SLAUGHTER AND MAY/

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NEW PUBLIC OFFERS AND ADMISSIONS TO TRADING REGIME: FCA PUBLISHES FINAL RULES

HIGHLIGHTS FOR EQUITY CAPITAL MARKETS

The FCA has published the final version of its prospectus rules under the new public offers and admissions to trading regime that will replace the current regime on 19 January 2026.

Most of the existing rules relating to prospectuses and admissions to trading will be carried across into the new regime broadly as they are. However, changes will be made to address problems identified in Lord Hill's Review of the Listing Regime and in the Secondary Capital-Raising Review (SCRR). Overall, the changes represent targeted improvements, rather than wholesale reform, and are far less radical than the changes to the listing regime that came into force on 29 July 2024. But existing listed companies will benefit from changes designed to make it easier, quicker and cheaper for them to raise further funding in a secondary capital-raising and to offer their own shares as consideration in a takeover.

This briefing summarises the key points relevant to offers of shares and other ECM transactions and takeovers. Key points relevant to DCM transactions are summarised in a separate briefing.

PUBLIC OFFERS AND ADMISSIONS TO TRADING: THE NEW LANDSCAPE

At present, an FCA-approved prospectus must be published before a company can (i) offer transferable securities to the public in the UK or (ii) request that transferable securities be admitted to trading on a UK regulated market. In each case, various exemptions are available. (Although there are many types of transferable securities, for convenience we refer below simply to shares.)

Under the new regime, the rules for public offers will be separated from those for admission to trading:

Public offers

Public offers will be governed principally by The Public Offers and Admissions to Trading Regulations 2024 (POAT Regulations). Under the POAT Regulations, a prospectus will no longer have to be published in connection with an

SUMMARY OF CHANGES

- A prospectus will no longer be required in connection with an offer to the public.
- A listed commercial company will be able to issue further shares in a secondary fundraising or takeover that comprise less than 75% of its existing share capital without having to publish a prospectus (currently the threshold is 20%). For closed-ended investment funds, the threshold will be 100%. Below the relevant threshold, an issuer will continue to be allowed to publish a voluntary prospectus approved by the FCA.
- Rules specifying the format and contents of a prospectus summary will be relaxed slightly.
- The requirements around working capital statements in a prospectus will be left largely unchanged, but some refinements may be made shortly.
- Where an issuer identifies climate-related risks as risk factors, or climate-related opportunities as material to its prospects, the prospectus will have to include information about how the issuer manages the relevant risks and opportunities, broadly in line with the disclosures required by the TCFD Recommendations and ISSB Standards.
- Certain forward-looking statements in a prospectus, including profit forecasts, that satisfy certain criteria and labelling requirements will be subject to a higher threshold for statutory liability.
- Where a company issues further securities of a class already admitted to listing, it will no longer have to make an application to list the new shares: they will be treated as listed automatically. However, it will have to announce certain information.

offer to the public. Instead, there will be a general prohibition on making a public offer and a set of exemptions. Most of the exemptions under the current regime will be carried across: for example, where shares are offered solely to qualified investors; or offered to fewer than 150 persons in the UK, other than qualified investors. In addition, there will be new exemptions that will apply where shares are:

- offered to persons already connected to the company - such as existing shareholders;
- already admitted, or will as part of the transaction be admitted (e.g. on an IPO or takeover), to trading on a regulated market or primary MTF in the UK. (A primary MTF is a trading venue where the operator specifies eligibility criteria and continuing obligations that apply to issuers. AIM is the main example); or
- issued in connection with a takeover offer.

If no exemption is available, and a company wishes to offer more than £5 million of shares to the public outside a public market, it will need to make the offer via a regulated public offer platform. (For more details see our briefing on public offer platforms.)

Most of the POAT Regulations are not yet in force.

Admission to trading

Admission to trading on a UK regulated market or primary MTF will be governed principally by rules made by the FCA. These will specify when a prospectus is required, either initially (on IPO) or subsequently (on a secondary fundraising); what information a prospectus must include; who is legally responsible for a prospectus; which types of forward-looking information should be "protected" from the usual liability rules; and related matters. The FCA rules will be called the *Prospectus Rules: Admission to Trading on a Regulated Market* rules (PRM) and will replace the current *Prospectus Regulation Rules*.

In Policy Statement 25/9, published earlier this month, the FCA published the final version of the new PRM. This briefing summarises the key points for equity issuers. Mostly the FCA is proceeding with its original proposals, which it consulted on in CP24/12 and CP25/2 (summarised in this briefing); where it has decided to modify its original proposals or given further details of next steps, we highlight this below (see text in italics).

TIMING

The PRM, and the remaining bulk of the POAT Regulations, will come into force on **19 January 2026**. At the same time, the existing regime set out in (principally) the UK Prospectus Regulation and the FCA's *Prospectus Regulation Rules* will be repealed.

A diagrammatic summary of the new regime, reproduced from the FCA consultation papers referred to above, can be found on the last page of this briefing.

> //The new POATRs framework will make it easier for companies to raise capital in the UK and reduce costs for companies. These more proportionate rules will improve the relative competitiveness of UK regulation compared to other jurisdictions. Over time this will support more companies listing in the UK and have additional benefits by facilitating business growth, recapitalisation and innovation with positive economic and employment effects.
>
> These changes will also improve access to investment opportunities and promote wider participation in UK capital markets. This includes encouraging corporate bond issuances in smaller, more investible sizes and wider access to further issuances by removing the prospectus requirement for most transactions. This should support greater participation by retail investors in capital raising // *(PS 25/9)*

ADMISSION TO TRADING: NEW FCA RULES

Exemptions from the requirement to publish a prospectus

Most of the existing exemptions from the requirement to publish a prospectus in connection with an admission to trading will be brought forward into the new regime without amendment. However, important changes will be made in the two areas highlighted below.

Secondary fundraisings

The threshold for commercial companies to issue further shares without having to publish a prospectus will be raised from the current 20% of existing share capital to 75%. The 75% threshold was recommended by the SCRR and proposed by the FCA in its draft rules published last year: although the FCA received "mixed responses", it has stuck to its original proposal. Below this threshold, an issuer will continue to be allowed to publish a voluntary prospectus approved by the FCA. Where a prospectus is published in connection with a secondary fundraising, it can be a simplified or full prospectus. Similar amendments will be made to the related exemption for convertibles – i.e. where shares are admitted to trading on a regulated market as a result of the exercise of conversion or exchange rights - so that the outturn shares must represent less than 75% of the company's existing listed shares.

Where no prospectus is published, it will be up to the issuer to decide the format and contents of the announcement and/or offer document: these will not be prescribed by FCA rules. Market practice will therefore be left to develop, and the FCA will monitor for evidence of "unintended consequences or market failure". The FCA also decided not to require additional disclosures where an issuer is in "financial difficulty", partly because this would be difficult to define and implement.

Closed-ended investment funds (CEIFs) will be given even greater leeway: they will not have to publish a prospectus for an issue of (i) further ordinary shares that comprise up to 100% of existing ordinary share capital or (ii) C shares - which typically convert into ordinary shares within a defined period - issued to obtain further capital to be deployed in accordance with the CEIF's investment policy. However, like commercial companies, CEIFs will have the option to produce a prospectus voluntarily.

Comment

Raising the threshold to 75% of existing share capital will in principle make it significantly easier, quicker and cheaper for an issuer to raise substantial amounts of capital in a secondary fundraising - for example, to strengthen the balance sheet, fund an acquisition or business development or to issue consideration shares (see further below). However, where the offer has a US element, companies may find that, in order to satisfy the requirements of US securities laws and the expectations of US investors, they need to disclose considerably more information than is typically included in a sub-20% placing announcement. On larger issues, a company may even need to publish a voluntary prospectus – although hopefully this will not become the market norm.

EU rules on secondary fundraisings will be slightly different: see box below.

Secondary fundraisings: EU prospectus regime

Under the EU regime, a prospectus must be published before a company can (i) offer transferable securities to the public in an EU state or (ii) request that transferable securities be admitted to trading on an EU regulated market. In each case, various exemptions are available.

Following amendments to the EU Prospectus Regulation that took effect on 4 December 2024, the position as regards secondary fundraisings is as follows:

- **Secondary issue by company listed for at least 18 months:** no prospectus is required for a secondary issue of any size provided (i) the company has had securities admitted to trading on an EU regulated market or an SME growth market for at least 18 months; (ii) the new securities are of the same class as the existing securities; and (iii) the new securities are not issued in connection with a takeover. This is a new exemption that will apply to most pre-emptive fundraisings.

- **Secondary issue by listed company of less than 30% of existing capital (threshold raised from 20%):** No prospectus is required for a secondary issue by a company with securities admitted to trading on an EU regulated market or an SME growth market where the new securities (i) are of the same class as the existing ones and (ii) represent less than 30% of the existing listed securities (taking into account any securities that were admitted over the previous 12 months). (Similar amendments were made to the related exemption for convertibles.) This exemption might be used where the one described above is not available.

In each case, the company must publish a short-form document of no more than 11 pages containing key information for investors; but this does not have to be approved by a competent authority. Each of these exemptions applies to both public offers and admissions to trading.

For further details see our briefing on the EU Listing Act published in November 2024.

Securities offered in connection with a takeover

The FCA has decided to retain this exemption and to provide guidance on the minimum information to be included in a takeover exempt document. *It intends to consult on such guidance later in the year*. At present, there are no UK regulations specifying the contents, but the FCA has had regard to a Delegated Regulation published under the EU Prospectus Regulation. The new FCA guidance is likely to use the EU Delegated Regulation as its starting point. In practice, the information provided in an offer document or scheme circular in order to comply with the Takeover Code is likely to satisfy most of the information requirements for a takeover exempt document. In some circumstances, the takeover exempt document will have to be approved by the FCA.

For further details of how the new regime will affect takeovers see the box on the next page.

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Content of a prospectus

Annexes specifying minimum items of information

As under the current rules, detailed contents requirements for the constituent parts of a prospectus required in various scenarios will be set out in Annexes. For example, Annex 1 of the PRM will specify the items of information to be included in a registration document for an "ordinary" prospectus published by a commercial company; and Annex 8 will specify the items of information to be included in a securities note for an "ordinary" prospectus published by a commercial company.

The summary

Detailed financial information will no longer have to be included in the summary; issuers will be able to cross-refer to information in other sections of the prospectus; and the maximum length will be increased from 7 to 10 pages.

Financial information

Existing requirements around the historical financial information on the issuer (HFI) that must be included, and around pro forma financial information, will be carried across largely unchanged. A new Technical Note, *a revised version of which will be published for consultation shortly*, will provide guidance on the information to be included where the issuer has a "complex financial history".

Working capital statement

The FCA has decided to retain without amendment the requirement to include a working capital statement in a prospectus. *But, following discussions with a working group of experts, it intends to consult in the Autumn on proposed changes to its existing guidance on working capital statements. Such changes may include permitting an issuer to disclose key assumptions upon which a clean working capital statement is based – for example, an assumption that the issuer will secure additional credit facilities.*

However, in light of consultation responses, the FCA does not intend to proceed with the more radical idea of allowing issuers to place greater reliance on the financial modelling, forecasting and sensitivity analysis carried out to support the issuer's most recent going concern statement and viability statement.

Takeover offers: bidder offering its own shares as consideration

Current rules

Where a bidder offers its own shares as consideration, a prospectus is required if either (i) there is an offer to the public in the UK and no exemption applies; or (ii) the consideration shares will be admitted to trading on a regulated market in the UK and no exemption applies. Although there is an exemption for takeovers under both triggers, for various reasons a prospectus has been published on takeovers:

- Under the offer to the public trigger, if the takeover has been structured as contractual offer from the beginning or the bidder switches from a scheme of arrangement to a contractual offer. While views and practice have differed, prospectuses have also been published where target shareholders have been offered a choice of consideration or an option to vary the proportion of consideration types (a "mix and match" facility).

- Under the admission to trading trigger, if the consideration shares to be admitted to a UK regulated market have represented 20% or more of the bidder's existing share capital.

New rules

Under the **offer to the public** rules:

- If the takeover is structured as a scheme of arrangement under the Companies Act 2006, the bidder will not be treated as making an offer to the public even if target shareholders are offered a choice of consideration or a mix and match facility.

- If the takeover is structured as a contractual offer, there will be an offer to the public but:
  - If the bidder has, or will as part of the transaction have, shares listed on a UK regulated market or primary MTF, it will be exempt from the prohibition on offering shares to the public (paragraph 6 of Schedule 1 to the POAT Regulations).
  - If the bidder has shares listed on a US or other overseas market, or the consideration shares will be unlisted, it will be exempt from the prohibition on offering shares to the public under the exemption for shares offered in connection with a takeover (paragraph 10 of Schedule 1 to the POAT Regulations). To qualify for this exemption, the bidder will need to publish a "written statement" containing certain basic information on the bidder, the terms of the offer, the impact of the offer on the target and bidder, and the bidder's intentions in relation to the target's business and any defined benefit pension scheme of the target. Where the Takeover Code applies, the bidder is likely to be required to publish this information in any event.

In other words, whether the bidder has shares listed in the UK or elsewhere, an exemption from the prohibition on making an offer to the public will be available.

Under the **admission to trading** rules:

- A UK listed bidder will not be required to publish a prospectus provided the consideration shares represent less than 75% of the bidder's existing share capital. Most takeovers will fall into this category. If the consideration shares represent a greater percentage, a UK listed bidder will be able to rely on the takeover exemption in the PRM referred to on page 4. To qualify for this exemption, the bidder will have to publish a takeover exempt document containing certain information specified in FCA guidance.

- Where the bidder has shares listed on a US or other overseas market then, unless it intends to apply for the consideration shares to be listed in the UK, the admission to trading rules will not be relevant, so no UK prospectus will be required. However, the bidder may be required to publish a disclosure document under the rules of its home jurisdiction.

Overall, it will therefore become significantly easier and cheaper for bidders to offer their own shares, because a prospectus or takeover exempt document will usually be required only where a UK listed bidder is offering shares that represent 75% or more of its existing share capital. By the same token, it will be much easier for a bidder to switch from a scheme to a contractual offer.

Climate-related disclosures

Where an issuer of equity securities or depositary receipts representing equity shares identifies climate-related risks as risk factors, or climate-related opportunities as material to its prospects, new item 5.8 in Annex 1 will require the prospectus to include additional information about the issuer's management of the relevant risks and opportunities, broadly in line with the high-level categories used in the TCFD Recommendations and ISSB Standards - namely governance, strategy, risk management and metrics and targets. *Over the next year or so, the FCA will review market practice on disclosures by mineral companies (which include mining and oil and gas companies) and, in light of this, may publish guidance on additional information such companies should include*. If the issuer has published a transition plan, and the contents are financially material, the prospectus will have to include a summary of key information in the transition plan.

Climate-related disclosures relating to strategy, transition plans and metrics and targets should qualify for protection as protected forward-looking statements (PFLS) if the relevant criteria are met; but disclosures on governance and risk management will not qualify as PFLS (see further below).

At this stage the FCA has decided not to require disclosure of sustainability information that is not climate-related.

Protection for certain forward-looking statements

To encourage issuers to disclose in prospectuses (especially IPO prospectuses) more detailed forward-looking information, particularly in relation to expected future financial performance and sustainability objectives, the POAT Regulations establish a different liability threshold, based on fraud or recklessness, for certain categories of forward-looking statements that meet certain criteria. These will be known as "protected forward-looking statements" (PFLS).

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The FCA is empowered to specify which types of statements should qualify as PFLS and the labelling and other requirements that should apply to them. Under the PRM, most mandatory disclosures required by the Annexes will <u>not</u> qualify as PFLS. But any profit forecast, and certain information that must be included in the *Business Overview* (including certain climate-related items (see above)), *Operating and Financial Review* and *Trend Information* sections will qualify as PFLS if the information satisfies the relevant criteria. The criteria, which are based on the requirements that apply to profit forecasts, and on US practice, are very specific: among other things, a statement will qualify for protection only where it can only be verified for accuracy by reference to events or sets of circumstances that occur after the statement has been published, and investors are provided with an estimate of when the event or set of circumstances is expected to occur. As a result, some forward-looking statements may not qualify. Profit estimates (relating to a financial period that has ended but for which results have not yet been published), aspirational targets and most purely narrative statements will <u>not</u> qualify as PFLS.

All PFLS disclosures will need to be clearly labelled, and certain accompanying statements will have to be included. *Later this year the FCA intends to consult on guidance relating to PFLS.*

The higher threshold for liability applies only in respect of statutory liability to pay compensation to investors under Regulation 30 of the POAT Regulations (which will broadly replace section 90 of the Financial Services and Markets Act 2000). Where the prospectus relates to a transaction with a US or other overseas element, if the issuer intends to include forward-looking statements, it will also need to consider the risks of liability under relevant overseas laws and how they can be mitigated. Investor relations factors will also need to be considered.

Supplementary prospectus and withdrawal rights

Existing rules around when a supplementary prospectus must be published and withdrawal rights can be exercised will be retained broadly as they are.

"Six-day" rule on IPOs with a retail offer

As recommended by the SCRR, the existing requirement that, in the case of an IPO involving an offer to the public, the prospectus must be published at least six working days before the end of the offer, will be amended to reduce the period to three working days. This is designed to encourage issuers to include a retail offer in their IPO.

Admission of securities to a primary MTF

An “MTF admission prospectus” will usually be required where (i) an issuer seeks initial admission to trading on a primary MTF on which retail investors can trade, even if there is no fundraising; or (ii) an enlarged entity seeks re-admission to such an MTF following a reverse takeover. An MTF admission prospectus will be subject to the same statutory responsibility and compensation provisions, and the same PFLS rules, as apply to prospectuses.

However, operators of primary MTFs will have discretion to decide (i) whether an MTF admission prospectus will be required for a secondary fundraising; (ii) the information that must be included in an MTF admission prospectus; and (iii) the process for reviewing and approving an MTF admission prospectus.

By introducing the concept of an MTF admission prospectus, the Government is hoping to encourage primary MTF issuers to offer securities to retail investors, instead of limiting their offer to qualified investors or fewer than 150 persons.

Issuing further shares of the same class: admission formalities

Where a company applies to list a class of shares, the application will cover shares that may be issued in future, as well as those issued at the time of the application. As a result, where a company issues further shares of the same class, it will no longer need to submit an application to the FCA to list the further shares. (However, a company may still need to apply for the new shares to be admitted to trading on an RIE.)

Among other things, this change to the Listing Rules will mean that:

- Applications to list in advance shares that may in future be issued under a share plan or equity issuance programme (known as a block listing) will no longer be necessary.

- It will no longer be necessary to submit to the FCA a signed ‘Pricing Statement’ confirming compliance with the discounted share issuance restrictions in UKLR 9.4.13R (where these apply).

But in order to ensure the market is made aware of the issue of further shares, an issuer will have to announce via a RIS details of, among other things:

- the number of shares that have been admitted to trading;

- the revised total number of shares of that class which, as a result of the further issue, have been admitted to trading; and

- any FCA-approved prospectus that has been published (e.g. on a large secondary fundraising), and details of where it can be found. (*Where there is no prospectus, it will not be necessary to specify the exemption from the prospectus requirement that the issuer is relying on.*)

To avoid an issuer having to make an announcement every time new shares are issued, an issuer will have up to 60 days to make an announcement, and multiple issues can be covered in a single announcement.

Market practice and ECM documentation may need to be adjusted to reflect this change - for example, to remove references to the FCA “approving” the admission of further securities to listing.

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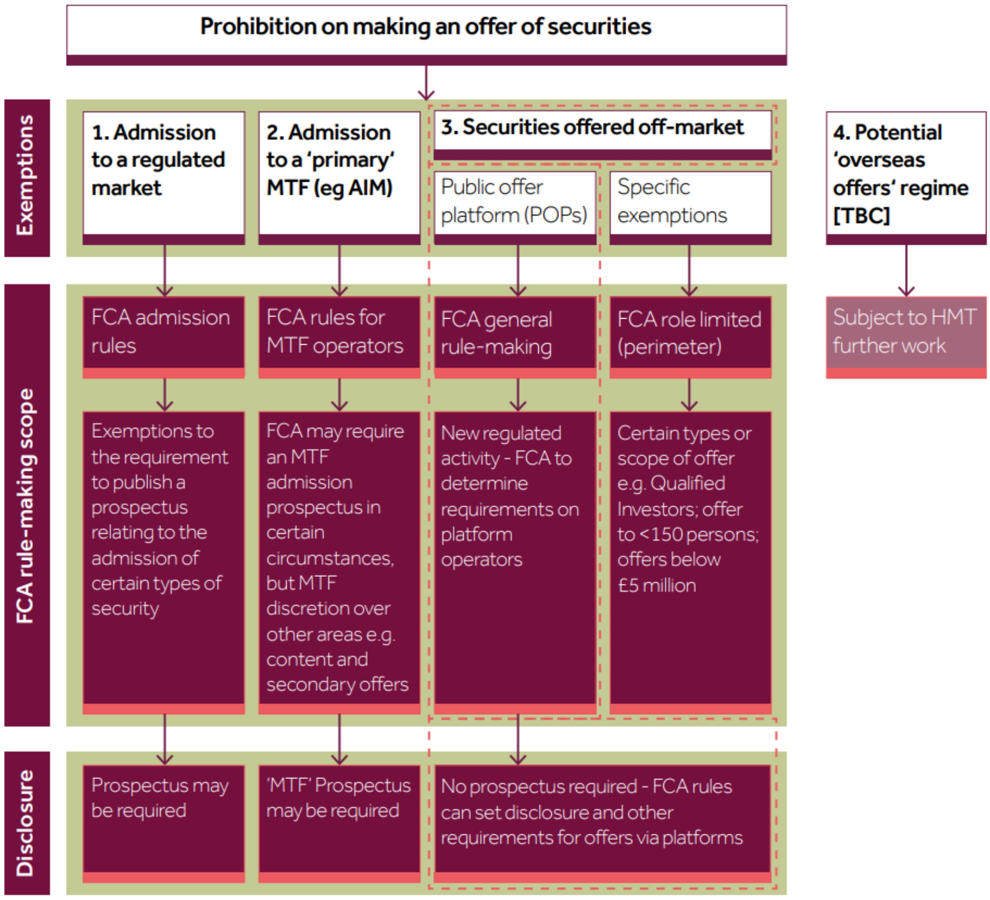
NEW PUBLIC OFFERS AND ADMISSIONS REGIME: DIAGRAMMATIC SUMMARY



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