

Chapter 3

Approval and publication of prospectus

3.1 Approval of prospectus

Criteria for scrutiny and approval of prospectus

3.1.1

UK

Chapter V of the *PR Regulation* sets out requirements regarding scrutiny and approval of the *prospectus* and review of the *universal registration document*:

Article 35

Scope of the scrutiny

For the purposes of the scrutiny of the prospectus and the review of the universal registration document, references to the prospectus shall mean the prospectus or any of its constituent parts, including a universal registration document whether submitted for approval or filed without prior approval and any amendments thereto as well as supplements to the prospectus.

Article 36

Criteria for the scrutiny of the completeness of the information contained in the prospectus

1. For the purposes of scrutinising the completeness of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus is drawn up in accordance with [the *Prospectus Regulation*] and this Regulation, depending on the type of issuer, the type of issuance, the type of security and the type of offer or admission to trading;
- (b) whether the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18.

2. For the purposes of point (b) of paragraph 1, the competent authority may require the issuer to include, modify or remove information from a draft prospectus, taking into account the following:

- (a) the type of securities;
- (b) the information already included in the prospectus and the existence and content of information already included in a prospectus of the entity other than the issuer, as well as the applicable accounting and auditing principles;
- (c) the economic nature of the transactions by which the issuer has acquired, or disposed of, its undertaking or any part of it, and the specific nature of that undertaking;

(d) whether the issuer can obtain with reasonable effort information about the entity other than the issuer.

Article 37

Criteria for the scrutiny of the comprehensibility of the information contained in the prospectus

1. For the purposes of scrutinising the comprehensibility of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus has a clear and detailed table of contents;
- (b) whether the draft prospectus is free from unnecessary reiterations;
- (c) whether related information is grouped together;
- (d) whether the draft prospectus uses an easily readable font size;
- (e) whether the draft prospectus has a structure that enables investors to understand its contents;
- (f) whether the draft prospectus defines the components of mathematical formulas and, where applicable, clearly describes the product structure;
- (g) whether the draft prospectus is written in plain language;
- (h) whether the draft prospectus clearly describes the nature of the issuer's operations and its principal activities;
- (i) whether the draft prospectus explains trade or industry specific terminology.

However, the competent authority shall not be required to consider points (g), (h) and (i) where a draft prospectus is to be used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required by Article 7 of [the *Prospectus Regulation*].

2. For the purposes of the first paragraph, the competent authority may, on a case-by-case basis and in addition to the information referred to in Article 7 of [the *Prospectus Regulation*] and Article 33 of this Regulation, require that certain information provided in the draft prospectus be included in the summary.

Article 38

Criteria for the scrutiny of the consistency of the information contained in the prospectus

For the purposes of scrutinising the consistency of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus is free of material discrepancies between the different pieces of information provided therein, including any information incorporated by reference;
- (b) whether any material and specific risks disclosed elsewhere in the draft prospectus are included in the risk factors section;

(c) whether the information in the summary is in line with information elsewhere in the draft prospectus;

(d) whether any figures on the use of proceeds correspond to the amount of proceeds being raised and whether the disclosed use of proceeds is in line with the disclosed strategy of the issuer;

(e) whether the description of the issuer in the operating and financial review, the historical financial information, the description of the issuer's activity and the description of the risk factors are consistent;

(f) whether the working capital statement is in line with the risk factors, the auditor's report, the use of proceeds and the disclosed strategy of the issuer and how that strategy will be funded.

Article 39

Scrutiny of the information contained in the prospectus of specialist issuers

The competent authority may require additional information to be included in the prospectus based on the activities of the specialist issuers falling under one of the categories set out in Annex 29.

Article 40

Additional criteria for the scrutiny of the completeness, consistency and comprehensibility of the information contained in the prospectus

Where necessary for investor protection, the competent authority may apply criteria in addition to those laid down in Articles 36, 37 and 38 for the purposes of scrutinising the completeness, comprehensibility and consistency of the information in the draft prospectus.

Article 41

Proportionate approach in the scrutiny of draft prospectuses and review of the universal registration document

1. Where a first draft of a prospectus that is submitted to the competent authority is substantially similar to a prospectus that the competent authority has already approved, and where that draft prospectus highlights all changes made to that approved prospectus, the competent authority shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to scrutinise those changes and any other information affected by them.

2. For the purposes of scrutinizing a universal registration document filed without prior approval that has already been reviewed, or an amendment to such a document, the competent authority shall only be required to apply the criteria laid down in Article 36, 37 and 38 to those parts of the universal registration document or the amendment that have not been reviewed.

3. Where a first draft of a prospectus that incorporates information by reference to a document that has been approved—

(a) before IP completion day in accordance with [the *EU Prospectus Regulation*] or in accordance with the UK law which implemented [the *PD*] by a competent authority (as defined in [the *EU Prospectus Regulation*] as it had effect immediately before IP completion day); or

(b) on or after IP completion day, by the competent authority in accordance with [the *Prospectus Regulation*],

the competent authority shall only be required to apply the criteria laid down in Article 38 of this Regulation to scrutinise that information.

4. When applying paragraphs 1, 2 or 3, the competent authority shall request the issuer, offeror or person asking for admission to trading on a regulated market to confirm that all information in the final draft of the prospectus or universal registration document is up-to-date and contains all the information referred to in the Annexes to this Regulation applicable to that prospectus or universal registration document.

5. Where subsequent drafts of the prospectus are submitted to the competent authority, that competent authority, when scrutinising such subsequent drafts, shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to changes made to the preceding draft and to any other information affected by those changes.

Article 42

Submission of an application for approval of a draft prospectus or filing of a universal registration document or of amendments thereto

1. All drafts of a prospectus shall be submitted to the competent authority in searchable electronic format via electronic means.

When submitting the first draft of the prospectus, the issuer, offeror or person asking for admission to trading on a regulated market shall provide the competent authority with a contact point for the competent authority to submit all notifications in writing and by electronic means.

2. The following information shall also be submitted to the competent authority in searchable electronic format via electronic means:

(a) the list of cross references, where requested by the competent authority in accordance with Article 24(5) of this Regulation, or when submitted on own initiative;

(b) where no list of cross reference is requested, a document that identifies any items set out in the Annexes to this Regulation that, due to the nature or type of issuer, securities, offer or admission to trading, have not been included in the draft prospectus;

(c) any information that is incorporated into the prospectus by reference as referred to in Article 19 of [the *Prospectus Regulation*], unless such information has already been approved by or filed with the same competent authority in searchable electronic format;

(d) any reasoned request to the competent authority to authorise the omission of information from the prospectus as referred to in Article 18 of [the *Prospectus Regulation*];

(g)an appendix where required by Article 26(4) of [the *Prospectus Regulation*], unless no summary is required pursuant to the second subparagraph of Article 7(1) of that Regulation;

(h)a confirmation that, to the best of the knowledge of the issuer, all regulated information which was required to be disclosed under the UK law which implemented [the *Transparency Directive*], where applicable, and under Regulation (EU) No 596/2014 of the European Parliament and of the Council, has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose that regulated information commenced, whichever is the shorter, where the issuer is submitting for approval a draft universal registration document or filing a universal registration document without prior approval and seeks to obtain the status of frequent issuer;

(i)where a universal registration document is filed without prior approval, an explanation as to how a request for amendment or supplementary information as referred to in the second subparagraph of Article 9(9) of [the *Prospectus Regulation*] has been taken into account in the universal registration document;

(j)any other information requested by the competent authority for the purposes of the scrutiny and approval of the prospectus or the scrutiny, review and approval of the universal registration document.

3.Where a universal registration document that is filed without prior approval is annotated in the margin in accordance with Article 24(6), it shall be accompanied by an identical version without annotations in the margin.

4.Where a universal registration document is filed without prior approval or where a universal registration document is amended, the information referred to in points (a), (b), (c), (d), (h) and (i) of paragraph 2 shall be submitted at the time when the universal registration document is filed with the competent authority whilst the information referred to in point (j) of paragraph 2 shall be submitted during the review process. In all other cases, the information referred to in paragraph 2 shall be submitted together with the first draft of the prospectus submitted to the competent authority or during the scrutiny process.

5.Where a frequent issuer informs the competent authority that it intends to submit an application for approval of a draft prospectus in accordance with the second sentence of the first subparagraph of Article 20(6) of [the *Prospectus Regulation*], that frequent issuer shall do so in writing and by electronic means.

The information referred to in the first subparagraph shall indicate the Annexes to this Regulation relevant for that draft prospectus.

Article 43

Changes to a draft prospectus during the approval procedure

1.Each version of the draft prospectus submitted after the first draft prospectus shall highlight all changes made to the preceding draft and shall be accompanied by an unmarked draft. The competent

authority shall accept marked extracts of the preceding draft prospectus where only limited changes have been made.

2. Where the competent authority, in accordance with Article 45(2) of this Regulation, have notified the issuer, offeror or person asking for admission to trading on a regulated market that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency as referred to in Article 20(4) of [the *Prospectus Regulation*], the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the outstanding issues notified by the competent authority have been addressed.

3. Where changes made to a draft prospectus are self-explanatory or clearly address the outstanding issues notified by the competent authority, an indication of where the changes have been made to address the outstanding issues shall be considered sufficient explanation for the purposes of paragraph 2.

Article 44

Submission for approval of the final draft of the prospectus

1. The final draft of the prospectus shall be submitted for approval together with all the information referred to in Article 42(2) that has changed compared to the previous submission, with the exception of the information referred to in points (a) and (h) of that Article. The final draft of the prospectus shall not be annotated in the margin.

2. Where no changes have been made to the information referred to in Article 42(2), the issuer, offeror or person asking for admission to trading on a regulated market shall confirm so in writing and by electronic means.

Article 45

Acknowledgment of the receipt of an application for approval of a draft prospectus, or of the filing of a universal registration document or of an amendment thereto, and processing of an application for approval of a draft prospectus

1. The competent authority shall acknowledge receipt of the initial application for approval of a draft prospectus or of the filing of a universal registration document as referred to in the second subparagraph of Article 9(2) of [the *Prospectus Regulation*], or of an amendment to that universal registration document in writing and by electronic means as soon as possible and no later than by close of business on the second working day following the receipt of the application or filing.

Upon receipt of the initial application for approval of a draft prospectus and of the filing of a universal registration document, or of an amendment thereto, the competent authority shall inform the issuer, offeror or person asking for admission to trading on a regulated market of the following:

- (a) the reference number of the application or of the filing;
- (b) the contact point within the competent authority to which queries regarding the application or the filing may be addressed.

2. Where the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or where changes or supplementary information are needed, the competent authority shall inform the issuer, offeror or person asking for admission to trading on a regulated market thereof in writing and by electronic means. Where the universal registration document referred to in the second subparagraph of Article 9(2) of [the *Prospectus Regulation*], or an amendment to that universal registration document, does not meet the standards of completeness, comprehensibility and consistency or where amendments or supplementary information are needed, the competent authority shall inform the issuer thereof in writing and by electronic means. Where the shortcoming must be addressed without undue delay, as required by the third subparagraph of Article 9(9) of [the *Prospectus Regulation*], the competent authority shall inform the issuer thereof.

3. The competent authority shall notify the issuer, offeror or person asking for admission to trading on a regulated market about its decision regarding the approval of the draft prospectus in writing and by electronic means as soon as possible and by no later than by close of business of the day on which that decision is taken.

Time limits for approval of prospectus

3.1.2

UK

Article 20(2) to (6) of the *Prospectus Regulation* sets out the time limits for the approval of a *prospectus*:

Article 20

Scrutiny and approval of the prospectus

...

2. The competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval of the prospectus within 10 working days of the submission of the draft prospectus.

Where the competent authority fails to take a decision on the prospectus within the time limits laid down in the first subparagraph of this paragraph and paragraphs 3 and 6, such failure shall not be deemed to constitute approval of the application.

3. The time limit set out in the first subparagraph of paragraph 2 shall be extended to 20 working days where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public.

The time limit of 20 working days shall only be applicable for the initial submission of the draft prospectus. Where subsequent submissions are necessary in accordance with paragraph 4, the time limit set out in the first subparagraph of paragraph 2 shall apply.

4. Where the competent authority finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed:

(a) it shall inform the issuer, the offeror or the person asking for admission to trading on a regulated market of that fact promptly and at the latest within the time limits set out in the first subparagraph of paragraph 2 or, as applicable, paragraph 3, as calculated from the submission of the draft prospectus and/or the supplementary information; and

(b) it shall clearly specify the changes or supplementary information that are needed. In such cases, the time limit set out in the first subparagraph of paragraph 2 shall then apply only from the date on which a revised draft prospectus or the supplementary information requested are submitted to the competent authority.

5. Where the issuer, the offeror or the person asking for admission to trading on a regulated market is unable or unwilling to make the necessary changes or to provide the supplementary information requested in accordance with paragraph 4, the competent authority shall be entitled to refuse the approval of the prospectus and terminate the review process. In such case, the competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision and indicate the reasons for such refusal.

6. By way of derogation from paragraphs 2 and 4, the time limits set out in the first subparagraph of paragraph 2 and paragraph 4 shall be reduced to five working days for a prospectus consisting of separate documents drawn up by frequent issuers referred to in Article 9(11). The frequent issuer shall inform the competent authority at least five working days before the date envisaged for the submission of an application for approval.

A frequent issuer shall submit an application to the competent authority containing the necessary amendments to the universal registration document, where applicable, the securities note and the summary submitted for approval.

Applying for approval

3.1.3

R

If the order of disclosure items in the *prospectus* does not coincide with the order set out in the Annexes to the *PR Regulation*, an *applicant* must provide the *FCA* with a cross-reference list identifying the pages where each disclosure item can be found in the *prospectus*.

[Note: Articles 24(5) and 25(6) of the *PR Regulation*]

3.1.4

R

An *applicant* must take all reasonable care to ensure that any *prospectus* submitted for approval, for which it is responsible, contains:

- (1) the necessary information as required under article 6 of the *Prospectus Regulation*; and
- (2) the information items required in the Annexes of the *PR Regulation*, as appropriate to its application.

3.1.5

R

An *applicant* must take all reasonable care to ensure that any *prospectus* submitted for approval for which it is responsible is, to the best of its

knowledge, in accordance with the facts and contains no omission likely to affect its import.

Timeframe for submission

3.1.6

R

- (1) The *applicant* must submit to the *FCA* by the date specified in paragraph (2):
 - (a) a completed Form A.
 [Note: Article 42(2)(j) of the *PR Regulation*. This form is available on the *FCA* website, see <https://www.fca.org.uk/markets/primary-markets/forms> .]
 - (b) the relevant fee; and
 [Note: ■ FEES 3 sets out the relevant fee payable to the *FCA*.]
 - (c) the first draft of the *prospectus* (accompanied, where relevant, by the additional information set out in article 42(2) of the *PR Regulation*.
- (2) The date referred to in paragraph (1) is:
 - (a) at least 10 *working days* before the intended approval date of the *prospectus*; or
 - (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admitted to trading* and has not previously made an offer; or
 - (c) as soon as practicable in the case of a *supplementary prospectus*.
- (3) The applicant must submit the final version of the draft *prospectus* and the additional information set out in article 44 of the *PR Regulation* to the *FCA* before midday on the day on which approval is required to be granted.
 [Note: Article 44 of the *PR Regulation* is reproduced for the convenience of readers in ■ PRR 3.1.1UK.]

Copy of resolution to be kept

3.1.7

R

An *applicant* must keep a copy of the board resolution allotting or issuing the *transferable securities* for six years after the application for approval of the *prospectus* for those *transferable securities*.

3.1.8

G

[deleted]

Decision-making procedures

3.1.9 **R** The *FCA* will follow the *executive procedures for statutory notice decisions* and *statutory notice associated decisions* if it:

- (1) proposes to refuse to approve a *prospectus*; or
- (2) decides to refuse to approve a *prospectus* after having given the *applicant* a written notice.

[Note: ■ DEPP 4 sets out the *executive procedures for statutory notice decisions* and *statutory notice associated decisions*.]

Prospectus not to be published until approved

3.1.10 **UK** Article 20(1) of the *Prospectus Regulation* provides:

Article 20

Scrutiny and approval of the prospectus

1.A prospectus shall not be published unless the competent authority has approved it, or all of its constituent parts in accordance with Article 10.

Prospectus comprising separate documents

3.1.11 **R** If the *prospectus* is not a single document but comprises separate documents:

- (1) an application for approval may relate to one or more of those separate documents; and
- (2) a reference in this section to a *prospectus* is, unless the context otherwise requires, to be taken to be a reference to the document or documents to which the application relates.

3.1.12 **EU** [deleted]

3.1.13 **R** (1) [deleted]
(2) [deleted]

Service of Notice Regulations

3.1.14 **G** Regulation 7 of the Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the *FCA*. Regulation 7 does not apply to the submission of a draft *prospectus* or *listing particulars* to the *FCA* for approval because of the provisions set out in ■ PRR 3.1.1UK.

3.2 Publication of prospectus

Publication

3.2.1 **UK** Article 21(1) of the *Prospectus Regulation* provides for the publication of the *prospectus*:

Article 21

Publication of the prospectus

1. Once approved, the prospectus shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved.

In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available to the public at least six working days before the end of the offer.

Method of publishing

3.2.2 **UK** Article 21(2) to (4) of the *Prospectus Regulation* provides for the methods by which the *prospectus* is to be published:

Article 21

Publication of the prospectus

...

2. The prospectus, whether a single document or consisting of separate documents, shall be deemed available to the public when published in electronic form on any of the following websites:

(a) the website of the issuer, the offeror or the person asking for admission to trading on a regulated market;

(b) the website of the financial intermediaries placing or selling the securities, including paying agents;

(c) the website of the regulated market where the admission to trading is sought, or where no admission to trading on a regulated market is sought, the website of the operator of the MTF.

3. The prospectus shall be published on a dedicated section of the website which is easily accessible when entering the website. It shall

be downloadable, printable and in searchable electronic format that cannot be modified.

The documents containing information incorporated by reference in the prospectus, the supplements and/or final terms related to the prospectus and a separate copy of the summary shall be accessible under the same section alongside the prospectus, including by way of hyperlinks where necessary.

The separate copy of the summary shall clearly indicate the prospectus to which it relates.

4. Access to the prospectus shall not be subject to the completion of a registration process, the acceptance of a disclaimer limiting legal liability or the payment of a fee. Warnings specifying the jurisdiction(s) in which an offer or an admission to trading is being made shall not be considered to be disclaimers limiting legal liability.

Other publication requirements

3.2.3

UK

Article 21(7) to (11) of the *Prospectus Regulation* provides for further requirements for publication:

Article 21

Publication of the prospectus

...

7. All prospectuses approved shall remain publicly available in electronic form for at least 10 years after their publication on the websites referred to in paragraph 2.

Where hyperlinks are used for information incorporated by reference in the prospectus, and the supplements and/or final terms related to the prospectus, such hyperlinks shall be functional for the period referred to in the first subparagraph.

8. An approved prospectus shall contain a prominent warning stating when the validity of the prospectus will expire. The warning shall also state that the obligation to supplement a prospectus in the event of significant new factors, material mistakes or material inaccuracies does not apply when a prospectus is no longer valid.

9. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information that constitute the prospectus may be published and distributed separately provided that those documents are made available to the public in accordance with paragraph 2. Where a prospectus consists of separate documents in accordance with Article 10, each of those constituent documents, except for documents incorporated by reference, shall indicate that it is only one part of the prospectus and where the other constituent documents may be obtained.

10. The text and the format of the prospectus, and any supplement to the prospectus made available to the public, shall at all times be identical to the original version approved by the competent authority.

11.A copy of the prospectus on a durable medium shall be delivered to any potential investor, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading on a regulated market or the financial intermediaries placing or selling the securities. In the event that a potential investor makes a specific demand for a paper copy, the issuer, the offeror, the person asking for admission to trading on a regulated market or a financial intermediary placing or selling the securities shall deliver a printed version of the prospectus. Delivery shall be limited to jurisdictions in which the offer of securities to the public is made.

Publication on website

3.2.4 **UK** Article 10(2) of the *Prospectus RTS Regulation* provides that:

Article 10

Publication of the prospectus

...

2.Where a prospectus is published in accordance with Article 21(2) of [the *Prospectus Regulation*], measures shall be taken on websites used for the publication of the prospectus to avoid targeting residents of third countries other than those where the securities are offered to the public.

Publication by the FCA

3.2.5 **UK** Article 21(5) (first sub-paragraph) of the *Prospectus Regulation* sets out the publication requirements applicable to the *FCA* as the competent authority:

Article 21

Publication of the prospectus

...

5.The competent authority shall publish on its website all the prospectuses approved or at least the list of prospectuses approved, including a hyperlink to the dedicated website sections referred to in paragraph 3 of this Article. The published list, including the hyperlinks, shall be kept up-to-date and each item shall remain on the website at least for the period referred to in paragraph 7 of this Article.

3.2.6 **G** The *FCA* will upload documents to the *national storage mechanism*. The *FCA* will upload *prospectuses* and related documents it approves after 6 p.m. on the *working day* following the *day* on which it approved the document.

3.2.7 **R** (1) [deleted]

(2) [deleted]

3.2.8 **R** [deleted]



3.3 Advertisements

Advertisements

3.3.1

UK

Article 22(1) to (5) of the *Prospectus Regulation* provides for requirements applicable to *advertisements*:

Article 22

Advertisements

1.Any advertisement relating either to an offer of securities to the public or to an admission to trading on a regulated market shall comply with the principles contained in paragraphs 2 to 5. Paragraphs 2 to 4 and point (b) of paragraph 5 shall apply only to cases where the issuer, the offeror or the person asking for admission to trading on a regulated market is subject to the obligation to draw up a prospectus.

2.Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.

3.Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate or misleading and shall be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published.

4.All information disclosed in an oral or written form concerning the offer of securities to the public or the admission to trading on a regulated market, even where not for advertising purposes, shall be consistent with the information contained in the prospectus.

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.

3.3.2

UK

Chapter IV of the *Prospectus RTS Regulation* provides that:

Article 13

Identification of the prospectus

Where the issuer, the offeror or the person asking for admission to trading on a regulated market is subject to the obligation to draw up a prospectus, an advertisement shall clearly identify that prospectus by:

- (a) clearly identifying the website where the prospectus is published, or will be published, where the advertisement is disseminated in written form and by means other than electronic means;
- (b) including a hyperlink to the prospectus and to the relevant final terms of a base prospectus where the advertisement is disseminated in written form by electronic means, or by including a hyperlink to the page of the website where the prospectus will be published if the prospectus has not yet been published;
- (c) including accurate information on where the prospectus may be obtained, and accurate information on the offer of securities or the admission to trading on a regulated market to which it relates, where the advertisement is disseminated in a form or by means not falling within the scope of points (a) or (b).

Article 14

Required content

1. Advertisements disseminated to potential retail investors shall include the following elements:

- (a) the word 'advertisement', in a prominent manner. Where an advertisement is disseminated in an oral form, the purpose of the communication shall be clearly identified at the beginning of the message;
- (b) a statement that the approval of the prospectus should not be understood as an endorsement of the securities offered or admitted to trading on a regulated market where the advertisement contains a reference to a prospectus approved by the FCA;
- (c) a recommendation that potential investors read the prospectus before making an investment decision in order to fully understand the potential risks and rewards associated with the decision to invest in the securities where the advertisement contains a reference to a prospectus approved by the FCA;
- (d) the comprehension alert required pursuant to point (b) of Article 8(3) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹² where:
 - (i) the advertisement relates to complex securities other than the financial instruments referred to in **COBS 10A.4.1R(2)(a), (b) and (d)]** and;
 - (ii) the comprehension alert is, or will be, included in the summary of the prospectus.

2. Advertisements in written form, which are disseminated to potential retail investors, shall be sufficiently different in format and

length from the prospectus that no confusion with the prospectus is possible.

Article 15

Dissemination of advertisements

1. Advertisements disseminated to potential investors shall be amended where:

- (a) a supplement to the prospectus is subsequently published in accordance with Article 23 of [the *Prospectus Regulation*];
- (b) the significant new factor, material mistake or material inaccuracy mentioned in the supplement renders the previously disseminated advertisement materially inaccurate or misleading.

The first subparagraph shall not apply after the final closing of the offer period to the public or after the time when trading on a regulated market begins, whichever occurs later.

2. Advertisements amended as referred to in paragraph 1 shall be disseminated to potential investors without undue delay following the publication of the supplement to the prospectus and shall contain all of the following:

- (a) a clear reference to the inaccurate or misleading version of the advertisement;
- (b) an explanation that the advertisement has been amended as it contained materially inaccurate or misleading information;
- (c) a clear description of the differences between the two versions of the advertisement.

3. With the exception of orally disseminated advertisements, advertisements amended pursuant to paragraph 1 shall be disseminated through at least the same means as the previous advertisement.

Article 16

Information concerning offers of securities

1. Information disclosed in oral or written form concerning an offer of securities to the public or an admission to trading on a regulated market, whether as an advertisement or for other purposes, shall not:

- (a) contradict the information in the prospectus;
- (b) refer to information which contradicts the information in the prospectus;
- (c) present the information in the prospectus in a materially unbalanced way, including by way of presentation of negative aspects of such information with less prominence than the positive aspects, omission or selective presentation of certain information;
- (d) contain alternative performance measures unless they are contained in the prospectus.

2. For the purposes of the paragraph 1, information in the prospectus shall consist of either information included in the prospectus, where already published, or information to be included in the prospectus, where the prospectus is to be published at a later date.

3. For the purposes of point (d) of the paragraph 1, alternative performance measures shall consist of financial measures of historical or future financial performance, financial position or cash flows, other than financial measures defined in the applicable financial reporting framework.



3.4 Supplementary prospectus

Supplementary prospectus

3.4.1

UK

Article 23(1) to (6) of the *Prospectus Regulation* provides for requirements applicable to *supplementary prospectuses*:

Article 23

Supplements to the prospectus

1. Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay.

Such a supplement shall be approved in the same way as a prospectus in a maximum of five working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published in accordance with Article 21. The summary shall also be supplemented, where necessary, to take into account the new information included in the supplement.

2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.

The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states:

- (a) that a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;

(b)the period in which investors can exercise their right of withdrawal; and

(c)whom investors may contact should they wish to exercise the right of withdrawal.

3.Where the securities are purchased or subscribed through a financial intermediary, that financial intermediary shall inform investors of the possibility of a supplement being published, where and when it would be published and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such case.

The financial intermediary shall contact investors on the day when the supplement is published.

Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published and where it would be published and that in such case, they could have a right to withdraw the acceptance.

4.Where the issuer prepares a supplement concerning information in the base prospectus that relates to only one or several individual issues, the right of investors to withdraw their acceptances pursuant to paragraph 2 shall only apply to the relevant issue(s) and not to any other issue of securities under the base prospectus.

5.In the event that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 concerns only the information contained in a registration document or a universal registration document and that registration document or universal registration document is simultaneously used as a constituent part of several prospectuses, only one supplement shall be drawn up and approved. In that case, the supplement shall mention all the prospectuses to which it relates.

6.When scrutinising a supplement before approval, the competent authority may request that the supplement contains a consolidated version of the supplemented prospectus, registration document or universal registration document in an annex, where such consolidated version is necessary to ensure comprehensibility of the information given in the prospectus. Such a request shall be deemed to be a request for supplementary information under Article 20(4). An issuer may in any event voluntarily include a consolidated version of the supplemented prospectus, registration document or universal registration document in an annex to the supplement.

3.4.2

UK

Chapter V of the *Prospectus RTS Regulation* provides for further requirements applicable to *supplementary prospectuses*:

Article 18

Publication of a supplement to the prospectus

1.A supplement to the prospectus shall be published where:

(a)new annual audited financial statements are published by any of the following:

(i)an issuer where a prospectus relates to shares or other transferable securities equivalent to shares;

(ii)an issuer of the underlying shares or other transferable securities equivalent to shares in case of securities referred to in Articles 19(2) or 20(2) of [the *PR Regulation*];

(iii)an issuer of the underlying shares of depository receipts referred to in Articles 6 and 14 of [the *PR Regulation*];

(b)an issuer has published a profit forecast or estimate following the approval of the prospectus, where a profit forecast or estimate is required to be included in the prospectus pursuant to [the *PR Regulation*];

(c)an amendment to, or a withdrawal of, a profit forecast or a profit estimate is included in the prospectus;

(d)a change in control occurs in respect of any of the following:

(i)an issuer where a prospectus relates to shares or other transferable securities equivalent to shares;

(ii)an issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to securities referred to in Articles 19(2) or 20(2) of [the *PR Regulation*];

(iii)an issuer of the underlying shares of depository receipts referred to in Articles 6 and 14 of [the *PR Regulation*];

(e)third parties make a new takeover bid as defined in paragraph 20(1) of Schedule 1C of the Companies Act 2006 or the result of any takeover bid becomes available in respect of any of the following:

(i)the equity of the issuer where a prospectus relates to shares or other transferable securities equivalent to shares;

(ii)the equity of the issuer of the underlying shares or other transferable securities equivalent to shares where a prospectus relates to securities referred to in Articles 19(2) or 20(2) of [the *PR Regulation*];

(iii)the equity of the issuer of the underlying shares of depository receipts where a prospectus is drawn up in accordance with Articles 6 and 14 of [the *PR Regulation*];

(f)the working capital statement included in a prospectus becomes sufficient or insufficient for the issuer's present requirements, in relation to:

(i)shares or other transferable securities equivalent to shares;

(ii)securities as referred to in Articles 19(2) of [the *PR Regulation*];

(iii)depository receipts issued over shares as referred to in Articles 6 and 14 of [the *PR Regulation*].

(h)in the case of a prospectus relating to shares or other transferable securities equivalent to shares or to the securities referred to in Articles 19(2) or 20(2) of [the *PR Regulation*], a new significant financial commitment is likely to give rise to a significant gross change as defined in Article 1(e) of that Delegated Regulation;

(i)the aggregate nominal amount of the offering programme is increased.