

Debt Capital Markets H1 Review 2024

This brief review provides a snapshot of the main developments and trends impacting issuers and managers of debt capital markets (DCM) products during the first half of 2024. Focus remained on sustainable finance and regulatory reform across many aspects of the DCM, as well as developments in the US securities market.

ANTI-GREENWASHING RULE AND GUIDANCE AND DCM UNDERWRITERS

The FCA's new anti-greenwashing rule and guidance (**AGR**) came into force on 31 May 2024 and was introduced as part of a package of measures designed to inform and protect consumers and improve trust in the market for sustainable investments (see our briefing [here](#)).

The AGR applies to UK authorised firms in their communications to clients and other persons in the UK regarding sustainability characteristics of a product or service. Such communications must be "*fair, clear and not misleading*". The FCA sees the AGR as a clarification of existing obligations on firms which already impose a "*fair, clear and not misleading*" standard to communications.

For UK authorised firms in their role as underwriters and bookrunners of DCM products, the FCA has confirmed (informally to industry and also through guidance stating that the AGR is not intended to override existing rules) that existing financial promotion exemptions are applicable with regards to the "*fair, clear and not misleading*" rule, such as excluded communications and third-party prospectuses (namely, prospectuses where the firm is not responsible for the information given in the prospectus under applicable prospectus rules and regulations and under the Conduct of Business Sourcebook). Monitoring the impact of the AGR on capital markets is prudent, as the rule becomes more established and industry and the FCA's views evolve.

REFORM OF EU PROSPECTUS REGULATION

The European Parliament adopted the [EU Listing Act](#) in April 2024 (the **Act**), which introduces a suite of amendments to the European Prospectus Regulation, with a view to increasing the attractiveness of EU capital markets. The changes introduced by the Act largely represent an evolution of the existing framework for public offers and admission to trading in the EEA, rather than a significant deviation from the current regime.

Key changes to the European Prospectus Regulation in the context of DCM include:

- incorporation of future new financial information without a supplement to the base prospectus (with the option of producing a supplement still being available);
- a slight expansion of the type of documents which can be incorporated by reference into a prospectus (such as sustainability reports included in management reports);
- the prescription of optional disclosures for bonds marketed as environmentally sustainable or sustainability-linked (and which will be compulsory disclosures for bonds adopting the EU Green Bond label);

- broader exemptions from the requirement to produce a prospectus (for instance raising the threshold from 20% to 30% over a rolling 12-month period for issuances of fungible securities, and adding a new exemption for securities fungible with existing securities that have been admitted to trading on an EEA regulated market for at least the previous 18 months, subject to certain conditions); and
- additional requirements as to the order and format of a prospectus, in respect of which ESMA is to produce guidelines in due course.

The Act is expected to enter into force in the coming months, following publication in the Official Journal with certain of the changes to be introduced via delegated acts or on a discretionary basis by Member States resulting in some provisions entering into force 15 or 18 months following the publication of the Act.

NEW UK PUBLIC OFFER REGIME 2025

Following publication of draft regulations in 2023, the [Public Offers and Admissions to Trading Regulations 2024](#) (the **Public Offer Regulations**) were made by Parliament on 29 January 2024, representing the next step in the process to legislate for a new UK Prospectus Regime. At present, only a small number of provisions in the Public Offer Regulations are in force, which include those that give the FCA power to make rules for the new regime, with further substantive provisions to come into force once the FCA has made the new rules.

The FCA is expected to launch a consultation on the proposed changes to the UK Prospectus Regime in the summer of 2024, with the intention of publishing final rules for the new regime in the first half of 2025.

In the meantime, the Public Offer Regulations contain transitional provisions relevant to debt issuance programmes which contemplate continued use of a base prospectus approved under the current assimilated law UK Prospectus Regime until the expiry of the twelve-month validity period of the base prospectus.

Public offer exemptions will continue to be relevant in the new UK Prospectus Regime and are largely derived from those under the current regime. However, the Public Offer Regulations include a prohibition which applies to offers of "*relevant securities*" which is wider than the current rules since it extends beyond transferable securities to encompass offers of certain non-transferable debt securities.

The FCA will also make rules under the Public Offer Regulations regarding when a prospectus is required for the admission of transferable securities to trading on a UK regulated market and has discussed potential rules within [Engagement Paper 1 \(admission to trading on a regulated market\)](#), [Engagement Paper 2 \(further issuances of equity on regulated markets\)](#) and [Engagement Paper 4 \(non-equity securities\)](#).

US SECURITIES

Adoption of SEC final rules on climate-related disclosures

On 6 March 2024, the US Securities and Exchange Commission (the **SEC**) adopted final rules on climate-related disclosures. These long-awaited rules set out what climate-related information US-listed companies, including foreign private issuers, are required to disclose in their annual reports and registration statements filed with the SEC. This includes disclosure of material climate-related risks and impacts on strategy, business model and outlook, board and management oversight of climate-related risks, risk management, climate-related targets and goals, Scope 1 and 2 greenhouse gas emissions (if material and only required for certain filers) and financial statement disclosures. On 4 April 2024, the SEC voluntarily stayed the rules pending the completion of judicial review by the US Court of Appeals for the Eighth Circuit, where legal challenges to the rules brought by several interested stakeholders have been consolidated. Pursuant to the SEC's order staying the rules, the effective date of the rules is delayed indefinitely.

SEC amendments to Regulation M

The SEC adopted amendments to Regulation M to remove the "*investment grade exceptions*" in Rule 101 and Rule 102 of Regulation M that reference credit ratings and substitute in their place new exceptions that are based on alternative standards of creditworthiness. In particular, the new exception for non-convertible debt securities and non-convertible preferred securities requires the lead manager to make a written "*probability of default*" determination that it must preserve for at least three years. Managers and issuers should consider appropriate changes to policies and procedures and transaction documentation for US offerings where the investment grade exception is applicable.

T+1 settlement cycle live in the US

The SEC amendments to Rule 15c6-1 of the US Securities Exchange Act of 1934 which shortened the standard settlement cycle to T+1 for most securities transactions came into effect on 28 May 2024. Canada and Mexico also moved to a T+1 regime on 27 May 2024. In the UK, the Accelerated Settlement Taskforce, which was created by HM Treasury to explore the potential for faster settlement of securities trades in the UK, [published a report in March 2024](#) recommending the UK to commit to moving to a T+1 settlement cycle by 31 December 2027. In the EU, [ESMA has released findings](#) from an industry-wide consultation, presenting various viewpoints on a shorter settlement cycle, and intends to deliver its final assessment to the European Parliament by 17 January 2025.

SUSTAINABLE SUKUK GUIDANCE PUBLISHED

In April 2024, the International Capital Market Association (**ICMA**), together with the Islamic Development Bank and London Stock Exchange Group, published its [guidance](#) on Green, Social and Sustainable Sukuk, with the aim of providing issuers and other key market participants with practical guidance on how sukuk may be aligned with the ICMA Principles and labelled as green, social or sustainable. The guidance offers examples, case studies and details of best practices.

As well as providing an overview of sukuk structures and examples within the market of existing sustainable sukuk issuances, the guidance also highlights the similarities in process between the issuance of sustainable conventional bonds and sustainable sukuk, while discussing the key differences for market participants when undertaking a sustainable sukuk issuance for the first time. The guidance further discusses the continued growth in the sustainable sukuk market.

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DATES FOR YOUR DIARY

- Summer 2024** FCA expected to launch a consultation on the proposed changes to the UK Prospectus Regime
- H2 2024** EU Listing Act expected to be published in the Official Journal
- H1 2025** FCA expected to publish final rules for the new UK Prospectus Regime

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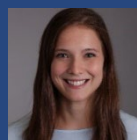
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If you would like to discuss any of the matters raised in this review, please speak to your usual HSF contacts or see above for some of the core members of the HSF London DCM team.