



# Primary Markets



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## UK prospectus regime: ICMA comments on near-final statutory instrument

On 21 August 2023, ICMA submitted technical comments to HM Treasury (HMT) on its [11 July near-final version](#) of a statutory instrument (SI) on the new UK prospectus regime. This follows ICMA's [14 February comments](#) on HMT's prior [1 December 2022 illustrative version](#) of the SI published as part of the UK's Edinburgh Reforms (which was reported on at page 35 of the [Second Quarter 2023 edition](#) of this Quarterly Report).

ICMA welcomed several changes effected by HMT from the illustrative SI to the near-final SI: (i) the simplification of the definition “relevant securities”; (ii) clarification that, for debt securities, the necessary information test’s reference to an issuer’s “prospectus” is to be read as a reference to “creditworthiness” (although ICMA queried the reasoning for some seemingly divergent treatment for bonds convertible into shares/equivalents issued by an entity outside the bond issuer’s group); and (iii) the provision that the liability alleviation relating to “protected forward-looking statements” will also apply to persons (such as bond underwriters) who are not formally responsible for a prospectus but who might otherwise face such liability. ICMA however queried the reasoning for some seemingly divergent treatment for bonds convertible into shares/equivalents issued by an entity outside the bond issuer’s group.

ICMA suggested a few discrete changes to the near-final SI: (i) some clarification in the grandfathering provision; (ii) the correction of two apparent typographic errors; and notably (iii) a correction in the definition of “non-equity securities”. The latter suggestion is designed to avoid some definitional circularity and to reference a wider underlying concept of “transferable securities” compared with the narrower “relevant securities” used in the near-final SI. The wider definition is more appropriate in the regulated market/MTF admission context because it is subject to further regulatory provision by the Financial Conduct Authority (FCA). The narrower underlying concept (“relevant securities”) is used in the public offer context, which is being regulated in the SI itself. ICMA also suggested that HMT engage with the

London Stock Exchange regarding any additional challenges for its International Securities Market arising from the SI’s primary MTF qualified investor condition.

ICMA highlighted several points of ongoing ICMA engagement with the FCA’s rulemaking work consequent to the SI (see the next article in this Quarterly Report relating to the FCA engagement papers): (i) applying the “advertisement” definition to address challenges arising from a previous change of underlying reference (from “communication” to “announcement”); (ii) limiting application of any MTF admission advertisement rules to the context of retail MTFs only; (iii) voluntary prospectuses being “approved” rather than “validated” (ICMA queried whether HMT intended the “validation” provision to relate to such prospectuses or to another document); and (iv) exempting money market instruments from FCA admission prospectus requirements.

ICMA lastly noted its presumption that HMT will provide appropriate advance notice of the SI coming into force.

ICMA will continue to liaise with its members as the SI is finalised. In this respect, HMT’s [policy note](#) accompanying the near-final SI referenced HMT’s Smarter Financial Services Regulatory [delivery plan](#) that states (at page 10) an intention to lay the SI before the UK’s Parliament before the end of the year. ICMA’s current expectation is that the SI will not come into force before 2025 (bearing in mind also the FCA’s rulemaking work consequent to the SI).



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## UK prospectus regime: ICMA response to FCA engagement papers

On 29 September 2023, ICMA submitted a response to the FCA on the engagement papers that it had published in May and July 2023 on the new UK prospectus regime. HM Treasury had published a near final version on 11 July of a draft statutory instrument (SI), [The Financial Services and Markets Public Offers and Admissions to Trading Regulations 2023 \(11 July near-final version\)](#), which