

Will UK issuers benefit from the EU's proposed introduction of lighter prospectus disclosure requirements pursuant to the EU Recovery Prospectus?

31 July 2020

Background

On 20 July 2020, the European Commission (Commission) adopted a capital markets recovery package as part of its overall COVID-19 recovery strategy. As part of the package, the Commission released a proposal to amend the Prospectus Regulation which aims to reduce the regulatory burden issuers face under the existing prospectus regime.

The proposal to amend the Prospectus Regulation (Amending Regulation) will create a new type of short-form prospectus for those companies undertaking a secondary issue of shares which are admitted to trading on a regulated market or an EU growth market for a continuous period of at least 18 months (EU Recovery Prospectus). The EU Recovery Prospectus will have reduced disclosure requirements that focus on essential information, thereby shortening the length of prospectuses from hundreds of pages to just 30 pages. The intention is to help companies with their COVID-19 pandemic recovery plans and facilitate capital raises through secondary issuances of shares by:

1. making prospectuses easier to prepare;
2. reducing the cost and time required to prepare a prospectus;
3. shortening the time required for the relevant regulator to review and approve the prospectus and generally enabling shorter timetables; and
4. making prospectuses easier to read and easier to scrutinise so that potential investors are able to make an informed investment decision.

When will the Amending Regulation take effect?

It is unclear when the report on the application of the Amending Regulation will be presented to the European Parliament and the Council, although it must be heard before 21 July 2022. If the Amending Regulation is passed, the proposed changes to the prospectus regime will apply directly in the Member States on the twentieth day following its publication in the official journal of the EU.

The UK formally left the European Union on 31 January 2020 and immediately entered into a transition period which ends on 31 December 2020. It is unclear whether UK issuers will be able to benefit from the EU Recovery Prospectus.

The UK Financial Conduct Authority (FCA) has not provided separate guidance regarding the EU Recovery Prospectus. There is no certainty whether UK issuers will be able to use the EU Recovery Prospectus in the event of a "no deal" following the end of the transition period. The FCA has encouraged UK issuers to use the simplified disclosure regime under the Prospectus Regulation to recapitalise and may, therefore, welcome the EU Recovery Prospectus.

Content of the EU Recovery Prospectus

The EU Recovery Prospectus will be a single, short form prospectus, which focuses on the essential information that investors need in order to make an informed investment decision.

The Amending Regulation sets out the minimum information requirements for an EU Recovery Prospectus, as follows:

- the name of the issuer, member state of incorporation, link to the issuer's website;
- a responsibility statement;
- material risk factors;
- financial statements (audited annual and half-yearly accounts) covering the preceding 12 month period and, where applicable, pro forma information;
- trend information since the last financial year;
- matters that are reasonably likely to have material effects in the current financial year;
- details of the final offer price, amount of shares and firm commitments;
- details regarding where and when to subscribe for the shares;
- reasons for the offer and use of proceeds;
- a working capital statement;
- conflicts of interest; and
- details regarding the shareholdings after the issuance.

The main differences between the EU Recovery Prospectus and the existing prospectus regime are that that following information will not be required to be disclosed:

- operating and financial overview;
- management discussion and analysis;
- business overview;
- taxation; and
- additional information (e.g. description of issuer's share capital, voting rights, corporate governance and share scheme).

However, companies would need to be certain that the content included in the EU Recovery Prospectus would be sufficient for investors to be willing to participate in the offering.

Who does this apply to?

A company that has traded on a regulated market or an SME growth market¹ continuously for at least the last 18 months will be able to use an EU Recovery Prospectus in its secondary offerings. It is, however important to note that, the EU Recovery Prospectus may not be an option where the proposed offer has a non-EU commitment, for example an offering to US persons.

This change to the prospectus regime is a temporary measure to help recapitalisation during the recovery phase and will only be in effect for 18 months.

Sensible support or risky de-regulation?

Given the damage COVID-19 has wrought on economies globally, the Commission's desire to provide support to EU issuers is understandable. The new EU Recovery Prospectus might enable EU issuers to access vital capital and liquidity. However, questions remain as to whether investors will take the view that the new EU Recovery Prospectus will require too little of issuers, especially given the financially challenging climate in which all businesses are currently operating and the consequential need to ensure that investors fully understand the risks and rewards of an additional investment.

Useful links:

[European Commission's press release on 24 July 2020](#)

[The proposal for the Amending Regulation](#)

[Annex to the Amending Regulation](#)

[FCA Statement of Policy: listed companies and recapitalisation issuances during the coronavirus crisis](#)

¹ A multilateral trading facility that is registered as an SME growth market under MiFID II, such as AIM.

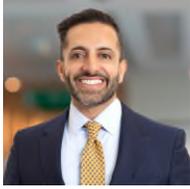
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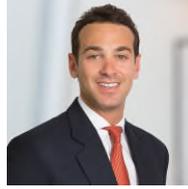
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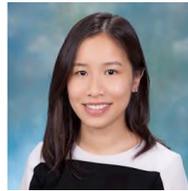
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