


# Prospectus Regulation and Existing Issuers

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The Prospectus Regulation (2017/1129) ("**Regulation**") which came into full force and effect on 21 July 2019 introduced changes which existing issuers are likely to welcome. Some of the changes are directed at issuers who seek to access capital markets frequently, other changes seek to provide tailored disclosure requirements for different issuers.

Since July 2017 a prospectus has not been required for the admission to trading on a regulated market of additional securities of the same class as securities already admitted to trading on the same regulated market provided the additional securities (calculated over a 12 month period) represent less than 20% of the securities already admitted to trading. Whilst this increased the 10% exemption threshold which previously applied an issuer will need to consider whether there could be any factors which would prevent them from taking advantage of this increased threshold. For example, the level of existing shareholder authorities and whether pre-emption rights have been (or can be) disapplied will need to be checked and Pre-emption Group guidelines may need to be considered. There may also be some restrictions on the application of this provision, such as non exempt rights issues or open offers or where the issue may cause a material change or risks which would require a prospectus to be published. In some situations, there could also be commercial, liability, marketing or other reason as a result of which it may be decided that a prospectus is in any event required.

Existing issuers should also consider whether the issue would be exempt from the requirement for a prospectus to be published where the total consideration for the offer/issue is less than EUR 8 million, calculated over a 12 month period.

A simplified proportionate disclosure regime for secondary issues has been introduced by the Regulation where the issuer has had its securities admitted to trading (on a regulated market or a SME growth market, including AIM) for at least the previous 18 months. The content requirements include annual and half-yearly information published within the last 12 months preceding the approval of the prospectus, a summary of relevant information disclosed under the Market Abuse Regulation in that 12-month period and a working capital statement. A simplified prospectus does not need to include an operating and financial review, information on capital resources, a remuneration and benefits section or information on board practices. The introduction of the simplified disclosure regime is expected to streamline secondary issuances, however, issuers will need to consider the extent of the content requirements for a prospectus published under this regime as set out in the Commission Delegated Regulation 2019/980.

The Regulation also introduces the ability for issuers to file a 'universal registration document' ("**URD**") (similar to the concept of a US shelf registration document) and to achieve frequent issuer status. This enables an issuer listed on a regulated market or a multilateral trading facility to file an annual URD to be approved even whether they do not intend to immediately offer or issue securities. URDs set out all relevant information on the issuer and its business as are required to be included in a registration document for an issuer of equity securities. Once an issuer has had a URD approved for two years consecutively, it will no longer need prior approval for filing subsequent URDs. Filing an URD gives the issuer the status of a frequent issuer provided 2 conditions are met. The first being that the issuer provide written confirmation that all information required to be disclosed under MAR or the Transparency Directive over the preceding 18 months has been published. Secondly, that the issuer may be required to update the URD if FCA considers that it is incomplete or inconsistent or that supplementary information is required. The URD allows an issuer to conduct secondary offerings on an accelerated basis provided on each occasion it publishes a securities note and summary and following acceptance by FCA of a URD, the approval process will be 'fast-tracked', reducing the approval time for frequent issuers from ten to five working days.

Issuers had the option of filing and publishing registration documents and using them as the basis for a prospectus under the prospectus regime in place prior to the Regulation but this has not been widely used. As such it remains to be seen whether the URD will be adopted by issuers seeking to make frequent offers or issuances of securities. Interestingly, the Regulation provides that the URD can incorporate annual and half yearly reporting and provided the URD is published at the latest 4 months after the end of the financial year (in the case of annual reporting) or at the latest 3 months after the end of the first 6 months (in the case of half yearly reporting) the issuer will be deemed to have published the relevant accounting information. This adds flexibility for issuers which could potentially result in issuers seeking to regularly issue URDs.

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