UK Prospectus Reform
Major Changes Ahead

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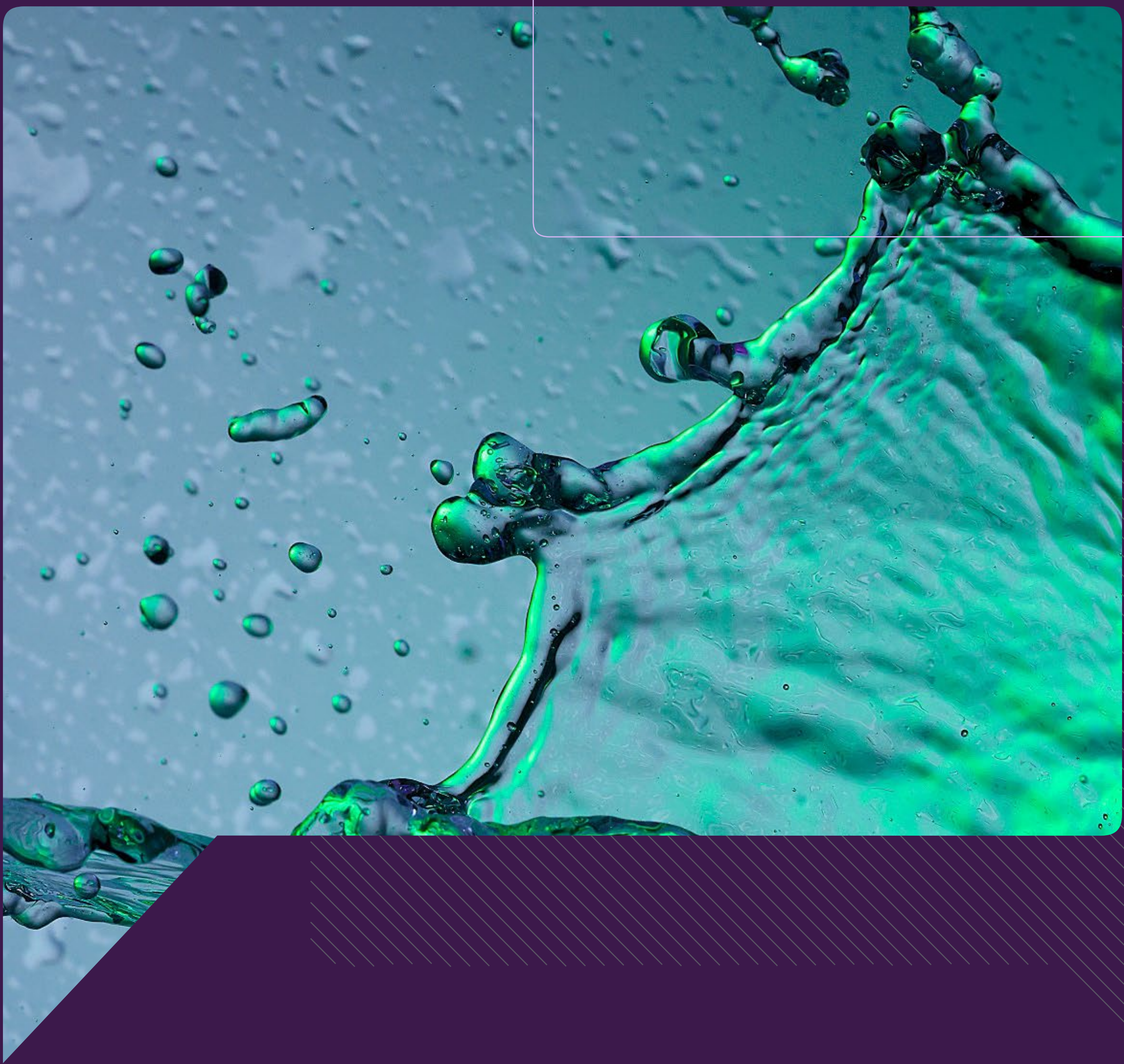

UK Prospectus reform: major changes ahead

Keeping up the rapid pace of reform of the UK capital markets rules, following finalisation of the new UK Listing Rules (**UKLR**) which came into force on 29 July 2024, the UK Financial Conduct Authority (**FCA**) has published a consultation paper (CP24/12) on the prospectus regime which includes some radical changes, albeit broadly in line with the UK Secondary Capital Raising Review published in July 2022.

We comment below on 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 prospectus regime. There are changes for companies applying for admission, or whose shares are already admitted, to the LSE's Main Market, AIM, and other markets such as the AQSE Growth Market.

The consultation period runs until 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 sourcebook (**PRM**) and will replace the existing Prospectus Regulation Rules in the FCA Handbook.

Key points for Main Market IPOs and issuers

We summarise 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) below:

When will a prospectus be required?

- An FCA-approved prospectus will still be a central feature of UK IPOs of equity shares on a regulated market.
- Following IPO, a prospectus will be required to issue 75% or more of a listed company's issued share capital in a 12-month period (a substantial increase from the current 20% threshold, and a major point of distinction compared to EU markets where the threshold will be set at 30%). Note that shareholder approval may be required for large share issues under current pre-emption group guidelines.
- Listed issuers will be able to prepare a "voluntary prospectus" approved by the FCA for any share issue below this threshold, should the need arise e.g. for compliance with overseas securities law requirements.

Content of a prospectus

- Whilst the FCA is consulting on the detailed disclosure requirements, the prospectus content requirements are expected to be largely the same.
- There is a proposal to introduce a more flexible **complex financial history regime**, allowing issuers more choice in disclosing financial information of acquired assets driven by what investors need to make an informed assessment of the issuer and its securities, with guidance to be provided by the FCA in a Technical Note.
- The FCA proposes carrying forward the current prospectus requirements regarding **historical financial information** into the new regime, with the clarification that any material uncertainty relating to going concern, or any other matters reported on by exception, be reproduced in full.
- A 12-month **working capital statement** will be retained, but potentially with the ability to include assumptions and significant judgements in the disclosure. An important additional proposal is 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, thereby merging two related but different workstreams and reducing the diligence requirement – and related cost – to support the prospectus.
- Issuers will have to include certain additional **climate-related disclosures** where the issuer has identified climate-related risks as risk factors or climate-related opportunities as material to the issuer's prospects.
- The FCA considers that greater flexibility in the **summary** would make a prospectus more accessible to retail participation. The FCA accordingly proposes reducing the prescribed content requirements, allowing cross-referencing to other parts of the prospectus, and removing some of the detailed financial information requirements. The permitted length of the summary is proposed to be extended from seven to ten pages.
- The FCA proposes to retain an issuer's discretion whether to **incorporate by reference** (rather than adopting the proposal that incorporating information by reference be made mandatory).
- See below regarding the inclusion of "protected forward-looking statements" in a prospectus.
- The FCA is also seeking views on additional guidance for specialist issuers such as mineral companies.

Changes to directors' liability for a prospectus

The consultation clarifies the proposals regarding "**protected forward-looking statements**" (**PFLS**), being a new regime which would allow prospectuses to include guidance on future performance. The aim of this change is to encourage the disclosure of forward-looking statements to help investors make better informed investment decisions. PFLS are financial or operational statements that can only be verified by reference to a future event or set of circumstances (as a rule, the FCA proposes that PFLS cannot be information that is otherwise required to be disclosed under the prospectus regime). Currently, issuers and directors are reluctant to include forward-looking statements, for various reasons including risk of liability, diligence requirements and concerns over publishing targets which may not be met. To address these concerns, under the PFLS regime the prospectus liability threshold for such statements will be the reduced standard of "recklessness" rather than "negligence". PFLS must disclose an estimate as to when the event or set of circumstances is expected to occur, and information disclosed under the PFLS regime must satisfy the "reasonable investor" test; the quid pro quo of benefitting from the lighter liability regime is that an issuer will need to update the market of any changes to PFLS after the IPO in accordance with their obligations under UK market abuse regulations (the rules on disclosure of "inside information" under UK MAR also incorporate a "reasonable investor" test).

Takeovers

Shares issued as consideration for a takeover offer may be able to benefit from:

- the new 75% exemption mentioned above; and/or
- the retained existing exemption applying to admission to trading of securities offered in connection with a takeover offer by means of an exchange offer. The requirement to make available an equivalent document describing the transaction will still remain and the FCA is considering providing guidance in a Technical Note on appropriate content for such a document. The FCA is also consulting on how to make this exemption more effective.

The "six-day rule"

The six-day rule, referring to the period for which a prospectus aimed at retail investors must be made public before shares can be admitted to trading in an IPO, is being reduced from six working days to three working days. This is designed to encourage the participation of retail investors alongside institutional financings by reducing the period to closing (and therefore a period of potential uncertainty) of any contemporaneous institutional offer.

Key points for AIM and AQSE

Where an issuer is seeking admission to a multilateral trading facility (**MTF**), the FCA can only require a prospectus where trading on the MTF is not intended to be limited only to qualified investors, i.e. where retail investors typically participate in the market. For these MTFs (referred to as **primary MTFs**, which include AIM and AQSE), the key points are as follows:

- The FCA is proposing to require an **MTF admission prospectus** for all initial admissions to trading on such markets (whether or not there is a retail offer) and reverse takeovers (with exceptions for existing simplified routes to admission such as the AIM Designated Market Route or the AQSE fast-track route). The intention of this proposal is 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).

- The FCA will delegate to the market operator (i.e. the London Stock Exchange for AIM) to set disclosure requirements for MTF admission prospectuses, except for the new "protected forward-looking statement" disclosure and liability regime which will apply as discussed above.
- The FCA will not approve MTF admission prospectuses.
- MTF admission prospectuses will broadly be subject to the same rules as regulated market prospectuses concerning supplementary prospectuses, prospectus advertisements, prospectus responsibility, withdrawal rights and the proposed three-working day offer period for retail offers.
- Regarding further share issues, AIM and AQSE issuers will not be subject to the 75% threshold referred to above, and market operators will be free to set thresholds (if any) for prospectus requirements for further issues. The FCA notes that UK MAR will continue to apply to primary MTF issuers, which should ensure ongoing disclosure of material information to investors ahead of any further issuance of securities irrespective of whether the market operator requires a specific disclosure document.

Final comments

The proposed PRMs will usher in substantial changes. The prospectus regime reform will markedly reduce the occasions when an issuer will need to publish an FCA-approved prospectus other than on an IPO. The reforms will introduce more targeted and proportionate requirements across the whole of the capital markets regime, reducing costs for UK-listed issuers, improving the quality of information available to investors via protected forward-looking statements, and removing barriers to retail participation.

The new UKLR significantly reduced the regulatory burden for London Main Market-listed issuers, as outlined in our article. The proposals for the new PRM are intended to dovetail with the UKLR to make listing and raising capital in the UK more competitive globally.

If you would like to discuss the content of this article in further detail, please contact Paul Airley or Nigel Gordon from our capital markets team.

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