

The Prospectus Regulation Rules sourcebook

Chapter 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 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*);
 - (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
 - (c) an *offer*, or a request for *admission to trading of transferable securities*, not referred to in paragraphs (a) or (b).
- (2) [deleted]

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) [deleted]
- (6) [deleted]
- (7) the *ESMA PR Prospectus Questions and Answers* (https://www.handbook.fca.org.uk/L3G/PR/esma31-62-1258_prospectus_regulation_qas.pdf);
- (8) [deleted]
- (9) the *Prospectus RTS Regulation* (https://www.handbook.fca.org.uk/techstandards/PD/2019/reg_2019_979_oj/);
- (10) the *ESMA guidelines on risk factors* (https://www.handbook.fca.org.uk/L3G/PR/esma31-62-1293_guidelines_on_risk_factors_under_the_prospectus_regulation.pdf);
- (11) the *ESMA guidelines on alternative performance measures* (<https://www.handbook.fca.org.uk/L3G/PR/2015-esma-1415en.pdf>);
- (12) the *ESMA guidelines on APMs Questions and Answers* (https://www.handbook.fca.org.uk/L3G/PR/esma32-51-370_qas_on_esma_guidelines_on_apms.pdf); and
- (13) the *technical note on PR disclosure and specialist issuers*
[*Editor's note*: link to follow]

[**Note**: the *FCA* has also issued other guidance relating to the prospectus regime, which can be accessed in the *FCA's* Knowledge Base (<https://www.fca.org.uk/markets/primary-markets/knowledge-base>).]

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

Guidance 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 Regulation* have been complied with, the *FCA* will consider whether a *person* has acted in accordance with the *technical note on PR disclosure and specialist issuers*, the *ESMA PR Prospectus Questions and Answers*, the *ESMA guidelines on risk factors*, the *ESMA guidelines on alternative performance measures*, and the *ESMA guidelines on APMs Questions and Answers*.

[**Note:** the *FCA* has also issued other guidance relating to the prospectus regime, which can be accessed in the *FCA*'s Knowledge Base at <https://www.fca.org.uk/markets/primary-markets/knowledge-base>.]

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

UK

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

Article 3

Obligation to publish a prospectus and exemption

1. Without prejudice to Article 1(4), securities shall only be offered to the public in the United Kingdom 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 United Kingdom after prior publication of a prospectus in accordance with this Regulation.

Securities to which the Prospectus Regulation does not apply

1.2.2

UK

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—

(i) the government of any country or territory,

(ii) a local or regional authority of any country or territory,

(iii) a public international body of which any state is a member,

(iv) the European Central Bank or the central bank of any state;

(c) shares in the capital of central banks of any state;

(d) securities unconditionally and irrevocably guaranteed by the government or a local or regional authority of any country or territory;

(e) securities issued by associations with legal status or non-profit-making bodies, recognised by a 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 Article 4, this Regulation shall not apply to an offer of securities to the public with a total consideration in the United Kingdom of less than EUR 1 000 000, which shall be calculated over a period of 12 months.

Exempt securities – offers of securities to the public

1.2.3

UK

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 in the United Kingdom, 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) subject to paragraph 6a, 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) subject to paragraph 6b, 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 United Kingdom 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

UK

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 the UK law which implemented 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) subject to paragraph 6a, 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) subject to paragraph 6b, 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 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; 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:

(i) before IP completion day, either this Regulation as it had effect immediately before IP completion day or [the *PD*]; or

(ii) on or after IP completion day, this Regulation,

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 *UK 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 the UK law which implemented 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 UK law which implemented 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

UK

Article 1(6), (6a) and (6b) provide 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.

6a.The exemptions set out in point (f) of paragraph 4 and in point (e) of paragraph 5 shall only apply to equity securities, and only in the following cases:

(a)the equity securities offered are fungible with existing securities already admitted to trading on a regulated market prior to the takeover and its related transaction, and the takeover is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of international financial reporting standard (IFRS) 3, Business Combinations, adopted by Commission Regulation (EC) No 1126/2008; or

(b)the FCA has issued a prior approval, under paragraph 6c of this Article, for the documents referred to in point (f) of paragraph 4 or point (e) of paragraph 5 of this Article.

6b.The exemptions set out in point (g) of paragraph 4 and in point (f) of paragraph 5 shall apply only to equity securities in respect of which the transaction is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of IFRS 3, Business Combinations, and only in the following cases:

(a)the equity securities of the acquiring entity have already been admitted to trading on a regulated market prior to the transaction; or

(b)the equity securities of the entities subject to the division have already been admitted to trading on a regulated market prior to the transaction.

6c. The FCA may issue prior approval for the documents referred to in point (f) of paragraph 4 or point (e) of paragraph 5 of this Article.

Voluntary prospectus

1.2.6

UK

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 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

UK

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.

