

REAL CHANGE FOR THE UK PROSPECTUS REGIME?

The Government's awaited [policy paper](#) on reform of the UK prospectus regime has been published. The proposed changes are designed to take forward the prospectus-related recommendations made by Lord Hill in his March 2021 UK Listings Review, which were aimed at making it easier and cheaper for companies to raise capital and to facilitate participation by retail investors. This briefing looks at the key implications for issuers of equity and debt securities.

Proposed reforms: key points

- The regulation of admission of securities to trading on a UK regulated market will be separated from the regulation of public offers of securities.
- The FCA will be responsible for specifying the circumstances when a prospectus is required if securities are to be admitted to trading on a UK regulated market, as well as matters that are currently set out in the UK Prospectus Regulation, including the contents, approval and publication of a prospectus.
- A prospectus will not be required for an offer to the public in the UK. Instead, there will be a general rule that securities must not be offered to the public in the UK unless an exemption applies. There will be exemptions similar to those currently available for offers to qualified investors, to fewer than 150 persons, to directors and employees and of debt securities with a minimum denomination of £50,000 (or the equivalent in another currency). There will also be new exemptions for:
 - Offers of securities which are, or will be, admitted to a UK regulated market or certain UK multilateral trading facilities (MTFs), such as AIM and the ISM.
 - Offers of securities to existing shareholders, subject to certain conditions, including that the offer is made pro rata to existing holdings.
- For certain forward-looking information in prospectuses, the threshold for civil liability will be raised so that a person will be liable only if they knew the statement was untrue or misleading or were reckless as to whether it was, or if they knew an omission was dishonest. Principally this is designed to encourage companies to include more prospective financial information in IPO prospectuses, although it may also help companies include targets and projections relating to non-financial issues such as adaptation to climate change or the roll-out of new technology.
- Securities listed on certain overseas stock markets will be able to be offered into the UK using offering documents prepared according to the rules of the relevant overseas jurisdiction and market.

Timing

The changes were consulted on last year (see our previous [briefing](#)) and received wide support from market participants, so we fully expect them to be introduced. As a first step, primary legislation will be required and the Government says it will introduce the relevant legislation "when parliamentary time allows". The FCA will then need to make changes to its Prospectus Regulation Rules and other parts of its Handbook, which will require additional consultation. It is therefore likely to be next year before the changes come into effect.

Implications for capital-raising in the UK

Main Market companies

IPOs: A prospectus will continue to be required because the company's shares are being admitted to trading on a UK regulated market. What information must be included in the prospectus, and the process for getting it approved and published, will be determined by FCA rules rather than EU-derived legislation, but as the current rules in this area are widely perceived to work well we do not expect any material changes. In any event, prospectus content will continue to be driven partly by the expectations of investors, and the requirements of US securities laws, which in some respects exceed UK regulatory requirements.

Rights issues and open offers: A secondary offer of shares by a company listed on the UK Main Market in a rights issue or open offer will not require a prospectus for the offer to the public regardless of the number or nature of the shareholders to whom the offer is made. However, the FCA will make rules to determine whether a secondary issue prospectus or other form of offering document will be required for the admission of the shares to the regulated market. A Government-sponsored working group is considering how the secondary fundraising process can be improved, with its recommendations expected to be published in the next couple of months. We therefore expect the FCA to consult in the second half of this year on the circumstances when a prospectus or other form of offering document should be published in connection with a secondary issue, and the information that must be included in it.

AIM companies

IPOs: A company doing an IPO on AIM will be able to include a retail offer without breaching the prohibition on offering shares to the public and no prospectus will be required solely because there is an offer to the public. As the shares will not be admitted to trading on a UK regulated market, no prospectus will therefore be required. However, as at present, an AIM admission document will be required in accordance with the AIM Rules for Companies.

Rights issues and open offers: A secondary offer of shares by a company with shares quoted on AIM in a rights issue or (more typically) an open offer will not require a prospectus for the offer to the public regardless of the number or nature of the shareholders to whom the offer is made. As now, whether an admission document or other form of secondary issue document is needed will be determined by the AIM Rules for Companies: in most circumstances, these do not require any such document to be published.

Takeovers with paper consideration

An offer of bidder shares or loan notes will not breach the prohibition on offering shares to the public, and no prospectus will be required solely because there is an offer to the public. However, if the shares will be admitted to trading on a UK regulated market (e.g. because the bidder's existing shares are listed on the UK Main Market) then whether or not a prospectus or some other form of disclosure document is needed will be determined by new FCA rules. We expect the FCA to consult on the circumstances when a prospectus or other form of disclosure document should be published in connection with a takeover, and the information that must be included in it.

Offers by unlisted companies

Like AIM companies, unlisted companies will be able to raise funds via an offer to existing shareholders that is made in proportion to their existing holdings, regardless of the number and nature of those shareholders and regardless of the amount to be raised. Where an unlisted company wants to raise funds via an offer that is **not** pre-emptive, it will have to make the offer through a crowdfunding or similar platform operated by a firm with the relevant FCA authorisation unless the amount to be raised is below a specified threshold. That threshold is yet to be determined, but it may well be lower than the EUR 8 million threshold that currently allows an offer to be made without a prospectus.

The pan-European wholesale debt market

The current "minimum denomination" exemptions under the UK and EU prospectus regimes are aligned at EUR 100,000. These exemptions allow issuers from across the globe to access capital markets in both the UK and the EU without requiring two separate prospectuses (or, if there is no admission to a regulated market in either the UK or the EU, without requiring any prospectus). Lowering the threshold for this exemption to £50,000 (rather than, for example,

simply re-stating it as £100,000) would effectively widen the exemption and therefore allow the existing pan-European wholesale debt market to continue unchanged.

Minibonds and other non-transferable debt securities

The current UK prospectus regime only applies to transferable securities. In response to the widely publicised London Capital and Finance minibond scandal and the subsequent independent investigation, the Government intends to widen the scope of the new UK prospectus regime to cover minibonds.

The general duty of disclosure for debt securities

For debt securities, the general disclosure obligation will be modified to require the prospectus to include all information that investors need to assess the creditworthiness of the issuer, rather than its financial position and prospects more generally. As holders of debt securities tend to be concerned principally with the issuer's ability to pay interest and repay principal, this is a sensible proposal. However, some issuers may still want to disclose information that does not directly relate to creditworthiness - for example, ESG information, particularly in the labelled debt context - and some investors may still expect such information.

A new UK retail debt market?

One policy objective of the Government is to "encourage broader participation in companies" and to facilitate investment in both equity and debt securities by retail investors. This is an ambitious objective for debt securities that faces a number of significant regulatory barriers, including under the UK PRIIPs and product governance regimes and potentially also the FCA's new consumer duty. Removing barriers under the UK prospectus regime is therefore only a first step in a much broader process: in order to encourage issuers to offer debt to retail investors, a number of other consumer protections may also need to be removed or recalibrated. Even then, issuers may have little incentive to access the retail debt market if they can obtain sufficient funding from institutional investors.

Comment

The Government's policy approach certainly represents a rethink of the UK prospectus regime. However, the extent to which the new regime will achieve Lord Hill's aims of reducing regulation and facilitating capital raising will largely depend on the approach taken by the FCA. This will become clearer over the next year or so.

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