

## Chapter 3

# Approval and publication of prospectus

## 3.4 Supplementary prospectus

### Supplementary prospectus

3.4.1

UK

Section 87G of the Act provides that:

- (1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by the [FCA].
- (2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the [FCA] for its approval.
- (3) The relevant period begins when the prospectus is approved by the [FCA] and ends –
  - (a) with the closure of the offer of the transferable securities to which the prospectus relates; or
  - (b) when trading in those securities on a regulated market begins.
- (3A) But where the prospectus relates both to an offer of transferable securities to the public and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period beings

- when the prospectus is approved and ends with the later of -
- (a) the closure of the offer to the public to which the prospectus relates; or
  - (b) the time when trading in those securities on a regulated market begins.
- (4) "Significant" means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).
- (5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to –
- (a) the issuer of the transferable securities to which the prospectus relates, and
  - (b) the person on whose application the prospectus was approved.
- (6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.
- (7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

**Amendments to summary**

3.4.2



A supplementary prospectus must also if necessary include an amendment or supplement to the *summary*, and any translations of the *summary*, to take into account the new information. [ **Note:** article 16.1 PD ]

**Note:** Sections 87Q(4) and (5) of the *Act* set out the rights of investors to withdraw their acceptances after a *supplementary prospectus* is published.

**Supplementary prospectus to be submitted as soon as practicable**

3.4.3

**R**

In the event that a requirement for a supplement is triggered, then as soon as practicable after the new factor, mistake or inaccuracy arises or is noted, a *person* referred to in section 87G(2) of the *Act* must submit a *supplementary prospectus* referred to in that section to the *FCA* for approval.

**Minimum situations in which a supplementary prospectus must be submitted for approval**

3.4.4

**EU**

Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus provides that:

**Recital 5**

It is not possible to identify all the situations in which a supplement to the prospectus is required as this may depend on the issuer and securities involved. Therefore, it is appropriate to specify the minimum situations where a supplement is required.

**Article 2**

**Obligation to publish a supplement**

A supplement to the prospectus shall be published in the following situations:

- (a) where new annual audited financial statements are published by any of the following:
  - (1) an issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article 4(2)(1) of Regulation (EC) No 809/2004;
  - (2) an issuer of the underlying shares or other transferable securities equivalent to shares in case of equity securities complying with the conditions set out in Article 17(2) of Regulation (EC) No 809/2004;
  - (3) an issuer of the underlying shares where the prospectus is drawn up in accordance with the depository receipt schedule, set out in Annex X or XXVIII of Regulation (EC) No 809/2004;

- (b) where an amendment to a profit forecast or a profit estimate already included in the prospectus is published by any of the following:
- (1) an issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article 4(2)(1) of Regulation (EC) No 809/2004;
  - (2) an issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to equity securities complying with the conditions set out in Article 17(2) of Regulation (EC) No 809/2004;
  - (3) an issuer of the underlying shares where the prospectus is drawn up in accordance with the depository receipt schedule, set out in Annex X or XXVIII to Regulation (EC) No 809/2004;
- (c) where there is a change in control in respect of any of the following:
- (1) an issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article 4(2)(1) of Regulation (EC) No 809/2004;
  - (2) an issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to equity securities complying with the conditions set out in Article 17(2) of Regulation (EC) No 809/2004;
  - (3) an issuer of the underlying shares where a prospectus is drawn up in accordance with a depository receipt schedule, set out in Annex X or XXVIII to Regulation (EC) No 809/2004;
- (d) where there is any new public takeover bid by third parties, as defined in Article 2(1)(a) of Directive 2004/25/EC of the European Parliament and

- the Council and the outcome of any public takeover bid in respect of any of the following:
- (1) the equity of the issuer where a prospectus relates to shares and other transferable securities equivalent to shares referred to in Article 4(2)(1) of Regulation (EC) No 809/2004;
  - (2) the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to equity securities complying with the conditions set out in Article 17(2) of Regulation (EC) No 809/2004;
  - (3) the equity of the issuer of the underlying shares where a prospectus is drawn up in accordance with the depository receipt schedule, set out in Annex X or XXVIII to Regulation (EC) No 809/2004;
- (e) where in relation to shares and other transferable securities equivalent to shares referred to in Article 4(2)(1) of Regulation (EC) No 809/2004 and convertible or exchangeable debt securities which are equity securities complying with the conditions set out in Article 17(2) of that Regulation there is a change in the working capital statement included in a prospectus when the working capital becomes sufficient or insufficient for the issuer's present requirements;
- (f) where an issuer is seeking admission to trading on (an) additional regulated market(s) in (an) additional Member State(s) or is intending to make an offer to the public in (an) additional Member State(s) other than the one(s) provided for in the prospectus;
- (g) where a new significant financial commitment is undertaken which is likely to give rise to a significant gross change within the meaning of Article 4a(6) of Regulation (EC) No 809/2004 and the prospectus relates to shares and other transferable securities equivalent to shares referred to in Article 4(2)(1) of that Regulation and other equity securities complying with the conditions set out in Article 17(2) of that Regulation;
- (h) where the aggregate nominal amount of the offering programme is increased.