

# Chapter 5

## Other provisions

## 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.