

How Draft Trading Regs Provide Framework For UK Regime

By **Dan Hirschovits, Simon Witty and Mark Chalmers** (January 19, 2024)

On Nov. 27, 2023, the draft of the Public Offers and Admissions to Trading Regulations 2023, or POAT, was published and laid before the U.K. Parliament.[1]

Once enacted, the POAT regulations will replace the European Union-derived Prospectus Regulation and accompanying instruments that currently provide the framework for public offers of securities and admission of securities to trading in the U.K.

In this article, we provide a brief overview of the POAT regulations and discuss the amendments in the latest version, which are largely of a technical nature. The detailed rules underpinning the regulations, drafts of which are expected to be published in mid-2024, will be of particular interest to practitioners and clients.

The POAT regulations represent an important part of the U.K. government's post-Brexit regulatory reform agenda. The aim is to replace EU-derived rules and regulations with rules set by the U.K.'s financial services regulators within a framework established by Parliament. An earlier draft of the POAT regulations was published in July 2023.

The POAT regulations provide a framework for a new rules-based regime for regulating public offers of securities and admissions to trading on a U.K.-regulated market or a primary multilateral trading facility, or MTF,[2] such as the AIM, with detailed rules to be set by the Financial Conduct Authority, known for the purpose of the POAT regulations as the FCA's designated activity rules.[3]

The designated activities regime was established by the recently passed Financial Services and Markets Act 2023, and is intended to fill a regulatory gap for activities that will not be addressed by U.K. law once the U.K. version of the Prospectus Regulation and other EU-derived laws are repealed.

The FCA will be responsible for the regulation of admissions, allowing it to specify when a prospectus is required, what it should contain and responsibility for its content.

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 MTFs; 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.



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The POAT regulations establish a general prohibition on public offers of securities in the U.K., which is subject to a number of exemptions.

The FCA is given rulemaking powers in relation to those exemptions, marking 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.

Under the POAT regulations, the FCA will oversee the new regulated activity of operating an electronic system for public offers of relevant securities, e.g., crowdfunding platforms. This seeks to address a perceived weakness of the U.K. version of the 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, 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 (\$6.4 million), where admission to trading on a regulated market or primary MTF is not being sought and no other exception applies.

The approach to regulating public offers and admissions to trading in the POAT regulations follows the government's stated aim to move financial services regulation to a model that is consistent with the Financial Services and Markets Act 2000, referred to as a comprehensive Financial Services and Markets Act 2000 model.

Under this model, significant influence is delegated to the U.K.'s key regulators, offering more control over regulatory agenda-setting and greater agility and adaptability to respond to developing market trends.

Updates Since July 2023

Comparing the November 2023 draft of the POAT regulations with the near-final form version published in July 2023, the contents remain largely unchanged.[4]

However, there are a few technical and clarifying changes that are worth noting.

Regulation 15(2)(a) provides that designated activity rules made by the FCA under the POAT regulations may require the operator of a primary MTF that permits access to retail investors to require the issuer, or a person requesting admission to trading, to publish an MTF admission prospectus.

The July 2023 draft of the POAT regulations also included a person making an offer of transferable securities to the public among those who could be required to publish an MTF admission prospectus, but this has now been removed.

A new paragraph has been added to Regulation 15(4)(a), stating that the designated activity rules may not impose requirements as to the content of an MTF admission prospectus or a supplementary prospectus relating to an MTF admission prospectus.

Regulation 20 has been amended to make clear that the designated activity rules made under the POAT regulations may include provisions enabling:

- Requirements imposed by those rules to be dispensed with or modified by the FCA; and

- Publication of a decision to dispense with or modify a rule in a way appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected.

Regulations 34-37 grant the FCA authority to give directions to protect investors or advance the FCA's operational objectives; to suspend, restrict or prohibit an offer to the public or admission to trading on a regulated market; and to suspend or prohibit trading on a trading facility.

Where the FCA proposes to exercise any of the powers set out in Regulations 34-37, Regulation 38(9) grants a person to whom a notice is given under Regulation 38 the ability to refer the matter to the upper tribunal.

References in the POAT regulations to the Financial Services and Markets Act 2023 and EU-derived legislation relating to prospectuses have been removed.

Summary of Feedback

In early December 2023, the FCA published a summary of feedback received from market participants on the new public offers and admissions to trading regime.[5]

The feedback was in response to a series of initial engagement papers published earlier in 2023 covering topics such as admission to trading on a regulated market, further issuances of equity, protected forward-looking statements, nonequity securities, the public offer platform and primary MTFs.[6]

The FCA has not yet indicated its likely approach in response to the feedback, which will instead be set out in future consultation papers.

Timing

HM Treasury expressed its intention to legislate for the new regime by the end of 2023. The POAT regulations must be approved by the U.K. Parliament to become effective.

However, once they have been approved by Parliament, the regulations are not expected to enter into force until after the FCA has made the related designated activity rules through its rulemaking powers.

The FCA is aiming to consult on draft rules this summer, with a view to making final rules in the first half of 2025.

Conclusion

While the POAT regulations provide a relatively stable picture of the public offers and admissions to trading regulatory framework at a high level, much of the detail of the new regime has yet to be published.

The success of the new regime, measured against the government's objective of making U.K. capital markets more attractive to potential and existing issuers, depends largely on how the market perceives the technical details underpinning the POAT regulations in terms of simplifying capital-raising in the U.K., compared to other jurisdictions.

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[1] https://www.legislation.gov.uk/ukdsi/2023/9780348254235/pdfs/ukdsi_9780348254235_en.pdf.

[2] A multilateral trading facility is a type of trading venue defined in Regulation (EU) No 600/2014. It forms part of the laws of the UK as a multilateral system, operated by an investment firm or a market operator, bringing together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way that results in a contract.

[3] For more information on the new designated activity regime, please see: <https://www.davispolk.com/insights/client-update/financial-services-and-markets-act-2023-ushers-era-major-regulatory-change>.

[4] <https://www.davispolk.com/insights/client-update/new-uk-public-offers-and-admissions-trading-regime-overview>.

[5] <https://www.fca.org.uk/publication/feedback/engagement-feedback-new-public-offers-admissions-trading-regime.pdf>.

[6] The engagement papers can be accessed at: <https://www.fca.org.uk/publications/calls-input/admission-trading-regulated-market-engagement-paper-1>.