

# EU LISTING ACT FINALISED

## KEY CHANGES FOR DEBT CAPITAL MARKETS

### Introduction

In April 2024, the European Parliament adopted a package of proposals known as the “EU Listing Act” which is designed to simplify EU listing rules, make public capital markets in the EU more attractive for companies and facilitate access to capital, particularly for SMEs. The EU Listing Act includes a proposed [Regulation](#) to amend the EU Prospectus Regulation as well as other legislation. This briefing looks at how the changes will impact issuers of wholesale debt, with details of how the changes will impact equity issuers covered in a [separate briefing](#).

### Overall effect

On the whole, the changes to the EU Prospectus Regulation under the EU Listing Act represent targeted refinements rather than substantive changes for the debt capital markets (DCM) and are the product of lengthy consultation processes. There are some useful new provisions which will provide additional flexibility for debt issuers, in particular, the ability to incorporate future financial information by reference.

The application of the EU Listing Act also means greater divergence between the UK and EU prospectus regimes (the UK Prospectus Regulation that was onshored following the Brexit transition period has up until now broadly mirrored its EU equivalent). Further divergence is in the pipeline with the overhaul of the UK prospectus regime expected next year (please see our latest [briefing](#) on the progress of those reforms). The UK is also expected to make refinements to the UK Market Abuse Regulation in due course.

### Key Changes to the EU Prospectus Regulation for DCM

#### • *Incorporation of future financials*

Issuers seeking admission to trading on a regulated market shall not be required to publish a supplement to a base prospectus in order to update annual or interim financial information if it is within the 12 month period for which a base prospectus is valid (i.e. annual updates will be required as usual to maintain listing, however, supplements will not be required for annual or interim

The EU Listing Act package of reforms is a part of the Capital Markets Union 2020 Action Plan and aims to improve access to capital markets.

Overall, the DCM related changes under the EU Listing Act represent targeted refinements to the existing regime with some useful new provisions for debt issuers.

The changes will be implemented on a staggered basis with some changes applying when the EU Listing Act comes into force (expected to be in the second half of this year) and others applying 15 or 18 months thereafter (see our timeline below).

financials). Issuers may continue to publish supplements voluntarily for this purpose if they wish to do so.

#### • *Incorporation by reference*

The list of documents that can be incorporated by reference has been widened to include, amongst other things, sustainability reports included in management reports and the short form summary document required for some of the fungible exemptions referred to below.

#### • *ESG Disclosure Requirements in Prospectuses*

Further ESG disclosure requirements for prospectuses are expected in due course with the Commission empowered to adopt delegated acts which take into account whether debt securities are advertised as taking into account ESG factors or pursuing ESG objectives.

In relation to the EU Green Bond Standard Regulation (“EU GBS”): (1) EU GBS prospectuses will need to incorporate by reference the relevant information in the green bond factsheet, and (2) for bonds issued under the “optional disclosure regime” set out in the EU GBS, prospectuses must include the relevant information required under the regime and set out in the EU GBS (for bonds marketed as environmentally sustainable or for sustainability-linked bonds with environmental KPIs). As a reminder, the EU GBS is a voluntary standard which applies from 21 December 2024 and our [briefing](#) sets out further detail.

- **Standardising Prospectuses**

The format and sequence of information in a prospectus is to be standardised with the Commission empowered to adopt delegated acts setting out further detail. The European Securities and Markets Authority (“ESMA”) is also empowered to develop draft implementing technical standards to specify “the template and layout of prospectuses, including the font size and style requirements, depending on the type of prospectus and the type of investors targeted” and is also expected to develop guidelines on comprehensibility and on the use of plain language to ensure that the information provided is concise, clear and user friendly.

- **Supplements cannot be used to introduce a new type of security**

Supplements to a base prospectus will not be permitted to introduce “a new type of security” for which the relevant information has not already been included in that base prospectus unless it is necessary to do so to comply with capital requirements. Some regulators have previously issued guidance to the effect that supplements should not be used for this purpose and the inclusion of the requirement in the EU Listing Act will seek to harmonise these rules. ESMA is expected to provide further guidance on what would be considered “a new type of security”.

- **Expansion of existing prospectus exemptions**

A number of exemptions from the requirement to publish a prospectus have been expanded although it may be that these changes have little practical impact on existing practice as the current exemptions have not been widely utilised for various reasons (for example, MTN programme frameworks already allow for fungible issuances to be conducted relatively easily - as a result there has been little need to rely on the fungible securities exemption to date).

**Fungible securities exemption:** The exemption from the obligation to publish a prospectus where fungible securities are admitted to trading and they represent, over a period of 12 months, less than 20 per cent. of the securities already admitted to trading has been expanded with the threshold increased to 30 per cent. and offers of securities to the public also included (provided that (1) the issuer is not subject to a restructuring or to insolvency proceedings; and (2) the issuer files and publishes a “summary document” with the home National Competent Authority).

**New fungible securities exemption:** There is also a new exemption for both public offers and admissions to trading which would apply to companies issuing securities fungible with securities already admitted to

trading on a regulated market or SME growth market if (1) the original issue has been admitted to trading for at least 18 months; (2) the new securities are not issued in connection with a takeover, merger or division; (3) the issuer is not subject to a restructuring or to insolvency proceedings; and (4) the issuer files and publishes the summary document referred to above. There is no percentage cap for this exemption.

**Exemption for shares resulting from conversion or exchange:** The exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of shares resulting from the conversion or exchange of other securities is also expanded so that it applies provided that the newly admitted shares represent, over a period of 12 months, less than 30 per cent. of the number of shares already admitted to trading on the same regulated market, increasing the threshold from 20 per cent.

**Credit Institution exemption:** The prospectus exemption for a credit institution issuing in a continuous or repeated manner where the total aggregated consideration for the securities offered is less than EUR 75 million has been increased to EUR 150 million.

- **New simplified disclosure documents**

**EU Follow-on prospectus:** A new EU Follow-on issuance document is introduced, which replaces the simplified disclosure regime for secondary issuances and EU recovery prospectuses under the existing regime. The use of an EU Follow-on prospectus requires that the issuer’s securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months before the offer to the public and/or seeking admission to trading or where the securities are fungible with such securities.

**EU Growth issuance prospectus:** A new EU Growth issuance document is introduced, which replaces the EU Growth prospectus under the existing regime and has lighter requirements to make the listing documentation for SMEs less complex and burdensome.

The EU Listing Act introduces new content requirements in the form of new Annexes to the EU Prospectus Regulation for both the EU Follow-on prospectus and EU Growth issuance prospectus, with the Commission to adopt further delegated acts in due course.

- **Other changes**

**New approach to equivalence:** There is a new approach to equivalence of third country prospectuses that is intended to allow equivalence decisions to be adopted at an EU level with National Competent Authorities no longer required to review third country prospectuses to determine equivalence.

**Extension of walkaway rights:** The amendments introduced as part of the Capital Markets Recovery Package have been made permanent. In particular for DCM, this means that walkaway rights, to the extent they apply, are extended from 2 to 3 days following the publication of a supplement.

**Risk factor clarifications:** The requirement to “rank the most material risk factors” has been replaced with a requirement to “list the most material risk factors in a manner which is consistent with the assessment undertaken by the issuer”. This is meant to be a relaxation of the rules relating to the ordering of risk factors, however, it may not have any practical effect as debt issuers are already familiar with the existing requirements and related ESMA Guidelines on Risk Factors. The Listing Act also makes clear that generic and disclaimer type risk factors should not be included in prospectuses, which debt issuers will already be familiar with under the ESMA Guidelines.

**Prospectuses in electronic form:** There is no longer a requirement to provide paper copies of prospectuses to investors on request. Instead, prospectuses are only required to be provided in electronic form.

**Universal Registration Documents (URDs):** The rules relating to filing URDs have been relaxed so that an issuer only has to have a URD approved by a National Competent Authority for one year (previously two) before subsequent URDs can simply be filed instead. URDs will also be excluded from the new rules relating to standardising prospectuses discussed above.

Whilst these improvements will benefit some issuers, such as in France where the URD regime is utilised, it will likely have a limited impact on the rest of DCM due to overall low take up of the URD regime.

## Key Changes to the EU Market Abuse Regulation for DCM

The EU Listing Act makes several notable changes to EU MAR including providing further clarity on what constitutes inside information and when disclosure of inside information may be legitimately delayed. These are discussed in further detail in our ECM briefing. A key point to note for DCM market participants is a welcome clarification that the market soundings regime in accordance with the procedures set out in EU MAR is an optional safe-harbour. The definition of market sounding is also expanded to include cases where a transaction is not eventually announced.

### Next steps

Whilst the majority of the changes above and in the EU Listing Act will enter into force in the coming months, the implementation of certain provisions is staggered (see our timeline below). These include the provisions on EU Follow-on prospectuses and EU Growth issuance prospectuses, which are to apply 15 months after the EU Listing Act comes into force and the standardising prospectuses provisions, which apply 18 months after the EU Listing Act comes into force. These provisions require delegated acts/further guidance and certain provisions involve EU Member State discretion.

The EU Listing Act contains transitional provisions which are expected to allow, until the end of their validity, prospectuses approved up to 18 months after the date the EU Listing Act comes into force to be governed by the EU Prospectus Regulation that is in force at the time of approval. This ‘grandfathering’ of prospectuses and the staggered implementation of the EU Listing Act means that the full impact of the changes will not be felt for some time, however, debt issuers should take note of the changes that will apply in the near future and prepare for those to come.

- Incorporation by reference of future financials
- Supplements cannot be used to introduce a new type of security
- Expansion of existing prospectus exemptions
- New approach to equivalence
- Extension of walkaway rights
- Risk factor clarifications
- Prospectuses in electronic form
- Changes to URD regime

- EU Follow-on prospectus
- EU Growth issuance prospectus

Commission to adopt delegated acts within 15 months of EU Listing Act coming into force.

- ESG disclosure requirements in prospectuses
- Standardising prospectuses

ESMA to produce guidelines (on plain language etc.) and draft ITS (on template/layout of prospectuses) within 12 months of EU Listing Act coming into force.

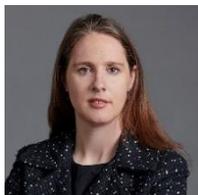
Commission to adopt delegated acts on format and ESG disclosure within 18 months of EU Listing Act coming into force.

EU Listing Act in force

15 months thereafter

18 months thereafter

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