

Prospectus Regulation: Increase in exempt offers threshold to €8 million

From 21 July 2018, the UK threshold below which public offers are exempt from the requirement to publish a prospectus will increase to €8m. Offers of securities in the EU of less than €1m will also be outside the scope of the prospectus regime from that date.

| | |
|-----------------------|--|
| Submitted | 11 July 2018 |
| Applicable Law | European Union , UK , UK (England & Wales) |
| Topic | Equity Capital Markets |
| Contact | Deborah Shaw, Jo Weston |

These changes have been confirmed by the publication of the Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 ([2018/786](#)).

Background

The [Prospectus Regulation](#) (the Regulation), which repeals and replaces the Prospectus Directive (PD), came into force on 20 July 2017 and will apply to all prospectuses approved on or after 21 July 2019. Some of the Regulation's provisions apply from an earlier date, however, including changes to thresholds for certain public offer exemptions, which will apply from 21 July 2018.

Unlike the PD, which is implemented into UK law through the FCA's Prospectus Rules and the Financial Services and Markets Act 2000 (FSMA), the Regulation is directly applicable in the UK. However, in order to implement these changes to the offer exemption thresholds, consequential amendments need to be made to FSMA.

These amendments to FSMA are being made by the Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 (the 2018 Regulations), which were laid before Parliament on 29 June 2018 and come into force on 21 July 2018.

Changes to public offer thresholds

Exempt offers

The Regulation (Article 3(2)) gives Member States the option to exempt offers of securities to the public where the total consideration of each offer in the EU does not exceed €8m over a 12 months period and provided that such offers are not subject to a passporting notification under Article 25 of the Regulation. Member States must notify the Commission and ESMA whether and at what monetary threshold they intend to exercise this discretion.

The 2018 Regulations amend s.86(1) FSMA to confirm that the UK will apply this new offer exemption from 21 July

2018 and that the threshold will be set at the maximum allowed by the Regulation - €8m. This is an increase from the current exempt offers threshold in s.86(1) FSMA of €100,000.

Offers outside of the prospectus regime

Under Article 1(3) of the Regulation, offers of securities with a total consideration in the EU of less than €1m calculated over a 12 months period, will fall entirely outside of the prospectus regime. The equivalent threshold in the PD is set at €5m.

The Regulation expressly prohibits Member States from imposing their own prospectus requirements for offers below the new €1m amount, but they can introduce other disclosure requirements provided that they are not disproportionate.

The 2018 Regulations amend Schedule 11A FSMA to implement this reduction in the threshold for offers outside the scope of the prospectus regime from €5m to €1m.

Practical consequences

Taken together, the two new offer thresholds introduced by the Regulation, mean that each Member State can set its own figure between €1m and €8m below which a prospectus will not be required.

As referred to above, the €8m threshold that the UK has elected to implement applies to the total consideration of each offer in the EU. In light of this, HM Treasury has warned that issuers undertaking cross border offers will need to take care as other Member States may not implement the same exemption thresholds. For example, if an offer of €8m is made in the UK and in another Member State that has not yet implemented the discretionary exemption, the offer might not be exempt under the domestic law of the other Member State. This will not be a concern where offers are made entirely in the UK.

Where a prospectus is required in another Member State, issuers may elect to produce a prospectus in the UK (even though the UK offer may be exempt) and passport it into the other Member State to avoid infringing the domestic laws of that Member State.

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.