

# Prospectus regime reform: FCA proposes radical change

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Quick on the heels of the finalisation of the [new UK Listing Rules](#) (UKLR), the UK Financial Conduct Authority (FCA) has published a [consultation paper](#) (CP24/12) on the prospectus regime which is possibly the most eye-catching of all UK listing regime reforms to date.

Whereas the UKLRs significantly reduced the regulatory burden for London-listed issuers, the proposals for prospectus reform really do take the brakes off and, if implemented in the suggested form, will dramatically reduce the occasions when an issuer will need to publish an FCA-approved prospectus outside of an IPO on the Official List.

Focussing on equity prospectuses, we look below at the significant changes to when a prospectus is needed, the new disclosure requirements where a prospectus is required, and the other proposed reforms to the regime. We look at the changes for companies applying for admission, or whose shares are already admitted, to the LSE's Main Market and AIM.

Comments on the proposals are due to be provided to the FCA by 18 October 2024. The FCA aims to finalise the rules by the end of H1 2025. The final rules will be called the Prospectus Rules: Admission to Trading on a Regulated Market (PRM) and will replace the existing Prospectus Regulation Rules in the FCA Handbook.

## Key takeaways

The key proposed reforms for issuers with shares admitted, or to be admitted, to a

regulated market (e.g., the London Stock Exchange's Main Market) are as follows:

- the maintenance of the requirement for an FCA-approved prospectus on an IPO on a regulated market;
- following IPO, a requirement for a prospectus if issuing 75 per cent. or more of an issuer's issued share capital in a 12-month period (increased from the current 20 per cent. threshold);
- a more flexible complex financial history regime, allowing issuers more choice in disclosing financial information of acquired assets, with guidance provided by the FCA in a Technical Note;
- clarification of what and how forward-looking information can benefit from a lower liability regime under the PRM;
- the retention of working capital statements, but potentially with the ability to include assumptions and significant judgements in the disclosure;
- a requirement for more sustainability-related disclosure by issuers who identify material climate-related risks or opportunities;
- a requirement for retail offer prospectuses to be published only three working days before admission (decreased from the current six working day period);
- an extension of the permitted length of summaries to ten pages, with fewer mandatory financial disclosure requirements and an ability to cross-

reference to other parts of the prospectus;

- the retention of discretion whether to incorporate by reference; and
- the provision of specific disclosure requirements for equivalent documents which can be published instead of a prospectus (e.g., where there is a takeover by means of an exchange offer).

For Primary MTF (e.g., AIM) applicants and issuers, the key takeaways are as follows:

- mandatory MTF admission prospectuses needed on all IPOs (whether or not there is an offer) except when an issuer makes use of the AIM Designated Market Route or AQSE fast-track;
- delegation to the market operator (i.e., the London Stock Exchange for AIM) to set disclosure requirements for MTF admission prospectuses, save for the new forward-looking information disclosure and liability regime which will apply;
- MTF admission prospectuses broadly subject to the same rules concerning supplementary prospectuses, advertisements, prospectus responsibility, withdrawal rights and the 3-working day offer period for retail offers;
- AIM issuers will not be subject to the 75 per cent. threshold described above and market operators will be free to set thresholds (if any) for prospectus requirements on a further issue; and
- the FCA will not approve MTF admission prospectuses.

### When will a prospectus be required?

Under the Public Offers and Admissions to Trading Regulations 2024 (POATRs), the UK government established parameters for the FCA to determine the new prospectus regime. The POATRs themselves narrowed the requirements for a prospectus, including by removing the requirement to produce a prospectus when offering shares to the public if applying for or already admitted to trading on a regulated market or a Primary MTF. This means that once the FCA has implemented the PRM, the prospectus regime will only apply to issuers on a regulated market or Primary MTF when a prospectus is required for the admission of securities and there is no available exemption.

### Further issues

The key threshold for a further admission prospectus under the current regime is the issuance of securities (or securities fungible with existing securities admitted to trading) of more than 20 per cent. of the issuer's issued share capital within a twelve-month period.

The FCA proposes to increase this threshold to 75 per cent., although issuers can voluntarily prepare a full or simplified prospectus if the percentage of securities to be admitted is lower than this number. This requirement only applies to the regulated market. Primary MTFs can set their own threshold should they choose to do so (note AIM does not currently have a requirement to issue an admission document on any further issue of shares no matter how large).

The FCA has indicated that it may require the publication of a prospectus if the admission of securities to a regulated market is in connection with a rescue financing, regardless of whether the 75 per cent. threshold is met. Even if the FCA was to introduce a lower

threshold in these circumstances, the proposed rules mean that an issuer could otherwise issue 74.99 per cent. of its issued share capital by way of a rights issue or as consideration for a significant transaction without the need for a prospectus, albeit that where it follows the current pre-emption group guidelines it may require shareholder approval to issue those shares.

If an issuer sought investors in other jurisdictions where a prospectus would be customary, or should the directors or underwriters of an equity raise want a prospectus to ensure that there was no doubt as to what the necessary information an investor needed to make an investment decision, the FCA propose that an issuer could publish a prospectus on a voluntary basis, which the FCA could approve.

The cost and inconvenience of producing a prospectus when there is no specific regulatory requirement to do so will likely lead to far fewer prospectuses being produced. There must be a concern that investors will be less informed because of these changes, especially when considered alongside the reduced mandatory disclosure requirements for a significant transaction, albeit that the counter to this argument is that these issuers are subject to the continuous disclosure requirements of the relevant market and so there should be little information which is not currently in the public domain. In turn, there is a risk that issuers and directors face more shareholder criticism if a further issuance of shares has a negative impact on an issuer's performance or share price and a prospectus had not been made available. Set against the backdrop of the forthcoming EU reforms to its prospectus regime, where the EU will raise the threshold from 20 per cent. to 30 per cent., the FCA's approach is undoubtedly brave and

creates clear blue water between the UK and EU regimes.

For the avoidance of doubt, an issuer would always need a prospectus on an IPO on a regulated market.

### *MTF admission prospectuses*

The POATRs empower the FCA to determine when to require the publication of an MTF admission prospectus. The FCA is proposing there will be a prospectus requirement for all initial admissions to trading on Primary MTFs (e.g., AIM) other than where an issuer qualifies for the AIM Designated Market Route or the AQSE fast-track. In practice, this aspect of the proposals is likely to be of little practical difference as there will be no requirement for that MTF Admission Prospectus to be approved by the FCA and AIM Admission Documents already follow much of the disclosure requirements in the Prospectus Regulation Rules.

The purpose of this reform therefore is primarily that issuers may be more inclined to include a retail tranche as part of their IPO since an MTF admission prospectus can be used for a retail offer, while under the current regime an admission document cannot, outside limited exemptions (e.g., offers of less than €8m).

On AIM, as mentioned above, the London Stock Exchange will have discretion whether to require an MTF admission prospectus on further issuances after IPO. The 75 per cent. threshold for secondary issues described above will not apply to AIM-quoted issuers.

However, the FCA has proposed that MTF admission prospectuses will be broadly subject to the same rules as other prospectuses for supplementary prospectuses, advertisements, prospectus responsibility, withdrawal rights and the three-

working day offer period for retail investors. The biggest practical change here will be the introduction of the advertisement regime to AIM which, while it does encourage discipline on issuers during a marketing process, can be onerous to follow.

### *Takeovers*

The FCA has also proposed providing more clarity to the exemption that allows an issuer not to produce a prospectus on admission of securities where the securities are offered in connection with a takeover by means of an exchange offer if an equivalent document is made available. The FCA plans to set out what an equivalent document must contain in a Technical Note using the EU standards (EU Commission Delegated Regulation (EU) 2021/528) as a starting point.

### **What will a prospectus need to contain?**

The FCA can determine disclosure requirements for regulated markets, but not Primary MTFs (such as AIM), except in relation to the forward-looking information disclosure and liability regime (see below). As such, except where we refer to MTF admission prospectuses specifically, the below relates to issuers with shares admitted, or seeking admission, to a regulated market or a Primary MTF.

### *Complex financial history*

To reduce the time and cost of preparing a prospectus, the FCA has sought to reduce, where appropriate, the disclosure regime for issuers who have completed significant transactions or financial commitments during the period covered by the historical financial information in the prospectus. In proposed guidance, the FCA intends that the financial disclosure of businesses acquired during that period should be driven by what investors

need to make an informed assessment of the issuer and its securities.

Where the acquisition happened nearly three years before, and the issuer has more than two years of consolidated financial information that reflects the entire business, the FCA concede that there may be no need to provide accounts on the acquired business for the period between the beginning of the historical financial information included in the prospectus and the date of completion of the acquisition. Equally, the FCA suggest that where an issuer has made several small acquisitions none of which represent 25 per cent. of the issuer on various metrics, there may be no need to include financial information for those acquired businesses. These examples will be set out in a Technical Note accompanying the new regime to guide issuers on their disclosure decisions.

This approach is welcomed, although issuers and their advisers will have to take heed of securities laws and practices of other jurisdictions, including the US, which often drive the financial disclosure required to be included in the prospectus.

### *Forward-looking information*

In the UK, issuers and directors have customarily been reticent to include guidance on future performance in a prospectus. This is for a mix of reasons, including the liability regime associated with prospectuses, the cost and time of having the information diligenced by reporting accountants, and the concern that it creates a hostage to fortune should the issuer not achieve its targets.

The POATRs lowered the liability profile for “protected forward-looking statements” (PFLS) to that of recklessness rather than negligence to give issuers and directors comfort when providing forward-looking information.

However, liability can arise other than through prospectus disclosure, and we assume issuers and directors will remain cautious around providing forward-looking information that in time can be judged against actual results. Whether we see more forward-looking information in prospectuses will depend on how hard investors push for this disclosure as part of any IPO marketing process.

CP24/12 nevertheless provides a framework for what is a PFLS and the benefits from the lower liability regime. PFLS are financial or operational statements that can only be verified by reference to a future event or set of circumstances, but to be a PFLS, it is necessary to also disclose an estimate as to when the event or set of circumstances is expected to occur.

For financial information to be a PFLS, it must expressly state either a figure (which can be a minimum or maximum figure) or data from which a calculation of such figure can be made. It must be prepared in a manner that is understandable, reliable and comparable with an actual figure in the issuer's historical financial information contained in the prospectus and would in our view extend to non-IFRS performance measures such as EBITDA and all-in-sustaining-costs.

For operational information to be a PFLS, it must expressly state a figure or data from which a figure can be calculated or, if it cannot be expressed numerically, it must be capable of being confirmed empirically through direct observation or objective measurements. It must be prepared in a manner that faithfully represents the issuer's actual and expected performance, strategies, plans and risk analysis and must be comparable with the actual future result.

These definitions mean that purely narrative statements or aspirational targets cannot be

PFLS, which is an attempt by the FCA to move prospectus disclosure of projected future performance towards being more specific than is currently the case.

Significantly, PFLS must be information that meets the "reasonable investor" test. This is to ensure that issuers seeking to benefit from the lighter liability regime will need to update the market of any changes to PFLS after the IPO in accordance with their obligations under UK MAR.

The FCA proposes that PFLS cannot be information that is otherwise required to be disclosed under the prospectus regime. This means "use of proceeds" disclosure or a working capital statement cannot be a PFLS, and by extension any valuation or other required reports such as competent persons reports should not be either. The FCA is however proposing certain exceptions relating to the business overview, operating and financial review and trend information requirements, where the information meets the other requirements of a PFLS. Profit forecasts will be PFLS, whilst profit estimates will not.

Where PFLS are included in a prospectus, accompanying statements will be required so that they are clearly identifiable. A prospectus will need to contain a general statement relating to PFLS (probably at the front of the prospectus in the "Important Information" section) as well as statements throughout the document identifying individual PFLS and providing contextual information specific to the disclosure.

Unlike other content requirements in this note which do not relate to the disclosure in an MTF admission prospectus (which the FCA propose should be set by the market operator), the PFLS regime will apply to MTF admission prospectuses.

### *Working capital statement*

It is a peculiarity of the EU and UK markets that prospectuses need to contain a statement on an issuer's working capital position for the twelve months following the publication of a prospectus. The FCA does not propose to remove this requirement but has suggested that the prospectus requirements could allow for more nuanced disclosure, including setting out the significant judgments that issuers and their directors have used to determine whether the issuer has sufficient working capital for its present requirements.

The FCA has also indicated that an issuer may be able to base its diligence for the working capital statement on the work it already undertakes for the purposes of viability and going concern statements in its financial statements. This would be a sensible move as the two processes are similar but sufficiently different to add unnecessary cost to the diligence required to publish a prospectus.

### *Sustainability-related disclosure*

The mandatory disclosure requirements under the current prospectus regime were drawn up at a time before the recent developments in disclosure around sustainability and climate-related risks and opportunities. As such, there is currently a significant difference between the amount of mandatory information required under the UKLRs for disclosure in an annual report to that set out in the current Prospectus Regulation Rules.

Whilst acknowledging the need to bridge this gap, the FCA is consulting on a less rigid approach than some expected. The proposals are additional disclosure requirements if an issuer identifies either climate-related risks as material risk factors or climate-related opportunities as material to the issuer's

prospectus. The minimum requirements include a description of:

- the issuer's governance arrangements for assessing and managing climate-related risks and opportunities;
- how the issuer identifies, assesses, and manages climate-related risks;
- the actual and potential impacts of climate-related risks and opportunities on the issuer's businesses, strategy, and financial planning; and
- the metrics and targets used to assess and manage relevant climate-related risks and opportunities.

If the issuer has published a climate transition plan, where the contents are material, a prospectus will include a summary of key information about the transition plan and where it may be located and inspected.

For the time being, the FCA is not proposing wider requirements for sustainability-related disclosure, noting that practice is still evolving. The FCA expects to revisit the rules in this area at a later stage.

### *Prospectus summary*

The FCA propose reducing the prescriptive disclosure requirements in a prospectus summary and allowing it to run to ten pages rather than seven. The lengthening of the summary is welcomed, although the removal of an arbitrary page limit would, in our view, be preferable. Ten pages should in most cases be manageable, especially as the FCA is intending to reduce the amount of financial information required and allow cross-references (but not incorporation by reference) in the summary. Cross-referencing allows issuers to sign-post particularly significant disclosure elsewhere in the document which cannot be summarised within the length restrictions.

### *Incorporation by reference*

The FCA had previously suggested that it might make incorporation by reference mandatory for prospectuses to reduce their length. This was overwhelmingly rejected by market participants, who value having all the information in one place and it will be interesting to see if this logic continues when providing feedback on the proposed 75% threshold for further issues. In response, the FCA has concluded that giving issuers the discretion to incorporate by reference is preferable.

### **What else is changing?**

#### *Shorter retail offering timetable*

Under the current regime, where a prospectus is published in connection with an offer to the public (i.e., to retail investors), it needs to be available for six working days. The FCA proposes halving this time to three working days. This reflects the fact that hard-copy prospectuses and order forms are no longer a practical requirement as online platforms make involving retail investors easier. This change matches the approach recently adopted in the EU.

A shorter mandatory offer period could encourage investors to involve retail investors on IPOs, but the period between publication of a prospectus and admission on an IPO is normally not much shorter than six working days as there is a need to circle back with institutional investors to confirm orders and

create sufficient distance between the investor education process and admission of the shares. As such, it is difficult to see what this changes in practice.

### **Final thoughts**

Over the next few months, we will no doubt witness a lively debate on whether the FCA has the balance right on the requirement to publish a prospectus on a further issuance of shares. Whilst 75 per cent. was the threshold proposed in the Secondary Capital Raising Review, some market participants will view this as too high notwithstanding the ability for an issuer to publish a voluntary prospectus.

We think the other changes should be well-received as the additional disclosure requirements are not heavy-handed. The FCA proposals are proportionate and should not damage London's competitiveness.

For AIM IPO candidates, the new rules will result in a small additional level of complexity to the process, particularly with the introduction of the advertisement regime, but none of the proposals are particularly alarming.

Once finalised, the hope is that the new UKLRs and PRM will mean that the London markets are "match fit" to address the needs of both issuers and investors.

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