

Primary Market Technical Note

Public offers – the six-day rule

The information in this note is designed to help issuers and practitioners interpret our Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA.

Article 21 Prospectus Regulation

This note outlines how Article 21 Prospectus Regulation will be applied in the context of pathfinder prospectuses. Where the issuer has taken advantage of the provisions in Article 17, which allow the prospectus to be approved without including the final offer price and amount of securities, this time can run from the approval date. A document prepared in line with Article 17 once approved is an approved and valid prospectus even though it does not contain the final price or number of securities and the six days' run from approval.

Issuers can prepare a pathfinder or pre-marketing document under the advertisement regime (PRR 3.3). If they do, the requirement that the prospectus is available for at least six working days before the end of the offer (in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted for the first time) still applies from the date the actual prospectus is approved. However, where the pathfinder is an advertisement under PRR 3.3 rather than an approved prospectus, the six-day period does not begin until the actual prospectus is approved and published. It does not begin when the pathfinder or premarketing document is published, at which point the document constitutes an advertisement rather than an approved prospectus.

We have also been asked how Article 21 applies where an issuer raises funds through an institutional placing when seeking admission to the Official List for the first time. To market to the institutions, the issuer produces a pre-marketing document under the advertising regime in PRR 3.3.

In these circumstances, while there is a public offer there is no requirement to produce a prospectus, as the offer is exempt since it is made to qualified investors. A prospectus is produced and approved only when the offer is effectively closed and priced and it fulfils the requirement to have a valid prospectus in relation to admission to trading on a regulated market. In these circumstances, the six-day period set out in Article 21 does not apply as there is no public offer which requires a prospectus to be produced. Therefore, there is no requirement for the prospectus to be available to the public six days before the end of the offer.