



PUBLIC OFFERS AND ADMISSIONS TO TRADING REGULATIONS REGIME

Issued 18 October 2024

ICAEW welcomes the opportunity to comment on the consultation on the *Public Offers and Admissions to Trading Regulations regime (CP24_12)*, published by the Financial Conduct Authority on 26 July 2024, a copy of which is available from this [link](#).

This response of 18 October 2024 has been prepared by the ICAEW Corporate Finance Faculty, ICAEW's centre of professional expertise in corporate finance. The faculty contributes to policy development and responds to consultations by international organisations, governments, regulators and other professional bodies. It provides a wide range of services, information, guidance, events and media to its members, including its highly regarded magazine *Corporate Financier* and its popular series of best-practice guidelines. The faculty's international network includes member organisations and individuals from major professional services groups, specialist advisory firms, companies, banks and alternative lenders, private equity, venture capital, law firms, brokers, consultants, policymakers and academic experts. More than 40 per cent of the faculty's membership are from beyond ICAEW.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 166,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2024

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: cff@icaew.com

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

KEY POINTS

1. The FCA's framing of Question 16 reveals a misunderstanding of the timing, purpose and distinct exercises that support (i) the going concern basis of accounting in the financial statements, and (ii) a working capital statement made in a prospectus. The 'going concern basis of accounting' and 'a clean working capital statement' are not identical concepts. The audit opinion on going concern is not based on 'due diligence' which can be repurposed. We explain this in our response to the Question 16.

ANSWERS TO SPECIFIC QUESTIONS

STRUCTURE OF THE PROPOSED SOURCEBOOK AND REQUIREMENTS FOR ADMISSION TO TRADING OF SECURITIES ON REGULATED MARKETS

Question 1: Do you agree with our proposed approach to the new Handbook as described above? Y/N. Please give your reasons.

2. We agree with the proposed approach to the new Handbook.

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.

3. We agree with the approach as proposed.

Question 3: Do you agree with our proposed approach to the takeover exemption as described above? Y/N. Please give your reasons.

4. We agree with the proposed approach to the takeover exemption.

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?

5. Yes, the FCA should develop and publish guidance on minimum information contents of exemption documents.
6. We also urge the FCA to structure such guidance so that it supports comparability and/or alignment with disclosure standards in other jurisdictions where UK issuers commonly market their issues and/or have dual listings.

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.

7. We agree with the proposed approach to the exemption for transfers.

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.

8. We agree the proposed less prescriptive approach to the prospectus summary is consistent with the objectives of the reforms to simplify regulation and support ownership among a wider range of investors.
9. We agree with the proposed increase to the maximum permitted pages of a summary; however, we note that the increase would mean that a UK Prospectus used in the EU would require a new summary for EU purposes.

Question 11: Do you agree with our proposed approach to incorporation by reference? Y/N. Please give your reasons.

10. We agree with the proposal to permit discretionary incorporation by reference, which we advocated for in our response¹ to the FCA's Engagement Paper 1.

Question 12: Do you agree with our proposed approach to carry forward financial information requirements as described above? Y/N. Please give your reasons.

11. We agree with carrying forward financial information requirements as the market is familiar and content with these and guidance is well-established.

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

12. We agree that the FCA should clarify its requirements that material uncertainty and any other matters reported on by exception be reproduced in full.

Question 14: Do you agree that we should retain the current requirement for a working capital statement in a prospectus? Y/N. Please give your reasons.

13. We support retaining the current requirements for a working capital statement in a prospectus. ICAEW has taken the same position in our responses to the Hill Review² and to the HM Treasury consultation on the UK Prospectus Regime³.

Question 15: Do you consider that we should allow issuers to disclose significant judgements made in preparing the working capital statement, including the assumptions the statement is based on and the sensitivity analysis which has been performed? Y/N. Please give your reasons.

14. An approach that allows issuers to disclose key assumptions made in preparing the working capital statement is consistent with the wider objective to give more information and responsibility to investors to assess how the issuer has reached its position for making the statement.
15. We would support this approach as long as issuers have a framework for identifying and disclosing the key, specific assumptions and judgements behind the conclusion in the working capital statement. ICAEW would be willing to assist the FCA in preparing a framework.
16. While working capital statements are specifically excluded from PFLS, the basis (ie a projection of the future) is similar and the FCA should be cognisant when considering disclosure requirements for both.

Question 16: Do you agree that we should allow issuers to base the working capital statement on the underlying due diligence performed for the purposes of viability and going concern disclosures in its annual financial statements? Y/N. Please give your reasons.

17. The question reveals a misunderstanding of the timing, purpose and distinct exercises that support (i) the going concern basis of accounting in the financial statements, and (ii) a working capital statement made in a prospectus. The 'going concern basis of accounting' and 'a clean working capital statement' are not identical concepts and we would challenge what the FCA means by 'due diligence' in framing this question. An audit opinion is not based on 'due diligence' that can be repurposed. We explain this below.

¹ FCA Public Offers and Admissions to Trading regime, Engagement Papers ([icaew.com](https://www.icaew.com))

² Call for Evidence - UK Listings Review ([icaew.com](https://www.icaew.com))

³ UK Prospectus Regime Review ([icaew.com](https://www.icaew.com))

Going concern

18. Under International Standard on Auditing (ISA) 1, management are required to make an assessment of an entity's ability to continue as a going concern. In the UK, those charged with governance are responsible for the preparation of the financial statements and the assessment of the entity's ability to continue as a going concern.
19. ISA 570 sets out the auditor's responsibilities for evaluating the going concern assumption of an entity. The term 'going concern' applies to any entity unless its management intends to liquidate the entity or to cease trading or has no realistic alternative to liquidation or cessation of operations. The term 'ability to continue as a going concern' is equivalent to the term 'ability to adopt the going concern basis of accounting in the future'.
20. ISA 570 explains that management's assessment of the entity's ability to continue as a going concern involves making a judgment, at a particular point in time, about inherently uncertain future outcomes of events or conditions. It also makes clear that any judgment about the future is based on information available at the time at which the judgment is made; subsequent events may result in outcomes that are inconsistent with judgments that were reasonable at the time they were made.
21. Under ISA 570, the auditor's responsibilities are to obtain sufficient appropriate audit evidence regarding, and conclude on:
 - whether a material uncertainty related to going concern exists; and
 - the appropriateness of management's use of the going concern basis of accounting in the preparation of the financial statements
 as part of its overall audit report (and as at the point in time its audit report is issued and dated).
22. Guidance on the going concern assessment is published by the FRC⁴ and includes factors and techniques for making the annual assessment.

Working capital statement

23. In the FCA's guidance for preparers of working capital statements⁵ that are included in prospectuses, when considering whether its working capital statement should be clean or qualified, the issuer should assess whether it is able to access cash and other available liquid resources in order to meet its liabilities as they fall due.
24. Under current Prospectus Rules, there is nothing preventing directors repurposing their own/the company's own internal due diligence on its own financial forecasts undertaken as part of a previous going concern/ viability assessment for its most recent financial statements/annual report. However, due to the elapse of time between the publication of those financial statements and the publication of a prospectus, there will be a need to update/refresh that work - and the greater the elapse of time, the greater the likely work required:
 - roll forward the period under review
 - update the forecasts for recent actual trading and events
 - update the forecast assumptions for changes in market conditions, inflation, interest rates, FX rates
 - update the forecasts for any fundraise/transaction which is the subject of the prospectus (and so, clearly, was not contemplated in the last assessment of going concern/viability statement)
25. Market guidance for preparers of working capital statements published by ICAEW requires that working capital projections should be prepared on a consistent basis with an issuer's historical financial information and in accordance with stated accounting policies. The exercise will be

⁴ [Guidance on the Going Concern Basis of Accounting and Reporting on Solvency and Liquidity Risk \(frc.org.uk\)](https://www.frc.org.uk/guidance-on-the-going-concern-basis-of-accounting-and-reporting-on-solvency-and-liquidity-risk)

⁵ [Primary Market Technical Note 619.1: Guidelines on disclosure requirements under the Prospectus Regulation \(fca.org.uk\)](https://www.fca.org.uk/primary-market-technical-note-619-1-guidelines-on-disclosure-requirements-under-the-prospectus-regulation)

supported by up-to-date business analysis that is properly grounded in the known facts and circumstances at the date of the prospectus, including the transaction that the prospectus relates to. While there is commonality in the underlying information, the two exercises are not interchangeable.

Question 17: Do you agree with our proposed approach to give additional guidance for companies with a complex financial history? Y/N.

26. ICAEW has long called for guidance for companies with a complex financial history on the financial information to be included in a prospectus. We are pleased that the FCA is proposing to provide such guidance and that this will be in a Technical Note which, if necessary, can be revised more efficiently.
27. Our members consider it is important to also have examples of situations that are in between the extreme positions of the examples currently in the draft. This will better support companies' internal discussions as well as initial discussions with their advisers which may take place some years before companies embark on a public offering. The guidance should include an enhanced example of aggregation of acquisitions and disposals, as well as numerical examples that will focus consideration on disclosures. ICAEW is willing to work with the FCA and other parties, including representatives of issuers, to develop examples that are useful. This will help avoid what will otherwise be significant demand for consultation with the FCA on situations with a complex financial history.

Question 18: How far do you consider the draft guidance attached to this CP would be useful for companies and their advisors? Y/N. Please give your reasons including any proposals you may have to change the draft guidance.

28. Please see our response to Q17.

Question 19: Do you consider that we should include requirements related to the age of financial information in prospectus requirements? Y/N. Please give your reasons.

29. No, this requirement has been removed from the listing rules and there are other rules and practice that serve to limit the age of financial information in prospectus.

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.

30. We agree as the regime is long established and well understood.

FURTHER ISSUANCES OF EQUITY SECURITIES ALREADY ADMITTED TO TRADING ON A REGULATED MARKET

Question 22: Do you agree with our proposal to raise the threshold for triggering the requirement to publish a prospectus for further issuances of securities already admitted to trading on a regulated market to 75% of existing share capital? Y/N. Please give your reasons.

31. Our members accept that the proposal to raise the threshold is consistent with the FCA's objective to reduce costs to issuers of further issuances of securities and with changes in other leading markets. Members' views vary on what an appropriate threshold would be depending on factors such as their area of practice and the size of business they represent.
32. There is agreement that for most situations, though not all, the change from 20% to 75% is too steep. Issuances of 75% and above will not typically be in the ordinary course of business so there is likely to be insufficient information in the market to enable an informed investment

decision and accurate price formation. There are also limited grounds in the consultation paper to support the proposed threshold. Moreover the proposed threshold is significantly (unjustifiably?) higher than equivalents in other international markets.

33. Please also refer to our response to Q24.

Question 23: Do you agree with our proposal to retain the requirement to use a simplified or full prospectus for further issuances of securities already admitted to trading on a regulated market, where not exempt or if issuers wish to produce a voluntary prospectus? Y/N. Please give your reasons.

34. We broadly agree with the proposal as this approach will help reduce duplication and will allow issuers to choose to prepare the type of prospectus that is appropriate given, inter alia, the requirements of their investor base (including retail investors) and the amount of capital being raised.

Question 24: Do you agree with a potential proposal to require issuers to notify us if the further issuance relates to rescue financing even if below the 75% threshold, based on which we may also require a prospectus? Y/N. Please give your reasons or provide any alternative approaches we could consider.

35. The effect of the proposal, where the FCA requires a prospectus, will be to flag that a further issuance relates to rescue financing.

36. We acknowledge the difficulty in defining all scenarios of financial difficulty for the purpose of a specific rule.

37. However the frequency of the above situation arising could be reduced with a lower threshold.

Question 25: Do you agree with our proposal to retain the requirement to publish a prospectus for further issuances of funds already admitted to trading on a regulated market? Y/N. Please give your reasons.

38. We agree with the FCA's reasoning in the commentary.

Question 26: Do you agree with our proposal to raise the threshold for triggering the requirement to publish a prospectus for further issuances of securities by closed-ended investment funds already admitted to trading on a regulated market to 75% of existing share capital and to allow these funds the options to publish a voluntary prospectus? Y/N. Please give your reasons.

39. Subject to our comments on Question 22, our members support raising the threshold for triggering the requirement to publish a prospectus for further issuances of securities of closed-ended investment funds so that it is the same as for commercial companies.

PROTECTED FORWARD-LOOKING STATEMENTS

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.

40. We support the overall approach that includes a general definition for PFLS and specific exclusions. We also support criteria that are specific to the category of PFLS, as this continues the current approach for published forward-looking financial information.

Question 45: Do you agree with our proposed general definition for protected forward looking statements? Y/N. Please give your reasons.

41. We agree with the proposed definition for forward looking statements however can the FCA explain why statements of a purely narrative nature are specifically excluded from being PFLS (paragraph 7.35)?

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.

42. We agree that the proposed criteria for financial information should be based on the well-understood concepts used by ICAEW in its Guidance for preparers of prospective financial information and that originate in the IASB's Conceptual Framework for Financial Reporting. The Framework aims to ensure consistent reporting treatment of transactions in order to promote investor confidence.

43. We note, however, that the concept of relevance has not been included in the proposed criteria. We question its omission given that financial information that is relevant includes information that could influence the decision of a user of the information and, arguably, is more familiar for companies to assess than the 'reasonable investor' test. Can the FCA explain its decision to leave out 'relevant' from the criteria for financial information?

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.

44. Can the FCA explain the source(s) of the proposed criteria for operational information, consistent with its approach to financial information? This information would help build understanding of the chosen criteria.

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.

45. We agree.

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.

46. We agree.

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.

47. We agree with the proposed approach.

Question 51: Do you agree with our overall approach to the presentation of PFLS in a prospectus? Y/N. Please give your reasons.

48. We agree with the overall approach.

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.

49. The statement needs to be carefully articulated in the final rules to reflect that an issuer may have different sets of internal projections for differing purposes, such as base case vs

aspirational or upside or downside cases, or for employee bonus case, or for banking purposes.

50. ICAEW would be pleased to assist the FCA with amended language.

Question 53: Do you agree with our proposed requirements for the specific accompanying statement? Y/N. Please give your reasons.

51. The statement includes listing of 'significant factors' that that could cause the forward-looking statement to be inaccurate. Significant factors may not be the same as key judgements and assumptions. Should the term 'significant factors' be replaced with 'key assumptions'?

MULTILATERAL TRADING FACILITIES

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.

52. We agree with the proposal mindful of the objective of encouraging broader participation in initial offerings of securities that are admitted to trading on Primary MTFs.

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.

53. We agree.

Question 56: Should we consider any additional exceptions to the requirement to produce an MTF admission prospectus? Y/N. Please give your reasons.

54. We have no further suggestions.

Question 57: Do you agree with our proposal for further issuances by Primary MTF issuers? Y/N. Please give your reasons.

55. We support the proposal for consistency reasons.

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.

56. We agree that the concept does not fulfil a purpose in the new rules.