

PROSPECTUS RULES (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 20 July 2017.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument
- E. The Prospectus Rules sourcebook (PR) is amended in accordance with Annex B to this instrument.

European Union Legislation

- F. Although European Union Legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Notes

- G. In Annex B 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

- H. This instrument may be cited as the Prospectus Rules (Miscellaneous Amendments) Instrument 2017.

By order of the Board
6 July 2017

Annex A**Amendments to the Glossary of definitions**

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

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

Prospectus Regulation Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

Amend the following definition as shown.

ESMA Prospectus Questions and Answers the Questions and Answers for prospectuses published by *ESMA* (~~ESMA/2016/576~~) (ESMA/2016/1674).

Annex B

Amendments to the Prospectus Rules sourcebook (PR)

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

1 Preliminary

...

1.2 Requirement for a prospectus and exemptions

...

Exempt securities – admission to trading on a regulated market

1.2.3 R In accordance with section 85(6)(b) of the *Act*, section 85(2) of the *Act* does not apply to the *admission to trading* of the following types of *transferable securities*:

(1) ~~shares representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already *admitted to trading* on the same *regulated market*~~ *transferable securities* referred to in article 1(5)(a) of the *Prospectus Regulation*;

...

(7) ~~shares resulting from the conversion or exchange of other *transferable securities* or from the exercise of the rights conferred by other *transferable securities*, if the shares are of the same class as the shares already *admitted to trading* on the same *regulated market*~~ shares referred to in article 1(5)(b) of the *Prospectus Regulation*;

(8) ...

(g) that the contents of the summary document comply with article 5(2) of the *prospectus directive*. Also the document must state where the most recent *prospectus* can be obtained and where the financial information published by the *issuer* pursuant to its ongoing disclosure obligations is available [~~Note: article 4(2) of *PD*~~];

(9) *transferable securities* referred to in article 1(5)(c) of the *Prospectus Regulation*.

[Note: article 4(2) of the *PD*, points (a), (b) and (c) of the first subparagraph of article 1(5) of the *Prospectus Regulation* and the second subparagraph of article 1(5) of the *Prospectus Regulation*]

1.2.3A EU Points (a), (b) and (c) of the first subparagraph of Article 1(5) of the Prospectus Regulation and the second subparagraph of Article 1(5) of the Prospectus Regulation provide that:

Article 1

Subject matter, scope and exemptions

...

5. The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:

(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market;

(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;

(c) securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU;

...

The requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market as referred to in point (b) of the first subparagraph shall not apply in any of the following cases:

(a) where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading on a regulated market of the securities giving access to the shares;

(b) where the securities giving access to the shares were issued before 20 July 2017;

(c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;

(d) where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Directive

2009/138/EC of the European Parliament and of the Council, and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC.

...

Insert the following new definition in the appropriate alphabetical position and amend the existing definition as shown.

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<i>ESMA Prospectus Questions and Answers</i>	the Questions and Answers for prospectuses published by <i>ESMA</i> (ESMA/2016/576) (<u>ESMA/2016/1674</u>).
...	
<u><i>Prospectus Regulation</i></u>	<u>Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.</u>
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