

# Public Offers and Admissions to Trading Regulations 2023 Statutory Instrument

<b>Lead department</b>	HM Treasury
<b>Summary of proposal</b>	The proposal is to enable the Financial Conduct Authority (FCA) to replace the UK Prospectus and Public Offers Regime, currently inherited from EU law, with a new regime including new rules on when a prospectus is needed and the content of prospectuses.
<b>Submission type</b>	Impact assessment (IA) – 23 <sup>rd</sup> August 2023
<b>Legislation type</b>	Secondary legislation
<b>Implementation date</b>	TBC
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-HMT-5289(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	5 October 2023

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The IA explains it is not possible to provide an EANDCB for the full impact of the proposal at this stage of the policy development. The RPC finds the quantification of direct costs to business of the SI itself sufficient for this stage of the policy development. The IA argues that small and micro businesses are expected to benefit from the proposal, subject to the new rules the FCA will establish. Whilst the IA is sufficient overall, there are several areas for improvement including further consideration of wider impacts such as competition. There is also no detailed monitoring and evaluation (M&E) plan set out for the proposal.

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). The RPC rating is fit for purpose or not fit for purpose.

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying provision	De minimis - further assessment of impact to be made by FCA (see below)
<b>Equivalent annual net direct cost to business (EANDCB)</b>	£0.03 million	£0.03 million
<b>Business impact target (BIT) score</b>	£0.2 million	
<b>Business net present value</b>	-£0.3 million	
<b>Overall net present value</b>	-£0.3 million	

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The IA presents an EANDCB of £0.03 million comprising of the familiarisation costs associated with the SI and the permission application cost for crowdfunding platforms. The department recognises that this does not represent the full impact of the FCA rules as it is not possible to quantify the impact until the FCA finalise its rules. The RPC finds this approach sufficient for this stage of the policy development and recommends a further assessment to be completed by the FCA.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA uses equity market value as an indication of the number of SMBs impacted by the regulation. The IA argues that the current prospectus regime is disproportionately burdensome on smaller businesses, which will therefore benefit from the new FCA rules, noting the FCA should consider the impact on SMBs when assessing these rules. The IA should expand its assessment to include medium-sized businesses
Rationale and options	<b>Satisfactory</b>	The IA provides a reasonable description of the rationale for intervention, drawing on evidence from the 2021 independent review of the UK's prospectus regime and consultation. The IA would benefit from including a summary of key findings from the 2021 consultation. The IA does not include a non-regulatory option and would benefit

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

		from a discussion of why non-regulatory options have not been considered.
Cost-benefit analysis	<b>Satisfactory</b>	The level of CBA in the IA is limited due to the uncertainty surrounding the details of the new prospectus regime. Whilst the department makes use of available data and evidence, the IA would be improved by testing the uncertainty surrounding some of their assumptions.
Wider impacts	<b>Weak</b>	The IA provides some discussion across a few wider impacts, including investment and trade. The assessment on trade is limited due to the uncertainty surrounding the detail of the rules the FCA will put in place. The department states the FCA will have to demonstrate how the new rules account for UK growth and international competitiveness. The IA would be improved by assessing any potential competition impacts.
Monitoring and evaluation plan	<b>Weak</b>	The IA states the requirement for the FCA to review their rules and HMT's requirement to submit an assessment of the Act to the Treasury Select Committee. The M&E plan could be improved by setting out evaluation questions, potential metrics and data that will be used to monitor and evaluate the proposal.

## Summary of proposal

The UK's prospectus regime derives from the EU prospectus regulation, which is now part of retained EU law (REUL) following the UK's departure from the EU. The proposal is to use the Financial Services and Markets (FSM) Act 2023, which repeals REUL related to financial services, to replace EU Prospectus Regulation with new rules created by the Financial Conduct Authority (FCA).

The current 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. In November 2020, the government asked Lord Hill of Oareford CBE to lead an independent review of the UK's listing regime and concluded that the current Prospectus Regime is overly complex and duplicative, making the public capital raising process inefficient and disincentivising the use of public markets.

This proposal is a response to the 2021 consultation on the UK's prospectus regime, which addressed Lord Hill's recommendations and proposed repealing and replacing the current prospectus regulation.

The proposal enables the FCA with powers to enact a fundamental review of the rules governing when a prospectus is required and what it must contain. The FCA will therefore be responsible for setting:

- The detailed requirements for admissions to regulated markets.
- The circumstances in which a prospectus is required on regulated markets and multilateral trading facilities (MTFs).
- The requirements for due diligence and disclosure on a public offer platform, such as a crowdfunding platform.

The IA discusses the following options:

- **Option 0:** Do nothing. Retaining the existing regime inherited from the EU.
- **Option 1:** Preferred option. Repealing the regime inherited from the EU and replacing it with a new regime run by the FCA. Whilst the detail of the new regime is yet to be determined by the FCA, the proposal identifies the following key aspects:
  - Instances in which a prospectus is currently required and limits access to capital raising will no longer require a prospectus and will be better tailored to the circumstances of the transaction.
  - Currently unregulated non-transferable securities, such as minibonds, will be brought within the scope of the new regime, where appropriate.
  - The SI will facilitate the provision of more forward-looking statements, such as profit forecasts, in prospectuses by amending the liability regime.
  - The requirement in the current regime that companies making public offers exceeding €8 million must issue a prospectus will be removed and replaced with a £5 million threshold above which admission to a public offer platform will be required.

Costs and benefits are dependent on the rules which will be set out by the FCA, and therefore cannot be fully assessed at this stage. The FCA will be responsible for consulting on their rule proposals, conducting cost-benefit analysis for these proposals, and conducting post-implementation monitoring and evaluation of their rules.

## EANDCB

### Identification of impacts

The IA argues that it is not possible to quantify the costs and benefits to business stemming from the rules the FCA will put in place as part of the new prospectus regime. Therefore, the focus of this IA is on the direct impact of the department's SI. The department indicates that the new FCA rules will be subject to consultation and thorough cost-benefit analysis by the FCA (paragraphs 2.1-2.5).

The department has estimated an initial EANDCB of £0.03 million. This includes the initial familiarisation costs associated with the SI for businesses expected to be impacted by the regulation, including trading venue stakeholders (including trading venues, existing and new issuers on trading venues, and advisory firms) and crowdfunding stakeholders (crowdfunding platforms). Estimated direct costs to business also include a permission application cost for crowdfunding platforms that

wish to host offers above the new proposed £5 million threshold. The RPC finds this approach sufficient for this stage of the policy development.

The IA lists expected costs to business associated with the FCA rules (paragraph 6.3). Whilst these cannot be quantified at this stage, the department should identify whether they are classified as direct/indirect to support their assessment that the overall proposal is a qualifying provision. The department is able to provide an indicative estimate of compliance costs for crowdfunding of £1.4 million (paragraph 7.40), using information and data from the FCA, noting that this is rough upper bound estimate which should be revised by the FCA.

The department is unable to quantify the benefits associated with the new regime at this stage due to uncertainty around the detail of the FCA's rules. The key unmonetised benefits identified in the IA are:

- Simplifying regulation.
- Making it easier to produce a prospectus, and therefore making offers to the public easier.
- Removing the requirement for a prospectus in certain instances.
- Tailoring the requirement for a prospectus proportionately to the circumstances where it is required.
- Increasing the number and size of public offers.

The department states that expected benefits to issuers and investors under these reforms will significantly outweigh any costs in the long term (paragraph 6.2).

### **Further assessment**

As discussed above, this IA does not represent a full assessment of the new prospectus regime as this is dependent on the details of the rules which will be set out by the FCA. The department notes the need for a further assessment to be conducted by the FCA to estimate the full impact to business.

## **SaMBA**

### **Scope**

The IA states there is no published data available on the number of staff for businesses impacted by the regulation. Instead, equity market value is used as an indication of small and micro businesses. The department uses a combination of data sources to estimate an upper bound of 668 businesses on trading venues with a market value of less than £25 million. However, many of these companies are likely to have 50 or more FTE employees and would therefore be exempt from the standard definition of a SMB.

The IA states there is also no data available on the number of employees for unlisted businesses or issuers on crowdfunding platforms. The department assumes that the majority of companies on crowdfunding platforms are smaller businesses due to the predominance of smaller raises on these platforms. It is the department's assessment that these businesses will not be directly impacted by the regulation

because the majority (99%) of deals on crowdfunding platforms are for under £5 million, which is the proposed threshold above which admission to a public offer platform will be required.

The IA should expand its assessment to include medium-sized businesses in line with the Government's widening of the SMB exemption, to businesses with fewer than 500 employees, presumed exemptions on regulation.

### **Exemption and mitigation**

The IA argues that SMBs on trading venues should not be exempt from the new regime. The department considers it proportionate that any company raising significant amounts of capital and/or raising from significant numbers of retail investors should be subject to an appropriate level of regulation to ensure investor protection. If SMBs wish to raise amounts above the proposed £5 million threshold, the department considers it proportionate that these companies should be subject to an appropriate level of regulation.

The department also sets out that current costs in an initial public offering (IPO) are disproportionately burdensome on smaller companies because costs are inversely proportional to the magnitude of the amount raised by the IPO itself. Therefore, smaller companies raising smaller amounts are particularly burdened by the current regime and will disproportionately benefit from reforms to make this process easier.

### **Further assessment**

The IA states that it is difficult to fully assess the impact of the new regime on SMBs before the FCA has developed its rules for the new regime. The department indicates that the FCA will be responsible for considering the impact of their rules on smaller businesses. The RPC recommends the FCA's consultation and cost-benefit analysis provides greater clarity on how the new regime will impact SMBs and if there are situations where exemptions or mitigations are appropriate.

## **Rationale and options**

### **Rationale**

The RPC considers the analysis of the rationale to be satisfactory. The IA states that the 2023 FSM Act repeals REUL related to financial services and enables government and regulators to replace it with new regulation. The rationale for new regulation comes from Lord Hill's 2020-21 independent review of the UK's listing regime. The review found that the current prospectus regime is overly complex and duplicative, making the public capital raising process inefficient and disincentivising the use of public markets (paragraph 1.11). The IA also states that evidence gathered through consultation suggests that replacing current prospectus regulation would be favoured by the industry. The rationale would be strengthened by including an analysis of the consultation responses within the IA.

The department helpfully uses data from UK Crowdfunding Association member firms to demonstrate that the current €8 million threshold at which a prospectus is

required is disincentivising private companies from raising capital from the public. The data shows how the threshold effectively acted as a cap as there are few deals occurring above the threshold (Figure 2). Whilst the IA states that qualitative information indicates this is because of the additional cost of preparing a prospectus, the rationale would be strengthened by including details on this inference.

## Options

The IA includes one regulatory option in addition to the do-nothing baseline option. It does not provide a discussion of other regulatory options considered. Whilst it is reasonable that non-regulatory options have been dismissed, the IA should discuss why regulation is needed and the potential risks of not having prospectus regulation.

## Cost-benefit analysis

### Evidence and data

The IA makes use of limited available data regarding the number and type of businesses impacted by the proposed regulation. The forecasted number of issuers and investors is uncertain, but the department make reasonable estimates based on historic trends.

When estimating the ongoing compliance costs for crowdfunding platforms, the department relies on the FCA's CBA which estimates the costs associated with transferring responsibility for consumer credit regulation from the Office of Fair Trading (OFT) to the FCA in 2013. Whilst this may be the most appropriate estimate available, it is not a like-for-like comparison for transferring prospectus regulation responsibilities to the FCA (see section on uncertainty, risks, and assumptions below). The IA would be improved by including more detail on the FCA's CBA and how it relates to the proposal.

### Modelling

The level of CBA in the IA is limited due to the uncertainty surrounding the details of the new prospectus regime. The IA would be improved by further discussion of some non-monetised areas, including potential training sessions needed and the dissemination of information among employees (paragraph 6.3).

### Uncertainty, risks, and assumptions

The uncertainty surrounding the new rules the FCA will enforce is recognised throughout the IA. Whilst some upper and lower bounds for estimates are provided, the IA would benefit from further sensitivity analysis to test assumptions to reflect this uncertainty, for example, applying a degree of optimism bias to the assumption of an upper bound of £1.4 million in ongoing compliance costs for crowdfunding platforms (paragraphs 7.39-7.40).

## Wider impacts

Whilst the IA recognises that the wider impacts of the new regime are dependent on the rules the FCA will implement, the department does discuss a limited range of

wider impacts. These include improving investor protection and general market confidence for those investing in minibonds and other kinds of non-transferable debt securities (NTDS) by including them within the scope of the new prospectus regime. The IA also explains how the new regime will improve the attractiveness of public listings which in turn supports economic growth. The IA needs a more detailed discussion of wider economic impacts, drawing on relevant evidence, potentially aided by a theory of change model.

### **International trade**

The IA considers the impact on international trade, arguing that simplifying the regime will have positive trade implication through improving the attractiveness of the UK as a listing destination for international issuances. The department is not able to quantify this impact as several factors influence these decisions. The IA also reiterates the FCA's duty to show how it has accounted for the UK's growth and international competitiveness in its rules.

### **Competition**

The department has not included an assessment of the impact on competition. The IA needs to consider whether the new prospectus regime could impact competition, for example, whether crowdfunding platforms having to apply for the permission to host offers on or above the £5 million threshold would limit competition in the industry.

## **Monitoring and evaluation plan**

The department has not included an M&E plan for this proposal. The IA states that the FCA currently conducts post-implementation monitoring and evaluation of its rules, while the implementation of the Smarter Regulatory Framework (SRF) includes proposals for regulators to keep their rules under review. The department also states its requirement to submit a preliminary assessment of the Act to the Treasury Select Committee with three to five years of Royal Assent.

The IA needs to be improved by setting out desired outcomes, evaluation questions and potential metrics and data to measure achievement against the policy objectives.

### **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).