

# FCA SEEKS EARLY ENGAGEMENT IN UK PROSPECTUS REGIME REFORMS

## HIGHLIGHTS FOR DEBT CAPITAL MARKETS

On 18 May 2023, the FCA published a series of engagement papers on various topics related to the new regime for public offers and admissions to trading. The papers take forward a key part of the Government's policy approach to reform of the UK prospectus regime (see our [previous briefing](#)) and follow the publication in December last year of the [draft Statutory Instrument](#): the Financial Services and Market Act 2000 (Public Offers and Admission to Trading) Regulations 2023 (the "SI") as part of the Government's Edinburgh reforms. In this briefing, we discuss the key implications of the papers for issuers of debt securities.

### **Background**

The draft SI sets out a new prospectus regime for public offers and admissions to trading. In particular, the draft SI gives the FCA powers to specify the circumstances when a prospectus is required if securities are to be admitted to trading on a UK regulated market, determine the contents, approval and publication of a prospectus and certain other matters that are currently set out in the UK Prospectus Regulation. The engagement papers are the first step in the FCA testing out its thinking on how it will exercise its new powers in a number of key policy areas.

### **Engagement Papers**

Engagement papers have been published on the following topics (with further engagement papers expected to be published in the coming month):

- [Admission to trading on a regulated market - Engagement Paper 1](#)
- [Further issuances of equity on regulated markets - Engagement Paper 2](#)
- [Protected forward-looking statements - Engagement Paper 3](#)
- [Non-equity securities - Engagement Paper 4](#)

The FCA has published a series of engagement papers on how it will use its rule making powers under the new prospectus regime. The first set of engagement papers focus on prospectuses for admission to regulated markets, secondary issuances, forward-looking statements and prospectuses for non-equity securities, with further engagement papers expected to follow on requirements for issuers seeking to admit securities to junior markets (MTFs) and rules for firms who choose to operate a 'public offer platform' to allow companies to raise capital from investors without being admitted to a public market.

The first and fourth engagement papers are particularly relevant for issuers of debt securities and key highlights are summarised below. More relevant in the equity capital markets space, the third engagement paper explores the FCA's initial considerations for what types of information can be considered "protected forward-looking statements". This follows the Government's intention to amend the liability standard for such statements to encourage issuers to include forward-looking statements in their prospectuses.

### ***Engagement Paper on Admission to Trading on a Regulated Market***

The paper focuses on prospectus requirements for admission to trading on a UK regulated market and highlights that for investor protection and market effectiveness, the FCA does not propose to significantly change the current regime. Key proposals include:

- Retaining the current exemptions from the requirement for a prospectus for admission to trading as well as retaining the current format and content requirements for a prospectus relating to admission to trading (including retaining the current "necessary information" test for prospectus disclosure) while considering any opportunities for improvements in these areas;

- Revisiting the prescriptive content requirements relating to summaries (which apply to retail debt securities) by either removing the requirement for summaries entirely or being less prescriptive; and
- Considering whether further guidance or content requirements should be considered for issuer sustainability-related prospectus disclosure for general purpose debt.

### **Engagement Paper on Non-Equity Securities**

The paper focuses entirely on proposals relating to debt securities with the aims of making MTN programmes more efficient, facilitating broader access to the retail bond market, and ensuring disclosure obligations are sufficiently calibrated for certain products (in particular, structured products and ESG labelled debt). Key proposals include:

- Allowing future financial information to be incorporated by reference without the need for a supplementary prospectus;
- Extending the validity of base prospectuses (i.e. beyond the current 12 month listing shelf life granted for MTN programme prospectuses);
- Adopting a single standard for bond disclosure with the current wholesale disclosure regime as a starting point (i.e. doing away with the current approach of differentiated disclosure regimes for wholesale and retail debt securities);
- Creating a new simplified disclosure regime for seasoned corporate issuers (described as “UK companies with premium listed equity (or similarly seasoned) or their subsidiaries”) to issue in-scope (i.e. senior, unsecured, plain-vanilla) low denomination bonds aimed at the retail and wholesale market. The regime is not expected to be open to financial institution issuers;
- Requiring additional disclosure obligations for ESG labelled debt. The FCA outlines two potential approaches in this regard:
  - Requiring high-level disclosure for all ESG-labelled debt focusing on the connection between the prospectus and bond framework, or
  - More prescriptive content requirements (in addition to the disclosure on bond frameworks described above), differentiating between use-of-proceeds (“UoP”) bonds and sustainability-linked bonds (“SLBs”). For UoP bonds, this could include disclosure on the projects which the bond is intended to finance, the approach to project

evaluation and selection, an explanation of how the issuer classifies projects as green, social or sustainable (for example, by reference to external standards), management of proceeds, the form of post-issuance review and impact reporting. For SLBs, this could include disclosure around the rationale and process for setting KPIs and targets, how the issuer has ensured that these are ambitious and meaningful, and how these have been benchmarked, an explanation of how the KPIs and targets fit within the issuer’s wider sustainability and business strategy, detail on penalty provisions, external reviews and post-issuance reporting;

- Requiring additional prospectus disclosure for certain structured financial products (which appears to be aimed principally at securitised derivatives) as well as revisiting the eligibility rules to ensure organiser/manufacture entities are appropriately regulated; and
- Simplifying the rules around tap issuances for debt securities (the current rules provide an exemption from the requirement to produce a prospectus for tap issuances that, over a period of 12 months, represent less than 20 per cent. of securities already admitted).

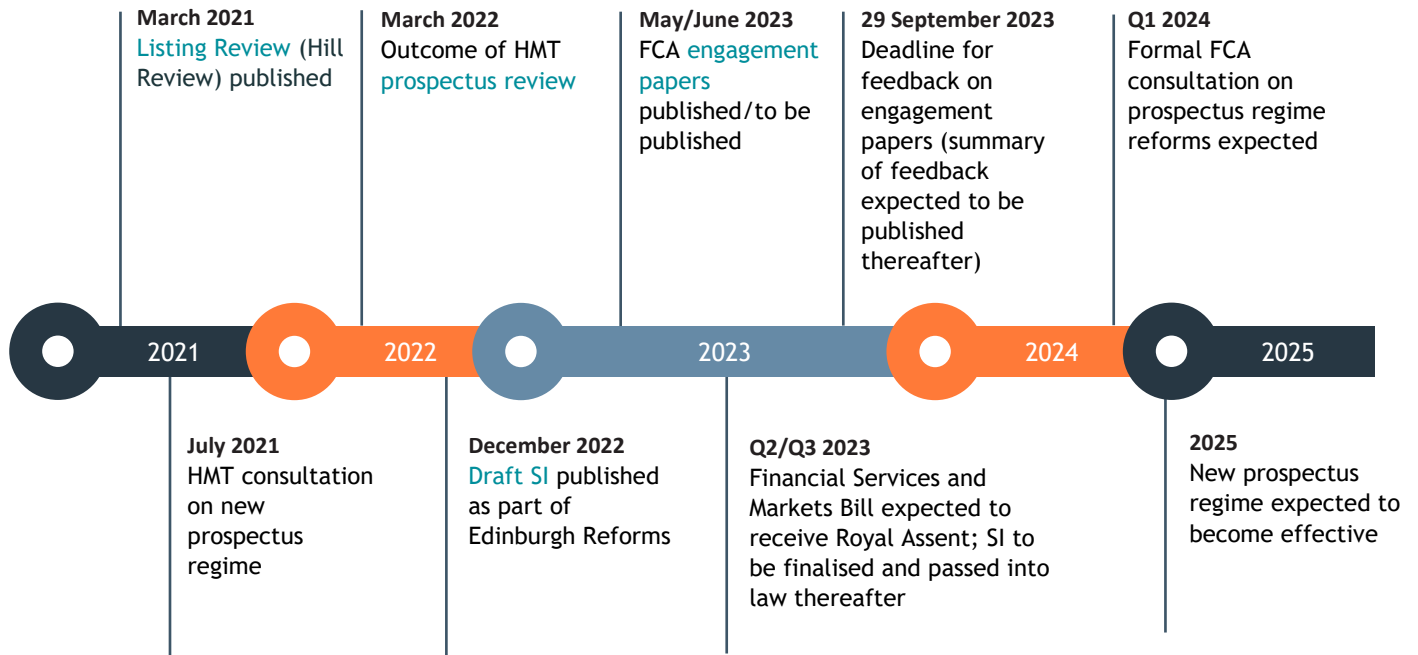
### **Our View**

The proposals for debt securities represent targeted refinements to the prospectus regime rather than a major overhaul, reflecting the overall view that regulation in the wholesale debt capital markets currently functions well. The FCA is also mindful of the cross-border nature of the market and will be keen to ensure that there is no unnecessary divergence with the EU prospectus regime. At the same time, the FCA is keen to test the water on more ambitious proposals such as reviving the retail bond market for UK listed companies. However, this market has been subdued for some time, hampered by onerous retail regulations. Whether it can be rescued depends on a number of factors including relaxing regulatory consumer protection barriers to issuing retail debt not just in the UK but also in Europe. It also remains to be seen whether issuers can be incentivised to pivot to a retail market when they are able to successfully access funding in a well-functioning institutional market.

### **Timing and process**

Given the technical nature of the reforms, the FCA is embarking on a lengthier consultation process with early engagement on its proposals being sought from market participants and trade associations such as ICMA and AFME through focus groups. Following feedback, a formal consultation is expected in early 2024. Given the longer process, the new regime is not likely to be in place until 2025 at the earliest.

## Expected Timeline for UK Prospectus Regime Reforms



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