

FCA Publishes Consultation Paper on Admission to Trading Regime

5 August 2024

BACKGROUND

On 26 July 2024, the UK Financial Conduct Authority (the “FCA”) published Consultation Paper [CP24/12](#), which sets out proposed rules for companies seeking to admit securities to a UK regulated market or a “primary” multilateral trading facility (“MTF”) under the new Public Offers and Admissions to Trading Regulations (“POATRs”) 2024 framework.

The POATRs, enacted on 29 January 2024, delegated responsibility for new public offers and admissions to trading to the FCA. The POATRs, which will become fully effective once the FCA publishes the new rules, represent a new framework to replace the existing prospectus regime, separating the public offers regime and the admissions to trading regime.

Under the new public offers regime, public offers of securities will no longer require a prospectus; however, any public offer of “relevant securities” will be prohibited unless it falls within a specific exemption, including where the securities are already admitted to trading on a UK regulated market or UK primary MTF.

The proposals aim to make capital raising on UK listed markets easier and more efficient and increase participation of retail investors in capital raisings. The key proposals in CP24/12 are summarised below.

KEY PROPOSALS

Requirement to Produce a Prospectus

- **Further issuances.** The FCA’s proposals would increase the threshold for requiring a prospectus for further issuances (of securities already admitted to trading on a regulated market) from the current 20% of the number of securities already admitted

to trading to 75% (although, issuers would still be allowed to produce a voluntary prospectus approved by the FCA for issuances below this threshold).

- **Securities offered in an exchange offer takeover.** The FCA’s proposals provide that shares issued as consideration for a takeover offer below the 75% threshold may qualify under the existing share capital exemption discussed above. Where that exemption does not apply, the FCA is proposing to keep the current prospectus exemption that applies to the admission to trading of securities offered in connection with a takeover by means of an exchange offer, where an equivalent document that describes the transaction and its impact on the issuer must be published.

Timing

The FCA’s proposals would amend the “six-day rule” so that only three working days would be required for a prospectus to be public before shares can be admitted to trading in an initial public offering.

Content of a Prospectus

- **Summary.** The FCA’s proposals would reduce the prescribed content requirements for prospectus summaries by removing the detailed financial information requirements and allowing issuers to include cross references to the relevant prospectus pages. A mandatory page limit would be retained but increased from seven pages to ten.
- **Financial information.** The FCA’s proposals would retain the existing financial information requirements. However, any material uncertainty relating to going concern, or any other matters reported on by exception, must be reproduced in full. The FCA is seeking views on whether to require financial information produced in a prospectus to be no more than six months before the date of the prospectus and no more than nine months before the date of admission, which was required under the old Listing Rules—see our [Debevoise Update](#) on the new Listing Rules.
- **Working capital statement.** The FCA’s proposals would retain the current requirement for a working capital statement, but the FCA is seeking views on whether issuers should be permitted to (i) disclose significant judgements made in preparing that statement and (ii) base the working capital statement on diligence performed for the purposes of viability and going concern disclosures in annual financial statements.
- **Sustainability related disclosures in prospectuses.** The FCA’s proposals would require issuers to include material and relevant climate-related disclosures in a prospectus (*i.e.*, where there are any climate-related risk factors or climate-related

opportunities that are material to the issuer's prospects). The FCA has suggested that climate-related disclosures relating to transition plans, metrics and targets should be eligible to fall within the class of PFLS (see discussion of PFLS below). The FCA's proposals would also require issuers to disclose whether their debt instruments have been marketed as "green", "social" or "sustainable", or issued under a bond framework or a similar document. The FCA is considering producing further guidance on sustainability-related disclosures.

Protected Forward-Looking Statements ("PFLS")

The POATRs provide that certain forward-looking statements can be deemed to be PFLS, whereby directors will only be liable for such statements if they are made recklessly (instead of the lower standard of being made negligently). The FCA's proposals include a general definition of what statements will constitute PFLS. Specifically, the FCA proposes that PFLS:

- can relate only to future events or sets of circumstances (and therefore a statement can only be considered PFLS if its veracity can only be determined by events that occur at a later date);
- must include an estimate as to when the event or set of circumstances to which it relates is expected to occur;
- can only be in respect of information useful to investors (using the standard of the "reasonable investor" under the UK Market Abuse Regulation); and
- will be either financial or operational information, with different requirements depending on which category such statement falls under.

Consequently, overly aspirational targets, narrative statements, existing mandatory disclosures and profit estimates (although not profit forecasts) would not be PFLS. The FCA expects that updates will be made in order to comply with the requirements of UK MAR. The FCA's proposals would require a prospectus to contain content-specific statements that identify individual PFLS and provide specific contextual information.

Admissions on MTFs

The FCA's proposals would require an MTF admission prospectus for all initial admissions to trading and reverse takeovers (with exceptions for existing simplified routes to admission) on an MTF (e.g., AIM and AQSE).

Currently, MTFs typically accept an admissions document (which is less burdensome and costly to prepare), rather than an FCA-approved prospectus. An MTF admission prospectus will be subject to the same statutory responsibility and compensation provisions that apply to prospectuses, but the detailed content requirements and the process for reviewing and approving such documents will be set by the relevant MTF operator.

The FCA hopes that the requirement to produce an MTF admission prospectus would increase retail participation as initial public offers to retail investors will have the same prospectus requirement as offers to qualified investors.

New Sourcebook

The FCA's proposals, in the case of admissions to UK regulated markets, would replace the existing Prospectus Regulation Rules with a new sourcebook, to be called the "Prospectus Rules: Admission to Trading on a Regulated Market" sourcebook.

COMMENTS

The FCA hopes the proposed changes will make the public offers regime more efficient and, in particular, will reduce the barriers to retail investors participating in public capital raisings. The FCA is expecting to publish later this year further proposals in regard to rules on non-equity securities on regulated markets, certain transitional provisions and other changes in relation to making the application process for further issuances of securities more efficient.

The deadline for comments on CP24/12 is 18 October 2024. The FCA aims to finalise the new rules by the end of the first half of 2025.

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Please do not hesitate to contact us with any questions.



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