The new EU Prospectus Regulation and ESMA draft technical advice: impact on capital markets transactions

July 21, 2017

Introduction

Following the publication of the **EU Prospectus Regulation** in the Official Journal of the European Union on June 14, 2017, **ESMA has now published draft technical advice** on prospectus disclosure requirements, the format of EU Growth Prospectuses, and the scrutiny and approval of prospectuses.

The stated aims for the new EU Prospectus Regulation are to make it easier and more cost-effective for companies, especially smaller companies, to access the capital markets, and also to improve the accessibility of prospectuses for investors. This memorandum provides an overview of the key aspects of the new regime and considers whether it will achieve these goals.

The deadline for responses to ESMA's published technical advice is September 28, 2017 and, therefore, until ESMA has considered those responses, the technical advice remains in draft form and subject to change. ESMA draft technical advice is still awaited in respect of the content of risk factors and the use of financial information in the summary section of a prospectus.

Background

The new EU Prospectus Regulation will replace the existing EU Prospectus Directive (Directive 2003/71/EC) and will be directly applicable across EEA member states without the requirement for implementing legislation within member states.

The regulation was originally proposed in November 2015 (**see our client memo here**) and on September 28, 2016 we reported that the European Parliament had adopted amendments to the European Commission's original proposal (**see our client memo here**). On December 8, 2016, it was announced that the European Parliament, the Council and the Commission had reached provisional agreement on the text of the new EU Prospectus Regulation. The agreed text was then submitted to the European Parliament and the Council for a final vote to adopt the regulation, which took place on April 5, 2017.

Date of application and impact of Brexit

Save for certain exemptions to the requirement to publish a prospectus (described below) that apply from July 20, 2017 and July 21, 2018, the vast majority of the provisions of the new EU Prospectus Regulation will apply from July 21, 2019. The **UK Prospectus Rules have been updated** to reflect those changes that have already come into force.

Even though the majority of the provisions will not apply until after the current proposed date for UK leaving the EU, the entire regulation took effect as a matter of English law on July 20, 2017. Assuming that the UK government does as is proposed in the current draft of the European Union (Notification of Withdrawal) Bill and converts the body of European legislation into UK law at the date the UK leaves the EU, the new EU Prospectus Regulation will remain as law in the UK after that date unless, and to the extent that, it has been expressly repealed.

It is worth noting, however, that Brexit will mean that prospectuses approved in the UK will no longer be able to take advantage of the EEA passporting regime (meaning a prospectus to be used within the EEA will have to be approved by an EEA competent authority) unless some agreement is reached prior to the date the UK leaves the EU, such as a transitional arrangement allowing passporting rights to be retained for a limited period.

Summary of key changes

- New exemption from the requirement to publish a prospectus, allowing issuers to issue securities representing less than 20% of the same securities already admitted over a 12 month period without a prospectus (this exemption has applied since July 20, 2017).
- New exemption from the requirement to publish a prospectus for shares resulting from the conversion or exchange of other securities provided such shares represent less than 20% of the same class of shares already admitted over a 12 month period (this exemption has applied since July 20, 2017).
- The content and format of summaries will be changed, limiting the length of summaries to seven pages and limiting the number of risk factors included in the summary to 15.
- Risk factors will need to be presented in order of materiality and in no more than three categories.
- ESMA proposes in its draft technical advice that profit estimates and forecasts in prospectuses will no longer have to be accompanied by an accountants' report.
- The "wholesale" regime remains for issuers of debt securities and its scope has been widened to include debt securities traded on a regulated market that can only be accessed by qualified investors.
- New simplified disclosure regime for secondary debt and equity offers after shares have been admitted to listing for 18 months.
- Establishment of the concept of "shelf registration" with the introduction of a universal registration document (the URD).
- New simplified disclosure regime for SMEs without a listing on a regulated market (the EU Growth Prospectus).

Exemptions from the requirement to publish a prospectus

Under the new EU Prospectus Regulation, it remains the case that an issuer must publish a prospectus when either: (i) there is an application for admission of securities to trading on a regulated market; or (ii) there is an offer to the public, unless a relevant exemption applies.

The exemptions that apply to one or both of these limbs are broadly similar under the old and new regimes and, except in the circumstances set out below, it is likely that practice will not change for the vast majority of larger capital market transactions.

Changes to exemptions for admission prospectuses

The exemptions under the previous regime from the obligation to publish a prospectus for admission to trading of shares included:

- where the number of shares to be admitted was, over a period of 12 months, less than 10% of the shares already listed; and

- shares resulting from the conversion or exchange of other securities, if the shares were of the same class as shares already admitted to trading on the same market, regardless of the number of underlying shares.

Under the new exemptions from the obligation to publish a prospectus for admission to trading, which came into force on July 20, 2017:

- issuers are able to issue securities representing less than 20% of the same securities already admitted over a 12 month period without a prospectus; and
- there is no requirement to publish a prospectus for shares resulting from the conversion or exchange of other securities provided such shares represent less than 20% of the same class of shares already admitted over a 12 month period.

Under the new regime, an issuer will be able to conduct a placing to institutional investors of up to 20% of its existing ordinary share capital without the need for a prospectus. Any such placing would, however, have to be considered in light of the UK Pre-emption Group Guidelines and the issuer's existing shareholder authorities.

The UK Pre-emption Group Guidelines limit offers on a non-pre-emptive basis to 5% of an issuer's existing ordinary share capital unless the offer is in connection with an acquisition or specified capital investment; in such circumstances, the issuer can, broadly speaking, make an offer of up to 10%. As issuers typically seek an annual authority from their shareholders that is consistent with these limits, it is unlikely that an issuer would have existing authority in place to execute a placing of up to 20%. As such, an issuer would be required to hold a general meeting before conducting a 20% cash placing or, alternatively, execute a 20% cashbox placing, both of which would contravene the UK Pre-emption Group Guidelines and may draw criticism from the buy-side community.

Note that, in most circumstances, the exemptions described above could not be used for the purposes of a rights issue, open offer or other pre-emptive secondary issuance because the offer would be an offer to the public and therefore a prospectus would still be required.

Another implication of the changes set out above is the tightening of the loophole that, in theory, allowed issuers to circumvent the requirement to publish a prospectus for listing shares on a regulated market by issuing convertible bonds on an unregulated market to institutional investors, and then making use of the exemption for shares admitted as a result of the conversion of such securities. Under the new regime, the shares underlying the convertible bonds no longer benefit from an exemption unless the aggregate number of such shares converted in a 12 month period, together with other shares issued by the company in that period, is less than 20% of the shares already admitted.

Whilst this change is already in effect, shares resulting from convertible bonds issued prior to July 20, 2017 will be grandfathered and continue to benefit from the old exemption. Regulatory capital instruments which typically contain automatic conversion features will continue to benefit from the exemption.

Changes to exemptions for public offers

From July 21, 2018, the new regime increases the threshold for publishing a prospectus from a total offer size of €100,000 in the EEA over a period of 12 months to €1,000,000 in the same period.

Furthermore, EEA member states will also be able to exempt offers of securities to the public within their jurisdiction with a total consideration of less than €8,000,000 calculated over a 12 month period. Any offers made in reliance of this exemption will not, however, benefit from the passporting regime. Other EEA member states into which such offer is made will be entitled to require other disclosure requirements to the extent that such requirements do not constitute a disproportionate or unnecessary burden on the issuer.

Despite previous suggestions that wholesale debt issuances would not be automatically exempt from the public offer exemption as they had been under the EU Prospectus Directive, the new EU Prospectus Regulation has retained the previous position (see "Wholesale debt issuances" section below). Accordingly, absent an application for listing of such securities on an EEA regulated market, no prospectus will be required for such issues.

As was previously the case, just because an offer is made to the public pursuant to an applicable exemption, there will remain a need to publish a prospectus should the issuer be applying for admission of its securities to trading on a regulated market and none of the relevant exemptions apply.

Prospectus disclosure

General disclosure requirements

The definition of necessary information for the purposes of the content of prospectuses, which serves as an overarching standard of disclosure, has been amended under the new regime to clarify that the information to be included will depend on the nature of the securities and whether trading in the securities is exclusively carried out by qualified investors. The new EU Prospectus Regulation also requires that the information in a prospectus must be concise as well as easily to analyse and comprehensive.

Whilst the above does potentially reduce the extent and nature of the disclosure in certain types of prospectuses (e.g., under the wholesale debt regime), the new requirements do not override any requirements of any non-EEA jurisdiction that would have to be met by issuers should the intention be to offer the securities outside of the EEA, for example, to US investors. As such, it is unlikely that these amendments will significantly change the approach taken to disclosure on transactions that are marketed internationally.

Summaries

Recognising that the summary format introduced by the amending Directive 2010/73/EU has not met one of its primary objectives (i.e., to achieve better comparability across prospectuses), the new summary requirements replace them in their entirety.

Requirement for a summary

The new EU Prospectus Regulation also abolishes the need for a summary in a base prospectus (although a summary must be included in the final terms). Wholesale debt prospectuses will continue to be exempt from the requirement to include a summary.

Content and format

The maximum length of the summary will be limited to seven pages of A4 (reduced from the current limit of 15 pages and 7% of the prospectus) except if there is a guarantor or a range of securities being offered where the summary can be longer. The text must be easy to read using characters of a readable size.

The content of the summary must contain the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor (where applicable) and the securities being offered or admitted to trading. It has to be *"accurate, fair, clear and not misleading"* and must be consistent with the other parts of the prospectus. It must be written in a style that is clear, non-technical, concise and comprehensible for investors.

The format will be made up of four sections containing:

- an introduction with prescribed warnings;
- key information on the issuer under the headings *"Who is the issuer of the securities?", "What is the key financial information regarding the issuer?",* and *"What are the key risks that are specific to the issuer?"*;
- key information on the securities under the headings *"What are the main features of the securities?", "Where will the securities be traded?", "Is there a guarantee attached to the securities?",* and *"What are the key risks that are specific to the securities?"*; and
- key information on the offer to the public and/or admission to trading under the headings *"Under which conditions and timetable can I invest in this security?", "Who is the offeror and/or the person asking for admission to trading?",* and *"Why is this prospectus being produced?"*.

ESMA will develop regulatory technical standards to specify the content and format of presentation of the key financial information in connection with the issuer and any guarantor. We expect that these will cover such things as the need for precedence of audited financial information over alternative performance measures.

The maximum number of the risk factors that can be contained in the summary will be fifteen.

Liability

Civil liability for the contents of the summary will attach only if it is misleading, inaccurate or inconsistent, or it does not provide key information in order to aid investors when considering whether to invest in the securities, in each case when read together with other parts of the prospectus.

Risk factors

The new EU Prospectus Regulation intends to curb the tendency of issuers to include lengthy risk factors which are generic and not focussed on risks which are material and specific to the issuer and its securities. However, as the details will be contained in further delegated legislation of the Commission and new ESMA guidance, neither of which has been made public, it is not yet clear how the presentation of risk factors may change.

Content and format

Currently, what we know is that:

- risk factors will be required to be presented in a *"limited number of categories depending on their nature"*, with the most material risk factors being disclosed first within each category; and
- issuers will be permitted, but not required, to disclose their assessment of the materiality of a given risk using a scale of low, medium or high;
- risk factors will include those risks resulting from the subordination of securities and the impact on the expected size or timing of payments to holders of security in the event of bankruptcy or similar procedure; and
- where securities are offered with a guarantee, the risk factors will include material and specific risk factors relating to the guarantor, to the extent that they are relevant to the guarantor's ability to fulfil its commitments under the guarantee.

The new requirements are not inconsistent with current market practice, except perhaps that the question of whether a risk factor is sufficiently specific will be more closely scrutinised by the FCA and other EEA competent authorities.

Liability

Consideration will need to be given to the potential increased liability under these new rules, including where liability may result from a failure to disclose adequately the risk factors in the required order. As the use of a qualitative scale to assess the materiality of a given risk is voluntary, we anticipate that issuers may be wary of using it due to the risk of being judged in hindsight to have wrongly categorised a risk as having low materiality.

Profit estimates and forecasts

Perhaps one the most significant developments to arise from the ESMA draft technical advice on the format and content of the prospectus is the proposal that issuers will not need to include an accountants' report in order to publish a profit estimate or forecast in a prospectus. Instead, an issuer should be able to provide clear and unambiguous forecasts presented in an explicit manner and accompanied by a set of assumptions. The assumptions will draw investors' attention to those uncertain factors which could materially change the outcome of the profit forecast.

Within a UK context, this may well see a change in approach to prospectus disclosure as issuers have been wary of making forward looking statements in a prospectus, in part because of the challenges with having reporting accountants report publicly on such statements within a short time frame.

Of course, the change in regulation does not mitigate any liability should a forward-looking statement prove to be incorrect. If accompanied by the appropriate assumptions, issuers should, however, be able to provide information that they have previously been unwilling to share with investors because of the practicalities of involving the reporting accountants in the process.

Further ESMA draft technical advice – equity

Aside from the more material changes described above, the ESMA draft technical advice also contains a number of further proposed changes, including that:

- the cover note at the front of a prospectus be limited to three pages, written in plain English and not contain any legal disclaimers. It also will need to include prescribed wording to disclose the role of the competent authority in approving the prospectus;
- persons responsible for the prospectus be listed in one place in the document;
- issuers no longer need to include a standalone section on selected financial information;
- the disclosure requirements for the OFR be brought into line with the management report requirements in the Accounting Directive (2013/34/EU) to facilitate incorporation by reference of the management report from the issuer's annual report and accounts;
- the significant change statement no longer refer to "trading position" to remove any uncertainty as to the meaning of the disclosure;
- the use of proceeds section be given increased prominence and the disclosure includes a precise breakdown of how funds will be employed;
- disclosure of the impact of dilution on existing holders be described in terms of a comparison of participation in share capital and voting rights before and after the capital increase, and a comparison of the net asset value per share at the latest balance sheet before the public offer and the offer price per share;
- issuers no longer need to include a separate section disclosing tangible fixed assets (which will now be covered in the business overview) or research and development (which will now be covered in the OFR);

- issuers may include a structure diagram in the prospectus to describe the organisational structure of the issuer's group;
- disclosure of the issuer's memorandum and articles of association be streamlined and that a hyperlink to the constitutional documents included in the prospectus;
- the requirement to disclose takeover provisions be amended so that an issuer need only include a summary of the legal position of the shareholder in the event of a takeover and highlight any possibility of frustrating measures against a bid;
- issuers no longer need to include information on taxation unless the investment attracts a specific, favourable tax treatment;
- a website address for the issuer must be included in the prospectus with a disclaimer that the website does not form part of the prospectus; and
- documents on display be no longer made available physically, but instead put on the website of the issuer.

ESMA's proposals also seek to clarify a number of existing disclosure requirements that have historically caused some confusion. In particular, the draft amendments to the rules make it clear that:

- in respect of the historical financial information disclosure requirement, where changes have been made to an IFRS requirement, this does not require an issuer to restate its last two financial statements even though the next financial statements may be presented differently on account of the change; and
- in respect of the capitalisation and indebtedness disclosure requirement, the statement may be made at up to 90 days prior to the date of the prospectus and that a narrative update for the stub period is sufficient.

Further ESMA draft technical advice – debt

To the extent that the above changes are relevant to debt issuances, the proposal is that these amendments will flow through into debt prospectuses. In addition, the ESMA also proposes the following additional changes that will apply only to debt capital market transactions:

- multi-product base prospectuses for debt issuances will include greater signposting and more obvious segregation such that the terms and conditions of each security type are more easily identifiable;
- retail base prospectuses will include a section which sets out how the base prospectus should be used;
- retail debt and derivatives prospectuses will no longer need to include statements around corporate governance and details of the audit committee;
- retail debt and derivatives prospectuses will need to include specific disclosure on changes to the issuer's borrowing and funding structure during the last financial year, and a description of existing financing of its activities; and
- wholesale debt and derivatives registration prospectuses will no longer have to contain restated financial statements if the next published financial statements will be prepared differently.

Incorporation by reference

The new EU Prospectus Regulation extends the scope of the documents that can be incorporated by reference so that it will include:

- information in existing prospectuses, supplements and final terms;
- regulatory information published through an RNS;
- annual and interim financial information;
- asset valuation reports; and
- constitutional documents.

When in electronic format, prospectuses will need to contain hyperlinks to all documents containing information incorporated by reference, and all such information must be made available on the same section of the website alongside the prospectus.

Types of prospectus

Wholesale debt issuances

The Commission's original proposal had been to remove the distinction between the level of information required to be included in a retail and wholesale bond issue. The new EU Prospectus Regulation, however, retains this distinction and, in fact, expands the scope of the wholesale regime to include debt securities traded on a regulated market that can only be accessed by qualified investors, in addition to those issued on any regulated market in denominations of at least €100,000.

The new EU Prospectus Regulation states that the information requirements for the wholesale regime need to be appropriate, taking into account the information needs of the investors concerned. However, apart from confirming that a wholesale debt prospectus does not require a summary, the ESMA draft technical advice has made only very minor proposed changes to the disclosure requirements, the most significant of which is to require use of proceeds wording where the purpose of the offer is different from making a profit and/or hedging certain risks.

It has been suggested that the removal of the need for the wholesale regime to require debt instruments to be issued in denominations of €100,000 may lower the denominations of debt instruments traded by qualified investors. This is probably unlikely because, by keeping to denominations of €100,000, issuers can avoid the financial reporting requirements under the Transparency Directive (2004/109/EC) and registering their auditors under the Statutory Audit Directive (2006/43/EC).

Secondary offers

The new EU Prospectus Regulation allows issuers and holders of securities to voluntarily draw up prospectuses under a simplified disclosure regime where:

- the issuer has been trading on a regulated market or an SME growth market for at least the last 18 months and issues securities fungible with those existing listed securities or other non-equity securities; and
- an offeror is offering securities that have been admitted to trading on a regulated market or an SME growth market for at least 18 months.

The proposed disclosure requirements in the ESMA draft technical advice is intended to ensure that an issuer or offeror is not required to repeat any disclosure that is already be in the public domain. An issuer will be required to confirm to the competent authority, at the time the prospectus is approved, that it has complied with the Transparency Directive and the Market Abuse Regulation (596/2014), although it is not

clear from the draft technical advice or the new EU Prospectus Regulation how an offeror would satisfy this requirement.

The following sections of an issuer's initial listing prospectus would not be required for a secondary offer:

- an operating and financial review;
- a description of the issuer's capital resources;
- a description of directors' and management remuneration and benefits;
- a description of board practices and statement of compliance with applicable corporate governance regimes;
- details of the issuer's employees, shareholdings and stock options;
- a description of the issuer's group, its significant subsidiaries and the issuer's ownership of such subsidiaries;
- details of the share capital of the issuer and the issuer's memorandum and articles, except for information regarding dilution, the rights attaching to existing shares and any poison pill; and
- a description of any environmental issues that may affect the issuer's utilisation of its tangible assets.

Furthermore, ESMA's draft technical advice proposes that the following information requirements for an issuer's initial listing prospectus should be narrowed to include only relevant information:

- business overview – significant new products and services need only be disclosed where they have significantly changes the business of the issuer after the period covered by the last published audited statements;
- regulatory environment – disclosure only needs to be made where there has been a material change after the period covered by the last published audited statements;
- financial information – the annual and half-yearly financial information published over the 12 months prior to the approval of the prospectus will need to be disclosed; and
- material contracts – only previously undisclosed contracts need to be included.

On the basis that the existing proportionate disclosure regime for secondary offers of equity under the Prospectus Directive has not been widely employed, it is perhaps unlikely that issuers will adopt the voluntary requirements for secondary offers given the concerns that simplified disclosure may not satisfy the disclosure standards in non-EEA jurisdictions (e.g., the United States) where the offer is made.

Universal registration documents

Similar to the US concept of "shelf registration", the new regime introduces the concept of a universal registration document, which is intended to allow issuers that already have securities admitted to trading on a regulated market or an MTF to respond swiftly to favourable market conditions.

The ESMA draft technical advice states that a URD will be similar in format and content to the disclosure requirements of a registration document and will describe the issuer's business, financial position, earnings and prospects, governance and shareholder structure to the standard required for an equity issuance. It can be prepared at any time and, once in place, it could be used to make up part of a debt or equity prospectus. Instead of publishing a standalone URD, an issuer could adapt its annual report to include the additional requirements needed to satisfy the requirements for a URD.

Any URD has to be approved by the FCA or another EEA competent authority for two consecutive years, but thereafter, as long as the issuer continues to file compliant URDs, the issuer will not need to seek approval for its URD although a competent authority may review the published URDs from time to time.

The new EU Prospectus Regulation also allows an issuer who has filed two consecutive compliant URDs to take advantage of a fast-track review process for any draft prospectus (shortening the stipulated review period from 10 working days to five working days). As the FCA attempt to provide comments on all prospectuses, other than in the context of an initial public offer of shares or global depositary receipts, in five clear working days, this will not change the position for companies seeking approval in the UK.

Issuers have, since 2005, been able to publish a registration document, yet the practice has not caught on in the UK. It is perhaps therefore unlikely that the new regime will trigger a change of approach. Relevant factors that may discourage issuers to take this route include:

- non-equity issuers have to provide greater disclosure in a URD than they would typically have to disclose in a prospectus as a URD must be drafted to an equity issuance standard;
- issuers rarely require a prospectus every year for an equity issuance (and perhaps even less so following the amendments to the exemptions to the requirements to publish a prospectus) and therefore the production of an annual URD may prove inefficient;
- even where an issuer has produced a URD, in order to publish a prospectus, it will be necessary to publish a securities note and, in most cases, a summary and these will need to be approved by the relevant EEA competent authority; and
- it is currently unclear whether a URD will need to be approved again when it is part of a prospectus.

From the perspective of an investment bank, it is unclear whether a sponsor under the UK Listing Rules will have any role in connection with a URD published by a company with shares admitted to the premium listing segment of the Official List, but it can perhaps be assumed that, as is currently the case with registration documents, a sponsor will not be required to provide a declaration to the FCA at the time of its approval or filing, but only where the URD forms part of a prospectus in the context of an admission of shares to the premium listing segment.

SME issuers – the EU Growth Prospectus

The new EU Prospectus Regulation introduces a proportionate disclosure regime for prospectuses of issuers (and in some cases holders of their securities) which have no securities admitted to trading on a regulated market and which are:

- SMEs (as defined in Markets in Financial Instruments Directive (2014/65/EU));
- issuers whose securities are, or will be, traded on an SME growth market, provided the average market capitalisation of less than €500,000,000 on the basis of end-year quotes for the three previous calendar years; or
- issuers with no securities traded on an MTF and who had an average of less than 500 employees during the previous financial year, where the offer does not exceed €20,000,000 over a period of 12 months.

The content and format requirements of the EU Growth Prospectus have been set out in ESMA draft technical advice. These include a set format and sequencing of information for the documentation, although an issuer may choose to publish the prospectus in one document or as a separate summary, registration document, and securities note.

The thrust of the draft technical advice is an attempt to make the process of producing a prospectus more affordable to smaller issuers. For instance:

- only issuers with a market capitalisation of above €200,000,000 will be required to include an operating and financial review, a description of market trends, a working capital statement, a statement of capitalisation and indebtedness;

- an issuer will only be required to include up to two years of historical financial information and such financial information can be prepared under IFRS or national accounting standards; and
- an issuer will not be required to include disclosure in relation to important events in its history, research and development, patents and licenses, joint ventures, board practices, and employees.

Note, however, that an issuer will be required to meet the general disclosure requirements set out in the new EU Prospectus Regulation and, as such, whilst there may not be a specific requirement to include certain information, the issuer will have to remain mindful that nothing is omitted which meets the overarching requirement to include all necessary information.

It is unclear how much time and money the new regime will really save issuers, but perhaps the most significant change is the removal of a requirement to publish accounts in IFRS which can be a very onerous exercise for an issuer and was previously a genuine barrier to entry to the capital markets.

Publication of a prospectus

The key change to the process for publication of a prospectus is that, under the new EU Prospectus Regulation, it will not be permissible to place the prospectus behind a web-blocker or otherwise require potential investors to register or pay a fee to view the prospectus.

Whilst this will make publication simpler, it does open up issuers to the possibility that non-EEA regulators (including in the United States) may conclude that, as the prospectus is being made available in their jurisdiction, an offer is being made to the public in their jurisdiction without satisfying local requirements.

Otherwise, the new requirements require electronic versions of the prospectus to be fully downloadable, printable and searchable, and easy to access on a designated section of the website. The summary needs to be accessible in a separate document to the whole prospectus in the same section of the website and, as described above, there must be easier and more accessible links for investors to any information incorporated by reference.

Following implementation of the new EU Prospectus Regulation, ESMA will publish an online and searchable database of all prospectuses which will be accessible to all investors.

Conclusions

The new regime will undoubtedly become clearer as more ESMA draft technical advice is published and the drafts which are now the subject of consultation are finalised.

At this stage, the new EU Prospectus Regulation and the delegated legislation does look as if it will make it easier for smaller companies to access the capital markets.

For larger issuers, there will clearly be some changes to the form and content of a prospectus for both debt and equity listings and issuances, perhaps the key ones for the UK market being the changes to the appearance of the summary and risk factors and the greater flexibility to use profit forecasts within prospectuses. However, whilst the new regime undoubtedly brings in numerous changes, the majority of these are likely to have an incremental rather than a seismic effect on how prospectuses will look and feel in the future.

Furthermore, for the reasons set out above, it is doubtful that some of the more dramatic changes brought in by the new EU Prospectus Regulation (for example, the streamlined disclosure regime for secondary issuances and the URD) will be employed by premium listed companies in the UK after July 21, 2019.

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