

## PROSPECTUS REGULATION (AMENDMENT NO 2) INSTRUMENT 2012

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
  - (2) section 84 (Matters which may be dealt with by prospectus rules);
  - (3) section 87A (Criteria for approval of prospectus by competent authority);
  - (4) section 101 (Part 6 rules: general provisions);
  - (5) section 138 (General rule-making power);
  - (6) section 156 (General supplementary powers); and
  - (7) schedule 7 (The Authority as Competent Authority for Part 6).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 28 September 2012.

### Amendments to the Handbook

- D. The Prospectus Rules sourcebook (PR) is amended in accordance with the Annex to this instrument.

### Non-FSA legislative text

- E. (1) In the Annex to this instrument, the legislative text marked “EU” in the margin is included for the convenience of readers but does not form part of the legislative text made by the Financial Services Authority.
- (2) Although European Union Legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

### Notes

- F. In the Annex to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Prospectus Regulation (Amendment No 2) Instrument 2012.

By order of the Board  
27 September 2012

## Annex

## Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## Contents of summary

## 2.1.4 EU ...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

~~**NOTE:** The European Commission has published a draft Regulation amending the *PD Regulation* here:~~

~~[http://ec.europa.eu/internal\\_market/securities/prospectus/index\\_en.htm](http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm)~~

~~The *FSA* will review *prospectuses* in accordance with the authoritative version of the *PD Regulation*, including any amendments made by the final published version of the above Regulation, which is the version that is published in the Official Journal of the European Union, from the date it is stated to be in force.~~

~~The *FSA Handbook* will be updated to reflect the final changes in due course.~~

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...

## 2.2.10 EU ...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

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## 2.2.11 EU ...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

**NOTE:** The European Commission has published a draft Regulation amending the *PD Regulation* here:

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## 2.3 Minimum information to be included in a prospectus

### Minimum information

- 2.3.1 EU Articles 3 to 23 of the *PD Regulation* provide for the minimum information to be included in a *prospectus*:  
**Note:** the Annexes (including *schedules* and *building blocks*) referred to in these articles are set out for information in *PR App 3*.

Article 3 Minimum information to be included in a prospectus
...
A prospectus shall contain the information items required in Annexes I to XVII and Annexes XX to <del>XXIX</del> <u>XXX</u> depending on the type of issuer or issues and securities involved. Subject to Article 4a(1), a competent authority shall not <del>request</del> <u>require</u> that a prospectus contains information items which are not included in Annexes I to XVII or Annexes XX to <del>XXIX</del> <u>XXX</u> .
In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed, for each of the information items.
Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a prospectus, in accordance with Article 5(2) of Directive 2003/71/EC, the competent authority of the home Member State, when approving the prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require certain information provided in the prospectus, to be

included in the summary.

[**Note:** See transitional provisions in Regulation (EU) No 862/2012]

...

<u>Article 20a</u> <u>Additional information building block for consent given in accordance with Article 3(2) of Directive 2003/71/EC</u>	
<u>1.</u>	<u>For the purposes of the third subparagraph of Article 3(2) of Directive 2003/71/EC, the prospectus shall contain the following:</u>
	<u>(a) the additional information set out in Sections 1 and 2A of Annex XXX where the consent is given to one or more specified financial intermediaries;</u>
	<u>(b) the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.</u>
<u>2.</u>	<u>Where a financial intermediary does not comply with the conditions attached to consent as disclosed in the prospectus, a new prospectus shall be required in accordance with the second paragraph of Article 3(2) of Directive 2003/71/EC.</u>
	[ <b>Note:</b> See transitional provisions in Regulation (EU) No 862/2012]

...

<u>Article 22</u> <u>Minimum information to be included in a base prospectus and its related final terms</u>	
<u>1.</u>	<u>A base prospectus shall be drawn up by using one or a combination of schedules and building blocks provided for in this Regulation according to the combinations for various types of securities set out in Annex XVIII.</u>
	<u>A base prospectus shall contain the information items required in Annexes I to XVII, Annex XX and Annexes XXIII to <del>XXIX</del> <u>XXX</u> depending on the type of issuer and securities involved, <del>provided for in the schedules and building blocks set out in this Regulation.</del> <u>A competent authority</u> <u>Competent authorities</u> shall not request <u>require</u> that a base prospectus contains information items which are not included in Annexes I to XVII, Annex XX or Annexes XXIII to <del>XXIX</del> <u>XXX</u>.</u>
	...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012 and in Regulation (EU) No 862/2012]

...

...

**NOTE:** The European Commission has published a draft Regulation amending the *PD Regulation* here: [http://ec.europa.eu/internal\\_market/securities/prospectus/index\\_en.htm](http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm)  
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2.4.6 EU ...

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...

3.2.9 EU ...

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...

### Appendix 3 Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks

App EU The following *schedules* and *building blocks* and tables of combinations  
3.1.1 are copied from the *PD Regulation*:  
[Note: See transitional provisions in Regulation (EU) No 486/2012 and Regulation (EU) No 862/2012]

#### ANNEX I

Minimum Disclosure Requirements for the Share Registration Document (schedule)

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	

...

ANNEX III  
Minimum Disclosure Requirements for the Share Securities Note  
(schedule)

...	
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION
...	

ANNEX IV  
Minimum Disclosure Requirements for the Debt and Derivative Securities  
Registration Document (schedule)  
(Debt and derivative securities with a denomination per unit of less than  
EUR 100 000)

...	
9.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	

ANNEX V  
Minimum Disclosure Requirements for the Securities Note related to Debt  
securities (schedule)  
(Debt securities with a denomination per unit of less than EUR 100 000)

...	
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION
...	

...

ANNEX X

Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)

INFORMATION ABOUT THE ISSUER OF THE UNDERLYING SHARES

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	
31.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS
...	

ANNEX XI

Minimum Disclosure Requirements for the Banks Registration Document (schedule)

...	
8.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	

ANNEX XII

Minimum Disclosure Requirements for the Securities Note for derivative securities (schedule)

...	
3.	<del>KEY ESSENTIAL</del> INFORMATION
...	
4.2.2	... - where the underlying is an index;
	<del>· the name of the index, and a description of the index if it is composed by the issuer. If the index is not composed by the issuer, where information about the index can be obtained</del>
	<u>· a description of the index if it is composed by the issuer or by any legal entity belonging to the same group.</u>
	<u>· a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless</u>

	<u>the prospectus contains the following statements:</u>
	- <u>the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website;</u>
	<u>and</u>
	- <u>the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.</u>
	<u>If the index is not composed by the issuer, where information about the index can be obtained.</u>
	...
...	

ANNEX XIII

Minimum Disclosure Requirements for the Securities Note for debt securities with a denomination per unit of at least EUR 100 000 (schedule)

...	
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION ...
...	

...

ANNEX XV

Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type (schedule)

...	
2.10	Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognised published index. <del>A description of the composition of the index must be provided.</del> <u>A statement setting out details of where information about the index can be obtained shall be included.</u>
...	

...

ANNEX XX

List of securities note schedules and building block(s)

	<b>ANNEX V</b>	
...		
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION	
...		
	<b>ANNEX XII</b>	
...		
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION	
...		
4.1.13	(i) a description of how any return on derivative securities takes place ([see footnote in Regulation (EU) No 486/2012]) ...	Category B
...		
4.2.2	... (ii) where the underlying is an index:	
	• the name of the index;	Category C
	• a description of the index if it is composed by the issuer <u>or by any legal entity belonging to the same group.</u>	Category A
	• <u>a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements:</u>	<u>Category A</u>
	<u>– the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer’s or on the index provider’s website;</u>	
	<u>and</u>	

	– the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.	
	• If <u>if</u> the index is not composed by the issuer, <u>an indication of where to obtain</u> information about the index <u>can be obtained</u> .	Category C
...		
	<b>ANNEX XIII</b>	
...		
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION	
...		
	<b>ANNEX VI</b>	
...		
4.	<b>Documents on display</b>	
	Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.	Category A
	<b><u>ANNEX XXX</u></b>	
<u>1.</u>	<b><u>Information to be provided regarding consent by the issuer or person responsible for drawing up the prospectus</u></b>	
<u>1.1</u>	<u>Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.</u>	<u>Category A</u>
<u>1.2</u>	<u>Indication of the period for which consent to use the prospectus is given.</u>	<u>Category A</u>
<u>1.3</u>	<u>Indication of the offer period upon which subsequent resale or final placement of securities</u>	<u>Category C</u>

	by <u>financial intermediaries can be made.</u>	
1.4	<u>Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.</u>	<u>Category A</u>
1.5	<u>Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</u>	<u>Category C</u>
1.6	<u>Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, this financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.</u>	<u>Category A</u>
2A	<b><u>Additional information to be provided where a consent is given to one or more specified financial intermediaries</u></b>	
2A.1	<u>List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.</u>	<u>Category C</u>
2A.2	<u>Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.</u>	<u>Category A</u>
2B	<b><u>Additional information to be provided where a consent is given to all financial intermediaries</u></b>	
2B.1	<u>Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions attached thereto.</u>	<u>Category A</u>

...

ANNEX XXII  
Disclosure requirements in summaries

...

...		
All	A.1	Warning that: • [this] summary should be read as introduction to the

		<p>prospectus;</p> <ul style="list-style-type: none"> <li>• any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;</li> <li>• where a claim relating to the information contained in [the] prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and</li> <li>• civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.</li> </ul>
<u>All</u>	<u>A.2</u>	<ul style="list-style-type: none"> <li>• <u>Consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus for subsequent resale or final placement of securities by financial intermediaries.</u></li> </ul>
		<ul style="list-style-type: none"> <li>• <u>Indication of the offer period within which subsequent resale or final placement of securities by financial intermediaries can be made and for which consent to use the prospectus is given.</u></li> </ul>
		<ul style="list-style-type: none"> <li>• <u>Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</u></li> </ul>
		<ul style="list-style-type: none"> <li>• <u>Notice in bold informing investors that information on the terms and conditions of the offer by any financial intermediary is to be provided at the time of the offer by the financial intermediary.</u></li> </ul>
...		

ANNEX XXIII

Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for Rights Issues

...	
8.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or

	estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
(a)	<u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
(b)	<u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
(c)	<u>this financial information has not been audited.</u>
...	

ANNEX XXIV

Proportionate Schedule for Minimum Disclosure Requirements for the Share Securities Note for Rights Issues

...	
3.	<del>KEY</del> <u>ESSENTIAL</u> INFORMATION
...	

ANNEX XXV

Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for SMEs and companies with reduced market capitalisation

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report</u>

	<u>shall not be required provided that the prospectus includes all of the following statements:</u>	
	(a)	<u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b)	<u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c)	<u>this financial information has not been audited.</u>

...

## ANNEX XXVI

Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities <100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation) ~~(see footnote in Regulation (EU) No 486/2012)~~

...

## ANNEX XXVII

Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities ≥100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation (schedule) ~~(see footnote in Regulation (EU) No 486/2012)~~

...

## ANNEX XXVIII

Proportionate Schedule for Minimum Disclosure Requirements for the Depositary Receipts issued over shares for SMEs and companies with reduced market capitalisation ~~(see footnote in Regulation (EU) No 486/2012)~~

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report</u>

	shall not be required provided that the prospectus includes all of the following statements:	
	(a)	<u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b)	<u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c)	<u>this financial information has not been audited.</u>
...		
31.	<del>KEY ESSENTIAL</del> INFORMATION ABOUT THE ISSUE OF THE DEPOSITARY RECEIPTS	
...		

## ANNEX XXIX

Proportionate Schedule for Minimum Disclosure Requirements for Issues by Credit Institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

Minimum Disclosure Requirements for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC (see footnote in Regulation (EU) No 486/2012)

...

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ANNEX XXX

Additional information regarding consent as referred to in Article 20a  
(Additional building block)

<u>1</u>	<b><u>Information to be provided regarding consent by the issuer or person responsible for drawing up the prospectus</u></b>
<u>1.1</u>	<u>Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.</u>
<u>1.2</u>	<u>Indication of the period for which consent to use the prospectus is given.</u>
<u>1.3</u>	<u>Indication of the offer period upon which subsequent resale or final placement of securities by financial intermediaries can be made.</u>
<u>1.4</u>	<u>Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.</u>
<u>1.5</u>	<u>Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</u>
<u>1.6</u>	<u>Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, the financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.</u>
<u>2A</u>	<b><u>Additional information to be provided where a consent is given to one or more specified financial intermediaries</u></b>
<u>2A.1</u>	<u>List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.</u>
<u>2A.2</u>	<u>Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.</u>
<u>2B</u>	<b><u>Additional information to be provided where a consent is given to all financial intermediaries</u></b>
<u>[2B.1]</u>	<u>Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions</u>

	<u>attached thereto.</u>
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