The City of London Law Society

The Law Society

# FCA CONSULTATION PAPER 25/2: FURTHER CHANGES TO THE PUBLIC OFFERS AND ADMISSIONS TO TRADING REGIME AND THE UK LISTING RULES

**14 MARCH 2025**

**Introduction**

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (the **CLLS**) and the Law Society of England and Wales (the **Law Society**).

2. The CLLS represents approximately 20,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.

3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to equity capital markets.

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**Questions**

Given the Joint Working Party's specialist focus, we have not responded to each question and only set out those questions for which we have comments to provide.

**Question 7: Do you agree we should remove the further issuance listing process from the UKLRs and simplify our administrative requirements for admitting securities to listing? If so, what are your reasons? If you disagree, please explain why.**

Yes, we agree, on the basis that the further issuance listing process adds unnecessary friction to the transaction timetable.

**Question 8: Do you agree in principle that we should introduce alternative measures to replace our current checks and information gathering on other matters that are currently incorporated within the further issuance listing process?**

Yes, we agree in principle, subject to the comments set out below.

**Question 9: Do you agree with how we propose to amend the UKLRs to remove the further issuance listing process and streamline our requirements? If you disagree, please explain why and what alternative measures you would propose.**

Yes, we agree.

**Question 10: Do you agree with our proposed changes to the sponsor requirements in the UKLRs to accommodate the removal of the further issuance listing process and other consequential changes? If not, what changes would you make and why.**

Yes, we agree.

**Question 11: Do you agree in principle that we should continue not to mandate the appointment of a sponsor for further issuances of shares below the threshold set for requiring a prospectus (which is subject to feedback to CP 24/12) when the new PRM comes into force?**

In relation to voluntary prospectuses approved by the FCA for issuances below the proposed 75% threshold, which we believe are likely to be produced on occasion once the PRM comes into effect, it would be helpful if the FCA could confirm whether a sponsor would need to be appointed on the submission of such a voluntary prospectus.

**Question 12: Do you agree with our proposed new rules in the PRM requiring discharge of the sponsor role prior to the FCA providing approval of a prospectus, with similar requirements for the sponsor role in the context of an issuer relying on a prospectus exemption in PRM 1.4.7R or 1.4.8R? If you disagree, please explain why.**

Yes, we agree with the proposed new rules. We understand the effect of these rules to be broadly as follows:

- Where an issuer needs to publish (i) a prospectus in connection with a further issuance of shares or (ii) a takeover exempt document that needs to be approved by the FCA under PRM 1.4.7R because the transaction does not satisfy both conditions in PRM 1.4.7R(2) (for example, it relates to a transaction that constitutes a reverse acquisition under IFRS), the FCA will not approve the prospectus or takeover exempt document unless a sponsor has been appointed and has performed the role specified in UKLR 24.

- Where an issuer needs to publish a document setting out details of a merger or division that satisfies the conditions in PRM 1.4.8R(2), the document must not be published unless a sponsor has been appointed and has performed the role specified in UKLR 24.

Under proposed UKLR 24.3.16R to 24.3.18R, the role of the sponsor will principally be:

- Before submitting to the FCA a prospectus relating to a further issuance of shares, the sponsor must have to come to a reasonable opinion, after having made due and careful enquiry, that (i) the issuer has satisfied all applicable requirements set out in the PRM and (ii) the directors of the issuer have a reasonable basis on which to make the working capital statement in the prospectus. The sponsor must also submit a Sponsor's Declaration.

- Before submitting a takeover exempt document for approval, or publishing a document relating to a merger or division, the sponsor must confirm to the FCA that it has come to a reasonable opinion, after having made due and careful enquiry, that the issuer has satisfied all applicable requirements set out in the PRM.

We note that the proposed rules around the submission of a prospectus are similar to the current rules in UKLR 24.3.6R and 24.3.7R.

In respect of the proposed rules relating to a takeover exempt document, because such a document is likely to relate either to a reverse acquisition or a takeover where the bidder is offering as consideration a new class of securities, it is probable that it will need to contain relatively complex disclosures about the impact of the transaction on the issuer and/or the rights attached to the consideration shares and, if the FCA publishes guidance or rules on the contents of a takeover exempt document, the items of information specified therein. We therefore agree that it is appropriate to require the issuer to appoint a sponsor in such a case and for the sponsor to be required to perform the role specified in UKLR 24.3.

In relation to the proposed rules around documents relating to a merger or division, we would note that mergers and divisions of UK companies are rare, and an issuer that is incorporated overseas is more likely to enter into such a transaction. Such transactions will not be familiar to most UK investors and, in any event, are likely to involve fairly complex arrangements that will need to be explained to shareholders. In such circumstances, we therefore agree that it is appropriate to require the issuer to appoint a sponsor and for the sponsor to be required to perform the role specified in UKLR 24.3.

Relatedly, we would anticipate that the Sponsor Declaration form and guidance for sponsors in Technical Notes etc. would be updated to reflect the final rules in this area. We understand that the sponsor will not - solely because it is submitting one of the documents referred to above - be expected to give confirmations to the FCA of the type required on first admission i.e. confirmations to the effect that, post-transaction, the issuer will have in place procedures which enable it to comply with its continuing obligations and which provide a reasonable basis for directors to assess the issuer's financial position and prospects. Additionally, where the transaction constitutes a reverse takeover under the UKLR, we would expect that the issuer would have to comply with the requirements in UKLR 7.5.

**Question 13: Do you agree with our proposed measures to replace the Pricing Statement that is currently submitted with the further issuance listing application? If you disagree, please explain your reasons and any alternative measures.**

In relation to the enhanced notification requirement under proposed UKLR 9.4.13R(6), which would replace the Pricing Statement (containing, amongst other things, the issuer's private confirmation of compliance with the discounted share issuance restrictions in UKLR 9.4.13R (where applicable)), it would be helpful if the FCA could provide further guidance, by way of a Technical Note, for example, on the application of UKLR 9.4.13R to accelerated bookbuilt offerings where there is a backstop price guaranteed by the underwriters, as previously set out in our response to FCA CP 23/31.

In such an arrangement, the underwriters will typically agree with the issuer on the night before launch a backstop price at which they will buy any unsold shares after the bookbuilding process. In recognition of UKLR 9.4.13R, the backstop price is typically drafted to be a price of X pence per share or (if higher) the price per share representing a 10% discount to the prevailing price at the time of pricing. It is not clear from UKLR 9.4.13R, however, whether the backstop price itself which is agreed the night before launch needs to be tested against the Daily Official List price

when the agreement is signed the night before launch. The key words are in UKLR 9.4.13 R(1): “at the time of agreeing the placing”. A natural reading is that the placing is only agreed when the final placing price to be paid by investors is established; therefore, UKLR 9.4.13R only applies after the bookbuild and does not apply to the backstop price itself. As previously stated, we think it would be helpful if the FCA could confirm this point to avoid both the backstop price and the final placing price being tested against the 10% discount limit as we believe only the final placing price which is paid by investors is relevant to this investor protection mechanism.

We note that it is proposed that the enhanced notification would contain broadly the same information as that set out in the Pricing Statement (including, amongst other things, the percentage discount of the price of the equity shares being placed to the middle market price), and believe that the need for clarity in this case has become more acute in the context of the proposed measures, particularly because liability would attach to the issuer notification.

Further, we would also note that the guidance in UKLR 9.4.14G lends itself to being modernised. When trying to price an accelerated bookbuilt placing, contacting the FCA to discuss the source of the intra-day price adds friction in a time-pressed situation. We would encourage the FCA to instead publish a list of approved sources for intra-day prices such as Bloomberg. Only deviation from those sources would then need to be discussed with the FCA.

**Question 14: Do you agree with our proposed new approach to removing the prospectus exemptions checkpoint at the listing admissions stage in the UKLRs, and instead replacing it with a market notification requirement on issuers within the PRM?**

We view the current prospectus exemptions checkpoint at the listing admissions stage as beneficial, as it ensures issuers address their legal obligations in advance of allotment of the relevant shares, which might otherwise be overlooked without FCA engagement. We note that the FCA rarely finds issuers in breach of the requirement to publish an FCA-approved prospectus through the routine checking process. However, we would suggest that this is as a result of the existing obligation to provide the relevant information to the FCA, which prompts issuers to seek advice from legal counsel and/or corporate brokers beforehand, guarding against the risk of incorrect reliance on a prospectus exemption.

With the proposed new prospectus framework, particularly the 75% exemption for shares, we agree that the likelihood of contravening the prospectus requirements should decrease. Nonetheless, given the serious consequences of breaching the PRM, combined with the fact that liability would attach to the proposed market notification, we believe that it would be helpful if it was highlighted, through a Technical Note or in the forthcoming Policy Statement, that an issuer (or sponsor) should consult with the FCA at the earliest possible stage if it is in doubt about how the prospectus exemptions apply in a particular situation. We believe that a provision of this type would ensure that the prospectus exemption analysis is appropriately brought into focus, in advance of admission, and would help to avoid incorrect reliance on an exemption and the grave consequences of any such reliance. Relatedly, a broader Technical Note providing practical guidance on the application of prospectus exemptions would also be welcome.

Further, a view was put forward as to whether it should be necessary for an issuer to specify which prospectus exemption it has relied on, in addition to simply confirming that it has relied on an exemption available at PRM 1.4.2R to PRM 1.4.11R, on the basis that detailed disclosure on specific prospectus exemptions might be somewhat cumbersome and unnecessary.

**Question 15: Do you agree on the proposed timeframe and transitional provisions?**

Yes, we agree.

**Question 17: Do you agree with our proposed new notification requirement to be included in the PRM and the reasons for it? If you disagree, please explain your reasons why and your alternative proposals.**

Subject to our response to question 14 above, we agree with the proposed approach.

Separately, we would be grateful for the opportunity to discuss what we understand to be an unintended consequence of the new notification requirement under PRM 1.6. This proposed obligation would seem to require an issuer to make an RNS announcement each time it allots new and issued shares for an employee share scheme, thereby requiring daily rather than aggregated six-monthly announcements. The new notification rules would therefore create more administration and costs than the current regime, undermining one of the key policy objectives.

**Question 19: How useful is the publication of this specific information to market participants and for what purpose(s)? Should we consider adding any additional information to the notification and if so, why?**

We agree that additional information, including the calculations or transaction history that may support an issuer's reliance on a prospectus exemption, is not required.

**Question 20: Do you agree with our proposed new admission to trading time limit requirement for the PRM? If you disagree, please explain your reasons why.**

We believe that it would be helpful if a shorter time limit could be introduced.

**Question 23: Do you consider that the transitional provisions are proportionate? Yes/No. Are there any other practical considerations for issuers that we should take into account as a result of our proposal? Please explain.**

Yes, we agree.

**Question 24: Do you agree with our proposed consequential changes? Yes/No. Please give your reasons.**

Yes, we agree.