

July 31, 2024

Changes to UK Prospectus Regime

FCA Consults on Significant Changes to the UK Prospectus Regime

SUMMARY

On July 26, 2024, the UK Financial Conduct Authority (“FCA”) [published](#) a consultation proposing reforms to the UK prospectus regime. The wide-ranging proposals have significant implications in particular for IPOs and secondary issuances where a company’s securities are to be admitted to trading on a UK regulated market (such as the main market of the London Stock Exchange) or a UK multilateral trading facility with rules specifying which companies are eligible for admission, the conditions for admission and ongoing obligations once admitted (a “primary MTF”) (such as AIM). The proposals are designed to enhance the attractiveness of the UK’s capital markets and dovetail with the FCA’s reforms of the UK listing regime, which took effect on July 29 and on which we reported [here](#).

KEY HIGHLIGHTS

The key highlights are as follows:

- The current EU-law-derived prospectus regime is to be abolished.
 - Under the proposed regime, offering securities to the public will be prohibited unless an exception applies.
 - A key exception will be that the offer is conditional on the admission of securities to trading on a UK regulated market or a primary MTF. Other exceptions, some derived from the current regime, will also apply.
 - The FCA will have rulemaking powers over when a prospectus will be required for admission to trading on a UK regulated market or a primary MTF and over the content requirements for a regulated market prospectus.
 - The threshold for secondary issuances on a regulated market not requiring a prospectus is proposed to be increased from 20% to 75% of the number of securities previously in issue.
 - Issuers will have the flexibility to submit voluntary prospectuses (whether for equity or debt securities) for FCA approval. A voluntary prospectus will entail all the rights and obligations of a mandatory regulated market prospectus, and could be used for regulated market issuances that do not meet the requirements for a mandatory prospectus.
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- A new type of prospectus, termed an “MTF admission prospectus”, is proposed to be required for all initial admissions to trading on a primary MTF. Although MTF admission prospectuses will not need to be approved by the FCA, they will be subject to the same statutory responsibility and compensation provisions as apply to regulated market prospectuses. Operators of primary MTFs will have discretion to determine whether MTF admission prospectuses are required for further issuances, as well as approval and content requirements.
- Detailed rules have been proposed to change the liability standard for certain categories of forward-looking statements from the negligence standard that currently applies to regulated market prospectuses to a recklessness standard to encourage issuers to include more forward-looking information.
- A working capital statement will be required for regulated market prospectuses relating to equity securities or depositary receipts representing shares. The FCA is considering further whether to permit disclosure of significant judgements made or to permit the working capital statement to be based on the underlying due diligence performed for the purposes of viability and going concern disclosures in issuers’ annual financial statements.
- The FCA is seeking views on whether to reintroduce requirements (that previously applied to issuers of premium listed equity shares under the UK listing regime) that balance sheet information for a regulated market prospectus must be as of a date no more than six months before the date of the prospectus and nine months before admission to trading.
- New climate-related disclosures are proposed for regulated market prospectuses relating to equity securities or depositary receipts representing shares where an issuer has identified material climate-related risk factors or opportunities, as well as to sustainability-labelled debt securities.
- Changes are proposed to make regulated market debt programmes more effective, including permitting the “forward incorporation” of future financial information such that debt issuers would not need to publish a supplementary prospectus if they release financial results during the period of a base prospectus’ validity.

NEXT STEPS

The consultation will close for responses on October 18, 2024. Subject to feedback received, the FCA plans to finalise its rules for the new UK prospectus regime by the end of H1 2025. There would be a further implementation period before the new rules enter into force.

The FCA has also stated that it intends to publish a separate consultation paper in late Q4 2024 on proposals to make it easier to include retail investors in non-equity fundraising by removing barriers to issuance of low denomination bonds.

We intend to publish on our website memoranda considering in detail the implications of the FCA’s proposals for issuers of equity and debt securities in due course.

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