



HM Treasury

# The Public Offers and Admissions to Trading Regulations 2023

## **Policy Note**

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July 2023





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# Chapter 1

## Context

1.1 This statutory instrument (SI) is part of HM Treasury's programme to deliver a Smarter Regulatory Framework (SRF) for financial services which is tailored to the UK, as set out in the government's policy statement.<sup>1</sup> Further detail on the government's approach to delivering the programme can be found in the SRF delivery plan.<sup>2</sup>

1.2 The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law relating to financial services. This enables the government to deliver a smarter regulatory framework for financial services. Retained EU law will be repealed and replaced with rules set by our independent and expert regulators, operating within a framework set by government and Parliament.

1.3 On 9 December 2022, the government published an illustrative SI on the Prospectus Regime as part of the Edinburgh Reforms<sup>3</sup> in order to demonstrate to stakeholders how the powers in FSMA 2023 would be used to deliver this reform. The government is publishing a near-final version of this SI, alongside an explanatory policy note. The government welcomes any technical comments on the draft SI by **21 August 2023**.

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<sup>1</sup> [Building a Smarter Financial Services Framework for the UK](#).

<sup>2</sup> [Building a Smarter Financial Services Regulatory Framework: Delivery Plan](#).

<sup>3</sup> [Draft Statutory Instrument: Financial Services and Markets Act 2000 \(Public Offers and Admissions to Trading\) Regulations 2023](#). See also the [Public Offers and Admissions to Trading Regime: Illustrative Statutory Instrument Policy Note](#).

# Chapter 2

## Purpose

**2.1** This note sets out the policy background for the new Public Offers and Admissions to Trading Regime; a summary of the policy intent and how the SI will achieve this; stakeholders likely to be impacted; and how to comment on whether the SI achieves the government's desired outcomes as set out in this note and in related publications such as the outcome of the UK Prospectus Regime Review.<sup>4</sup>

**2.2** This publication is the near-final version of this SI, which is being published for technical checks, such as any significant errors or oversights in the legal drafting which would mean that the SI would not achieve the desired outcomes explained in this note or that would lead to significant unintended consequences.

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<sup>4</sup> [UK Prospectus Regime Review Consultation Outcome.](#)



# Chapter 3

## Policy background

### **What did any law do before the changes to be made by this instrument?**

**3.1** The UK's Prospectus Regime derives from the EU Prospectus Regulation, which became retained EU law following the UK's departure from the EU. It regulates two separate but overlapping activities: public offers of securities and admissions to trading on regulated markets.

**3.2** Under the Prospectus Regulation, securities (i.e. tradeable financial assets such as shares and bonds) are 'admitted to trading' when, for example, they are listed on a 'regulated market', such as a stock market, and can thereby be bought and sold. The concept of being 'admitted to trading' is therefore used in relation to the rules and processes relating to traditional capital raising on stock exchanges.

**3.3** A 'public offer' of securities is a broader term used in the Prospectus Regulation to refer to any situation in which an organisation's securities are offered for sale, including to 'retail investors' (i.e. the general public). This includes traditional capital raising (through 'admissions to trading', above) as well as the raising of capital from the public outside of regulated markets, and often on a much smaller scale; for example, activity that occurs in the crowdfunding sector.

**3.4** The Prospectus Regulation requires that, unless an exemption applies, a prospectus must be published where there is a public offer of securities or where there is an admission to trading on a regulated market.

**3.5** A prospectus is a disclosure document which a company publishes when seeking admission to trading on a regulated market or in connection with an offer of its securities. A prospectus contains information for the benefit of prospective investors, such as the company's finances, shareholding structure, and the details of the securities being sold, which they can use to make an informed decision on whether to invest.

### **Lord Hill's review of the UK's listing regime**

**3.6** In November 2020, the government asked Lord Hill of Oareford to lead an independent review of the UK listing regime. Lord Hill

reported in March 2021,<sup>5</sup> recommending, among other things, that HM Treasury should conduct a ‘fundamental review’ of the UK’s Prospectus Regime. He concluded that the current regime is duplicative and poorly designed, making the public capital raising process inefficient and disincentivising the use of public markets. He also observed that it sets out detailed and prescriptive rules in primary legislation, making it inflexible and unresponsive to changing market conditions.

**3.7** On 1 July 2021, the government published a consultation on the UK’s Prospectus Regime,<sup>6</sup> which addressed Lord Hill’s recommendations and proposed repealing and replacing the EU Prospectus Regulation with an updated regime designed for UK markets. This signalled the government’s intent to establish a reformed Prospectus Regime and Public Offers Regime.

**3.8** In the outcome of the review,<sup>7</sup> HM Treasury confirmed its intention to move forward with these proposals largely as consulted. The government committed to replacing the regime currently contained in the Prospectus Regulation with a new regime intended to meet the following key objectives:

1. to facilitate wider participation in the ownership of public companies and remove the disincentives that currently exist for those companies to issue securities to wider groups of investors;
2. to improve the efficiency of public capital-raising by simplifying regulation and removing the duplications that currently exist in the UK Prospectus Regime;
3. to improve the quality of information which investors receive under the Prospectus Regime; and
4. to make the regulation in this area more agile and dynamic, capable of being quickly adapted and updated as times change.

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<sup>5</sup> [UK Listing Review](#).

<sup>6</sup> [UK Prospectus Regime Review Consultation](#).

<sup>7</sup> [UK Prospectus Regime Review Consultation Outcome](#).

# Chapter 4

## Summary of statutory instrument

4.1 This SI replaces retained EU law related to the Prospectus Regime and creates a new regulatory framework for public offers and admissions to trading.

### What does the instrument do?

4.2 As committed to in the outcome of the Prospectus Regime Review, this instrument makes regulation in this area more agile and effective; facilitates wider participation in the ownership of public companies; and delegates a greater degree of responsibility for the regime to the Financial Conduct Authority (FCA).

4.3 This instrument will deliver the following reforms when it replaces the existing Prospectus Regulation:

- **A new public offers architecture.** Under the new regime, there will be a general prohibition on public offers of securities. There will then be a number of exceptions from this prohibition. The principal exceptions will apply to offers where securities are admitted to trading on UK regulated markets or multilateral trading facilities (MTFs), and a new regime for public offers that do not take place on such markets. More detail is given on these below.
- **Admissions to trading on regulated markets.** The FCA will be given enhanced rulemaking responsibilities regarding admissions of securities to trading on UK regulated markets. This will allow the FCA to specify when a prospectus is required and what it should contain, and to address the manner and timing of validation and publication. FCA rulemaking responsibilities will also cover other matters that currently sit in the Prospectus Regulation.
- **Admissions to trading on MTFs operating primary markets.** Multilateral trading facilities, also known as 'junior markets', are trading systems that provide investors with an alternative to stock markets. These have a different regulatory model from regulated markets, as MTFs are operated by investment firms or market operators who largely make their own rules, with oversight from the FCA. For instance, the London Stock

Exchange's main market is a regulated market, but their growth market aimed at smaller companies, AIM, is an MTF. The FCA will have rulemaking powers over 'primary MTFs' (i.e. MTFs which operate as primary markets and allow companies to issue new capital rather than only trade existing instruments). These powers will allow the FCA to require the issuance of an 'MTF admission prospectus' by those admitted to trading on primary MTFs that are open to retail investors (i.e. non-professional investors). These MTF admission prospectuses will be defined in the instrument and carry certain protections for both investors and issuers that are equivalent to those that attach to a prospectus. In addition to the FCA powers, primary MTF operators will be able to require the publication of an MTF admission prospectus in relation to the admission of securities to trading on their markets. Primary MTF operators will retain broad discretion over MTF admission prospectuses to set rules on the content and approval or validation mechanism for these documents. All MTF admission prospectuses will be subject to the statutory compensation remedy applicable to prospectuses. This implements the conclusion of the Prospectus Regime Review that certain MTF admission documents be treated as a type of prospectus.

- **Forward-looking statements.** Lord Hill identified 'forward-looking information' – statements that predict the future performance of a company, such as projections of future profitability – as particularly useful information for investors to have at their disposal when making investment decisions. He argued that the liability provisions in the existing Prospectus Regime deter companies from including such information in the prospectuses they publish. The reformed regime will remove this deterrent by establishing a different liability threshold (based on fraud or recklessness) for certain categories of forward-looking statements in prospectuses or MTF admission prospectuses, with the FCA specifying the categories of forward-looking information in scope. This SI retains the negligence-based threshold to determine liability for false, misleading, or omitted information that is not forward-looking information.
- **Offers of securities not admitted to trading.** The new regime will continue to allow companies to offer securities to the public without having them admitted to a securities market. The previous regime required offers to the public of €8 million or above to have a prospectus: in practice, this acted as a cap on such capital raising. The government is changing the requirements for such offers, making it easier for companies to raise large amounts of capital whilst maintaining investor protection. A prospectus will no longer be required for any such offers. Instead, offers of securities above a £5 million threshold

will need to be made through a public offer platform, to be achieved through the creation of a new regulated activity covering this, unless another exemption applies. This is explained in more detail below.

- **A revised scope of the Public Offers Regime.** The government is bringing certain kinds of non-transferable securities within the scope of the new Public Offers Regime, where these may cause harm to investors if their offer is not subject to appropriate regulation. In practice, this approach will mean that offers of certain non-transferable securities above the £5 million threshold will need to be made through a public offer platform unless another exemption applies. This is explained in more detail below.

4.4 The government intends to bring forward a further instrument in due course that will make consequential amendments to other existing legislation to take account of the changes to the Prospectus Regime made by this SI.

### **What will change in comparison to the previous retained EU law (REUL) provisions?**

4.5 As stated above, Lord Hill recommended a ‘fundamental review’ of the UK’s Prospectus Regime. As a result, this SI forms the first part of the fundamental overhaul of the Prospectus Regime, to be followed by detailed FCA rules, which together will create the new regime. The key elements that provide the new framework have been outlined above; further information on how this SI compares with the current regime is given below.

4.6 In addition, the government is reforming the requirements for offers of securities made to the public without admission to a securities market, making it easier for companies to raise large amounts of capital whilst maintaining investor protection. The government will not retain the requirement in the Prospectus Regulation that companies offering securities to the public of a value at or over €8 million must publish a prospectus. Following these reforms, there will be no requirement for a prospectus to be produced for offers to the public made without an admission to a securities market.

4.7 This SI instead establishes a new regime for public offers of above £5 million, which anticipates a crowdfunding-centric model for the facilitation of larger public offers. This SI requires that companies will be required to use a ‘public offer platform’ where the total value of the offer exceeds £5 million (or where cumulative offers in a 12-month period by the same issuer exceed £5 million), unless the offer falls within one of the other exemptions under the regime (for example there is an exemption for offers made only to Qualified Investors, such as sophisticated institutional investors). ‘Public offer platforms’ (such as crowdfunding platforms) will be authorised and supervised by the FCA and will be subject to FCA rules. It is expected that these will cover

matters such as due diligence and disclosure to investors. In order to facilitate these reforms, this SI creates a new regulated activity of operating a public offer platform.

**4.8** The existing obligations under the Prospectus Regulation apply to offers of ‘transferable’ securities. This SI expands the scope of securities to which the new Public Offers and Admissions to Trading Regime will apply, bringing into scope certain kinds of ‘non-transferable’ securities, such as ‘minibonds’. This will deliver a recommendation of the Rt Hon. Dame Elizabeth Gloster’s report into the FCA’s regulation of London Capital & Finance PLC.<sup>8</sup> In practice, this approach means that offers of such securities above £5 million will need to be made through a public offer platform, unless another exemption applies. This change is achieved in regulation 5 of the SI by defining ‘relevant securities’ as ‘transferable securities’ as defined in the current regime (so that securities that are currently in scope of the current regime continue to be so in the new regime) and also securities as defined under article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO), so that those debt securities that are not already in scope, because they are not transferable securities, are brought within scope.

**4.9** Some exemptions from the current regime will be retained (see below), while others will be amended or deleted as they are no longer necessary. Changes to exemptions in the current Prospectus Regulation include the following:

- This SI lowers the threshold for an offer of securities denominated in amounts over €100,000 to £50,000 to minimise disruption to UK institutional investor access to international wholesale bond markets.
- This SI deletes the exemption for offers made in connection with divisions, since shareholders in dividing companies are allotted, rather than offered shares in the two new companies, and this is therefore not considered a public offer capable of acceptance and is outside the scope of this regime.
- The SI deletes the exemption for non-equity securities issued in a continuous or repeated manner by a credit institution where the total aggregated consideration in the UK for the securities offered is less than €75 million per credit institution calculated over a period of 12 months. The government considers this a separate issue from those of the Prospectus Regime and it will henceforth be addressed by the FCA and market operator rules.

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<sup>8</sup> [Regulation of Non-Transferable Debt Securities \(Mini-bonds\): A Consultation](#), and [Regulation of Non-Transferable Debt Securities \(Mini-bonds\): Consultation Response](#).

## **What will not change in comparison to the previous REUL provisions?**

**4.10** These reforms constitute a ‘fundamental overhaul’ of the UK’s Prospectus Regime, in which the current Prospectus Regulation will be repealed and replaced with an entirely new regime. However, there are some principles and aspects retained from the Prospectus Regulation in this SI.

**4.11** This SI retains the basic concept of a prospectus in legislation and defines what a prospectus is in regulation 21.

**4.12** All offerings of at least £1 million excepted from the public offer prohibition will continue to be subject to an ‘equality of information’ requirement where information disclosed to one investor must be disclosed to all (set out in regulation 13).

**4.13** A ‘necessary information test’ is retained to ensure that an overall standard of preparation for a prospectus remains in statute (regulation 23). All prospectuses will have to meet this core standard.

**4.14** Many of the exemptions from the requirement to publish a prospectus that exist in article 1(4) of the Prospectus Regulation (for example, for offers to ‘qualified investors’ and where the offer is made to fewer than 150 persons) will remain part of the new regime as kinds of offer that are exceptions to the public offer prohibition.

**4.15** The new regime will continue to allow companies to offer securities to the public without having them admitted to a securities market.

## **What are the firm facing impacts going to be?**

**4.16** The repeal of retained EU law and its replacement with a new framework that is tailored to the UK will benefit firms in several ways. In particular, firms will benefit by replacing detailed EU provisions which were designed to apply across the EU with rules set by the UK’s expert and independent regulators tailored to the UK. Beyond this, replacing retained EU law will enable firms to benefit from a streamlined and accessible legislative framework for financial services, where rules adapt over time as in response to changing practices in an agile manner. There are particular impacts for individual firms, which are listed below.

**4.17 Trading venues:** this SI gives the FCA additional rulemaking powers over both regulated markets and primary MTFs, as trading venues that facilitate public offers. Our reforms will principally impact three of the investment exchanges that are recognised by the FCA: the London Stock Exchange (both the main market and growth market); the Aquis Stock Exchange (both the main market and growth market); and the International Property Securities Exchange (for which only the main market will be affected, given that the growth market is purely for institutional investors and so MTF admission prospectuses will not be mandated by FCA rules).

**4.18 Issuers and investors on trading venues:** new issuers on these venues will benefit from changes being made to make the regulatory process for undergoing an IPO easier. Existing issuers will have to abide by the new regime if they seek to conduct further issuances. We expect the FCA's new rules to make it easier to pursue these issuances. Investors may benefit from a greater number of investment opportunities and earlier investment in growth companies if these become more likely to list in the UK. Retail investors (i.e. ordinary people, non-professional investors) will benefit from reforms made to increase their participation in capital markets.

**4.19 Advisory firms:** firms which provide strategic and financial advice to clients will be affected by our changes to the IPO and further issuance processes. These firms will have to familiarise themselves with this SI and with the FCA's new rules when published. However, they are likely to pass part of these costs onto clients and may benefit from increased demand for their services as a result of an increase in listings.

**4.20 Public offer platforms:** operators of platforms which apply for and are granted the new permission will be subject to a bespoke regime tailored to them by the FCA. Platforms which obtain the new permission may see a benefit in the form of increased fee revenue if there is an uptick in activity on their platforms. Whether they apply for the new permission and take on any associated costs is their decision depending on whether they wish to facilitate offers above the new £5 million threshold.

**4.21 Issuers and investors on crowdfunding platforms:** offers first made before the new Public Offers Regime comes into force will be unaffected by these changes, and existing issuers on crowdfunding platforms will be unaffected by these reforms to the extent that future public offers they make remain below the new £5 million threshold. However, future public offers made above that level will be subject to this requirement unless another exemption applies. These issuers may benefit if they wish to conduct further capital raises above the new threshold once the requirement to produce a prospectus as part of higher issuances is removed. Investors using these platforms will benefit from new FCA rules protecting them from specific risks and will have access to an increased number of investment opportunities due to the facilitation of larger funding rounds on these platforms.

**4.22 Issuers of certain non-transferable securities:** issuers whose securities are currently not in scope of the Public Offers Regime will have to adhere to the new regime if their securities are brought into scope, which may result in some costs to them.

**4.23** Outside of the specific familiarisation costs that are highlighted, firms may generally face familiarisation costs from this new framework. In order to comply with the new regime, firms are likely to engage lawyers or consultants to understand the legislation and accompanying guidance.

**4.24** As the FCA is operationally independent, it is not possible for the government to prejudge the rules it will make. The regulators have



appropriate mechanisms to consider the impact of such decisions through their statutory consultation and cost-benefit analysis framework, which were enhanced through FSMA 2023.

### Updates from the December 2022 illustrative SI

4.25 The policy note published in December alongside the illustrative version of this SI explained these reforms and their impact in further detail. Since December, certain issues outstanding at the time of publication have been finalised. In particular, the following changes from that version should be noted:

- **Definition of ‘relevant securities’:** the illustrative SI included a provisional definition of ‘relevant securities’, which was intended to capture both transferable and certain non-transferable securities, such as minibonds. In December the government set out its intention that these reforms should not disrupt existing business or market activity in such areas as the wholesale loan markets, over-the-counter (OTC) derivatives, building societies, credit unions, or cooperative and mutual benefits societies. This draft has been revised to clarify that these securities are outside of scope. See regulation 5 of the SI for more information.
- **FCA powers over MTFs:** the illustrative SI included provisional drafting on new FCA rulemaking powers to require a prospectus for admissions to trading on MTFs in certain circumstances, in order to extend the statutory benefits that attach to a prospectus while maintaining the broad discretion of MTF operators to set content and approval requirements for admission documents, including prospectuses used on their platforms. This drafting has been revised, including clarifying that the FCA will only have powers to require an MTF admission prospectus where the securities are being admitted to trading on markets open to retail investors. See regulations 11, 15, 16, and 21 for more information.
- **Necessary information test:** in the illustrative SI, the government sought to clarify the necessary information required to meet the ‘necessary information test’ required for those issuing bonds. The ‘necessary information test’ specifies the key information that issuers must provide in prospectuses. This provisional drafting has been further revised to provide greater clarity for bond issuers, although the key requirements of the necessary information test have not changed. See regulations 23(3) and 23(5) for more information.
- **New regulated activity of operating a public offer platform:** this SI amends the RAO to create a new regulated activity to facilitate the new public offer regime. See regulation 46 for more information.

- **Public offer platform threshold:** at the time of publication of the illustrative SI, the threshold above which unlisted issuers would be required to make their offer via a public offer platform had not been determined. The relevant threshold has now been set at £5 million so that offers above this level will either need to be made via a public offer platform or within the scope of one of the other exceptions in Part 1 of Schedule 1 to the SI. Furthermore, this SI now defines the new regulated activity of operating such a platform, which was not included in the illustrative SI. See regulation 46 and Schedule 1, Part 1, paragraphs 1 and 13 for more information.
- **Exceptions:** aside from the public offer platform threshold, the government has also revised various exceptions to the regime to ensure their scope is appropriate and that they do not cause unintended disruption. See Schedule 1, Part 1, paragraphs 1, 8, 9, and 10 for more information.

4.26 The remaining parts of the retained EU law in this area will be repealed, to be replaced with FCA rules where specified by the FCA. The FCA will consult on any draft rules or guidance that will replace current legislation in these areas.

# Chapter 5

## Stakeholders and contact

5.1 The policy set out in this note is now settled and HM Treasury intends to legislate for the new regime by the end of the year, subject to parliamentary time allowing. This legislation will fully come into effect after the FCA has made the relevant new rules.

### **Comment on this SI**

5.2 **This is a near-final version of this SI, which is being published for technical checks.**

5.3 HM Treasury will consider technical comments on this SI, focused on any changes that need to be made to this draft instrument to achieve the outcomes the government seeks to achieve through these reforms as set out in section four of this policy note.

5.4 Any comments should be provided to [UKProspectusRegime@hmtreasury.gov.uk](mailto:UKProspectusRegime@hmtreasury.gov.uk) by **21 August 2023**.

# Chapter 6

## Further information

- 6.1 Read Lord Hill's [UK Listing Review](#), published in March 2021.
- 6.2 Read the [UK Prospectus Regime Review Consultation](#), published in July 2021; the [Summary of Responses](#), published in December 2021; and the [Consultation Outcome](#), published in March 2022.
- 6.3 Read Dame Elizabeth Gloster's [Regulation of Non-Transferable Debt Securities \(Mini-bonds\): A Consultation](#), published in April 2021, and [Regulation of Non-Transferable Debt Securities \(Mini-bonds\): Consultation Response](#), published in March 2022.
- 6.4 Read HM Treasury's [Policy Statement – Building a Smarter Financial Services Framework for the UK](#), published in December 2022.
- 6.5 Read the illustrative version of this SI, the [Draft Statutory Instrument: Financial Services and Markets Act 2000 \(Public Offers and Admissions to Trading\) Regulations 2023](#), and the accompanying policy note, the [Public Offers and Admissions to Trading Regime: Illustrative Statutory Instrument Policy Note](#), both published in December 2022.
- 6.6 Read the FCA's statement about their engagement process for their new rules, the [New Regime for Public Offers and Admissions to Trading](#), published in May 2023.

## **HM Treasury contacts**

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

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