

UK Edinburgh Reforms: prospectus regime

On 14 February (and following prior reporting in the [First Quarter 2023 edition](#) of this Quarterly Report in the context of the UK's [Edinburgh Reforms announcement](#)), ICMA published [comments](#) on the UK Treasury's draft statutory instrument (SI) [Financial Services and Markets Act 2000 \(Public Offers and Admissions to Trading\) Regulations 2023](#) (8th draft 01/12/22).

ICMA generally noted the intention to keep the *status quo* in many areas in relation to the existing UK prospectus regime and that the SI sets out *limited detail* regarding the new UK prospectus regime, with much being left to FCA or primary MTF operator rules and ICMA consequently unable to comment in depth (but listing areas that the FCA would be expected to then address: see further below).

ICMA queried the new regime's *scope* relating to "relevant securities", being distinct from the separate concept of "transferable securities" and potentially inappropriately catching instruments other than securities – such as OTC derivatives, loans and securities financing transactions. ICMA also queried short-term money market instruments being carved out of only one, but not the other, of these two concepts (expecting this to be addressed in the FCA rules as noted below) and as well as an exclusion for issues by qualifying bodies not covering the use of common SPV structures (even though the credit exposure is the same).

ICMA expressed disappointment that the *necessary information test* (NIT) for bonds covers the issuer's prospects including its creditworthiness, rather than just the issuer's creditworthiness (instead of its prospects) as ICMA had previously requested – thus worsening the NIT's clarity rather than improving it. ICMA requested that the *status quo* remain if it is not possible to line up with ICMA's prior request. ICMA also queried the NIT covering underlying assets in the context of asset-backed securities and structured products, which seems too blunt given the range of different products and the NIT anticipating that the information will vary depending on context – with specifics then best left to be addressed in FCA rules.

ICMA presumed that *withdrawal rights* will continue to follow publication of a supplement, but also requested it be made clear that such rights do not arise following "admission-only" supplements.

In terms of *exemptions*, ICMA queried (i) the total consideration exemption having a £100,000 threshold while the minimum denomination exemption has a £50,000 threshold, (ii) application of the public offer exemption for issues "conditional" on regulated market or primary MTF admission (bearing in mind that retail offers typically start some time prior to admission) and (iii) primary MTF admission in a retail context (bearing in mind that bond primary MTFs such as the London Stock Exchange's Professional Securities Market and International Securities Market have been institutional-only markets).

ICMA noted the new *forward-looking statement provisions* could be useful (subject to the FCA's detailed rules), though issuers in cross-border transactions will also need to consider potential liability in other jurisdictions. ICMA also queried underwriters not being covered by the provisions.

In terms of areas expected to be addressed by *FCA (or primary MTF) rules*, ICMA notably cited continuity in terms of (i) existing admission to trading exemptions (including re. money market instruments as noted above), (ii) wholesale disclosure standards, (iii) retail offers preceding admission and (iv) the existing Prospectus Regulation's Article 18 omission provisions. ICMA's comments also picked up on various other aspects in passing.

ICMA will continue its engagement on the UK's replacement of the prospectus regime, notably in terms of anticipated subsidiary work by the FCA.



Contact: Ruari Ewing
ruari.ewing@icmagroup.org
