



FCA consultation on UK prospectus regime reform – key changes for DCM issuers

The FCA is consulting on proposals for the new UK public offers and admission to trading regime (CP24/12). CP 24/12 sets out the FCA's proposed regulatory framework for the admission of securities to trading on UK regulated markets and UK primary multilateral trading facilities (**MTFs**) under The Public Offers and Admissions to Trading Regulations 2024 (**POATRs**).

This briefing considers some key areas in which the FCA is planning to make changes relevant for issuers with, or seeking admission of, non-equity securities such as bonds to trading on UK regulated markets or primary MTFs.

The new public offers and admissions to trading regime

The POATRs replace the existing UK Prospectus Regulation (*UK PR*) and create a new framework for the offering of securities to the public in the UK.

Under the POATRs, public offers and admissions to trading on a UK regulated market are treated separately.

Public offers of securities will no longer require publication of a prospectus. The POATRs prescribe a general prohibition on public offers of relevant securities unless the offer falls within a specified exemption. The principal exemptions from the public offer prohibition relate to offers where the securities are, or are to be, admitted to trading on UK markets (regulated or primary MTF) or offered by means of a regulated public offer platform (*POPs*).

The POATRs retain the concept of a prospectus only in the context of an admission to trading: the FCA will be able to require publication of a prospectus and prescribe its contents before admitting securities to trading on a UK regulated market. Under the POATRs, the FCA also has rulemaking powers to ensure that, for markets that 'retail' investors can access, the rulebooks of primary MTFs require an admission document to be published and treated as a prospectus.

The legislation has created a new regulated activity of operating a POP, through which issuers can make offers of any size to the public. Companies will be required to use such a platform where the offer is made outside public markets, is not otherwise exempted from the prohibition on public offers, and where the total value of an offer is above a threshold of £5 million in a 12-month period.

'Off-public-market' offers to the public of securities that are below the *de minimis* threshold of £5 million, or otherwise made only to qualified investors, made to less than 150 persons, or securities whose denomination per unit amounts to at least £50,000, are exempt from the general prohibition on offers of relevant securities to the public. There is no requirement for an approved prospectus in these circumstances.

The POATRs will come fully into force only after the FCA has finalised its new rules in 2025.

New rulebook

It is proposed that the existing Prospectus Regulation Rules sourcebook (*PRR*) will be replaced with a new sourcebook, the Prospectus Rules: Admission to Trading on a Regulated Market sourcebook (*PRM*). The draft text of the new sourcebook is included in Appendix 1 to CP24/12. Detailed content requirements are set out as Annexes in the new PRM sourcebook, broadly similar to the current UK PR structure, although with the benefit of a

more integrated single sourcebook versus separate assimilated regulations.

Prospectus summary

A prospectus summary will be mandatory in all prospectuses for regulated markets *except* non-equity securities where admission is sought on a QI-only segment of a regulated market, or the non-equity securities have a denomination of at least £50,000.

The FCA proposes to reduce the prescribed summary contents requirements by removing the requirement for detailed financial information in the summary and allowing issuers to include cross referencing. The FCA intend to continue to set a mandatory page limit to the summary but propose to increase this limit from 7 pages to 10 pages.

Incorporation by reference

The FCA proposes to permit forward incorporation by reference; in this respect, there will be a degree of alignment with the EU Listing Act reforms of the EU Prospectus Regulation, which will also permit forward incorporation by reference.

Under the proposed PRM, issuers will be able to incorporate certain future financial information by reference in their base prospectus if and when this information is published through a regulatory information service (*RIS*). This will be a voluntary option, and issuers will still be able to use supplementary prospectuses to incorporate such information by reference. When future financial information is incorporated by reference in this way, investors will not be entitled to mandatory withdrawal rights (unlike when issuers amend prospectuses via supplementary prospectuses). However, issuers remain free to grant withdrawal rights voluntarily.

The FCA proposes to continue to allow discretionary incorporation by reference and cross referencing, but not to make it mandatory.

Historical financial information

The FCA proposes retaining existing financial information requirements, with the clarification that any material uncertainty relating to going concern, or any other matters reported on by exception, be reproduced in full.

Supplementary prospectuses

Up until now, there have been limits on what kinds of revisions and amendments may be made via a supplementary prospectus. If an issuer wants to add a new class of security to a base prospectus or wants to add new terms and conditions to a base prospectus, it has to produce a drawdown prospectus or otherwise update the entire base prospectus.

The FCA propose changing the rules around supplementary prospectuses to make them more flexible, subject to certain limitations. The FCA's view is that this flexibility may be appropriate to supplement base prospectuses in certain circumstances, eg where there is no significant new factor, material mistake or material inaccuracy to trigger a supplementary prospectus, but an issuer wants to add terms for a new type of security such as green bonds. However, this route may not be used to add asset-backed securities or securities with a derivative element to a prospectus, due to these securities' inherent complexity and the amount of additional information required. In this situation, the FCA would still want a full prospectus to be published.

Note that the EU Listing Act reforms to the EU Prospectus Regulation clarify that no new securities may be added into an EU Prospectus Regulation base prospectus via a prospectus supplement, except where an issuer does so to comply with capital requirements under EU law – so in this respect, there is likely to be EU/UK divergence in approach.

Further issuance of fungible securities

The FCA proposes to raise the threshold at which a prospectus is required for the admission to trading of securities fungible with existing traded securities on a regulated market from 20% to 75% of the number already admitted to trading, over 12 months. This significantly higher threshold for a prospectus would apply to all types of securities, including debt securities, shares and GDRs.

Issuers may still produce a voluntary prospectus, approved by the FCA, for fungible issuances below 75%. This voluntary prospectus option may be attractive to an issuer that is marketing a fungible offer of securities to a global investor base across jurisdictions with disparate liability regimes.

This is another area where there will be UK/EU divergence, as the FCA's proposal for fungible securities goes much further than the approach taken by the EU Listing Act in its reform of the EU Prospectus Regulation. EU changes will allow admission of fungible issues on an entirely undocumented basis only up to 30%, although certain issuers will be permitted to admit securities with no upper limit if they meet specified conditions and publish a shortform disclosure document (of no more than 11 pages).

Sustainability and climate-related disclosures

For general purpose non-equity securities, the FCA proposes to retain the approach of using non-Handbook Technical Note guidance to clarify their expectations.

While the FCA does not intend to set minimum information requirements, issuers of non-equity securities will continue to have the obligation to report information in line with the 'necessary information' test. Regulation 23(3) of the POATRs specifies that references in the necessary information test to the '*prospects of the issuer and of any guarantor are to be read, in relation to debt securities, as a reference to the creditworthiness of the issuer and of any guarantor*'. In particular, the FCA comments that issuers of long-dated non-equity securities should consider how sustainability-related risks and opportunities may affect the ability of the issuer to continue to meet its obligations.

Sustainability-labelled debt instruments

The FCA notes that sometimes prospectuses and bond frameworks (as well as other communications that may be advertisements for the purposes of the prospectus regime) are not fully consistent in terms of the information they present to investors in green, social, sustainable, and sustainability-linked debt securities. Currently, the FCA addresses this under [Primary Market Bulletin 41](#) (June 2022), where it indicates that bond frameworks that form part of communications relating to public offers or admissions to trading of securities were likely to be advertisements for the purpose of the prospectus regime, thus requiring consistency vis-à-vis the prospectus.

To address this lack of consistency, the FCA proposes a new disclosure requirement that all issuers of debt securities will have to comply with to meet the necessary information test. All issuers of debt securities will be required to state in their prospectus whether their bonds have been marketed as 'green', 'social', 'sustainable' or 'sustainability-linked' and/or issued under a bond framework or similar document published by the issuer, any of its subsidiaries or any entity belonging to the group of the issuer. Issuers would then need to consider whether to disclose further information, depending on the type of bond, on a voluntary basis. It would be the issuer's choice to do so, but if they did, the FCA sets out the nature of the disclosure they would like to see.

Such disclosure should generally include the kind of information that is normally contemplated under reasonably detailed bond frameworks. Issuers would be prompted (but not mandated) to include a set of more 'general' disclosures applicable to both Use of Proceeds (UoP) bonds and Sustainability-Linked Bonds (SLBs), as well as more specific disclosures, depending on the type of security they are issuing.

In particular, the FCA are proposing the following set of common disclosures:

- Availability and location of any bond framework (or similar document).
- Whether any standards or principles have been followed in developing the framework.
- Details of any external review(s) (typically a second party opinion) on the degree of alignment between the bond framework (or similar document) and the relevant standards or principles.

In the case of UoP bonds, the proposed additional disclosures would focus on:

- *Eligible projects*: details of the eligible projects that will be funded (or refinanced) through the proceeds raised. Issuers should consider clarifying whether the proceeds can be used for refinancing existing commitments, and if so, add details on the maximum proportion of proceeds that will/could be used for refinancing transactions (and the percentage expected to be allocated to new ones); and the expected look-back period (ie the maximum time period that the issuer will look back to identify projects for the purpose of capital deployment).
- *Project evaluation*: details of the project objectives, risks associated with the project and related mitigation measures; and the criteria, metrics or performance indicators used to evaluate the projects.
- *Project selection criteria*: The criteria and rationale for selecting projects, including how the UoP bond aligns to industry standards or principles by reference to an external review or the issuer's methodology for determining eligibility of the projects as green, social, or sustainable.
- *Management of proceeds*: rationale for the approach and methods for the management of proceeds (including those relevant in the context of temporary management of proceeds).
- *Post-issuance reviews*: information on post-issuance external review or assessment of the projects performance; whether the issuer has arranged or intends to arrange a post-issuance assessment of the impact or effectiveness of the project(s) being financed or refinanced, where that information will be found and how often it will be updated.

In the case of SLBs, the FCA are not seeking to duplicate disclosures that should already be included in the contractual terms of the bond, including matters such as baselines, fallbacks, and verification. They propose focussing instead on items that can provide a more rounded understanding of how an SLB fits in the issuer's strategy and sustainability aspirations. The FCA propose to focus on the following aspects:

- *Selection of Key Performance Indicators (KPIs)*: the KPIs and relevant performance metrics, including information on the process and rationale for their

selection; how they are calculated/estimated; their measurability and verifiability; and how they will be benchmarked, if relevant.

- *Selection of the Sustainability Performance Targets (SPTs)*: details of the baseline and level of ambition of the targets in light of the strategy of the issuer and its 'business as usual' trajectory. Issuers should seek to include details of how they intend to achieve their SPTs, where possible, and set out any uncertainties and risks to their plans.
- *Financial incentives and consequences*: An explanation of why the financial consequences of failing to meet or meeting the intended SPTs are deemed by the issuer to provide adequate incentives to the issuer to effect the necessary changes to achieve the agreed SPTs, including, for example, in relation to how material any step-up or step-down is for the company in the context of their interest costs.

These proposed disclosures do for the most part reflect current market practice for bond issuers that follow voluntary market-based principles such as the Green Bond Principles and the Sustainability-Linked Bond Principles; therefore, in our view, these additional disclosures should not be unduly onerous for issuers seeking to issue sustainability-labelled bonds.

For the avoidance of doubt, the FCA clarifies that it does not intend to create a bond standard for green, social, or sustainability-labelled debt at this time. In contrast, the EU Green Bond Standard Regulation is set to come into force across the EU later this year, as a voluntary option for those issuers that wish to seek the EU Green Bond label for their bonds.

Protected forward looking statements (PFLS)

The UK Listing Review identified forward-looking statements as particularly useful information for investors to have when making investment decisions. The review concluded that companies are discouraged from including such information in their prospectuses because of the existing prospectus liability provisions (which are based on a negligence standard). The POATRs address this behaviour by establishing a different recklessness/dishonesty liability threshold for certain categories of forward-looking statements in prospectuses and MTF admission prospectuses. Aside from this change, the new regime retains the existing negligence-based threshold for prospectus liability.

The POATRs give the FCA powers to make rules relating to PFLS, including what information can be deemed to be PFLS. The FCA has suggested a general definition that will apply to all PFLS disclosures, along with category-specific criteria for financial or operational information.

The FCA propose:

- That a forward-looking statement can only be considered PFLS if it relates to future events or circumstances and the verification as to the truth, correctness, and completeness of the statement can only be carried out by reference to an event or set of circumstances that occurs *after* the forward-looking statement has been published.
- That a forward-looking statement can only be considered PFLS if it includes an estimate as to when the event or set of circumstances to which the statement relates is expected to occur.

Incorporating the reasonable investor test (routinely applied in a UK Market Abuse Regulation (**MAR**) continuing disclosure obligation context) into the general definition of PFLS, to ensure that only information useful to investors can be a PFLS. Note that, although the reasonable investor test is used in identifying inside information, the FCA's proposal is not intended to limit PFLS disclosures to information that could be considered inside information; PFLS will be inherently uncertain and therefore will be insufficiently 'precise' to meet the inside information definition. However, the FCA expects that use of the 'reasonable investor' test will mean that issuers will need to make subsequent updates in order to comply with their MAR obligations. When the future event or set of circumstances to which the PFLS relates are reasonably expected to occur (or have occurred), the FCA presumes the issuer will have information that meets the inside information test in full, potentially triggering an announcement obligation.

PFLS must be clearly demarcated within a prospectus, and certain accompanying statements will be required where a prospectus contains PFLS. The FCA propose that there should be two types of accompanying statement:

- A *general statement* applying to all PFLS in the prospectus that informs investors about the risks that would apply to any PFLS disclosure. The general statement will only need to be included once and will need to explain how to identify PFLS in the prospectus by describing where in the document the information is located and how it is demarcated from other prospectus content.
- A *content-specific statement* that identifies a particular disclosure as PFLS and that provides contextual information which is specific to the disclosure. Content-specific statements should sit alongside the PFLS disclosures to which they relate.

This approach will apply to prospectuses for admission of securities to a primary MTF, as well as admissions to a regulated market.

Note that this reduced standard of liability will apply only in the UK, meaning issuers will still have to have regard to heads of liability outside the statutory regime, as well as the liability regimes of any other jurisdiction into which they offer securities. Notably, the EU Prospectus Regulation (including the EU Listing Act) does not provide for a disclosure concept similar to PLFS. As such, it remains to be seen to what extent the inclusion of forward-looking information in prospectuses will increase.

MTF admission prospectuses

By introducing the concept of an MTF admission prospectus, the legislation intends to encourage wider participation in the ownership of public companies by enabling primary MTF issuers to offer securities to the public (ie not limited to qualified investors or to fewer than 150 persons) without the burden of having to produce an FCA-approved prospectus.

An MTF admission prospectus will be required for all initial admissions to trading, even when there is no public offer. The FCA will make the relevant changes by adding a new Chapter to the Market Conduct (MAR) sourcebook. The detailed content requirements and the process for reviewing and approving such documents, however, will be set by the relevant MTF operator.

Under the POATR, FCA rules can only require an MTF admission prospectus or supplementary prospectus where trading on the MTF is intended for retail investors. The FCA cannot require this where a MTF is intended to be limited only to Qualified Investors eg the International Securities Market (*ISM*). With respect to QI-only MTFs, only the market operator can require the publication of an MTF admission prospectus or supplementary prospectus.

For fungible issuances, the FCA consider it appropriate to allow primary MTF operators to have discretion in deciding whether an MTF admission prospectus should be required.

The FCA also propose extending the regulated market advertisements regime to the admission of transferable securities to trading on a primary MTF.

MTF admission prospectuses will be subject to the same statutory responsibility and compensation provisions as apply to regulated market prospectuses.

Conclusion

The FCA has heeded market feedback that the current prospectus regime works well overall for non-equity securities. The FCA proposals in CP 24/12 are, on the whole, measured and sensible proposals that will make targeted, incremental improvements to the UK prospectus regime.

While the PFLS regime is an interesting innovation, it remains to be seen whether bond issuers will include forward-looking information in prospectuses marketed to a global bondholder base.

We await the FCA's proposals for rules on low denomination retail bonds, to see how far-reaching reform in the retail bond space will be.

What happens next?

Comments on the consultation are requested by 18 October 2024. The FCA aims to finalise the rules for the overall POATRs regime by the end of H1 2025.

For a summary of the key changes for regulated market issuers of shares, see our recent [blog](#).

The FCA expects to undertake a follow up consultation later this year in relation to rules on low denomination retail bonds, certain transitional provisions, and minor changes to make the applications process for further issuances of securities more efficient.

This paper is part of a wider set of consultations launched by the FCA to promote more efficient and effective capital raising for issuers and increase opportunities for investors, which also includes consultations on the establishment of [public offer platforms \(CP24/13\)](#) and reforms for [derivatives \(CP24/14\)](#).



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