CFA Institute CFA Society United Kingdom

18 October 2024

David Stubbs
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

RE: Consultation on the new Public Offers and Admissions to Trading Regulations regime (CP24/12)

Mr. Stubbs,

CFA Institute[1] and CFA Society of the United Kingdom appreciate the opportunity to provide perspectives on the Financial Conduct Authority's ("FCA") CP24/12 Consultation on the new Public Offers and Admissions to Trading Regulations *R*egime (POATRs) ("Consultation").

CFA Institute and CFA Society United Kingdom have a long history of advocating in favor of investor disclosures that improve the quality and the depth of information investors have access to in order to make informed decisions, which is a crucial aspect related to market integrity and a condition for investor participation in capital markets. We also believe it is important to consider such regulatory developments within a global context, as stock markets are increasingly globalised, hence the importance of considering how rules compare at regional and global levels, so as to identify areas prone for convergence, which will facilitate the evaluation work and analysis made by investors. Therefore, we are establishing comparisons with US and EU capital markets where we think it may be relevant.

We are commenting on select aspects of the Consultation in the interest of promoting global capital markets integrity and investor protections on behalf of our membership of over 190,000 investment professionals. While we appreciate that the FCA has been tasked with policy objectives including increasing listings, making capital raising easier, and increasing retail investor participation in the UK, our focus in this response is in considering the UK markets within a global context, ensuring that jurisdictional competition for listings does not erode investor protections in a "race to the bottom." We believe investor protection results

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1 With offices in Charlottesville, VA; New York; Washington, DC; Brussels; Hong Kong SAR; Mumbai; Beijing; Abu Dhabi; and London, CFA Institute is a global, not-for-profit professional association of more than 190,000 members, as well as 160 member societies around the world. Members include investment analysts, advisers, portfolio managers, and other investment professionals. CFA Institute administers the Chartered Financial Analyst® (CFA®) Program. For more information, visit www.cfainstitute.org or follow us on LinkedIn and X.

from investment professionals receiving high-quality information from issuers to make informed decisions for their clients.

Our comments are from the perspective of a fundamental investor, or *user* of the disclosures discussed in the Consultation, and focus on three areas of the Consultation:

- When a prospectus is required for further issuances of equity securities already admitted to trading on a regulated market (Chapter 4, Questions 22-26 of the Consultation).
- Sustainability-related disclosures in prospectuses for admission to trading on a regulated market (Chapter 6, Questions 31-43 of the Consultation).
- Protected forward-looking statements (Chapter 7, Questions 44-53 of the Consultation).

When a prospectus is required for further issuances of equity securities already admitted to trading on a regulated market (Chapter 4, Questions 22-26 of the Consultation)

Calls for reducing transparency and reporting requirements by issuers and their surrogates are often advertised as catalysts for economic growth and improved competitiveness. In fact, the relationship between disclosure deregulation and economic growth is not straightforward and may involve complex secondary effects, where, for example, reductions in compliance costs are offset by increases in the cost of capital charged by investors. We urge the FCA to examine academic research of the effects of the UK abandoning quarterly reporting, which did not achieve its intended goals of reducing "short termism" or increasing corporate investment, but did result in reduced analyst coverage and less accurate earnings forecasts.[2]

Investors value decision-useful information from issuers. Decision-useful information has several attributes, including relevance and faithful representation.[3] *Incremental* decision-useful information (i.e., not already known by the market) is most important for investment decisions. The goal of prospectus reform should be, at a minimum, to maintain the amount of incremental decision-useful information disclosed to investors while minimising the amount of other information, such as legal boilerplate and information that has already been disclosed.

The proposal to raise the threshold for a prospectus for further issuance from 20% to 75% over a 12-month period would result in some modest cost savings, as noted in the cost benefit

[2] Impact of Reporting Frequency on UK Public Companies (cfainstitute.org)
[3] See A Comprehensive Business Reporting Model | Position Paper (cfainstitute.org) and paragraphs 2.4 – 2.38 of the IFRS - Conceptual Framework for Financial Reporting.

analysis, but at the cost of reducing information to investors. We believe these rules and framework should be grounded in both the underlying cause and impact of issuance, in addition to competitive standing. Typically, an issuance of over 50% implies a transformational change to the business profile and investment case e.g. by way of expansion, acquisition, capital structure, in addition to investor dilution. On the other hand, small % increases are less likely to be prompted by significant change.

We also note that your proposals do not appear to enhance the *de minimis* level of new capital issuance requiring a prospectus to obtain a listing, whereas the EU seems to be increasing this level from Euro1m.

We propose an alternative framework that emphasises the provision of incremental, decision-useful information while minimising redundant disclosures: a "5 and 50" rule:

Share issuance	Prospectus requirement	Rationale
For new issuance and listing: ≤5%* or £20m (whichever is higher) *of pre listing capital	• None for a new issuance and listing	• Less burdensome for new SME listings • Competitive with the new EU de minimis 12m Euro
For further fungible issuance**: ≤50%	• Prospectus summary only, maximum 10 pages. • Focus on offer-specific and facts-and-circumstances information • Refer to existing disclosures where appropriate.	• Greater than 50% is very likely to be a symptom of transformational change • Competitive with the EU likely new 30% or 40% • Prospectus summary approach aligned with the US model
≥50%	• Full.	• This would be proportionate for the concerns we have on investor protection

**% of fungible shares already admitted to trading on a regulated market over 12-month period.

Our framework is modeled on the US requirements for shelf registrations for seasoned issuers and the prospectus regime in the EU, as amended by the EU Listing Act that takes effect next year[4], but bolder with a 50% threshold for a full further issuance prospectus and a higher minimum threshold for new listings.

Our framework would preserve and encourage the disclosure of incremental, decision-useful information to investors while reducing the costs associated with producing full prospectuses when they are not necessary.

[4] Listing Act - European Commission (europa.eu)

Sustainability-related disclosures in prospectuses for admission to trading on a regulated market (Chapter 6, Questions 31-43 of the Consultation).

We support the proposals for the disclosure of sustainability-related information in the prospectuses of issuers of securities admitted to trading on a regulated market. Issuers have a responsibility to inform investors of risks and opportunities material to the issuer, and that includes sustainability risks and opportunities.

It is important to note that, from a practical perspective, sustainability information will be required once the company is listed. It would be preferable for investors not to find out about the company' sustainability actions, footprint and performance only when the first set of accounts is published, circa 1 year later. We could argue investors need such information from day 1 of owning the shares, and the company should be ready at that point, given that they will need to do it for annual reporting in any case.

We support the use of the IFRS Sustainability Standards, including the SASB Standards (collectively, the "ISSB Standards"), as issued by the International Sustainability Standards Board ("ISSB") to guide the selection of material sustainability risks and opportunities for disclosure in prospectuses as well as their form and content. CFA Institute has long supported the SASB standards[5], supported IFRS S1 and S2[6], and the creation of the ISSB[7]. The ISSB standards meet investors' needs because they are global, use a single materiality lens (focused solely on investors' information needs), leverage industry-based SASB standards that prioritise the issuer's most relevant risks and opportunities. Importantly, the ISSB is an independent standard setting body with appropriate technical expertise and protection from the whims of partisanship.

The proposed climate-related disclosures in the Consultation, including the discussion of issuers with oil, gas, or coal projects, are required if the issuer identifies climate-related risks and opportunities as material to their prospects. We recommend that the FCA clarifies, in PRM 4.6.3, that

- Materiality is an investor, not an issuer-centric concept. Issuers must conduct outreach with investors, consider industry and sector risk factors, disclosures by peer issuers, and other work to understand what risks and opportunities a reasonable investor would identify as material. An issuer in an extractive industry cannot, for example, determine that climate-related risks and opportunities are immaterial if that is contrary to the reasonable investor's interpretation. We note that IFRS/IASB are currently consulting on case studies on climate risk disclosure, which include examples of materiality judgement aligned to this.

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[5] Comment Letter on Exposure Draft on SASB Rules of Procedure and Conceptual Release (cfainstitute.org)
[6] The ISSB Launches its First two Sustainability Standards Video (cfainstitute.org)
[7] The IFRS Foundation's Consultation Paper on Sustainability Reporting (cfainstitute.org)

- Issuers must use the industry-based SASB standards as the starting point for identifying material sustainability risks and opportunities including those related to climate. This includes companies in extractive industries, such as those with oil, gas, and coal projects.

Protected forward-looking statements (Chapter 7, Questions 44-43 of the Consultation).

We generally support the proposals for rules defining and setting certain safeguards around protected forward-looking statements (PFLS) in prospectuses.

Investing is forward looking, with securities' valuation based on estimates of future cash flows discounted at rates that incorporate market participants' outlook on systematic and idiosyncratic risk factors. Issuers' management are in a privileged position to make forecasts, particularly about issuer-specific variables and decisions under their control.[8] Investors benefit from improved forecast accuracy from guidance and the disclosure of underlying assumptions by management.[9]

Historical information is no less important than forward-looking statements, however; historical information has both confirmatory and predictive value. Historical financial, operational, and sustainability information form the record of how investors' resources were used. A strong legal liability standard is necessary to manage the conflicts of interest inherent in the fact that management prepares the financial, operational, and sustainability reports for investors. Management "grades its own homework" and has an incentive to provide predominately positive information in its reports. Other protections for investors against the risk of misstatements include independent audits and securities law enforcement.

The challenge for the FCA is to create rules that (a) permit and encourage the disclosure of decision-useful forward-looking information by creating a legal liability "safe harbor" while (b) not make the safe harbor so wide so as to inadvertently reduce the legal liability for information outside the scope of forward-looking statements, such as historical financial, operational, and sustainability information.

We think the proposed definition in the Consultation meets this challenge, but for the avoidance of doubt, we suggest the FCA explicitly clarifies in PRM 8.1.3 that:

- The financial statements, in whole and in part (i.e., any amounts presented on them or disclosed in the notes to the financial statements), are excluded from PFLS.

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[8] Do Managers Always Know Better? The Relative Accuracy of Management and Analyst Forecasts - HUTTON - 2012 - Journal of Accounting Research - Wiley Online Library

[9] HOUSTON, J.F., LEV, B. and TUCKER, J.W. (2010), To Guide or Not to Guide? Causes and Consequences of Stopping Quarterly Earnings Guidance*. Contemporary Accounting Research, 27: 143-185. https://doi.org/10.1111/j.1911-3846.2010.01005.x

    - See Section 27A of the Securities Act and Section 21E of the Exchange Act in the US that contain this exclusion ("shall not apply to a forward-looking statement that is…included in a financial statement prepared in accordance with generally accepted accounting principles").
- Sustainability reporting that is mandated by sustainability disclosure requirements (and can already be caveated in terms of estimations, models used, assumptions and sources of data), apart from targets and transition plans that meet the criteria of PFLS, is excluded from PFLS.

These exclusions are necessary because financial statements and sustainability reports contain estimates and forward-looking information even in "historical" amounts and figures. For example, a pension liability is based on forward-looking information at the balance sheet date. Investors need certainty that the legal liability standard for information presented as historical information does not change with the introduction of PLFS in prospectuses.

Conclusion

In this response, we have sought to express a balanced view on the complex question of regulation pertaining to investor disclosures, in a globalised market for listings. We have historically and generally been in favour of rule simplification and harmonisation where appropriate, while opposing broad-brushed deregulation initiatives without proven beneficial impact, from the point of view of investors. In our response, we have provided an alternative framework to determine when a prospectus would be necessary, which we think is upholding the principle of incremental decision-useful information grounded in both the underlying cause and impact of issuance. We have also expressed our support for the inclusion of sustainability information in prospectuses of issuers of securities admitted to trading on a regulated market, which we think should be based on the ISSB framework and focus on information considered to be material to investors' information needs. Finally, we support the proposals for rules defining and setting certain safeguards around protected forward-looking statements (PFLS) in prospectuses, while clarifying the limits we believe should apply to the safe harbour.

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Thank you for your consideration of our views and perspectives. We would welcome the opportunity to meet with you to provide more details. If you have any questions or seek further elaboration of our views, please contact Olivier Fines at olivier.fines@cfainstitute.org or Matthew Winters at matt.winters@cfainstitute.org.

Sincerely,

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