

# The UK Government Publishes Near-Final Draft Update of the Prospectus Regime

11 August 2023

**Background.** On 11 July 2023, the UK Government published the long-anticipated near-final draft statutory instrument to update and in some parts replace the on-shored EU prospectus regime. “The Public Offers and Admissions to Trading Regulations 2023”, when adopted, are intended to increase flexibility, facilitate wider participation in ownership of securities and delegate a greater degree of responsibility for the regime to the FCA.

The key proposals are summarized below.

**New public offers architecture.** The regulation would provide for a general prohibition on the public offer of relevant securities, subject to the offer falling within a number of exceptions. The principal exception applies to offers where relevant securities are admitted to trading on UK-regulated markets or multilateral trading facilities (“MTFs”), as well as a new regime for public offers that do not take place on such markets.

**Admissions to trading on regulated markets.** The FCA would be empowered to decide when a prospectus is required regarding the admission of relevant securities to UK regulated markets, such as the Main Market of the London Stock Exchange (the “LSE”), and what a prospectus is required to contain, as well as the manner and timing of its approval and publication.

**Admissions to trading on MTFs operating primary markets.** The FCA would be given powers over MTFs that operate as “primary MTFs”, such as the LSE’s Alternative Investment Market, or “AIM”. These powers would allow the FCA to require primary MTFs which accept retail investors to provide an “MTF admission prospectus” as a condition for admission.

While primary MTF operators would retain discretion to set rules of the content and approval of MTF admission prospectuses (which would not be approved by the FCA), such MTF admission prospectuses would fall under the existing regime applicable to prospectuses required for offerings to a regulated market in respect of liability and disclosure.

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**Forward-looking statements.** Under the regulation, the liability threshold for certain forward-looking statements is higher: a claimant would be required to show such statements were fraudulent or reckless, rather than negligent (the current standard). However, the regulation retains the negligence-based threshold to determine liability for false, misleading or omitted information that is not forward looking.

**Offers of relevant securities not admitted to trading.** The regulation would continue to allow issuers to offer relevant securities to the public without having them admitted to a securities market. However, under the regulation, offers of relevant securities exceeding £5 million would not require a prospectus, but would need to be made through a public offer platform unless another exemption applies.

**A revised scope of the public offers regime.** Under the regulation, certain non-transferable securities would be within the scope of the new public offers regime. Offers of certain non-transferable securities (for example, securities offered through crowdsourcing platforms) exceeding £5 million would need to be made through a public offer platform unless another exemption applies.

**Retention and amendment of certain exemptions.** While many exemptions from the current prospectus regime would be retained, changes to exemptions in the current prospectus regime include the following:

- Lowering the threshold for an exempt offer of securities denominated in amounts over €100,000 to £50,000.
- Eliminating the exemption for non-equity securities issued in a continuous or repeated manner by a credit institution where the total aggregated consideration in the United Kingdom for the securities offered is less than €75 million per credit institution calculated over a period of 12 months.

**Aspects of the regime remaining unchanged.** The following would be retained under the new regulation:

- The basic concept of a prospectus in legislation and the definition of what a prospectus is.
- All offerings of at least £1 million exempted from the public offer prohibition would continue to be subject to an “equality of information” requirement where information disclosed to one investor must be disclosed to all.
- The “necessary information” test, to ensure that an overall standard of preparation for a prospectus, would remain.

- Many of the exemptions from the requirement to publish a prospectus that exist in article 1(4) of the UK Prospectus Regulation would remain under the regulation as offers that are exempted from the prohibition of offers to the public.
- Issuers would continue to be allowed to offer relevant securities to the public without having them admitted to a relevant securities market.

**Comments.** The new regulation would create a public offer regime distinct from the legacy on-shored European regime. Keeping with the UK Government's plans to overhaul and make more accessible UK public markets (see our previous update on the [publication](#) of Lord Hill's recommended changes to the listing regime, and [reports](#) on subsequent FCA consultations), the new regulation extends the move away from a rules-based prospectus regime to empowering the FCA to set policies that work for issuers.

The regulation is in near-final form, and the UK Government is accepting technical comments only. The deadline for comments is 21 August 2023.

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