

## Chapter 5

### Other provisions

## 5.1 Validity of prospectus

### Validity of prospectus

5.1.1

UK

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.

## 5.3 Persons responsible for a prospectus

5.3.1 **R** [deleted]

### 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 themselves 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 their knowledge or consent and on becoming aware of its publication they, as soon as practicable, gives reasonable public notice that it was published without their 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 **UK** 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, restrict or suspend an *offer* and to prohibit, restrict 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.

### Calculation of amounts not denominated in euros

5.4.3 **R** For the purposes of article 7(1) 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

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To comply with paragraph 130 in section III.1 of the *technical note on PR disclosure and specialist issuers*, 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

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To comply with item 2.7 of Annex 4 of the *PR Regulation*, 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.

