

Chapter 5

Other provisions

5.1 Validity of prospectus

Validity of prospectus

- 5.1.1 **R** A *prospectus* is valid for 12 months after its approval for an *offer* or an *admission to trading*, provided that the *prospectus* is updated by a *supplementary prospectus* (if required) under section 87G of the Act. [**Note:** article 9.1 PD]
- 5.1.2 **R** For an *offering programme*, the *base prospectus* is valid for a period of up to 12 months after it is filed. [**Note:** article 9.2 PD]
- 5.1.3 **R** For *non-equity transferable securities* referred to in ■ PR 2.2.7 R (2), the *prospectus* is valid until no more of the *transferable securities* concerned are issued in a continuous or repeated manner. [**Note:** article 9.3 PD]
- 5.1.4 **R** A *registration document* is valid for a period of up to 12 months after it is filed and approved, provided that it has been updated in accordance with ■ PR 2.2.5 R and ■ PR 3.4.2 R. [**Note:** article 9.4 PD]

5.3 Certificate of approval

5.3.1

UK

Sections 87H and 87I of the Act provide:

Prospectus approved in another EEA State

- 87H (1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has notified *ESMA* and provided the competent authority with -
- (a) a certificate of approval;
 - (b) a copy of the prospectus as approved; and
 - (c) if requested by the [FCA], a translation of the summary of the prospectus.
- (2) A document is not a certificate of approval unless it states that the prospectus -
- (a) has been drawn up in accordance with the prospectus directive; and
 - (b) has been approved, in accordance with that directive, by the competent authority providing the certificate.
- (3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.
- (3A) The competent authority must publish on its website a list of certificates of approval provided to it in accordance with this section.
- (3B) The list referred to in subsection (3A) must -
- (a) be kept up-to-date;
 - (b) retain items on it for a period of at least 12 months; and
 - (c) include hyperlinks to any certificate of approval and prospectus published on the website of -
 - (i) the competent authority of the EEA State which provided the certificate;
 - (ii) the issuer; or
 - (iii) the regulated market where admission to trading is sought.
- (4) "Prospectus" includes a supplementary prospectus.

Provision of information to host Member State

87I	(1)	The [FCA] must, if requested to do so, supply the competent authority of a specified EEA State with – <ul style="list-style-type: none"> (a) a certificate of approval; (b) a copy of the specified prospectus (as approved by the [FCA]); and (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).
	(1A)	If the competent authority supplies a certificate of approval to the competent authority of the specified EEA State, it must also supply a copy of that certificate to – <ul style="list-style-type: none"> (a) the person who made the request under this section; and (b) ESMA.
	(2)	Only the following may make a request under this section – <ul style="list-style-type: none"> (a) the issuer of the transferable securities to which the specified prospectus relates; (b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom; (c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.
	(3)	A certificate of approval must state that the prospectus – <ul style="list-style-type: none"> (a) has been drawn up in accordance with this Part and the prospectus directive; and (b) has been approved, in accordance with those provisions, by the [FCA].
	(4)	A certificate of approval must state whether (and, if so, why) the [FCA] authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.
	(5)	The [FCA] must comply with a request under this section – <ul style="list-style-type: none"> (a) if the prospectus has been approved before the request is made, within 3 working days beginning with the date the request is received; or (b) if the request is submitted with an application for the approval of the prospectus, on the first working day after

the date on which it approves the prospectus.

- (6) "Prospectus" includes a supplementary prospectus.
- (7) "Specified" means specified in a request made for the purposes of this section.

Requests to the FCA to supply a certificate of approval

5.3.2

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- (1) This *rule* applies to a request by a *person* to the *FCA* to supply information referred to in section 87I of the *Act* to the competent authority of a relevant *Host State*.
- (2) The request must be in writing and must include:
- (a) the relevant *prospectus* as approved (if it has already been approved); and
 - (b) a translation of the *summary* if required by the competent authority of a relevant *host State*.

[**Note:** See PR 3.1.-1EU for the additional requirements where a request is made prior to the approval of a *prospectus*]

5.3.3

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The *FCA* will inform the *person* who made the request as soon as practicable after it has supplied the information to the other competent authority.

Certificate received from another competent authority

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If the *FCA* receives information referred to in section 87H from another competent authority it will as soon as practicable give notice on the *FCA* website that it has received the information.

5.5 Persons responsible for a prospectus

Persons responsible for a prospectus

5.5.1 **R** The *rules* in this section specify in accordance with section 84(1)(d) of the Act and for the purposes of Part 6 of the Act, the *persons* responsible for a *prospectus*.

Note: In accordance with **PR 1.1.9** a reference in this section to a *prospectus* includes a *supplementary prospectus*.

Rules only apply if UK is Home State

5.5.2 **R** The *rules* in this section only apply in respect of a *prospectus* if the *United Kingdom* is the *Home State* for the *issuer* in relation to the *transferable securities* to which the *prospectus* relates.

Equity shares

5.5.3 **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 himself 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*.

5.5.3A **R** In **PR 5.5.3R (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.

5.5.3B **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

5.5.4 **R**

- (1) This *rule* applies to a *prospectus* relating to *transferable securities* other than those to which **PR 5.5.3 R** 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

- 5.5.5 **R** A *person* is not responsible for a *prospectus* under ■ PR 5.5.3R (2)(a) or (b) or ■ PR 5.5.4 R (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

- 5.5.6 **R** A *person* is not responsible for a *prospectus* under ■ PR 5.5.3 R (2)(b)(i) if it is published without his knowledge or consent and on becoming aware of its publication he, as soon as practicable, gives reasonable public notice that it was published without his knowledge or consent.

Offeror not responsible in certain circumstances

- 5.5.7 **R** A *person* is not responsible for a *prospectus* under ■ PR 5.5.3 R (2)(d) or ■ PR 5.5.4 R (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

- 5.5.8 **R** A *person* who accepts responsibility for a *prospectus* under ■ PR 5.5.3 R (2)(c) or ■ PR 5.5.4 R (2)(b) or authorises the contents of a *prospectus* under ■ PR 5.5.3 R (2)(f) or ■ PR 5.5.4 R (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 a professional capacity

- 5.5.9 **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.

5.6 Miscellaneous

Information to be disclosed to all investors to whom offer addressed

5.6.1 **R** Where, in relation to an *offer* in the *United Kingdom*, no *prospectus* is required under the *Act*, the *issuer* and *offeror* must ensure that material information they provide to *qualified investors* or special categories of investors, including information disclosed in the context of meetings relating to *offers*, is disclosed to all *qualified investors* or special categories of investors to whom the *offer* is exclusively addressed. [Note: article 15.5 PD]

5.6.2 **G** Where a *prospectus* is required to be made available to the public under the *Act*, information referred to in **PR 5.6.1 R** should be included in the *prospectus* or in a *supplementary prospectus*.

Exercise of powers under section 87K or 87L of the Act

5.6.3 **G** Under sections 87K and 87L of the *Act*, the *FCA* has various powers including powers to prohibit or suspend an *offer* and to prohibit 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

5.6.4 **R** For the purposes of these *rules*, an amount (in relation to an amount denominated in euros) 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* together with a *securities note* and a *summary*, the date on which the *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

5.6.5 **G** To comply with paragraph 130 of the *ESMA Prospectus Recommendations*, 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.

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To comply with paragraph 2.7 of Annex XV of the *PD Regulation*, the FCA would also expect a valuation report for a property collective investment undertaking to comply with a relevant standard set out in ■ PR 5.6.5 G.