

Changes to align the FCA Handbook with the EU Prospectus Regulation

Consultation Paper

CP19/6**

January 2019

How to respond

We are asking for comments on this Consultation Paper (CP) by **28 March 2019**.

You can send them to us using the form on our website at:
www.fca.org.uk/cp19-06-response-form

Or in writing to:

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1 Summary

Why we are consulting

- 1.1** The Prospectus Regulation¹ (the Regulation) entered into force on 20 July 2017. While some of its provisions are already applicable across the European Union (EU), most are due to apply from 21 July 2019. It is on this date that the existing Prospectus Directive 2003² (PD) and associated EU measures made under it will be repealed.
- 1.2** We are consulting on several changes to ensure our Prospectus Rules sourcebook (PR sourcebook) is consistent with the Regulation.
- 1.3** The Regulation sets out the information companies need to disclose to investors and potential investors through a 'prospectus' when they are raising capital. The changes in the new Regulation keep the EU prospectus regime up-to-date, ensuring that investors have the information they need to make informed investment decisions.
- 1.4** The Regulation will come into effect after the United Kingdom's departure from the EU on 29 March 2019³ (exit day). In March 2018, the UK Government and the European Commission agreed the terms of an implementation period, which was included in the draft Withdrawal Agreement.⁴ Our consultation proposals cater for the scenario where an implementation period is in place after the UK's departure. During this period, set to start on 29 March 2019 and lasting until 31 December 2020, EU law will continue to apply in the UK. Therefore, the Regulation will apply in full and become directly applicable in the UK from 21 July 2019.
- 1.5** However, since the implementation period is part of the Withdrawal Agreement, it will need to be approved by the UK Parliament and the European Parliament in order to take effect on exit day. If the UK departs from the EU without an implementation period, we will not proceed with these proposals. Under this scenario, we note that the Regulation is 'specified EU financial services legislation' in the Financial Services (Implementation of Legislation) Bill and we will return with revised proposals once the Government has decided whether to proceed with a reform of the UK prospectus regime.

Who this applies to

- 1.6** This consultation paper (CP) will be of particular interest to:
- UK and overseas issuers with UK-listed securities or those considering a UK listing of their securities

1 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC

2 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

3 European Union (Withdrawal) Act 2018, s 20(1)

4 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018

- issuers and other persons who make public offers of transferable securities or seek admission of transferable securities to regulated markets in the UK
- firms advising issuers on the issuance of UK-listed securities
- firms and market participants who provide advice on prospectuses
- firms and persons who invest or deal in transferable securities through public offers or regulated markets in the UK
- firms advising persons investing in or dealing in listed securities or transferable securities

Please note, this list is not exhaustive and we welcome responses from all other interested stakeholders.

What we want to change

- 1.7** We want to update the FCA's PR sourcebook so it is consistent with the Regulation. This mainly involves removing existing rules, which implemented the PD in the UK, as the Regulation will repeal and replace the PD.
- 1.8** This consultation paper sets out the changes we plan to make to our Handbook. We plan to keep a user-friendly format by continuing to reproduce text in the PR sourcebook directly from the Regulation. While this is not strictly necessary as the Regulation applies directly, we think it is helpful for firms and issuers. We explore this in more detail in Chapter 4.
- 1.9** In addition to setting out what we plan to change in our Handbook, we also explain in Chapter 5 how issuers should submit information to us under the new regime.

Points to consider

- 1.10** By including text reproduced from the underlying directive as highlighted in paragraph 1.8, the PR sourcebook currently functions as a set of rules issuers need to follow under the PD. It is also a helpful reference material on the underlying PD legislative regime.
- 1.11** We intend to maintain the current format of our PR sourcebook. We will replicate the level of detail seen in the current version in a new sourcebook for the convenience of issuers and other stakeholders.
- 1.12** We also anticipate some incremental changes to our information technology (IT) systems to capture more information from issuers. The proposed changes are to help us comply with required information submissions to the European Securities and Markets Authority (ESMA) under the new regime.

Outcome we are seeking

- 1.13** We want our Handbook to be consistent with the new Regulation, and a useful resource for firms and issuers.

How it links to our objectives

- 1.14** Aligning our PR sourcebook with the Regulation will support market integrity and overall help UK markets to continue to function well.
- 1.15** We believe structuring our PR sourcebook in a similar way to the current one enhances market integrity. We anticipate this will provide issuers with a familiar format that should act as a helpful reference tool when preparing a prospectus.

Equality and diversity considerations

- 1.16** Conforming with an EU Regulation is mandatory and the UK will have limited discretion over how the Regulation is applied. The institutions and bodies of the EU are required to guarantee that the rights and principles of the Charter of Fundamental Rights are correctly considered at every step of the legislative process. The equality rights enshrined in the Charter are broadly equivalent to those protected under the UK's Equality Act 2010.
- 1.17** We have considered the equality and diversity issues that may arise from the proposals in this consultation paper.
- 1.18** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We will consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when making the final rules. In the meantime, we welcome your input on this aspect of the consultation.

Next steps

- 1.19** We want to know what you think of our proposals. Please send us your comments on our proposed changes by 28 March 2019. You can use the online response form on our website or write to us at the address on page 2.
- 1.20** Once closed, we will consider the responses we have received and aim to issue a policy statement by the end of May.

2 The wider context

Aligning with the Regulation in a transition period

- 2.1** The initial Prospectus Directive came into force in July 2005. As a directive, it did not apply directly in Member States and had to be transposed into domestic requirements in each country. In the UK, this was done via the Financial Services and Markets Act 2000⁵ (FSMA) and the FCA's PR sourcebook⁶. It was changed in 2010 by an amending directive⁷.
- 2.2** The Regulation replaces the directive provisions and came into force on 20 July 2017. It applies in full 2 years later – ie from 21 July 2019 – when it will repeal the current PD regime. We are consulting ahead of this date to bring our Handbook into line with the requirements of the Regulation.
- 2.3** We anticipate the Government will also be legislating to amend FSMA, as appropriate.
- 2.4** Since the Regulation is an EU regulation and EU law will continue to apply in the UK during any implementation period, our consultation assumes it will apply directly in the UK.

Aligning with the Regulation in a no-deal outcome

- 2.5** The Financial Services (Implementation of Legislation) Bill proposes, that in a no-deal outcome, the Government would have the power to implement provisions corresponding to those in the Regulation into UK domestic law. We can only proceed with implementing the provisions of the Regulation in a no-deal outcome if this legislation is passed.
- 2.6** As Parliament will decide on the enactment of this Bill, we do not explore at this stage how much of the Regulation would be brought onto the UK statute book.
- 2.7** In that case we would expect to issue a further CP to set out proposals to replicate the Regulation in our domestic regime. We would work closely with Her Majesty's Treasury (the Treasury) to develop our proposal under no-deal, if required.

5 Financial Services and Markets Act 2000, Part VI

6 www.handbook.fca.org.uk/handbook/PR/

7 Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010

3 The new regime and how it will work

The new regime

- 3.1** The Regulation is the second and biggest update of the EU's prospectus regime. The new framework of rules aims to simplify and improve the regime, increase its efficiency and enhance the international competitiveness of the EU.

The main changes between the PD and the Regulation

- 3.2** The Regulation is a key step in the EU's Capital Markets Union. This is a European Commission (the Commission) plan to develop a more diversified financial system across EU countries. It allows investors to invest their funds across borders more easily and helps business to access a wider range of financing.
- 3.3** The Commission, in its press release on its proposal for the Regulation in November 2015, explained that it introduced the following main new requirements. Two of these have already come into effect:
- a. Exempting the smallest capital raisings** – Members States can choose to increase the public offer threshold, below which a prospectus does not need to be published, to a maximum of €8m from July 2018. The UK put in place an €8m threshold on 20 July 2018.⁸
 - b. Admissions threshold raised** – since July 2017, issuers have been able to issue up to 20% of securities of the same class already admitted to trading over a period of 12 months without needing a fresh prospectus. This is an increase from 10% of shares only under the PD.
 - c. Creating a lighter prospectus for smaller companies** – The aim of this measure is to allow SMEs to benefit from a new proportionate disclosure regime. The SME market capitalisation threshold has also been raised, from €100m to €200m.
 - d. Shorter prospectuses and better investor information** – The prospectus summary will become a shorter 7-page document based on a small number of key questions.
 - e. Simplifying secondary issuance for listed issuers** – A simplified prospectus can be drawn up by issuers, who are admitted to trading on a regulated market, or who have been admitted to a SME growth market for 18 months.
 - f. Fast track and simplified frequent issuer regime** – A new Universal Registration Document (URD) is introduced, described by the Commission as a type of 'shelf registration'. It aims to support quicker scrutiny and approval of prospectuses. It is similar to a document already widely used by French listed companies.
 - g. Single access point for all EU prospectuses** – Although ESMA already has a Prospectus Register, a new portal will be available to provide searchable online access to all prospectuses approved in the EEA. When a National Competent Authority (NCA) approves a prospectus, it will have to send an electronic copy, together with specified information, to ESMA.

8 The Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018

- 3.4** A few additional elements may be added to the new regime before 21 July. These include an amendment to the text of the Regulation to allow SME issuers to use a simplified 'transfer prospectus' when moving up to regulated markets. Also included is an initiative to specify the content of prospectuses for 'green bond' issuances.

How the EU's new prospectus regime will work

- 3.5** The EU legislation for the Regulation will be set at 3 levels.
- 3.6** At the top sits the 'Level 1', the Regulation itself. This is EU legislation, which is directly applicable across the EU and will apply in full from 21 July 2019.
- 3.7** The Regulation requires the Commission to make additional rules at what is called 'Level 2', which will also be directly applicable EU legislation. These will include:
- **Delegated acts.** On 28 November 2018, the Commission published the bulk of the Level 2 delegated acts in draft.⁹ These covered:
 - content and format of the prospectus
 - the EU Growth prospectus
 - scrutiny and approval of the prospectus and the universal registration document (URD)
 - **Regulatory technical standards (RTS).** ESMA undertook a consultation on draft RTS and published its Final Report on 17 July 2018. The Commission is invited to endorse the RTS. They cover:
 - key information for the summary
 - data and machine readability
 - advertisements
 - supplements
 - publication
 - notification portal
- 3.8** ESMA also makes what are referred to as 'Level 3' measures. It consulted in July 2018 on Guidelines on risk factors under the Regulation¹⁰. It already has other Level 3 measures in place, such as its PD Q&A¹¹ and the ESMA update of the Committee of European Securities Regulators (CESR) Recommendations¹² under the PD and can be expected to update them for the new Regulation regime.
- 3.9** The Level 3 measures will not be directly applicable in the same way as the Level 1 and Level 2. Instead, the Level 3 provides guidance and context to assist issuers with interpreting the Level 1 and 2.

⁹ More information and further details can be found at https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2169999_en

¹⁰ *Guidelines on risk factors under the Prospectus Regulation*. ESMA31-62-996, 13 July 2018

¹¹ *Questions and Answers, Prospectuses*, 28th updated version – March 2018

¹² *ESMA update of the CESR recommendations, The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive*, ESMA/2011/81, 23 March 2011

- 3.10** ESMA conducted consultations on the matters covered by the delegated acts and provided its technical advice to the Commission in its Final Report of 28 March 2018.¹³ These are set out in 3.7.
- 3.11** Other delegated acts will cover exemptions from publishing a prospectus for a takeover, merger or division. In future years this will cover third country prospectus equivalence.

13 Final Report, *Technical advice under the Prospectus Regulation*, ESMA31-62-800, 28 March 2018

4 Aligning our rules with the requirements of the Regulation

Overview

- 4.1** In this section, we explore how we will align our Handbook with the Regulation. We set out the changes required to the PR sourcebook, both structurally and in terms of content. We also set out how these changes relate to steps being taken by the Treasury.
- 4.2** One of the new requirements relates to data submission, and this is explored separately in Chapter 5.

Structural changes to the FCA Handbook

- 4.3** We are proposing to replace our current PR sourcebook, with a new one that will closely follow the format of the existing sourcebook. The new sourcebook will contain 2 types of content.
- **Reproduced content** – we will replicate key provisions of the Regulation, other relevant EU legislation and domestic law into the new sourcebook for reference. We understand that issuers and their advisors find it helpful that relevant reference material is in a single location. The current PR sourcebook already has this content and maintaining a similar structure will provide continuity in the transition phase.
 - **Rules** – The new sourcebook will contain FCA rules, which we are required to provide under the Regulation. Some of these rules will be similar to the existing rules, while others will be new.

Current structure of the PR sourcebook

- 4.4** The current PR sourcebook provides rules and guidance for issuers when preparing a prospectus for publication. A lot of the sourcebook contains boxes of text reproduced for the convenience of the reader from FSMA, the PD Regulation and the Prospectus RTS Regulations (see Figure 1). It also includes FCA rules made to give effect to the PD.

Figure 1: an example of a text box in the current pr sourcebook

2.1.1	UK	<p>General contents of prospectus</p> <p>Sections 87A(2), (2A), (3) and (4) of the Act provide for the general contents of a <i>prospectus</i>:</p> <p>(2) The necessary information is the information necessary to enable investors to make an informed assessment of –</p> <p>(a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and</p> <p>(b) the rights attaching to the transferable securities.</p> <p>(2A) If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.</p> <p>(3) The necessary information must be presented in a form which is comprehensible and easy to analyse.</p> <p>(4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.</p>
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FCA Prospectus Rules, Rule 2.1.1, General contents of prospectus

Proposed new sourcebook

- 4.5** We intend to replace the existing PR sourcebook with a new sourcebook with a different name. It will have a similar structure to the current PR sourcebook, to make it easier for the reader.
- 4.6** Under s.84 of FSMA we are empowered to make prospectus rules. We expect to have a similar power under the new regime, and we propose to make FCA rules in a new sourcebook.
- 4.7** The new sourcebook will contain fewer FCA rules than the current version. This is because most of the provisions will sit within the Regulation, and the EU's delegated acts and RTS made under the Regulation, which will apply directly at a European level.
- 4.8** It will contain more of the text boxes, which will replicate key provisions of the Regulation, and other relevant EU legislation and domestic law (see Figure 1). We hope this will provide a familiar format for issuers to follow the new regime.

Structural changes to the FCA Handbook

- 4.9** The main differences between the existing rules and the new sourcebook are:
- **Persons responsible for a prospectus** – This is currently set out in PR 5.5. It specifies who is responsible for a prospectus for equity shares and all other securities. It also explains when they are not responsible for a prospectus. Article

11 of the Regulation is similar to the corresponding provision in the PD, so we propose to mirror the existing provisions of PR 5.5 in the new rule.

- **Use of language** – This is currently set out in PR 4.1. It specifies that the prospectus must be drawn up in English when United Kingdom is the issuer's home state, as well as other related language rules. Article 27 of the Regulation is similar in content to the corresponding provision in the PD. We therefore propose to mirror the existing provisions of PR 4.1 in the new rule. The provisions of Article 27(5) of the Regulation are slightly different from those in the PD for markets only accessible by qualified investors. We propose to reflect this in our new rule.
- **Sending data to the FCA** – Our new PR sourcebook will require issuers to send information to the FCA in electronic format (more information in Chapter 5).
- **Prospectus accuracy** – The rules currently set out in PR 3.1.2A and PR 3.1.2B were subject to consultation in CP14/2. They were introduced to the current PR sourcebook to require an applicant to send a compliant, factually accurate prospectus. These rules reflect current market practice across Europe and existing regulatory expectations, so we propose to retain them in the new sourcebook.

Q1: Do you agree with our plan to keep the structure of the new sourcebook as similar as possible to the current sourcebook, with reproduced key sections of the Regulation?

Q2: Do you agree with the new rules we have proposed to incorporate into the new sourcebook (excluding the rule regarding the submission of data to ESMA)?

Sanctions

- 4.10** The UK sanctions for failing to comply with the Regulation are a matter for the Treasury.

Repeal of the existing regime

- 4.11** Issuers with a prospectus approved in the 12 months before 21 July 2019, will be subject to the measures in place before the Regulation repeals the PD. Our PR sourcebook as at 20 July 2019 will be available using the 'show timeline' facility on our Handbook website. This will provide legal certainty to issuers and other stakeholders.
- 4.12** Article 46(3) of the Regulation states that prospectuses approved before 21 July 2019 shall 'continue to be governed by that national law until the end of their validity, or until twelve months have elapsed after 21 July 2019, whichever occurs first'. This means there will be an element of crossover between the current and the new regimes.
- 4.13** For example, if an issuer has a prospectus approved on 20 July 2019, it will be approved under the existing regime and that prospectus will be valid for up to 12 months from that date.

National Storage Mechanism (NSM)

- 4.14** Under PR 3.2.1R of the PR sourcebook, which transposes Article 14(1) of the PD, issuers are currently required to file approved prospectuses with the FCA. This is done through a publicly accessible portal, or NSM, in accordance with PR 3.2 R in our PR sourcebook.
- 4.15** Article 21 of the Regulation does not require issuers to file the approved prospectus with the FCA. It does, however, include requirements for the issuer to make the approved prospectus available to the public. Issuers with securities admitted to trading on a regulated market will still be required to publish information under the EU Transparency Directive. The consequence of this change is that the issuer will no longer be submitting (filing) the document to the FCA's appointed public portal, the NSM.
- 4.16** Under Article 21(5) of the Regulation, the FCA has an obligation to publish all prospectuses that we have approved. We intend to delegate this to our current NSM provider, Morning Star, to publish these documents. We feel market participants would find it helpful to have other associated documents in one central place. We intend to make these approved documents available through the NSM to continue their availability there. We will continue to upload final terms and other documents, as we do at the moment.
- 4.17** We will publish all approved prospectuses on the NSM. Depending on timings, we could be publishing prospectuses before issuers have published them.

Q3: Do you have any concerns about our potentially publishing a prospectus before an issuer has done so itself?

- 4.18** Ultimately, this means that issuers will no longer be required to send an approved prospectus to the NSM. However, approved prospectuses will still be stored with the NSM under the new regime, as we will be sending them instead.

Fees

- 4.19** In 3.4 (f) we mention the Regulation introduces the concept of a new document type, the URD. We are amending FEES 3 Annex 12, UKLA transaction fees in the Handbook to reflect this. We propose to charge £2,000 for the application to approve a URD of an issuer with a market capitalisation of under £500 million. If the issuer's market capitalisation is £500 million or more we propose to charge £15,000. These are the same fees as our current charges for the application to approve registration documents under the current regime.
- 4.20** Article 20(10) of the Regulation introduces the ability for a home Member State to charge fees for filing URDs, amendments to filed URDs and final terms. We do not intend to introduce fees for filing such documents. However, we will keep this under review when considering future changes to the Fees Manual.
- 4.21** Article 4(1) and (2) of the PD contain exemptions from publishing a prospectus for takeovers, mergers and divisions. This would be based on the issuer making

a document available, which the competent authority regards as equivalent to a prospectus. These are replaced under Article 1(4) and (5) of the Regulation with new exemptions, which simply require the issuer to publish a document. We therefore propose to remove the existing fee for submitting a document equivalent to a prospectus for review under PR 1.2.2R(2), PR 1.2.2R(3), PR 1.2.3R(3) or PR 1.2.3R(4).

The transition between the new and the old regimes

Submitting a prospectus to us under the new regime

We understand some issuers may wish to prepare a prospectus under the Regulation before 21 July 2019 for approval on or after 21 July 2019. We would expect these requests to arise from April 2019 onwards.

We intend to finalise updates to the PR sourcebook by the end of May 2019. However, these updates might not be finalised before some issuers may wish to start preparing prospectuses under the new regime's rules.

This possibility would arise if some of the EU's measures made under the Regulation were not finalised by that time. In these circumstances issuers would gain certainty as soon as the EU measures were made. We would then be able to reproduce them, or extracts of them, in our PR sourcebook.

By providing advance notice, we hope to help issuers plan their transactions. However, if this causes significant issues, contact us as soon as possible and we will discuss a suitable approach. For any 'live' cases already submitted to the FCA, please speak to your contacts at the FCA, who are involved in scrutinising your draft prospectus. For future cases not yet initiated, please contact David Prevezer, Allocation Manager, on 020 7066 3836.

Submitting a prospectus under the current regime

Issuers will still be able to submit a draft prospectus to us under the current regime until the new regime takes effect on 21 July 2019. We will be pragmatic and review draft prospectuses according to the regime they were submitted under.

To avoid complications, we encourage issuers to have due regard for the turnaround times for the approval of a prospectus. These can be found on our website. We encourage issuers submitting prospectuses to consider if it is appropriate to submit an application under the current regime. This might be the case if this is very close to the new regime coming into effect.

Prospectuses approved before 21 July 2019 may be subject to Article 46(3) of the Regulation. Our online Handbook's 'show timeline' facility will provide access to the PR sourcebook as it was on 20 July 2019.

5 Data Submission Requirements

Overview

- 5.1** We propose to make a new rule to require issuers to send data to us in a prescribed electronic format. This is explored further in this section. As the Commission has not yet adopted the relevant RTS, this may change.

Context

- 5.2** Under Article 21(5) of the Regulation, when NCAs (the FCA in the UK) notify ESMA of the approval of a prospectus or a supplement, they are required to provide ESMA with an electronic copy of those documents. The NCA is also required to send to ESMA the data necessary for:
- the classification by ESMA of those documents on an ESMA public storage mechanism website
 - the ESMA annual report containing statistics and trend analysis on prospectus approval and passporting
- 5.3** Annex V of ESMA's Final Report¹⁴ sets out the draft RTS. Annex VII of the RTS¹⁵ sets out in tabular format the data NCAs must submit to ESMA (RTS data) when notifying ESMA of the approval of prospectuses and supplements, or when communicating final terms to ESMA.
- 5.4** Depending on the type of document, there are approximately 28 data items that will need to be submitted. These data items can include fields for type of security, consideration offered, and issuance currency.
- 5.5** ESMA recommended that the Commission should amend its delegated act to expressly provide for NCAs to require issuers to provide these data to the NCA in line with the RTS, and to the extent required by the NCA. ESMA clarified that NCAs are free to set the right scope of data requests, including data which are already available to the NCA.
- 5.6** The Commission has yet to adopt the final RTS.

Submitting information to us

- 5.7** Annex VI in ESMA's Final Report sets out the draft delegated act, which expressly provides for NCAs to require issuers to provide NCAs with the RTS data.

¹⁴ ESMA, Final Report Draft regulatory technical standards under the Prospectus Regulation, ESMA31-62-1002, 17 July 2018
¹⁵ pp.128-136

- 5.8** We propose to make a rule to require issuers to provide us with the RTS data in accordance with the anticipated delegated act.
- 5.9** If this provision in the delegated act is not adopted by the Commission, we will proceed as planned with making a rule to require issuers to provide us with the RTS data by electronic means. We note that Article 32(1)(b) of the Regulation, which continues a similar requirement under Article 21(3)(b) of the PD, provides for competent authorities to have, in accordance with national law, the power to require applicants to provide information and documents.
- 5.10** We believe that asking issuers to provide us with the RTS data is the most cost effective and efficient way to meet our new data submission obligations. We explore our reasons in Annex 2 – Cost Benefit Analysis.

What information needs to be submitted to us

- 5.11** Annex VII of the draft RTS provides the data that NCAs are required to submit to ESMA. We anticipate some of these fields will be sourced from our own systems, such as the sending Member State and approval date. However, the majority of the fields will be required from issuers. We also anticipate issuers will need to provide additional identifying information as part of the submission, such as issuer name and the record type. However, we do not anticipate these to have a material impact on issuers. We will be providing further clarification on the data items as part of our ongoing work in the 'Resources' area in [this section of our website](#).

How information can be submitted to us

- 5.12** We are proposing to enhance our existing Electronic Submission System (ESS) to allow issuers to submit documents and enter the required data into our existing IT system. Many issuers already use this system to send documents and to review applications for listing.
- 5.13** This information will be passed onto ESMA in accordance with the requirements of the RTS. The [ESS User Guide](#) will be updated to explain the new or revised features.
- 5.14** Clearly some companies issue securities to the market more frequently than others. Consequently, they will have high numbers of prospectuses or final terms in any given year. We are therefore considering whether it would be helpful to these types of issuers if we developed a system-to-system (S2S) solution. This would allow users to upload the required information directly to our FCA systems.
- 5.15** Under the S2S option, we would develop one system. Issuers can choose if it is an appropriate option for them according to their own business need.
- 5.16** An S2S option may require an initial investment from issuers who choose to use it to prepare their infrastructure for communicating with the FCA's systems. We believe this may be a more cost-effective and efficient option for high volume issuers in the long term.

- 5.17** High volume issuers will not have to use the S2S option – they are free to choose. We would encourage them to consider the long-term merits of choosing this option, compared with the resource costs of submitting high volumes of data via the ESS portal.
- 5.18** We do not anticipate charging any specific fees for the development work required by the FCA on this project.
- 5.19** We will report on any developments on the S2S option in future communications in this section of our website.

The new handbook rule

- 5.20** We are proposing to include a new rule in the sourcebook, which requires issuers to provide the data detailed in Annex VII of the RTS to the FCA. This rule will refer to the data that needs to be sent, and the required format.
- 5.21** We will also create a rule to instruct issuers to submit information to us through the ESS or an alternative designated system (currently expected to be S2S, if developed). This will follow in principle the way FCA-regulated firms submit regulatory reports to us, adapted for issuers.
- 5.22** We will also issue communications outlining the submission and technical requirements for the required information.

Q4: **Do you agree with the proposed rule to require issuers to submit the data detailed in Annex VII of the RTS to the FCA?**

Next steps

- 5.23** In the coming months, we will finalise the information we require, consider what the submission methods will be and how they will operate. We intend to issue separate communications from this consultation process to keep market participants updated. This will include communications that can be found on this section of our website.

Annex 1

Questions in this paper

- Q1:** Do you agree with our plan to keep the structure of the new sourcebook as similar as possible to the current sourcebook, with reproduced key sections of the Regulation?
- Q2:** Do you agree with the new rules we have proposed to incorporate into the new sourcebook (excluding the rule regarding the submission of data to ESMA)?
- Q3:** Do you have any concerns about our potentially publishing a prospectus before an issuer has done so itself?
- Q4:** Do you agree with the proposed rule to require issuers to submit the data detailed in Annex VII of the RTS to the FCA?

Annex 2

Cost Benefit Analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate balance of our statutory objectives, taking into account all the other impacts we foresee.

Changes to the Handbook

3. The changes we propose to the PR sourcebook are a direct result of the changes imposed by aligning with the Regulation. We intend to continue to replicate text for the benefit of the reader and maintain continuity in the PR sourcebook. We aim to maintain the status quo, so we do not believe these changes will add any significant costs or benefits.

Key facts and assumptions

4. If adopted by the Commission, under the amendment to the delegated act recommended by ESMA, the FCA has the authority to require issuers to submit RTS data to it. The FCA will have to send the RTS data to ESMA under Articles 10 and 11 of the RTS.
5. ESMA's delegated act amendment does not oblige the FCA to require issuers to submit this data.
6. We note NCAs are allowed, but not obliged, to use data available to them, should they prefer – rather than requiring issuers to perform this task.
7. If the Commission do not adopt ESMA's delegated act amendment, we will continue to require issuers to submit the RTS data to us by electronic means. We note Article 32(1)(b) of the Regulation, which continues a similar requirement under Article 21(3)(b) of the PD.

8. The requirement to send data to ESMA is set out in Article 21(5) of the Regulation. It therefore falls outside of the scope of the CBA. However, the action we are proposing to require of issuers does require some FCA rulemaking and guidance. We have set out its impact in the Costs section.

Costs

Requiring issuers to submit the documents and data

9. We consider that the information required by these proposals should be readily available to issuers and their advisors. Most of this is required to create the document in the first place. Therefore, it should not significantly increase costs in the context of a transaction.
10. The amount of information required depends on several factors, such as the nature of the document and transaction. Therefore, in many cases an issuer will only be required to provide a subset of information.
11. We believe it is likely to take a legal advisor approximately 30 to 60 minutes to find the information, verify the accuracy of what has been transcribed and send it to us. We do not anticipate this to be a time-consuming process. We expect this to cost between £50 to £70 per document, based on our survey of average salaries for legal and compliance costs across the industry.
12. According to ESMA's data,¹ there were 459 prospectuses approved in the UK in 2017. From this we estimate the cost of this change would fall within a range of £23,000 to £32,000 per year.
13. On final terms, we receive approximately 55 documents each working day. When considering the number of working days (c.260 a year), this gives around 14,500 final terms documents received a year.
14. From this, and using the same cost per document, we estimate the cost of this change on issuers, which issue final terms documents to be within a range of £725,000 to £1,015,000. This is based on our survey of average salaries for legal and compliance costs across the industry.
15. We calculate the total annual cost of these changes on the market to fall between £748,000 to £1,047,000.
16. We appreciate that a greater share of the costs may fall on issuers with frequent transactions. Therefore, we are considering an S2S route. Although this option is likely to incur initial costs in the short term, it may be more efficient in the long run.

FCA responsibility for data and document collection

17. If we chose to collate the data ourselves, it would add to our resource costs, which

¹ Report, EEA prospectus activity in 2017, ESMA31-62-1114, 15 October 2018

would ultimately be passed onto issuers via fees. These are likely to be higher given we would be less familiar with the data related to the documents than issuers. There would be additional costs for issuers if we need to collect or check information that may not readily be available in documentation provided – for example, the Financial Instrument Short Name (FISN) of the security and the Classification of Financial Instrument (CFI) code.

Benefits

18. Sourcing the information from issuers is likely to increase the accuracy of information and reduce the time taken for it to be made available. This is particularly important for **issuers** wanting to passport out their offers to other Member States, where prompt handling of cases is important.
19. We therefore consider that asking issuers to provide us with this information is the most cost-effective and efficient method of meeting our obligations under the new regime. It will ultimately lead to more accurate information being transmitted to ESMA.

Annex 3

Compatibility statement

Compliance with legal requirements

- 20.** This Annex records the FCA's compliance with several legal requirements applicable to the proposals in this consultation. This includes an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
- 21.** When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is compatible with its general duty:
- under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives
 - under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA
- 22.** The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 23.** This Annex also sets out the FCA's view of how the proposed rules are compatible with the FCA's duty to discharge its general functions (which include rule-making) in a way which promote effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
- 24.** This Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
- 25.** This Annex includes our assessment of the equality and diversity implications of these proposals.
- 26.** Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

27. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of ensuring markets function well. This is because they are designed to make the Handbook consistent with the directly applicable Prospectus Regulation, which seeks to ensure that capital markets work effectively.
28. They are also relevant to the FCA's market integrity objective. This is because the Regulation seeks to advance the principles set out in the EU's Capital Markets Union agenda, which seeks to make capital markets across Europe more accessible for businesses and investors.
29. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s. 1F FSMA.
30. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

31. Our proposals are intended to ensure that the rules and guidance in relation to the Regulation enable issuers to interact with us in the most efficient way possible.

The principle that a burden or restriction should be proportionate to the benefits

32. We have sought to be proportionate in our approach to the data submission requirements. We believe we are proposing the most efficient and cost-effective method of collecting the data from issuers.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

33. We believe that our proposal will support the growth of the UK economy by enabling the UK's capital markets work better for businesses and investors.

The general principle that consumers should take responsibility for their decisions

34. We believe that our new PR sourcebook will enhance the ability of investors to take responsibility through their due diligence obligations for their investment decisions in securities.

The responsibilities of senior management

35. We believe our proposals will enhance the ability of senior management of issuers to take responsibility for their decisions through providing a user-friendly PR sourcebook. Where issuers are themselves regulated entities, we believe setting out the new requirements as we propose to will help Senior Managers to discharge their obligations under the Senior Managers and Certification Regime, where relevant.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

36. We consider that our proposals are consistent with this principle.

The principle that we should exercise of our functions as transparently as possible

37. We consider that our proposals are consistent with this principle.
38. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA).

Expected effect on mutual societies

39. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Equality and diversity

40. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
41. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.12. We do not consider these proposals to have an equality or diversity implication.

Annex 4

Abbreviations used in this paper

CESR	The Committee of European Securities Regulators
The Commission	The European Commission
CP	Consultation paper
ESMA	European Securities and Markets Authority
EU	European Union
Exit day	29th March 2019
FSMA	The Financial Services and Markets Act 2000
the Treasury	HM Treasury
IT	Information technology
NSM	National Storage Mechanism
PD	Prospectus Directive
PR sourcebook	Prospectus Rules sourcebook
The Regulation	Prospectus Regulation
RTS	Regulatory Technical Standards
SME	Small to Medium Enterprise
UK	United Kingdom
URD	Universal Registration Document

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Appendix 1

Draft Handbook text

PROSPECTUS REGULATION RULES INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 79 (Listing particulars and other documents);
 - (3) section 84 (Matters which may be dealt with by prospectus rules);
 - (4) section 89A (Transparency rules);
 - (5) section 89G (Transparency rules: other supplementary provisions);
 - (6) section 96 (Obligations of issuers of listed securities);
 - (7) section 137A (The FCA’s general rules);
 - (8) section 137T (General supplementary powers);
 - (9) section 139A (Power of the FCA to give guidance); and
 - (10) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 21 July 2019.

Making the Prospectus Regulation Rules (PRR) sourcebook

- D. The Financial Conduct Authority makes the rules and gives the guidance in Annex A to this instrument.

Revocation of the Prospectus Rules sourcebook

- E. The provisions of the Prospectus Rules sourcebook are deleted.

Amendments to the Handbook

- F. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex B
Fees manual (FEES)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Market Conduct sourcebook (MAR)	Annex E
Product Intervention and Product Governance sourcebook (PROD)	Annex F
Decision Procedure and Penalties Manual (DEPP)	Annex G
Investment Funds sourcebook (FUND)	Annex H
Regulated Covered Bonds sourcebook (RCB)	Annex I
Listing Rules sourcebook (LR)	Annex J
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex K
Enforcement Guide (EG)	Annex L
Perimeter Guidance Manual (PERG)	Annex M
Supervision Manual (SUP)	Annex N

Notes and Non-FCA legislative text

- G. (1) In the Annexes to this instrument, the “notes” (indicated by “**Note:**” and “**Editor’s Note:**”) and legislative text, marked “EU” or “UK” in the margin, are included for the convenience of readers but do not form part of the legislative text made by the Financial Conduct Authority.
- (2) Although European Union Legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

Citation

H. This instrument may be cited as the Prospectus Regulation Rules Instrument 2019.

By order of the Board

[DATE]

[Editor's Note: the text in this instrument will be supplemented with the relevant sections of, or references to, the Financial Services and Markets Act 2000, EU Level 2 legislation and EU Level 3 measures in the final published version for the benefit of the reader.]

Annex A

The Prospectus Regulation Rules Sourcebook

In this Annex all text is new and is not underlined. Insert the following new sourcebook, Prospectus Regulation Rules (PRR) in the Listing, Prospectus and Disclosure Rules Block.

1 Preliminary

1.1 Preliminary

Application

- 1.1.1 R (1) The *rules* and *guidance* in this sourcebook, except for the *rules* and *guidance* in PRR 4.1, only apply (subject to paragraph (2)) in relation to:
- (a) an *offer*, or a request for *admission to trading* of *transferable securities*, in respect of which article 3 of the *Prospectus Regulation* applies (other than an exempt *offer* under [section 86 of the *Act*] or article 1 of the *Prospectus Regulation*) and in relation to which the *United Kingdom* is the *Home State*;
 - (b) an *offer*, or a request for *admission to trading* of *transferable securities*, where under article 4 of the *Prospectus Regulation* a *person* has elected to have a *prospectus* in relation to the *transferable securities* and in relation to which the *United Kingdom* is the *Home State*; and
 - (c) an *offer*, or a request for *admission to trading* of *transferable securities*, not referred to in paragraphs (a) or (b), in relation to which the *United Kingdom* is the *Home State*.
- (2) The *rules* falling within paragraph (1) also apply in relation to an *offer*, or a request for *admission to trading* of *transferable securities*, where another competent authority of an *EEA State* has transferred the function of approving the *prospectus* to the *FCA*.

Persons responsible for complying with rules

- 1.1.2 R A *person* must comply with all *rules* that are specified as being applicable to them.
- 1.1.3 R If a *rule* does not specify who is responsible for complying with it, then the following *persons* must comply with it:

- (1) in relation to an *offer*:
 - (a) the *issuer*; and
 - (b) the *offeror* (if this is a *person* other than the *issuer*);
- (2) in relation to a request for the *admission to trading of transferable securities*:
 - (a) the *issuer*; and
 - (b) the *person* requesting *admission to trading* (if this is a *person* other than the *issuer*).

- 1.1.4 R An *issuer* is not responsible under PRR 1.1.3R (1)(a) or (2)(a) if it has not authorised or made the *offer* or the request for the *admission to trading*.

Provisions concerning the prospectus regime

- 1.1.5 G The *FCA* considers that the following documents are relevant to the *prospectus* regime:

- (1) the *Prospectus Regulation*;
- (2) *Part 6* of the *Act*;
- (3) the *PR Regulation*;
- (4) these *rules*;
- (5) [the *ESMA Prospectus Recommendations*;
- (6) the *ESMA Prospectus Questions and Answers*;
- (7) the *ESMA Prospectus Opinions*; and
- (8) the *Prospectus RTS Regulations*.]

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>]

- 1.1.6 G To assist readers, extracts from the *Prospectus Regulation*, the *Act*, the *PR Regulation* and the *Prospectus RTS Regulations* are reproduced in the text of these *rules*. Readers should however consult those documents themselves to see the full and definitive text.

ESMA materials

- 1.1.7 G In determining whether the *Prospectus Regulation*, *Part 6* of the *Act*, these *rules*, the *PR Regulation* and the *Prospectus RTS Regulations* have been

complied with, the *FCA* will consider whether a *person* has acted in accordance with the [*ESMA Prospectus Recommendations*, the *ESMA Prospectus Questions and Answers* and the *ESMA Prospectus Opinions*.]

Application of rules to supplementary prospectuses

- 1.1.8 R Unless the context otherwise requires, a reference in these *rules* to a *prospectus* includes a *supplementary prospectus*.

PRIIPs Regulation

- 1.1.9 G An *issuer*, *offeror* or *person* requesting *admission to trading* should also consider whether the requirements of the *PRIIPs Regulation* apply.

1.2 Requirement for a prospectus and exemptions

Requirement for a prospectus

- 1.2.1 EU Article 3(1) and (3) of the *Prospectus Regulation* provides for when a *prospectus* will be required:

Article 1

Subject matter, scope and exemptions

1. Without prejudice to Article 1(4), securities shall only be offered to the public in the Union after prior publication of a prospectus in accordance with this Regulation.
- ...
3. Without prejudice to Article 1(5), securities shall only be admitted to trading on a regulated market situated or operating within the Union after prior publication of a prospectus in accordance with this Regulation.

Securities to which the Prospectus Regulation does not apply

- 1.2.2 EU Article 1(2) and (3) of the *Prospectus Regulation* provides that certain *transferable securities* are out of scope of the *Prospectus Regulation*:

Article 1

Subject matter, scope and exemptions

...

2. This Regulation shall not apply to the following types of securities:
 - (a) units issued by collective investment undertakings other than the closed-end type;

- (b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States;
 - (c) shares in the capital of central banks of the Member States;
 - (d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;
 - (e) securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, for the purposes of obtaining the funding necessary to achieve their non-profit-making objectives;
 - (f) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without that right being given up.
3. Without prejudice to the second subparagraph of this paragraph and to Article 4, this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months.

Member States shall not extend the obligation to draw up a prospectus in accordance with this Regulation to offers of securities to the public referred to in the first subparagraph of this paragraph. However, in those cases, Member States may require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate or unnecessary burden.

Exempt securities – offers of securities to the public

- 1.2.3 EU Article 1(4) of the *Prospectus Regulation* provides that certain *offers of transferable securities* to the public are exempt from the obligation to publish a *prospectus*:

Article 1

Subject matter, scope and exemptions

...

4. The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public:

- (a) an offer of securities addressed solely to qualified investors;
- (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
- (c) an offer of securities whose denomination per unit amounts to at least EUR 100 000;
- (d) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;
- (e) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
- (f) securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
- (g) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
- (h) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (i) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment;
- (j) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities:
 - (i) are not subordinated, convertible or exchangeable; and

- (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.

Exempt securities – admission to trading on a regulated market

- 1.2.4 EU Article 1(5) of the *Prospectus Regulation* provides that *admission to trading* of the following types of *transferable securities* is exempt from the obligation to publish a *prospectus*:

Article 1

Subject matter, scope and exemptions

...

5. The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:
 - (a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20% of the number of securities already admitted to trading on the same regulated market;
 - (b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;
 - (c) securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of [RRD];
 - (d) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, where the issuing of such shares does not involve any increase in the issued capital;
 - (e) securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;

- (f) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2), containing information describing the transaction and its impact on the issuer;
- (g) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer or allotment;
- (h) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer or allotment;
- (i) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities:
 - (i) are not subordinated, convertible or exchangeable; and
 - (ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument;
- (j) securities already admitted to trading on another regulated market, on the following conditions:
 - (i) that those securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;
 - (ii) that, for securities first admitted to trading on a regulated market after 1 July 2005, the admission to trading on that other regulated market was subject to a prospectus approved and published in accordance with Directive 2003/71/EC;

- (iii) that, except where point (ii) applies, for securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Council Directive 80/390/EEC or [the *Consolidated Admissions and Reporting Directive*];
- (iv) that the ongoing obligations for trading on that other regulated market have been fulfilled;
- (v) that the person seeking the admission of a security to trading on a regulated market under the exemption set out in this point (j) makes available to the public in the Member State of the regulated market where admission to trading is sought, in accordance with the arrangements set out in Article 21(2), a document the content of which complies with Article 7, except that the maximum length set out in Article 7(3) shall be extended by two additional sides of A4-sized paper, drawn up in a language accepted by the competent authority of the Member State of the regulated market where admission is sought; and
- (vi) that the document referred to in point (v) states where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to ongoing disclosure obligations is available.

The requirement that the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market as referred to in point (b) of the first subparagraph shall not apply in any of the following cases:

- (a) where a prospectus was drawn up in accordance with either this Regulation or [the *PD*] upon the offer to the public or admission to trading on a regulated market of the securities giving access to the shares;
- (b) where the securities giving access to the shares were issued before 20 July 2017;
- (c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of [the *EU CRR*] of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;

- (d) where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of [the *Solvency II Directive*], and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of [the *Solvency II Directive*] or the group solvency requirement as laid down in Title III of [the *Solvency II Directive*].

1.2.5 EU Article 1(6) provides as follows in relation to exemptions:

Article 1

Subject matter, scope and exemptions

...

- 6. The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may be combined together. However, the exemptions in points (a) and (b) of the first subparagraph of paragraph 5 shall not be combined together if such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than 20% of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.

Voluntary prospectus

1.2.6 EU Article 4 of the *Prospectus Regulation* provides for when a *prospectus* may be drawn up on a voluntary basis:

Article 4

Voluntary prospectus

- 1. Where an offer of securities to the public or an admission of securities to trading on a regulated market is outside the scope of this Regulation in accordance with Article 1(3), or exempted from the obligation to publish a prospectus in accordance with Article 1(4), 1(5) or 3(2), an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily draw up a prospectus in accordance with this Regulation.
- 2. Such voluntarily drawn up prospectus approved by the competent authority of the home Member State, as determined in accordance with point (m) of Article 2, shall entail all the rights and obligations provided for a prospectus required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision

of that competent authority.

Prospectus for resale of transferable securities

- 1.2.7 EU Article 5 of the *Prospectus Regulation* provides for when an additional *prospectus* is, and is not, required in case of a subsequent resale of *transferable securities*:

Article 5

Subsequent resale of securities

1. Any subsequent resale of securities which were previously the subject of one or more of the types of offer of securities to the public listed in points (a) to (d) of Article 1(4) shall be considered as a separate offer and the definition set out in point (d) of Article 2 shall apply for the purpose of determining whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus unless one of the exemptions listed in points (a) to (d) of Article 1(4) applies in relation to the final placement.

No additional prospectus shall be required in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 12 and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.

2. Where a prospectus relates to the admission to trading on a regulated market of non-equity securities that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in such securities, the securities shall not be resold to non-qualified investors, unless a prospectus is drawn up in accordance with this Regulation that is appropriate for non-qualified investors.

2 Drawing up the prospectus

2.1 General contents of prospectus

General contents of prospectus

- 2.1.1 EU Article 6(1) and (2) of the *Prospectus Regulation* provides for the general contents of a *prospectus*:

Article 6

The prospectus

1. Without prejudice to Article 14(2) and Article 18(1), a prospectus shall contain the necessary information which is material to an

investor for making an informed assessment of:

- (a) the assets and liabilities, profits and losses, financial position and prospects of the issuer and of any guarantor;
- (b) the rights attaching to the securities; and
- (c) the reasons for the issuance and its impact on the issuer.

That information may vary depending on any of the following:

- (a) the nature of the issuer;
- (b) the type of securities;
- (c) the circumstances of the issuer;
- (d) where relevant, whether or not the non-equity securities have a denomination per unit of at least EUR 100 000 or are to be traded only on a regulated market or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities.

2. The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form, taking into account the factors set out in the second subparagraph of paragraph 1.

Summary

- 2.1.2 EU Article 7(1) (first sub-paragraph) and (2) of the *Prospectus Regulation* provides:

Article 7

The prospectus summary

1. The prospectus shall include a summary that provides the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market, and that is to be read together with the other parts of the prospectus to aid investors when considering whether to invest in such securities.

...

2. The content of the summary shall be accurate, fair and clear and shall not be misleading. It is to be read as an introduction to the prospectus and it shall be consistent with the other parts of the prospectus.

When a summary is not required

2.1.3 EU Article 7(1) (second sub-paragraph) of the *Prospectus Regulation* provides:

Article 7

The prospectus summary

...

1. By way of derogation from the first subparagraph, no summary shall be required where the prospectus relates to the admission to trading on a regulated market of non-equity securities provided that:
 - (a) such securities are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in such securities; or
 - (b) such securities have a denomination per unit of at least EUR 100 000.

Contents of summary

2.1.4 EU Article 7(3) to (12) of the *Prospectus Regulation* provides for how the contents of the *summary* are to be determined:

Article 7

The prospectus summary

...

3. The summary shall be drawn up as a short document written in a concise manner and of a maximum length of seven sides of A4-sized paper when printed. The summary shall:
 - (a) be presented and laid out in a way that is easy to read, using characters of readable size;
 - (b) be written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, concise and comprehensible for investors.
4. The summary shall be made up of the following four sections:
 - (a) an introduction, containing warnings;
 - (b) key information on the issuer;
 - (c) key information on the securities;

- (d) key information on the offer of securities to the public and/or the admission to trading on a regulated market.

5. The section referred to in point (a) of paragraph 4 shall contain:

- (a) the name and international securities identification number (ISIN) of the securities;
- (b) the identity and contact details of the issuer, including its legal entity identifier (LEI);
- (c) where applicable, the identity and contact details of the offeror, including its LEI if the offeror has legal personality, or of the person asking for admission to trading on a regulated market;
- (d) the identity and contact details of the competent authority approving the prospectus and, where different, the competent authority that approved the registration document or the universal registration document;
- (e) the date of approval of the prospectus;

It shall contain the following warnings:

- (a) the summary should be read as an introduction to the prospectus;
- (b) any decision to invest in the securities should be based on a consideration of the prospectus as a whole by the investor;
- (c) where applicable, that the investor could lose all or part of the invested capital and, where the investor's liability is not limited to the amount of the investment, a warning that the investor could lose more than the invested capital and the extent of such potential loss;
- (d) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under national law, have to bear the costs of translating the prospectus before the legal proceedings are initiated;
- (e) civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only where the summary is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or where it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities;

- (f) where applicable, the comprehension alert required in accordance with point (b) of Article 8(3) of [the *PRIPs Regulation*].
6. The section referred to in point (b) of paragraph 4 shall contain the following information:
- (a) Under a sub-section entitled ‘Who is the issuer of the securities?’, a brief description of the issuer of the securities, including at least the following:
 - (i) its domicile and legal form, its LEI, the law under which it operates and its country of incorporation;
 - (ii) its principal activities;
 - (iii) its major shareholders, including whether it is directly or indirectly owned or controlled and by whom;
 - (iv) the identity of its key managing directors;
 - (v) the identity of its statutory auditors;
 - (b) under a sub-section entitled ‘What is the key financial information regarding the issuer?’ a selection of historical key financial information presented for each financial year of the period covered by the historical financial information, and any subsequent interim financial period accompanied by comparative data from the same period in the prior financial year. The requirement for comparative balance sheet information shall be satisfied by presenting the year-end balance sheet information. Key financial information shall, where applicable, include:
 - (i) pro forma financial information;
 - (ii) a brief description of any qualifications in the audit report relating to the historical financial information;
 - (c) under a sub-section entitled ‘What are the key risks that are specific to the issuer?’ a brief description of the most material risk factors specific to the issuer contained in the prospectus, while not exceeding the total number of risk factors set out in paragraph 10.
7. The section referred to in point (c) of paragraph 4 shall contain the following information:
- (a) under a sub-section entitled ‘What are the main features of the securities?’, a brief description of the securities being offered to the public and/or admitted to trading on a

regulated market including at least:

- (i) their type, class and ISIN;
 - (ii) where applicable, their currency, denomination, par value, the number of securities issued and the term of the securities;
 - (iii) the rights attached to the securities;
 - (iv) the relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under [the *RRD*];
 - (v) any restrictions on the free transferability of the securities;
 - (vi) where applicable, the dividend or payout policy;
- (b) under a sub-section entitled 'Where will the securities be traded?', an indication as to whether the securities are or will be subject to an application for admission to trading on a regulated market or for trading on an MTF and the identity of all the markets where the securities are or are to be traded;
- (c) where there is a guarantee attached to the securities, under a sub-section entitled 'Is there a guarantee attached to the securities?', the following information:
- (i) a brief description of the nature and scope of the guarantee;
 - (ii) a brief description of the guarantor, including its LEI;
 - (iii) the relevant key financial information for the purpose of assessing the guarantor's ability to fulfil its commitments under the guarantee; and
 - (iv) a brief description of the most material risk factors pertaining to the guarantor contained in the prospectus in accordance with Article 16(3), while not exceeding the total number of risk factors set out in paragraph 10;
- (d) under a sub-section entitled 'What are the key risks that are specific to the securities?', a brief description of the most material risk factors specific to the securities contained in the prospectus, while not exceeding the total number of risk

factors set out in paragraph 10.

Where a key information document is required to be prepared under [the *PRIIPs Regulation*], the issuer, the offeror or the person asking for admission to trading on a regulated market may substitute the content set out in this paragraph with the information set out in points (c) to (i) of Article 8(3) of [the *PRIIPs Regulation*]. Where [the *PRIIPs Regulation*] applies, each Member State acting as a home Member State for the purpose of this Regulation may require issuers, offerors or persons asking for admission to trading on a regulated market to substitute the content set out in this paragraph with the information set out in points (c) to (i) of Article 8(3) of [the *PRIIPs Regulation*] in the prospectuses approved by its competent authority.

Where there is a substitution of content pursuant to the second subparagraph, the maximum length set out in paragraph 3 shall be extended by three additional sides of A4-sized paper. The content of the key information document shall be included as a distinct section of the summary. The page layout of that section shall clearly identify it as the content of the key information document as set out in points (c) to (i) of Article 8(3) of [the *PRIIPs Regulation*].

Where, in accordance with the third subparagraph of Article 8(9), a single summary covers several securities which differ only in some very limited details, such as the issue price or maturity date, the maximum length set out in paragraph 3 shall be extended by two additional sides of A4-sized paper. However, in the event that a key information document is required to be prepared for those securities under [the *PRIIPs Regulation*] and the issuer, the offeror or the person asking for admission to trading on a regulated market proceeds with the substitution of content referred to in the second subparagraph of this paragraph, the maximum length shall be extended by three additional sides of A4-sized paper for each additional security.

Where the summary contains the information referred to in point (c) of the first subparagraph, the maximum length set out in paragraph 3 shall be extended by one additional side of A4-sized paper.

8. The section referred to in point (d) of paragraph 4 shall contain the following information:
 - (a) under a sub-section entitled ‘Under which conditions and timetable can I invest in this security?’, where applicable, the general terms, conditions and expected timetable of the offer, the details of the admission to trading on a regulated market, the plan for distribution, the amount and percentage of immediate dilution resulting from the offer and an estimate of the total expenses of the issue and/or offer, including estimated expenses charged to the investor by the issuer or the offeror;

- (b) if different from the issuer, under a sub-section entitled ‘Who is the offeror and/or the person asking for admission to trading?’, a brief description of the offeror of the securities and/or the person asking for admission to trading on a regulated market, including its domicile and legal form, the law under which it operates and its country of incorporation;
 - (c) under a sub-section entitled ‘Why is this prospectus being produced?’, a brief description of the reasons for the offer or for the admission to trading on a regulated market, as well as, where applicable:
 - (i) the use and estimated net amount of the proceeds;
 - (ii) an indication of whether the offer is subject to an underwriting agreement on a firm commitment basis, stating any portion not covered;
 - (iii) an indication of the most material conflicts of interest pertaining to the offer or the admission to trading.
9. Under each of the sections described in paragraphs 6, 7 and 8, the issuer may add sub-headings where deemed necessary.
 10. The total number of risk factors included in the sections of the summary referred to in point (c) of paragraph 6 and point (c)(iv) and point (d) of the first subparagraph of paragraph 7 shall not exceed 15.
 11. The summary shall not contain cross-references to other parts of the prospectus or incorporate information by reference.
 12. Where a key information document is required to be prepared for securities offered to the public under [the *PRIIPs Regulation*] and a home Member State requires the issuer, the offeror or the person asking for admission to trading on a regulated market to substitute the content of the key information document in accordance with the second sentence of the second subparagraph of paragraph 7 of this Article, the persons advising on or selling the securities on behalf of the issuer, the offeror or the person asking for admission to trading on a regulated market shall be deemed to have fulfilled, during the offer period, the obligation to provide the key information document in accordance with Article 13 of [the *PRIIPs Regulation*], provided that they instead provide the investors concerned with the summary of the prospectus under the timing and conditions set out in Articles 13 and 14 of that Regulation.

2.1.5 EU [Chapter II] of [Commission Delegated Regulation XXX] sets out the content and format of presentation of the key financial information referred to in Article 7(6)(b) and (7)(c)(iii) of the *Prospectus Regulation*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

Note: [Annexes I to VI] of [Commission Delegated Regulation XXX] are set out for information in *PRR* App 2.

Language of the summary

- 2.1.6 EU Article 27(4) of the *Prospectus Regulation* provides as follows in relation to the language of the *summary*:

Article 27

Use of language

...

4. The final terms and the summary of the individual issue shall be drawn up in the same language as the language of the approved base prospectus.

When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the following language rules shall apply to the final terms and the summary annexed thereto:

- (a) the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with the second subparagraph of paragraph 2 or the second subparagraph of paragraph 3, as applicable;
- (b) where the base prospectus is to be translated pursuant to paragraph 2 or 3, as applicable, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus.

Note: *PRR* 4.1 sets out the *rules* about the language in which the *prospectus* must be drawn up.

Note: Under article 27(2) and (3) of the *Prospectus Regulation* the competent authority of each *Host State* shall require that the *summary* is translated into its official language. The *FCA* as competent authority of a *Host State* requires a *summary* to be translated into English under *PRR* 4.1.4R.

2.2 Format of prospectus

Format of prospectus

- 2.2.1 EU Article 6(3) of the *Prospectus Regulation* provides for how a *prospectus* may be drawn up:

Article 6

The prospectus

...

3. The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or as separate documents.

Without prejudice to Article 8(8) and the second subparagraph of Article 7(1), a prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.

Prospectuses consisting of separate documents

- 2.2.2 EU Article 10 of the *Prospectus Regulation* provides for drawing up a *prospectus* consisting of separate documents:

Article 10

Prospectuses consisting of separate documents

1. An issuer that has already had a registration document approved by a competent authority shall be required to draw up only the securities note and the summary, where applicable, when securities are offered to the public or admitted to trading on a regulated market. In that case, the securities note and the summary shall be subject to a separate approval.

Where, since the approval of the registration document, there has been a significant new factor, material mistake or material inaccuracy relating to the information included in the registration document which is capable of affecting the assessment of the securities, a supplement to the registration document shall be submitted for approval, at the latest at the same time as the securities note and the summary. The right to withdraw acceptances in accordance with Article 23(2) shall not apply in that case.

The registration document and its supplement, where applicable, accompanied by the securities note and the summary shall constitute a prospectus, once approved by the competent authority.

2. Once approved, the registration document shall be made available to the public without undue delay and in accordance with the arrangements set out in Article 21.
3. An issuer that has already had a universal registration document approved by the competent authority, or that has filed a universal registration document without prior approval pursuant to the second subparagraph of Article 9(2), shall be required to draw up only the securities note and the summary when securities are offered to the public or admitted to trading on a regulated market.

Where the universal registration document has already been approved, the securities note, the summary and all amendments to the universal registration document filed since the approval of the universal registration document shall be subject to a separate approval.

Where an issuer has filed a universal registration document without prior approval, the entire documentation, including amendments to the universal registration document, shall be subject to approval, notwithstanding the fact that those documents remain separate.

The universal registration document, amended in accordance with Article 9(7) or (9), accompanied by the securities note and the summary shall constitute a prospectus, once approved by the competent authority.

Base prospectus

- 2.2.3 EU Article 8 of the *Prospectus Regulation* provides for the content of the *base prospectus*:

Article 8

The base prospectus

1. For non-equity securities, including warrants in any form, the prospectus may, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market, consist of a base prospectus containing the necessary information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market.
2. A base prospectus shall include the following information:
 - (a) a template, entitled 'form of the final terms', to be filled out for each individual issue and indicating the available options with regard to the information to be determined in the final terms of the offer;
 - (b) the address of the website where the final terms will be published.

3. Where a base prospectus contains options with regard to the information required by the relevant securities note, the final terms shall determine which of the options is applicable to the individual issue by referring to the relevant sections of the base prospectus or by replicating such information.

4. The final terms shall be presented in the form of a separate document or shall be included in the base prospectus or in any supplement thereto. The final terms shall be prepared in an easily analysable and comprehensible form.

The final terms shall only contain information that relates to the securities note and shall not be used to supplement the base prospectus. Point (b) of Article 17(1) shall apply in such cases.

5. Where the final terms are neither included in the base prospectus, nor in a supplement, the issuer shall make them available to the public in accordance with the arrangements set out in Article 21 and file them with the competent authority of the home Member State, as soon as practicable upon offering securities to the public and, where possible, before the beginning of the offer of securities to the public or admission to trading on a regulated market.

A clear and prominent statement shall be inserted in the final terms indicating:

- (a) that the final terms have been prepared for the purpose of this Regulation and must be read in conjunction with the base prospectus and any supplement thereto in order to obtain all the relevant information;
- (b) where the base prospectus and any supplement thereto are published in accordance with the arrangements set out in Article 21;
- (c) that a summary of the individual issue is annexed to the final terms.

6. A base prospectus may be drawn up as a single document or as separate documents.

Where the issuer, the offeror or the person asking for admission to trading on a regulated market has filed a registration document for non-equity securities, or a universal registration document in accordance with Article 9, and chooses to draw up a base prospectus, the base prospectus shall consist of the following:

- (a) the information contained in the registration document, or in the universal registration document;
- (b) the information which would otherwise be contained in the relevant securities note, with the exception of the final terms

where the final terms are not included in the base prospectus.

7. The specific information on each of the different securities included in a base prospectus shall be clearly segregated.
8. A summary shall only be drawn up once the final terms are included in the base prospectus, or in a supplement, or are filed, and that summary shall be specific to the individual issue.
9. The summary of the individual issue shall be subject to the same requirements as the final terms, as set out in this Article, and shall be annexed to them.

The summary of the individual issue shall comply with Article 7 and shall provide the following:

- (a) the key information in the base prospectus, including the key information on the issuer;
- (b) the key information in the appropriate final terms, including the key information which was not included in the base prospectus.

Where the final terms relate to several securities which differ only in some very limited details, such as the issue price or maturity date, a single summary of the individual issue may be attached for all those securities, provided the information referring to the different securities is clearly segregated.

10. The information contained in the base prospectus shall, where necessary, be supplemented in accordance with Article 23.
11. An offer of securities to the public may continue after the expiration of the base prospectus under which it was commenced provided that a succeeding base prospectus is approved and published no later than the last day of validity of the previous base prospectus. The final terms of such an offer shall contain a prominent warning on their first page indicating the last day of validity of the previous base prospectus and where the succeeding base prospectus will be published. The succeeding base prospectus shall include or incorporate by reference the form of the final terms from the initial base prospectus and refer to the final terms that are relevant for the continuing offer.

A right of withdrawal pursuant to Article 23(2) shall also apply to investors who have agreed to purchase or subscribe for the securities during the validity period of the previous base prospectus, unless the securities have already been delivered to them.

2.2.4 EU Articles [XXX] of [Commission Delegated Regulation XXX] provide for the format of a *prospectus*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

2.3 Minimum information requirements

Minimum information

- 2.3.1 EU Articles [XXX] of [Commission Delegated Regulation XXX] provide for the minimum information to be included in a *prospectus*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

Final offer price and amount of securities not included in prospectus

- 2.3.2 EU Article 17 of the *Prospectus Regulation* provides for where the final offer price and amount of *transferable securities* are not included in the *prospectus*:

Article 17

Final offer price and amount of securities

1. Where the final offer price and/or amount of securities to be offered to the public, whether expressed in number of securities or as an aggregate nominal amount, cannot be included in the prospectus:
 - (a) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and/or amount of securities to be offered to the public has been filed; or
 - (b) the following shall be disclosed in the prospectus:
 - (i) the maximum price and/or the maximum amount of securities, as far as they are available; or
 - (ii) the valuation methods and criteria, and/or conditions, in accordance with which the final offer price is to be determined and an explanation of any valuation methods used.
2. The final offer price and amount of securities shall be filed with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2).

Risk factors

- 2.3.3 EU Article 16(1) to (3) of the *Prospectus Regulation* provides for the format and content of the risk factors to be included in a *prospectus*:

Article 16

Risk factors

1. The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and/or to the securities and which are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note.

When drawing up the prospectus, the issuer, the offeror or the person asking for admission to trading on a regulated market shall assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact.

Each risk factor shall be adequately described, explaining how it affects the issuer or the securities being offered or to be admitted to trading. The assessment of the materiality of the risk factors provided for in the second subparagraph may also be disclosed by using a qualitative scale of low, medium or high.

The risk factors shall be presented in a limited number of categories depending on their nature. In each category the most material risk factors shall be mentioned first according to the assessment provided for in the second subparagraph.

2. Risk factors shall also include those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities in the event of bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with [RRD].
3. Where there is a guarantee attached to the securities, the prospectus shall contain the specific and material risk factors pertaining to the guarantor to the extent that they are relevant to the guarantor's ability to fulfil its commitment under the guarantee.
4. In order to encourage appropriate and focused disclosure of risk factors, ESMA shall develop guidelines to assist competent authorities in their review of the specificity and materiality of risk factors and of the presentation of risk factors across categories depending on their nature.

- 2.3.4 EU The [ESMA guidelines] provide guidance on the specificity and materiality of risk factors and on the presentation of risk factors across categories depending on their nature:

[PLACEHOLDER FOR LEVEL 3 MATERIALS]

Hyperlinks

- 2.3.5 EU [Article 17(1)] of [Commission Delegated Regulation XXX] addresses

hyperlinks within *prospectuses*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

2.4 Universal registration document

Universal registration document

2.4.1 EU Article 9(1) to (13) of the *Prospectus Regulation* provides:

Article 9

The universal registration document

1. Any issuer whose securities are admitted to trading on a regulated market or an MTF may draw up every financial year a registration document in the form of a universal registration document describing the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure.

2. Any issuer that chooses to draw up a universal registration document every financial year shall submit it for approval to the competent authority of its home Member State in accordance with the procedure set out in Article 20(2) and (4).

After the issuer has had a universal registration document approved by the competent authority for two consecutive financial years, subsequent universal registration documents may be filed with the competent authority without prior approval.

Where the issuer thereafter fails to file a universal registration document for one financial year, the benefit of filing without prior approval shall be lost and all subsequent universal registration documents shall be submitted to the competent authority for approval until the condition set out in the second subparagraph is met again.

The issuer shall indicate in its application to the competent authority whether the universal registration document is submitted for approval or filed without prior approval.

Where the issuer referred to in the second subparagraph of this paragraph requests the notification of its universal registration document pursuant to Article 26, it shall submit its universal registration document for approval, including any amendments thereto which were previously filed.

3. Issuers which, prior to 21 July 2019, have had a registration document, drawn up in accordance with Annex I to [the *PD Regulation*], approved by a competent authority for at least two consecutive financial years and have thereafter filed, in accordance with Article 12(3) of [the *PD*], or got approved such a registration document every year, shall be allowed to file a universal registration document without prior approval in accordance with the second

subparagraph of paragraph 2 of this Article from 21 July 2019.

4. Once approved or filed without prior approval, the universal registration document, as well as the amendments thereto referred to in paragraphs 7 and 9 of this Article, shall be made available to the public without undue delay, in accordance with the arrangements set out in Article 21.
5. The universal registration document shall comply with the language requirements laid down in Article 27.
6. Information may be incorporated by reference into a universal registration document under the conditions set out in Article 19.
7. Following the filing or approval of a universal registration document, the issuer may at any time update the information it contains by filing an amendment thereto with the competent authority. Subject to the first and second subparagraphs of Article 10(3), the filing of the amendment with the competent authority shall not require approval.
8. The competent authority may at any time review the content of any universal registration document which has been filed without prior approval, as well as the content of any amendments thereto.

The review by the competent authority shall consist in scrutinising the completeness, the consistency and the comprehensibility of the information given in the universal registration document and any amendments thereto.
9. Where the competent authority, in the course of the review, finds that the universal registration document does not meet the standards of completeness, comprehensibility and consistency, or that amendments or supplementary information are needed, it shall notify it to the issuer.

A request for amendment or supplementary information addressed by the competent authority to the issuer needs only be taken into account by the issuer in the next universal registration document filed for the following financial year, except where the issuer wishes to use the universal registration document as a constituent part of a prospectus submitted for approval. In that case, the issuer shall file an amendment to the universal registration document at the latest upon submission of the application referred to in Article 20(6).

By way of derogation from the second subparagraph, where the competent authority notifies the issuer that its request for amendment or supplementary information concerns a material omission or a material mistake or material inaccuracy, which is likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, the issuer shall file an amendment to the universal registration document without

undue delay.

The competent authority may request that the issuer produces a consolidated version of the amended universal registration document, where such a consolidated version is necessary to ensure comprehensibility of the information provided in that document. An issuer may voluntarily include a consolidated version of its amended universal registration document in an annex to the amendment.

10. Paragraphs 7 and 9 shall only apply where the universal registration document is not in use as a constituent part of a prospectus. Whenever a universal registration document is in use as a constituent part of a prospectus, only Article 23 on supplementing the prospectus shall apply between the time when the prospectus is approved and the final closing of the offer of securities to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later.
11. An issuer fulfilling the conditions set out in the first or second subparagraph of paragraph 2 or in paragraph 3 of this Article shall have the status of frequent issuer and shall benefit from the faster approval process in accordance with Article 20(6), provided that:
 - (a) upon the filing or submission for approval of each universal registration document, the issuer provides written confirmation to the competent authority that, to the best of its knowledge, all regulated information which it was required to disclose under [the *Transparency Directive*], if applicable, and under [the *Market Abuse Regulation*] has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose regulated information commenced, whichever is the shorter; and
 - (b) where the competent authority has undertaken a review as referred to in paragraph 8, the issuer has amended its universal registration document in accordance with paragraph 9.

Where any of the above conditions is not fulfilled by the issuer, the status of frequent issuer shall be lost.

12. Where the universal registration document filed with or approved by the competent authority is made public at the latest four months after the end of the financial year, and contains the information required to be disclosed in the annual financial report referred to in Article 4 of [the *Transparency Directive*], the issuer shall be deemed to have fulfilled its obligation to publish the annual financial report required under that Article.

Where the universal registration document, or an amendment

thereto, is filed or approved by the competent authority and made public at the latest three months after the end of the first six months of the financial year, and contains the information required to be disclosed in the half-yearly financial report referred to in Article 5 of [the *Transparency Directive*], the issuer shall be deemed to have fulfilled its obligation to publish the half-yearly financial report required under that Article.

In the cases referred to in the first and second subparagraph, the issuer:

- (a) shall include in the universal registration document a cross reference list identifying where each item required in the annual and half-yearly financial reports can be found in the universal registration document;
 - (b) shall file the universal registration document in accordance with Article 19(1) of [the *Transparency Directive*] and make it available to the officially appointed mechanism referred to in Article 21(2) of that Directive;
 - (c) shall include in the universal registration document a responsibility statement using the terms required under point (c) of Article 4(2) and point (c) of Article 5(2) of [the *Transparency Directive*].
13. Paragraph 12 shall only apply where the home Member State of the issuer for the purposes of this Regulation is also the home Member State for the purposes of [the *Transparency Directive*], and where the language of the universal registration document fulfils the conditions set out in Article 20 of that Directive.

Minimum information

- 2.4.2 EU Articles [XXX] of [Commission Delegated Regulation XXX] provide for the minimum information to be included in a *universal registration document*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

2.5 Simplified prospectus regime for secondary issuances

Simplified prospectus

- 2.5.1 EU Article 14(1) of the *Prospectus Regulation* provides:

Article 14

Simplified disclosure regime for secondary issuances

1. The following persons may choose to draw up a simplified prospectus under the simplified disclosure regime for secondary

issuances, in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market:

- (a) issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue securities fungible with existing securities which have been previously issued;
- (b) issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities;
- (c) offerors of securities admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months.

The simplified prospectus shall consist of a summary in accordance with Article 7, a specific registration document which may be used by persons referred to in points (a), (b) and (c) of the first subparagraph of this paragraph and a specific securities note which may be used by persons referred to in points (a) and (c) of that subparagraph.

2.5.2 EU Article 14(2) of the *Prospectus Regulation* provides for the content of a simplified *prospectus*:

...

2. By way of derogation from Article 6(1), and without prejudice to Article 18(1), the simplified prospectus shall contain the relevant reduced information which is necessary to enable investors to understand:
 - (a) the prospects of the issuer and the significant changes in the business and the financial position of the issuer and the guarantor that have occurred since the end of the last financial year, if any;
 - (b) the rights attaching to the securities;
 - (c) the reasons for the issuance and its impact on the issuer, including on its overall capital structure, and the use of the proceeds.

The information contained in the simplified prospectus shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors to make an informed investment decision. It shall also take into account the regulated information that has already been disclosed to the public pursuant to [the *Transparency Directive*], where applicable, and

[the *Market Abuse Regulation*].

Reduced information in a simplified prospectus

- 2.5.3 EU Articles [XXX] of [Commission Delegated Regulation XXX] specify the reduced information to be included in a simplified *prospectus*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

2.6 EU Growth prospectus

2.6.1 EU Growth prospectus

EU Article 15(1) of the *Prospectus Regulation* provides:

Article 15

EU Growth prospectus

1. The following persons may choose to draw up an EU Growth prospectus under the proportionate disclosure regime set out in this Article in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market:
 - (a) SMEs;
 - (b) issuers, other than SMEs, whose securities are traded or are to be traded on an SME growth market, provided that those issuers had an average market capitalisation of less than EUR 500 000 000 on the basis of end-year quotes for the previous three calendar years;
 - (c) issuers, other than those referred to in points (a) and (b), where the offer of securities to the public is of a total consideration in the Union that does not exceed EUR 20 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499;
 - (d) offerors of securities issued by issuers referred to in points (a) and (b).

An EU Growth prospectus under the proportionate disclosure regime shall be a document of a standardised format, written in a simple language and which is easy for issuers to complete. It shall consist of a specific summary based on Article 7, a specific registration document and a specific securities note. The information in the EU Growth prospectus shall be presented in a standardised sequence in accordance with the delegated act referred

to in paragraph 2.

Reduced information in an EU Growth prospectus

- 2.6.2 EU Articles [XXX] of [Commission Delegated Regulation XXX] specify the reduced information to be included in an EU Growth prospectus:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

2.7 Incorporation by reference

Incorporation by reference

- 2.7.1 EU Article 19(1) to (3) of the *Prospectus Regulation* provides for how information may be incorporated by reference in a *prospectus*:

Article 19

Incorporation by reference

1. Information may be incorporated by reference in a prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:
 - (a) documents which have been approved by a competent authority, or filed with it, in accordance with this Regulation or [the *PD*];
 - (b) documents referred to in points (f) to (i) of Article 1(4) and points (e) to (h) and point (j)(v) of the first subparagraph of Article 1(5);
 - (c) regulated information;
 - (d) annual and interim financial information;
 - (e) audit reports and financial statements;
 - (f) management reports as referred to in Chapter 5 of [the *Accounting Directive*];
 - (g) corporate governance statements as referred to in Article 20 of [the *Accounting Directive*];
 - (h) reports on the determination of the value of an asset or a company;
 - (i) remuneration reports as referred to in Article 9b of Directive 2007/36/EC of the European Parliament and of the Council;

- (j) annual reports or any disclosure of information required under Articles 22 and 23 of [AIFMD];
- (k) memorandum and articles of association.

Such information shall be the most recent available to the issuer.

Where only certain parts of a document are incorporated by reference, a statement shall be included in the prospectus that the non-incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus.

[**Note:** “Regulated information” is defined in the *Prospectus Regulation* as information defined in point (k) of article 2(1) of the *Transparency Directive*.]

2. When incorporating information by reference, issuers, offerors or persons asking for admission to trading on a regulated market shall ensure accessibility of the information. In particular, a cross-reference list shall be provided in the prospectus in order to enable investors to identify easily specific items of information, and the prospectus shall contain hyperlinks to all documents containing information which is incorporated by reference.
3. Where possible alongside the first draft of the prospectus submitted to the competent authority, and in any case during the prospectus review process, the issuer, the offeror or the person asking for admission to trading on a regulated market shall submit in searchable electronic format any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the competent authority approving the prospectus.

2.8 Omission of information

Omission of information

- 2.8.1 EU Article 18 of the *Prospectus Regulation* provides for the circumstances in which certain information may be omitted from the *prospectus*:

Article 18

Omission of information

1. The competent authority of the home Member State may authorise the omission from the prospectus, or constituent parts thereof, of certain information to be included therein, where it considers that any of the following conditions is met:
 - (a) disclosure of such information would be contrary to the public interest;

- (b) disclosure of such information would be seriously detrimental to the issuer or to the guarantor, if any, provided that the omission of such information would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer or guarantor, if any, and of the rights attached to the securities to which the prospectus relates;
- (c) such information is of minor importance in relation to a specific offer or admission to trading on a regulated market and would not influence the assessment of the financial position and prospects of the issuer or guarantor, if any.

The competent authority shall submit a report to ESMA on a yearly basis regarding the information the omission of which it has authorised.

2. Subject to adequate information being provided to investors, where, exceptionally, certain information required to be included in a prospectus, or constituent parts thereof, is inappropriate to the sphere of activity or to the legal form of the issuer or of the guarantor, if any, or to the securities to which the prospectus relates, the prospectus, or constituent parts thereof, shall contain information equivalent to the required information, unless no such information exists.
3. Where securities are guaranteed by a Member State, an issuer, an offeror or a person asking for admission to trading on a regulated market, when drawing up a prospectus in accordance with Article 4, shall be entitled to omit information pertaining to that Member State.

Request to omit information

- 2.8.2 G [Article 2(2)] of [Commission Delegated Regulation (EU) XXX] sets out requirements regarding the submission of requests to omit information from a prospectus. The *FCA* considers that a reasoned request for this purpose would:

- (1) be in writing from the *applicant*;
- (2) identify the specific information concerned and the reasons for its omission; and
- (3) State why in the *applicant's* opinion one or more of the grounds in article 18(1) of the *Prospectus Regulation* applies.

3 Approval and publication of prospectus

3.1 Approval of prospectus

Criteria for scrutiny of prospectus

- 3.1.1 EU [PLACEHOLDER FOR LEVEL 2 LEGISLATION]

Time limits for approval of prospectus

- 3.1.2 EU Article 20(2) to (6) of the *Prospectus Regulation* sets out the time limits for the approval of a *prospectus*:

Article 20

Scrutiny and approval of the prospectus

...

2. The competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval of the prospectus within 10 working days of the submission of the draft prospectus.

Where the competent authority fails to take a decision on the prospectus within the time limits laid down in the first subparagraph of this paragraph and paragraphs 3 and 6, such failure shall not be deemed to constitute approval of the application.

The competent authority shall notify ESMA of the approval of the prospectus and any supplement thereto as soon as possible and in any event by no later than the end of the first working day after that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market.

3. The time limit set out in the first subparagraph of paragraph 2 shall be extended to 20 working days where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public.

The time limit of 20 working days shall only be applicable for the initial submission of the draft prospectus. Where subsequent submissions are necessary in accordance with paragraph 4, the time limit set out in the first subparagraph of paragraph 2 shall apply.

4. Where the competent authority finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed:
- (a) it shall inform the issuer, the offeror or the person asking for admission to trading on a regulated market of that fact promptly and at the latest within the time limits set out in the first subparagraph of paragraph 2 or, as applicable, paragraph 3, as calculated from the submission of the draft prospectus

and/or the supplementary information; and

- (b) it shall clearly specify the changes or supplementary information that are needed.

In such cases, the time limit set out in the first subparagraph of paragraph 2 shall then apply only from the date on which a revised draft prospectus or the supplementary information requested are submitted to the competent authority.

5. Where the issuer, the offeror or the person asking for admission to trading on a regulated market is unable or unwilling to make the necessary changes or to provide the supplementary information requested in accordance with paragraph 4, the competent authority shall be entitled to refuse the approval of the prospectus and terminate the review process. In such case, the competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision and indicate the reasons for such refusal.
6. By way of derogation from paragraphs 2 and 4, the time limits set out in the first subparagraph of paragraph 2 and paragraph 4 shall be reduced to five working days for a prospectus consisting of separate documents drawn up by frequent issuers referred to in Article 9(11), including frequent issuers using the notification procedure provided for in Article 26. The frequent issuer shall inform the competent authority at least five working days before the date envisaged for the submission of an application for approval.

A frequent issuer shall submit an application to the competent authority containing the necessary amendments to the universal registration document, where applicable, the securities note and the summary submitted for approval.

Applying for approval

- 3.1.3 R If the order of disclosure items in the *prospectus* does not coincide with the order set out in the annexes to the [REFERENCE TO LEVEL 2 LEGISLATION], an *applicant* must provide the *FCA* with a cross-reference list identifying the pages where each disclosure item can be found in the *prospectus*.

[Note: Articles XXX of the *PR Regulation* and article XXX of Commission Delegated Regulation (EU) XXX.]

- 3.1.4 R An *applicant* must take all reasonable care to ensure that any *prospectus* submitted for approval, for which it is responsible, contains:
 - (1) the necessary information as required under article 6 of the *Prospectus Regulation*; and
 - (2) the information items required in Annexes [XXX] of the *PR*

Regulation, as appropriate to its application.

- 3.1.5 R An *applicant* must take all reasonable care to ensure that any *prospectus* submitted for approval for which it is responsible is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

Timeframe for submission

- 3.1.6 R (1) The *applicant* must submit to the *FCA* by the date specified in paragraph (2):

- (a) (i) a completed Form A; and
- (ii) a completed Publication Form;

[**Note:** [REFERENCE TO LEVEL 2 LEGISLATION]. These forms are available on the *FCA* website.]

- (b) the relevant fee; and

[**Note:** *FEES* 3 sets out the relevant fee payable to the *FCA*.]

- (c) the first draft of the *prospectus* (accompanied, where relevant, by the additional information set out in [REFERENCE TO LEVEL 2 LEGISLATION].

- (2) The date referred to in paragraph (1) is:

- (a) at least 10 *working days* before the intended approval date of the *prospectus*; or
- (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admitted to trading* and has not previously made an *offer*; or
- (c) as soon as practicable in the case of a *supplementary prospectus*.

- (3) The *applicant* must submit the final version of the draft *prospectus* and the additional information set out in [article XXX of Commission Delegated Regulation (EU) XXX] to the *FCA* before midday on the day on which approval is required to be granted.

[**Note:** Article XXX of Commission Delegated Regulation (EU) XXX is reproduced for the convenience of readers in *PRR* 3.1.1 EU.]

Copy of resolution to be kept

- 3.1.7 R An *applicant* must keep a copy of the board resolution allotting or issuing the *transferable securities* for six years after the application for approval of

the *prospectus* for those *transferable securities*.

Request for certificate of approval

- 3.1.8 G If an *applicant* wishes the *FCA* to provide a certificate of approval to another competent authority at the time the *prospectus* is approved, it should note the requirements set out in article 25 of the *Prospectus Regulation*. As provided by article 25 of the *Prospectus Regulation*, a request may still be submitted to the *FCA* after the *prospectus* has been approved (*PRR 5.2.3 G* provides *guidance* for making such a request).

Decision-making procedures

- 3.1.9 R The *FCA* will follow the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions* if it:
- (1) proposes to refuse to approve a *prospectus*; or
 - (2) decides to refuse to approve a *prospectus* after having given the *applicant* a written notice.

Note: DEPP 4 sets out the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions*.

Prospectus not to be published until approved

- 3.1.10 EU Article 20(1) of the *Prospectus Regulation* provides:
1. A *prospectus* shall not be published unless the relevant competent authority has approved it, or all of its constituent parts in accordance with Article 10.

Prospectus comprising separate documents

- 3.1.11 R If the *prospectus* is not a single document but comprises separate documents:
- (1) an application for approval may relate to one or more of those separate documents; and
 - (2) a reference in this section to a *prospectus* is, unless the context otherwise requires, to be taken to be a reference to the document or documents to which the application relates.

Transfer to another competent authority

- 3.1.12 EU Article 20(8) of the *Prospectus Regulation* provides for the transfer of approval of the *prospectus* to another *EEA State*:

Article 20

Scrutiny and approval of the prospectus

...

8. On request of the issuer, the offeror or the person asking for admission to trading on a regulated market, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to prior notification to ESMA and the agreement of that competent authority. The competent authority of the home Member State shall transfer the documentation filed, together with its decision to grant the transfer, in electronic format, to the competent authority of the other Member State on the date of its decision. Such a transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limits set out in the first subparagraph of paragraph 2 and paragraph 3 shall apply from the date the decision was taken by the competent authority of the home Member State. Article 28(4) of Regulation (EU) No 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph. Upon completion of the transfer of the approval, the competent authority to whom the approval of the prospectus has been transferred shall be deemed to be the competent authority of the home Member State for that prospectus for the purposes of this Regulation.

- 3.1.13 R (1) A *person* seeking to have the function of approving a *prospectus* transferred to the competent authority of another *EEA State* must make a written request to the *FCA* at least 10 *working days* before the date the transfer is sought.
- (2) The request must:
- (a) set out the reasons for the proposed transfer;
 - (b) state the name of the competent authority to whom the transfer is sought; and
 - (c) include a copy of the draft *prospectus*.

Service of Notice Regulations

- 3.1.14 G Regulation 7 of the Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the *FCA*. Regulation 7 does not apply to the submission of a draft *prospectus* or *listing particulars* to the *FCA* for approval because of the provisions set out in [REFERENCE TO LEVEL 2 LEGISLATION].

3.2 Publication of prospectus

Publication

- 3.2.1 EU Article 21(1) of the *Prospectus Regulation* provides for the publication of the *prospectus*:

Article 21

Publication of the prospectus

1. Once approved, the prospectus shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved.

In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available to the public at least six working days before the end of the offer.

Method of publishing

- 3.2.2 EU Article 21(2) to (4) of the *Prospectus Regulation* provides for the methods by which the *prospectus* is to be published:

Article 21

Publication of the prospectus

...

2. The prospectus, whether a single document or consisting of separate documents, shall be deemed available to the public when published in electronic form on any of the following websites:
 - (a) the website of the issuer, the offeror or the person asking for admission to trading on a regulated market;
 - (b) the website of the financial intermediaries placing or selling the securities, including paying agents;
 - (c) the website of the regulated market where the admission to trading is sought, or where no admission to trading on a regulated market is sought, the website of the operator of the MTF.
3. The prospectus shall be published on a dedicated section of the website which is easily accessible when entering the website. It shall be downloadable, printable and in searchable electronic format that cannot be modified.

The documents containing information incorporated by reference in the prospectus, the supplements and/or final terms related to the prospectus and a separate copy of the summary shall be accessible

under the same section alongside the prospectus, including by way of hyperlinks where necessary.

The separate copy of the summary shall clearly indicate the prospectus to which it relates.

4. Access to the prospectus shall not be subject to the completion of a registration process, the acceptance of a disclaimer limiting legal liability or the payment of a fee. Warnings specifying the jurisdiction(s) in which an offer or an admission to trading is being made shall not be considered to be disclaimers limiting legal liability.

Other publication requirements

- 3.2.3 EU Article 21(7) to (11) of the *Prospectus Regulation* provides for further requirements for publication:

Article 21

Publication of the prospectus

...

7. All prospectuses approved shall remain publicly available in electronic form for at least 10 years after their publication on the websites referred to in paragraphs 2 and 6.

Where hyperlinks are used for information incorporated by reference in the prospectus, and the supplements and/or final terms related to the prospectus, such hyperlinks shall be functional for the period referred to in the first subparagraph.
8. An approved prospectus shall contain a prominent warning stating when the validity of the prospectus will expire. The warning shall also state that the obligation to supplement a prospectus in the event of significant new factors, material mistakes or material inaccuracies does not apply when a prospectus is no longer valid.
9. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information that constitute the prospectus may be published and distributed separately provided that those documents are made available to the public in accordance with paragraph 2. Where a prospectus consists of separate documents in accordance with Article 10, each of those constituent documents, except for documents incorporated by reference, shall indicate that it is only one part of the prospectus and where the other constituent documents may be obtained.
10. The text and the format of the prospectus, and any supplement to the prospectus made available to the public, shall at all times be identical to the original version approved by the competent

authority of the home Member State.

11. A copy of the prospectus on a durable medium shall be delivered to any potential investor, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading on a regulated market or the financial intermediaries placing or selling the securities. In the event that a potential investor makes a specific demand for a paper copy, the issuer, the offeror, the person asking for admission to trading on a regulated market or a financial intermediary placing or selling the securities shall deliver a printed version of the prospectus. Delivery shall be limited to jurisdictions in which the offer of securities to the public is made or where the admission to trading on a regulated market is taking place under this Regulation.

Publication on website

- 3.2.4 EU [Article 17(2)] of [Commission Delegated Regulation XXX] provides that:
[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

Publication by the competent authority

- 3.2.5 EU Article 21(5) (first sub-paragraph) of the *Prospectus Regulation* sets out the publication requirements applicable to the *FCA* as the competent authority:

Article 21

Publication of the prospectus

...

5. The competent authority of the home Member State shall publish on its website all the prospectuses approved or at least the list of prospectuses approved, including a hyperlink to the dedicated website sections referred to in paragraph 3 of this Article as well as an identification of the host Member State or States where prospectuses are notified in accordance with Article 25. The published list, including the hyperlinks, shall be kept up-to-date and each item shall remain on the website at least for the period referred to in paragraph 7 of this Article.

- 3.2.6 G The *FCA* will upload *prospectuses* approved by it and other relevant documents to the system identified by the *FCA* on its website as the national storage mechanism for regulatory announcements and certain documents published by *issuers*.

Issuers required to submit data

- 3.2.7 R (1) An *issuer* must provide to the *FCA* any information that the *FCA* requires in order to comply with its obligations to provide

information to *ESMA* under article 21(5) of the *Prospectus Regulation* or any regulatory technical standards adopted under article 21(12) of that regulation.

[**Note:** Annex VII (Machine Readable Data) of [Commission Delegated Regulation XXX] [Link to be inserted].]

- (2) The *issuer* must provide the information referred to in paragraph (1) to the *FCA* as soon as possible and
 - (a) for information relating to a *prospectus*, before the *prospectus* is approved by the *FCA*;
 - (b) for information relating to all other documents, no later than when the relevant document is submitted to the *FCA*.

- 3.2.8 R The *issuer* must submit the information referred to *PRR* 3.2.7R using electronic means and the format made available by the *FCA*.

[**Note:** Information on the required data and format of submission can be found on the Markets section of the *FCA* website.]

3.3 Advertisements

Advertisements

- 3.3.1 EU Article 22(1) to (4) of the *Prospectus Regulation* provides for requirements applicable to *advertisements*:

Article 22

Advertisements

1. Any advertisement relating either to an offer of securities to the public or to an admission to trading on a regulated market shall comply with the principles contained in paragraphs 2 to 5. Paragraphs 2 to 4 and point (b) of paragraph 5 shall apply only to cases where the issuer, the offeror or the person asking for admission to trading on a regulated market is subject to the obligation to draw up a prospectus.
2. Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.
3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate or misleading and shall be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published.

4. All information disclosed in an oral or written form concerning the offer of securities to the public or the admission to trading on a regulated market, even where not for advertising purposes, shall be consistent with the information contained in the prospectus.
5. In the event that material information is disclosed by an issuer or an offeror and addressed to one or more selected investors in oral or written form, such information shall, as applicable, either:
 - (a) be disclosed to all other investors to whom the offer is addressed, in the event that a prospectus is not required to be published in accordance with Article 1(4) or (5); or
 - (b) be included in the prospectus or in a supplement to the prospectus in accordance with Article 23(1), in the event that a prospectus is required to be published.

3.3.2 EU [Chapter IV] of [Commission Delegated Regulation XXX] provides that:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

3.4 Supplementary prospectus

Supplementary prospectus

3.4.1 EU Article 23(1) to (6) of the *Prospectus Regulation* provides for requirements applicable to *supplementary prospectuses*:

Article 23

Supplements to the prospectus

1. Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay.

Such a supplement shall be approved in the same way as a prospectus in a maximum of five working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published in accordance with Article 21. The summary, and any translations thereof, shall also be supplemented, where necessary, to take into account the new information included in the supplement.

2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the

supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.

The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states:

- (a) that a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;
- (b) the period in which investors can exercise their right of withdrawal; and
- (c) whom investors may contact should they wish to exercise the right of withdrawal.

3. Where the securities are purchased or subscribed through a financial intermediary, that financial intermediary shall inform investors of the possibility of a supplement being published, where and when it would be published and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such case.

The financial intermediary shall contact investors on the day when the supplement is published.

Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published and where it would be published and that in such case, they could have a right to withdraw the acceptance.

4. Where the issuer prepares a supplement concerning information in the base prospectus that relates to only one or several individual issues, the right of investors to withdraw their acceptances pursuant to paragraph 2 shall only apply to the relevant issue(s) and not to any other issue of securities under the base prospectus.
5. In the event that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 concerns only the information contained in a registration document or a universal registration document and that registration document or universal registration document is simultaneously used as a constituent part of several prospectuses, only one supplement shall be drawn up and approved. In that case, the supplement shall mention all the

prospectuses to which it relates.

6. When scrutinising a supplement before approval, the competent authority may request that the supplement contains a consolidated version of the supplemented prospectus, registration document or universal registration document in an annex, where such consolidated version is necessary to ensure comprehensibility of the information given in the prospectus. Such a request shall be deemed to be a request for supplementary information under Article 20(4). An issuer may in any event voluntarily include a consolidated version of the supplemented prospectus, registration document or universal registration document in an annex to the supplement.

- 3.4.2 EU [Chapter V] of [Commission Delegated Regulation XXX] provides for further requirements applicable to *supplementary prospectuses*:

[PLACEHOLDER FOR LEVEL 2 LEGISLATION]

4 Use of languages and third country issuers

4.1 Use of languages

Language

- 4.1.1 EU Article 27 of the *Prospectus Regulation* provides:

Article 27

Use of language

1. Where an offer of securities to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State.
2. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language, or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.

For the purpose of the scrutiny and approval by the competent authority of the home Member State, the prospectus shall be drawn up either in a language accepted by that authority or in a language

customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

3. Where an offer of securities to the public is made or an admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State, and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror, or the person asking for admission to trading on a regulated market.

The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.

4. The final terms and the summary of the individual issue shall be drawn up in the same language as the language of the approved base prospectus.

When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the following language rules shall apply to the final terms and the summary annexed thereto:

- (a) the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with the second subparagraph of paragraph 2 or the second subparagraph of paragraph 3, as applicable;
 - (b) where the base prospectus is to be translated pursuant to paragraph 2 or 3, as applicable, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus.
5. Where a prospectus relates to the admission to trading on a regulated market of non-equity securities and admission to trading on a regulated market is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission

to trading on a regulated market, provided that either:

- (a) such securities are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities; or
- (b) such securities have a denomination per unit of at least EUR 100 000.

English language

- 4.1.2 R For the purposes of article 27 of the *Prospectus Regulation*, English is the language accepted by the *FCA* where the *United Kingdom* is a *Home State* or *Host State*.

Language customary in the sphere of international finance

- 4.1.3 G The *FCA* will consider a language to be customary in the sphere of international finance if documents in that language are accepted for scrutiny and filing in at least three international capital markets in each of the following:
- (1) Europe;
 - (2) Asia; and
 - (3) the Americas.

Summary to be translated into English

- 4.1.4 R If:
- (1) an *offer* is made or *admission to trading* is requested in the *United Kingdom*;
 - (2) a *prospectus* relating to the *transferable securities* has been approved by the competent authority of another *EEA State* and the *prospectus* contains a *summary*; and
 - (3) the *prospectus* is drawn up in a language other than English;
- the *offeror* must ensure that the *summary* is translated into English.
- [**Note:** Article 27(2) and (3) of the *Prospectus Regulation*]

4.2 Third country issuers

Approval of prospectus drawn up in accordance with the Prospectus Regulation

- 4.2.1 EU Article 28 of the *Prospectus Regulation* provides:
- Article 28

Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with this Regulation

Where a third country issuer intends to offer securities to the public in the Union or to seek admission to trading of securities on a regulated market established in the Union under a prospectus drawn up in accordance with this Regulation, it shall obtain approval of its prospectus, in accordance with Article 20, from the competent authority of its home Member State.

Once a prospectus is approved in accordance with the first subparagraph, it shall entail all the rights and obligations provided for a prospectus under this Regulation and the prospectus and the third country issuer shall be subject to all of the provisions of this Regulation under the supervision of the competent authority of the home Member State.

Approval of prospectus drawn up in accordance with third country laws

4.2.2 EU Article 29 (1) and (2) of the *Prospectus Regulation* provides:

Article 29

Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with the laws of a third country

1. The competent authority of the home Member State of a third country issuer may approve a prospectus for an offer of securities to the public or for admission to trading on a regulated market, drawn up in accordance with, and which is subject to, the national laws of the third country issuer, provided that:
 - (a) the information requirements imposed by those third country laws are equivalent to the requirements under this Regulation; and
 - (b) the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.
2. In the case of an offer to the public or admission to trading on a regulated market of securities issued by a third country issuer, in a Member State other than the home Member State, the requirements set out in Articles 24, 25 and 27 shall apply.

5 Other provisions

5.1 Validity of prospectus

Validity of prospectus

- 5.1.1 EU Article 12 of the *Prospectus Regulation* provides for the validity of a *prospectus*, *registration document* or a *universal registration document*:

Article 12

Validity of a prospectus, registration document and universal registration document

1. A prospectus, whether a single document or consisting of separate documents, shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that it is completed by any supplement required pursuant to Article 23.

Where a prospectus consists of separate documents, the period of validity shall begin upon approval of the securities note.

2. A registration document which has been previously approved shall be valid for use as a constituent part of a prospectus for 12 months after its approval.

The end of the validity of such a registration document shall not affect the validity of a prospectus of which it is a constituent part.

3. A universal registration document shall be valid for use as a constituent part of a prospectus for 12 months after its approval as referred to in the first subparagraph of Article 9(2) or after its filing as referred to in the second subparagraph of Article 9(2).

The end of the validity of such a universal registration document shall not affect the validity of a prospectus of which it is a constituent part.

5.2 Certificate of approval

Certificate of approval – prospectus

- 5.2.1 EU Article 25(1) and (2) provides:

Article 25

Notification of prospectuses and supplements and communication of final terms

1. The competent authority of the home Member State shall, at the request of the issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up the prospectus and within one working day following receipt of that request or, where the request is submitted together with the draft prospectus, within one working day following the approval of the prospectus, notify the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Regulation and with an

electronic copy of that prospectus.

Where applicable, the notification referred to in the first subparagraph shall be accompanied by a translation of the prospectus and any summary, produced under the responsibility of the issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up the prospectus.

The same procedure shall be followed for any supplement to the prospectus.

The issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up the prospectus shall be notified of the certificate of approval at the same time as the competent authority of the host Member State.

2. Any application of the provisions of Article 18(1) and (2) shall be stated in the certificate of approval, as well as its justification.

Certificate of approval – registration documents or universal registration documents

5.2.2 EU Article 26(1) to (5) provides:

Article 26

Notification of registration documents or universal registration documents

1. This Article shall only apply to issues of non-equity securities referred to in point (m)(ii) of Article 2 and to issuers established in a third country referred to in point (m)(iii) of Article 2, where the home Member State chosen for the prospectus approval pursuant to those provisions is different from the Member State whose competent authority has approved the registration document or universal registration document drawn up by the issuer, the offeror or the person asking for admission to trading on a regulated market.
2. A competent authority that has approved a registration document, or a universal registration document and any amendments thereto, shall, at the request of the issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up such document, notify the competent authority of the home Member State for the prospectus approval with a certificate of approval attesting that the registration document, or universal registration document and any amendments thereto, has been drawn up in accordance with this Regulation and with an electronic copy of that document. That notification shall be made within one working day following receipt of the request or, where the request is submitted together with the draft registration document or draft universal registration document, within one working day following

the approval of that document.

Where applicable, the notification referred to in the first subparagraph shall be accompanied by a translation of the registration document, or universal registration document and any amendments thereto, produced under the responsibility of the issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up such documents.

The issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up the registration document, or the universal registration document and any amendments thereto, shall be notified of the certificate of approval at the same time as the competent authority of the home Member State for the prospectus approval.

Any application of the provisions of Article 18(1) and (2) shall be stated in the certificate, as well as its justification.

The competent authority that has approved the registration document, or the universal registration document and any amendments thereto, shall notify ESMA of the certificate of approval of those documents at the same time as it is notified to the competent authority of the home Member State for the prospectus approval.

No fee shall be charged by those competent authorities for the notification, or receipt of notification, of registration documents, or universal registration documents and any amendments thereto, or any related supervisory activity.

3. A registration document or universal registration document notified pursuant to paragraph 2 may be used as a constituent part of a prospectus submitted for approval to the competent authority of the home Member State for the prospectus approval.

The competent authority of the home Member State for the prospectus approval shall not undertake any scrutiny nor approval relating to the notified registration document, or universal registration document and any amendments thereto, and shall approve only the securities note and the summary, and only after receipt of the notification.

4. A registration document or a universal registration document notified pursuant to paragraph 2 shall contain an appendix setting out the key information on the issuer referred to in Article 7(6). The approval of the registration document or universal registration document shall encompass the appendix.

Where applicable pursuant to the second subparagraph of Article 27(2) and the second subparagraph of Article 27(3), the notification shall be accompanied by a translation of the appendix to the registration document or universal registration document produced

under the responsibility of the issuer, offeror or person responsible for drawing up the registration document or the universal registration document.

When drawing up the summary, the issuer, offeror or person responsible for drawing up the prospectus shall reproduce the content of the appendix without any changes in the section referred to in point (b) of Article 7(4). The competent authority of the home Member State for the prospectus approval shall not scrutinise that section of the summary.

5. Where a significant new factor, material mistake or material inaccuracy arises or is noted within the timeframe specified in Article 23(1) and relates to the information contained in the registration document or the universal registration document, the supplement required pursuant to Article 23 shall be submitted for approval to the competent authority which approved the registration document or the universal registration document. That supplement shall be notified to the competent authority of the home Member State for the prospectus approval within one working day following its approval, under the procedure set out in paragraphs 2 and 3 of this Article.

Where a registration document or a universal registration document is simultaneously used as a constituent part of several prospectuses, as provided for in Article 23(5), the supplement shall be notified to each competent authority which has approved such prospectuses.

Requests to the FCA to supply a certificate of approval

- 5.2.3 G (1) The following *guidance* applies to a request by a *person* to the *FCA* to supply information referred to in article 25 of the *Prospectus Regulation* to the competent authority of a relevant *Host State*.
- (2) The request should be in writing and should include:
 - (a) the relevant *prospectus* as approved (if it has already been approved);
 - (b) a translation of the *summary* if required by the competent authority of a relevant *Host State*; and
 - (c) any information reasonably required by the *FCA* to enable it to supply the information to the other competent authority.

[**Note:** Information on the required data and format of submission can be found on the Markets section of the *FCA* website.]
- 5.2.4 G The *FCA* will inform the *person* who made the request as soon as practicable after it has supplied the information to the other competent

authority.

Certificate received from another competent authority

- 5.2.5 G If the *FCA* receives information referred to in Article 25 of the *Prospectus Regulation* from another competent authority it will as soon as practicable give notice on the *FCA* website that it has received the information.

5.3 Persons responsible for a prospectus

Rules only apply if UK is Home State

- 5.3.1 R The *rules* in this section only apply in respect of a *prospectus* if the *United Kingdom* is the *Home State* for the *issuer* in relation to the *transferable securities* to which the *prospectus* relates.

Equity shares

- 5.3.2 R (1) This *rule* applies to a *prospectus* relating to:
- (a) *equity shares*;
 - (b) warrants or options to subscribe for *equity shares*, that are issued by the *issuer* of the *equity shares*; and
 - (c) other *transferable securities* that have similar characteristics to *transferable securities* referred to in paragraphs (a) or (b).
- (2) Each of the following *persons* are responsible for the *prospectus*:
- (a) the *issuer* of the *transferable securities*;
 - (b) if the *issuer* is a *body corporate*:
 - (i) each person who is a *director* of that *body corporate* when the *prospectus* is published;
 - (ii) each *person* who has authorised himself to be named, and is named, in the *prospectus* as a *director* or as having agreed to become a *director* of that *body corporate* either immediately or at a future time; and
 - (iii) each *person* who is a senior executive of any *external management* company of the *issuer*;
 - (c) each *person* who accepts, and is stated in the *prospectus* as accepting, responsibility for the *prospectus*;
 - (d) in relation to an *offer*:
 - (i) the *offeror*, if this is not the *issuer*; and

- (ii) if the *offeror* is a *body corporate* and is not the *issuer*, each *person* who is a *director* of the *body corporate* when the *prospectus* is published;
- (e) in relation to a request for the *admission to trading* of *transferable securities*:
 - (i) the *person* requesting admission, if this is not the *issuer*; and
 - (ii) if the *person* requesting admission is a *body corporate* and is not the *issuer*, each *person* who is a *director* of the *body corporate* when the *prospectus* is published; and
- (f) each *person* not falling within any of the previous paragraphs who has authorised the contents of the *prospectus*.

5.3.3 R In *PRR 5.3.2R* (2)(b)(iii), *external management company* means in relation to an *issuer* that is a *company* which is not a collective investment undertaking, a *person* who is appointed by the *issuer* (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by *officers* of the *issuer* and to make recommendations in relation to strategic matters.

5.3.4 G In considering whether the functions the *person* performs would ordinarily be performed by *officers* of the *issuer*, the *FCA* will consider, among other things:

- (1) the nature of the board of the *issuer* to which the *person* provides services, and whether the board has the capability to act itself on strategic matters in the absence of that *person's* services;
- (2) whether the appointment relates to a one-off transaction or is a longer-term relationship; and
- (3) the proportion of the functions ordinarily performed by *officers* of the *issuer* that is covered by the arrangement.

All other securities

- 5.3.5 R
- (1) This *rule* applies to a *prospectus* relating to *transferable securities* other than those to which *PRR 5.3.2R* applies.
 - (2) Each of the following *persons* are responsible for the *prospectus*:
 - (a) the *issuer* of the *transferable securities*;
 - (b) each *person* who accepts, and is stated in the *prospectus* as accepting, responsibility for the *prospectus*;

- (c) in relation to an *offer*, the *offeror* of the *transferable securities*, if this is not the *issuer*;
- (d) in relation to a request for an *admission to trading* of *transferable securities*, the *person* requesting admission, if this is not the *issuer*;
- (e) if there is a *guarantor* for the issue, the *guarantor* in relation to information in the *prospectus* that relates to the *guarantor* and the *guarantee*; and
- (f) each *person* not falling within any of the previous paragraphs who has authorised the contents of the *prospectus*.

Issuer not responsible if it has not authorised offer or admission to trading

- 5.3.6 R A *person* is not responsible for a *prospectus* under PRR 5.3.2R(2)(a) or (b) or PRR 5.3.5R(2)(a) if the *issuer* has not made or authorised the *offer* or the request for *admission to trading* in relation to which the *prospectus* was published.

Publication without director's consent

- 5.3.7 R A *person* is not responsible for a *prospectus* under PRR 5.3.2R(2)(b)(i) if it is published without his knowledge or consent and on becoming aware of its publication he, as soon as practicable, gives reasonable public notice that it was published without his knowledge or consent.

Offeror not responsible in certain circumstances

- 5.3.8 R A *person* is not responsible for a *prospectus* under PRR 5.3.2R(2)(d) or PRR 5.3.5R(2)(c) if:
- (1) the *issuer* is responsible for the *prospectus* in accordance with the *rules* in this section;
 - (2) the *prospectus* was drawn up primarily by the *issuer*, or by one or more *persons* acting on behalf of the *issuer*; and
 - (3) the *offeror* is making the *offer* in association with the *issuer*.

Person may accept responsibility for, or authorise, part of contents

- 5.3.9 R A *person* who accepts responsibility for a *prospectus* under PRR 5.3.2R(2)(c) or PRR 5.3.5R(2)(b) or authorises the contents of a *prospectus* under PRR 5.3.2R(2)(f) or PRR 5.3.5R(2)(f), may state that they do so only in relation to specified parts of the *prospectus*, or only in specified respects, and in that case the *person* is responsible under those paragraphs:
- (1) only to the extent specified; and

- (2) only if the material in question is included in (or substantially in) the form and context to which the *person* has agreed.

Advice in professional capacity

- 5.3.10 R Nothing in the *rules* in this section is to be construed as making a *person* responsible for any *prospectus* by reason only of the *person* giving advice about its contents in a professional capacity.

5.4 Miscellaneous

Information to be disclosed to all investors to whom offer addressed

- 5.4.1 EU Article 22(5) of the *Prospectus Regulation* provides:

Article 22

Advertisements

...

5. In the event that material information is disclosed by an issuer or an offeror and addressed to one or more selected investors in oral or written form, such information shall, as applicable, either:
- (a) be disclosed to all other investors to whom the offer is addressed, in the event that a prospectus is not required to be published in accordance with Article 1(4) or (5); or
 - (b) be included in the prospectus or in a supplement to the prospectus in accordance with Article 23(1), in the event that a prospectus is required to be published.

Exercise of powers under section [87K or 87L] of the Act

- 5.4.2 G Under [sections 87K and 87L] of the *Act*, the *FCA* has various powers including powers to prohibit or suspend an *offer* and to prohibit or suspend an *advertisement*. The *FCA* will use these powers if it is necessary to protect investors or the smooth operation of the market is, or may be, jeopardised.

[SUBJECT TO AMENDMENT FOLLOWING AMENDMENTS TO THE ACT]

Calculation of amounts not denominated in euros

- 5.4.3 R For the purposes of articles 7(1) and 27(5) of the *Prospectus Regulation*, a reference to an amount denominated in euros is also a reference to an equivalent amount.

- 5.4.4 R For the purposes of *PRR* 5.4.3R, an amount is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another

currency or unit of account, calculated at:

- (1) in relation to a *prospectus* drawn up as a single document, the date on which the *prospectus* is approved;
- (2) in relation to a *prospectus* consisting of a *registration document* or a *universal registration document* together with a *securities note* and a *summary*, the date on which the *registration document* or the *universal registration document* is approved;
- (3) in relation to a *prospectus* consisting of a *base prospectus* and final terms of the *offer*, the date on which the final terms are filed.

Property valuation reports

- 5.4.5 G To comply with [LEVEL 3 MATERIAL] the *FCA* would expect a valuation report for a property company to be in accordance with either:
- (1) the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or
 - (2) the International Valuation Standards (7th edition) issued by the International Valuation Standards Committee.
- 5.4.6 G To comply with [LEVEL 2 LEGISLATION], the *FCA* would also expect a valuation report for a *property collective investment undertaking* to comply with a relevant standard set out in *PRR 5.4.5G*.

PRR Appendix 1
PRR App 1.1 Relevant definitions

[**Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.]

<i>Act</i>	the Financial Service and Markets Act 2000.	
<i>admission to trading</i>	admission to trading on a <i>regulated market</i> .	
<i>advertisement</i>	(as defined in the <i>Prospectus Regulation</i>) a communication with both of the following characteristics:	
	(1)	relating to a specific offer of securities to the public or to an admission to trading on a regulated market; and
	(2)	aiming to specifically promote the potential subscription or acquisition of securities.
<i>applicant</i>	an <i>applicant</i> for approval of a <i>prospectus</i> or <i>supplementary prospectus</i> relating to <i>transferable securities</i> .	
<i>base prospectus</i>	a base prospectus referred to in article 8 of the <i>Prospectus Regulation</i> .	
<i>body corporate</i>	(in accordance with section 417(1) of the <i>Act</i> (Definitions) any body corporate, including a body corporate constituted under the law of a country or territory outside the <i>United Kingdom</i> .	
<i>company</i>	any <i>body corporate</i> .	
<i>director</i>	(in accordance with section 417(1)(a) of the <i>Act</i>) a <i>person</i> occupying in relation to it the position of a director (by whatever name called) and, in relation to an <i>issuer</i> which is not a <i>body corporate</i> , a <i>person</i> with corresponding powers and duties.	
<i>EEA state</i>	(in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time:	
	(a)	a state which at that time is a member State; or
	(b)	any other state which is at that time a party to the EEA agreement.
	[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. Where the context requires, references to an EEA State include references to Gibraltar as appropriate.]	
<i>equity share</i>	<i>shares</i> comprised in a <i>company's equity share capital</i> .	

[ESMA Prospectus Opinions]	the following opinions published by ESMA:	
	(1)	Format of the base prospectus and consistent application of article 26(4) of the Prospectus Regulation (ESMA/2013/1944);
	(2)	Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive (ESMA/2013/317);
	(3)	Assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and
	(4)	Assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).]
[ESMA Prospectus Questions and Answers]	the Questions and Answers for prospectuses published by ESMA (ESMA/2016/1674).]	
[ESMA Prospectus Recommendations]	the ESMA update of the CESR recommendations: The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ESMA/2013/319).]	
executive procedures	(1)	the procedures relating to the giving of warning notices, decision notices and <i>supervisory notices</i> that are described in DEPP 4 (Decisions by FCA staff under executive procedures);
	(2)	the procedures relating to the giving of written notices under the AIFMD UK regulation that are described in FUND App 1.
external management company	has the meaning in PRR 5.3.3R.	
FCA	the Financial Conduct Authority	
guarantee	[(as defined in the PR Regulation)] any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, keep well agreement, mono-line insurance policy or other equivalent commitment.	
guarantor	a person that provides a guarantee.	
Home State	in relation to an issuer of <i>transferable securities</i> , the EEA State which is the “home Member State” for the purposes of the <i>Prospectus Regulation</i> (which is to be determined in accordance with article 2(m) of that regulation).	

<i>Host State</i>	(as defined in Article 2(n) of the <i>Prospectus Regulation</i>) the <i>EEA State</i> where an offer of securities to the public is made or admission to trading on a regulated market is sought, where different from the home Member State.
<i>issuer</i>	(as defined in article 2(h) of the <i>Prospectus Regulation</i>) a legal person who issues or proposes to issue the <i>transferable securities</i> in question.
<i>listing particulars</i>	(in accordance with section 79(2) of the <i>Act</i>), a document in such form and containing such information as may be specified in <i>listing rules</i> .
<i>offer</i>	an <i>offer of transferable securities to the public</i> .
<i>offer of transferable securities to the public</i>	(as defined in the <i>Prospectus Regulation</i>) a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries.
<i>offeror</i>	a <i>person</i> who makes an <i>offer of transferable securities to the public</i> .
<i>officer</i>	(in relation to a <i>body corporate</i>) (as defined in section 400(5) of the <i>Act</i> (Offences by bodies corporate etc)) a director, member of the committee of management, <i>chief executive</i> , <i>manager</i> , secretary, or other similar officer of the body, or a <i>person</i> purporting to act in that capacity or a <i>controller</i> of the body.
<i>PD</i>	Prospectus Directive.
<i>PD Regulation</i>	Regulation number 809/2004 of the European Commission
<i>person</i>	(in accordance with the <i>Interpretation Act 1978</i>) any person, including a body of persons corporate or unincorporated that is, a natural person, a legal person and, for example, a <i>partnership</i>).
<i>PR Regulation</i>	[Regulation number XXX/XXXX of the European Commission.]
<i>PRIIPs Regulation</i>	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs). http://data.europa.eu/eli/reg/2014/1286/oj
<i>property collective investment undertaking</i>	[(as defined in the <i>PR Regulation</i>)] a collective investment undertaking whose investment objective is the participation in the holding of property in the long term.
<i>prospectus</i>	a prospectus required under the <i>Prospectus Regulation</i> .
<i>Prospectus</i>	Regulation (EU) No 2017/1129 of the European Parliament and of the

<i>Regulation</i>	Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.	
<i>[Prospectus RTS Regulations</i>	(1)	Commission Delegated Regulation (EU) XXX; and
	(2)	Commission Delegated Regulation (EU) XXX.]
<i>PRR</i>	the <i>Prospectus Regulation Rules</i> sourcebook.	
<i>registration document</i>	a registration document referred to in article 6(3) of the <i>Prospectus Regulation</i> .	
<i>rule</i>	(in accordance with section 417(1) of the <i>Act</i> (Definitions)) a rule made by the <i>FCA</i> under the <i>Act</i> .	
<i>securities note</i>	a securities note referred to in article 6(3) of the <i>Prospectus Regulation</i> .	
<i>statutory notice associated decision</i>	a decision which is made by the <i>appropriate regulator</i> and which is associated with a decision to give a <i>statutory notice</i> , including a decision:	
	(a)	to determine or extend the period for making representations;
	(b)	to determine whether a copy of the <i>statutory notice</i> needs to be given to any third party and the period for him to make representations;
	(c)	to refuse access to <i>appropriate regulator</i> material.
<i>statutory notice decision</i>	a decision by the <i>appropriate regulator</i> on whether or not to give a <i>statutory notice</i> .	
<i>summary</i>	(in relation to a <i>prospectus</i>) the summary included in the <i>prospectus</i> .	
<i>supplementary prospectus</i>	a supplementary prospectus containing details of a new factor, mistake or inaccuracy.	
<i>transferable security</i>	(as defined in section 102A of the <i>Act</i>) anything which is a transferable security for the purposes of <i>MiFID</i> , other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.	
	[Note: In the <i>Prospectus Regulation</i> and <i>PR Regulation</i> , the term “security” rather than “transferable security” is used.]	
<i>United Kingdom</i>	England and Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).	
<i>universal</i>	a universal registration document referred to in article 9 of the <i>Prospectus</i>	

<i>registration document</i>	<i>Regulation.</i>
<i>working day</i>	(as defined in section 103 of the Act) any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

PRR Appendix 2
PRR 2.1 Disclosure Annexes

App 2.1.1 EU	The following annexes are copied from the [<i>PD Regulation</i>]:	
	[PLACEHOLDER: TEXT FROM LEVEL 2 INSTRUMENT TO BE INCLUDED FOLLOWING ENTRY INTO FORCE.]	

TP 1 Transitional Provisions for prospectuses approved before 21 July 2019

TP 1.1 R

(1)	(2)	(3)	(4)		(5)	(6)
	Material to which the Transitional Provision applies		Transitional Provision		Transitional Provision: dates in force	Handbook Provision: coming into force
1	All of <i>PR</i>	R	<i>PR</i> shall continue to apply to any <i>prospectus</i> approved under <i>PR</i> before 21 July 2019 until the earlier of:		From 21 July 2019	
			(a)	the end of its validity under <i>PR</i> 5.1; or		
			(b)	21 July 2020.		

Schedule 6 Rules that can be waived or modified**6.1 G**

1.	As a result of section 138A of the <i>Act</i> (Modification or waiver of rules) the <i>FCA</i> has power to waive all its rules, other than rules made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the <i>Act</i> . However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FCA</i> to grant a waiver that would be incompatible with the <i>United Kingdom's</i> responsibilities under those directives.
2.	In addition article 18 (Omission of information) of the <i>Prospectus Regulation</i> provides the <i>FCA</i> with discretion to authorise omissions from disclosure requirements derived from the <i>Prospectus Regulation</i> in the circumstances specified in that article.

Annex B

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

<i>admission to trading</i>	...	(2) (in PR <u>PRR</u> and <i>DTR</i>) admission to trading on a <i>regulated market</i> .
<i>advertisement</i>	(in PR <u>PRR</u> and <i>LR</i> 4) (as defined in the <i>PD-Regulation</i> <u><i>Prospectus Regulation</i></u>) announcements <u>a communication with both of the following characteristics:</u>	<p>(1) relating to a specific offer of securities to the public or to an admission to trading on a regulated market; and</p> <p>(2) aiming to specifically promote the potential subscription or acquisition of securities.</p>
<i>applicant</i>	...	(2) (in PR <u>PRR</u>) an applicant for approval of a <i>prospectus</i> or <i>supplementary prospectus</i> relating to <i>transferable securities</i> .
<i>asset backed security</i>	(as defined in the <i>PD-Regulation</i> <u><i>PR Regulation</i></u>) <i>securities</i> which:	...
<i>base prospectus</i>	(in <i>Part 6 rules</i>) a base prospectus referred to in <i>PR 2.2.7R</i> <u>article 8 of the <i>Prospectus Regulation</i></u> .	
<i>building block</i>	(as defined in the <i>PD-Regulation</i> <u><i>PR Regulation</i></u>) a list of additional information requirements, not included in one of the schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is drawn up.	
<i>collective investment undertaking other than the closed end type</i>	(in PR <u>PRR</u>) (as defined in article 2(p) of the <u><i>Prospectus Regulation</i></u> Article 2.1(e) of the <i>prospectus directive</i>) unit trusts and investment companies with both of the following characteristics:	<p>(a) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading;</p> <p>(b) the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these</p>

	undertakings.
	<ul style="list-style-type: none"> (i) <u>they raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors;</u> (ii) <u>their units are, at the holder's request, repurchased or redeemed, directly or indirectly, out of their assets.</u>
<i>director</i>	<ul style="list-style-type: none"> (1) (except in <i>COLL</i>, <i>DTR</i>, <i>LR</i> and <i>PR-PRR</i>) (in relation to any of the following (whether constituted in the United Kingdom or under the law of a country or territory outside it)): ... (3) (in <i>DTR</i>, <i>LR</i> and <i>PR PRR</i>) (in accordance with section 417(1)(a) of the <i>Act</i>) a person occupying in relation to it the position of a director (by whatever name called) and, in relation to an issuer which is not a body corporate, a person with corresponding powers and duties.
<i>equity security</i>	...
	<ul style="list-style-type: none"> (2) (in <i>FEES and PR</i>) (as defined in Article 2.1(b) of the Prospectus Directive article 2(b) of the <i>Prospectus Regulation</i>) shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer.
<i>equivalent document</i>	a document containing information equivalent to a prospectus for the purposes of PR 1.2.2R (2) or (3) or PR 1.2.3R (3) or (4).
[<i>ESMA Prospectus Recommendations</i>]	the <i>ESMA</i> update of the <i>CESR recommendations</i> : The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ESMA/2013/319).]
<i>external management company</i>	(in <i>LR</i> and <i>PR PRR</i>) has the meaning in <i>PR 5.3.3AR</i> <i>PRR 5.3.3R</i> .
<i>guarantee</i>	...
	<ul style="list-style-type: none"> (2) (in <i>PR PRR</i>) [(as defined in the <i>PD Regulation</i> <i>PR Regulation</i>)] any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, keep well agreement, mono-line insurance policy or other equivalent commitment.

<i>guarantor</i>	(in PR <u>PRR</u>) a person that provides a <i>guarantee</i> .
<i>Home Member State</i>	(in DTR ; PR and <i>LR</i>) <i>Home State</i>
<i>Host Member State</i>	(in PR and <i>LR</i>) <i>Host State</i> .
<i>Home State</i>	... (8) (in <i>LR</i> and PR <u>PRR</u>) (as defined in section 102C of the Act) in relation to an issuer of <i>transferable securities</i> , the <i>EEA State</i> which is the “home Member State” for the purposes of the prospectus directive <u>Prospectus Regulation</u> (which is to be determined in accordance with Article 2.1(m) of that directive <u>article 2(m) of that regulation</u>).
	...
<i>Host State</i>	(1) (in <i>LR</i> and PR <u>PRR</u>) (as defined in Article 2.1(n) of the Prospectus Directive <u>article 2(n) of the Prospectus Regulation</u>) the <i>EEA State</i> where an offer of <u>securities</u> to the public is made or <i>admission to trading</i> is sought, where different from the <i>Home State</i> (2) (except in <i>LR</i> , PR <u>PRR</u> and <i>DTR</i> and except in relation to <i>MiFID</i>) the <i>EEA State</i> in which an <i>EEA firm</i> , a <i>UK firm</i> , or a <i>Treaty firm</i> is exercising an <i>EEA right</i> or <i>Treaty right</i> to establish a <i>branch</i> or provide <i>cross border services</i>
<i>issuer</i>	... (4) (in PR <u>PRR</u> and <i>FEES</i> in relation to PR <u>PRR</u>) (as defined in section 102A of the Act <u>article 2(h) of the Prospectus Regulation</u>) a legal person who issues or proposes to issue the <i>transferable securities</i> in question.
<i>key information</i>	(in PR) (as defined in section 87A(9) and (10) of the Act) the information which is essential to enable investors to understand the <i>transferable securities</i> to which the <i>prospectus</i> relates and decide whether to consider the <i>offer</i> further. The key information must include: (a) the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions; (b) the essential characteristics of, and risks associated with, investment in the <i>transferable securities</i> , including any rights attaching to the

	<i>securities;</i>
	(e) the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;
	(d) details of the admission to trading; and
	(e) the reasons for the offer and proposed use of the proceeds.
<i>non-equity transferable securities</i>	(in PR <u>PRR</u>) (as defined in section 102A of the Act <u>article 2(c) of the Prospectus Regulation</u>) all <i>transferable securities</i> that are not equity securities.
<i>listing particulars</i>	(in LR <u>and PRR</u>) (in accordance with section 79(2) of the Act), a document in such form and containing such information as may be specified in listing rules.
<i>offer</i>	...
	(3) (in LR <u>an PRR</u>) an <i>offer of transferable securities to the public</i> .
<i>offer of transferable securities to the public</i>	(in PR <u>PRR</u> and LR) (as defined in the <i>Prospectus Regulation</i>) a <u>communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries. (as defined in section 102B of the Act), in summary:</u>
	(a) a communication to any person which presents sufficient information on:
	(i) the transferable securities to be offered, and
	(ii) the terms on which they are offered;
	to enable an investor to decide to buy or subscribe for the securities in question;
	(b) which is made in any form or by any means;
	(c) including the placing of securities through a financial intermediary;
	(d) but not including a communication in connection with trading on:
	(i) a regulated market;
	(ii) a multilateral trading facility; or
	(iii) any market prescribed by an order under section 130A of the Act.

Note: This is only a summary; to see the full text of the definition, readers should consult section 102B of the Act.

<i>offering programme</i>	(in PR) (as defined in Article 2.1(k) of the prospectus directive) a plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period.
<i>offeror</i>	... (2) (in LR (except LR 5.2.10R to LR 5.2.11DR), PR and FEES provisions in relation to PR <u>PRR</u>) (as defined in the <i>Prospectus Regulation</i>) a person who makes an offer of transferable securities to the public.
<i>overseas company</i>	(in LR and PR) a company incorporated outside the United Kingdom.
PR	the Prospectus Rules sourcebook.
<u>PRR</u>	(1) (in <i>BIPRU</i>) position risk requirement. (2) (except in <i>BIPRU</i>) the Prospectus Regulation Rules sourcebook.
<i>property collective investment undertaking</i>	(in PR <u>PRR</u>) [(as defined in the PD-Regulation <i>PR Regulation</i>)] a collective investment undertaking whose investment objective is the participation in the holding of property in the long term.
<i>profit estimate</i>	(as defined in the PD-Regulation <i>PR Regulation</i>) a profit forecast for a financial period which has expired and for which results have not yet been published.
<i>profit forecast</i>	(as defined in the PD-Regulation <i>PR Regulation</i>) a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used.
<i>prospectus</i>	(1) (in LR and PR <u>PRR</u> , FEES and FUND 3 (Requirements for managers of alternative investment funds)) a prospectus required under the prospectus directive <i>Prospectus Regulation</i> . (2) (except in LR and PR <u>PRR</u>) (in relation to a <i>collective investment scheme</i>) a document containing information about the <i>scheme</i> and complying with the requirements in COLL 4.2.5R (Table: contents of the prospectus), COLL 8.3.4R (Table: contents of qualified investor scheme prospectus) or COLL 9.3.2R (Additional information

required in the prospectus for an application under section 272) applicable to a *prospectus* of a *scheme* of the type concerned.

[Prospectus
RTS
Regulations

(1) Commission Delegated Regulation (EU) XXX; and

(2) Commission Delegated Regulation (EU) XXX.]

*public
international
body*

(1) ~~(in PR) (as defined in the PD Regulation) a legal entity of public nature established by an international treaty between sovereign States and of which one or more Member States are members~~ [Deleted]

(2) (in LR and DTR) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Development Bank, the European Atomic Energy Community, the European Bank for Reconstruction and Development, the European Company for the Financing of Railroad Stock, the EU, the European Investment Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund and the Nordic Investment Bank.

*qualified
investor*

~~(in PR) (as defined in section 86(7) of the Act) in relation to an offer of transferable securities:~~

(a) ~~a person or entity described in points (1) to (4) of Section I of Annex II to MiFID, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with MiFID; or~~

(b) ~~a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to MiFID and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to MiFID; or~~

(c) ~~a person who is an eligible counterparty in accordance with article 30 of MiFID and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of MiFID; or~~

(d) ~~a person whom:~~

(i) ~~any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of article 71.6 of Directive 2004/39/EC of the~~

European Parliament and of the Council of 21 April 2004 on markets in financial instruments; and

- (ii) the firm may continue to treat as a *professional client* from 3 January 2018 by virtue of Section II.2 of Annex II to *MiFID*.

<i>registration document</i>	(in <i>Part 6 rules</i> and <i>COBS 11A</i>) a registration document referred to in <i>PR 2.2.2R</i> article 6(3) of the <i>Prospectus Regulation</i> .
<i>risk factors</i>	(in <i>PR</i>) (as defined in the <i>PD Regulation</i>) a list of risks which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions.
<i>schedule</i>	(as defined in the <i>PD Regulation</i> <i>PR Regulation</i>) a list of minimum information requirements adapted to the particular nature of the different types of <i>issuers</i> and/or the different <i>securities</i> involved.
<i>securities issued in a continuous and repeated manner</i>	(in <i>PR</i>) (as defined in Article 2.1(1) of the <i>prospectus directive</i>) issues on tap or at least two separate issues of securities of a similar type and/or class over a period of 12 months.
<i>securities note</i>	(in <i>Part 6 rules</i>) a securities note referred to in <i>PR 2.2.2R</i> article 6(3) of the <i>Prospectus Regulation</i> .
<i>small and medium-sized enterprise</i>	... (2) (in <i>PR</i>) (as defined in article 2.1(f) of the <i>prospectus directive</i>) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43,000,000 and an annual net turnover not exceeding €50,000,000. [Deleted]
<i>special purpose vehicle</i>	(1) (in <i>PR</i>) (as defined in the <i>PD Regulation</i>) an <i>issuer</i> whose objects and purposes are primarily the issue of <i>securities</i> . [Deleted] (2) (except in <i>PR</i>) a <i>body corporate</i> , explicitly established for the purpose of securitising assets, whose sole purpose (either generally or when acting in a particular capacity) is to carry out one or more of the following functions: ...
<i>transferable security</i>	(as defined in section 102A of the <i>Act</i>) anything which is a transferable security for the purposes of <i>MiFID</i> , other than money-market instruments for the purposes of that directive which have a maturity of less than 12

months.

Note: In the ~~prospectus directive and PD regulation~~, the Commission uses Prospectus Regulation and PR Regulation the term “security” rather than “transferable security” is used.

umbrella collective investment scheme	(in PR) (as defined in the PD Regulation) a collective investment undertaking invested in one or more collective investment undertakings, the asset of which is composed of separate class(es) or designation(s) of securities.
units of a collective investment scheme	(in PR) (as defined in Article 2.1(p) of the prospectus directive) securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets.
working day	(1) (in PR PRR and COMP) [(as defined in section 103 of the Act)] any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the <i>United Kingdom</i> .

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>PR Regulation</i>	[Regulation number XXX/XXXX of the European Commission.]
<i>universal registration document</i>	a universal registration document referred to in article 9 of the <i>Prospectus Regulation</i> .

Annex C

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Application, Notification and Vetting Fees

...

3 UKLA transaction fees

Annex
12R

...

Category A1 includes:

...

- (f) ~~submitting a summary document for review under PR 1.2.3R (8)~~ [deleted];

...

Category A2 includes:

...

- (b) where an *issuer* has a market capitalisation of less than £500 million:

...

- (iv) ~~submitting a document equivalent to a prospectus for review under PR 1.2.2R(2), PR 1.2.2R(3), PR 1.2.3R(3) or PR 1.2.3R(4)~~ [deleted];
or

- (v) applying for the approval of a universal registration document;

...

- (d) where an issuer is a *closed-ended investment fund*:

...

- (iv) ~~submitting a document equivalent to a prospectus for review under PR 1.2.2R(2), PR 1.2.2R(3), PR 1.2.3R(3) or PR 1.2.3R(4)~~ [deleted];
or

- (v) applying for the approval of a universal registration document; or

...

...

Category A4 includes:

...

- (f) ~~submitting a *document* equivalent to a *prospectus* for review under *PR 1.2.2R(2)*, *PR 1.2.2R(3)*, *PR 1.2.3R(3)* or *PR 1.2.3R(4)* applying for the approval of a *universal registration document*; or~~

...

...

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Communicating with clients, including financial promotions

4.3 Financial promotions to be identifiable as such

4.3.1 R ...

- (3) If a *financial promotion* relates to a *firm's* business that is not *MiFID* or *equivalent third country business*, this rule applies to *communicating* or *approving the financial promotion* but does not apply:

...

- (b) to the extent that it is a prospectus advertisement to which ~~PR~~ ~~3.3~~ article 22 of the *Prospectus Regulation* applies;

...

...

4.5 Communicating with retail clients (non-MiFID provisions)

4.5.1 R ...

- (3) This section does not apply in relation to a communication:

...

- (b) to the extent that it is a prospectus advertisement to which ~~PR~~ ~~3.3~~ article 22 of the *Prospectus Regulation* applies;

...

...

4.6 Past, simulated past and future performance (non-MiFID provisions)

4.6.1 R ...

- (3) This section does not apply in relation to a communication:

...

- (b) to the extent that it is a prospectus advertisement to which ~~PR~~ ~~3.3~~ article 22 of the *Prospectus Regulation* applies;

...

...

4.7 Direct offer financial promotions

4.7.1 R

...

(4) This section does not apply in relation to a communication:

...

(b) to the extent that it is a prospectus advertisement to which ~~PR~~
~~3.3~~ article 22 of the *Prospectus Regulation* applies;

...

...

4.9 Financial promotions with an overseas element

4.9.1 R

...

(3) If a communication relates to a *firm's* business that is not *MiFID* or
equivalent third country business, this section does not apply:

...

(b) to the extent that it is a prospectus advertisement to which ~~PR~~
~~3.3~~ article 22 of the *Prospectus Regulation* applies;

...

...

4.11 Record keeping: financial promotion

4.11.1 R

...

(5) If a communication relates to a *firm's* business that is not *MiFID* or
equivalent third country business, this section does not apply:

...

(b) to the extent that it is a prospectus advertisement to which ~~PR~~
~~3.3~~ article 22 of the *Prospectus Regulation* applies;

...

...

11A Underwriting and placing**11A.1 Underwriting and placing**

11A.1. R COBS 11A.1.4BR to COBS 11A.1.4FR apply to a *firm* that:
4A

- (1) has agreed to carry on regulated activities for a *client* that is an *issuer* (“the *issuer client*”) that include underwriting or placing of *financial instruments*, where:

...

- (d) an approved *prospectus* will be required in accordance with ~~section 85 of the Act~~ article 3 of the *Prospectus Regulation* for the relevant securities;

...

...

11A.1. R ...
4F

- (4) For this *rule*, publication of the relevant document means making the relevant document available to the public in ~~any of the ways set out at PR 3.2.4R(1) to (4) (Method of publishing)~~ accordance with article 21 of the *Prospectus Regulation*.

...

14 Providing product information to clients**14.3 Information about designated investments (non-MiFID provisions)**

14.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the ~~*Prospectus Directive*~~ *Prospectus Regulation*, that *firm* must inform the retail client where that prospectus is made available to the public.

...

22 Restrictions on the distribution of certain regulatory capital instruments**22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds**

...

22.3.2 R ...

Title	Type of retail client	Additional comments
...		
Prospectus	Any <i>retail client</i> .	The restrictions do not apply to the distribution of a prospectus required under the <i>Prospectus Directive Prospectus Regulation</i> .
...		

...

Annex E

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5 Multilateral trading facilities (MTFs)

5.10 Operation of an SME growth market

...

- 5.10.2 R For an *MTF* to be eligible for registration as an *SME growth market*, the *firm* must have effective rules, systems and procedures which ensure that:

...

- (3) on initial admission to trading of *financial instruments* on the market, there is sufficient information to enable investors to make an informed judgement about whether or not to invest in the *financial instruments* published in either:

...

- (b) a prospectus, if the ~~*Prospectus Directive*~~ *Prospectus Regulation* is applicable in respect of a public offer being made in conjunction with the initial admission to trading of the *financial instrument* on the *MTF*;

...

Annex F

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Product governance: MiFID

3.3 Distribution of products and investment services

...

- 3.3.8 R Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under the *transparency rules* or the ~~*prospectus rules*~~ *Prospectus Regulation*.

...

Annex G

Amendments to the Decision Procedure and Penalties Manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6 Penalties

6.2 Deciding whether to take action

...

- 6.2.10 G The primary responsibility for ensuring compliance with Part VI of the *Act*, the *Part 6 rules*, the *prospectus rules* or a provision ~~otherwise made in accordance with the *Prospectus Directive*~~ of the *Prospectus Regulation* or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) (Penalties for breach of Part 6 rules) of the *Act* respectively. Normally therefore, any disciplinary action taken by the *FCA* for contraventions of these obligations will in the first instance be against those persons.

...

Annex H

Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Requirements for alternative investment fund managers

3.2 Investor information

...

- 3.2.4 R Where the *AIF* is required to publish a *prospectus* under ~~section 85 of the Act or the equivalent provision implementing article 3 of the *Prospectus Directive* in the *AIF's Home State*~~ article 3 of the *Prospectus Regulation*, only information referred to in *FUND* 3.2.2R and 3.2.3R that is additional to that contained in the *prospectus* needs to be disclosed, either separately or as additional information in the *prospectus*.

...

Annex I

Amendments to the Regulated Covered Bonds sourcebook (RCB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction

1.1 Introduction to sourcebook

...

- 1.1.9 G (1) *Issuers* which are subject to an obligation to publish a prospectus under the ~~*Prospectus Directive*~~ *Prospectus Regulation* are required by [article 3] of the ~~*PD Regulation*~~ *PR Regulation* to disclose risk factors. These requirements are set out in ~~PR 2.3.1 EU and PR App 3.1.1 EU~~ *PRR 2.3.3 EU and PRR App 2.1.1 EU*.

[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

Annex J

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Preliminary: All securities

1.1 Introduction

1.1.1 R LR applies as follows:

...

Note: Other parts of the Handbook that may also be relevant to issuers or sponsors include *DTR* (the Disclosure Guidance and Transparency Rules sourcebook), ~~*PR*~~ *PRR* (the Prospectus Regulation Rules sourcebook), *COBS* (the Conduct of Business sourcebook), *DEPP* (Decision Procedure and Penalties Manual), Chapter 9 of *SUP* (the Supervision manual) and *GEN* (General Provisions).

...

2 Requirements for listing: All securities

2.2 Requirements for all securities

...

2.2.9 R (1) This rule applies if under the ~~*Act*~~ *Prospectus Regulation* or under the law of another *EEA State*:

...

3 Listing applications: All securities

3.4 Debt and other securities

...

3.4.8 R ...

Note: For further details on *final terms*, see ~~*PR 2.2.9 R*~~ article 8(5) of the *Prospectus Regulation*.

...

3.5 Block listing

...

3.5.3 G The grant of a block listing constitutes *admission* to *listing* for the *securities* that are the subject of the block. Separately, the provisions of ~~*PR 1.2.2 R*~~ article 1(4) of the *Prospectus Regulation* will need to be considered by the

applicant when the *securities* that are the subject of the block listing are being issued.

...

4.1 Application and Purpose

- 4.1.1 R This chapter applies to an *issuer* that has applied for the *admission* of:
- (1) *securities* specified in ~~Schedule 11A of the Act~~ article 1(2) of the *Prospectus Regulation* (other than *securities* specified in ~~paragraphs 2, 4 or 9 of that Schedule~~ article 1(2)(b), (d) or (3) of that regulation); or
 - (2) any other *specialist securities* for which a *prospectus* is not required under the ~~*prospectus directive*~~ *Prospectus Regulation*.
- 4.1.2 G (1) The purpose of this chapter is to require *listing particulars* to be prepared and published for *securities* that are the subject of an application for *listing* in the circumstances set out in LR 4.1.1R where a *prospectus* is not required under the ~~*prospectus directive*~~ *Prospectus Regulation*.

...

...

4.2 Contents and format of listing particulars

...

- 4.2.2 R (1) The *listing particulars* must contain a *summary* that complies with the requirements in ~~section 87A(5) and (6) of the Act and PR 2.1.4EU to PR 2.1.7R~~ article 7 of the *Prospectus Regulation* (as if those requirements applied to the *listing particulars*).
- (2) Paragraph (1) does not apply:
- ...
- (b) if, in accordance with ~~PR 2.1.3 R~~ article 7(1) of the *Prospectus Regulation*, no *summary* would be required in relation to the *securities*.
- 4.2.3 R (1) The *listing particulars* must be in a format that complies with the relevant requirements in ~~PR 2.2~~ the *Prospectus Regulation* and the ~~*PD Regulation*~~ *PR Regulation* (as if those requirements applied to the *listing particulars*).
- 4.2.4 R The following minimum information from the ~~*PD Regulation*~~ *annexes to the PR Regulation* must be included in *listing particulars*:

- (1) for an issue of bonds including bonds convertible into the *issuer's* shares or exchangeable into a third party *issuer's shares* or derivative *securities*, irrespective of the denomination of the issue, the minimum information requirements ~~required by the *schedules*~~ applicable to debt and derivative *securities* with a denomination per unit of at least 100,000 euros;
- (2) the additional information requirements ~~applicable to~~ ~~required by the~~ underlying shares ~~*building block*~~ where relevant;
- (3) for an issue of *asset-backed securities*, irrespective of the denomination per unit of the issue, the minimum information requirements ~~required by the *schedules* and *building blocks*~~ applicable to *asset-backed securities* with a denomination per unit of at least 100,000 euros;
- (4) for an issue of *certificates representing shares*, irrespective of the denomination per unit of the issue, the requirements ~~*schedule*~~ applicable to depositary receipts over shares with a denomination per unit of at least 100,000 euros (except that [item 13.2 (relating to profit forecasts) in Annex 10 and Annex 28] is not to apply);
[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]
- (5) for an issue of *securities* by the government of a *non-EEA State* or a local or regional authority of a *non-EEA State*, the requirements ~~*schedule*~~ applicable to *securities* issued by third countries and their regional and local authorities; and
- (6) for all issues that are guaranteed, the information requirements ~~applicable to~~ ~~in the~~ ~~guarantees~~ ~~*building block*~~.

- 4.2.5 G For all other issues, the *FCA* would expect issuers to follow the most appropriate ~~*schedules* and *building blocks*~~ annexes in the ~~*PD-Regulation*~~ *PR Regulation* to determine the minimum information to be included in *listing particulars*.
- 4.2.6 R An *issuer* may incorporate information by reference in the *listing particulars* as if ~~PR 2.4~~ article 19 of the *Prospectus Regulation* and the ~~*PD-Regulation*~~ *PR Regulation* applied to the *listing particulars*.
- 4.2.7 R An *issuer* may include equivalent information in *listing particulars* as if ~~PR 2.5.1 R~~ article 18(2) of the *Prospectus Regulation* applied to the *listing particulars*.

...

4.3 Approval and publication of listing particulars

- 4.3.1 R An application for approval of *listing particulars* or *supplementary listing particulars* must comply with the procedures in ~~PR 3.1~~ *PRR 3.1* (as if those procedures applied to the application), except that the applicant does not

need to submit a completed form A.

...

- 4.3.3 G The *FCA* will try to notify the applicant of its decision on an application for approval of *listing particulars* or *supplementary listing particulars* within the same time limits as are specified in [section 87C of the *Act* (consideration of application for approval)] for an application for approval of a *prospectus* or *supplementary prospectus*.

[Editor's Note: References to the *Act* to be confirmed after that legislation has been amended.]

...

- 4.3.5 R An issuer must ensure that after *listing particulars* or *supplementary listing particulars* are approved by the *FCA*, the *listing particulars* or *supplementary listing particulars* are filed and published as if the relevant requirements in ~~*PR 3.2*~~ article 21 of the *Prospectus Regulation*, the ~~*PD Regulation*~~ *PR Regulation* and [Commission Delegated Regulation (EU) 2016/301 applied to them.]

[Editor's Note: References to Level 2 legislation to be amended after that legislation comes into force.]

4.4 Miscellaneous

...

- 4.4.2 R An issuer must ensure that after *supplementary listing particulars* are approved by the *FCA*, the *supplementary listing particulars* are filed and published as if the requirements in ~~*PR 3.2*~~ article 21 of the *Prospectus Regulation*, the ~~*PD Regulation*~~ *PR Regulation* and [Commission Delegated Regulation (EU) 2016/301 applied to them.]

- 4.4.3 R If final terms of the offer are not included in the *listing particulars*:
- (1) the final terms must be provided to investors and filed with the *FCA*, and made available to the public, as if the relevant requirements in ~~*PR 3.2*~~ article 21 of the *Prospectus Regulation* and the ~~*PD Regulation*~~ *PR Regulation* applied to them; and

...

...

5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

5.6 Reverse takeovers

...

- 5.6.15 G ...

- (2) a description of the *target* to include key non-financial operating or performance measures appropriate to the *target's* business operations and the information as required under [~~PR~~ PRR Appendix 2 Annex 1 item 12 (Trend information)] for the *target*;

[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

...

6 Additional requirements for premium listing (commercial company)

6.2 Historical financial information requirements

...

6.2.4 R The historical financial information in *LR* 6.2.1R and *LR* 6.2.3R must:

- (1) have been audited or reported on in accordance with the standards acceptable under [item 20.1 of Annex I of the ~~PD Regulation~~ PR Regulation]; and

[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

...

8 Sponsors: Premium listing

8.2 When a sponsor must be appointed or its guidance obtained

8.2.1 R A company with, or applying for, a *premium listing* of its *securities* must appoint a *sponsor* on each occasion that it:

- (1) is required to submit any of the following documents to the *FCA* in connection with an application for *admission* of *securities* to *premium listing*:

- (a) a *prospectus*; or *supplementary prospectus* ~~or equivalent document~~; or

...

- (c) a document as required by ~~PR 1.2.3R (8)~~ article 1(2)(j)(v) of the *Prospectus Regulation*; or

...

- (1A) is required to publish a document under article 1(4)(f) or (g) or (5)(e)

or (f) of the *Prospectus Regulation*; or

...

...

8.4 Role of a sponsor: transactions

8.4.1 R *LR 8.4.2R to LR 8.4.4G apply in relation to an application for admission of securities to premium listing if an applicant does not have securities already admitted to premium listing, the conditions in LR 6.1.1R(1), LR 6.1.1R(2), LR 21.2.5R(1), LR 21.2.5R(2), LR 21.6.13R(1) or LR 21.6.13R(2) do not apply and, in connection with the application, the applicant is required to publish a document under article 1(4)(f) or (g) or (5)(e) or (f) of the *Prospectus Regulation* or is required to submit to the FCA:*

(1) *a prospectus, or supplementary prospectus ~~or equivalent document~~;*
or

...

(3) *a document under ~~PR 1.2.3R (8)~~ article 1(2)(j)(v) of the *Prospectus Regulation*; or*

...

...

8.4.3 R *A sponsor must:*

(1) *submit a completed Sponsor's Declaration on an Application for Listing to the FCA either:*

...

(b) *at a time agreed with the FCA, if the FCA is not approving the prospectus ~~or if it is determining whether a document is an equivalent document~~;*

...

(3) ...

*have been disclosed with sufficient prominence in the prospectus or ~~equivalent document~~ a document published under article 1(4)(f) or (g) or (5)(e) or (f) of the *Prospectus Regulation* or otherwise in writing to the FCA; and*

(4) *submit a letter to the FCA setting out how the applicant satisfies the criteria in LR 2 (Requirements for listing - all securities), LR 6 (Additional requirements for premium listing (commercial company)) and, if applicable, LR 15, LR 16 or LR 21, no later than when the first draft of the prospectus or listing particulars is*

submitted (or, if the *FCA* is not approving a prospectus ~~or if it is determining whether a document is an *equivalent document*~~, at a time to be agreed with the *FCA*).

...

8.4.9 R A *sponsor* must:

...

- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FCA* in considering the application for *listing* have been disclosed with sufficient prominence in the *prospectus* or ~~*equivalent document*~~ a document published under article 1(4)(f) or (g) or (5)(e) or (f) of the *Prospectus Regulation* or otherwise in writing to the *FCA*.

...

9 Continuing obligations

9.2 Requirements with continuing application

...

9.2.19 G *LR 9.2.18R* does not apply to:

- (1) pro forma financial information prepared in accordance with [Annex 1 and Annex 2] of the ~~*PD Regulation*~~ *PR Regulation*; or
[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

...

9.5 Transactions

...

9.5.12 R ...

- (3) The working capital statement required by paragraph (1) must be prepared in accordance with [item 3.1 of Annex 3 of the ~~*PD Regulation*~~ *PR Regulation*] and on the basis that the reconstruction or the re-financing has taken place.
[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

9.6 Notifications

...

9.6.16 R A *listed company* must notify a *RIS* as soon as possible of information relating to the disposal of *equity shares* under an exemption allowed in the lock-up arrangements disclosed in accordance with the ~~*PD Regulation*~~ *PR Regulation*.

9.6.17 R A *listed company* must notify a *RIS* as soon as possible of the details of any variation in the lock-up arrangements disclosed in accordance with the ~~*PD Regulation*~~ *PR Regulation* or any subsequent announcement.

...

13 Contents of circulars: Premium listing

13.3 Contents of all circulars

...

13.3.3 R If a *listed company* includes pro forma financial information in a *class 1 circular*, a *related party circular* or a *circular* relating to the purchase by the *company* of 25% or more its issued *equity shares* (excluding *treasury shares*), it must comply with the requirements for pro forma financial information set out in the ~~*PD Regulation*~~ *PR Regulation*.

...

13.4 Class 1 circulars

...

13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or *related assets*, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in [Section 1c of Part III (Scientific research based companies) of the *ESMA Prospectus Recommendations*.]
[Editor's Note: References to Level 3 materials to be confirmed.]

...

13.5 Financial information in Class 1 Circulars

...

13.5.7 G In complying with *LR 13.5.6R* a *listed company* should:

...

(3) indicate which aspects of the financial information relate to:

...

- (c) pro forma financial information prepared in accordance with [Annex 1 and Annex 2] of the ~~PD Regulation~~ PR Regulation; [Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

13.5.32 R If a *listed company* includes a *profit forecast* or a *profit estimate* in a *class 1 circular* it must:

- (1) comply with the requirements for a *profit forecast* or *profit estimate* set out in Annex 1 of the ~~PD Regulation~~ PR Regulation [except that a *listed company* does not need to include a report on the forecast or estimate from an accountant in the *class 1 circular*]; and

[Editor's Note: The reference to including a report on the forecast or estimate from an accountant will be deleted if this obligation is not included in the PR Regulation.]

...

...

13.6 Related party circulars

13.6.1 R A *related party circular* must also include:

- (1) in all cases the following information referred to in the ~~PD Regulation~~ PR Regulation relating to the *company*:

Paragraph of Annex 1 of the ~~PD Regulation~~ PR Regulation;

- (a) [Annex 1 item 5.1.1 – Issuer name;
 - (b) Annex 1 item 5.1.4 – Issuer address;
 - (c) Annex 1 item 18.1 – Major shareholders;
 - (d) Annex 1 item 22 – Material contracts (if it is information which shareholders of the *company* would reasonably require to make a properly informed assessment of how to vote);
 - (e) Annex 1 item 24 – Documents on display;]
- (2) for a transaction or arrangement where the *related party* is (or was within the 12 months before the transaction or arrangement), a *director* or *shadow director*, or an *associate* of a *director* or *shadow director*, of the *company* (or of any other *company* which is its *subsidiary undertaking* or *parent undertaking* or a fellow *subsidiary*

undertaking) the following information referred to in the ~~PD Regulation~~ PR Regulation relating to that *director*:

- (a) [Annex 1 item 16.2 – Service contracts;
- (b) Annex 1 item 17.2 – Directors’ interests in shares;
- (c) Annex 1 item 19 – Related party transactions;]

[Editor’s Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

...

13 Class 1 circulars **Annex** **1**

The following table identifies (by reference to certain paragraphs of [Annex 1 and Annex 3] of the ~~PD Regulation~~ PR Regulation) the additional information required to be included in a *class 1 circular* relating to the *listed company* and the undertaking the subject of the transaction.

[Editor’s Note: References to Level 2 legislation in LR 13 Annex 1 Class 1 circulars to be confirmed after that legislation comes into force.]

...

21 Sovereign Controlled Commercial Companies: Premium listing

21.6 Requirements for listing: Certificates representing shares

...

- 21.6.14 R If the *prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted does not include a working capital statement which demonstrates that *LR 6.7.1R* is satisfied, then:

...

- (2) the working capital statement required by paragraph (1) must be prepared in accordance with [item 3.1 of Annex 3] of the ~~PD Regulation~~ PR Regulation; and

[Editor’s Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

...

21.8 Continuing obligations: Certificates representing shares

...

21.8.27 R In relation to an application for *admission of certificates representing shares* of an *applicant* that has *certificates representing shares* already listed:

...

- (2) if the *prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted does not include a working capital statement which demonstrates that the requirement under paragraph (1) is satisfied, then:

...

- (b) the working capital statement required by paragraph (a) must be prepared in accordance with [item 3.1 of Annex 3] of the ~~PD Regulation~~ PR Regulation; and

[Editor's Note: References to Level 2 legislation to be confirmed after that legislation comes into force.]

...

...

Appendix 1 Relevant definitions

App 1.1 Relevant definitions

...

<i>advertisement</i>	(as defined in the PD Regulation <u>Prospectus Regulation</u>) announcements <u>a communication with both of the following characteristics:</u>	
	(1)	relating to a specific offer of securities to the public or to an admission to trading on a regulated market; and
	(2)	aiming to specifically promote the potential subscription or acquisition of securities.
<i>asset backed security</i>	(as defined in the PD Regulation <u>PR Regulation</u>) <i>securities</i> which:	
...		
<i>base prospectus</i>	a base prospectus referred to in PR 2.2.7R <u>article 8 of the <i>Prospectus Regulation</i></u> .	
<i>building block</i>	(as defined in the PD Regulation <u>PR Regulation</u>) a list of additional information requirements, not included in one of the schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is	

	drawn up.		
<i>equivalent document</i>	a document containing information equivalent to a <i>prospectus</i> for the purposes of <i>PR 1.2.2R</i> (2) or (3) or <i>PR 1.2.3R</i> (3) or (4).		
[<i>ESMA Prospectus Recommendations</i>]	the <i>ESMA</i> update of the CESR recommendations: The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ESMA/2013/319).]		
<i>external management company</i>	(in <i>LR</i> and <i>PR PRR</i>) has the meaning in <i>PR 5.3.3AR PRR 5.3.3R</i> . (i.e., in relation to an <i>issuer</i> that is a <i>company</i> which is not a collective investment undertaking, a <i>person</i> who is appointed by the <i>issuer</i> (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by <i>officers</i> of the <i>issuer</i> and to make recommendations in relation to strategic matters).		
<i>Home Member State or Home State</i>	(as defined in section 102C of the Act) in relation to an issuer of <i>transferable securities</i> , the <i>EEA State</i> which is the “home Member State” for the purposes of the <i>prospectus directive</i> <i>Prospectus Regulation</i> (which is to be determined in accordance with Article 2.1(m) of that directive <u>article 2(m) of that regulation</u>).		
<i>Host Member State or Host State</i>	(as defined in Article 2.1(n) of the <i>Prospectus Directive</i> <u>article 2(n) of the <i>Prospectus Regulation</i></u>) the <i>EEA State</i> where an offer of <u>securities</u> to the public is made or <i>admission to trading</i> is sought, when different from the <i>home Member State</i> .		
<i>offer of transferable securities to the public</i>	(as defined in section 102B of the Act), in summary:		
	(a)	a communication to any person which presents sufficient information on:	
		(i)	the transferable securities to be offered, and
		(ii)	the terms on which they are offered;
		to enable an investor to decide to buy or subscribe for the securities in question;	
	(b)	which is made in any form or by any means;	
	(c)	including the placing of securities through a financial intermediary;	
	(d)	but not including a communication in connection with trading on:	
		(i)	a regulated market;

		(ii)	a multilateral trading facility; or
		(iii)	any market prescribed by an order under section 130A of the <i>Act</i> .
	<p>Note: This is only a summary; to see the full text of the definition, readers should consult section 102B of the <i>Act</i>.</p> <p><u>(as defined in the <i>Prospectus Regulation</i>) a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries.</u></p>		
<i>PD</i>	<i>prospectus directive</i>		
<i>PD Regulation</i>	Regulation number 809/2004 of the European Commission		
<i>PR</i>	the sourcebook containing the <i>Prospectus Rules</i> .		
<i>profit estimate</i>	(as defined in the <i>PD Regulation</i> <i>PR Regulation</i>) a profit forecast for a financial period which has expired and for which results have not yet been published.		
<i>profit forecast</i>	(as defined in the <i>PD Regulation</i> <i>PR Regulation</i>) a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used.		
<i>prospectus</i>	a prospectus required under the <i>prospectus directive</i> <i>Prospectus Regulation</i> .		
<i>Prospectus Directive</i>	the Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (No 2003/71/EC).		
<i>registration document</i>	a registration document referred to in <i>PR 2.2.2R</i> article 6(3) of the <i>Prospectus Regulation</i> .		
<i>schedule</i>	(as defined in the <i>PD Regulation</i>) a list of minimum information requirements adapted to the particular nature of the different types of issuers and/or the different securities involved.		
<i>securities note</i>	a securities note referred to in <i>PR 2.2.2R</i> article 6(3) of the <i>Prospectus Regulation</i> .		

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>PRR</i>	the Prospectus Regulation Rules sourcebook.
<i>PR Regulation</i>	[Regulation number XXX/XXXX of the European Commission.]
<i>universal registration document</i>	a universal registration document referred to in article 9 of the <i>Prospectus Regulation</i> .

Annex K

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1B Introduction (Corporate governance)

1B.1 Application and purpose (Corporate governance)

...

1B.1.3 R *DTR 7.1* does not apply to:

...

- (3) a *credit institution* whose *shares* are not *admitted to trading* and which has, in a continuous or repeated manner, issued only *debt securities* which are *admitted to trading* provided that:

...

- (b) the *credit institution* has not been subject to a requirement to publish a prospectus in accordance with ~~section 85 of the Act~~ article 3 of the *Prospectus Regulation*; and

...

...

4 Periodic Financial Reporting

...

4.4 Exemptions

...

4.4.3 R The *rules* on half-yearly financial reports (*DTR 4.2*) do not apply to a *credit institution* whose *shares* are not *admitted to trading* and which has, in a continuous or repeated manner, only issued *debt securities* provided that:

...

- (2) the *credit institution* has not published a prospectus in accordance with the ~~prospectus directive~~ *Prospectus Regulation*.

Annex L

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7 Financial penalties and other disciplinary sanctions

7.2 Alternatives to sanctions

7.2.1 The FCA also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:

...

(5) where there are reasonable grounds for suspecting that a provision of Part VI of the *Act*, a provision contained in the *prospectus rules*, or any other provision made in accordance with the *Prospectus ~~Directive~~ Regulation* has been infringed, the *FCA* may:

- (a) suspend or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
- (b) suspend or prohibit admission of transferable securities to trading on a regulated market as set out in section 87L of the *Act*;

[Editor's Note: To be confirmed following amendments to Part VI FSMA.]

...

Appendix 2 Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies

App 2.1 Purpose, status and application of the guidelines

...

App 2.1.9 The following are indicators of whether action by the *FCA* or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

- (a) Tending towards action by the *FCA*

...

Where the suspected conduct in question would be best dealt with by:

...

proceedings for breaches of the *Prospectus Regulation* actionable under Part VI of the Act, of *Part 6* rules or the *Prospectus Rules* or a provision otherwise made in accordance with the *Prospectus Directive*.

...

Appendix 3 Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies

App 3.1 The FCA

...

App Under the 2000 Act the *FCA* has powers to investigate concerns including:
3.1.3

...

suspected contraventions of the *Prospectus Regulation* or any directly applicable *EU* regulation made under the *Prospectus Regulation* and suspected breaches of Part VI of the Act, of *Part 6* rules or the *prospectus rules* or a provision otherwise made in accordance with the *Prospectus Directive*.

[Editor's Note: To be confirmed following amendments to Part VI FSMA.]

...

...

Annex M

Amendments to the Perimeter Guidance Manual (PERG)

8 Financial promotion and related activities

...

8.21 Company statements, announcements and briefings

...

8.21.16 G Article 68 applies where the *financial promotion* relates to *securities* which have not yet been admitted to trading but for which application has been or is to be made. It exempts a *non-real time* or a *solicited real-time financial promotion* which a relevant *EEA* market requires to be *communicated* before admission to trading can be granted. A relevant *EEA* market for this purpose is a market with its head office in an *EEA State* and which meets the conditions in Part I of Schedule 3 to the *Financial Promotion Order*. Article 68 also requires that the *financial promotion* be one:

- (1) which, if it were included in a prospectus issued in line with prospectus rules made under Part VI of the *Act*, would be required to be *communicated* by those rules; and

[Editor's Note: To be amended to reflect amendments to be made to Article 68 FPO]

...

...

8.21.20 G Article 70 applies to a *non-real time financial promotion* included in:

...

- (3) a prospectus or supplementary prospectus approved in line with *Prospectus Rules* or by the *competent authority* of another *EEA State* (provided the requirements of section 87H of the *Act* are met) – including part of such a prospectus or supplementary prospectus; or

[Editor's Note: To be amended to reflect amendments to be made to Article 70 FPO]

- (4) any other document required or permitted to be published by *listing rules* or *Prospectus Rules*.

[Editor's Note: To be amended to reflect amendments to be made to Article 70 FPO.]

...

- (2) The purpose of this section is to give *guidance* on:

...

- (f) the interaction between the marketing of an AIF and the Prospectus Regulation ~~prospectus directive~~ (see PERG 8.37.15 G).

...

8.37 AIFMD Marketing

...

- 8.37.15 G (1) ~~The *prospectus directive* has not been amended by AIFMD and~~ Closed ended AIFs that are making an offer of securities to the public as defined in the Prospectus Regulation ~~prospectus directive~~ need to comply with the requirements under both ~~Directives~~ AIFMD and the Prospectus Regulation.
- (2) However, where the AIF is required to publish a *prospectus* under ~~section 85 of the Act~~ article 3 of the Prospectus Regulation ~~or the equivalent provision implementing article 3 of the Prospectus Directive in the AIF's Home State~~, only information referred to in *FUND 3.2.2 R* and *FUND 3.2.3 R* that is additional to that contained in the *prospectus* needs to be disclosed, either separately or as additional information in the *prospectus*.

Annex N

Supervision Manual (SUP)

13A Qualifying for authorisation under the Act

...

Annex Application of the Handbook to Incoming EEA Firms
1

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PR <u>PRR</u>	PR <u>PRR</u> (Prospectus <u>Regulation</u> Rules)	PR <u>PRR</u> (Prospectus <u>Regulation</u> Rules)
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