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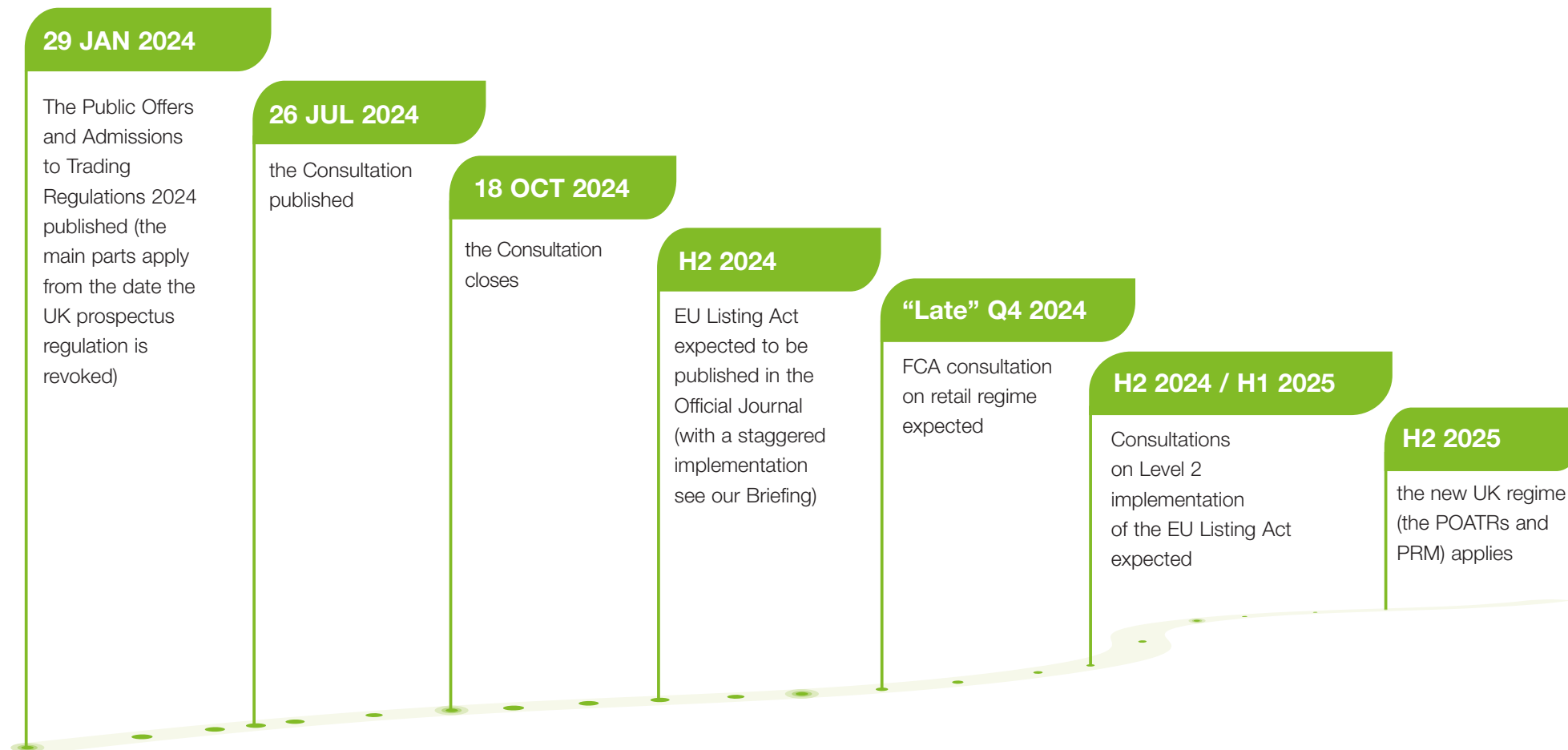
**THE NEW UK PROSPECTUS REGIME –
FILLING IN THE BLANKS**

AUGUST 2024

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Timeline:



Forward incorporation of financials by reference (PRM 5)

- During the life of a base prospectus, an issuer will be able to update financial disclosure by incorporating its future annual and interim financial information, as well as audit reports and financial statements.
- This concept mirrors the EU Listing Act development on “future incorporation” of financials (and, in fact, harks back to some pre-2005 prospectus regimes).

Practical implications

- Forward incorporation is designed to remove the need for an issuer to prepare a supplementary prospectus, although one may be produced at an issuer’s discretion. Additionally, in the absence of a supplementary prospectus, forward incorporation will not trigger withdrawal rights (see below).
- The FCA’s aim to streamline and simplify the process for issuers to update disclosure is broadly welcomed, but associated drafting changes to documentation will need to be considered to encompass the revised financial statements. (Examples include: “evergreen” language to refresh relevant prospectus statements, and suitable associated representations in contractual documentation.)

Snapshot compare of new and existing regimes

	Draft PRM	Current UK regime	EU regime (including Listing Act proposals)
Forward incorporation by reference	<p>✓ Permitted.</p>	<p>✗ Not permitted.</p>	<p>✗ Not permitted under current regime.</p> <p>✓ Will be permitted on introduction of Listing Act.</p>

Supplementary prospectuses and investor withdrawal rights (PRM 10)

- Many supplementary prospectus obligations set out in the PRM rules are familiar:
 - The general “significant new factor, material mistake, or material inaccuracy” test governing when an issuer will be required to publish a supplementary prospectus will remain, although the new rules introduce flexibility for certain non-material changes (see *Supplementary prospectuses, non-material information and new securities* below).
 - Additionally, as under the current UK and EU prospectus regimes, the FCA will mandate certain trigger events which will require a supplementary prospectus to be published. PRM 10.1.18 contains a list of trigger events, largely carried over from the current regime.
 - Relevant timing for publication of a supplementary prospectus is also familiar – namely, an event which arises or is noted between prospectus approval and the closing of the offer period or the time when trading begins, whichever occurs later.
 - Investor withdrawal rights will also continue to apply when a supplementary prospectus is published: within 2 working days in the case of the regulated market (PRM 10.1.10); within 7 working days in the case of publication of an MTF admission prospectus (MAR 5ZA.3.3).
- Supplementary prospectus requirements will also be applied to UK MTFs and MTF admission prospectuses – although not to QI-only MTFs, which will have discretion as to when and whether a supplementary prospectus will be required. Currently, the London ISM Rulebook requirements for a supplementary prospectus are similar to the regulated market rules.
- The investor withdrawal right provisions apply to both regulated markets and MTF markets (both non-QI and QI-only MTFs).

Practical implications and points for further FCA discussion

- Investor withdrawal rights in the PRM apply on the same basis as under the current regime - namely, the trigger is whether a supplementary prospectus is published. The rationale is that a supplementary prospectus is likely to contain significant information for an investor to assess.
- Currently, however, and notwithstanding the technical UK PR requirements, market practice is that publication of a “wholesale” debt supplementary prospectus is an exception which does not trigger withdrawal rights. This informal market practice is not reflected in the Consultation. Clarity on withdrawal rights and supplementary prospectuses relating to wholesale debt prospectuses under the POATR and PRM (where securities with a denomination of (Sterling) £50,000 will constitute “wholesale” securities) would be helpful. This was requested by industry groups in feedback to Engagement Papers and will therefore be a point for further discussion with the FCA. That said, incorporation of forward financial information no longer requires a supplementary prospectus and will not trigger investor withdrawal rights in the absence of a supplementary prospectus. Additionally, for a QI-only MTF, if the MTF rules do not require a supplementary prospectus, there will be no ensuing investor withdrawal rights.
- A further point for discussion with the FCA will be how the supplementary prospectus provisions will apply in practice under the new POATR regime. By using the same language to determine when a supplementary prospectus must be published (including references to the “offer period” and the time when trading begins), the triggers and timetables governing publication of a supplementary prospectus seem identical to the current regime. But there may be nuances and points to iron out during the consultation process, given the new landscape created by the POATR. By way of reminder, the POATR introduces a prohibition on making an offer of securities to the public, other than pursuant to certain exceptions and exemptions – and one of the new exceptions is an offer of securities where that offer is conditional on securities being admitted to trading. It is unclear what will constitute the “offer period” in this context, especially since the phrase “offer period” is italicised in the draft PRM rules but there is currently no definition in the POATR or Consultation.

Snapshot compare of new and existing regimes

	Draft PRM (and MAR Sourcebook for MTFs)	Current UK regime	EU regime (including Listing Act proposals)
Supplementary prospectuses – significant factor / specified events	✓	✓	✓
Investor withdrawal rights	<p>✓</p> <p>When a supplementary prospectus is published.</p> <p>Note: A supplementary prospectus is optional where an issuer opts for forward incorporation by reference; there will not be investor withdrawal rights in the absence of a supplementary prospectus.</p> <p>In the case of a QI-only MTF, investor withdrawal rights will depend on whether the QI-only MTF requires a supplementary prospectus to be published.</p>	<p>✓</p> <p>When a supplementary prospectus is published.</p> <p>However, generally viewed as not applying following publication of a wholesale supplementary prospectus, not with standing technical UK PR requirements.</p>	<p>✓</p> <p>When a supplementary prospectus is published.</p> <p>However, generally viewed as not applying following publication of a wholesale supplementary prospectus, notwithstanding technical <u>EU PR requirements</u>. <u>(See ESMA's 2018 Report on the Prospectus Regulation RTS.)</u></p>
Withdrawal period	2 working days (regulated market); 7 working days (MTF)	2 working days	2 working days. To be extended to 3 working days under the Listing Act.

Supplementary prospectuses, non-material information and new securities (PRM 10.1.4 – 10.1.7)

- The PRM widens the scope of when a supplementary prospectus can be used.
- Issuers with base prospectuses can use a supplementary prospectus to amend these with non-material information (i.e. where there is no significant new factor, material mistake or material inaccuracy), within certain constraints.
- Significantly, this also allows new securities to be added to the base prospectus (the Consultation specifically notes this could be used to add green bonds).
- BUT certain conditions apply:
 - there can be no open offer or securities with a pending application for admission of securities to a regulated market.
 - securities issued off the base prospectus must already be (and continue to be) admitted to listing on the Official List.
 - amendments can only be made to securities note information.
 - no changes can be made to registration statement information or information relating to a guarantee or guarantor.
- Additionally, changes via a supplementary prospectus to terms and conditions of securities that may be issued are restricted unless:
EITHER, the securities remain “manifestly the same”;
OR, where the securities cannot be considered “manifestly the same”:
 - the new securities are to be admitted to the “same listing category” as those already admitted to the Official List;
 - the new securities are not asset backed or derivative securities; and
 - the supplementary prospectus must include the full information as required by the relevant securities note annex.
- As this type of supplementary prospectus for non-material information and new securities cannot be used when there is an open offer or pending application for admission to trading on a regulated market, investor withdrawal rights will not apply.

Practical considerations and points for further FCA discussion

- This change in approach is welcome and addresses the concerns issuers have with the limits on using supplementary prospectuses under the current UK and EU regimes. It will also become a clear point of distinction with the EU regime when the Listing Act changes are implemented.
- Clarification on what is meant by the “same listing category” would be useful and, as under the current regime, making use of the “manifestly the same” criteria is challenging in practice.
- A further improvement to the regime would be also to allow for non-material changes to be made to the registration statement information such as change in registered office.

Snapshot compare of new and current regimes

	Draft PRM	Current UK regime	EU regime (including Listing Act proposals)
Supplementing base prospectus with non-material information	✓ Subject to conditions	✗	✗
Adding new securities to base prospectus	✓ Subject to conditions	✗ See also the FCA Technical Note 605.4	✗ Will be explicitly prohibited by Listing Act

Sustainability disclosures, Use of Proceeds (UoP) bonds and SLBs (PRM 4.7)

- For all debt issuers, the rule regarding prospectus disclosure of sustainable information remains the same. Namely, disclosure is required of all “necessary information” (PRM 2.1.1) and accordingly any sustainability information that is necessary information must be included. The [FCA Technical Note 801.2](#) provides existing guidance on this point. The FCA is intending to update this Technical Note and will be consulting on it in due course.
- The PRM does not introduce any new general corporate sustainability disclosure rules for debt issuers. However, equity issuers will be subject to the new disclosure rules for climate-related information in PRM 4.6.
- For UoP bonds and SLBs the PRM introduces a new rule that a prospectus must state that the securities are (i) marketed as “green”, “social”, “sustainable” or “sustainability-linked” or (ii) issued under a framework (although for clarification the framework does not need to be disclosed in the prospectus).
- For UoP bonds and SLBs the PRM also introduces a “voluntary” set of disclosures that support the requirements under the necessary information test. These voluntary disclosures are broadly based off the ICMA Principles and “4 Pillars” style disclosure.
 - *common voluntary disclosures for both UoP and SLBs*: details of any framework, where it is available, what principles apply in preparing the framework and details of any external review in assessing the framework.
 - *UoP voluntary disclosures*: details on the projects (including refinancings), project evaluation, selection process, external opinions, alignment with taxonomies, management of proceeds and post-issuance performance reporting.
 - *SLB voluntary disclosures*: details of KPIs (including rationale for selection, how calculated, verifiable, how benchmarked), details of SPTs (including ambition in light of issuer strategy and trajectory, how they will be achieved and any uncertainties) and explanation of how the financial consequences (e.g. the step up) provides an adequate incentive.
- The FCA confirms in the Consultation that there will not be a UK green bond standard at this time.

Practical considerations and points for further FCA discussion

- It is a welcome confirmation that there will be no general corporate sustainability disclosures required for debt issuers but close consideration of the Technical Note consultation will be needed.
- While it is helpful that the majority of the UoP and SLB disclosures are “voluntary” our expectation is that most issuers will seek to include them as a matter of best practice and investor expectation.
- While the FCA’s stated intention is that these voluntary disclosures “should generally include the kind of information that is normally contemplated under reasonably detailed bond frameworks” and are “aligned with best international practices (such as the ICMA Principles) and stakeholder expectations” this may not be the case in practice. The specified disclosures will require careful consideration by market participants in particular the disclosures on SLBs (e.g. on the ambition of SPTs and adequacy of incentives) look more extensive than current prospectus disclosure. This may require further discussions with the FCA.

Snapshot compare of new and current regimes

	Draft PRM	Current UK regime	EU regime (including Listing Act proposals)
Climate-related disclosures for debt prospectuses	✗	✗	✗
Necessary information	✓	✓ (FCA Technical Note 801.2)	✓ (see also ESMA public statement July 2023)
Disclosure if marketed as sustainable OR issued under a framework	✓	✗ (But note FCA PMB 41)	✗ (But note ESMA public statement)
Disclosures on sustainability framework	✓ (voluntary)	✗ (But note FCA PMB 41)	✗ (But note ESMA public statement)
UoP bonds disclosures	✓ (voluntary)	✗ (But note FCA PMB 41)	✗ (But note ESMA public statement) Listing Act anticipates ESG annex disclosures but yet to be developed.
SLB disclosures	✓ (voluntary)	✗ (But note FCA PMB 41)	✗ (But note ESMA statement). Listing Act anticipates ESG annex disclosures but yet to be developed.

Protected Forward Looking Statements (PFLS) (PRM 8)

- The concept of PFLS with a lower liability standard for issuers was introduced in the POATRs and is expanded in the PRM. As set out in the POATRs liability will not attach in respect of PFLS unless there is knowledge or recklessness as to whether something was untrue or misleading, or knowledge that an omission was dishonest concealment of a material fact.
- The PFLS regime applies to both regulated market and MTF prospectuses.
- The PRM provides a definition of what a forward-looking statement could be for example, a statement containing a projection, a forecast; a statement giving guidance; a statement of opinion as to future events or a statement of intention.
- For a forward-looking statement to be a PFLS it must:
 - contain financial information OR operational information (the PRM set out detailed criteria for what is considered financial information and operation information)
 - only be verifiable for accuracy or truth after the date of the statement
 - include an estimate of when the circumstances relating to the statement will occur
 - be information that a reasonable investor would use for its investment decision
 - include the necessary accompanying statements
- Generally, items that are required by the disclosure annexes (or the rules of the MTF operator) cannot be PFLS, however there are a number of explicit exclusions including profit forecasts (but not profit estimates) and climate-related information required for equity securities (relating to transition plans and assessments of climate-related risks and opportunities) (PRM 8.1.4).
- The PRM requires two sets of accompanying statements in relation to a PFLS. A general statement which appears once and a content specific statement which appears next to each PFLS. The PRM prescribes the content of these statements.

Practical considerations

- This change is intended to expand the range of useful information disclosed to investors however given the definitions of what information can be considered a PFLS it may not be that easy for issuers to align any future information within the PRM criteria.
- The FCA notes in the Consultation that it would expect updates regarding any PFLS to be published in accordance with the market abuse regime. This may require issuers to keep track of developments relating to PFLS included in prospectuses, so that information about such developments is published promptly.

Snapshot compare of new and current regimes

	Draft PRM	Current UK regime	EU regime (including Listing Act proposals)
Protected Forward Looking Statements	✓ Subject to conditions	✗	✗

Retail securities and summaries

- Conceptually, a “public offer” itself no longer requires the publication of a prospectus, as all offers to public are prohibited (subject to a list of exemptions in the POATR including an admission to trading on a regulated market or MTF, a QI only offer or an offer of securities with a minimum denomination of £50,000). As a result, several principles and disclosure requirements which were anchored to the concept of a “public offer” have been removed.
- Separation of wholesale and retail disclosure requirements retained. Summaries will continue to be required for listings on regulated market unless (i) denomination of at least £50,000 or (ii) admission to trading is limited to QI segment.
- Summaries remain for retail securities but the content requirements are relaxed:
 - cross referencing is permitted and incorporation by reference may be possible (the Consultation refers to this possibility but it is not reflected in the draft PRM).
 - page limit is increased from 7 to 10 pages.
 - no limit on the maximum number of risk factors.
 - no prescribed financial line items which mandatorily need to be included in the summaries.
- Summaries may now need to include a reason for the proposed admission to trading on a regulated market.
- If a summary is required to be updated following the publication of a supplementary prospectus, the PRM does not currently require the new information to be integrated in the summary in a way that enables investors to easily identify the changes.

Practical considerations

- The implication is that the retail cascade language is no longer required. Unless seeking to rely on one of the other exemptions, any person can offer retail securities using an issuer’s prospectus prepared in connection with its admission to trading. FCA will need to clarify whether an issuer can limit the number of third parties which can use a prospectus in such circumstances.
- As mentioned under Supplementary prospectuses and investor withdrawal rights, there is some ambiguity regarding the trigger points for supplementary prospectuses and withdrawal rights where these were previously linked to offer periods and further clarifications may be necessary.

Snapshot compare of new and current regimes

	Draft PRM	Current UK regime	EU regime (including Listing Act proposals)
Retail cascade language	<p>✗</p> <p>(FCA to confirm if issuer can limit the use of the prospectus on a voluntary basis)</p>	<p>✓</p>	<p>✓</p>

Further points of interest

Draft PRM

Retail and wholesale disclosure

- Separate retail and wholesale disclosure standards remain. Initial discussions in 2023 suggested that the FCA would adopt a single disclosure standard.
- Retail securities are those not admitted only to QI-only segment or which do not have minimum denominations of £50k.

Exempt securities and other exemptions

- Key changes to the existing regime:
- Fungible securities threshold increased to 75%.
 - Certain Islamic finance issuance to be brought within scope of the sovereign guarantor exemption
 - Non-profit organisations brought within scope of the PRM.
 - Removal of the €8 million threshold exemption
 - Otherwise the PRM exemptions align with the current UK regime

Public international bodies exemption

- *Public international bodies* are exempt from the application of the PRM.
- Definition of public international bodies will be expanded to cover legal entities of “public nature” established by an international treaty between sovereign states of which one or more states are members. The scope of “public nature” is currently not clear.

Voluntary prospectuses

- Exempt issuers can voluntarily prepare a prospectus but full rules apply to such prospectuses i.e. no lighter disclosure for sovereigns.
- This is the same as the current UK regime.
- Note the EU prospectus regime has a specific disclosure annex for third country sovereign disclosure.

Advertisement regime

- The advertisement requirements remain the same as the current regime but are expanded to include MTFs.

Derivative securities (POATR and PRM 4.5.7)

- Regulations 23(4) and (5) of the POATR require non-equity securities with payment or delivery obligations linked to assets to include the necessary information which is material to an investor for making an informed assessment of the underlying assets, including (i) the creditworthiness of the obligor of the underlying assets, or, (ii) for shares/shares-equivalents as underlying assets, the prospects of the issuer of the underlying assets.
- As part of the general requirements above, the PRM introduces a new requirement for prospectuses to include risk factors relating to any underlying assets to the extent they are relevant to the creditworthiness of the obligor of the underlying assets or where the underlying assets are shares /securities equivalent to shares to the prospects of the issuer of such underlying assets

Equivalence for non-UK approved prospectuses

- There are no conclusions on this (sometimes referred to as “regulatory deference”) and it remains subject to further work by HMT.

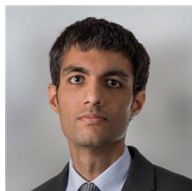
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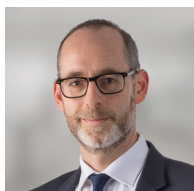
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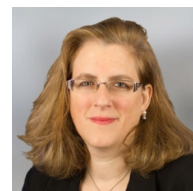
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