UK Financial Conduct Authority

(Submitted by e-mail to cp24-12@fca.org.uk)

18 October 2024

ICMA response to FCA CP 24/12 on the new Public Offers and Admission to Trading Regulations regime (POATRs)

The International Capital Market Association (ICMA) welcomes the opportunity to give feedback on the FCA's CP 24/12 on the new Public Offers and Admission to Trading Regulations regime (POATRs) that will replace the UK prospectus regime.

ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris, Brussels, and Hong Kong, serving over 620 members in 70 jurisdictions globally. Its members include private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets. See: www.icmagroup.org.

This feedback is given by the ICMA primary market constituency comprised of borrowers and banks that lead-manage syndicated debt securities issues throughout Europe and beyond and law firms that advise on those transactions. This constituency deliberated principally through:

- the ICMA Legal and Documentation Committee (LDC), which gathers the heads and senior members of the legal transaction management teams of a number of ICMA member banks active in lead managing syndicated debt securities issues in Europe.

- the ICMA Prospectus Regulation Working Group, which gathers members of the legal documentation and transaction management teams of member firms from the LDC and ICMA Legal/Transaction Management Group Heads group, and related senior lawyers from member law firms who are concerned with the EU and UK Prospectus Regulation and related documentation practices.

We set out our feedback below and would be pleased to discuss it with you at your convenience.

Yours faithfully,

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Introduction

(Abbreviations: CP=Consultation Paper 24/12; para=paragraph)

A. We welcome this opportunity to respond to CP 24/12 which sets out the new framework for the UK prospectus regime.

B. We appreciated the FCA engaging with market participants in advance of this consultation through a series of engagement papers published during the summer of 2023. We gave feedback on the engagement papers on 29 September, 2023 (ICMA's Engagement Paper Response). We refer you to the comments made in that response, and we have included references to them in this response where we think the initial comments are still particularly relevant.

C. We appreciate the FCA's intention to adopt a new UK prospectus regime that is largely consistent with the current regime, and to make improvements where possible to reduce costs for issuers, improve access to markets or improve the quality of information available to investors, while retaining the intended outcome of the regulation. (CP paras 1.8-1.9)

D. In the engagement papers, the FCA acknowledged that the UK debt capital markets are working well, and that it was intending to maintain the status quo and look for opportunities to make improvements. Ensuring no new burdens but only improvements are added to the UK debt capital market regime also facilitates the international competitiveness of the UK economy (including in particular the financial services sector), in accordance with the FCA's new secondary objective under section 25 of the Financial Services and Markets Act 2023 (FSMA 2023).

E. The overall view from our members is that the new proposed regime in CP 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.

F. We have focussed our comments in this response mainly on areas where we are unclear of the reason for a change, changes that do not seem to be an improvement on the status quo, and improvements that could be adjusted to make them even more useful for debt issuers so that the improvements can achieve their intended purposes.

G. We understand the FCA plans to publish a separate consultation paper on low denomination retail bonds in Q1 2025. We may need to re-visit some of the proposals in CP 24/12, such as the content of the disclosure annexes, when that consultation is published.

H. We will not be responding to the FCA's parallel consultation on the new public offer platforms regime (CP24/13).

I. As our members are mainly active in institutional offerings of vanilla debt instruments, we will primarily focus our comments in that context. That also means that in the context of primary multilateral trading facilities (MTFs), we are mainly commenting on rules that impact qualified investor (QI)-only MTFs and will not be commenting on retail MTFs. This is because the

International Securities Market (ISM) is the main MTF of interest to our members, and we understand the ISM will meet the definition of being a QI-only MTF.

J. At the end of this paper, following our "Response to CP 24/12 Questions" section set out below, we have also included a section on "Other Points to Note" to address issues that were not directly raised by questions in the CP.

K. We have also included an Annex that lists apparent typographical errors and other minor drafting comments on the proposed rules. We hope the FCA finds these to be useful as it prepares to adopt the final rules.

Executive Summary

This Executive Summary highlights ICMA's key points from the following sections below:

- Response to CP 24/12 Questions
- Other Points to Note

A. We welcome the FCA's prior acknowledgement that the current UK debt capital market regime works well. We understand that in the new regime, the FCA's intention is to maintain the status quo and to make improvements where there is the opportunity to do so. Ensuring no new burdens but only improvements are added to the UK debt capital market regime will help to facilitate the international competitiveness of the UK economy, which is one of the FCA's new objectives under FSMA 2023.

B. We support maintaining the status quo or making incremental changes that would help facilitate the efficient issuance and documentation of institutional bond offerings. The main areas where we are seeking clarification about a change or adjustments to improvements to help them achieve their intended purposes are:

1. **Withdrawal rights on regulated market.** The FCA has not included 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 ESMA's July 2018 Final Report on draft regulatory technical standards under the Prospectus Regulation). If withdrawal rights were to apply to supplements to wholesale prospectuses on the regulated market, this would potentially be a competitive disadvantage for listing in the UK since this is not the case in the EU. (See Other Points to Note, Item 1.)

2. **Voluntary disclosure guidance for Use of Proceeds (UoP) bonds and sustainability-linked bonds (SLBs).** We agree 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 4.7.4 and 4.7.5 are not aligned with the ICMA Principles. It would be helpful to align the language of these provisions more consistently with the ICMA Principles.

We would like to emphasise that UoP bonds and SLBs are different products, and the markets are at different stages of development and should be treated differently (see ICMA Engagement Paper response paras 43-44). As the UoP bond market is well established, we agree with the current proposal to include voluntary detailed guidance in the PRM 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 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.

3. **Climate disclosure.** We agree that the climate disclosure rule should not apply to issuers of general purpose debt securities (i.e. non sustainability-labelled non-equity securities). We agree with the points set out by the FCA in CP 6.23 as to why the rule should not be extended to such debt issuers, which would be consistent with the EU's approach under its current Listing Act review. We also reiterate the comments made in ICMA's Engagement Paper Response para 37, in particular that a requirement to align debt prospectus disclosure with UK entity-level corporate reporting requirements would be problematic for SPVs and debt issuers that comply with sustainability corporate reporting requirements in other jurisdictions, and having to follow additional disclosure requirements for admitting debt in the UK may be a barrier to their doing so.

4. **Supplement flexibility.** We welcome the changes that allow for more flexibility around the use of supplements, including the ability to make non-material changes, but we have noted where some of the conditions for use could be adjusted to make this change even more useful.

5. **Forward incorporation by reference.** We welcome 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. It would also be helpful 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.

6. **Prospectuses/supplements for retail offers ahead of admission.** In the proposed rules, there is an ambiguity or a lack of clarity around the use of "offer period" in the new regime and the lack of a definition of "offer period".

   It would be helpful to understand further the anticipated operation of some of the new exemptions to the public offer prohibition in practice, for example the arrangements in relation to the drawing up of prospectuses (and supplements) ahead of retail offers.

   We would be happy to discuss this further with the FCA.

7. **Retail cascades.** Under the current regime, an unauthorised offeror would take responsibility for the prospectus. In the CP, the wording on the "offeror" being responsible has not been carried into the PRMs, and the annex on Consent has also not been carried across. It would be helpful to understand where responsibility for the prospectus falls if other parties are involved in distributing securities as part of a retail cascade.

We would be happy to speak with you further about retail cascades.

8. **Withdrawal rights and QI-only MTFs.** We understand that in the context of securities to be admitted to a 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. Please confirm that this understanding is correct. It is also our understanding that the ISM will meet the definition of QI-only MTF and will not require an "MTF admission prospectus" to admit securities, which means withdrawal rights will not apply in the context of securities admitted to the ISM. This is important because currently withdrawal rights do not apply to QI-only MTFs where wholesale debt is listed. Extending withdrawal rights to QI-only MTFs could negatively impact the competitiveness of the UK markets compared to EU (and other) markets. (See also ICMA Engagement Paper Response, paragraph 59.)

9. **Advertisements and QI-only MTFs.** We understand 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.

Response to CP 24/12 Questions

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Chapter 3 - Structure of the proposed sourcebook and requirements for admission to trading of securities on regulated markets **Structure and location of proposed rules**	
Question 1	Do you agree with our proposed approach to the new Handbook as described above? Y/N. Please give your reasons.
	Yes. We suggest that for ease it would also be helpful to carry across into the new PRM aspects of the POATR where relevant instead of just including cross references, e.g. 2.1.1R (the necessary information test).
Chapter 3 - Structure of the proposed sourcebook and requirements for admission to trading of securities on regulated markets **The scope of exemptions in the new regime**	
Question 2	Do you agree with our proposed approach to maintaining the exemptions from the current regime in the future regime, as described above? Y/N. Please give your reasons.
	Yes. Many of the exemptions are equity focused, but consistency with the EU Prospectus Regulation is welcome.
Question 3	Do you agree with our proposed approach to the takeover exemption as described above? Y/N. Please give your reasons.
	N/A for debt.
Question 4	Do you consider that we should publish guidance on what we consider should be the contents of exemption documents as described above in a Technical Note?
	N/A for debt.
Question 5	Do you agree with our proposed approach to the exemption for transfers between regulated markets as described above? Y/N. Please give your reasons.
	Para 3.19 of the CP speaks of transfers between UK regulated markets which is not relevant for debt given there is only one regulated market. However, we would like to take this opportunity to reiterate a point regarding equivalence of non-UK approved prospectuses. We wish to reiterate para 31 from ICMA's Engagement Paper Response: **Equivalence/approval for regulated market admission prospectuses** HMT has the power to determine equivalence of non-UK prospectuses for public offer purposes. However, the FCA has the power to approve non-UK prospectuses for admission. ICMA encourages the FCA to provide a process for

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	non-UK prospectuses to be approved or deemed equivalent in this first transposition of rules instead of waiting to address it at a later time. See also ICMA response to illustrative draft SI (14.02.23), 9(f). For example, this could apply to a base prospectus approved in the EU where the issuer wants to do a drawdown admitted solely in the UK or on a dual basis
Question 6	Do you agree with our proposed approach to Public International Bodies as described above? Y/N. Please give your reasons.
	Yes, we agree with deletion of the UK Listing Rules (UKLR) definition to align with the prospectus regime definition. However, while the CP states that the UKLRs' definition for "public international body" would be deleted, in the glossary this wording is not shown as a deletion. We assume this is an oversight. We suggest deleting the words "of public nature" from the glossary definition of "public international body". It is not clear whether they change the scope of the definition—we would suggest they do not.
Question 7	Do you agree with our proposed approach to the scope of transferable securities as described above? Y/N. Please give your reasons.
	Yes. However, we note a drafting inconsistency where money-market instruments are excluded twice from the scope of the PRMs – first in the definition of "transferable securities" in the glossary and again in PRM 1.3.1(7). It is not clear why this approach has been taken. In comparison, the UK PR defines 'securities' as transferable securities other than money-market instruments that have a maturity of less than 12 months.
Question 8	Do you agree with our proposed approach to expand the currently exempted securities from UK PR Art 1(2) to include instruments of Islamic finance where an appropriate credit support arrangement exists? Y/N. Please give your reasons.
	ICMA welcomes the FCA's efforts to include instruments of Islamic finance within the exemptions to the PRM. Market participants consider this could be a helpful exemption if carefully crafted. We set out comments on the proposed exemption below. **Islamic finance exemption for sovereigns:** 1. In case clarity is needed on the scope of this exemption, we suggest that guidance could be added that the types of instruments of Islamic finance that could fall within the exemption could include, but are not limited to, any type of instrument of Islamic finance already admitted to trading on a regulated market or primary MTF. We note that there is already listed on the LSE a wide range of Islamic finance instrument structures.) 2. Rather than considering this exemption through the lens of a "guarantee", we suggest basing this exemption on a test of whether the SPV funds its payment obligations to holders from payments derived from a sovereign source. The FCA may wish to consider framing the exemption in the context

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	of existing exemptions, i.e. those for an alternative finance investment bond, where the issuer for the purposes of the undertakings referenced in Article 77A(2)(d) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 has the benefit of an undertaking of a sovereign for payment (either directly or through intermediate SPVs) of an amount at least equal to the amounts payable by the issuer pursuant to those undertakings. 3. If the suggestion in our point 2 above is reflected, we suggest that PRM 1.3.2G is substantially amended. However, if our suggestion in point 2 above is not reflected and the concept of a "guarantee" is retained, we suggest that limbs (2) and (3) of PRM 1.3.2G are removed and limb (4) amended. a. In relation to (2), the wording in relation to "creating direct obligations" on the credit supporter is not clear. In addition, payments may be subject to the satisfaction of certain conditions, such as the delivery of a notice, allowing time to pass etc, and a suggestion that there cannot be conditions to payment will be problematic for the majority of sukuk. b. Limb (3) is very broad and therefore could be problematic. Conventional bonds may not meet this criteria. We think the requirement should rather be that the payment obligation is a general payment obligation of the relevant sovereign. In other words, it should not be a special obligation (e.g. one that can only be claimed against a specific fund or asset) nor be based on irrevocability, but rather one that is, to borrow a US term, backed by the "full faith and credit" of the relevant sovereign. c. In limb (4), the word "direct" should be removed because, in the case of a sukuk, the claim is not made directly by a holder but by the SPV/delegate on behalf of holders. d. If limbs (2) and (3) end up being retained, we would suggest that the lead-in language in PRM 1.3.2G is amended to make it clear that not all four limbs need to be met. Use of Guarantee annex: Without prejudice to the comments made in point 2 above, if an Islamic finance transaction falls within PRM 1.3.1(5) and 1.3.2 (as proposed), no prospectus is required. However, for Islamic transactions that are not exempt, we would welcome guidance from the FCA that the Guarantee annex (Annex 21) should be followed for the disclosure of the credit support that they have in place. In some cases, credit support is given by a corporate (rather than a sovereign) and issuers typically follow the Guarantee annex as it is the most appropriate disclosure annex to follow. However, this approach sometimes raises queries from the FCA during the review process as the credit support is not technically a "guarantee" in Islamic Finance structures. Guidance (not necessarily in the PRM) that the Guarantee annex should be followed would help to provide clarity in these situations.

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Question 9	Do you agree with our proposed approach of removing the exception for not-for-profit bodies? Y/N. Please give your reasons.
	We agree it is helpful to remove the distinction between the UKLR and prospectus regimes. We are not aware of any issuers who have concerns about this change, but we defer to other respondents who may be aware of entities that would be adversely impacted. Otherwise, we agree it is helpful to remove the distinction between the UKLR and prospectus regimes such that, going forwards, non-profit bodies are preparing a prospectus rather than listing particulars (which are a prospectus in all but name).
Chapter 3 - Structure of the proposed sourcebook and requirements for admission to trading of securities on regulated markets **Contents requirements for a prospectus for admission to trading on a regulated market**	
Question 10	Do you agree with our proposed approach to revising the requirements for a summary as described above? Y/N. Please give your reasons.
	Broadly yes, although we note it is not relevant in the wholesale debt context. We note that the FCA is planning to revisit retail non-equity securities in their upcoming consultation and has stated that it is still considering uniform wholesale and retail disclosure. Therefore, while we have highlighted some points on the current drafting in case this is helpful at this stage, we will revisit summaries, if proposed to be required for non-equity, after the retail consultation is published. Requiring summaries for wholesale non-equity would place London markets in a less competitive position compared to European markets for wholesale non-equity securities. Para 3.40 of the CP suggests that the summary will allow cross referencing and incorporation by reference, but PRM 2.5.4 (p. 40 of 235) states that the summary may contain cross-references but cannot incorporate information by reference. We assume that PRM 2.5.4 should be amended to reflect the intention expressed in the body of the CP. We had the following queries re Annex B (Prospectus summary) (p.99), although we appreciate certain of these may be superseded by the upcoming retail consultation: • In Annex 14 (Securities Note for Retail Non-Equity Securities), the disclosure requirements for the offer have been deleted from section 5, but the equivalent information about the offer has not been deleted from Annex B (see Section 5(1) of Annex B) (although see points made in para 3 of “Other points to note”. • Section 2, 1(f)(v), is unclear. Is this new provision attempting to impose a new liability standard for omissions or for PFLS (PRM 8)? • The new Section 1 Preliminary Disclosure (under 1.3R) seems unnecessary (in particular item 1(b)) and doesn't add anything; query if

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	could be removed? We note that para 1(c) in this section regarding use of proceeds is already covered in Section 5 of Annex B. As a general note, we consider this is an example of an area where the rules do not need to be so prescriptive for debt securities. For example, the increase in the page limit for a summary is welcome, but we query whether a limit is needed at all.
Question 11	Do you agree with our proposed approach to incorporation by reference? Y/N. Please give your reasons.
	Yes. We agree that incorporation by reference should not be mandatory and that issuers should retain flexibility – see ICMA Engagement Paper Response, para 7. We note that the list of information that may be incorporated by reference (PRM 5.1.1(3)) does not include previously approved prospectuses; we understand this is an oversight. It would be important to include previously approved prospectuses, including prospectuses previously approved by EU competent authorities before the UK's departure from the EU (as is currently the case under Article 19(1) of the UK Prospectus Regulation), as debt issuers frequently incorporate by reference the terms and conditions from previously approved prospectuses for the purposes of fungible issuances.
Question 12	Do you agree with our proposed approach to carry forward financial information requirements as described above? Y/N. Please give your reasons.
	Yes, the approach is consistent with what we are accustomed to in the debt context.
Question 13	Do you agree with our proposal to clarify requirements relating to material uncertainty regarding going concern and other matters reported on by exception? Y/N. Please give your reasons.
	Yes, no objections.
Questions 14 - 19	N/A for debt securities.
Chapter 3 - Structure of the proposed sourcebook and requirements for admission to trading of securities on regulated markets **Responsibility in the new regime**	
Question 20	Do you agree with our proposal to largely retain the responsibility regime from the existing provisions? Y/N. Please give your reasons including any proposals.
	We have no objections, subject to the below. We note that "offeror" has been removed from the list of persons responsible for a prospectus in PRM3.1.7. ICMA would be happy to discuss the issues around retail cascades and prospectuses for retail offers ahead of admission after the retail CP is published. (See also Other Points to Note, Item 3, Interaction with upcoming retail CP.)

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Question 21	Do you agree with our proposal to change the requirement that a prospectus be made available to the public for 6 working days for admissions of securities at IPO to 3 working days? Y/N. Please give your reasons.
	N/A for debt securities.
Chapter 4 - Further issuances of equity securities already admitted to trading on a regulated market	
Questions 22 – 26	N/A for debt securities.
Chapter 5 - Requirements for admission to trading of non-equity securities on regulated markets **Making debt programmes more effective**	
Question 27	Do you agree with our proposed approach to permit issuers to use future incorporation by reference of financial information, including the option for issuers to use supplementary prospectuses for this purpose? Y/N. Please give your reasons.
	Yes, as per ICMA's Engagement Paper Response – para 5, permitting the incorporation by reference of future information into base prospectuses is welcome. The FCA's confirmation that forward incorporation by reference will not trigger withdrawal rights is also welcome. However, this reform will only be significantly helpful if it is accompanied by a clear provision to the effect that the incorporation by reference of regular interim or annual financial information or audit reports or financial statements will not by itself amount to a significant new factor or correction of a material mistake or material inaccuracy triggering the requirement to supplement under PRM 10.1.1 R. Otherwise, out of an abundance of caution, issuers are likely to continue to publish supplements to their base prospectuses thus defeating the FCA's stated objective of minimising costs for issuers (CP para 5.6). We suggest the addition of the following sentence at the end of PRM 10.1.1 R: "Information which is incorporated by reference into a base prospectus pursuant to PRM 5.1.1 R(2) shall not need to be mentioned in a supplementary prospectus for these purposes unless any of that information causes a material mistake or material inaccuracy in any other information which already appears in the base prospectus." Please confirm that the FCA would find it acceptable to have "evergreen" language to refresh relevant prospectus statements that might be impacted by information that is forward incorporated by reference (such as the no material adverse change statement), e.g. "Since our last published financial statements, there have been no material adverse changes…." An issuer would then only need to supplement a base prospectus if there had been a material adverse change since the last information had been future-incorporated by reference.

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	Furthermore, we agree that forward incorporation by reference should be voluntary, and issuers should be permitted to use a supplementary prospectus if preferred. For example, issuers selling securities under Rule 144A into the US may wish to publish a full MD&A of the new financial information, or for other reasons issuers may want to provide further information or background on the new financial information, in each case via a supplement.
Question 28	Do you agree with our proposed approach to give issuers of non-equity securities more flexibility in relation to supplementary prospectuses? Y/N. Please give your reasons.
	Yes, proposed 10.1.6 R of PRM is welcome. See ICMA Engagement Paper Response – paras 11/12. **Conditions on use of flexible supplement:** • PRM 10.1.5(2) requires the base prospectus to already have been used to issue transferable securities which have already been admitted. We understand the FCA is concerned about misuse of a supplement to incorporate into a base prospectus the terms for novel securities. Whilst this is understood, we are concerned that this requirement prevents use of a supplement for legitimate reasons simply because since the last update of the base prospectus, the issuer has not issued any securities (bearing in mind most non-financial corporates may well not issue more than once a year). Even a requirement that the "programme documentation" has previously been utilised for an issuance still restricts an issuer's flexibility. In a fast paced and fluctuating market environment, issuers may require flexibility to amend documentation before an issuance window has become available, particularly in respect of nascent and developing products such as SLBs. To the extent there is a concern that supplements documenting new instrument features will not be an "easily analysable, concise and comprehensible" read for investors together with the base prospectus (for example, because of multiple individual amendments to different terms and conditions in the base prospectus), then the FCA limitations should be framed accordingly. • PRM 10.1.5(4) prevents issuers from including registration document information in a supplement where there is no significant new factor, material mistake or material inaccuracy. We understand the FCA is willing to permit flexibility in this regard so that such a supplement could amend securities note and/or registration document information. Should it need to amend both types of information, an issuer would expect to combine both types of information in one supplement for efficiency purposes rather than needing to produce two separate supplements. Amendments will need to be made to the PRMs to reflect this.

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	Timing of filing a flexible supplement: We note the reference in 10.1.5(1) to "open offer". See Other Points to Note, Item 3, Interaction with upcoming retail CP. **"Same listing category" and "manifestly the same":** Clarification on what is meant by "same listing category" and "manifestly the same" would be useful.
Chapter 5 - Requirements for admission to trading of non-equity securities on regulated markets **Further issuances**	
Question 29	Do you agree with us not carrying over the option to produce a simplified prospectus for further issuance of non-equity securities? Y/N. Please give your reasons.
	Yes, this is in line with ICMA's Engagement Paper Response – para 29. We note that the FCA has also informally confirmed to us that it will be looking at the disclosure annexes as a part of the upcoming retail CP. However, please clarify: • Annexes 8 and 16 for secondary issuances of non-equity are still included. Our understanding from 5.14 of the CP is that the proposed rules do not include an option to use a simplified document for secondary issuances of non-equity securities and the table in 4.1.1G does not reference these Annexes. Given this, we think these Annexes should be deleted. • PRM part 7, simplified disclosure regime, contains 7.1.3(2) which permits simplified disclosure for "non-equity securities or securities giving access to equity securities" (convertibles)? The first reference to non-equity securities should presumably be deleted, given our understanding set out above.
Question 30	Do you agree with our proposed approach raise the threshold to 75% for further issuances of non-equity securities already admitted to trading? Y/N. Please give your reasons.
	We believe this is more of a consideration in an equity context. In the debt context, we do not feel that many issuers would take up this option of issuing fungible securities up to 75% of existing securities without a prospectus. This is primarily due to the fact that fungible issuances are often issued pursuant to an issuer's MTN programme which sets out a framework and documentary process for fungible issuances. Where a fungible issuance is issued pursuant to an MTN programme, this exemption is therefore not a relevant consideration. In the context of standalone bond issuances, market practice is that an issuer produces a prospectus even where the exemption for increases of 20% could be available under the existing regime. We cannot predict whether a significantly higher threshold such as 75% might make a fungible issuance of a previous stand-alone bond offering more attractive, given that the higher threshold means a significantly higher amount

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	can be raised in a fungible issuance than currently is the case. Nevertheless, the more significant factor to consider may be the period of time that has elapsed since the previous bond offering, as opposed to the 75% threshold itself. For example, if an issuer has issued a 10-year bond, it is unlikely to issue a fungible issuance 5 years after the initial issuance without a prospectus (and relying only on continuing obligations disclosure), while the ability to issue fungible securities without a prospectus may be of more interest during a limited period after the original issue date whilst financial information, risk factors and the statements on financial position in the original offering document remain relatively current. If the FCA would like to increase the threshold, consistency with the threshold included in the EU Listing Act (which was increased from 20% to 30%) is worth bearing in mind. We understand that ECM participants have considered many of the issues around further issuances without a prospectus from the ECM perspective, where it is a more significant issue in the context of capital raising, and are recommending a threshold in the range of 30% to 33.33%, which we would support as a sensible range if the FCA were to increase the threshold. **"Intended to be fungible":** We wish to propose a drafting amendment to PRM 1.4.3R to clarify that, as currently understood and evidenced in market practice, securities fungible at a future point in time are within the scope of the further issuances exemption. (By way of background, this is relevant for debt as, unlike equity, secondary issues of debt securities are very frequently issued with a temporary period of non-fungibility and under a separate ISIN, before, often after a period of 40 days to several months (depending on factors such as applicable selling restrictions and interest payment dates), the secondary issue becomes fungible with the original issue and commences trading under the same ISIN as the original issue. We propose the additional wording in red below: 1.4.3 R *Transferable securities* fungible with securities already *admitted to trading* on the same *regulated market*, provided they represent, over a 12-*month* period, less than 75% of the number of securities already *admitted to trading* on the same *regulated market*. [**Note**: *Prospectus Regulation* Art 1(5)(a)] "For the purposes of the PRM, a transferable security is considered *fungible* with an existing security if it is either: (a) immediately fungible with the existing security on issuance; or (b) at the time of issuance the transferable security is intended to become fungible with the existing security at a known future date falling not more than [12] months after the date of issuance of the transferable security." Similar wording setting out when a security is considered fungible should also be added to 5ZA2.2 regarding when an MTF admission prospectus is required.

Chapter 6 - Sustainability related disclosures in prospectuses for admission to trading on a regulated market	
Questions 31 – 33	N/A for debt securities.
Question 34	Do you agree that our proposed climate disclosure rule should apply to issuers of equity securities and issuers of depositary receipts representing equity shares only, with other securities addressed through the Technical Note? Y/N. Please give your reasons. Yes, we agree that the climate disclosure rule should apply only to issuers of equity and depositary receipt representing equity shares, and not to general purpose debt securities (i.e. non sustainability-labelled non-equity securities). We agree with the points set out by the FCA in CP 6.23 as to why the rule should not be extended to such debt issuers, which would be consistent with the EU's approach under its current Listing Act review. We wish to reiterate the comments made in ICMA's Engagement Paper Response para 37, in particular that a requirement to align debt prospectus disclosure with UK entity-level corporate reporting requirements would be problematic for SPVs and debt issuers that have their equity listed outside the UK. Issuers with equity listed elsewhere may be following disclosure requirements in other jurisdictions; having to follow additional disclosure requirements for admitting debt in the UK may be a barrier to their doing so.
Questions 35-38	N/A for debt securities.
Question 39	Do you agree with the proposed areas for revision of the Technical Note in relation to sustainability-related disclosures? Yes. Are there any other areas that we should seek to address? No. See answers to Q41 and following.
Question 41	Do you agree with the proposed new disclosure requirement and set of voluntary additional disclosures we are proposing to mitigate information gaps between bond frameworks (or similar documents) and prospectuses? Are there other disclosures that you think we should consider? • We agree with the proposed new disclosure requirement for sustainability-labelled non-equity securities set out in 4.7.1 R. • We agree also that the set of additional disclosures in 4.7.3 G- 4.7.5 G should be voluntary to permit flexibility. • However, we query whether the disclosure of the information listed in PRM 4.7.4 and 4.7.5 will in practice be **expected** or whether it will remain **voluntary**. It is crucial for these disclosures to remain voluntary in practice and that when reviewing prospectuses the FCA will be mindful that PRM 4.7.4 and 4.7.5 is guidance only to ensure continued frictionless use of the ICMA Principles for the reasons below.

	• The PRM UoP bond and SLB disclosure requirements are very detailed and prescriptive and, while some provisions look broadly similar to the ICMA Principles, go beyond current market practice in certain aspects. For example, aspects of PRM 4.7.4 and 4.7.5 are not aligned with the ICMA Principles. See Q 42 and Q43 below for further explanation. • In addition to the point on alignment above, the ICMA Principles also give some flexibility as to how the information is communicated to investors. There is variation in practice as to what information is included in a prospectus itself and what is included in a framework document. Compliance with the full list of information in the manner in which it is set out in PRM 4.7.4 and 4.7.5 would be a shift in practice for issuers in terms of disclosing such information in a prospectus. In addition, some of these items could be difficult to draft into a prospectus given the liability regime attached to prospectuses. • As the UoP bond market is well established, we agree with the current proposal to include voluntary detailed guidance in the PRM sourcebook as set out in PRM 4.7.4. However, we are of the view that it is appropriate to approach UoP bond disclosures and SLB disclosures separately given the different levels of development of these markets (see bullet below). It may be more appropriate for SLB disclosures not to be subject to specified further guidance (in which case such issuers would just follow ICMA Principles) or for guidance on SLBs disclosures to be included in a technical note rather than the PRM sourcebook. This could be Primary Market/TN/801.2 (*Disclosures in relation to ESG matters, including climate change*) (which we understand the FCA intends to update) or a new separate technical note. Including guidance in a technical note would have the benefit of being more easily amended in the future to reflect market developments. • We would like to emphasise that UoP bonds and SLBs are different products, and the markets are at different stages of development and should be treated differently (see ICMA Engagement Paper response paras 43-44). In particular, the SLB market remains relatively nascent and fragile, and adding burdensome disclosure requirements to SLBs may hamper any further development of the market for these bonds. For example, SLBs, unlike other types of sustainable bonds which have experienced growth in the past year, are the only category of sustainable bonds to have experienced a year-on-year decline, dropping by 48% as of 23 September 2024 (see "Sustainable bond market update", ICMA Quarterly Report, October 2024, p.35). • Furthermore, adding prescriptive guidelines for UoP bonds and SLBs that are not aligned with the ICMA Principles and current market practice could deter issuers from listing in London which would negatively impact the FCA's secondary objective of facilitating the international competitiveness of the UK economy. In particular, as the EU is developing its own rules, it would not be helpful to the UK's competitiveness if its rules turned out to be more onerous than the EU's.

	• Paras 6.55 and 6.59 of the consultation paper specify "corporate issuers". It would be helpful if the FCA would confirm in the policy statement that this includes financial institution issuers of vanilla debt, as has already been informally confirmed to us.
Question 42	Do you agree with the additional voluntary disclosures we are proposing to introduce in prospectuses for UoP bonds? Are there other disclosures that you think we should consider? Yes, we broadly agree with the additional disclosures subject to some specific drafting points below. We note that there are no other additional disclosures that need to be considered at this stage. The flexibility of the existing regime and necessary information test allow for issuers to include additional disclosures as appropriate for specific issuances and products. We note that aspects of the UoP bond guidelines are more detailed and prescriptive than the ICMA Principles. PRM 4.7.4(2) and (3) are not fully consistent with the ICMA Principles. It would be helpful to align the language of these provisions more consistently with the ICMA Principles. Particular concerns relate to: (a) the language used when referring to "projects". Project-level information may simply not be available at the time of issuance since, except the cases of refinancing, projects may not be known to the issuer at the issuance. The FCA could clarify, for example, that their required disclosures do not intend to go beyond being a summary of the information included in the framework documents and do not require granular project level information, but rather high-level characteristics related to eligible green project categories to which issuers expect to allocate the proceeds of the bond. (b) referencing "risks associated with projects and related mitigation measures" – as these may not be known to many issuers at the time of drafting the framework document and until the project is being implemented – we propose the references should rather be to "issuer processes". (c) the language around selection in 4.7.4(3) which could be incorporated into 4.7.4(2), as under the ICMA Principles, evaluation and selection are considered together. (d) the language in 4.7.4 (3) concerning the external review is duplicative of 4.7.3. (e) in 4.7.4(3)(a) (and the lead-in in 4.7.4(3)), as it is important to note that often the external review will be of alignment of the issuer's framework with the ICMA Principles (rather than alignment of the bond itself), so suggest deleting this wording, especially as the external review is already covered in 4.7.3(2). Set out below is suggested drafting of 4.7.4(2)-(3) to reflect these concerns:

	(2) the project evaluation prior to the issue of the use-of-proceeds bonds, including: (a) the general sustainability ~~project~~ objectives of eligible projects; (b) processes by which issuer identifies, manages, and mitigates potential risks ~~specifically~~ associated with the relevant projects ~~and related mitigation measures~~; and (c) the criteria, metrics or performance indicators used to evaluate and select the projects and the process and methodology by which the evaluation and selection is conducted; ~~(3) the criteria and rationale for selecting the projects, including how the use-of-proceeds bond aligns to the standards and /or principles referred to in PRM 4.7.3G(2), by reference to:~~ ~~(a) an external review of the bond, where available; or~~ [This is repetitive as it was already recommended in 4.7.3. Also, often the external review will be of alignment of the issuer's framework with the ICMA Principles (rather than alignment of the bond itself).] ~~(b) details of the issuer's methodology for determining the project's green, social and/or sustainability eligibility.~~ [inserted in 2(c) above]
Question 43	Do you agree with the additional voluntary disclosures we are proposing to introduce in prospectuses for SLBs? Are there other disclosures that you think we should consider? As indicated above, the ICMA Principles leave some flexibility as to how information around rationale and process by which KPIs are selected and alignment with the sustainability strategy is communicated to investors. There is therefore variation in practice as to whether this information is currently disclosed in a prospectus. In addition, PRM 4.7.5 (2) goes further than what is recommended by ICMA Principles. While the quantum of the financial consequence of meeting or failing to meet any targets, metrics or indicators can be factually disclosed, concluding whether it is an "adequate incentive" is a subjective assessment. Often, for issuers, it can be the reputational incentive that is the most important, rather than any increased costs. From an "ESG" investor perspective, there is typically unease about receiving a financial advantage from the failure of an issuer to meet its target(s), therefore the reputational disincentive on the issuer for failing to meet its target(s) is equally significant for investors. In addition, for investors the increased reporting and transparency resulting from an issuance of an SLB can be as important as any financial consequence. Also, if an issuer had multiple SLBs, it would be difficult to apply such a holistic test to one issuance, taking into account all the SLBs it may have outstanding. Introducing a prescriptive provision of this nature, even through guidance, could hamper the development of the SLB market and impact the competitiveness of the UK market as issuers would be less inclined to list SLBs in London. As mentioned above, given that the SLB market is still developing, including any disclosure requirements applicable to SLBs into a technical note (see

	suggestion in Q41) may allow the FCA to be more nimble in the future should it wish to adjust the guidance as the SLB market develops further.
Chapter 7 - Protected forward-looking statements **Our proposed approach**	
Question 44	Do you agree with our overall approach to specifying the kinds of statements that can be protected forward-looking statements? Y/N. Please give your reasons. Overall, we think that a well-calibrated Protected Forward Looking Statement regime that is consistent with existing international market practice could encourage more and better disclosure (see ICMA Engagement Paper Response, para 45). We acknowledge that the PFLS regime is primarily intended for equity issuance. and so it is not surprising that the regime is unlikely to be widely relevant to issuers of debt securities: there are only limited circumstances in which the PFLS regime may be used by debt issuers. Given the complexity of the proposed new PFLS regime, it might be helpful if the FCA is able to provide illustrative worked examples to assist the market in understanding its intended use cases. We ask the FCA to reconsider its proposals and reiterate our request that the FCA adopt a PFLS regime that is similar to the US forward-looking safe harbour as it is well understood by the market, and issuers would benefit from having a consistent approach across different markets (see ICMA Engagement Paper Response, para 46-47). In particular, the PFLS regime should consider aligning with the US regime in the following ways: • Allow application of the PFLS regime to qualitative and aspirational statements. Limiting PFLS to quantitative statements limits its use for debt issuers, where forward-looking statements are more likely to be made in a qualitative, narrative format. • Whether a statement should be protected should be assessed by reference to its nature and the policy objective of encouraging more disclosure of forward-looking information (which is inherently more difficult for issuers to provide) by providing a different liability standard for such information. It should not be determined by whether its disclosure is mandated by the rules. The proposed rules are very granular and prescriptive which may impact whether issuers use the regime. For example, it may be cumbersome to need to include a legend against each PFLS, instead of only needing to include one blanket legend. However, if under the final adopted regime a PFLS is not assessed by reference to the nature of the statement, then being able to identify PFLS with an accompanying legend may provide clarity to the investor as to which statements the issuer views to be PFLS. In addition, issuers may also find it difficult to meet the content requirements of the accompanying statement. The FCA may need to observe how the regime is

	used once it applies and be flexible on developing the regime if practice shows it is challenging for issuers to use. If the PRM is adopted in its current or similar formulation, for clarity we request the FCA confirm our informal understanding, that the PFLS regime applies to PRM 4.7.4 and 4.7.5 information (in alignment with the exceptions set out in PRM 8.1.4(1) relating to climate-related disclosures in Annex 1 items 5.8.2, 5.8.3 and 5.8.5) to the extent that that information meets the requirements for PFLS and is labelled as such. With reference to paras 7.23 and 7.24 of CP24/12 in relation to the reasonable investor test, inside information and market updates in accordance with UK MAR, we wonder whether the requirement for an announcement to update PFLS information may be a disincentive to issuers.
Question 45	Do you agree with our proposed general definition for protected forward looking statements? Y/N. Please give your reasons. See response to Q44.
Question 46	Do you agree with our proposed criteria for financial information that can be considered to be protected forward looking statements? Y/N. Please give your reasons. See response to Q44.
Question 47	Do you agree with our proposed criteria for operational information that can be protected forward looking statements? Y/N. Please give your reasons. See response to Q44.
Question 48	Do you agree with our proposed exclusions for the type of information that can be considered as protected forward looking statements linked to existing required prospectus disclosures for regulated markets? Y/N. Please give your reasons. See response to Q44.
Question 49	Do you agree with our proposal to include profit forecasts in the definition of PFLS even where our rules require an issuer to include a profit forecast in their prospectus? Y/N. Please give your reasons. See response to Q44. For debt securities, profit forecast disclosure is optional, but having the PFLS regime available for such disclosure would be helpful.
Question 50	Do you agree with our proposed approach to exclusions to protected forward looking statements for MTF admission prospectuses? Y/N. Please give your reasons. N/A for QI-only MTF.
Question 51	Do you agree with our overall approach to the presentation of PFLS in a prospectus? Y/N. Please give your reasons. See response to Q44.
Question 52	Do you agree with our proposed requirements for the general accompanying statement for protected forward looking statements? Y/N. Please give your reasons. See response to Q44.

	It would appear that making the statement that the information is consistent with internal projections is not itself part of the PFLS. This statement potentially exposes an issuer to additional liability, and it is unclear if the additional liability is at the same standard as for the PFLS regime.
Question 53	Do you agree with our proposed requirements for the specific accompanying statement? Y/N. Please give your reasons. See response to Q44.
Chapter 8 - Multilateral trading facilities **Requirement for an MTF admission prospectus**	
	Questions 54-57 are either equity focused or not relevant to QI-only MTF.
Question 54	Do you agree with our proposal to require an MTF admission prospectus for all initial admissions to trading and admissions of enlarged entities resulting from reverse takeovers? Y/N. Please give your reasons. Not relevant for debt.
Question 55	Do you agree with the proposed exceptions to requiring an MTF prospectus on admission for AQSE fast-track and AIM designated market admissions? Y/N. Please give your reasons. Not relevant for debt.
Question 56	Should we consider any additional exceptions to the requirement to produce an MTF admission prospectus? Y/N. Please give your reasons. Not relevant for QI-only MTF.
Question 57	Do you agree with our proposal for further issuances by Primary MTF issuers? Y/N. Please give your reasons. Not relevant for QI-only MTF.
Chapter 8 - Multilateral trading facilities **Voluntary and UK Growth prospectuses**	
Question 58	Do you agree with our proposal to not take forward in our rules the concept of a UK Growth prospectus? Y/N. Please give your reasons.
	Yes, no concerns.
Chapter 8 - Multilateral trading facilities **Requirement for a supplementary prospectus**	
Question 59	Do you agree with our proposed requirements for supplementary prospectuses that relate to MTF admission prospectuses? Y/N. Please give your reasons.
	Not relevant to QI-only MTF.
Chapter 8 - Multilateral trading facilities **Circumstances and manner in which withdrawal rights may be exercised**	
Question 60	Do you agree with our proposed requirements for the circumstances and manner in which withdrawal rights may be exercised in relation to offers by Primary MTF issuers? Y/N. Please give your reasons.

	Yes, in so far as withdrawal rights do not apply to the ISM if it is a QI-only MTF that does not require an MTF admission prospectus. We understand from informal discussions with the FCA that, in the context of securities to be admitted to a 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. Formal confirmation of what has previously informally been confirmed would be helpful.
Chapter 8 - Multilateral trading facilities **Prospectus responsibility**	
Question 61	Do you agree with our proposal for who should be responsible for an MTF admission prospectus and supplementary prospectus? Y/N. Please give your reasons. Not relevant to a QI-only MTF that does not require an MTF admission prospectus.
Chapter 8 - Multilateral trading facilities **Advertisements**	
Question 62	Do you agree with our proposed requirements for advertisements in relation to the admission of transferable securities to trading on a Primary MTF? Y/N. Please give your reasons.
	Our view is that the rules around advertisements (as well as the rules around persons responsible for an MTF admission prospectus and withdrawal rights) should not apply to a QI-only MTF. In many cases, the drafting of the individual rules in MAR 5ZA achieves this given that they key off an MTF admission prospectus or a supplement to an MTF admission prospectus (and the rules of a QI-only MTF (such as the ISM) are not expected to require such documents). However, it would be helpful to revisit a couple of rules as set out below. 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 UK Prospectus Regulation regime (where the advertisement regime is confined to the regulated market space) and may place the ISM at a slight competitive disadvantage to similar venues outside the UK. Clarification of this point may be possible through MAR 5ZA 1.1/1.2 or though individual rules. Suggestions are set out below (for amendments to individual rules), but we would be happy to discuss this further. **5ZA.3 Withdrawal rights** Application 5ZA.3.1 R The *rules* in this section apply in respect of any *admission to trading* of *transferable securities* on a *primary MTF* that are the subject of an MTF admission prospectus. **5ZA.5 Advertisements and other disclosure of information** Application 5ZA.5.1 R This chapter applies to the communication and content of an *advertisement* that relates to the *admission to trading* or proposed *admission to trading* of *transferable securities* on a *primary MTF* unless the *primary MTF*

	meets the *qualified investor condition* and does not require an *MTF admission prospectus*.
Question 63	Do you have any comments on our cost benefit analysis?
	No.

Other Points to Note

1. **Withdrawal rights on Regulated Market**

The FCA has not included an exemption from withdrawal rights for supplements to wholesale prospectuses.

Under the current regime, withdrawal rights do not apply in a wholesale context (this has been the understanding for many years, in particular since ESMA clarified the point in 2018 (see ESMA's July 2018 Final Report on draft regulatory technical standards under the Prospectus Regulation (paragraph 238 on p.63 and paragraph 268 on pp.68-69)). To ensure consistency with market practice and expectations, it would be helpful for this to be provided for in the PRMs. For reference, in the ICMA Engagement Paper Response para 16, it was stated "*ICMA asks the FCA to confirm that any public offers that benefit from any of the exceptions in Schedule 1, Part 1, paragraphs (1) – (5) and paragraph (12) of the SI would not be subject to withdrawal rights even if the securities the subject of such offers are intended to be admitted to trading on a regulated market or a primary MTF (that is, offers which are otherwise excepted, over and above the conditional-on-admission exception in paragraph 6(a))… [W]ithdrawal rights would apply to issuances that fall within the exception for offers that are conditional upon admission to trading (Schedule 1, Part 1, paragraph (6)(a)) but not also one of the other listed exceptions (Schedule 1, Part 1, paragraphs (1) – (5)), enabling retail offers that are admitted to trading to benefit from withdrawal rights.*"

If withdrawal rights were to apply to wholesale prospectuses on the regulated market, this would potentially be a competitive disadvantage for listing in the UK since this is not the case in the EU.

We suggest the following amendments to 10.1.10:

> 10.1.10 Where a *prospectus* relates to an offer of *transferable securities* to the public which does not benefit from one or more of the exceptions from the prohibition on offers to the public set out in paragraphs (1) to (5) and (12) of Part 1 of Schedule 1 to the Public Offers and Admissions to Trading Regulations 2024, an investor who has already agreed to buy or subscribe for those securities before the *supplementary prospectus* is published may withdraw their acceptance according to (1) and (2): ……..

Other exceptions, such as the ones set out in paragraphs (7) to (8), or (9) to (11), of Part 1 of Schedule 1, may also be relevant to the above rule, but as they do not relate to non-equity securities, we defer to others to comment on them.

There would also need to be a similar amendment made to the withdrawal right provision for MTFs at MAR 5ZA.3.3

2. **Withdrawal rights on MTF**

This is addressed in our response to Question 60. For emphasis, however, we have set out the point here.

We understand that in the context of securities to be admitted to a QI-only MTF, as long as the QI 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. Please confirm that this understanding is correct.

It is also our understanding that the ISM will meet the definition of QI-only MTF and would not require an "MTF admission prospectus".

We have responded to the questions in the CP on the basis of those understandings; we would need to re-visit some of those questions were either of those understandings incorrect.

3. **Interaction with upcoming retail CP**

a. **<u>Draft PRM/Disclosure annexes</u>**: We note that in the retail CP expected in Q4 2024/Q1 2025, the intention is to move from a dual disclosure to a single disclosure regime based on the wholesale standard.

i. We support the proposal to move to one standard of bond disclosure in the prospectus regime which will be based on the existing wholesale disclosure annexes. We emphasise that the single standard should not be more onerous than the requirements under the existing wholesale annexes, to avoid (i) disrupting the institutional/wholesale bonds markets that have been reliably providing trillions in financing to the global economy over the years and (ii) undermining the competitiveness of the UK as a listing venue in these markets. This would also seem to be aligned with the FCA's new secondary objective introduced by the FSMA 2023 to facilitate the international competitiveness of the UK economy. (ICMA Engagement Paper Response, para 3.)

ii. In particular, we strongly advocate that there be no mandatory summary requirement, especially as currently there is no such requirement in the wholesale debt context. (ICMA Engagement Paper Response, para 4.)

iii. See also our comment below at item 6 in relation to the "necessary information test" for debt securities and interaction of the creditworthiness test with the requirements contained in disclosure annexes.

iv. In terms of the annexes, we suggest it may be easier to have one annex for each of the registration statement and securities note, with additional information required for retail clearly annotated in each annex.

b. **<u>Prospectuses/supplements for retail offers ahead of admission</u>**

In the proposed rules, there is an ambiguity or a lack of clarity around the use of "offer period" in the new regime and the lack of a definition of "offer period".

We would be happy to discuss this further with the FCA.

It would be helpful to understand further the anticipated operation of some of the new exemptions to the public offer prohibition in practice.

For example:

We would like to understand the arrangements in relation to the drawing up of prospectuses (and supplements) ahead of retail offers, as the publication of a prospectus is no longer a factor in whether an offer of securities may lawfully be made if the offer is relying on the "offer conditional on admission to a regulated market or MTF" exemption.

As we understand it, the proposed rules only address the requirement for a prospectus in connection with admission but do not address the requirement for a prospectus in connection with a retail, otherwise non-exempt offer. The FCA does have power to make rules in relation to public offers in connection with an admission, through POATRs Regulation 14(1)(a). We would expect the proposed rules would need to provide that, before an offer can be made to retail ahead of admission (i.e. where there is a public offer that only has the benefit of the conditional on admission exception), a prospectus must be approved by the FCA.

c. Retail cascades:

Under the current regime, an unauthorised offeror would take responsibility for the prospectus. In the CP, the wording on the "offeror" being responsible has not been carried into the PRMs (although there remain some stray references in the annexes) and the annex on Consent has also not been carried across.

As mentioned above, it would be helpful to understand the arrangements (in terms of prospectus coverage/approval) for retail offers ahead of admissions. It would also be helpful to understand where responsibility for the prospectus falls if other parties are involved in distributing securities as part of a retail cascade. Currently, PRR 5.3.9 provides that an offeror is not responsible for the prospectus if the issuer *is* responsible, the prospectus was drawn up primarily by the issuer and the offeror is making the offer "in association with the issuer". The flip side of this is that the issuer is not responsible if the offeror is making an offer otherwise than in association with the issuer. Without arrangements like this set out in PRM 3.1.7, there may be a concern over responsibility for a prospectus vis a vis an aggrieved investor who has purchased securities from a third party offeror who is not part of the "authorised distribution".

The focus on retail cascades can be traced back to July 2007 and paragraph 4.1 of the then FSA's List! 16 addressing the impossibility of covering 'cascade' offers terms (not directly involving the issuer) in the issuer's prospectus – since such terms would vary and generally be unknown to the issuer. This, however, led to a further focus on retail investors confirming whether cascade offerors were entitled to rely on the issuer's prospectus (regarding the remaining information notably about the securities), in terms of the issuer's obligation to keep the prospectus updated with any supplement during such cascade offers. This in turn led to a focus on prospectuses disclosing who (whether generically or specifically) was entitled to rely in the issuer's prospectus. In this respect, ICMA initially published in October 2007 a guidance note on retail cascades and subsequently Appendices A16 and A16a in the ICMA Primary Market Handbook covering (inter alia) retail cascade legends.

We would be happy to speak with you further about retail cascades.

4. **Exempt SSA issuers**

The ICMA response to the engagement papers had asked what requirements would be followed by an SSA exempt issuer (under PRM 1.3.1R(2)) wishing to produce a voluntary prospectus. Would it be just the necessary information test or some type of annex? Any annex should include proportionate disclosure requirements.

5. **Structured products disclosure**

There are additional aspects of the necessary information test that apply to structured products (Regulation 23, POATR). Regulations 23(4) and 5 (and PRM 4.5.7) could be particularly problematic for structured product issuers and imposes requirements they may not be able to meet, potentially resulting in such issuers seeking alternative listing venues (including in Europe). These POATR and PRM requirements do not align with Annex 17 disclosure requirements – which, as they reflect existing practices, structured product issuers can address in disclosure. It would be helpful if the FCA could confirm that Annex 17 disclosure requirements remain sufficient. The FCA may receive other comments from structured product market participants.

6. **Necessary information test (NIT)**

The "necessary information" criteria in Article 6(1) of the UK (and EU) Prospectus Regulation are well understood and well-regarded. It seems to represent a change that may indeed be confusing, to provide in PRM 2.1.1 R(2) that information required by the PRM sourcebook is **in addition to** the necessary information required by Regulation 23 of the POATRs. It would be preferable to retain the status quo and provide that the PRM and its Annexes are a subset of Regulation 23 of the POATRs (in the same way that the information required by the UK PR Regulation and its Annexes is a subset of the information required by Article 6 of the UK Prospectus Regulation).

7. **Approval of prospectus**

In PRM 9 on the approval of a prospectus, we note that certain provisions have not been carried across from the current regime: (i) the provision providing that, when vetting a draft prospectus for wholesale non-equity securities, the FCA is not required to consider whether a draft prospectus is (A) written in plain language, (B) describes the nature of issuer's operations/principal activities or (C) explains trade/industry specific terminology; and (ii) article 41 of the UK PR ("Proportionate approach in the scrutiny of draft prospectuses and review of the URD"). Is this intentional?

8. **Public availability of prospectus**

We note that PRM 9.5.9 has carried over from the existing regime the requirement to keep the prospectus available for 10 years. We want to reiterate a comment that was made in ICMA's Engagement Paper Response, para 20. Fundamentally, the prospectus is mainly necessary for the offer period/admission period of the bonds, so changing the current 10 year public availability requirement to the shorter of 10 years or the date of redemption/maturity of the relevant securities would be helpful.

Annex

Annex: Typos and other drafting comments

The annex is split into two parts. Part 1 relates to all comments that could be classed under the category of "typos", and Part 2 relates to any other drafting comments or queries. The comments are listed in chronological order, with the reference and page number (which is consistent with footer numbering in the main consultation document). Corrections, word additions and other linguistic amendments are highlighted in yellow. Some of the drafting comments listed (e.g. in relation to "offeror") may be impacted by the upcoming retail consultation paper expected in Q1 2025; we have noted them here in case the FCA may find it helpful.

PART 1: Typos

Annex B Amendments to the Market Conduct sourcebook (MAR)

MAR 5ZA.2.4 G (p.13)

- This should be subject to MAR 5ZA.2.3 i.e., "The requirement in MAR 5ZA.2.1R does not apply where the issuer uses an excluded route to admission."

Annex D Prospectus Rules: Admission to Trading on a Regulated Market Sourcebook (PRM)

PRM 1.1.4 G (p.23)

- The wording "Subject to PRM 1.1.7R," isn't particularly clear. A more simple approach would be to instead have a sentence at the end which says some rules will apply to an MTF, as set out in 1.1.7.

PRM 1.1.7 G (p.24)

- Cross-reference should be to PRM 8.

PRM 1.4.4 R (p.27)

- The drafting in (2) is not as clear as in Prospectus Regulation. Consider rephrasing the lead-in (starting "unless:") to (a) to (d) to a lead-in along the lines of "The 75% limit does not apply where:".

PRM 1.4.10 R (p.30)

- Typo in heading: "Transferable securities allotted to existing ~~of~~ or former directors or employees".

PRM 2.1.7 R (p.33)

- Why does this distinguish between a "Prospectus" and a "Base Prospectus" whereas the other provisions don't?
    - As also seen in PRM 2.2.1 R (p. 33)

PRM 2.2.11 R (p.34)

- Reference to "where a prospectus summary is required" should appear before "the prospectus summary" (and not after).

PRM 2.3.9 R (p.36)

- In relation to (2) below, should the highlighted wording below state “to which the final terms relates”? The base prospectus of course will relate to all issues under the programme so it may be clearer to refer to the final terms relating to the particular admission.

    - “Where the final terms are not included in the base prospectus, or in a supplementary prospectus, the issuer must:
      (1) make the final terms available to the public in accordance with PRM 9; [Note: Prospectus Regulation Art 8(5) first para]
      (2) file the final terms with the FCA as soon as possible after they have been agreed and no later than 2 pm on the day before the admission to trading on a regulated market to which the base prospectus relates; [Note: Prospectus Regulation Art 8(5) first para]
- In relation to (4) (b) and (c) (p.37), the grammar of limb (b) and (if retained – see next comment below) limb (c) require amending as they do not currently make sense following on from the lead-in wording to limbs (a) to (d).
- In relation to (4) (c) (p.37) this is not required, as the summary will be annexed to the final terms and the base prospectus will identify where the final terms will be published.

PRM 2.3.10R (p.37)

- Whilst the below paragraph has always existed in Article 8(8), it doesn’t sit (and has never sat) very easily with the fact that an issue specific summary has to be annexed to the final terms (which are then filed). Perhaps this represents an opportunity to clarify the wording below?
    - “2.3.10 R A summary specific to the individual issue should only be drawn up once the final terms have been:
      (1) included in the base prospectus;
      (2) included in the supplementary prospectus; or
      (3) filed.
      [Note: Prospectus Regulation Art 8(8)]”

PRM 2.3.11 R (p.37)

- Whilst the below carries across the generic point made in Article 8(9) that the issue specific summary shall be subject to the same requirements as the final terms and shall be annexed to them, it doesn't seem correct to reference specifically PRM 2.3.8 R in this proposed rule given that 2.3.8 states that the final terms must only contain securities note information. An issue specific summary, of course, contains more than securities note information.
- Word highlighted in yellow to be changed to "and" instead:
    - "2.3.11 R The summary of the individual issue is subject to the same requirements as the final terms, as set out in PRM 2.3.7 R to PRM 2.3.9 R, and should be annexed to them.
      [Note: Prospectus Regulation Art 8(9) first sub-para]"
- Consider deleting the reference to "and should be annexed to them" as covered by 2.3.9.

PRM 2.5.1(2)(b) (p.39)

- Bonds don't have 'units' (applicable also to a few other similar refs) Not required if QI-only RM (segment) or £50k min denom "per unit".

PRM 4.2.5 R (p.50)

- Please consider inserting a sub-heading directly above this rule, with the title "Registration document for secondary issuances of non-equity securities".

PRM 4.2.9 (p.51)

- Is "securities" the correct term to use below? It would seem more consistent with other rules in PRM 4 to use "non-equity securities" or "transferable securities", instead of "securities".
    - The rule at PRM 4.2.8R does not apply to the securities described at (1), (2), (3) or (4):
      [Note: PR Regulation Art 7]
      (1) *securities* that:
      [Note: PR Regulation Art 8(2)]
      (a) are only traded on a *regulated market*, or a specific segment thereof, to which only *qualified investors* can have access for the purpose of trading in such *securities*; or
      [Note: PR Regulation Art 8(2)(a)]…."

PRM 4.3.4 R (p. 53)

- Please consider inserting a sub-heading directly above this rule, with the title "Securities note for secondary issuances of non-equity securities".
- There is a reference to Article 20 of the PR Delegated Regulation that will need to be updated.

PRM 4.4.7R (p.56)

- Is "contain" missing from the lead-in (i.e. the securities note must contain the…")?
    - For transferable securities that give the right to buy or subscribe for shares that are, or will be, issued by the issuer or by an entity belonging to that issuer's group, the securities note must the following information:

- Also, should the highlighted references in (1) and (2) reference "shares" rather than securities (i.e., such that the exact disclosure requirements depend on whether the underlying securities are on a RM)? This would seem to more closely track Article 20 UK delegated regulation.

  (1) where the securities are admitted to trading on a regulated market, the securities note must contain as additional information the information referred to in PRM Annex 17; and
  [Note: PR Regulation Art 20(1)]

  (2) where the securities are not admitted to trading on a regulated market, the securities note must contain as additional information:

- Also, "in" appears to be missing in (2)(a) (just before "item 2.2.2").
    - (a) the information referred to in PRM Annex 17, except for the information referred to item 2.2.2 of that Annex; and

  [Note: PR Regulation Art 20(2)(a)]

PRM 4.4.11 R (p.57)

- There appear to be some words missing in the below (added in underscore and yellow highlight).
    - In relation to any financial year beginning after 31 December 2020, issuers established in the United Kingdom must present their historical financial information ~~as follows~~ in accordance with:
- Also, is "UK-adopted international accounting standards" defined? Also, it would be helpful to understand why "not available" appears in (2), rather than "not applicable", as currently set out in Article 23a(4)b) of the UK delegated regulation.
  [Note: PR Regulation Art 23a(4)]

  (1) *UK-adopted international accounting standards*; or

  [Note: PR Regulation Art 23a (4)(a)]

  (2) if the standards in (1) are not available, UK accounting standards.

  [Note: PR Regulation Art 23a (4)(b)]"

PRM 4.4.14 R (p.58)

- It is noted that whilst the meaning of "wholesale" non-equity securities is well understood, it is not defined in the PRM. It may need to be considered whether this will need to be defined for the purposes of the PRM going forward, particularly as a result of any consequential changes required to be introduced as part of the consultation on retail securities.

PRM 4.5.2R (p.59)

- Is reference to "offeror" correct?

PRM 4.5.7 R (p.60)

- Presumably this proposed rule relates to the necessary information test for asset backed/linked securities under Regulation 23(4) and (5) of the Public Offers and Admissions to Trading Regulations 2024. If this the case it would be helpful if this rule was specific in this regard, as suggested in highlighted yellow below.
    - "Where the transferable securities are non-equity securities described in Regulation 23(4) of the Public Offers and Admissions to Trading Regulations, the prospectus must contain the specific and material risk factors pertaining to the underlying assets, to the extent that they are relevant to:

  (1) the creditworthiness of the obligor of the underlying assets; or
  (2) where the underlying assets are shares or securities equivalent to shares, the prospects of the issuer of the underlying assets."

PRM 4.7.1R (p.61)

- Change "whether" to "if" so that it is clear that only a positive statement is required.
- (1) Change "or" to "and/or" at end of this paragraph. This would be consistent with the explanation in paragraph 6.58 of the CP (see page 55 of CP).

PRM 4.7.2 R (p.61)

- Last sentence of this Rule refers to "PRM 4.7.3 R to PRM 4.7.5 R" whereas these are stated to be Guidance so this should be "G".

PRM 4.7.4 G (p.62)

- (Item 5) The term "review or assessment" is used inconsistently, for example it is in (b) but not in (c).

PRM 5.1.7 (p.65)

- (Item 2) The words "or filed" should be included (as per current PR 19(3)).

PRM 8.1.3 R (p.68)

- Query whether the lead-in to this rule should read slightly differently, as suggested in highlighted yellow below:

- "8.1.3 R Subject to PRM 8.1.4R and PRM 8.1.5R, a *forward-looking statement* in a *prospectus* or *MTF admission prospectus* is *a protected forward-looking statement* ~~that~~ if it satisfies (1) to (5) below:

(1) the statement contains:

(a) financial information in accordance with PRM 8.1.6R; or……."

PRM 8.2.1 R (p.71)

- Query if the highlighted words below are necessary, as they are repeated in 8.2.2 G which follows.
  - A *protected forward-looking statement* must be clearly demarcated within a prospectus or MTF admission prospectus and can be included in multiple locations throughout a *prospectus or MTF admission prospectus document*.
  - 8.2.2 G "A protected forward-looking statement can be included in multiple locations throughout a prospectus or MTF admission prospectus document."

PRM 9.1.6 G (p.74)

- Item (3) there seem to be some spelling errors and words missing, highlighted in yellow. "The FCA may consider whether the draft prospectus: […] ~~is~~ groups~~ed~~ related information together;"

PRM 9.2.3 R (p.75-76)

- In (1), the cross-reference to PRM 2.5.4 R does not appear to be correct.
- In both (1) and (2) set out below, the words in yellow highlight should instead be (1) "where required by PRM 9.4.3 R" and (2) "required", respectively.
  - "The following information must also be submitted to the FCA in searchable electronic format via electronic means:
    (1) the list of cross references, where requested by the FCA in accordance with PRM 2.5.4R (Content of a prospectus summary);
    [Note: PR Regulation Art 42(2)(a)]
    (2) where no list of cross reference is requested, a document that identifies any items set out in the PRM Annexes that, due to the nature or type of issuer, transferable securities or admission to trading, have not been included in the draft prospectus; [Note: PR Regulation Art 42(2)(b)]"

  - PRM 9.4.3 R does not contemplate the FCA requesting a cross-reference list but, rather, the onus is on the applicant to provide a cross-reference list in the specified circumstances.
  - In item 4 believe the cross-reference to PRM 2.8 is incorrect, this should refer to PRM 6.

PRM 9.2.4 R (p.76)

- (Item 2) Believe the cross-reference to the second paragraph of PRM 2.6 is incorrect.

PRM 9.2 and 9.3 (p.75-80)

- Noting the various incorrect cross-references to other rules (e.g. in PRM 5.1.1, 9.1.1, 9.2.3(4), 9.2.4(2), 9.2.6, 9.2.7, 9.2.9, 9.2.11, 9.3.3, 9.3.4, 9.7.22, to name a few), we presume that cross-references will be checked.

PRM 9.2.7 R (p.77)

- Believe the cross-reference to PRM 9.3.6R is incorrect, this should refer to PRM 9.3.8R.

PRM 9.2.11 R (p.78)

- Believe the cross-references are incorrect, this should instead refer to PRM 9.2.3 - 9.2.6 and PRM 9.2.3R(1).

PRM 9.2.12 R (p.78)

- The annotation refers to the first sentence of PR Regulation Art 44(1), but this should refer to the second sentence.

PRM 9.3.3 G (p.79)

- Perhaps this should also refer to PRM 9.3.1G.

PRM 9.4.3 R (p.81)

- Should the reference to PRM Annex A 1R(1) (that refers to a table of contents) actually refer to PRM Annex A 1R overall?

PRM 9.4.4 R (p.81)

- This proposed rule includes a typo as highlighted below.
    - "9.4.4 R The list of cross-references referred to in ~~the~~ *PRM 9.4.3R* must identify any items set out in the PRM Annexes that have not been included in the draft prospectus due to the nature or type of issuer, securities, *offer or admission to trading*.
      [Note: PR Regulation Art 24(5) sub-para 2]"

PRM 9.4.5 R (p.81)

- The highlighted wording below does not appear to be consistent with PRM 9.4.3R, which states that an applicant must provide the FCA with a cross-reference list in the specified circumstances.
    - Where no list of cross-references is requested by the *FCA* or is not voluntarily submitted by the *issuer*, *offeror* or person asking for *admission to trading* on a *regulated market*, it must be indicated in the margin of the draft *prospectus* to which information in the draft *prospectus* the relevant information items set out in the *PRM* Annexes correspond.
      [Note: *PR Regulation* Art 24(6)]"

PRM 9.5.17 R (p.85)

- Not required, as PRM 9.5.16R refers to obligation in respect of the UK only.

PRM 9.6.1 G (p.85)

- This proposed guidance includes a typo, as shown highlighted below.
  - "9.6.1G The FCA will publish on its website all the *prospectuses* it approves or a list of the *prospectuses* it has approved, with hyperlinks to the dedicated website sections referred to in PRM 9.5.3R. The published list, including the hyperlinks, will be kept up to date and each item will remain on the website ~~at least~~ for at least 10 years."

PRM 11.1.1 R (p.92)

- Believe the cross-reference to PRM 9 is incorrect, this should refer to PRM 10.

PRM 12.1.4 R (p.94)

- Query whether this rule is duplicative of the rule in 12.1.2 R (both are set out below). (Typo also highlighted.)
  - "12.1.2 R All information disclosed in oral or written form, as an *advertisement* or otherwise disclosed, must be consistent with and not contradict:
    [Note: *Prospectus Regulation* Art 22(4)]
    (1) information included in the *prospectus* or in a *supplementary prospectus*, where already published; or
    (2) information to be included in the *prospectus* or in a *supplementary prospectus*, where the *prospectus* or *supplementary prospectus* is to be published at a later date."
    "12.1.4 R An advertisement must comply with the requirements contained in (1) to (4):….
    (4) the information contained in an *advertisement* must be consistent with the information contained in the *prospectus*, where already published, or required to be in the *prospectus*, where the *prospectus* is yet to be published."

Annex A Format of a prospectus

(p.98)

- Item 4, there is a square-bracketed mention of Commission Delegated Regulation (EU) 2019/815 (the ESEF regulation) that presumably will be updated to refer to the UK's reporting format requirements.
- Item 6, believe the cross-reference to Annex A5(e) is incorrect, this should refer to Annex A5G(1).

Annex B Prospectus Summary

(p.100-103)

- Section 2 item 1 (f) (iv) p. 100 – believe the cross-reference to PRM 6 is incorrect, this should refer to PRM 8.
- Section 4 item 1 (a) p.102 – the "or" does not make sense.
- Section 4 item 1(h) p.103 - is the below reference to the PRIIPs Regulation intended to be a reference to Article 8(9) of the UK Prospectus Regulation (which presumably would be replaced by a reference to the PRMs)? There is also a missed space between "3" and "additional". See yellow highlighting.
    - "Where, in accordance with the [third subparagraph of Article 8(9) of the PRIIPs Regulation, a single summary covers several securities which differ only in some very limited details, such as the issue price or maturity date, the maximum length set out in Annex B Item 1.2, may be extended by 2 additional sides of A4-sized paper. However, in the event that a key information document is required to be prepared for those securities under the PRIIPs Regulation and the issuer, the offeror or the person asking for admission to trading on a regulated market proceeds with the substitution of content referred to in sub-paragraph (f), the maximum length can be extended by 3additional sides of A4-sized paper for each additional security."

Annex C Base Prospectus

(p.106)

- Item 1.2 (7) there is again a mention of Commission Delegated Regulation (EU) 2019/815 (the ESEF regulation) that presumably will be updated to refer to the UK's reporting format requirements.
- Item 1.2 (7) there seem to be some words missing after the reference to PRM 2.6.19R.

Annex 6 Registration document for Retail Non-Equity Securities

(p. 144)

- Item 9.2, there appear to be typos in the paragraphs below. See yellow highlighting.
    - "Potential conflicts of interests of the *persons* referred to in item 9.1 between any duties to the *issuer persons* and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made."
- Item 11.3.1a, there appears to be a typo in the paragraph below. See yellow highlighting.
    - "Where audit reports on the historical financial information have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers an emphasis of matter, material uncertainty relating to going concern, or any other matters reported on by exception, the reason must be given, and such qualifications, modifications of opinion, disclaimers, emphasis of matter paragraphs, material uncertainty relating to going concerns, or other matters reported on by exception must be reproduced in full."

- Item 11.4.1, there appears to be a typo in the paragraph below. See yellow highlighting.

  "Information on any governmental, legal or arbitration proceedings, including any such proceedings which are pending or threatened of which the issuer is aware of, during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement."

(p.146)

- Item 11.2.1, reference should be to S.403 of the Companies Act 2006 and not Directive 2013/34/EU.

Annex 7 Registration document for wholesale non-equity securities

(p.148)

- There appear to be typos in the paragraphs below. See yellow highlighting.
  - Item1.3
    - (b) (business address;
  - Item 9.2
    - "Administrative, management, and supervisory bodies conflicts of interests Potential conflicts of interests of the *persons* referred to in item 9.1 between any duties to the *issuer persons* and their private interests and/or other duties…."
  - Item 11.2.1a
    - "Where audit reports on the historical financial information have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers an emphasis of matter, material uncertainty relating to going concern, or any other matters reported on by exception, the reason must be given, and such qualifications, modifications of opinion, disclaimers, emphasis of matter paragraphs, material uncertainty relating to going concerns, or other matters reported on by exception must be reproduced in full."

Annex 14 Securities note for retail non-equity securities

(p.203 & 206)

- There appear to be typos in the two paragraphs below. See yellow highlighting.
  - Item 4.4
    - "Where the maximum amount of securities to be offered cannot be provided in the *securities note*, the *securities note* must specify that acceptances of the purchase or subscription of securities may be withdrawn up to two working days after the amount of securities to be issued has been filed."
  - Item 7.4

- "Where the *summary* ~~of the report~~ is substituted in part with the information set out in points (c) to (i) of paragraph 3 of Article 8 of the *PRIIPS Regulation*, all such information to the extent it is not already disclosed elsewhere in the *securities note*, must be disclosed."

PART 2: Other drafting comments/queries

Annex A amendments to the glossary of definitions

Supplementary prospectus (p.9)

- Article 23 of the current UK Prospectus Regulation refers to: "Every significant new factor, material mistake or material inaccuracy". Should that phrasing be replicated in the FCA proposed definition by adding in the word material? i.e.
  - (in Part 6 rules and PRM) ~~a supplementary prospectus~~ a supplement to a prospectus, prepared in accordance with the rules in PRM 10, containing details of a significant new factor, material mistake or material inaccuracy.
  - (in MAR 5ZA) a supplement to an MTF admission prospectus, prepared in accordance with the rules of an MTF operator operating a primary MTF, according to the rules in MAR 5ZA.2.6R and MAR 5ZA.2.7R.

Chapter 3: Structure of the proposed sourcebook and requirements for admission to trading of securities on regulated markets

3.2 (p.21)

- How is ESMA guidance intended to be followed and will the relevant guidance be tracked across via Technical Notes?

Annex B Amendments to the Market Conduct sourcebook (MAR)

MAR 5ZA.4.4 R (p.16)

- In item C does this (i.e., other transferable securities that have similar characteristics to transferable securities referred to in paragraphs (a) or (b)) cover corporate hybrid securities and/or AT1 securities?

Annex D Prospectus Rules: Admission to Trading on a Regulated Market Sourcebook (PRM)

PRM 2.1.3 G (p.32)

- Query whether the highlighted wording below is the intended transposition of UK PR Article 18(2), which seems to focus on information being inappropriate to the sphere of activity of

the issuer or guarantor. This seems to make more sense than applying sphere of activity or sector to an offer.

- "In considering the rule at PRM 2.1.1R, the FCA will pay regard to whether adequate information is provided to investors in a particular case. Where, in exceptional circumstances, certain information required by PRM 2.1.1R(2) is not available by reason of, for example:

  (1) the sphere of activity or sector in which the offer is made; or

  (2) the legal form of the issuer or the guarantor, equivalent information may be submitted and accepted in the alternative, unless no such information exists. [Note: Prospectus Regulation Art 18(2)]"

PRM 2.3.1 R (p.35)

- Is "offeror" still needed here? (see highlighting below). It has, for example, been removed in PRM 2.3.5. There are other instances where "offeror" is retained in the proposed PRMs and it would be helpful to understand the reasoning behind this.
  - "A base prospectus may be used by the issuer, offeror or person requesting the admission to trading on a regulated market, where the transferable securities in issue are non-equity securities, including warrants in any form. [Note: Prospectus Regulation Art 8(1)]"

PRM 2.3.9 R (p.36)

- In (3), recognising that a summary is not required for "wholesale issues", this paragraph should begin "where applicable, annex a summary of the individual issue to the final terms; and"

PRM 2.3.15 and PRM 2.3.16 R (p.37-38)

- Query to the FCA: how is this intended to work?
  - Under the new regime an offer can be exempt from the prohibition (by virtue of high denoms, QIs only etc) or be conditional on listing. If relying on the conditional on listing there needs to be a valid base prospectus to admit the securities to trading.

PRM 9.1.6 G (p.74)

- The transposition of this proposed guidance (on criteria for scrutiny of the comprehensibility of the information) from the UK delegated regulation does not appear to take into account Article 41 (Proportionate approach in the scrutiny of draft prospectuses and review of the universal registration document). It would be helpful if the FCA could confirm where this point is addressed.

- The transposition of this proposed rule (on criteria for scrutiny of the comprehensibility of the information) from the UK delegated regulation does not appear to take into account the second paragraph of Article 37(1)(a), which clarifies that the considerations around plain language, description of the issuer's operations and principal activities and explanation of terminology are not required where a draft prospectus is to be used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required. It would be helpful if the FCA could confirm where this point is addressed.

PRM 9.2.4 R (p.76)

- (Item 1) Under the UK delegated regulation (Article 42(2)(h)), a confirmation in respect of regulated information is needed for URD draft submissions and URD filings without prior approval.
- PRM 2.6.15 R (p.42) also requires this confirmation for URD draft submissions (under PRM 2.6.2 R) and URD filings without prior approval (under PRM 2.6.3 R).
    - However, the text in PRM 9.2.4 R (1), highlighted below, only requires this confirmation when an issuer is "submitting" a URD "for filing without prior approval", merging the two concepts. It would be helpful if the highlighted text could be clarified.
      "9.2.4 R In addition to the *rule* at *PRM* 9.2.3R, in respect of a *universal registration document*:
      (1) where the *issuer* is submitting a draft *universal registration document* for filing without prior approval and seeks to obtain the status of frequent *issuer*, confirmation from the *issuer* that, to the best of their knowledge, all *regulated information* has been filed and published in accordance with the rules applicable to that information over the shorter period of either: [Note: *PR Regulation* Art 42(2)(h)]"

PRM 9.3 (p.79)

- On time limits for approval of prospectus. Would the FCA consider adding a provision to this section 9.3 to clarify that shorter time limits than those currently mentioned in 9.3 are applied for the approval of prospectuses for non-equity securities?

PRM 9.3.2 G (p.79)

- Is the omission of the following UK PR wording from this guidance intentional and, if so, does this signify a proposed change in the FCA's review timeframes for subsequent submissions of prospectuses?

    - UK PR wording "*The time limit of 20 working days shall only be applicable for the initial submission of the draft prospectus. Where subsequent submissions are necessary in accordance with paragraph 4, the time limit set out in the first subparagraph of paragraph 2 shall apply.*"

- In 9.3.2 G "The time limit set out in PRM 9.3.1R may be extended to 20 working days where the *admission to trading* involves *transferable* securities issued by an *issuer* that does not have any securities already *admitted to trading on a regulated market*."

  [Note: Prospectus Regulation Art 20(3) sub-para 1]"

PRM 10 (p.86)

- There is no reference in PRM 10 or PRM 9.3 about the time periods that apply for approval of a supplementary prospectus.

Annex 17 Securities giving rise to payment or delivery obligations linked to an underlying asset

(p.220)

- Item 2.2.2(a)(i) and (ii) references to "equivalent market overseas". This term is not defined. The existing FCA Handbook definition of "regulated market" has a separate limb (limb (2)) that captures equivalent overseas markets,
- The same comment applies to Annex 19 Item 2.2.11(b) (p. 227).