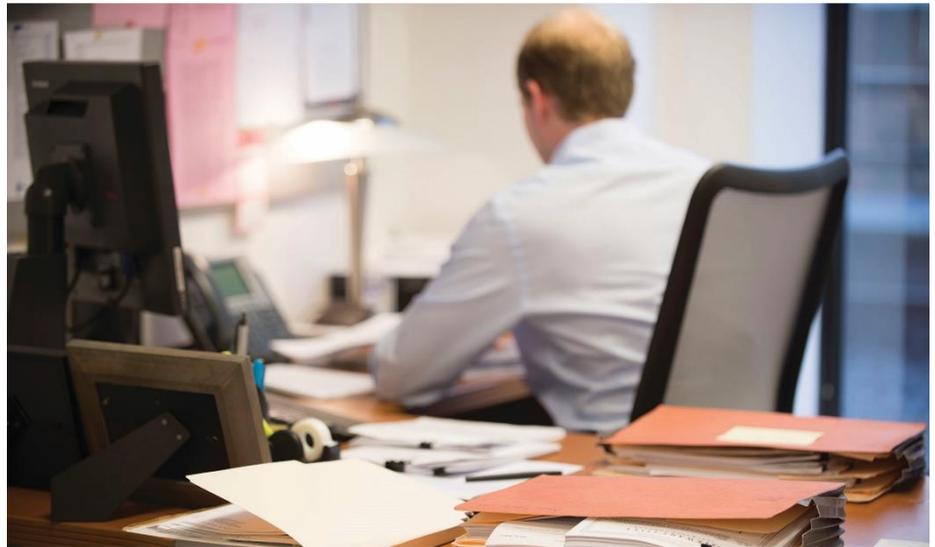


UK: CORPORATE BRIEFING

CAPITAL MARKETS UPDATE – THE NEW
EU PROSPECTUS REGULATION
AUGUST 2017

- RECENTLY THERE HAVE BEEN SEVERAL CHANGES IN THE CAPITAL MARKETS SPACE.
- IN THE FIRST OF TWO BRIEFINGS WE LOOK AT THE NEW EU PROSPECTUS REGULATION.
- THIS INCLUDES CHANGES FROM 20 JULY 2017 AND CHANGES DUE FROM JULY 2018 AND JULY 2019.
- IN THE NEXT BRIEFING WE WILL LOOK AT PROPOSALS FOR AMENDING THE AIM RULES FOR COMPANIES AND THE NEW LSE INTERNATIONAL SECURITIES MARKET.



The past few months have seen some interesting developments in the area of capital markets. In this first briefing of a series of two, we look at the new EU Prospectus Regulation. In the next briefing, we will look at the proposals for amending the AIM Rules for Companies and the new International Securities Market for debt securities launched by the London Stock Exchange.

The new EU Prospectus Regulation (EU) 2017/1129 (the “Regulation”) came into force on 20 July 2017. Most of its provisions will apply from 21 July 2019, but two sets of measures will apply before: the first from 20 July 2017 and the second from 21 July 2018.

The Regulation aims to modernise the regime governing the publication of prospectuses and to make it easier and more efficient for businesses to raise funds publicly.

The Regulation replaces the 2003 Prospectus Directive and all regulations made under it and has direct effect in all EU member states without the need for any further implementing legislation at member state level. The use of a regulation should ensure that the new regime is applied consistently across the EU, leading to greater legal certainty. Much of the detail of the regime will be specified in delegated acts and technical standards on which the European Securities and Markets Authority (“ESMA”) will consult. Three consultation papers on the format and content of the prospectus, the EU Growth prospectus and scrutiny and approval of prospectuses were issued on 6 July 2017 by ESMA.

“THE KEY CHANGES INTRODUCED BY THE NEW REGIME SHOULD BE WELCOME TO THE EXTENT THEY SIMPLIFY THE PROCESS AND REDUCE THE COST OF CAPITAL RAISING.”

The key changes introduced by the new regime should be welcome to the extent they simplify the process and reduce the cost of capital raising. However, uncertainty arises over the consequences of Brexit on the prospectus regime in the UK and the application of the Regulation.

Key changes introduced on 20 July 2017

A couple of the exemptions from the obligation to publish a prospectus when securities are admitted to trading on a regulated market have been amended:

- The exemption that allows issuers to admit further shares of the same class as shares already admitted to trading on a regulated market without a prospectus provided that they represent over a period of 12 months less than 10% of such shares is extended and increased so as to apply to all securities (equity and non-equity) fungible with securities admitted to trading provided they represent less than 20% of such securities. This is a welcome change for further fundraisings. However, it should be noted that any new issue of shares by issuers listed on the premium segment of the Official List will still be subject to pre-emption guidelines published by the Pre-Emption Group and will generally require shareholder approval to disapply pre-emption rights for cash issues of more than 5% of the existing issued shares. The Pre-Emption Group confirmed on 27 July 2017 that it does not intend to change its guidelines in light of the change made by the Regulation to this exemption.
- The exemption that allows shares resulting from conversion or exchange of other transferable securities to be admitted to trading without a prospectus provided that the resulting shares are of the same class as shares already admitted to trading is capped so as to apply only where the resulting shares represent, over a period of 12 months, less than 20% of the shares already admitted to trading (with limited exceptions). Previously, there was no limit.

Under the Regulation, with effect from July 2019, the above two exemptions cannot be combined together if such combination could lead to the immediate or deferred admission to trading of more than 20% of the number of shares of the same class already admitted to trading on the same regulated market over a period of 12 months.

“MEMBER STATES WILL ALSO BE ABLE TO CHOOSE TO EXEMPT OFFERS OF SECURITIES TO THE PUBLIC FROM THE OBLIGATION TO PUBLISH A PROSPECTUS WHERE THE TOTAL CONSIDERATION OF SUCH OFFER IN THE EU IS UP TO €8M.”

Changes from July 2018

From 21 July 2018, no prospectus will be required for offers of securities to the public with a total consideration in the EU of less than €1m calculated over a 12-month period. Member states can, however, require other disclosure requirements at national level in relation to such offers provided that these are not disproportionately or unnecessarily burdensome.

Member states will also be able to choose to exempt offers of securities to the public from the obligation to publish a prospectus where the total consideration of such offer in the EU is a higher amount up to €8m, calculated over a 12-month period (but such offers will not benefit from the passporting regime). Under the current prospectus regime in the UK, no prospectus is required for offers under €5m (calculated over 12 months). It will be for the Treasury to consult on whether the threshold should be raised above €5m to up to €8m. If the threshold is raised, this will mean more companies will be able to raise capital without needing a prospectus.

“THE FOCUS OF THE EU GROWTH PROSPECTUS WILL BE ON INFORMATION THAT IS MATERIAL AND RELEVANT FOR INVESTORS BUT PROPORTIONATE TO THE SIZE OF THE COMPANY.”

Key changes from 21 July 2019

- **Simplified disclosure for secondary issues** – the introduction of a new simplified proportionate disclosure regime for secondary issues by issuers whose securities have been admitted to trading on a regulated market or SME Growth Market continuously for at least 18 months (which replaces the current proportionate disclosure regime for rights issues that has not been widely used). The specific content will be set out in delegated legislation but only one year of financial information will be required and, in the case of equity securities, there must be a working capital statement.
- **EU Growth prospectus** – the introduction of a new shorter EU Growth prospectus for offers by small and medium-sized enterprises (“SMEs”) and certain other issuers, including companies admitted to trading on an SME Growth Market that have had an average market capitalisation of less than €500m on the basis of year end quotes for the previous three calendar years. SMEs include companies that, according to their latest annual or consolidated accounts, have two of the following: (i) fewer than 250 employees on average; (ii) a total balance sheet not exceeding €43m; and (iii) an annual net turnover not exceeding €50m.

The focus of the EU Growth Prospectus will be on information that is material and relevant for investors but proportionate to the size of the company.

AIM expects to become an SME Growth Market when the definition of SME Growth Market in MiFID II comes into force on 3 January 2018.

- **Universal Registration Document** – the introduction of a universal registration document for issuers whose securities are admitted to trading on a regulated market or a multilateral trading facility (such as AIM), a shelf registration mechanism for frequent issuers of equity or debt. Issuers that regularly maintain an updated universal registration document will benefit from a five-day (instead of a 10-day) fast track prospectus approval process.
- **Prospectus summary** – there will be a prescriptive format for the content and structure of the summary that will be shorter, with a maximum length of seven pages. A new requirement states that the summary must be accurate, fair and not misleading. The summary may not contain more than 15 of the most material risk factors.
- **Changes to the presentation and content of risk factors** – risk factors should be limited to risks that are specific to the issuer and/or the securities and are material for taking an informed investment decision. An issuer must assess the materiality of the risk factors (based on the probability of their occurrence and the expected magnitude of their negative impact) and must present them in a limited number of categories with the most material risk factors mentioned first. ESMA will develop guidelines to assist with the review and presentation of risk factors.
- **Incorporation by reference** – more information can be incorporated by reference into a prospectus, including all regulated information and not just filings under the prospectus and transparency regime.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors of this briefing below or your regular contact at Watson Farley & Williams.



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