

## Engagement Paper 1

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Admission to trading on a regulated market

May 2023

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## Public Offers & Admissions to Trading

This paper is part of the series of engagement papers on the new Public Offers and Admission to Trading regime. These papers set out our emerging policy thinking on how the FCA may use its rule-making powers under the new regime. Feedback on these papers is intended to create a dialogue between us and stakeholders which will inform further development of proposed rules, which the FCA will consult on formally during 2024.

Other papers in the series are available on the FCA's website:

[www.fca.org.uk/markets/new-regime-public-offers-and-admissions-trading](http://www.fca.org.uk/markets/new-regime-public-offers-and-admissions-trading)

The FCA is seeking comments and suggestions on our initial thoughts as set out in this paper

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## Summary

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1. We set out here for discussion and feedback our initial thinking on how we may write admission rules for issuers seeking to have securities admitted to trading on regulated markets under the new public offers and admission to trading regime.
2. The new regime will give us the opportunity to tailor our approach more directly to the needs of issuers and investors in the specific context of the admission to trading and capital raising.
3. We consider that this will make our markets work better and seek to take full benefit from the opportunities that our new powers give us to better tailor our regulation.
4. We recognise that there are strong arguments that it is important for investor protection and market effectiveness that we should stick broadly with existing requirements as set out in the UK Prospectus Regulation.
5. However, this does not imply that we should not seek to make changes to these requirements where needed and consider current prospectus requirements to see if there are any unnecessary frictions or unintended consequences which we can usefully address in the new regime.
6. We set out here for discussion areas where we consider there may be opportunities to make small changes which, cumulatively, could represent a significant improvement on current requirements. These include:
  - When a prospectus should be required for admission to regulated markets or where exemptions should apply
  - The required content of prospectuses for initial admissions
  - The format of prospectus documents, and
  - Responsibility for prospectus documents and how they are approved

## What we want your feedback on

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7. We are looking for your feedback on the following main areas of how we may approach the requirement for a prospectus in the new regime related to admission to trading on regulated markets.
  - a. Do you agree with our starting assumption that we should continue to set requirements for a prospectus for admission to trading on regulated markets largely in the way that is done under the current regime?
  - b. The exceptions to when a prospectus is required will be set by our rules, although the exceptions in the draft SI to the prohibition on public offers resemble or replicate the exceptions in the current regime for producing a prospectus. We are interested in views about how we should approach putting exceptions into our rules particularly those related to takeovers and transfers between regulated markets.
  - c. Our intention is to largely reproduce content requirements for a prospectus for admission to trading on a regulated market. We would be interested in your views on

this and whether we should adopt a different approach entirely or in part. We have though considered how we may make changes to the requirements for prescribed content in the prospectus. We are interested in views for example about how current requirements may cause frictions or problems for stakeholders that we could address in making changes. We are interested here in how we may balance best the information needs of investors with the desire to be proportionate and provide issuers flexibility in the manner in which they meet the necessary information test. In particular, we are interested in views on calibrating key content requirements for:

- i. the summary.
  - ii. financial information.
  - iii. use of incorporation by reference.
  - iv. Environmental, Social and Governance (ESG) disclosures
  - v. the benefit of aligning content requirements with other overseas jurisdictions, into a prospectus.
- d.** We are also interested in views about whether or not we may usefully simplify the format requirements for a prospectus. Again, we are interested here in achieving the best balance between standardisation and flexibility.
- e.** Our starting assumption has been that we should not consider here how we should make changes to other adjacent regimes such as the advertisements regime or COBS 11a as part of this exercise. However, we are interested in your views about whether we should look to do so.
- 8.** More broadly we are interested in any data which stakeholders may be able to give us which may provide insight into the likely costs and benefits of any changes which we may consider in this area. An example may be the typical costs of preparing and publishing a prospectus or any specific element of this.

## Our proposed general approach to the new regime

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### Box 1: Key terms used in this paper

#### Prospectus Regulation

The retained EU law version of Regulation (EU) 2017/1129 (repealing Directive 2003/71)

#### The PR Regulation

The retained EU law version of Commission Delegated Regulation (EU) 2019/980

#### Prospectus RTS Regulation

The retained EU law version of Commission Delegated Regulation (EU) 2019/979

- 9.** As now, under the new regime the concept of a prospectus will be retained as an important part of the regulation of securities admitted to trading on regulated markets. However, the FCA will be given enhanced rulemaking responsibilities to cover a variety of

matters connected to the admission, or proposed admission of securities to trading on a regulated market. We will have power to decide when a prospectus is required. These may cover also topics including procedure and circumstances governing notification to the FCA, prospectus publication requirements, form and content of a prospectus, procedures surrounding approval or validation of a prospectus and periods of validity of a prospectus.

- 10.** Before issuers have their securities admitted to trading there can be a lack of public and comprehensive information about the issuer and the securities being offered. This creates the potential for information asymmetry between issuers and potential investors as well as between issuers and investors. We consider that, unless there is regulatory intervention, this creates risks that investors may misunderstand or be misled about the securities and ultimately that the securities may be mispriced.
- 11.** In our view, such outcomes would be detrimental to market effectiveness, transparency and the efficient allocation of capital. Investors may suffer losses and mispricing may reduce market confidence. Further it is possible that if investors are not confident about the effectiveness of regulatory requirements they may discount a stock, reducing the value of securities listed on UK markets.
- 12.** Prospectus content requirements under the Prospectus Regulation look to address this asymmetry by requiring a comprehensive, publicly available overview of an issuer's business, the nature of the securities being offered and the terms on which they are being offered. The 'necessary information test' is a key plank of this requirement. An issuer is responsible for the contents of a prospectus and a statutory liability regime attaches to omissions of material facts or where information is misleading or inaccurate.
- 13.** Given this, we consider that there are strong arguments for retaining the bulk of current prospectus requirements on issuers seeking to have transferable securities admitted to trading on regulated markets.
- 14.** In general, we consider that we should be cautious about relaxing the current requirements for a prospectus for admission to trading of securities on a regulated market. This approach would be consistent with the outcome of HMT's review which decided to retain the concept of the prospectus as an important part for the regulation of admissions to trading on regulated markets but gives the FCA enhanced responsibilities to make rules determining when a prospectus is required.
- 15.** We are also aware the requirements under the current regime are accepted by the global market and that any radical change in these requirements may create risks of unintended consequences with regards to cross-border business.
- 16.** We are though, very interested in understanding the practical experience of how current requirements affect the market and feedback on how the current regime works and any frictions that it creates or any ways in which it can be streamlined and improved.
- 17.** We set out below key areas of the current regime for discussion about how we may improve upon current requirements.

## The scope of exceptions to prospectus requirements

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- 18.** Current exemptions to the requirement for a prospectus for admission to trading are set out in Article 1 (5) of the Prospectus Regulation. Under the draft SI some of these exemptions are repurposed as exceptions to the prohibition on public offers.
- 19.** However, they fall away as exceptions to the requirement to produce a prospectus unless we choose to build corresponding exceptions into FCA rules under the new regime.
- 20.** Excepting the 20% threshold exemption relating to further issuances (including the exemption for the conversion or exchange of securities or the exercise of rights conferred by other securities below the threshold), which is discussed in our Engagement Paper on further issuances, these include the following:
- securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU.
  - shares issued in substitution for shares of the same class already admitted to trading on the same regulated market where the issuing of such shares does not involve any increase in the issued capital.
  - securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer.
  - securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer.
  - shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer or allotment.
  - securities offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer or allotment.
  - non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities:
    - are not subordinated, convertible or exchangeable; and
    - do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument

- securities already admitted to trading on another regulated market, subject to certain conditions, principally that they have been admitted for 18 months or more on another RM and were subject to an approved prospectus or equivalent when admitted, ongoing obligations of that market have continued to be met and a further summary is provided to support the new admission.

**21.** We consider below key elements of these exemptions to the requirement to produce a prospectus for admission to trading to a regulated market under the Prospectus Regulation, for the purpose of deciding whether they should be replicated in FCA rules in the new regime.

### **Takeovers, mergers and divisions**

- 22.** Currently there is an exemption from the requirement to produce a prospectus for admission to trading where equity securities are offered in connection with a takeover, merger or division, provided that an exemption document describing the transaction and its impact on the issuer is made public.
- 23.** As there are no UK regulations about the content of these exemption documents; when approving them we have regard to the relevant published EU regulations relating to their content. This is currently Commission Delegated Regulation (EU) 2021/528 of 16 December 2020.
- 24.** This provides that the exemption document must include the relevant information, which is necessary to enable investors to understand, amongst others, the prospects of the issuer, and where relevant of the target, significant changes in the business and financial positions of specified entities since the end of the previous financial year, the rights attaching to the securities and a description of the transaction and its impact on the issuer.
- 25.** The disclosures are most comprehensive where the document requires FCA approval and are largely the same as the information that must be included in a prospectus for the issue of equity securities, plus information on the target, the transaction and its effect on the issuer. The required disclosures are reduced where the securities are fungible with existing securities admitted to a regulated market and the transaction is not a reverse. For example, only financial statements published over the previous 12 months need to be included. The required disclosures are reduced even further where the securities represent no more than 10% of existing securities admitted to a regulated market. In this case the information is limited to, amongst other things, a description of the transaction, the impact of the transaction on the issuer, business overview of the issuer and target and a working capital statement.
- 26.** For a takeover, the exemption document must be approved by the FCA either if the securities are not fungible with securities already admitted to trading on a regulated market or the takeover is considered to be a reverse acquisition transaction within the meaning of paragraph B19 of international financial reporting standard (IFRS) 3, Business Combinations.

27. For a merger or division, FCA approval is not required but the exemption applies only if the transaction is not a reverse under IFRS 3 and the securities of the acquiring entity or the entities subject to the division have already been admitted to a regulated market prior to the transaction.

### **Box 2: Options for excepting admissions to a regulated markets related to takeovers from a requirement to produce a prospectus**

We propose to carry forward into the new regime an exception from the requirement to produce a prospectus for takeover transactions. This could be modelled on the existing exemption or the new exception from the prohibition to public offers for takeovers under the new regime. We recognise that it is desirable to avoid unnecessary duplication of regulatory requirements and that many takeover transactions must also comply with the City Code on Takeovers and Mergers (Takeover Code).

We would therefore be interested in exploring whether the takeover exception document disclosures should conform more closely to those of the Takeover Code. Possible options for change include:

- Setting the disclosures for the exception document in more general terms.
- Adopting specific disclosures for the exception document that reflect more closely the disclosures required by the Takeover Code.
- Removing or extending the requirement for FCA approval of exception documents.

28. We propose to clarify that the takeover exception applies to acquisitions that are affected by schemes of arrangement. We consider that a prospectus should be required for all admissions to regulated markets and for readmissions following a reverse takeover.
29. For mergers and divisions where the securities in question are already admitted to a regulated market, we consider that no prospectus should be needed unless the transaction is a reverse. Our initial view is that we should replicate these exemptions in the new regime.
30. We consider that these exemptions are relevant for regulated markets. In line with our broader intention to simplify (rather than increase) the scope of current requirements, we are minded to retain this as an exception under the new regime. However, we are interested in views on these and if we do seek to retain these exceptions whether there are options for making the way in which it applies more effective. See Box 2.

### **Transfers between regulated markets**

31. Under the current regime issuers are not required to publish a prospectus for transfers of securities between UK regulated markets, such as from the LSE Main Market to Aquis Stock Exchange Main Market. Our starting assumption would be to retain this as an



exception under the new regime. However, we are interested in views on this and if we do seek to retain the exception whether there are options for making the way in which it applies more effective.

## The scope of transferable securities

- 32.** Under the new regime, we will have discretion as to whether or not to set requirements for a prospectus for the admission to trading of transferable securities.
- 33.** Under the current regime, there are certain types of transferable securities which are excluded from the entire scope of the Prospectus Regulation set out in Article 1(2):
- units issued by collective investment undertakings (other than closed-end ones)
  - non-equity securities issued by regional or local authorities, by public international bodies of which the UK is a member or by the Bank of England.
  - shares in the capital of the Bank of England.
  - securities unconditionally guaranteed by UK regional or local authorities
  - securities issued by non-profit associations.
  - non-fungible shares of capital whose main purpose is real estate.
- 34.** These types of securities are treated as a sub-set of transferable securities in the new regime and are defined as 'excluded securities'
- 35.** This means that, in the new regime, we have the power to make rules in connection with admission of (all) transferable securities (including 'excluded securities') – that is, we could theoretically make admission rules and require a prospectus with respect to excluded securities as well. If we want 'excluded securities' to be excluded from the admission rules, we will need to mirror the excluded securities' definition in our admission rules.
- 36.** As a starting view we consider that we would, however, not require prospectuses for 'excluded' securities', therefore mirroring the effect of the current exemptions from the scope of the Prospectus Regulation.

## The required contents of a prospectus

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- 37.** Under the current regime issuers are required to provide investors with all the information necessary for investors to make an informed assessment as to the securities being admitted to trading subject to the liability regime as described above. The Prospectus Regulation and the PR Regulation specify the minimum content requirements which issuers need to include in the prospectus.

- 38.** Under the current regime, the content and format requirements are set out in the Prospectus Regulation and in the PR Regulation and the Prospectus RTS Regulation, with the Annexes to the PR Regulation setting out the detailed minimum content requirements for different securities and issuers. The required format includes a single or 'tripartite' prospectus (comprised of a summary, registration document and securities note) and for debt securities the option to use a base prospectus plus final terms.
- 39.** The summary provides investors with an overview of the key information. The registration document sets out the necessary information related to the issuer, including the financial information concerning the issuer's assets and liabilities, financial position and profits and losses, risk factors and trend information. The securities note sets out a description of the securities to be offered to trading and (for equity securities) a working capital statement.
- 40.** Under the new regime the statutory 'necessary information' for a prospectus will be retained and will require inclusion of information on assets and liabilities, profits and losses and the financial position and prospects of the issuer and any guarantor; the rights attaching to the securities, and the reasons for the issuance and the impact on the issuer.
- 41.** Consistent with the current regime, what qualifies as "necessary information" in a particular case will vary depending on the nature of the issuer, the type of the transferable securities and the circumstances of the issuer and whether the issuer already has transferable securities admitted to trading on a regulated market or an MTF. Currently, the PR Regulation and the Prospectus RTS Regulation supplement the Prospectus Regulation as to the content and key financial information to be included in a prospectus.
- 42.** The new regime will give the FCA rule making powers that will cover this detail, allowing greater discretion to better tailor the contents requirements for a prospectus. We consider this in more detail in Engagement Paper 2 in relation to further issuances.
- 43.** Our starting assumption is that under the new regime the prospectus for admission to trading on a regulated market should continue to be both a document of record that is produced in order to obtain admission and a key document which the investor uses as a basis for their decision making.
- 44.** Further, we consider it is likely that issuers will continue to provide a considerable level of detail in the prospectus document to meet the necessary information test and to protect themselves from liability claims.
- 45.** Given this, we are interested in views about whether we should keep requirements the same or consider either being more prescriptive in setting certain content requirement or whether it would be better to give issuers greater flexibility in places.
- 46.** In this respect we are interested to understand the trade-offs between greater flexibility for issuers, investor protection and transparency and certainty in the market which may be fostered by standardised documents.
- 47.** We consider key elements of current content requirements below.

## The summary

- 48.** Under the current regime there are prescribed content requirements for the summary, including key information on the issuer including key financial information for each financial year covered by the historical financial information and material risk factors, key information on the securities and key information on the admission to trading (as well as any offer of securities to the public).
- 49.** The introduction of the summary in the Prospectus Regulation was intended to make publication of a prospectus less onerous for issuers and to improve the signposting of key information for investors.
- 50.** However, we are mindful that there have been a number of criticisms of current requirements.
- 51.** There are arguments that the summary unnecessarily lengthens the prospectus and that there may be better ways of signposting key information to investors. There are conversely arguments that such a short document may not be of sufficient detail to give investors the key information.
- 52.** The prescriptive format also prevents issuers deciding for themselves what is the most important information that should be highlighted to investors, which may result in less useful disclosure for investors. On the other hand, the purpose of the summary is to provide the key information in a format that is understandable and accessible, particularly for retail or less sophisticated investors, and to provide a degree of certainty for issuers as to what information needs to be included.
- 53.** The current requirements also include a number of limitations to the summary length and to how far there can be cross-referencing. These include that:
- The summary shall be drawn up as a short document written in a concise manner and of a maximum length of seven sides of A4-sized paper when printed.
  - The total number of risk factors included in the summary shall not exceed 15.
  - The summary shall not contain cross-references to other parts of the prospectus or incorporate information by reference.
- 54.** As an initial starting point for discussion, we consider that there are a number of ways in which the requirements for a summary could be changed, for example:
- We could consider removing the requirement for a summary entirely, leaving issuers with flexibility as to how they provide investors with key information most efficiently given that some issuers have reported that the current summary is burdensome. However, there are also concerns that without a specified requirement issuers may not include key information in a way that is as accessible to investors as possible. In this respect it is possible that the current requirement for a summary that includes key information on the issuer and the securities provides also some reassurance for investors.
  - Alternatively, we could still require a summary of key information to be included, but be less prescriptive, leaving it to issuers to decide what information is included and how it is presented to include in the summary. We could consider including a

requirement that the summary must present balanced and fair view of the issuer, the securities and the transaction. Our aim here could be to make the document easier for investors to use.

- We could also consider relaxing current requirements in relation to cross referencing and incorporation by reference in the prospectus. This may act to reduce the size of the summary.

## Changes to the financial information requirements in the prospectus

**55.** Under the current regime, financial information requirements are detailed in the PR Regulation. These include

- Historical financial information requirements set out in Item 18.1.1 of the PR Regulation require that issuers include 'audited historical financial information covering the latest three financial years (or such shorter period as the issuer has been in operation)' and the audit report in respect of each year for the last 3 years for issuances of equity securities and 2 years for issuances of non-equity securities in the summary.
- According to Item 18.1.3 Accounting standards 'The financial information must be prepared according to International Financial Reporting Standards as endorsed in the Union based on Regulation (EC) No 1606/2002.'
- Where the audited financial information is prepared according to national accounting standards, include at least the following: (a) the balance sheet; (b) the income statement; (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners; (d) the cash flow statement; (e) the accounting policies and explanatory notes.
- If the issuer prepares both stand-alone and consolidated financial statements, include at least the consolidated financial statements in the registration document.
- The balance sheet date of the last year of audited financial information may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; (b) 16 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document. This difference in timing reflects the additional assurance that investors get from the auditing of the financial statements and gives issuers additional time for this audit process.
- If the issuer has published quarterly or half-yearly financial information since the date of its last audited financial statements, include these in the registration document.
- The historical annual financial information must be independently audited.
- In the case of a significant gross change, a description of how the transaction might have affected the assets, liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information.

- A description of the issuer's policy on dividend distributions and any restrictions thereon. If the issuer has no such policy, include an appropriate negative statement. The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.
- Information on any governmental, legal or arbitration proceedings during a period covering at least the previous 12 months which may impact on the group's financial position or profitability.
- Any significant change in the issuer's financial position.
- Share capital information.
- Information on material contracts.

- 56.** There are also requirements related to companies with complex financial histories and those which have made a significant financial commitment set out in Article 18. Pro forma financial information is required where a significant gross change has taken place. The requirements of that pro forma information are set out in Annex 20 of the PR Regulation.
- 57.** There are additional requirements set out in the PR Regulation where issuers choose to include financial information on a voluntary basis.
- 58.** In general, our starting assumption is that the information listed above is necessary information for investors seeking to make an informed assessment of the relevant securities.
- 59.** We also note that standardising how this information is presented in the prospectus may support greater consistency in the information contained in the prospectus. Inclusion of this information in the prospectus ensures that issuers have responsibility for such information in line with the statutory liability regime for omissions of material facts or where information in the prospectus is misleading or inaccurate.
- 60.** However, we would be interested in views about whether we should require issuers to include quarterly information in prospectuses, recognising that inclusion of this type of information may act against investors taking a longer-term view of the securities.
- 61.** We will also need to ensure that our requirements reflect any changes in accounting standards following UK exit from the EU.
- 62.** Further, there may also be arguments for adjusting our requirements to reflect changes which we may make to the eligibility requirements set out in the Listing Rules, for example, where we have proposed removing historical financial track record eligibility requirements for companies seeking a premium listing of shares.

### **Incorporation by reference**

- 63.** In their Listings Act package, the European Commission has proposed amending the current Article 19 in the Prospectus Regulation (under which issuers may incorporate by reference information such as annual financial reports, regulated information, audit reports and financial statements which are already published) to make incorporation by reference mandatory for information required to be disclosed in a prospectus. We could

consider a similar approach and we recognise that such a proposal may act towards reducing the length of prospectuses and removing duplication of contents in the prospectus already published elsewhere. However, we already allow issuers to choose to incorporate by reference if they wish to do so and mandating incorporation by reference may reduce issuers' flexibility as to how they present information.

- 64. We could also consider extending forward incorporation by reference for other documents as well as base prospectuses. Any discussion of this would likely need also to address consideration of supplements and withdrawal rights.
- 65. We are interested in views about whether we should consider making incorporation by reference mandatory and whether we should consider extending forward incorporation by reference.

### **Environmental, Social and Governance (ESG) disclosures**

- 66. Under the new regime, we intend to consider environmental, social and governance (ESG) reporting and whether we need to update the requirements to ensure investors receive relevant and accurate information. This relates to our preferred market outcome of enabling investors to have sufficient reliable information on companies and companies' securities, thereby supporting our market effectiveness and market integrity objectives.
- 67. We are not proposing to re-open discussion about ESG reporting requirements in general or to set different requirements than those that apply to ongoing reporting. Instead, we are seeking views on how we can ensure that investors have the relevant information in the prospectus to inform their assessment of the company, and on how we should aim to update our requirements in response to changing reporting standards in this area.
- 68. The FCA previously clarified that under the current prospectus requirements issuers may need to disclose relevant ESG matters - see [FCA Technical Note 801.2](#). The circumstances include where the information constitutes 'necessary information' for the investor, and where ESG issues present specific and material risk factors for the issuer and its securities.
- 69. It is our view that these requirements should continue to apply under the new Prospectus regime. We are also minded, however, to explore whether more specific reporting requirements are needed to ensure consistency and quality of reporting.
- 70. Increasingly, there is a gap between the requirements at the point of issuing a prospectus and the more explicit disclosures that certain listed issuers are expected to provide in the annual report and on an ongoing basis. In December 2020, the FCA introduced a climate-related disclosure rule for premium listed commercial companies, requiring those companies to include a statement in their annual financial report on whether and how they have made disclosures consistent with the [Task Force on Climate-Related Financial Disclosures \(TCFD\)](#) recommendations. In December 2021, this was expanded to issuers of standard listed shares and Global Depositary Receipts

(GDRs) representing equity shares (not including standard-listed investment entities and shell companies).

- 71.** Further sustainability standards are also in development. The Government's 2023 Green Finance Strategy reiterated the UK's support for IFRS Sustainability Disclosure Standards being developed by the International Sustainability Standards Board, and the government and FCA's intention to require reporting against the standards, subject to a UK assessment and endorsement process. The UK Government-commissioned Transition Plan Taskforce is also developing a disclosure framework for private sector climate transition plans, which the FCA intends to draw on in future to strengthen disclosure requirements.
- 72.** The cumulative effect of these developments is that a gap may open between the broad content requirements set out in the prospectus regime, for which the appropriate information to disclose varies depending on the nature and circumstances of the issuer and the securities, and the clarity, breadth and prescriptiveness of ongoing transparency requirements applicable to listed companies. Arguably, however, it is at least as important that investors have a clear understanding of the ESG issues faced by companies at the point at which the company seeks admission to a regulated market. In particular, there is an information asymmetry between issuers and the market at the point at which an issuer first seeks admission to public markets, with investors potentially having much less visibility on the ESG risks and opportunities faced by the issuer. The absence of this information may cause harm by making it harder to price securities accurately, and by affecting capital allocation decisions.
- 73.** The emphasis on necessary information in the current requirements provides greater flexibility to issuers in presenting the ESG issues they consider material to their investors, than would be the case for more prescriptive rules. This approach may be beneficial to issuers in reducing the costs of compliance or reducing the overall volume of reporting.
- 74.** There are, however, several potential downsides to the flexibility provided in the current requirements.
- Firstly, companies may find it difficult to identify the relevant information to disclose, or to understand the level of detail required or expected. ESG reporting standards are relatively new compared to more traditional financial reporting, and companies may therefore find it difficult to interpret the requirements without more specific guidance.
  - Secondly, companies may differ in their assessment of the materiality of information to their business and may not produce consistent disclosures, even for issuers with similar business models. This could in turn limit the usefulness of these disclosures to investors. There may, therefore, be merit in improving the consistency of this information by encouraging companies to report in line with known frameworks such as the TCFD.
- 75.** In reviewing and approving prospectuses, this approach also requires the FCA to apply judgement as to an appropriate level of detail, which offers less certainty to issuers and sponsors (where relevant) and may result in more rounds of comment on prospectuses prior to approval.

- 76.** We are therefore seeking views on whether further direction is needed through guidance or content requirements. Providing this direction may give issuers greater certainty about the information that they should be providing in the prospectus and improve the consistency and quality of information disclosed.
- 77.** The FCA could respond to these challenges in a range of different ways:
- Maintaining the current requirements. This may be more flexible and less prescriptive, but has the disadvantages noted above.
  - Providing additional guidance to companies on the types of information that should be disclosed in the prospectus.
  - Introducing minimum content requirements for the prospectus such as requiring them to include disclosures on key topics or incorporate by reference any existing disclosures and policies that address these areas.
- 78.** In designing any additional guidance or requirements, the FCA will need to consider the level of prescription and the specificity of the content. This could include requiring issuers to disclose in line with frameworks such as the TCFD or, in future, ISSB standards, or to focus more narrowly on specific topics or aspects of these standards. The FCA will need to consider the proportionality of any requirement for additional reporting by issuers coming to market. However, if these requirements are aligned with what issuers would later be required to produce in the annual report, the additional burden could be minimised.
- 79.** We are interested in views about whether the current prospectus requirements result in sufficiently detailed disclosure on companies' ESG issues in a way that is relevant for investors and if the FCA should be seeking to align its expectations on the information required in the prospectus more closely with the reporting requirements in the annual report, e.g., TCFD-aligned disclosures and future ISSB/TPT standards, when implemented. If so, how should we go about this? (E.g., rules or guidance, appropriate level of detail).
- 80.** The nature of the relevant sustainability risks and opportunities also differs depending on the issuer's industry. We would welcome views on whether and how to differentiate across sectors in any requirements or guidance. For example, this could include referring to industry-specific guidance in the ISSB or TPT frameworks.
- 81.** We are also interested in views about how potential future guidance/requirements could be calibrated for equity and debt issuers, and whether the relevant information differs across different types of issuers. We are also seeking views on ESG-labelled debt instruments such as Use of Proceeds and Sustainability-Linked Bonds in Engagement Paper 4: Non equity securities.
- 82.** We are not proposing to extend the requirements to closed ended funds as we consider that the more appropriate way to introduce sustainability reporting requirements for these vehicles is through introducing requirements for the investment manager, as with our existing TCFD rules for UK-authorized firms.
- 83.** Aspects of sustainability-related information could also be included within the category of Protected Forward Looking Statements, and we would welcome views on whether



and how to do this, as detailed in the sustainability section of Engagement Paper 3: Protected forward-looking statements.

## The format of the prospectus

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- 84.** We have considered whether and how to change the current prospectus formats, for example whether to allow issuers greater flexibility to move away from the whole or 'Tri-partite' prospectus which includes a summary, registration document and securities note provided that they meet the necessary information test.
- 85.** This structure is intended to provide investors with key information in summary, then the necessary information on the issuer and the likely risks to the business going forward in the registration document, then the necessary information on the securities being admitted to trading, including the likely risks associated with an investment those securities, in the securities note.
- 86.** Allowing greater flexibility for issuers to choose between prospectus formats may allow them to innovate in how they provide such information and over time improve the formats used.
- 87.** However, in practice the necessary information test may require issuers to provide most, if not all of, the information currently contained in a prospectus for admission to trading, though, as noted earlier the necessary information test is changing in relation to issuances of debt securities.
- 88.** Further having an accepted required format creates a consistency in the presentation of information that may be useful for investors who are familiar with the current formats. Allowing deviation from these may also create a plurality of presentations of information which may prove confusing for investors, adding to their information search costs and potentially generating miss-pricing of securities in the market.
- 89.** We are minded to transpose the current format requirements of the prospectus for admissions to trading on a regulated market into our Handbook as a starting point from which we may consult upon changes following transposition if market practice or other factors justify such a change. In part this is because we recognise that issuers and investors are familiar with the current formats and consider that this approach will act towards certainty in the market at a moment where there are significant changes to the broader regime. However, we are interested in views about out whether and how we might make changes/improvements to the current format at that later point or whether more urgent changes are needed as part of transposition.

## Growth prospectuses

- 90.** In light of the proposals in relation to MTFs, whereby any MTF admission prospectus document content and format would be left to the discretion of an MTF operators' rules, we would propose to remove the possibility that such issuers may use a growth prospectus.

91. Further, in light of our objective for regulatory simplification and the low uptake by SMEs of growth prospectuses we are interested in views about whether we should remove the option for issuers to use a growth prospectus.

### **Universal Registration Documents (URDs)**

92. We are also considering whether or not it is useful to continue to allow issuers to use URDs given the very low usage in the UK of such documents.
93. We recognise that URDs have not been widely used in the UK compared to other countries such as France. We are therefore considering whether or not we should remove the possibility of using a URD as part of our simplification of rules and would be interested in views on this issue.

### **Voluntary prospectuses**

94. We are interested in views about whether or not we should allow issuers to publish a voluntary prospectus.
95. We could propose to retain the right of issuers to publish a voluntary prospectus. An example might be where issuers could take benefit from an exemption but choose to publish a prospectus in any case.
96. We will also need to decide also whether or not we should approve or otherwise validate voluntary prospectuses, if we choose to allow issuers to publish them, and what would be the status of unapproved documents.

## **Changes to the rules and rights associated with a prospectus**

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### **Who is responsible for the prospectus?**

97. The current liability regime is set by statute rather than in FCA rules and will continue to be matter for statute under the new regime. The new regime will continue to delegate power to the FCA to determine who is responsible for a prospectus. Therefore, we will need to consider whether we should retain the scope of responsibility set out in our current Handbook rules at PRR 5.3, which specifies the responsibility of not only the issuer but, where the issuer is a body corporate, also directors and senior executives of any executive management company of the issuer, and anyone who accepts responsibility for the prospectus.
98. Our initial view is that we should not change the current regime in respect of responsibility, (as set out in PRR 5.3) as this is accepted by the market and to make a change on this may create unnecessary legal uncertainty at the start of the new regime. However, we are interested in views on this issue.

## Shortening the period that an IPO prospectus is available to retail investors

- 99.** The Secondary Capital Raising Review (SCRR) has recommended that the FCA should shorten the period that an IPO prospectus is available to the public from 6 to 3 days (the six-day rule'). This is in the context of its broader consideration of the effects of current requirements on capital raising. SCRR recommendations are considered in more detail in our Engagement Paper on further issuances (EP 1b).
- 100.** It is argued that such a move would allow issuers more flexibility in timing their capital raising and accelerate the capital raising process. This may in turn reduce disincentives for such issuers to involve retail investors in their capital raising.
- 101.** In practice, we understand that issuers often respond to this 'six-day' rule' by excluding retail investors.
- 102.** Our initial view is that removing this rule would still allow investors sufficient time to consider the offer given the improved ability to access and consider information electronically. However, some may disagree and feel it is insufficient for less sophisticated investors to consider the content of a prospectus, especially where documents are long and complex, and that there is a disparity whereby institutional investors may be involved in earlier engagement with an issuer as part of initial price discovery and later book-building processes, which may give them greater insight before a prospectus is published.
- 103.** We are minded to take forward this shortening of the period to 3 days in line with our objective to widen participation in capital raising and consistent with the 'have regard' provision included in the illustrative statutory instrument for the new regime, but we are interested in views before consulting on such a proposal.

## The period of validity for a prospectus

- 104.** Under Article 12(1) of the Prospectus Regulation a prospectus, whether a single document or consisting of separate documents, shall be valid for 12 months.
- 105.** Where there is new material information then an issuer is currently required to publish a supplementary prospectus. This alleviates risks that a longer validity period may mean that investors do not receive up to date information.
- 106.** Arguments for retaining this period of validity for a prospectus are that it provides certainty to the market and broadly fits with annual financial reporting cycles. However, extending the period of validity could reduce issuers' costs. We are interested in views on this issue.

## Changes to the process of approval and validation of a prospectus

- 107.** We are interested in views about whether or not we should change the process of FCA approval of a prospectus for admission to trading on a regulated market or whether an alternate process for approving prospectuses should be considered.

## Changes in other relevant regimes

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- 108.** We could also look to make changes to other relevant regimes such as the regime for advertisements or rules under COBS 11a.
- 109.** However, our initial thinking is that we should not consider these within the scope of this policy discussion, but we could return to this once the first phase of this transposition of rules is completed. Our intention is to retain the advertisement regime, but we are interested in views from stakeholders about how well these provisions currently operate.

