

UK prospectus regime: ICMA response to FCA consultation

On 18 October 2024, ICMA submitted its [response](#) to the FCA's consultation on the new *Public Offers and Admissions to Trading Regulations regime (POATRs)* ([consultation paper 24/12](#)), in which the FCA sets out its proposals for when companies will need to produce a prospectus for the admission of securities to UK regulated markets or certain “primary” multilateral trading facilities (MTFs) and detailed requirements for the content of prospectuses for regulated markets. These proposals provide further detail to the *Public Offers and Admissions to Trading Regulations (POATRs) 2024*, made in Parliament in January 2024, which set out a framework for replacing the UK Prospectus Regulation.

The overall view from ICMA members is that the new proposed regime in consultation paper 24/12 is broadly consistent with the current prospectus regime, with some welcomed improvements. In particular, voluntary forward incorporation by reference and more flexibility around the use of supplements are broadly welcomed. In its response, ICMA mainly focused on areas where the reason for a change was unclear, changes that did not seem to be an improvement on the *status quo*, and improvements that could be adjusted so that they can better achieve their intended purposes.

The key points of ICMA's response are as follows:

- (i) *Withdrawal rights on regulated market:* In consultation paper 24/12, the FCA did not include an exemption from withdrawal rights for supplements to wholesale prospectuses on the regulated market. This is a departure from what exists under the current regime where this has been the understanding for many years, in particular since ESMA clarified the point in 2018 (see [Final Report on Draft Regulatory Technical Standards under the Prospectus Regulation](#)). To ensure consistency with market practice and expectations, it would be helpful for this to be provided for in the new rules.
- (ii) *Voluntary disclosure guidance for use-of-proceeds (UoP) bonds and sustainability-linked bonds (SLBs):* ICMA agrees that the proposed specific sustainability-related disclosures should be voluntary. However, although the guidelines are voluntary, the guidelines for UoP bond and SLB disclosure are very detailed and prescriptive and go beyond current market practice in certain respects. For example, aspects of proposed provisions 4.7.4 and 4.7.5 in the *Prospectus Rules: Admission to Trading on a Regulated Market sourcebook (PRM)* are not aligned with the ICMA Principles. It would be helpful to align the language of these provisions more consistently with the ICMA Principles.

ICMA also emphasised that UoP bonds and SLBs are different products, and the markets are at different stages of development and should be treated

differently. As the UoP bond market is well established, ICMA agrees with the current proposal to include voluntary detailed guidance in the new sourcebook. However, the SLB market is relatively nascent and fragile, and detailed disclosure items, even if expressed as guidelines, for SLBs may hamper any further development of the market for these bonds. It may be more appropriate for SLBs not to be subject to further guidance provisions (such that issuers just follow ICMA Principles), or for guidance on SLBs disclosures to be included in a technical note rather than the PRM sourcebook.

- (iii) *Climate disclosure:* ICMA agrees that the climate disclosure rule should not apply to issuers of general purpose debt securities (ie non sustainability-labelled non-equity securities). ICMA agrees with the points set out by the FCA in paragraph 6.23 of the consultation as to why the rule should not be extended to such debt issuers, which would be consistent with the EU's approach under the EU Listing Act.
- (iv) *Supplement flexibility:* ICMA welcomes the proposed changes that allow for more flexibility around the use of supplements, including the ability to make non-material changes. However, the response noted where some of the conditions for use could be adjusted to make this change even more useful.
- (v) *Forward incorporation by reference:* ICMA welcomes the ability to voluntarily forward incorporate by reference financial information into a base prospectus, without the requirement to publish a supplement. It would be useful if the FCA could clarify that the forward incorporation by reference of financial information will not by itself trigger the need to file a supplement, and for the FCA to confirm that it is acceptable to include “evergreen” language to refresh relevant prospectus statements that might be impacted by information that is forward incorporated by reference.
- (vi) *Withdrawal rights and QI-only MTFs:* ICMA asked for confirmation of its understanding that in the context of securities to be admitted to a Primary MTF that is intended only for qualified investors (QI-only MTF), provided the QI-only MTF does not require a document called an “MTF admission prospectus”, no withdrawal rights will arise from the publication of a supplement to the circular or particulars required for admission. It is also ICMA's understanding that the International Securities Market (ISM) will meet the definition of QI-only MTF.
- (vii) *Advertisements and QI-only MTFs:* ICMA understands that it is not the FCA's intention to apply the rules around advertisements (as well as the rules around persons responsible for an MTF admission prospectus and withdrawal rights) to a QI-only MTF. This is not always clear in the rules as drafted. If provisions like the

advertisement rules were to be applied to a QI-only MTF (such as the ISM), it would represent a divergence from the current regime (where the advertisement regime applies only to regulated markets) and would place the ISM at a competitive disadvantage to similar venues outside the UK.

- (viii) *Protected Forward Looking Statements (PFLS)*: ICMA believes that a well-calibrated PFLS regime that is consistent with existing international market practice could encourage more and better disclosure. ICMA acknowledges that the PFLS regime is intended for equity issuances, so the regime as proposed will be of only marginal utility to debt issuers. However, ICMA reiterated its request that the FCA adopt a PFLS regime that is similar to the US forward-looking safe harbour, which (a) applies to qualitative and aspirational statements and (b) is determined by the nature of the statements and the policy objective of encouraging more disclosure of forward-looking information.
- (ix) *Fungible issuance threshold*: ICMA believes this is more of a consideration in an equity context. This is primarily due to the fact that debt fungible issuances are often issued pursuant to an issuer's MTN programme which sets out a framework and documentary process for fungible issuances. However, if the FCA would like to increase the threshold, ECM participants have recommended a threshold of 33.33%, which ICMA would support as a sensible increase.

The FCA has stated that it plans to publish a separate consultation paper on low denomination retail bonds in early Q1 2025, with a view to adopting new rules (that would take into account the responses to consultation paper 24/12 and the expected retail bond consultation) to replace the current UK prospectus regime by mid-2025. Application of the new rules may not be until the end of 2025 or early 2026.



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