

DCM Round Up: April 2024

Welcome to our periodic round up of key developments for DCM. Further details on some of these topics can also be found on the [Financial Markets Toolkit](#).

For a more detailed service please contact one of our experts, who can discuss in detail how these developments will affect your business and transactions.

- [EU AND UK PROSPECTUS REGIME REFORM](#)
- [EU REGULATORY](#)
- [OTHER UK DEVELOPMENTS](#)
- [ESG / SUSTAINABILITY](#)
- [OTHER DEVELOPMENTS](#)

EU AND UK PROSPECTUS REGIME REFORM

EU Prospectus Regulation

The final Listing Act was agreed in trilogue on 9 February and is expected to be passed by the European Parliament on 24 April. It will then be published in the Official Journal. As expected, the changes made by the final Listing Act to the EU Prospectus Regulation are evolutionary rather than revolutionary in nature. Some changes will come in immediately i.e. 20 days after publication of the Listing Act in the Official Journal (likely June or July), but others will be introduced on a staggered timeline and will not come into effect until 15 - 18 months after the OJ publication.

Key changes due to be brought in straight away are: (1) the ability to incorporate future financials by reference in to a base prospectus without a supplement; (2) the walkaway right period being extended from 2 to 3 working days; (3) the expansion to the prospectus exemptions, particularly for fungible securities; (4) more documents to be permitted to be incorporated by reference; (5) minor amendments to the risk factor requirements (although unlikely to have an impact on existing practice)

and (6) clarification that new securities cannot be added into a base prospectus by way of a supplement.

Key changes that will only apply in a further 18 months (due to further guidance being needed) are (1) standardised prospectus format and (2) ESG disclosures for all green and sustainable bonds i.e. EU Green Bond Standard (EU GBS) compliant bonds; EU GBS "opt -in" bonds and other market based/ ICMA Principles bonds.

As well as providing for staggered application of the changes to the EU Prospectus Regulation the final agreed Listing Act also includes grandfathering provisions relating to prospectuses that will be relevant to base prospectuses. Some of these staggered implementation and grandfathering provisions are currently not as clear as they might be, but we understand that drafting is due to be clarified during the jurist-linguist process and we will be able to comment on the application of these at that point.

There are other minor changes being introduced to the EU Prospectus Regulation not described here. A more detailed look at the changes will be outlined in our forthcoming briefing.

UK Prospectus Regulation

For completeness there have been no further developments on the UK prospectus reforms since our January 2024 Round Up. We are expecting the FCA to publish more details on its proposed rules over the coming months.

[Back to top](#)

EU REGULATORY

EU MAR and market soundings

The EU Listing Act will also make changes to the EU Market Abuse Regulation (**MAR**). Of interest will be changes made to the market sounding regime which will come into effect when the Listing Act is published in the Official Journal.

These amendments will make clear that the main market sounding procedures set out in MAR are optional (rather than mandatory). Disclosing market participants complying with those procedures will still benefit from a safe harbour from the prohibition against the unlawful disclosure of inside information but non-compliance will not create a presumption of unlawful disclosure. It will still be mandatory to consider whether a disclosure involves inside information and to inform a recipient when disclosed information ceases to be inside information (and to comply with the associated record-keeping requirements). However, the amendments will also simplify the 'cleansing' process by removing the obligation to inform a recipient where the information has already been publicly

announced. The amendments will also make clear that the definition of a market sounding covers disclosures not followed by an announcement of a transaction.

[Back to top](#)

OTHER UK DEVELOPMENTS

FCA Listing Rule changes

The FCA has consulted on changes to the Listing Rules as part of its Primary Markets Effectiveness Review and published a [draft UKLR instrument](#). While debt listings will be minimally impacted by the proposed changes to the new rules (the **UKLRs**) the new UKLR Listing Principles and guidance will apply across all listing categories (as set out in Chapter 14 of the [FCA CP23/31](#)). The six updated Listing Principles do not impose onerous new requirements on debt issuers (most already apply although in some cases via different rules). However, Listing Principle 1, that a listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations (which already applied to both equity and debt issuers), is now supported by a confirmation from the board to this effect.

The new UKLR 20.3.1 states:

20.3.1 R (1) An applicant must provide confirmation from the board that the applicant has established adequate procedures, systems and controls to enable it to comply with its obligations under the listing rules, disclosure requirements, transparency rules and corporate governance rules following admission.

(2) The board confirmation in (1) must be provided using the Procedures, Systems and Controls Confirmation form.

In principle, the rule itself does not pose any issues. However, there is some uncertainty in the rule in relation to the timing for application and scope. There are also some practical concerns regarding how the rule and any transitional relief might apply to existing MTN programmes. We have sought clarification from the FCA on these points. The new rules are not expected to take effect until summer 2024 and we would hope to have more guidance on their application over the next few weeks/months.

[Back to top](#)

ESG / SUSTAINABILITY

FCA Anti-Greenwashing Rule

The FCA Anti-Greenwashing Rule which we have covered in previous Round Ups is due to come into effect on 31 May. We have yet to hear or see anything further from the FCA on its proposed guidance in relation to the new rule. We had raised concerns regarding the rule's potential scope with the FCA but have yet to receive any feedback or clarification.

[Back to top](#)

OTHER DEVELOPMENTS

Irish Global Exchange Market (GEM) rule changes

On 11 March, the GEM expanded its rules to permit the admission of trading of bonds aimed at retail investors (see attached PDF). This does not impact bonds previously admitted to GEM as a professional investor market. This expansion required minor changes to the GEM rules including a requirement that the listing particulars include the following statement:

“Issuers on GEM, a multilateral trading facility (MTF), are not subject to the same rules as issuers on a regulated market. The risk in investing in debt securities on GEM may therefore be higher than investing in debt securities listed on a regulated market. Investors should take this into account when making investment decisions”

In addition to those retail market expansion changes we are expecting a revised set of GEM rules to be published for application at the beginning of May. From an advanced review of an early draft of the new rules there are a number of alleviations that might be helpful. These include (1) simplified disclosure for issuers with shares admitted to trading on a regulated market; (2) future incorporation of financial statements; (3) a listing particulars exemption for fungible securities (of up to 30% of existing GEM issues over the previous 12 months) and (4) an easier process for transferring a listing from the Irish regulated market to the GEM.

ICSDs – eGlobal Note project and esignatures

The ICSDs will launch the ability to issue an "eGlobal Note" on 3 June but only in respect of English law governed registered notes issued by English issuers or supranational issuers. In addition to these limited parameters to be eligible the Note must be held in accordance with the New Safekeeping Structure (**NSS**) and comply with the relevant documentary requirements. These documentary requirements are relatively limited and are set out in a revised [NSS Electronic Safekeeping Legal Pack](#). To use the eGlobal Note issuers must also enter into updated forms with the ICSDs (namely, the Issuer-ICSD Agreement, Effectuation and Disposal Authorisation, Effectuation Instruction, Common Safekeeper Authorisation and Common Safekeeper election form) these are available on the [ICSDs websites](#).

Separately, the ICSDs have confirmed that from 3 June they will accept esignatures on all forms of global notes, including those that are not eGlobal Notes, provided that issuers have entered into the above-mentioned updated Issuer-ICSD Agreement.

There are some clarifications still being sought from the ICSDs and ICMSA on how these changes will work in practice.

[Back to top](#)

[Subscribe](#)

[Visit our Financial Markets Toolkit](#)

[**Andrew Coats**](#)

Partner
020 7006 2574

[**Paul Deakins**](#)

Partner
020 7006 2099

[**Matt Fairclough**](#)

Partner
020 7006 1717

[**Julia Machin**](#)

Knowledge Director
020 7006 2370

[**Simon Sinclair**](#)

Partner
020 7006 2977

[**Kate Vyvyan**](#)

Partner
020 7006 1940

[**Jessica Walker**](#)

Knowledge Director
020 7006 2880

[**Deborah Zandstra**](#)

Partner
020 7006 8234

Follow us



Browse our podcasts



UK: We are sending this email on the assumption you do not live or work in New York State. If that is not the case, please [follow this link](#).

If you prefer, you can write to us with your marketing or monitoring request at Marketing Department, Clifford Chance, 10 Upper Bank Street, London, E14 5JJ, UK.

This email does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. Prior results do not guarantee a similar outcome.

Clifford Chance LLP is a limited liability partnership registered in England & Wales under number OC323571. The firm's registered office and principal place of business is at 10 Upper Bank Street, London, E14 5JJ. The firm uses the word "partner" to refer to a member of Clifford Chance LLP or an employee or consultant with equivalent standing and qualifications. The firm is authorised and regulated by the [Solicitors Regulation Authority](#) (SRA) under SRA number 447778.

For further details about Clifford Chance, including our [Privacy Statement](#) see our [website](#).

Copyright: © Clifford Chance. 2024. All rights reserved.

[Unsubscribe](#)