



FCA PUBLIC OFFERS AND ADMISSIONS TO TRADING REGIME, ENGAGEMENT PAPERS

Issued 3 October 2023

ICAEW welcomes the opportunity to comment on engagement papers published by FCA on 18 May 2023 on the new public offers and admissions to trading regime:

Admission to Trading on a Regulated Market (Engagement Paper 1), a copy of which is available from this [link](#)

Further issuances of Equity on Regulated Markets (Engagement Paper 2), a copy of which is available from this [link](#)

Protected Forward-Looking Statements (Engagement paper 3), a copy of which is available from this [link](#)

For questions on this response please contact our Corporate Finance team at CFF@icaew.com quoting REP 99/23.

GENERAL POINTS

- The design and development of significant reforms to the regulatory regime for the UK's listed market are formidable tasks, not least because they are underpinned by differing levels of risk. Responses to the reform consultations to date illustrate diversity and a range of views on the likely outcome of reforms, such as the impact on investor confidence and protection. The FCA should proactively invite evaluation of its thinking for draft new rules - before these are published for consultation. ICAEW members, many of whom are responding formally, are willing to participate in and support such pre-consultations.
- We are mindful that the FCA is working to an accelerated timetable for implementing new rules for both listing and for public offers and admissions to trading. Notwithstanding the FCA must provide for meaningful consideration by the market, with a consultation period of appropriate length in each case.

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This response of 3 October 2023 has been prepared by the ICAEW The Corporate Finance Faculty is ICAEW's centre of professional expertise in corporate finance. It contributes to policy development and responds to consultations by international organisations, governments, regulators and other professional bodies. It provides a wide range of services, information, guidance, events and media to its members, including its highly regarded magazine Corporate Financier and its popular series of best-practice guidelines. The faculty's international network includes member organisations and individuals from major professional services groups, specialist advisory firms, companies, banks and alternative lenders, private equity, venture capital, law firms, brokers, consultants, policymakers and academic experts. More than 40 per cent of the faculty's membership are from beyond ICAEW.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 166,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

GENERAL POINTS

1. The design and development of significant reforms to the regulatory regime for the UK's listed market are formidable tasks, not least because they are underpinned by differing levels of risk. Responses to the reform consultations to date illustrate diversity and a range of views on the likely outcome of reforms, such as the impact on investor confidence and protection. The FCA should proactively invite evaluation of its thinking for draft new rules - before these are published for consultation. ICAEW and its members are willing to participate in and support such pre-consultations.
2. We are mindful that the FCA is working to an accelerated timetable for implementing new rules for both listing and for public offers and admissions to trading. Notwithstanding the FCA must provide for meaningful consideration by the market, with a consultation period of appropriate length in each case.
3. This ICAEW submission includes answers to specific questions in Engagement Paper 1, and comments on the FCA's thinking in Engagement Papers 2 and 3.

ENGAGEMENT PAPER 1 ADMISSIONS TO TRADING ON A REGULATED MARKET

ANSWERS TO SPECIFIC QUESTIONS

Qa. Do you agree with our starting assumption that we should continue to set requirements for a prospectus for admission to trading on regulated markets largely in the way that is done under the current regime?

4. We agree that the FCA should continue to set requirements broadly in the manner of the current regime.

Qb. The exceptions to when a prospectus is required will be set by our rules, although the exceptions in the draft SI to the prohibition on public offers resemble or replicate the exceptions in the current regime for producing a prospectus. We are interested in views about how we should approach putting exceptions into our rules particularly those related to takeovers and transfers between regulated markets.

5. The FCA's approach should be to include in its rules under the new regime exceptions that correspond to the exceptions to the prohibition on public offers in the Statutory Instrument, including those related to takeovers and transfers between regulated markets.
6. The second option in Box 2 in Engagement Paper 1, in which the exception document disclosures for takeover transactions would be aligned to the specific disclosures required by the Takeover Code, will help to streamline regulatory requirements benefitting both companies and investors.
7. We support the proposal in paragraph 28 to clarify in the FCA's rules that the takeover exception applies to schemes of arrangement as well as contractual offers.

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

i. the summary.

ii. financial information.

iii. use of incorporation by reference.

iv. Environmental, Social and Governance (ESG) disclosures

v. the benefit of aligning content requirements with other overseas jurisdictions, into a prospectus.

i. the summary

8. Support for retaining the requirement for a summary is not unanimous among our members. Some consider it constrictive as well as repetitive while others view it as important for highlighting key information to investors. Another common view among members is that preparing the summary is a useful exercise for the issuer to perform and helps focus directors' minds on articulating the proposition.
9. On balance we think that the requirements for a summary could be changed in the manner described in the second option in paragraph 54. In reaching this conclusion, we have regard to two objectives of the wider capital market reforms; namely,
 - boosting the number of fast-growth technology, e-commerce and science companies coming onto the UK's public markets; and
 - improving retail involvement in capital raising.Investors benefit from having key information brought to their attention to inform their decisions and a less prescriptive summary requirement will enable different types of applicant issuers to articulate their proposition.
10. For an applicant that does not have a clean working capital statement, the prospectus summary ought to include a relevant discursive statement, in line with the disclosure-based approach of the new regime, and in addition to disclosures elsewhere such as in the description of risk factors.

ii. financial information

11. We support retaining the current financial information requirements in the prospectus given the FCA's proposal in CP23/10 to remove specific financial information eligibility requirements for a single equity share commercial company listing category. However the current guidance on historical financial information - inherited from the EU - can lead to inconsistent outcomes due to the subjectivity involved. We strongly believe that the FCA should review the provisions for issuers with complex financial histories and publish guidance on practical application of the complex financial history rules - whether in the new public offers and admissions to trading regime or as an FCA Technical Note.
12. The mandatory quarterly reporting obligation for listed companies was removed in 2013 as a result of changes to the Transparency Directive. Imposing an obligation to include quarterly financial information in a prospectus (and the associated administrative burden) is difficult to justify when the obligation will fall away upon the company listing. Such an obligation has also been found not to support longer-term investments; the Kay review of UK equity markets and long-term decision-making found that excessively frequent reporting of performance and earnings encouraged short-term decision making by investors and required issuers to focus on managing short-term earnings expectations and announcements.

iii. use of incorporation by reference

13. We are not in favour of making incorporation by reference mandatory as applicants may not have published compliant financial statements. Moreover, even where they do, they may prefer the option to instead include a single historical financial information (HFI) document in the prospectus.

iv. Environmental, Social and Governance (ESG) disclosures

14. The disclosures in a prospectus on an issuer's ESG issues should be closely aligned to the reporting requirements in the annual report to facilitate comparability.

v. the benefit of aligning content requirements with other overseas jurisdictions, into a prospectus

15. Comparability would be boosted with mapping of requirements and different protections of those overseas jurisdictions where UK issuers commonly market their issues and/ or have dual listings.

Qd. We are also interested in views about whether or not we may usefully simplify the format requirements for a prospectus. Again, we are interested here in achieving the best balance between standardisation and flexibility.

16. We agree that the FCA should review the format requirements for a prospectus at a reasonable interval after the new public offers and admissions to trading regime has come into effect. Insights on possible or desirable changes to the format requirements, including from the types of issuers and investors that the new regime is intended to attract, should help inform this review.

Qe. Our starting assumption has been that we should not consider here how we should make changes to other adjacent regimes such as the advertisements regime or COBS 11a as part of this exercise. However, we are interested in your views about whether we should look to do so.

17. We support the starting assumption that changes to other adjacent regimes such as those mentioned in the question should be considered in a separate exercise(s).

ENGAGEMENT PAPER 2 FURTHER ISSUANCES OF EQUITY ON REGULATED MARKETS

COMMENTS ON REDUCED REQUIREMENTS FOR FURTHER ISSUANCES

18. A 'tiered' approach is appropriate for supporting the FCA's discretion under the new regime regarding a prospectus for further share issuances to a regulated market. The current prospectus requirement for further issuances sought to mitigate the risk of information asymmetry. The new regime recognises that there will be instances where the FCA may conclude that the level of this risk does not justify requiring a prospectus or would justify a different type of document. The new regime must, however, also prevent the risk of information asymmetry between institutional investors and retail investors from developing.
19. Table 1 in the engagement paper considers the likely effects on issuers and investors of the scale of a further issuance. We think that the purpose of the issuance (proposed use of proceeds) should also be overlaid given the impact on asymmetry of information - and the importance of the working capital statement as a source of information for investors - in further issuances of low scale as well as for high scale ones. The interaction of these factors would inform the type of document or prospectus required in conjunction with the calibration considerations in Table 2 of the paper.

ENGAGEMENT PAPER 3 PROTECTED FORWARD-LOOKING STATEMENTS (PFLS)

COMMENTS ON DEFINING AND PRESENTING PFLS

20. ICAEW's publication, [Guidance for preparers of prospective financial information](#), is established market guidance for preparing certain forward-looking information (defined as prospective financial information), including information that is published in the context of a

capital market regulatory requirement. Considerations in that guidance are relevant to the FCA's discussion on defining protected forward-looking statements (PFLS) and presenting it in a prospectus; namely:

- a broad definition is intentionally adopted because businesses prepare information in varying formats and for different purposes. Information may also be quantitative or qualitative
- prescribing minimum criteria for producing information can elevate the quality of information, enable accountability and support the extent of confidence that investors can place with a given liability standard.

21. Information in a prospectus that is deemed to be PFLS must be useful for investors and the issuer must be accountable to a liability standard. The criteria that the FCA sets for PFLS in a prospectus (and any simplified alternative document) should apply to other FLS that a listed company releases to the market. The established criteria under the Prospectus Regulation for disclosure of profit forecasts and key underlying assumptions, and preparation standard, are relevant in this context.
22. Certain types of forward-looking statements that do not meet the definition, preparation standard and disclosure criteria should be excluded from the definition of PFLS.
23. Sustainability-related disclosures that meet the definition and disclosure criteria should be eligible for inclusion as PFLS.
24. We think that the option of a separate, clearly labelled section for presenting PFLS in the prospectus, with the accompanying disclaimer, will help focus and consistency.