FINANCIAL CONDUCT AUTHORITY

Engagement feedback on the new public offers and admissions to trading regime

December 2023

Contents

1.	Summary	3
2.	Admission to trading on a regulated market	5
3.	Further issuances of securities already admitted to trading	10
4.	Protected forward-looking statements (PFLS)	13
5.	Non-Equity securities	15
6.	Public offer platform	18
7.	Primary multilateral trading facilities	21
8.	ESG and Sustainability	24

Moving around this document

Use your browser's bookmarks and tools to navigate.

To **search** on a PC use Ctrl+F or Command+F on MACs.

Sign up for our **news and publications alerts**

See all our latest press releases, consultations and speeches.

Request an alternative format

Please complete this form if you require this content in an alternative format.

Or call 020 7066 6087

Chapter 1

Summary

1.1 The Government is in the process of finalising a new legislative framework that will replace the UK Prospectus Regulation. The legislation is set out in the Public Offers and Admissions to Trading Regulations 2023 (POATRs) Statutory Instrument which was laid in Parliament on 27 November 2023.

1.2 As outlined on our website, this new framework sets out a general prohibition on public offers of securities, which is then subject to a series of exemptions. The FCA is given powers to make rules in a number of areas relating to those exemptions.

1.3 The main exemptions and areas where the FCA will make rules include:

- **Regulated Markets:** Admissions of securities to trading on a regulated market, including specifying when a prospectus for admission to trading or further issuance is required, minimum prospectus content, the circumstances when a supplementary prospectus will be required and how they are approved and published. We also have powers to define a new category of 'protected forward looking statements' that would be permitted within a prospectus with different liability treatment.
- **Primary MTFs:** Admission of securities to trading on 'primary' multilateral trading facilities (Primary MTFs), such as AIM or the AQSE Growth Market. The FCA will have powers to require Primary MTF operators to set rules on issuers seeking admission to their markets to publish a prospectus document (MTF admission prospectus) or a supplementary prospectus where retail investors participate in those markets.
- **Public Offer Platforms:** Requirements for firms choosing to carry out a new regulated activity of operating a public offer platform (an electronic platform for the public offering of relevant securities of £5m and above), which companies will have to use when offering securities to a wider investor base that will not be admitted to a regulated trading venue (eg, not using other exemptions).

1.4 In May this year, we launched an engagement process with several events and the publication of 4 initial Engagement Papers. We subsequently published a further 2 papers in July and had a series of roundtable focus groups and follow up meetings during the summer and early autumn. Following a deadline for written submissions of 29 September 2023, we received 41 responses in addition to the rich feedback receiving during our outreach.

1.5 We summarise feedback below across the Engagement Papers, including points raised in the written responses and at our events. At this stage, we do not indicate our likely approach in response, which will instead be set out in our future consultation paper(s) alongside our detailed proposals. Whilst this summary focuses on written responses to the Engagement Papers this also reflects the discussions we have had in our broader process of engagement.

1.6 This feedback was supplemented by the outreach which has allowed stakeholders to expand upon the points raised in their submissions and for us to discuss these with them directly. This has allowed us to focus with them on detailed technical issues also as well as the broad themes covered in our Engagement Papers. This outreach has also given stakeholders the opportunity to discuss key issues with us and then to follow up on these discussions in their written responses to the Engagement Papers. For example, we were able to discuss potential barriers to capital raising with those handling deals and how we may best improve participation with those with an interest in participation of retail investors. During the engagement process we were able to engage with a wide range of stakeholders, experts and industry bodies including those from the capital raising industry and advisors such as law firms, and accountancy bodies as well as our Independent Panels, including the Listing Authority Advisory Panel (LAAP) and the Financial Services Consumer Panel.

Next steps

1.7 We are continuing to develop detailed policy proposals for making FCA rules to support the new public offers and admissions to trading regime. We may also undertake follow up engagement with stakeholders on key topics to inform our further thinking on specific proposals.

1.8 We are aiming to consult on proposals in summer 2024, which will include draft rules and cost benefit analysis. We will seek to engage widely and welcome written responses during this consultation period.

1.9 Subject to consultation responses and final approval by the FCA Board, we will seek to make final rules in the first half of 2025.

Equality and diversity considerations

1.10 At this stage, we are not making specific proposals and therefore there are no immediate equality and diversity issues. As we develop and put forward proposals in due course, we will assess any potential impact(s) on any of the groups with protected characteristics under the Equality Act 2010. We will also seek views on the equality and diversity implications of our proposals during the consultation period, and prior to making any final rules.

Environmental, social & governance considerations

1.11 Similarly, as we develop proposals we will consider the environmental, social and governance (ESG) implications of our proposals and our duty under ss. 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008. Chapter 8 specifically discussed ESG matters in the context of this work. We will assess our specific proposals and present our analysis in the later consultation paper(s) and prior to making final rules.

Chapter 2

Admission to trading on a regulated market

2.1 In Engagement Paper 1 (EP1) we set out our initial views on how we could amend the rules applicable to issuers seeking to have securities admitted to trading on a regulated market under the new public offers and admissions to trading regime. We sought views on questions related to:

- Whether 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?
- How we should approach putting exceptions into our rules particularly those related to takeovers and transfers between regulated markets?
- How we may make changes to the requirements for prescribed content in the prospectus (eg, in relation to the summary, financial information, use of incorporation by reference)? If we should include ESG disclosures and on the importance of aligning content requirements with those in other jurisdictions?
- Whether we should simplify the format requirements for a prospectus?
- How and when we should consider make changes to other adjacent regimes such as the advertisements regime or COBS 11A?

Respondents

2.2 We received written feedback from 21 respondents, including 7 trade associations, 5 accountancy groups and 3 market operators. We have also received responses from others, such as law firms and a professional representative body and our Consumer Panel and engaged with our Listing Authority Advisory Panel (LAAP). Not all respondents gave feedback on every topic summarised below.

Summary of feedback

Comments on our general approach

2.3 Fourteen respondents supported a starting position of requiring a prospectus for the admission of securities to regulated markets and retaining the bulk of prospectus requirements. The same respondents agreed that we should aim for targeted improvements to the existing framework. However, four respondents expressed concerns about duplicative requirements and a lack of consistency between the prospectus regime and other disclosure requirements.

Scope of exemptions

2.4 Seven respondents favour keeping the existing exemptions to the obligation of publishing a prospectus. We also received suggestions to:

- include new issuances of share capital arising from 'rollover schemes of reconstruction' adopted by companies that transfer or sell the whole or part of their business to other entities in a winding up situation under Section 110 of the Insolvency Act 1986 in the list of exemptions – which, according to the feedback received, assumes a particular relevance in the context of investment companies
- amend the exemption on PR Article 1(5)(b), which allows issuances of shares of the same class resulting from the conversion, exchange or exercise of rights to be exempt from the above referred obligation (subject to conditions, including a 20% threshold of existing share capital), to apply to different share classes; further to this, the respondent would favour that no threshold is applied to conversions between share classes, and
- extend the exemption on PR 1(5)(d), which allows the substitution of existing shares without the publication of a prospectus where there is no increase of capital, to 'top cos' placed on an existing issuer

Takeovers, mergers and divisions

2.5 In general, respondents favour keeping the existing exemption to producing a prospectus in the context of a takeover where an exemption document is produced. Nonetheless, three respondents favour a closer alignment between the disclosures required under the existing takeover exemption document and those under the Takeover Code. Two of those respondents favour the removal of the FCA approval requirement.

2.6 Those respondents that commented on the application of the takeover exemption to schemes of arrangement were in favour of it.

Required contents of a prospectus

2.7 We have received mixed views overall on what should be the contents of the prospectus. But there is a consistent view that changes should be incremental to the existing framework. Some respondents would rather have more flexible requirements, so that prospectuses become more bespoke in the line with the features of the underlying issuance. However, the necessary information test is viewed as fit for purpose and as an important underpinning of the disclosures and investor protection.

2.8 Respondents identified the main areas where we could consider making improvements as being requirements related to issuers' capital history, material contracts, pre-IPO disclosed forecasts, and financial information, including the working capital statement.

The prospectus summary

2.9 Most respondents favour retaining the summary as a requirement but want us to give issuers more flexibility to make it more bespoke. Others argue that the removal of the summary could be considered, though most of these ultimately favour retaining the requirement for a summary but again allowing more flexibility. A minority of respondents favour a more prescriptive approach to ensure consistency and comparability among summaries regarding different investment alternatives.

2.10 On cross-referencing and incorporation by reference within the summary, we received mixed views. Some respondents were in favour of us giving greater flexibility to issuers on this whilst others were happy with current requirements. Two respondents also suggest creating a 'balanced and fair principle' for the summary requirement.

Changes to financial information requirements

2.11 The overwhelming majority of respondents oppose making quarterly financial information mandatory, even though some favour the inclusion of a link in the prospectus, in cases where it has been previously produced.

2.12 A significant number of respondents (eight respondents) asked for us to produce further guidance on our requirements for companies with complex financial histories.

Incorporation by reference

2.13 Respondents are almost unanimously against us making incorporation by reference mandatory. We received some views that favour forward incorporation by reference, ie allowing an issuer's prospectus to refer to an expected future publication of information such as its latest financial report, such that this would be treated as linked to an existing prospectus and not require a supplementary prospectus. We have also received mixed views on extending the existing catalogue of information that can be incorporated by reference, which is currently limited to previously or simultaneously published electronic documents, such as (i) documents approved by, or filled before, the FCA or another competent authority, (ii) exemption documents in the context of takeovers, mergers and divisions, scrip dividends, directors and employee offers and transfers between regulated markets, (iii) regulated information, (iv) annual and interim financial information, (v) audit reports and financial statements, (vi) management reports, (vii) corporate governance statements, (viii) reports on the determination of the value of an asset or company, (ix) remuneration reports, (x) annual reports and specific investor-oriented AIFMD-related disclosures and (xi) memorandum and articles of association.

2.14 Further, three respondents were concerned about the liability standard applicable to information outside the prospectus that is incorporated by reference.

Format of prospectus

2.15 Most respondents are in favour of keeping the existing format requirements.

Growth Prospectus

2.16 Most respondents are in favour of removing the Growth Prospectus, which currently allows for a slightly less comprehensive prospectus for issuers that are SMEs, issuers below a certain size whose securities are or will be admitted to an SME Growth Market (a form of MTF), and certain other issuers.

Universal registration document

2.17 Most respondents favour keeping Universal Registration Documents, even though many note that they are used relatively little in the UK market. Some felt it was useful to retain 'optionality' in case market developments made these more attractive in future. A few of the respondents suggested exploring changes to the URD to incentivise adoption.

Voluntary prospectus

2.18 There was almost unanimous support for having a voluntary prospectus regime, ie where the FCA would remain willing to approve a prospectus even if the issuer was not required to produce one (eg where an exemption could be applied). Most respondents emphasised the benefits of having an FCA approval in such cases.

Responsibility for the prospectus

2.19 There was unanimous support for keeping the existing approach to responsibility for prospectuses under the current framework, despite two respondents expressing concern about the extent of directors' responsibility.

Period that an IPO prospectus is available to retail investors

2.20 Most respondents favour the reduction of the period that an IPO prospectus needs to be made available where an offer includes retail investors from 6 to 3 days.

Validity of the prospectus

2.21 Most respondents favour keeping the current 12-month period for which a prospectus will be valid following approval by the FCA.

Approval process

2.22 Four respondents expressed a preference to have earlier and more iterative engagement with the FCA in the course of approving a prospectus. This appeared to relate more to the general interactions issuers and their advisors have with us, with a desire to have earlier stage discussions to help identify potential issues with a given offer or issuer, and our likely expectations for the nature of disclosures provided within a prospectus, versus specific rules or timelines.

Changes to other regimes

2.23 We received mixed views on when the FCA should consider changes in complementary areas such as advertisement rules under PRR 3.3 and underwriting and placing rules under COBS 11A. Three respondents favour discussing other regulatory changes at a later stage, acknowledging the merits of discussing those regimes once the bulk of amendments under the new public offers and admission to trading regime has been implemented. Three other respondents favour changes, or at least targeted adjustments, being made sooner, in particular to COBS 11A (three respondents) on the basis that the maintenance of such rules has been negatively contributing to the IPO process, making it more onerous and costly. One of the respondents also favoured the quick review of COBS 12.2.21A, which, according to such respondent, has been a source of uncertainty and rigidness with detrimental impacts in the relationship between potential IPO candidates and research analysts.

Chapter 3

Further issuances of securities already admitted to trading

3.1 In Engagement Paper 2 (EP2), we asked for views in relation to the following questions:

1. 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.
2. 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.
3. 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.
4. 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?
5. 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.
6. 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.
7. Is there any further data which we should take into account in our analysis? If so, please provide us with details of this data.

Respondents

3.2 We received written feedback from 18 respondents, including 6 trade associations, 5 accountancy groups, 3 law firms and 3 market operators. We also received a response from a professional representative and from our Consumer Panel.

Summary of feedback

Reduced requirements for a prospectus for further issuances

3.3 A few respondents favour a more ambitious approach than the one set out in EP2, including the removal of the prospectus in a further issuance context. We also received some views in favour of:

- keeping the existing obligation for listed closed ended funds (with a particular emphasis on Venture Capital Trusts) to publish a prospectus, given that their investor base is typically composed, to a significant extent, by retail investors

- adopting more bespoke requirements that reflect the context, the information already available to the market and the intended target of such information (eg, removal of disclosure of capitalisation and indebtedness in the context of closed ended investment funds deemed unnecessary to retail investors), and
- the status quo on simplified prospectuses

3.4 Six respondents (regardless of where they would set a threshold for a prospectus requirement – discussed below) acknowledge that certain transactions should trigger a higher level of disclosure (and potentially a prospectus). These could include financial distress situations, refinancing and financing of major transactions. Nonetheless, we have also received feedback that the ultimate purpose of a fundraise is not always clear early in the process. Some respondents also emphasise specifically the importance to investors of the working capital statement.

Existing frictions to capital raising

3.5 The main frictions raised by respondents are:

- the level of thresholds for exemptions to publishing a prospectus at all
- where they are undertaking cross-border issuances
- cost and time burdens associated with publishing a prospectus, and
- misalignments vis-à-vis other ongoing disclosures

3.6 However, respondents acknowledge that capital raising will always entail frictions.

Threshold requirement to publish a prospectus

3.7 We have received mixed (and nuanced) responses on where to set a threshold requirement to publish a prospectus for further issuances (in most cases subject to conditions):

- some respondents favour a threshold being set at 75% of the existing capital, which aligns with the Secondary Capital Raising Review recommendation
- some suggested setting it at 2/3 of existing capital (to align with the threshold customarily used for allotment authorities for UK-incorporated companies in connection with rights issues)
- other respondents would prefer a threshold between 30%-40% of the existing capital, representing a modest uplift on the current level, and
- a further group of respondents acknowledged that the existing threshold (20% of the existing capital) has been working reasonably well

3.8 Five respondents also signalled that it would be important for UK threshold to be either consistent with, or higher than, any final threshold set under the EU Listing Act reforms, so as not to set more burdensome requirements than EU regulation.

Degree of flexibility between a simplified prospectus and a voluntary full prospectus

3.9 Four respondents favour a tiered approach, with a higher threshold and some disclosure documents giving investors minimum information.

3.10 Most respondents favour retaining the option of a simplified or full prospectus for further issuances, giving issuers the choice as to which they used.

Offer type document below the threshold

3.11 Four respondents were against creating an alternative offer document to prospectuses for the purposes of issuances below the threshold.). However, seven respondents said that it would be important to have some sort of simple document below the threshold, including three respondents that supported a document with a market cleansing effect. In roundtables, many felt existing offer announcements typically contained all of the key information investors needed, including the reasons for the offer.

Requirements for a prospectus for further issuances of funds

3.12 We have received mixed views on fund-specific disclosures. Some respondents favour a more bespoke approach to funds due to their specificities (eg, C-shares, new classes of shares). These approaches range from an exemption to publish a prospectus to a higher threshold. Other respondents favour keeping the existing requirements, despite suggesting some targeted amendments (eg, simplification of simplified prospectus, universal registration documents, etc).

3.13 Respondents representing the funds sector tended to support a higher threshold for the purposes of further issuances of shares in investment companies, versus the more mixed views received in relation to stakeholders who appeared to be focused on commercial companies.

Data gathering

3.14 We asked if respondents could provide any data to help us analyse existing costs and benefits relating to prospectuses for further issuances and any change we may propose. However, no meaningful data has been provided.

Chapter 4

Protected forward-looking statements (PFLS)

4.1 Under the POATRs, protected forward-looking statements (PFLS) will be a type of information that can be included within a prospectus but will be subject to a different liability treatment (that is more favourable for the issuer) versus other information in prospectuses. The FCA is given powers in the POATRs to further define what information can be considered PFLS and how it is presented.

4.2 In Engagement Paper 3 (EP3) we set out our initial thinking on the rules we will make to specify: (i) the types of information that can be considered PFLS and (ii) the form of the accompanying statement that identifies information as PFLS.

4.3 We asked for views in relation to the following questions:

1. What types of forward-looking statements should we allow as PFLS, and how should we define them (eg, broadly or more specifically)?
2. Should we set certain minimum criteria or expectations for how PFLS is produced?
3. Should certain types of forward-looking statements be excluded from the definition of PFLS?
4. Should we consider including sustainability-related disclosures as PFLS and, if so, what types?
5. How should PFLS be presented or labelled within a prospectus document?
6. 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 specific elements of such a document.

Respondents

4.4 We received written feedback from 17 respondents, including 7 trade associations, 6 accountancy groups, and 2 law firms. We also received verbal feedback from 2 professional representative bodies and several law firms during our outreach as described earlier.

Summary of feedback

Definition of PFLS

4.5 On how we might structure the definition of PFLS, respondents emphasised the importance of clarity to give legal certainty to issuers. Some respondents favoured a narrow prescriptive definition, but most expressed a preference for a more open

approach based on either a general framework or guidance with illustrative examples to aid with interpretation. Two of the trade associations preferred an even more expansive definition that would categorise any forward-looking statement as PFLS.

4.6 There was almost unanimous support for a definition that encompasses all types of information, including sustainability-related disclosures. One of the accountancy groups, however, favoured a definition that limited PFLS to quantitative information and one of the law firms argued that financial disclosures should be the only type of statements that benefit from the amended liability standard.

4.7 Respondents generally supported our proposal to use qualitative criteria (eg, accounting standards), where appropriate, with some preferring guidance instead. Two respondents expressed a preference for no criteria. One of those 2 respondents was in favour of a very prescriptive definition so criteria would not be needed. The other respondent was 1 of the 2 trade associations that wanted an expansive definition of PFLS without any limitation.

4.8 There was almost unanimous support for the use of targeted exclusions that would prevent certain types of statements, like the working capital statement, from benefiting from the amended liability standard. The 2 trade associations in favour of an expansive definition did not want any exclusions.

Form of the accompanying statement

4.9 Respondents were in favour of requiring a statement that identifies information as PFLS and that draws attention to the inherent uncertainty of forward-looking information and the amended liability standard for PFLS. Respondents generally supported requiring warnings about specific factors that could affect the accuracy of PFLS disclosures and for including assumptions and inputs where relevant.

4.10 There was a mixture of views on format (eg, separate annex vs. single up-front disclaimer), with most in favour of issuer discretion.

4.11 One of the trade associations was opposed to the use of standardised wording in the accompanying statement and 1 of the trade associations that was in favour of the expansive definition of PFLS was against any requirement to describe significant factors that could cause the forward-looking statement to be inaccurate or to require issuers to state any key assumptions or inputs.

Chapter 5

Non-Equity securities

5.1 In Engagement Paper 4 (EP4), we asked for feedback on how we may improve the regime for admissions of non-equity securities to regulated markets and related prospectus requirements under the new POATR framework.

5.2 Specifically, we asked for views in relation to the following questions:

- Whether the current UK prospectus regime broadly works well in the context of wholesale, debt capital markets and whether there are any areas that work less well and that we should consider amending? We would also be interested in stakeholders' views on the exemptions from the requirement for a prospectus discussed in EP1 in the context of wholesale debt capital markets.
- Whether stakeholders would welcome the removal of the dual disclosure standards in non-equity prospectuses, and whether they agree that the existing wholesale disclosure annexes should be a starting point for a new single standard? We would also be grateful for stakeholders' views on whether there are any key items from the retail disclosure annexes which they believe would add value to such a revised disclosure regime.
- Whether we should require additional disclosure for certain types of non-equity securities that are structured finance products or traded investment products and if so, what additional information they think would be useful for investors?
- Whether disclosure requirements for secondary issuances of non-equity securities should be revised and on the various options discussed here and in the engagement paper on further issuances?
- Whether the discussed ESG disclosures would represent an improvement on the information available to investors, the information which should be required and the benefits or limitations of the 2 options described below?

Respondents

5.3 We received 20 responses to EP4. We also had roundtables on non-equity issues with industry representatives and law firms looking at the details of how we might take forward requirements in this area and lessons learned from approaches in other jurisdictions.

Summary of feedback

Wholesale debt capital markets and making the debt programme more efficient

5.4 All but one respondent who addressed the point agreed that the current UK prospectus regime broadly works well in the context of wholesale debt capital markets.

5.5 Several respondents asked that the current exemptions from the duty to produce a prospectus be maintained. Two asked for the exemption for non-equity securities guaranteed by sovereigns to be broadened to encompass certain additional securities.

5.6 Three respondents addressed the option to allow the forward incorporation by reference of financial information. Two respondents supported this, a third was supportive but uncertain of the extent of the benefit this would create.

5.7 Those respondents that addressed the issue of whether the validity period of a non-equity prospectus could be lengthened did not think the validity of prospectuses should be extended beyond the current 12 months.

5.8 Two respondents asked that the regime for supplementary prospectuses be made more flexible

Dual disclosure standard for 'wholesale' versus 'retail' issuances

5.9 The removal of the dual disclosure standards in prospectuses for retail and wholesale non-equity securities was almost unanimously supported. There was strong support to use the wholesale disclosure standard as a starting point.

5.10 However, 1 respondent did not want us to make any changes to the disclosure requirement for retail investors without prior consumer testing.

Facilitating broader access to listed bonds

5.11 A scheme which would encourage the issuance by seasoned UK-listed corporates of simple standardised unsubordinated unsecured corporate bonds aimed at a wide range of investors, retail and wholesale, was largely welcomed. Of the ten respondents who addressed the question, eight agreed in principle and two were interested to find out more.

5.12 However, there were nuanced and sometimes differing views on what types of issuers and securities should be within the scope of the scheme, with the majority of respondents asking that the scope be extended to encompass additional issuers and/or security features.

Structured finance and investment products

5.13 Our questions around the treatment of structured finance and investment products received only three responses.

5.14 One respondent agreed that additional or different disclosure for these types of products would be beneficial for investors, but two respondents said any further differentiation was not necessary as the current regime already caters for different types of products.

Secondary issuances

5.15 We asked if disclosure requirements for secondary issuances should be revised, and for feedback on the options discussed in EP1.

5.16 On this, we received only four but nuanced responses. Most respondents doubted the utility of a bespoke simplified disclosure document when issuers are able simply to use base prospectuses and final terms.

5.17 There was some scepticism among respondents towards raising the percentage threshold for the further issuance exemption. However, we were urged to keep an eye on any potential changes in the EU in this area, to see if an alignment was desirable.

Chapter 6

Public offer platform

6.1 The POATRs will established a new regulated activity of operating a public offer platform Companies seeking to make 'off-market' public offers of securities above £5m will need to do so via a firm operating a public offer platform unless other exemptions apply, and therefore it is likely to be relevant to wider offers involving retail investors. It is akin to investment related crowdfunding or boutique corporate finance activity currently regulated under 'arranging' activities.

6.2 In Engagement Paper 5 (EP 5) we asked for views on, and asked for views in relation to questions around

- The outcomes that we wished to achieve from the public offer platform, including our focus for regulation in this area.
- Due diligence under the public offer platform and existing practices within the current crowdfunding space. This included the scope of due diligence requirements, the risks associated with these, and the cost of the implementing our proposals. We also asked for views on the communication of due diligence and whether investors currently feel they are getting appropriate information in this area.
- Our approach to disclosures, and the categories of information that should be disclosed to investors. We asked whether investors feel they are currently getting correct levels of information about the security they are purchasing or the company that they are investing in. We also sought views on whether respondents agreed with our analysis of the types of information that investors require, and the costs associated with the different approaches.
- Liability and redress considerations for both the public offer platform and companies issuing securities through a platform, linked to any final requirements that we set, including FOS and FSCS protections.

Respondents

6.3 There were 5 main written responses to EP 5 on the public offer platform.

6.4 A leading trade body also provided detailed feedback in a roundtable session and the City of London Law Society and some individual law firms offered general comments in bilateral engagement.

Summary of feedback

6.5 There was general agreement to our approach and support particularly from a leading trade body on our starting point for disclosure and due diligence, although another respondent preferred a more principles-based approach.

6.6 There was more debate on points of detail eg to what extent and how due diligence undertaken is disclosed to investors, and the interaction of our requirements with the liability/redress between platforms and issuers. Some respondents pointed to a lack of thorough due diligence by crowdfunding platforms under the current regime.

Due Diligence

6.7 One respondent stated the need for consumer testing to determine which approaches are most effective in supporting consumers in making decisions about their investment options. They also stated that the need to ensure that consumer protection and benefits to consumers are used to prioritise regulatory change. For example, the requirement to apply the Consumer Duty should not be balanced against the ability and efficiency of firms to raise capital.

6.8 A market participant stated that the risk of scams and outright fraud should be addressed but they also noted the very small number of these cases within the current equity crowdfunding market, in the context of the number of genuine opportunities and the wider increase in fraud in society.

6.9 They also believe that this risk is reduced even further when the amount being raised is large and on a crowdfunding platform because of the amount of due diligence and close interaction via account management that happens between crowdfunding platforms and issuers that raise more than £5m.

6.10 They also believed that any minimum standards of due diligence for valuations and financial projections need to be carefully considered. This information can be very subjective and often the value is set by a lead institutional investor who may not with to reveal their methodology. They therefore urged caution and flexibility to avoid any unintended consequences.

6.11 A trade association stated that under current processes forward-looking statements that companies include and the due diligence that is performed on these areas does not appear to be particularly rigorous. They stated that platforms will often perform due diligence and provide opinions on very limited company information (effectively sometimes little more than anti-money laundering checks).

6.12 They state the main risk is that different approaches to due diligence led to inconsistencies and variations in how due diligence is conducted which causes a lack of understanding amongst users of platforms as to what due diligence has occurred.

6.13 They also recognise that due diligence is a challenge, particularly as requiring crowdfunding platforms to conduct all the due diligence required to protect consumers may be a substantial cost to them. Greater clarity is also needed in this area as currently, both companies and investors are often unsure of their liability position.

Disclosures

6.14 Several respondents broadly agreed with the categories of information that we set out in the Engagement Paper, but one highlighted a key area where they disagreed with our analysis. They stated that forward looking financial statements and projections are inherently unreliable for these types of company and investment and including them is therefore misleading and inappropriate for retail investors.

6.15 Another respondent stated that the guiding principle for disclosure should be the necessary information test. In addition to this, general guidance on the tax consequences of an investment (as is typical in a prospectus or AIM admission document) would be helpful for investors.

6.16 They also stated that including a requirement to discuss exit scenarios, which we discussed in the Engagement Paper, does not fit with the type of company that typically uses crowdfunding platforms. In these cases, an exit can take around 3 to 5 years so any discussion on exit is highly speculative. They suggested that a better alternative, where a company does not have a specific exit plan, is that public offer platforms provide generalised information about exit scenarios to investors.

6.17 A trade association believed that approaches to ongoing disclosures by crowdfunding platforms are varied and can be sporadic. There is no set practice and updating investors is usually the responsibility of companies. This is because platforms are utilised on a one-off basis. Once a fundraise has been completed, the role of the platform has been fulfilled. Therefore, from the perspective of the platform, there is no need to produce ongoing disclosures. Usually, updates only occur through disclosures when there is a need for investors to be updated, for example if there is a liquidity issue or an exit opportunity for a company. This is partly because there is no secondary trading once the offering has completed, and the situation may need to change if the intermittent trading venue concept is implemented effectively.

Liability and Redress

6.18 On respondent stated that we need to properly consider platform operator liability (together with issuer liability under Financial Services and Markets Act). We should also consider defences available for platform operators, what standards would actions be judged by. They also stated that included in this there should be a cross reference to the approach to protected forward looking statements within this public offer platform. Respondents also noted that it is important that we find the correct balance in terms of liability for all actors, including directors of companies issuing securities.

6.19 A trade association wanted a debate to be had around the liability standards that we apply and whether this would be on a negligence or recklessness basis. They also wanted us to clarify whether a liability standard would relate to the issuer (not the platform operator) and possibly also its directors.

6.20 A market participant added that crowdfunding platforms are already liable for misleading statements and breaches of FCA rules. In their view, as crowdfunding platforms are to some extent reliant on information provided by a raising company, a defence based on reasonable diligence with additional guidance based on the minimum standards of due diligence referred to in the Engagement Paper would be welcomed by the market.

Chapter 7

Primary multilateral trading facilities

7.1 The POATRs will provide us with the power to ensure that certain multilateral trading facilities (MTFs) operating as primary markets (Primary MTFs) require issuers to produce an MTF admission prospectus, or supplementary prospectus, in specified circumstances. Also, as with regulated markets, we will have the power to create rules in relation to MTF admission prospectus responsibility, withdrawal rights, and advertisements. Engagement Paper 6 (EP6) set out our initial considerations in relation to these powers.

7.2 We asked for views in relation to questions:

1. In what circumstances should our rules ensure that Primary MTF operators require the publication of an MTF admission prospectus?
2. Should Primary MTF operators have discretion in deciding whether an MTF admission prospectus is required in connection with a further issuance of securities that are fungible with securities already admitted to trading on the Primary MTF?
3. Should we end the voluntary prospectus regime to the extent it could apply to Primary MTFs?
4. Should we remove the option of using a UK Growth prospectus?
5. In what circumstances should we ensure that Primary MTF operators require the publication of a supplementary prospectus?
6. In what manner and circumstances should persons be able to exercise withdrawal rights in connection with admissions to trading on Primary MTFs?
7. Who should be responsible for an MTF admission prospectus?
8. Should we extend the existing advertising regime in the UK Prospectus Regulation to admissions to trading on Primary MTFs?

Respondents

7.3 We received written feedback from 10 respondents, including 4 trade associations, 2 accountancy groups, 2 market operators, and 1 law firm. However, 2 of the written responses did not provide feedback directly to our questions but made other points. We also received verbal feedback from 2 professional representative bodies and several law firms.

7.4 The feedback from some respondents reflected a preference for having rules that are similar to the requirements for regulated markets. Other respondents, however, considered it important that UK MTFs be able to differentiate themselves from regulated markets as well as growth markets in other jurisdictions.

Summary of feedback

Requirement for an MTF admission prospectus

7.5 Respondents were generally in favour of our proposal to require an MTF admission prospectus for all initial admissions to trading on Primary MTFs that allow retail participation, even when there is no public offer. However, 1 of the trade associations that supported our proposal noted that we should make an exception for issuers that qualify for the AIM Designated Market Route or the Aquis Fast Track, which both provide a streamlined admission process for companies that already have securities admitted to trading on other specified markets.

7.6 Three respondents disagreed with our proposal. All 3 considered that an MTF admission prospectus should be required by our rules only if there is an IPO.

Further issuances of fungible securities

7.7 There was general support for our proposal to allow Primary MTF operators discretion in deciding whether an MTF admission prospectus is required in connection with a further issuance of securities that are fungible with securities already admitted to trading on the Primary MTF. Two respondents, however, want the requirements for Primary MTFs to be the same as those for regulated markets. Two other respondents want us to adopt a more flexible approach.

7.8 One of the respondents that suggested a more flexible approach asked us to consider allowing Primary MTF operators discretion in deciding whether to require an MTF admission prospectus for an issuance of Conversion Shares (also known as C-shares) because these shares will ultimately be converted into ordinary shares that are equivalent to those that are already admitted to trading.

7.9 The other respondent seeking a more flexible approach suggested that we should allow Primary MTF operators to decide whether an MTF admission prospectus should be required for the issuance of new classes of shares.

Voluntary and growth prospectuses

7.10 There was almost unanimous support for discontinuing the use of voluntary and growth prospectuses for Primary MTFs. One respondent, however, considered that the availability of these types of prospectuses might still be useful for certain issuers and that the option of the growth prospectus could alleviate the potential resource burden for Primary MTF operators.

Requirement for a supplementary prospectus

7.11 There was almost unanimous support for our proposal to require a supplementary prospectus whenever there is a significant new factor, material mistake, or material inaccuracy relating to the information included in an MTF admission prospectus which may affect an investor's assessment of the securities and which arises or is noted

between the time when the prospectus is approved (in line with the rules of the relevant Primary MTF operator) and the closing of the offer period or the time when trading on the Primary MTF begins, whichever occurs later.

7.12 One respondent disagreed with our proposal and suggested that the Primary MTF operator should have discretion in deciding when a supplementary prospectus is required.

Withdrawal rights

7.13 For Primary MTFs that allow retail participation, we proposed retaining the current practice of allowing withdrawal rights in the same circumstances that trigger the requirement for a supplementary prospectus. We also asked whether withdrawal rights should be available for Qualified Investor (QI)-only MTFs

7.14 Responses were mixed. One respondent was in favour of applying the existing requirements to Primary MTFs, including QI-only MTFs. Two trade associations and 1 of the professional representative bodies were also in favour of withdrawal rights, but were not clear on the status of QI-only MTFs.

7.15 Another respondent stated that withdrawal rights should not apply to offers in which there is a secondary basis for being exempt from the general prohibition on public offers.

7.16 Finally, 1 respondent argued that withdrawal rights should not be available for Primary MTFs and stated that we will not have the power to create rules for withdrawal rights for QI-only MTFs. As a point of clarification, the QI condition in the Public Offers and Admissions to Trading Regulations only limits our ability to require an MTF admission prospectus or supplementary prospectus, the latter of which is simply the means by which investors would ordinarily be notified about withdrawal rights. A supplementary prospectus is not the source of the withdrawal rights.

Prospectus responsibility

7.17 Respondents were generally supportive of our proposal to apply the existing requirements in PRR 5.3 to MTF admission prospectuses. Some respondents, however, consider that this would be an extension of liability compared with the existing regime. Consequently, 2 of the trade associations disagreed that directors of the issuer should be responsible for an MTF admission prospectus.

Advertisements

7.18 Most respondents were in favour of extending the existing advertising regime to admissions to trading on Primary MTFs. One respondent, however, stated that the regime should apply only when there is a public offer. Another respondent was opposed to extending the advertising regime to ensure there was differentiation between Primary MTFs and regulated markets.

Chapter 8

ESG and Sustainability

8.1 We asked for views in relation to questions in EP 1, EP 3 and EP 4 to cover various aspects about the inclusion of ESG and sustainability-related information in the prospectus.

8.2 In EP 1 (Admission to trading on regulated markets) we asked:

- Whether we should provide further direction on the appropriate ESG information to be disclosed in the prospectus either through rules or guidance?
- Whether any requirements or guidance should be aligned with wider frameworks such as the Task Force on Climate-related Financial Disclosures, the International Sustainability Standards Board (ISSB) standards and Transition Plan Taskforce (TPT) disclosure framework?
- Whether and how to differentiate across sectors in any requirements or guidance?
- How potential future guidance/requirements could be calibrated for equity and debt issuers?

8.3 In EP 3 (Protected forward-looking statements) we asked:

- Whether we should consider including sustainability-related disclosures as protected forward-looking statements and, if so, what types should be included?

8.4 In EP 4 (Non-equity securities) we asked:

- Whether we should introduce requirements to more closely align disclosures on green, social or sustainability labelled debt instruments in the prospectus with information disclosed in other documents, in particular bond frameworks which set out issuers' approach to these instruments?
- Whether any potential new requirement should be framed in terms of a high-level approach focusing on the bond framework or additionally include more specific disclosures on use of proceeds (UoP) bonds and sustainability-linked bonds (SLBs)?

Respondents

8.5 We received written responses from 20 respondents which covered at least one of the sustainability questions in our engagement papers. Of these we received 15 responses to the sustainability topics in EP 1, 15 responses to EP 3, and 6 responses to EP 4.

Summary of feedback

Environmental, Social and Governance (ESG) disclosures in general prospectus content (EP1)

8.6 Most respondents agreed that further measures would be helpful to provide greater clarity to issuers over what sustainability related information should be included within the prospectus. Some respondents supported more closely aligning sustainability disclosures in the prospectus with ongoing reporting requirements. A few responses specifically mentioned a preference to align with existing standards such as the Task Force on Climate-related Financial Disclosures (TCFD) and the International Sustainability Standards Board (ISSB) standards. Responses were split evenly as to whether this was best achieved through disclosure requirements or guidance.

8.7 One response disagreed that closer alignment was needed, stating that disclosure standards are developing and that it was too soon to bring further requirements for the prospectus. Another response highlighted the potential burden that could be faced by issuers in having to bring forward disclosures from the ongoing reporting requirements to the point of issuing the prospectus.

8.8 Only four responses addressed the issue of whether the requirements or guidance should extend beyond equity to debt prospectuses. Of these, three were in favour and one against.

8.9 Two responses argued that the FCA should introduce additional requirements for extractive industries, including recommendations for changes to the expectations for specialist issuers and the Competent Person's Report.

Protected forward-looking statements (EP3)

8.10 Most responses supported the inclusion of sustainability-related information within the scope of protected forward-looking statements. Responses generally favoured treating sustainability-related information in the same way as other forward-looking information, subject to the same requirements under our broader approach to PFLS.

8.11 Two responses disagreed with the inclusion of sustainability-related information within PFLS. These responses highlighted the investor protection benefits of the existing liability standard for this information. Both also argued that if sustainability-related information is included within PFLS, it should be limited to certain categories of information rather than applying to all information.

8.12 One response mentioned concerns about the liability treatment of historical estimates as well as forward-looking estimates, arguing that this is relevant for sustainability-related information. They suggested extending the PFLS protection to these historical estimates.

Green, social or sustainability labelled debt instruments (EP4)

8.13 We received six responses that addressed this part of Engagement Paper 4. Responses generally favoured work towards greater alignment between the prospectus and bond framework documents.

8.14 The engagement paper set out two approaches to framing potential new requirements. Option 1 focuses on the connection between the prospectus and the bond framework at a high-level, suggesting requirements including whether the bond has been issued in line with a bond framework, whether the bond and/or framework are aligned with industry principles and/or bond standards, and what forms of external review the bond is subject to. Option 2 suggests supplementing option 1 with more detailed requirements tailored to UoP bonds (eg. information on projects), or SLBs (e.g. Sustainability Performance Targets and KPIs).

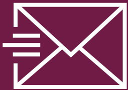
8.15 Responses differed over how granular any requirements should be. Three responses favoured option 2 for both UoP bonds and SLBs, and one favoured option 1 for both instruments. One respondent favoured option 2 for UoP bonds, but option 1 for SLBs, arguing that the UoP bond market is more established than that for SLBs. One expressed no preference.

All our publications are available to download from www.fca.org.uk.

Request an alternative format

Please complete this form if you require this content in an alternative format.

Or call 020 7066 6087



Sign up for our **news and publications alerts**

Pub ref: D2445

© Financial Conduct Authority 2023
12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
All rights reserved