

## DCM Round Up: January 2024

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

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

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### EU AND UK PROSPECTUS REGIME REFORM

#### UK

Recent developments are summarised below, but the FCA has indicated that the likely timing for the proposed new UK regime to be in place is the first half of 2025.

The [UK Public Offer and Admissions to Trading Regulations 2024](#) were made on 29 January 2024. These address the minor technical points ICMA noted on the July 2023 draft of the regulations and which we covered in our September 2023 DCM Round Up.

On 12 December 2023 the FCA published [Engagement feedback on the new public offers and admissions to trading regime](#) provided by market participants in response to the FCA's six Engagement Papers published in 2023. The feedback is merely a summary of responses and does not provide an indication of the FCA's proposed approach. The FCA notes that it is continuing to

develop its policy proposals in relation to the new regime and aims to consult on these in summer 2024.

The feedback provided to the FCA reflect, on the whole, a broad consensus. Key points being:

- the existing regime works well, particularly for wholesale debt;
- the dual disclosure standard for retail and wholesale debt should be removed (with wholesale as the starting point for the consolidated standard);
- incorporation by reference should not be mandatory with some respondents (including ICMA) in favour of future incorporation of financials;
- the new Protected Forward Looking Statement regime needs a clear definition to provide certainty to all investors but should include all types of information (including sustainability information);
- a more mixed position from respondents on ESG prospectus disclosure for Use of Proceeds bonds and Sustainability-Linked Bonds.

## EU

On 29 January 2024, the European Council and the European Parliament [announced](#) they had reached provisional agreement on the Listing Act, which includes changes to the Prospectus Regulation. The text of the text of the provisional agreement has not yet been published.

It is anticipated that the Listing Act will be published in the Official Journal in summer 2024, however many areas will require development of detail in delegated acts so will not take effect until 18 months following the publication of the Listing Act. These areas will include Prospectus Regulation provisions relating to format of prospectuses, ESG disclosures and equivalence of third country prospectuses.

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## EU/UK REGULATORY

### UK PRIIPs consultation

In November 2023, the UK Government published its [UK Retail Disclosure Framework – Draft SI and Policy Note](#) regarding its proposed replacement to the existing UK PRIIPs regime. The Note included (i) a “near-final” draft statutory instrument setting out scope, key definitions and rule-making powers provided to the FCA by HMT plus supervision/ enforcement provision and (ii) a policy statement outlining problems with the current PRIIPs regime and discussing the new “proportionate” approach. Indications are that the statutory instrument will be laid in summer 2024.

The changes to the PRIIPs regime follow the Edinburgh reforms approach, namely the outline of the new regime is set out in the statutory instrument and the detail is provided in FCA rules. It is expected

that the FCA will publish a consultation on their draft rules to replace the PRIIPs Regulation (and certain MiFID provisions related to cost disclosure) in summer 2024.

While PRIIPs will be called Consumer Composite Instruments (**CCIs**) under the new regime the definition of a CCI looks essentially the same as the existing PRIIPs definition:

*“... “consumer composite investment” means— (a) an investment, or (b) an insurance product, other than excluded products, where the amount repayable is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor;”*

The draft statutory instrument does not exclude debt instruments from scope but it is possible that certain mainstream bonds will be excluded by the FCA under its rule-making powers.

The proposed new UK regime also retains some other concepts from the UK PRIIPs regime. One example is "manufacturing". Unlike the PRIIPs regime, however, the draft statutory instrument attempts to define "manufacturing a consumer composite investment" with a specific list of activities.

### **EU and UK BMR third country benchmarks extension periods**

On 26 October 2023, the EU extended the transitional period applicable to third country benchmarks under the EU Benchmark Regulation to 31 December 2025 (under [Commission Delegated Regulation 2023/2222](#)).

Similarly on 19 December 2023, the UK extended the transitional period applicable to third country benchmarks under the UK Benchmark Regulation to 31 December 2030 (under the [Financial Services and Markets Act 2023 \(Benchmarks and Capital Requirements\)\(Amendments\) Regulations 2023](#) which came into effect on 1 January 2024).

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## **OTHER UK DEVELOPMENTS**

### **Hague Convention 2019**

On 12 January 2024, the UK signed the Hague Convention 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (**Hague 2019**). It provides for the mutual enforcement of judgments between the UK and the other contracting states, including EU member states, in proceedings started after it comes into force for the UK. Hague 2019 is complementary to the Hague Convention 2005 (**Hague 2005**) on choice of court – although a distinction between the two is that asymmetric and non-exclusive jurisdiction clauses fall within Hague

2019 but not Hague 2005. Hague 2019 still needs to be ratified by the UK and will come into force 12 months after ratification. See our [briefing](#) for more detail.

### **Economic Crime and Corporate Transparency Act**

Part of the miscellaneous provisions under the Economic Crime and Corporate Transparency Act 2023 that came into effect on 26 December 2023 was to expand the "identification doctrine" so that companies can be prosecuted for certain specified economic crimes committed by a "senior manager" of the company acting within the actual or apparent scope of their authority. Prior to 26 December 2023, a company could only be prosecuted for most criminal offences committed by those considered to be the "directing mind and will" of the company (typically, directors of the company). The economic crimes in scope are listed in Schedule 12 to the ECCTA and include various offences include fraud, bribery, money laundering, tax evasion and financial services offences. Financial services offences relevant to DCM transactions include, those under the Financial Services and Markets Act 2000.

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## **ESG / SUSTAINABILITY**

### **FCA Anti-Greenwashing Rule**

On 28 November 2023, the FCA published its [Policy Statement on Sustainability Disclosure Requirements \(SDR\) and investment labels](#) and its [Guidance consultation on the Guidance on the Anti-Greenwashing rule](#). The Policy Statement includes the final FCA rules on sustainability labelling and while the vast majority of these are only applicable to fund managers the FCA has introduced a new anti-greenwashing rule (**AGR**) that will apply to all FCA authorised firms (this has been included in the ESG Sourcebook ESG 4.3.1 (*Naming and marketing / Anti-greenwashing*)). The FCA's consultation on the draft Guidance closed on 26 January 2024 and the AGR is due to come into effect on 31 May 2024 to allow firms to consider the final FCA Guidance.

It is not clear from the face of the AGR and the draft Guidance whether the scope of the AGR is intended to cover FCA authorised firms in the context of their wholesale debt underwriting business or only FCA authorised firms' issuance of wholesale debt (retail debt issuance is likely to be caught by the scope of the rule). Clarity is being sought from the FCA on the intended scope.

### **CSRD and published ESRS**

By way of a reminder the EU Corporate Sustainability Reporting Directive (**CSRD**) started to apply in relation to financial years starting on 1 January 2024 on a staggered basis (see Implementation timeline below). The new requirements apply to EU entities but also catch third country issuers that have equity or low denomination debt admitted to trading on an EU regulated market by virtue of

changes made to the Transparency Directive (but note the thresholds in Implementation timeline below). “Low denomination debt” in this context means debt with a denomination below EUR 100,000 (or equivalent), which does not benefit from the Transparency Directive exemptions available for wholesale debt.

CSRD requires in-scope entities to include in their management reports specified sustainability related information prepared in accordance with European sustainability reporting standards (**ESRS**). The EU published its first set of ESRS on 22 December 2023 which are described in our briefing [The new European Sustainability Reporting Standards entered into force!](#)

*Implementation timeline:*

Financial years starting 1 January 2024 (first report published in 2025):

- EU companies already in-scope of the NFRD; and
- Issuers that are large undertakings\*/parent undertakings of large groups\*\* and that have an average number of 500

Financial years starting 1 January 2025 (first report published in 2026):

- All other large EU companies
- All other issuers qualifying as large undertakings/parent undertakings of large groups

Financial year starting on or after 1 January 2026.

- EU SMEs
- All other issuers

Financial years starting on or after 1 January 2028 (first report due in 2029):

- Third-country parent undertakings.

\* Large Undertakings are defined as undertakings which at their balance sheet dates exceed two of these criteria: (i) balance sheet total of Euro 20m; (ii) net turnover of Euro 40m; and (iii) an average number of employees during financial year of 250.

\*\*Large Groups are a group of parent and subsidiary undertakings which on a consolidated basis, at the balance sheet date of the parent undertaking, exceed the limits of at least two of these criteria: undertaking: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; and (c) average number of employees during the financial year: 250.

### **Final EU Green Bond Regulation**

The [EU Green Bond Regulation](#) was published on 22 November 2023 and will apply from 21 December 2024. By way of reminder we published a [briefing](#) comparing the EU Green Bond Regulation with the ICMA Green Bond Principles.

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## CLIENT BRIEFINGS

We have attached our most recent Listing Comparison

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