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EU Listing Act: Simplifying a Stock Exchange Listing, in Particular for SMEs and UK Prospectus Reform

INTRODUCTION

The EU Listing Act and UK Prospectus Reform are two different legislative reforms with a common goal: making public capital markets in the UK and EU more accessible and attractive for companies of all sizes, including small- and medium-sized enterprises, seeking to raise capital and list on a stock exchange by reducing the costs and administrative burden of a public listing, whilst maintaining market integrity. A consistent theme in both sets of reforms is the need to create a pragmatic and commercial listing environment which will benefit public companies that nonetheless builds – and maintains – investor confidence in public markets. This GT Alert summarises recent updates in both reforms and looks to next steps.

EU LISTING ACT

On 1 February 2024, the EU Council and Parliament reached a provisional agreement on the EU Listing Act, as part of a legislative package published in December 2022, aimed at improving the capital markets. The legislative package published by the European Commission (**EC**) in December 2022 aimed to amend the key EU capital markets regulations, namely the Prospectus Regulation (Regulation (EU) 2017/1129) (**PR**), the Market Abuse Regulation (Regulation (EU) No 596/2014) (MAR), the Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014) (**MiFIR**), and the Markets in Financial Instruments Directive (**MiFID II**) and to repeal Directive 2001/34/EC (**Listing Act**). The proposal also

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introduced a new directive on multiple-voting share structures. The EC's proposal, part of the Listing Act package, is a set of measures designed to make public markets more attractive for EU companies and facilitate access to capital for small- and medium-sized companies (SMEs).

Purpose

The overall objective of the proposal, on which the EU Council and Parliament have reached provisional agreement, is to make technical adjustments to the EU's capital markets rulebook to reduce regulatory and compliance costs for companies seeking to list or which are already listed, with a view to streamlining the listing process while ensuring an appropriate level of investor protection and market integrity.

More specifically, the Listing Act aims to (i) simplify and reduce the costs associated with drafting a prospectus, making a stock exchange listing easier and more affordable for companies, (ii) provide greater clarity on what constitutes insider information, ensuring clear guidelines on which information needs to be disclosed to the market and when disclosure of inside information may be legitimately delayed, and (iii) enable multiple-voting shares and address the regulatory barriers that emerge at the pre-IPO phase in this respect and, in particular, the unequal opportunities companies across the EU face when choosing the appropriate governance structures when they list.

Below, we provide an overview of the key Listing Act amendments to the PR and MAR, as well as of the main elements of the new proposed directive on multiple-voting share structures.

Prospectus Regulation – Key Proposed Changes

Exemptions for secondary offerings

Under the current prospectus rules, provided there is an exempt "offering to the public" (e.g. an offer to qualified investors only, or to fewer than 150 persons per EU Member State), listed companies are not required to publish an admission prospectus for issuances of securities that are of the same class of their shares which are already admitted to trading on the same regulated market, where such securities represent, over a period of 12 months, less than 20% of the number of securities already admitted to trading on such regulated market.

The proposed amendments would widen the scope of this exemption by (i) increasing the 20% threshold to 30%; and (ii) making it also applicable to an "offering to the public" (in addition to the current "admission to trading" exemption), where the securities being offered are of the same class as securities already admitted to trading on the same market. To ensure investor protection, in particular for retail investors, a short-form document with key information for investors should be made available to the public when securities of the same class as securities already admitted to trading on the same market are being offered under the exemption. Such document should be made available to the public and filed with the competent authority of the home Member State, but not be subject to its approval.

- New EU Follow-On Prospectus replacing simplified disclosure regime for secondary issuances and EU Recovery Prospectus. The proposal introduces a new EU Follow-On Prospectus, which replaces the simplified prospectus for secondary issuances as well as the EU Recovery Prospectus.

  The regime for the EU Follow-On Prospectus provides for a standardised format and sequence and imposes a page limit in the case of secondary issuances of shares to ensure concise disclosure that is most relevant to investors.

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- New EU Growth Issuance Prospectus regime replaces the current regime. The proposal introduces a new EU Growth Issuance Prospectus, which replaces the current EU Growth Prospectus regime.

  The EU Growth issuance prospectus will be available for SMEs, issuers other than SMEs which have securities already admitted or are to be admitted to trading on an SME growth market, and offers from small unlisted companies with an aggregate offering value of up to €50 million over a 12-month period. To avoid a two-tier disclosure standard on regulated markets depending on the size of the issuer, the EU Growth issuance prospectus will not be available for companies with securities already admitted to trading on regulated markets. However, to facilitate an upgrade to a regulated market and to enable issuers to benefit from an exposure to a broader investor base, issuers whose securities have already been admitted to trading on an SME growth market continuously for at least 18 months will be allowed to use an EU Follow-on prospectus to transfer to a regulated market.

  The EU Growth Issuance Prospectus will be a single document, following a standardised format and sequence, and is subject to page limitations in the same way as the EU Follow-On Prospectus.

- Shorter minimum IPO offer period. The proposal reduces the minimum IPO offer period between the publication of a prospectus and the end of an offer of shares from six to three days to facilitate swift book-building processes. With a six-working-day offer period, companies going public find themselves exposed to market risk over a relatively long period of time. This is particularly evident in case the order book is oversubscribed within a few hours, but the offer must remain open. Such poses an unnecessary risk for a deal that has already been successfully marketed. A shortening of the offer period will provide increased flexibility and may serve a tool to de-risk a transaction.

- Risk factors. One of the proposal's most significant amendments with respect to risk factors is the removal of the ranking requirement that requires the most material risk factors (in the company's assessment) to be mentioned first. However, risk factors will have to be presented in a limited number of risk categories depending on their nature. Furthermore, the proposal provides that a prospectus should not contain risk factors that are generic, only serve as disclaimers, or do not give a sufficiently clear picture to investors of the specific risk factors that they should be aware of. The (mis)use of generic risk factors has been a point of criticism for both regulators and investors in the EU (and the UK), with companies often being perceived to have included irrelevant risk factors which do not help with investment decision-making.

- Further harmonization. Various amendments have been proposed to further standardise and streamline prospectus disclosure, including:

  - the introduction of a standardised format for a prospectus, including a fixed order and presentation of disclosure;
  - a maximum length of 300 sides of A4-sized paper for an equity prospectus (excluding the summary, any information incorporated by reference or additional information provided if and when the issuer has a so-called complex financial history or has made a significant financial commitment); and
  - the removal of the ability for investors to request paper copies of a prospectus.

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EU Market Abuse Regulation – Key Proposed Changes

- Narrow the scope of the obligation to disclose inside information concerning intermediate steps of a protracted process. The proposal narrows the scope of the obligation on companies to disclose inside information in the case of a so-called "protracted process" (i.e. multi-staged events, such as a merger or other significant M&A transaction) by providing that the disclosure obligation does not cover the intermediate steps of such process. Issuers should disclose only the information relating to the event that is intended to complete a protracted process (e.g. the signing of a definitive merger or sale and purchase agreement). However, when inside information relating to intermediate steps in a protracted process has not been disclosed, but the confidentiality of that inside information is no longer ensured, the issuer will have disclose that inside information to the public as soon as possible.

  More generally, the provisional agreement does not amend the notion of inside information and therefore, for example, the prohibition of insider dealing continues to be triggered by an intermediate step of a protracted process if such step qualifies as inside information.

- Amendment of the conditions under which delayed disclosure of inside information is permitted. The proposal amends the conditions which issuers must comply with to delay the disclosure of inside information. Under the current rules, delayed disclosure is permitted if (i) immediate disclosure is likely to prejudice the company's legitimate interests; (ii) delay of disclosure is not likely to mislead the public; and (iii) the company is able to ensure the ongoing confidentiality of the information until it is disclosed. In the provisional agreement it is proposed to replace the second condition, that the delay should not mislead the public, with a specific condition that the inside information that the company intends to delay is not contrary to the most recent previous public announcement by the company on the matter to which the inside information relates.

- Increased threshold for management transaction notifications and expansion of exempted management transactions during closed period. The provisional agreement provides that transactions conducted by Persons Discharging Managerial Responsibilities (**PMDRs**) and persons closely associated with them on their own account relating to shares, debt instruments, derivatives or other financial instruments of the relevant issuer will not require notification to the competent authority if the transaction falls below €20,000, representing an increase to the current threshold of €5,000. The proposal also grants competent authorities the ability to either raise the threshold applying at the national level to €50,000 or decrease it to €10,000, where justified in light of national market conditions.

  In addition, the proposal expands the exemptions to the prohibition of PMDRs carrying out transactions in a closed period (i.e. in the 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public). The current exemptions to the prohibition relating to employee shares or saving schemes and qualifications or entitlement of shares are to be expanded to include financial instruments other than shares (e.g. derivative instruments).

Multiple-Voting Share Structures

MiFID II and MiFIR allowed the creation of SME growth markets, which are trading venues that facilitate access to capital for SMEs. However, many founders do not list their companies on public markets for fear of losing control by the entry of new shareholders, and consequently it is believed that the EU is potentially missing out on a number of high-growth companies accessing the public markets. One

instrument to address this concern is multiple-voting share structures, which enable controlling shareholders (i.e. the founders of the companies) to have more voting rights per share compared with other investors.

Currently, some EU member states, like The Netherlands, allow multiple-voting share structures while in other EU member states such structures are forbidden. The directive aims to reinforce the attractiveness of listing on trading venues primarily targeted by SMEs, such as SME growth markets and other multilateral trading facilities, increase the ability of such companies to raise funds on such markets, and reduce inequalities for companies seeking a listing on SME growth markets. In this respect, companies should be able to choose capital and governance structures that best suit their development stage, including multiple-voting share structures, where maintaining the founders' influence in key business and governance decisions is seen as beneficial to the company's overall growth. At the same time, the proposed directive protects the rights of shareholders who hold shares with a lower number of votes per share by introducing certain safeguards.

What Next?

The provisional agreement will now be finalised and presented to representatives of the EU member states and Parliament for approval. If approved, the EU Council and Parliament will have to formally adopt the proposals. The date of entry into force is not known yet, but we expect the proposals to be finalised at some point during summer 2024.

UK PROSPECTUS REFORM

In response to perceived UK market decline, various individuals and bodies have for several years now been proposing changes to the UK capital markets regime to enhance the UK's competitiveness and attractiveness for public companies following Brexit. In March 2021, Lord Hill's UK Listing Review made a series of recommendations to redesign the prospectus regime so that it "fits better with both the breadth and maturity of UK capital markets and the evolution of the type of businesses coming to market as well as those that are already listed". The UK Listing Review urged that consideration be given, at a minimum, to three areas:

- changing prospectus requirements to treat separately (i) admission to a regulated market, and (ii) offers to public;
- changing how prospectus exemption thresholds operate so that documentation is only required in respect of certain types of transactions; and
- the use of alternative listing documentation in other instances, such as secondary issuances by an issuer already listed on a regulated market.

Following this, in July 2021, HM Treasury published a consultation on the UK prospectus regime which reflected some of the UK Listing Review recommendations, and then in March 2022 published a policy approach that would be taken. As set out in HM Treasury's UK Prospectus Regime Review Outcome, the "changes will simplify regulation in this area and make it more agile and effective, as well as facilitating wider participation in the ownership of public companies and improving the quality of information investors receive." A key focus of the changes was to separate the regulation of public offers of securities from the regulation of admissions of securities to trading, as the UK Listing Review recommended. It also delegated greater responsibility to the Financial Conduct Authority (FCA) to draft rules to bring the architecture of the new regime to life.

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In December 2022, the UK Chancellor, in what has now been called the "Edinburgh Reforms", set out a collection of announcements in response to the government's ambition for the UK to be a more competitive global financial centre.

In July 2023, the Chancellor, in his Mansion House speech, set out the government's vision for a new capital markets regime. Specifically, the Chancellor noted a proposed new regulatory regime for prospectuses, giving companies the flexibility to raise larger sums from investors more quickly. In addition, a near final draft of the statutory instrument (Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023) was published (the "**Regulations**").

The FCA, which under the Regulations would have greater discretion on whether and how to set requirements for a prospectus for issuers seeking admission to trading, subsequently published a series of engagement papers in respect of the new prospectus regime, on which feedback has now been received by the FCA from market participants. We cover each of the FCA's engagement papers on these topics in more detail below.

***Engagement Paper 1* – Admission to trading on a regulated market (May 2023)**

The FCA acknowledged there were strong reasons to maintain the existing requirements to have securities admitted to trading on regulated markets, which it largely intends to, although it believes certain changes could relieve unnecessary friction.

The areas the FCA identified which could represent opportunities for improvements include:

- when a prospectus is required for admission to regulated markets versus where exemptions could apply;
- the required content of prospectuses for initial admission;
- the format of prospectus documents; and
- responsibility for prospectus documents and how they are approved.

The FCA's starting point was that the requirements for a prospectus for admission to trading on a regulated market would remain largely unchanged. The FCA's general view was that the reason for requiring a prospectus is where there is a lack of available information in the market about an issuer and its proposed securities which may mean investors are not able to accurately price the securities. This could lead to mispricing of securities (either at admission or on a longer-term basis), which may reduce effectiveness and in turn market confidence and integrity.

In addition, the FCA proposed to retain the current exemptions from publishing a prospectus when admitting securities to a regulated market, including where securities are admitted following a conversion of existing admitted securities (e.g. warrants), under a scrip dividend programme and/or to existing or former directors and employees. The FCA sought views on how to approach exceptions related to takeovers and transfers between regulated markets.

Further, the FCA believed it would largely reproduce the current content requirements for a prospectus for admission to trading on a regulated market, on which it sought views, although it intends to explore possible better ways to balance the informational needs of investors with the desire to be proportionate and provide flexibility to investors. Specifically, the FCA sought views on calibrating key content

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requirements for the summary, financial information, use of incorporation by reference, ESG disclosures and aligning content requirements with other overseas jurisdictions.

Summary of feedback and responses to Engagement Paper 1 (December 2023)

Two-thirds of respondents supported a starting position requiring a prospectus for the admission of securities to regulated markets as well as retaining the majority of prospectus requirements, although respondents also agreed there should be targeted improvements to the existing framework. The extent to which respondents wanted more flexible requirements as to the contents of a prospectus varied; however, the consistent view was that any changes should be incremental. Most respondents favoured retaining the summary as a prospectus requirement but wanted to have increased flexibility to make it more bespoke.

Engagement Paper 2 – Further issuances of equity on regulated markets (May 2023)

The FCA sought market views on when or whether a prospectus should be required for an existing listed issuer carrying out a secondary equity issuance. This harked back to prior initiatives, including the Secondary Capital Raising Review (**SCRR**), which found that current requirements to prepare, seek approval on and publish a prospectus may have been hindering issuers in their capital raising.

Under the current regime, issuers must prepare and publish a prospectus for further share issuances that will be admitted to a regulated market, subject to a number of exemptions, such as the "threshold exemption" in respect of securities which amount to less than 20% of the number of securities already admitted to trading on the same regulated market. In addition, the current regime provides issuers with the option of publishing a simplified prospectus, which requires a lower level of information (for example, not needing an operating and financial review), where the issuer's securities have been trading for at least 18 months.

The FCA's starting point here was that the new regime should not require prospectuses for secondary issuances for equity securities admitted to trading on regulated market unless there is a clear argument that it is necessary for investor protection. In this engagement paper, the FCA set out some of the ways it may approach scaling back the current requirements.

The FCA sought feedback in the following key areas:

- reduced requirements for further issuances, with the FCA's starting assumption being that there should be fewer requirements for subsequent issuance prospectuses, given that listed companies already produce publicly available information so a lack of transparency is generally not the case, except in certain circumstances, such as where an issuer is seeking capital to finance a significant new venture which might constitute a material change in its business;
- the effect of the current regime on issuers and its proportionality, in particular whether it is preventing issuers from raising capital quickly and at scale or imposing disproportionate financial and time burdens;
- setting a share capital percentage threshold for requiring a prospectus for a secondary issuance, noting that the SCRR proposed that a prospectus only be required for a transaction amounting to at least 75% of an issuer's existing share capital;
- what document should be required in lieu of a prospectus in instances below the threshold, such as publishing an announcement via a Regulatory Information Service (RIS) as proposed by the SCRR; and

- whether there are specific issues which should be considered in relation to issuers making further issuances of equity securities for funds.

Summary of feedback and responses to Engagement Paper 2 (December 2023)

Responses to what requirements there should be for a prospectus for further issuances were mixed. Some respondents favoured removing the requirement for a prospectus whilst others suggested more bespoke requirements to reflect the context or to maintain the status quo on simplified prospectuses. Most respondents favoured issuers retaining the option of a simplified or full prospectus for further issuances. Respondents also generally favoured a threshold requirement to publish a prospectus; however, there is no clear consensus on what that threshold should be.

Engagement Paper 3 – Protected forward-looking statements (May 2023)

Any person who is responsible for a prospectus (including the company) may be liable for the inclusion of an untrue or misleading forward-looking statement in a prospectus. The current threshold for liability is "negligence", which has led to cautiousness about the inclusion of forward-looking statements in prospectuses, such as projections of future profitability, as the burden is on the issuer to show that the forward-looking statement was not included negligently. This burden has been referred to as a "reverse" burden of proof.

The Regulations define a forward-looking statement as a statement containing a projection or estimate of opinion as to future events or circumstances, or a statement of intention. The Regulations create a new concept of "protected" forward-looking statements, categories of which the FCA would have the ability to specify. If identified by an issuer as being protected, the threshold for liability that applies would be raised to a recklessness/dishonesty standard.

As a result of this change, the persons responsible for a prospectus would not incur liability for any loss suffered by investors which was caused by the protected forward-looking statement unless they (i) knew the statement was untrue or misleading or was reckless as to whether it was untrue or misleading; or (ii) knew the omission from the statement was a dishonest concealment of a material fact.

The intention is that this change will reduce the risk and should, therefore, make it possible to include forward-looking statements in prospectuses, which in turn could provide investors with more useful information. Rather than obtaining forward-looking information through third-party means, such as through "connected research" published by investment banks' research divisions, investors could receive it directly from the company. This change may, in turn, reduce information asymmetries where only certain investors (principally, institutional investors who routinely receive connected research in connection with the IPO process) have access to such forward-looking information.

The FCA was seeking views on:

- the types of forward-looking statements that should be considered protected, with the FCA believing that information routinely prepared by issuers which support investor understanding and inform valuation models, such as profit forecasts or statements around business targets, is likely to be considered protected;
- whether sustainability-related disclosures should be considered protected forward-looking statements; and

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- how such protected statements should be produced (i.e. whether there would be minimum criteria or expectations) and presented and/or labelled.

Summary of feedback and responses to Engagement Paper 3 (December 2023)

Most respondents favoured a more open approach on how protected forward-looking statements should be defined: (i) based on the general framework, or (ii) as guidance with illustrative examples to aid interpretation. Although some respondents preferred a narrower prescription definition, the priority for respondents was to have legal certainty irrespective of how such statements are defined.

Engagement Paper 4 – Non-equity securities (May 2023)

The FCA considered how it might improve the regime for non-equity securities. The FCA believed no major changes were required, but raised certain points for discussion:

- whether the current UK prospectus regime broadly works well in respect of wholesale debt capital markets, and if there are any areas that work less well that could be improved upon;
- whether the FCA should remove the dual disclosure standards in non-equity prospectuses, and if the existing wholesale disclosure annexes should be a starting point for a new single standard;
- whether the FCA should require additional disclosure for structured finance products or traded investment products;
- whether disclosure requirements for secondary issuances of non-equity securities should be revised; and
- whether and what further ESG disclosures should be required, and in particular ways to further align disclosure provided in the prospectus and elsewhere in bond framework documents.

The current rules require more disclosure for issuances of non-equity securities with a denomination per unit below €100,000 (wholesale debt securities, predominantly sold to sophisticated professional investors, are typically denominated in multiples of €100,000 or higher). The belief was that securities with a lower denomination require additional measures of investor protection – i.e. for retail investors. The FCA believed that this dual standard had in effect caused issuers to issue higher denomination securities to avoid the additional disclosure requirements, with few well-known UK corporates having issued lower denomination debt securities. The FCA proposed whether it would be possible to facilitate broader access to listed bonds, although there remains a broader question whether UK retail investors would have an appetite for wholesale debt securities.

Summary of feedback and responses to Engagement Paper 4 (December 2023)

Almost all respondents thought the current UK prospectus regime for wholesale debt capital markets works well, with several respondents in favour of maintaining the current exemptions from the duty to produce a prospectus. Nearly all respondents also supported the removal of the dual disclosure standards for retail and wholesale non-equity securities and most favoured the wholesale disclosure standard as the starting point, perhaps indicative of the fact that the wholesale debt market is almost exclusively a market for professional investors.

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***Engagement Paper 5* – The Public Offer Platform (July 2023)**

Currently, the UK Prospectus Regulation requires that either when an issuer's securities are admitted to a regulated market or when a public offer of securities is made, this must be done pursuant to an FCA-approved prospectus, unless an exemption applies. In the prospectus, a company must disclose all "necessary information" to allow investors to make an informed decision whether to purchase the company's securities. The current prospectus regime also creates a liability regime for those responsible for the prospectus for misleading statements or material omissions. The FCA performs an oversight function in being required to approve the prospectus.

By contrast, there is lesser regulation, and consequently lesser oversight, that applies to public offers made outside the current prospectus regime, which could, therefore, pose risks for investors in the case of fraudulent or highly speculative offers. Moreover, the current prospectus regime may prove too burdensome and/or costly for companies looking to raise growth capital given the resource and time commitments involved in producing and receiving FCA approval of a prospectus. As such, the FCA believed it was possible pursuant to the Regulations to usher in a new regime enabling legitimate offers outside of markets by companies seeking to raise funds within a more proportionate regime.

The Regulations create a regime that allows for the regulation of public offers to be treated separately from admissions to regulated markets, and for exemptions from the prospectus requirement for public offers made outside of public markets. For larger offers made to the public, the key exemption provides for such offers to be made via a "Public Offer Platform", which will be subject to FCA authorisation, rules and oversight. Under the Public Offer Platform regime, the FCA intends to expand the investment opportunities available to retail investors.

Under existing regulation, companies may make public offers without an FCA-approved prospectus up to a threshold for consideration of €8 million over a 12-month period. The UK government has proposed removing this current requirement for offers of securities; instead, it will be possible for securities to be offered to the public in reliance on certain exemptions.

The Regulations provide that offers with a total consideration below a £5 million threshold would be exempt from the public offer restriction, and offers above that threshold would need to be made by means of a Public Offer Platform, unless another exception applies.

The FCA sought views on the proposed regulatory framework for such Public Offer Platforms, in particular around investor protection measures, including the type and level of investor disclosure required and the nature and extent of due diligence to be performed by platforms when onboarding companies.

Summary of feedback and responses to Engagement Paper 5 (December 2023)

The respondents generally agreed with the FCA's approach; however, there was debate on the points of detail, such as to what extent and how due diligence should be disclosed to investors. In respect of due diligence, one respondent suggested there is consumer testing to determine which approaches benefit consumers making decisions about their investments. In addition, most respondents observed that forward-looking financial statements are unreliable and therefore, are not suitable for retail investors.

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Engagement Paper 6 – Primary multilateral trading facilities (MTFs) (July 2023)

Under the Regulations, there will be a new type of MTF admission document, called an "MTF admission prospectus". The FCA would be granted the power to make certain MTFs operating as primary markets (**Primary MTFs**) to require that issuers produce an MTF admission prospectus in certain circumstances.

A Primary MTF will be an MTF that meets two conditions: (i) the operator of the MTF maintains rules which relate to the eligibility of issuers, the conditions for admission to trading including information to be published and requirements to be complied with in order to maintain the admission to trading; and (ii) the issuers of transferable securities that are to be admitted to trading on the MTF are required to comply with those rules.

Currently, Primary MTF issuers are not subject to rules relating to the admission of securities to trading on regulated markets but are subject to existing requirements for public offers of transferable securities. Therefore, a prospectus is not currently required for the admission of securities to trading on a Primary MTF unless there is a non-exempt public offer or the rules of the Primary MTF require a prospectus. Primary MTF admission documents, however, serve a similar purpose to a prospectus.

The FCA noted that it is not seeking to increase materially the burden of admitting securities to trading on a Primary MTF. Its proposal as to when an MTF admission prospectus should be published was that it would be required for all initial admissions to trading on Primary MTFs that allow retail participation, even when there is no public offer.

In connection with this, the FCA sought views on the circumstances when it should ensure Primary MTF operators require the publication of an MTF admission prospectus, among others.

Summary of feedback and responses to Engagement Paper 6 (December 2023)

Most respondents favoured a mandatory MTF admission prospectus for all initial admissions to trading on primary MTFs that allow retail participation even if there is no public offer. Almost all respondents supported the discontinuation of the voluntary and growth prospectuses for Primary MTFs. There was also almost unanimous support for the requirement of a supplementary prospectus whenever there is a significant new factor, mistake or material inaccuracy which may affect an investor's assessment of the relevant securities.

FCA Consultation Papers

The FCA plans to respond to key points raised and publish consultation papers in 2024 to develop the specific rule proposals.

COMPARISON OF EU AND UK REFORM REGIMES

The fundamental driver of both sets of reforms is to make UK and EU public markets more attractive. Both seek to rebalance investor protection and market integrity with ease of market access by making requirements less burdensome for issuers. This could be viewed as a shift of responsibility to investors to undertake appropriate and proportionate due diligence, away from mandatory rules with which an issuer must comply.

In particular, both reforms seek to simplify and reduce the costs associated with drafting a prospectus. This is in part by reducing the circumstances in which a prospectus is necessary in the first place and in

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part by reducing the content requirements for a prospectus when it is required. In terms of when a prospectus is needed, the forms focus on secondary offerings. In the EU, an admission prospectus would no longer be needed where there is an exempt offer to the public for issuances of securities that are less than 30% of the number of securities already admitted to the same regulated market, an increase from 20%. Likewise, in the UK, the FCA sought feedback on setting a higher share capital percentage threshold for requiring a prospectus for a secondary issuance, noting that the SCRR proposed that a prospectus only be required for a transaction of at least 75% of the existing share capital. There will also be instances in the EU where a summary document, a short document with certain formulaic content requirements, would be required instead of a prospectus. This parallels the UK regime in which the FCA is considering the option of allowing issuers to decide what type of offering document to provide.

Another similarity is the revised approach to multiple-voting share structures. In the EU, the proposal introduces a new directive on this. The FCA is proposing a more permissive approach to dual-class structures, including allowing enhanced voting rights on all matters by shareholders (who must also be directors of the issuer) which would cease to be exercisable after 10 years, except for the issuance of new shares at a discount of more than 10%. (See August 2023 GT Alert for more on this topic.)

CONCLUSION

There are sound and sensible reasons for the reforms which aim to facilitate capital-raising for companies by making the respective public markets more attractive to issuers. Market participants generally will likely welcome these proposals. Eventually, the proof of the pudding is in the eating and whether we will see an increase in IPOs in the EU and the UK.

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