

The new UK public offers and admissions to trading regime – An overview

July 31, 2023 | Client Update | 5-minute read

In July 2023, the UK government published a revised and near-final draft statutory instrument setting out a new regulatory framework for public offers of securities and admission to trading on regulated markets and primary multi-lateral trading facilities in the UK.

The [Financial Services and Markets Act 2000 \(Public Offers and Admission to Trading\) Regulations 2023](#) (the Regulations), once passed into law, will supplant the EU-derived Prospectus Regulation and accompanying instruments, which have applied since 2017 and were later incorporated into UK domestic law post-Brexit (the UK Prospectus Regulation).

Whilst the Regulations provide a relatively stable picture of the expected framework at a high level, much of the detail of the new regime has been delegated to the UK Financial Conduct Authority (the FCA) in rules yet to be published (known for the purpose of the Regulations as the FCA's 'designated activity rules'). This approach is consistent with the government's aim to move financial services regulation to a 'comprehensive FSMA model' – one in which significant influence is delegated to the UK's key regulators, offering more control over regulatory agenda-setting and greater agility and adaptability to respond to developing market trends.

In the [linked table](#), we provide an overview of key aspects of the Regulations and highlight both the differences and similarities with the UK's existing prospectus and public offer regime under the UK Prospectus Regulation.

Key takeaways of the Regulations include:

- The default position under the new regime will be that offers of securities to the public will be generally prohibited unless an exemption is available. This marks a divergence from the current public offer regime which is less concerned with whether an offer is or is not permissible, rather whether an offer will or will not require publication of a prospectus.
- While prospectuses will remain a central feature of the new public offer regime, the requirement to publish a prospectus in specified circumstances will apply only if admission to trading is sought on a regulated market or certain types of primary MTF and the admission to trading rules of the FCA (forming part of its designated activity rules), or those of the primary MTF operator, require such a document to be published. The circumstances that trigger the requirement for a prospectus in relation to admission to trading, including for further issuances, are the subject of a current FCA engagement process with market participants (see in particular [FCA Engagement Paper 1 – Admission to trading on a regulated market](#) and [FCA Engagement Paper 2 – Further issuances of equity on regulated markets](#) and [FCA Engagement Paper 6 – Primary multilateral trading facilities](#)).
- New 'designated activities' will be established. The 'designated activities' regime was established by the recently passed Financial Services and Markets Act 2023 (FSMA 2023) and is intended to fill a regulatory gap for activities which will not be addressed by UK law once the UK Prospectus Regulation and other EU-derived laws are repealed (read our recent Client Update on the Financial Services and Markets Act 2023 [here](#)). The FCA has been granted

broad powers to dictate the conditions for carrying on designated activities in its designated activity rules. The new designated activities created by the Regulations are:

- offering relevant securities to the public in the UK, communicating an advertisement relating to the same or disclosing information in respect of such an offer;
 - requesting or obtaining admission to trading of securities on a regulated market in the UK, communicating an advertisement relating to the same, disclosing information relating to the same or admitting securities to trading on a regulated market; and
 - requesting or obtaining admission to trading of securities on a primary MTF, communicating an advertisement relating to the same, or admitting securities to trading on a primary MTF.
- The creation of a separate liability standard for ‘protected forward-looking statements’. Lord Hill’s UK Listing Review identified the negligence standard that applies to liability for prospectus content under the Financial Services and Markets Act 2000 (FSMA 2000) as deterring issuers and their directors from including forward-looking information (i.e., projections, estimates, opinions about future events or circumstances, statements of intention etc.) in prospectuses given the inherent uncertainty of this type of information. By introducing a fraud or recklessness liability standard for such statements, the Regulations seek to remove this deterrent and address the concerns raised by Lord Hill. Again, the precise nature of the regime is the subject of the FCA’s engagement process (see [FCA Engagement Paper 3 – Protected forward-looking statements](#)).
- The FCA will regulate the activity of operating an electronic public offer platform (e.g., crowdfunding platforms). This seeks to address a perceived weakness of the UK Prospectus Regulation, which is that offers falling outside of the public offers regime are currently subject to minimal regulation and oversight. By bringing such platforms into the regulatory perimeter of the FCA, it is the intention to create a more formal framework covering issues such as disclosure, due diligence, and investor protection for offers exceeding £5 million where admission to trading on a regulated market or primary MTF is not being sought and no other exception applies. The FCA is seeking feedback on the nature of rules governing public offer platforms in [FCA Engagement Paper 5 – The Public Offer Platform](#).

Next steps

Parliamentary time permitting, HM Treasury intends to legislate for the new regime by the end of 2023. However, the legislation will not fully enter into force until after the FCA has made the related new designated activity rules through its rulemaking powers. It is expected that the FCA will respond to feedback on its engagement papers later in 2023 and consult on these draft rules in 2024. In the meantime, HM Treasury will consider technical rather than policy-related comments on the Regulations. Comments must be submitted by no later than 21 August 2023.

[Download this client update as a PDF](#)

Future of UK Capital Markets series

Visit our [Future of UK Capital Markets](#) page to read our series of client updates on the UK government’s sweeping efforts to reform the capital markets and the wider regulatory system to strengthen the UK’s position as a leading global financial centre.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Simon Witty

+44 20 7418 1015
simon.witty@davispolk.com

Will Pearce

+44 20 7418 1448
will.pearce@davispolk.com

Mark Chalmers

+44 20 7418 1324
mark.chalmers@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.