

Locke Lord QuickStudy: UK Capital Markets Developments: The ?Edinburgh Reforms

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On December 9th, the UK Government, as part of the Edinburgh Reforms, announced a number of reforms to the UK capital markets landscape. Many of the changes reflect existing post-Brexit governmental findings, following reviews of the financial services regulatory framework.

The Edinburgh Reforms reflect the UK Government's intent to repeal much of the retained EU law as it relates to the financial services sector and instead establish a comprehensive domestic UK model of regulation.

The reforms will follow a phased approach of two tranches in 2023 during which time the Government will:

- Substantially amend MiFID (the regulation of investment services in the EU since 2007 and updated by MiFID II in 2018), ultimately transitioning the legislation into an FSMA (UK Financial Services and Markets Act 2000) model (this is expected to occur over tranches 1 and 2).
- Repeal the existing EU prospectus regulation, to be replaced with new UK-specific regulations.
- Expand the ability for companies to make a public offer of securities in the UK without requiring a prospectus. Essentially, the existing exemptions will be expanded by exempting offers where the securities are admitted to trading on UK markets or offered by means of a new category of distribution arrangements to be called "regulated platforms."
- Give the UK Financial Conduct Authority ("FCA") enhanced rulemaking responsibilities. While the concept of a prospectus will be retained as an important part of the IPO process, it will be simplified. Further, the FCA will be able to specify when a prospectus is required, what a prospectus should contain and the manner and timing of validation and publication.
- Treat documents required for admission to trading on UK securities markets as prospectuses, following the conclusion of the Prospectus Regime Review published on March 1, 2022.
- Simplify and improve the ability of companies to provide forward-looking information (e.g., projections of future profitability) by establishing a different liability threshold (based on fraud and recklessness) for certain categories of forward-looking information in prospectuses, to be specified by the FCA. Aside from this change, the regime will generally retain the existing negligence-based threshold for liability for false, misleading or omitted information.
- Continue to allow companies to offer securities to the public without having them admitted to a securities market, making it easier for companies to raise large amounts of capital by removing the requirement that companies offering securities to the public of a value over €8 million must publish a prospectus and creating a route in which offers of any size can be made to the public – a regulated platform known as a "public offer platform."

Comment

The reforms put forward by the UK Government are not new, reflecting the findings of the Wholesale Markets Review, Lord Hill's Listing Review and the Securitisation Review that were conducted in connection with Brexit, but are very welcome and will have a significant impact in making the London markets more attractive. However, the reforms only go so far and we await details of the other proposed reforms to the Listing Rules (driven by the FCA in its new expanded role) and which will be necessary to fully maximize the benefit of the reforms recently put forward. Those proposed reforms are expected to open up London to more dual listings by public companies in the US and other countries.

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