FINANCIAL CONDUCT AUTHORITY

Engagement Paper 2

Further issuances of equity on regulated markets

May 2023

Contents

Public Offers & Admissions to Trading

This paper is part of the FCA 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.

In this paper we consider further issuances of equity securities. Further issuances by closed-end funds are covered at the end of the section.

Non-equity securities are considered separately in Engagement Paper 4.

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

1. We set out here for discussion and feedback our initial thinking on how we may formulate requirements for issuers seeking to make further issuances of equity securities admitted to trading on regulated markets under the new Public Offers and Admission to Trading Regime. Further issuances for funds are also considered in the final section of this document.

2. The draft Statutory Instrument (SI) for the new regime published in December 2022 will give the FCA the opportunity to tailor our approach to the needs of issuers and investors in the specific context of admission to market and capital raising. We will have discretion regarding whether or not to require a prospectus and to interpret what 'necessary information' needs to be contained in such a document.

3. The Secondary Capital Raising Review (SCRR), as well as previous engagement initiatives have found that the current requirements to prepare and publish a prospectus and have it vetted and approved may create frictions for issuers in their capital raising, stemming from the length and potential unpredictability of the process, and reduce the ability of issuers to raise capital quickly and at scale, in a manner calibrated precisely to their financing needs.

4. We consider the starting assumption that we should not require prospectuses for further issuances for equity securities admitted to trading on regulated markets unless there is a clear argument that to do so is necessary for investor protection, taking into account other existing disclosure requirements on issuers. We want to test this assumption with stakeholders and consider in broad terms how this may work.

5. In line with this, we set out below possible ways in which we may approach scaling back current requirements. Our analysis here is not intended to be exhaustive and we are interested in views on other possible options not considered here. We are also keen to understand how possible options may work in practice and what we may best consider in calibrating options to the scale of issuance or conditions on the issuance.

6. We are also interested in views of stakeholders regarding the potential for unintended consequences in making changes to the current requirements.

What we are inviting your feedback on

7. We are looking for your feedback on the following main areas:

a. Reduced requirements for further issuances

Our starting assumption is that we should seek to be more ambitious in reducing the requirements for a prospectus for further issuances than for issuances at initial public offering. This is because we do not consider that there is a similar concern about information asymmetry between issuers and investors in this area. This approach is in line with the broader objectives of the new regimes for public offers and admissions

to trading for more tailored regimes. We are interested in views about our analysis and basic approach.

Q1: **Do you agree that we should be more ambitious in seeking to reduce requirements for a prospectus for further issuances than for issuances at initial public offering? Please give your reasons.**

b. Effect of current regime on issuers

Evidence suggests that current requirements are creating unnecessary frictions in the market. We note the evidence of the SCRR which suggests also that issuers may be prevented from raising capital quickly and at scale, in a manner calibrated precisely to their financing needs. We are interested in views about the analysis presented here and whether in practice current requirements create these barriers, or whether we have missed frictions that currently exist.

Q2: **Do you agree with our analysis of where there may be potential frictions for issuers which may prevent them from raising capital efficiently? Please give your reasons.**

c. Setting a threshold for requiring a prospectus

We could set a threshold (i.e., on the size of the further issuance as a percentage of existing share capital) above which we may require a prospectus. We are interested in what level we should set this requirement and whether above any threshold we should allow issuers to publish a full prospectus as well as the simplified prospectus.

Q3: **Do you agree that we should set a percentage threshold for a requirement to publish a prospectus? If so, where would you set this threshold? Please give your reasons.**

Q4: **Do you consider that we should allow issuers to only publish a simplified prospectus above this level or continue to allow them to publish a full prospectus if they choose to do so?**

d. What document should be required if we do not require a prospectus?

We may also choose to require a different type of document to a prospectus below the threshold. This could include allowing issuers to publish an announcement as proposed by the SCRR (see Chapters 6 and 8) or a document modelled on one used or proposed in other jurisdictions.

Q5: **Would you set a requirement for an offer type document below this threshold? If so, please describe what type of document you would require. Please give your reasons.**

e. Further issuances for funds

We also set out here considerations on how there may be specific issues in relation to issuers making further issuances of equity securities for funds. We are interested in how far we have captured all these issues correctly and on whether we should tailor our requirements in a different way for these issuances. Further, we are interested to hear what information investors regard as essential to their investment decision for further offers by closed end funds where a prospectus is, or is not, required.

Q6: **Do you agree that we should set requirements for a prospectus for further issuances of funds? If so, where would you set these requirements? Please give your reasons.**

f. Relevant data and/or evidence

We are also interested in any relevant data or other evidence that stakeholders may have on these issues.

Q7: **Is there any further data which we should take into in our analysis? If so, please provide us with details of this data.**

How the regime is changing

The current regime

8. Under the current regime, issuers are required to prepare and publish a prospectus for further share issuances that will be admitted to a regulated market subject to a number of exemptions as set out below:

a. where securities less than 20% of the number of securities already admitted to trading on the same regulated market (the 'threshold exemption').
b. shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading;
c. 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; or

d. 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.

9. The current regime provides issuers with the option of publishing a simplified prospectus for further issuances when the issuer's securities have been trading for at least 18 months.

10. Compared to a full prospectus, the simplified prospectus requires a lower level of information. There is no requirement in a simplified prospectus for the issuer to publish an operating and financial review (OFR) or a management discussion and analysis (MD&A), information about the issuer's group structure; funding structure; regulatory environment; directors' remuneration; corporate governance arrangements; share capital history; articles of association; or financial information more than 12 months old.

The new regime

11. Under the new regime, the FCA may make designated activity rules relating to transferable securities that have already been admitted, or are of a class that has already been admitted, to trading on a regulated market. The FCA has discretion under these rules regarding whether or not to set requirements for a prospectus for admission to trading. This means also that we have discretion also about whether or not to set a threshold in our future rules such that a prospectus is not required for further issuances which are below this threshold (expressed as a percentage of existing share capital), but is required above this level for admission of further share issuances to a regulated market. We could consider dropping this requirement.

12. As the admission to a regulated market serves as a general exemption to the prohibition on the offer of securities, there is no longer a need for a parallel exemption to enable a public offer of securities, unlike the current regime.

13. Further, under the draft SI, there is scope to vary the necessary information that a prospectus must contain for different types of issuers, issuances, or markets where the securities are trading.

Reduced requirements for further issuances

14. As described in Engagement Paper 1, we consider that the underlying reason for requiring a prospectus for securities is where there is a lack of transparency in the market that may mean that issuers and investors are not able to accurately price these securities. This may lead to mispricing in the market, which may in turn reduce effectiveness and market integrity.

15. Evaluated against this rationale, we do not consider that this lack of transparency is generally the case for a further issuance, given that investors can already see performance of the securities trading on the market and will benefit from periodic financial reporting by an issuer. Issuers also already have obligations to update the market on any information that is significant to the price of the securities.

16. Nevertheless, we recognise that there may be circumstances where there may be information asymmetry. For example, where an issuer is making a further issuance that represents a significant proportion of additional shares compared to existing share capital and the purpose of which may be to raise capital to finance an acquisition or significant new project or rescue. In these cases, we can see there is a stronger rationale for a prospectus requirement.

17. However, for further issuances that do not involve these significant amounts of capital raising, we are less convinced that there is a strong argument for a prospectus requirement. In our view the proportionality of setting such a requirement may depend on the additional costs it imposes and frictions it may create compared to the benefits of additional transparency that a prospectus may offer investors.

18. We consider these effects in the following section.

The effects of the current regime on issuers

19. Concerns about the possible effects of prospectus requirements on issuers seeking to raise capital have been raised in a series of UK reviews as follows:

- The Rights Issue Review Group in 2008 set medium term objectives which included that the FSA and BERR consult on reducing the rights issue subscription period from 21 to 14 days. That the FSA work at EU level for the adoption of short form prospectuses for Rights issue and the possible increased use of shelf registration for equity issuance. Following this Review, the rights subscription period was reduced to 14 days and the FSA was asked to look how the Australian authorities were allowing more rapid capital raising.
- The UK Listing Review recommended that HMT should conduct a fundamental review of the prospectus regime, so it fits better with both the breadth and maturity of UK capital markets and the evolution in the types of businesses coming to market as well as those that are already listed. It recommended that consideration should be given, as a minimum, to the following areas:
  - changing prospectus requirements so that, in future, admission to a regulated market and offers to the public are treated separately.
  - changing how the prospectus exemption thresholds function so that documentation is only required where it is appropriate for the type of transaction being undertaken and suits the circumstances of capital issuance.
  - use of alternative listing documentation where appropriate and possible, e.g., in the event of further issuance by an existing listed issuer on a regulated market.
- In its Prospectus Review, HMT consulted on an approach to a new legislative framework during 2021. They then confirmed their intention to legislate for a revised regime in early 2022. Under the new regime proposed by the HMT review (which is considered more widely in this paper) the regime is to be replaced by a framework that allows the FCA to set separate rules for admissions to trading versus other public offers. HMT asked Mark Austin, a financial services lawyer, to undertake a review of secondary capital raising.

- The Secondary Capital Raising Review (SCRR) made a number of recommendations:
  - Remove duplicated information from the prospectus and focus the disclosure on new information that is relevant for shareholders i.e., background to and reasons for the fundraise.
  - There should be no or at most very little FCA oversight of the secondary capital raising process and the review undertaken by the investment bank should also be considered as it is overly costly and time consuming. Sponsors should only need to be appointed if otherwise caught in relation to rules concerning an acquisition that is caught by significant transactions rules.
  - Prospectuses should only be required for fundraisings that are at least 75% of the existing share capital.
  - The FCA's approach to working capital statements should be revised to allow greater flexibility/ a disclosure-based approach and FCA should change its approach to the language on the importance of the shareholder vote (in this context). Disclosures should be focused on the rationale for the level of the funds and the use of the proceeds.
  - Increasing range of choice available fundraising structures for companies. One option would be to develop accelerated fundraising structures such as those used in Australia e.g. the cleansing notice approach, use of shorter offer documents that do not duplicate existing market disclosure, the ability to split the shareholder register to identify different shareholder types, lack of regulatory involvement and the use of market standard terms and conditions with institutional investors.
  - The SCRR also proposed that for smaller issuances where there was no requirement for a prospectus companies could make an announcement via the Regulatory Information Service within a week of the offer.

20. Alongside these developments in the UK, there has been a process of reform of the requirements at European level drawing on similar themes of how to make requirements less burdensome for issuers whilst retaining the necessary levels of investor information. The European Commission published new proposals on 7 December 2022 intended to make listing on EU capital markets more attractive. These are considered in more detail later when we consider also our own approach going forward.

21. Alongside the broader concerns about the proportionality of current requirements, the SCRR noted that issuers may face strong incentives to seek to avoid the costs and potential time delays imposed by publishing a prospectus if they want to raise capital quickly or at a time of their choosing.

Setting a threshold for requiring a prospectus

22. In considering when a prospectus should be required, given the evidence of potential frictions described above, and contained in the SCRR, we do not consider that continuing with the current scope of exemptions or the current simplified prospectus

document would be a credible policy option. We also consider that such an approach may not maximise the benefits from the new framework.

23. Overall, we consider (in common with the SCRR and the European Commission) that alleviations in the current regime for requirements for further issuances are insufficient.

24. We note that prospectuses currently do involve substantial duplication of information already contained in annual financial reports and in announcements to the market (e.g., under MAR), albeit that such information is prepared without the same liability threshold as that in the prospectus.

25. As described above, the SCRR proposed that a prospectus should only be required when an issuer is undertaking a transaction of at least 75% of the existing share capital.

26. We also note that the European Commission has proposed significant changes to the regimes in the EU in its Listings Act proposals which include proposals to set a threshold of 40% of existing share capital for shares which are fungible with securities already trading.

27. In practice, we consider that it is unlikely that we will be able to determine what is an optimum level of such a threshold based on a quantitative analysis.

28. However, we can make an indicative assessment of what may work best based on the interaction between the level of transparency for investors without a prospectus requirement, the level of risk to investors and other potential effects of an issuance on investors.

29. The level of transparency without a prospectus requirement may depend to some extent on the scale of the issuance and the existing disclosures available without a prospectus. In this respect it is worth noting that this transparency includes the enhanced liability threshold attached to information contained in a prospectus which drives issuer due diligence and the FCA's role in approving such documents.

30. The higher the relative size of a transaction compared to the scale of existing share capital is important as it is an indicator of the level of transparency which the performance of (and pricing of) securities already trading on the market may give investors. It could be considered for example that the higher the scale of the issuance relative to the existing share capital, the likely the lower the additional transparency afforded to investors by the performance and pricing of shares already trading.

31. There is also additional transparency generated by disclosures which are available to investors without a prospectus which include those which issuers have to make under MAR. Further, as below we can mitigate any risks of a lack of transparency by requiring issuers to provide an alternative type of document which is not a prospectus.

32. Further the potential effects on existing investors may also be an important consideration, for example where there are risks of share dilution from a large issuance.

33. Looked at across these factors we can see that the scale of the issuance is an important driver in whether prospectus requirements are proportionate for further issuances.

34. This point is discussed in Table 1 below:

Table 1: The effects of the scale of the issuance on the proportionality of prospectus requirements

Scale of issuance as a proportion of existing share capital	Likely transparency without a prospectus	Risks for investors	Potential effects of the requirement on issuers	Proportionality of the prospectus requirement
High	May be information asymmetry for example where there is no working capital statement for a future project.	Increased risks if information asymmetry applies but this may be reduced where there may be other required disclosures.	Requirement could prevent issuers optimising their capital raising but much of the due diligence required for a prospectus already being undertaken. Less likely that capital raising without a prospectus will be quick. Potential effects on existing investors such as share dilution may be higher.	Costs of producing and publishing a prospectus appear to be more proportionate.
Low	Lower chance of information asymmetry as greater reliance can be placed on performance of securities already trading on the market.	Possibly lower risks due to lower scale of the issuance and lower information asymmetry. But this can depend on other factors such as the purpose of the capital raising.	Prospectus may impose costs which prevent quick and time-certain capital raising.	Less proportionate.

35. However, the scale of the issuance is not the only driver of whether a requirement for a prospectus for further issuances is proportionate.

36. The purposes of the capital raising can provide some indication of the level of risk that investors may face. For example, it could be considered likely that capital raising for

the purposes of rescue funding or refinancing to bolster to balance sheet may present additional risks, given that it may be an indication of problems that the issuer is facing.

37. Where investors are facing particular risks, there are arguments that it is appropriate that they get additional information and assurance around this information which a requirement that issuers publish a prospectus can provide.

38. In practice then we should consider also if and how to impose a requirement for a prospectus in a way that we consider strikes the right balance between our objectives, for example towards regulatory simplification and effective capital raising and is consistent with investors getting the information they need.

What document should we require below a threshold

39. We can mitigate risks discussed above of a lack of transparency where there is no prospectus by requiring that issuers publish a different type of document (where they do not publish a prospectus).

40. There are a range of options we could consider:

i. No requirement to publish an additional document

41. One option may be to consider leaving it to issuers to decide on the type of offer document that they may choose to provide for investors below the threshold for a prospectus. This would mean that investors would then have to rely on information contained in the annual financial reporting published by issuers and announcements to the market in relation to publication of inside information or information related to significant transactions.

42. Whilst this would mean, in principle, that much of the information necessary for investors was available to them it could mean that this information was not easily accessible, particularly for less sophisticated investors, but was spread across different sources.

43. We recognise, though, that moves towards digitalisation, the development of our National Storage Mechanism and the broader development of communications technology have made it easier for investors to find information about the securities and the issuers.

44. However, it may be still difficult for investors to understand the relative status of the information and, potentially, increase asymmetry between investors and issuers if issuers also make public other information which has not been verified or audited.

45. Further, in the absence of a requirement to publish a prospectus, it is possible that there may be a wide range of offer type documents produced by issuers, and this may be confusing for investors.

ii. Setting a requirement to publish an alternative form of document

46. We could also decide to require a particular type of offer document below the threshold for a prospectus.

47. This could include setting a requirement as recommended by the SCRR that issuers publish an announcement via a Regulatory Information Service (RIS) within a week of the offer.

48. We could also consider whether or not to require an offer type document which was made to the specific requirements of the UK market.

49. In this context we note that the SCRR recommended that we consider whether we could adapt a Cleansing Notice type document used in Australia for UK requirements. We provide further detail on these at Annex 1.

The impact of pre-emption

50. We note that the SCRR has considered the interaction between pre-emption and prospectus requirements.

51. For non-pre-emptive placings the SCRR proposes that issuers should have follow-on offer for retail investors supported by a Cleansing Statement and an offer booklet which could be subject to requirements as per a circular under our listing rules. This could give issuers greater flexibility to make placings without a prospectus requirement.

52. For pre-emptive offers the SCRR has more of a preference for no formal document requirements but suggests 4 main elements (offer-specific information, cleansing statement, incorporation by reference of existing disclosures, and additional disclosures including assurances / comfort informing investment decisions – but minimising inclusion of non-decision useful or duplicative disclosure).

53. In practice we consider that pre-emption can create mixed effects in relation to potential information asymmetry and whether there should be a requirement for a prospectus.

54. Whilst a pre-emptive offer will be made to existing investors who may have a good knowledge of the issuer's business and performance, there are arguments that they may benefit for additional information and due diligence (that a prospectus requirement may provide) where there is a substantial further issue to finance a significant transaction or acquisition or for a rescue or refinancing.

55. Similarly, whilst a non-pre-emptive offer may be made to new investors it is likely that issuers will seek out qualified investors for a placing and that these sophisticated investors may not require substantial additional information.

56. Given the above, we are interested in views about whether and how we may tailor requirements to take pre-emption into account.

Issuances in more than one jurisdiction

57. As the SCRR notes many UK issuers will also looking to make an issuance in the US to ensure take-up of any shares not sold in the UK. To do so they will need to meet US requirements, and this may mean that they undertake significant additional due diligence which may typically involve publishing a prospectus.

58. Given this we understand that we need to ensure that issuers have flexibility to make offers in other jurisdictions as well as the UK and that any changes in our requirements should not create additional obstacles or unnecessary documentation for these issuers.

Retail participation

59. We are also very much aware that we need to consider the potential for greater participation of retail investors.

60. To some extent we understand that the structure of the new regime and potential changes to the six-day rule may make it more possible for issuers to make offers that include retail investors as well as institutional investors.

61. We recognise that without a requirement for a prospectus there may be some additional risks for investors, for example in that information may not be prepared under the liability threshold of a prospectus or be found as easily in one place.

Interaction with disclosures under MAR

62. We are though conscious that MAR obligations already require issuers to provide material updates to the market and that issuers could be expected to put out information on the securities being issued without any requirements under the new regime. This may limit the value of requirements for updated information for investors beyond putting links to such information in one place.

63. We could however achieve this by prescribing minimum contents requirements to make it easier for investors to access the information they need for example links to recent disclosures issuers may have made to meet their MAR obligations and to their most recent financial information published on the National Storage Mechanism and information about the securities being issued.

64. We recognise also that it might be challenging to put requirements shaped overseas into UK rules and market practice. For example, we would see the main point of any requirements for an offer document to be in information published or made available to investors before any offer was made.

Financial information requirements

65. We understand also that removing requirements for a prospectus may create information gaps for investors comparted to the financial information they receive in a prospectus.

66. However, we could address this separately.

67. For example, we could set requirements that issuers include a working capital statement where the issuance is to finance a major project but is below the threshold for a prospectus. We understand also that this interacts with our proposal to remove the premium listing eligibility requirements under the current Listing Rules, which could increase the reliance of investors on the financial information contained in the prospectus. We will take this into account in designing our proposals in this area.

68. We could also consider further whether such a document should be reviewed by the FCA.

How we may calibrate options

69. In practice we have some flexibility to develop options which are calibrated across a number of different permutations of the scale of issuance, conditions we may set on issuers and the type of document or prospectus required.

70. We could set conditions on issuers who can use the exemptions. For example, we could require that issuers had been listed on a regulated market for certain period of time (perhaps 18 months). This ensures that investors have access to a full cycle of financial reporting linked to transparency obligations, i.e., a company will have had to publish end of year financials after 12 months and 4 months to report.

71. We could also introduce options based on different scales of issuance. For example, we could say that no offer document was prescribed below a threshold of 50% of existing share capital but between 50% and 75% we required an offer document with prescribed contents and above 75% of existing share capital we required a prospectus.

72. We could set a condition that issuers were only able to raise capital without issuing a prospectus if they had not previously been in serious financial difficulty and that they were not then raising funds to deal with this.

73. As considered above, we could also consider whether we should vary our requirements in relation to whether the offers are pre-emptive or not as proposed by the SCRR.

74. Further there are arguments that we may consider mandating requirements that issuers include retail participation in their offers, for example that at least 10% of any offer must be made to retail investors. We are interested in views about this.

75. As stated earlier though we are aiming towards simplification in our requirements and would not seek to introduce a complicated regimes or one which could set perverse incentives for issuers to structure their further capital raising in ways to avoid specific requirements.

76. An indicative example of how we may use calibration between options is included in Table 2 below.

Table 2: Possible calibration between options for further issuances

Document options	Advantages	Disadvantages	Calibration commentary
A) No disclosure requirement	No specific or consolidated information for investors Low costs for issuer.	No additional information- working capital statement or proforma	Existing threshold exemption is <20% of existing share capital (We could raise the threshold as discussed in this paper.)
B) Update type document (maybe an adapted version of the Cleansing Statement)	More efficient approval and assurance process. Signposts and supplements key information in a proportionate way,	Reduced information for investors on specifics of the capital raise. Eg may have no working capital statement or proforma Could place a burden on Directors that they need to ensure that they have appropriate continuous disclosure processes as they may have liability Publication after the offer could reduce usefulness for investors.	Could standardise format or only allow this combined with a certain threshold of share capital
C) Announcement	Well understood means of updating the market. Can provide investors with essential update information. Inexpensive compared to publishing a document	If following from the offer this may limit the usefulness to investors. May not include some of the information contained in a prospectus	Could consider whether a week after an offer was too long a period. Could also consider whether to require inclusion of additional information.

Document options	Advantages	Disadvantages	Calibration commentary
D) Tailored alternative offer type document with specific investor information add-ons	Brings together information in one place. Flexible format. We could set a different requirement for the level of information required for transparency. Lower costs compared to a prospectus.	Less standardised for investors (unless we set content requirements.)	We could consider whether we should require FCA assurance over the content.
E) Simplified prospectus	Weaknesses of the prospectus requirements as discussed above in this section.	Brings together existing information in one place. Higher standard of liability may improve quality of information. Allows for possible alignment with EU rules.	Could consider tailoring to follow-on EU approaches. Could require above a certain threshold.
F) Full prospectus	Weaknesses of the prospectus requirements as discussed above in this section.	Full disclosure of the information. Disclosure at high standard of liability and FCA assurance. Could align with requirements in other jurisdictions.	Incorporation of any changes we propose to prospectus to admission to trading document. Could require above a certain threshold or type of issuance (e.g., for rescue funding).

Further issuances of closed ended funds

77. We consider that there are specific factors that may mean we want a different approach for closed-ended funds. These include the following:

a. The reason for raising further funds is usually to enable the vehicle to make further investments in accordance with its investment policy.
b. Some closed-ended funds are frequent issuers or wish to have the flexibility to move quickly when investment opportunities arise, and market conditions are favourable.
c. There is usually greater retail investor participation in further issuances by closed-ended funds than for commercial companies.
d. The nature of the closed-ended fund as an investment vehicle. This means that the information that is relevant to investors is different to the considerations that apply to commercial companies.
e. The concerns regarding dilution are different to those applying to commercial companies, and typically shares are not issued at large discounts as would typically be the case in further issuances by commercial companies.

78. However, we do also note that further issuances by closed-ended funds are not limited to raising further funds. The issue of consideration shares and shares resulting from the conversion or exchange of other securities sometimes has been sufficiently large to trigger the requirement for a prospectus.

79. As issuers of equity securities, closed-ended fund issuances comprise a significant portion of all further equity securities issuances.

80. Almost all closed-ended funds have included a public offering element to their further issuances. This is often due to a desire to provide for retail investor participation (and some funds such as VCTs are necessarily focussed on retail investors given the nature of the tax treatment of investment in the vehicle).

81. Closed-ended funds with Venture Capital Trust (VCT) status often repeat further issuances each year given the pool of available capital for further issuances renews each new tax year. Investors utilising the tax advantages of investing in the equity securities of closed-ended funds with VCT status are exclusively individual investors and therefore VCT further issuances are achieved routinely by way of public offers which remain open for a number of months. Also, further VCT offers made, particularly by new or smaller VCTs, often represent significant proportion of existing shares as a VCT may wish to take as much capital as it believes it can invest should the capital be available.

82. The use of multiple share classes is also more prevalent for closed-ended funds. Closed-ended funds may determine to issue separate equity share classes which entitle an investor to the returns of a defined group of assets. This may also be for the purposes of limiting 'cash drag' on one particular equity share class whilst the net proceeds relating to the issue of a separate, temporary equity share class, typically referred to as 'C Shares' are invested.

83. It is common practice for closed-ended funds to use a placing programme or share issuance programme for their further issuance. A placing programme enables a single

approved prospectus to be used for admission where further shares are offered to investors within an exemption (from the public offer rules over a 12-month period). A share issuance programme is typically undertaken by way of use of a tri-partite prospectus so as to enable a new public offer within a 12-month period to be made upon approval of a new summary and securities note and any required supplement to a registration document. However, the tri-partite route adds to the costs of such further issuance and increases regulatory burden for a closed-ended fund. For this reason, we understand that the tri-partite route is only favoured where there is significant benefit derived from the ability to undertake more than one public offer over the term of the registration document.

84. Such programmes may include the ability to offer at least two separate classes of equity shares, where one such class may not already be admitted to trading on a regulated market and/or may be in issue on a temporary basis before converting into an existing share class under specified conditions, for example, 'C Shares'.

85. In this context, the current threshold exemption for a prospectus for further issuances would not apply to an issue of a new class of shares by an existing closed-end fund. Any potential change to the exemption threshold percentage for further issuances prospectuses may therefore still mean that new classes of equity securities admitted to trading on a regulated market would require a prospectus.

86. Under the current requirements, closed-ended funds may utilise a simplified prospectus for further issuances and are required to include substantially all disclosures required for issuers of equity shares. In addition, disclosures specific to the nature of closed-ended funds are required. For example, a description of a closed-ended fund's investment policy and a comprehensive and meaningful analysis of its portfolio. Inclusion of certain of these required disclosures may be duplicated in other publicly available materials produced by closed-ended funds. However, there are certain disclosures which are not. For example, a working capital statement.

Options that could be considered specifically for closed-ended funds

87. These include the following:

a. Setting requirements that are specifically calibrated for closed ended fund issuers.
b. Allowing flexibility for an existing issuer to have new classes of shares admitted without a new prospectus provided that the rights of the shares have been described in a previous prospectus.

Annex 1

The SCRR, Cleansing Notices and EU Listings Act proposals

Secondary Capital Raising Review (SCRR) July 2022

1. Broad principles underpinning the Review are:

- Pre-emption rights
- Cost and efficiency
- Choice
- Enabling retail investors

Key proposals:

2. These included

- Maintaining and enhancing pre-emption. Put the Pre-Emption Group ({PEG) on a more formal footing- including more formal and transparent governance structure, dedicated and accessible website and review of their membership. PEG should publish an annual report.
- Increasing ability to raise smaller amounts of funds quickly. Making permanent that companies are able to go to their shareholders at AGM for a pre-emption disapplication authority for up to 20%- with up to 10% available for use for any purpose and up to a further 10% for use in connection with an acquisition or a specified capital investment. Companies should report to market on the placing using a short template form provided by the PEG on its website and filed with PEG, and publicly available to investors. The details should also be included in the Annual Report.
- Allowing additional flexibility for capital hungry companies. For high growth companies (e.g., tech and life sciences) the limit of raising 20% of their existing share capital non-pre-emptively should ` raised to 75% as should the trading threshold for a prospectus (again to 75%. The possibility of this should be included in IPO offer documentation and this capital raising should be subject to shareholder approval at AGM.
- Involving retail investors more fully: Companies should consider how to involve retail investors in the fundraising on the same terms and conditions. This could be done by having a separate retail offer following on from a placing, The FCA should also shorten the six-day period for which an IPO prospectus must be made available to retail investors to 3 days,
- Reducing regulatory involvement in fundraising. Remove duplicated information from the prospectus. Focus of the fundraise disclosure should be on new information about the company and capital raise that is relevant for shareholders in deciding whether to invest more money in the company i.e., background to and reasons for fundraising, the amount and use of proceeds and how the transaction

will affect company's strategy, financial viability and forward-looking guidance. There should be no or at most very little FCA oversight of the secondary capital raising process. The review undertaken by the investment bank to give the current required confirmations to the FCA should also be considered as it is overly costly and time consuming. Sponsors should only need to be appointed if overwise caught in relation to rules concerning an acquisition that is caught by significant transactions rules. Prospectuses should only be required for fundraisings that are at least 75% of the existing hare capital.

- Making existing pre-emptive fundraising structures quicker and cheaper. Document fundraising such as rights issues and open offers take too long and are too expensive. Offers should not need to be open for 10 business days- the period should be shortened to 7 days for rights issues and open offers. Further the minimum notice period for shareholder meetings that are not AGMs should be reduced from 14 days to 7 days.
- Increasing range of choice available fundraising structures for companies. One option would be to develop accelerated fundraising structures such as those used in Australia such as the cleansing notice approach, the use of shorter offer documents that do not duplicate existing market disclosure, the ability to split the shareholder register to identify different shareholder types, lack of regulatory involvement and the use of market standard terms and conditions with institutional investors.
- Raise priority of the 'drive to digitisation' to facilitate innovation which is actioned by a Digitisation Task force with an independent chair and a clear set of principles to be followed. Digitisation of share ownership.

Australian Cleansing Notice

3. Under the Australian Corporations Act 2001 securities cannot be traded or sold for 12 months after their issue unless they were offered under a disclosure document, such as a prospectus. However, there is an exemption where a company releases a cleansing notice within five days of issuing quoted securities. The effect of a cleansing notice is to "cleanse" the market with information that may not have otherwise been disclosed, or confirm that no such information exists, to create a level playing field and allow the issued securities to be traded by recipients. This means that in some circumstances early disclosure of information that is otherwise not required to be released to the market must be made.

4. Cleansing notices may only be issued in limited circumstances including: The securities issued are of a class that were quoted securities for at least the last three months; Trading in the class of securities has not been suspended for more than five trading days in the previous 12 months (this has been temporarily extended by ASIC, to 10 days where the company meets certain conditions). A cleansing notice must include any "excluded information", which includes information:

a. that has been excluded from a continuous disclosure notice in accordance with the listing rules of the relevant market operator to whom that notice is required to be given; and

b. that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:

i. the assets and liabilities, financial position and performance, profits and losses and prospects of the body; or
ii. the rights and liabilities attaching to the relevant securities.

Proposed EU summary document

5. A summary type document is proposed by the European Commission in its Listing Act proposal. This document is a new Annex IX is inserted in the Prospectus Regulation to clarify what information is to be included in the summary document with the following contents:

- The name of the issuer (including its LEI), country of incorporation, link to the issuer's website.
- A declaration by those responsible for the document that, to the best of their knowledge, the information contained in the document is in accordance with the facts and that the document makes no omission likely to affect its import.
- A statement that the document does not constitute a prospectus within the meaning of Regulation (EU) 2017/1129 and that the document has not been subject to the scrutiny and approval by the relevant competent authority in accordance with Article 20 of Regulation (EU) 2017/1129.
- A statement of continuous compliance with reporting and disclosure obligations throughout the period of being admitted to trading, including under Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, Commission Delegated Regulation (EU) 2017/565.
- An indication of where the regulated information published by the issuer pursuant to ongoing disclosure obligations is available and, where applicable, where the most recent prospectus can be obtained.
- Where there is an offer of securities to the public, a statement that at the time of the offer the issuer is not delaying the disclosure of inside information pursuant to Regulation (EU) No 596/2014.
- The reason for the issuance and use of proceeds.
- The risk factors specific to the issuance.
- The characteristics of the securities (including their ISIN).
- For shares, the dilution and shareholding after the issuance.
- Where there is an offer of securities to the public, the terms and conditions of the offer.
- Where applicable, any regulated markets or SME growth markets where the securities fungible with the securities to be offered to the public or to be admitted to trading on a regulated market are already admitted to trading.'

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