**Documentation required for an offer**

This element explains the documentation required for both retail and institutional offers.

**Introduction**

There are a number of documents that must be submitted to the FCA in order for a company to obtain a listing.

The **prospectus** is the most important document in an IPO and any other issue carried out by a listed company. It has a number of purposes:

* the first is that it is required by the UK Prospectus Regulation and Part VI FSMA in order for the company to list on the Official List;
* the second is that it is used to market the issue to investors. The prospectus must contain all the information an investor would require in order to make an informed decision as to whether to invest in the shares;
* the third is that it acts as a ‘document of record’ – i.e. it provides a definitive record of the information that was made available to investors at the time of the IPO.

There are detailed rules governing the contents of the prospectus.

**The prospectus: price**

In accordance with **PRR 2.3.2/Art 17(1) UK Prospectus Regulation**, FCA approval may be sought for a prospectus which does not contain a final price but instead contains the valuation methods and criteria, and/or conditions, in accordance with which the final price is to be determined, an explanation of any valuation methods used, and the maximum price so far as it is known. This is known as a **price-range prospectus**.

It is possible to leave out the information on pricing or maximum number of securities referred to above, but only if investors are given a right to withdraw their acceptances for a period of two working days after the final offer price is filed with the FCA. This option is considered unlikely to be generally attractive to issuers.

Once the final offer price is confirmed, the issuer will publish the offer price in accordance with PRR 2.3.2/Art 17(2) UK Prospectus Regulation (which cross refers to PRR 3.2.2/Art 21(2) UK Prospectus Regulation). In practice, this generally means that the issuer will make a ‘**pricing statement**’ (a short addendum to the prospectus) available on the issuer’s website: this pricing statement must also be filed with the FCA. The issuer will also release an announcement confirming the final price.

An approved price-range prospectus is final in every way except that a price-range is included instead of the exact price of the shares. A price-range prospectus is almost always used where there is a retail/intermediaries offer, because an approved prospectus must always be published before an offer is made to the general public. It is highly unlikely that a price-range prospectus would be used for an institutional-only IPO offer as issuers tend to undertake their bookbuilding based on a pathfinder and then issue an approved fixed-price prospectus.

**Registration Document**

A registration document is one of the three documents that can make up a tripartite prospectus. In brief, a prospectus can be drafted as a single document, or can be made up of three separate parts: a registration document, which sets out information on the business and prospects of the issuer; a securities note, which primarily sets out information on the securities being offered; and a summary, which summarises the other two documents. However, a registration document can also be approved by the FCA and published as a standalone document.

On the basis of the COBS rules on publication of research, an issuer must publish either an approved registration document or an approved prospectus before any research on the company can be released. The FCA considers that investors should have access to a formal source of information on a company before they are given access to the more informal information in a research report.

**Diagram:** Three text boxes within one bigger text box. The three text boxes read ‘A registration document which contains information relating to the issuer (company).’ ‘A securities note which primarily gives details of the securities being offered.’ ‘A summary’. Under this bigger text box is the word ‘or’ and under ‘or’ it reads ‘A single document’. **End of diagram.**

An issuer is unlikely to have finalised details of its offer of securities at the time it announces its potential intention to float, and these details are essential to the publication of a full prospectus. Therefore, in practice, where connected research is expected to be published, it is a registration document that will generally be published as a first step in any future IPO timetable. A standalone registration document may be submitted for approval by the FCA in the same way as a prospectus and on the basis of the same timeframe for approval: see PRR 3.1.11.

Once the registration document has been approved and published, an issuer has two options in relation to its subsequent requirement to publish a full prospectus. It may simply issue an approved securities note and a summary, in order to create a tripartite prospectus (see PRR 2.2.2/Art10(1) UK Prospectus Regulation); if a significant new factor, material mistake or inaccuracy relating to the original registration document has arisen/been noted since its publication, this would also be accompanied by a supplement to the registration document (see PRR 2.2.2/Art 10(1) UK Prospectus Regulation). Alternatively, the FCA has stated that an issuer may instead produce a full prospectus as a single document, which would effectively build on and expand the published registration document with any missing sections (such as the summary). In practice, because investors prefer to have a single document to refer to, issuers usually publish a full prospectus as a single document.

**‘Pathfinder’**

A document called a ‘**pathfinder**’ may be used by an issuer if they are making an institutional-only offer with no retail element. A ‘pathfinder’ is not a completely separate document, but a near-final draft of the (fixed price) prospectus prepared by the issuer. It will not yet have been approved as a prospectus by the FCA – as it will have gaps where the price and size of the issue should be, it will not be capable of approval in this form. However, it should have cleared all of the comments made by the FCA during its review process.

This draft document is used for marketing purposes with institutional investors instead of an approved price-range prospectus. It must comply with the prospectus regime, the rules on advertisements and the financial promotion regime (see later elements) but it is not an approved prospectus.

The issuer will then publish an approved fixed-price prospectus (containing the final agreed price) on the date that the ‘Documents to be provided 2 business days in advance’ ‘‘are submitted to the FCA, in compliance with the timings set by PRR 3.2.1.

One of the main advantages of a pathfinder is that it reduces the risk of the final price falling outside a published price-range and thereby triggering withdrawal rights for investors.

However, only limited distribution of a pathfinder is permitted, as a pathfinder may only be provided to qualified investors (as defined in Art 2(e) UK Prospectus Regulation). Wider distribution (e.g. to retail investors) could potentially breach the requirements of s 85(1) FSMA and PRR 1.2.1/Art 3(1) UK Prospectus Regulation, which provide that an approved prospectus will need to be published before an offer of transferable securities is made to the public in the UK. Distribution is also limited to institutional investors and other sophisticated investors because of the restrictions on the use of financial promotions under s 21 FSMA.

**Approval of prospectus**

The FCA must approve a prospectus (or a registration document) before it can be published (PRR 3.1.10/Art 20(1) UK Prospectus Regulation – and see also PRR 3.1.11, which applies the relevant provisions to any registration document that is being issued separately).

**Publication of prospectus**

Once the prospectus has been approved by the FCA, it must be published in accordance with PRR 3.2/Art 21 UK Prospectus Regulation. There are different time periods set out in PRR 3.2.1/Art 21(1) UK Prospectus Regulation but, in practice, a price-range prospectus would be published on Launch (to allow six working days before the end of any retail offer – see below), whereas a fixed-price prospectus would be published when the ‘Documents to be provided 2 business days in advance’ are submitted to the FCA with the application for admission.

(The publication requirement is not applicable for a pathfinder because it is not an approved prospectus.)

The prospectus must be made available to the public (PRR 3.2.2 - PRR 3.2.3/Arts 21(2)-(11) UK Prospectus Regulation). The FCA is also required to upload the prospectus to the National Storage Mechanism (‘NSM’) (PRR 3.2.5/Art 21(5) UK Prospectus Regulation), which it will do after 6 p.m. on the working day following the day the prospectus is approved (PRR 3.2.6).

The next two pages explain the differing positions of initial public offers and other offers.

**Initial public offer - PRR 3.2.1/Art 21(1) UK Prospectus Regulation**

Where there is an initial public (retail) offer of shares not already admitted to trading, the prospectus must be made available to the public before the offer is made, in order to satisfy the requirements of both PRR 1.2.1/Art 3(1) UK Prospectus Regulation, and of s85(1) FSMA (which makes non-compliance a criminal offence).

In addition, publication must also be at least six working days before the end of the offer, under PRR 3.2.1/Art 21(1) UK Prospectus Regulation. In this specific context, an initial public offer is one made to the public at large (ie a retail offer and not a placing). The practical effect of this is that a retail offer must be open for at least six working days from the date the prospectus is made available to the public before it can be closed.

**b) Other offers - PRR 3.2.2**

Any other offer, including an IPO with an institutional placing, and all secondary share issues that require a prospectus will fall within the remit of the first paragraph of PRR 3.2.1/Art 21(1) UK Prospectus Regulation, which states that the prospectus must be made available to the public (i.e. must be published) ‘at a reasonable time in advance of, and at the latest at the beginning of, the offer… or the admission to trading of the securities involved.’ This conforms with the requirements of PRR 1.2.2/Art 3(1) UK Prospectus Regulation, which requires that a prospectus should be published before securities are admitted to trading on a regulated market such as the Official List.

However, under the provisions of s 85(2) FSMA, a prospectus required because of an admission to a regulated market must in fact be published before the request for admission is made: ie in practice, two business days before the date on which the listing hearing occurs – and an approved prospectus is also specified as one of the ‘Documents to be provided 2 business days in advance’ ‘‘forming part of this application. This is therefore generally the date on which a fixed-price prospectus is approved and published.

**Timing of submission of draft prospectus/supporting documents to the FCA**

As part of the process of approving the prospectus (and also the registration document), the other documents referred to in PRR 3.1.1/Art 42(2) UK PR Regulation must also be submitted to the FCA. Note also the requirement in PRR 3.1.1/Art 42(1) UK PR Regulation, that all drafts of the prospectus/registration document must be submitted in searchable electronic format via electronic means.

PRR 3.1.6(2)(a) provides that these documents must be submitted at least 10 working days before the intended approval date of the prospectus. However, in the case of a new applicant - that is an applicant that does not have transferable securities admitted to trading and has not previously made an offer - the documents must be submitted at least 20 working days before the intended approval date of the prospectus (or registration document, as applicable) (PRR 3.1.6(2)(b)). This time limit also applies separately to the submission of the standalone registration document (see PRR 3.1.11, which applies the relevant provisions to any registration document that is being issued separately) – and as the registration document is the earliest document to be published during the IPO process, it is standard practice to submit both the draft prospectus and the draft registration document to the FCA together (so taking account of the latest submission date relevant to the registration document).

Following a first submission of the prospectus (or the registration document), PRR 3.1.2/Arts 20(2) and (3) UK Prospectus Regulation provides that the FCA is required to respond to the issuer within 20 working days, either to approve the document or to state what changes or pieces of supplementary information are required in order to progress the approval. The time limit for response to any subsequent submission of an amended document (together with any required information) then reduces to a period of 10 working days from the fresh submission.

However, the FCA also has its own internal targets on how quickly it will respond, which are faster than those required under the PRRs. The FCA aims to provide comments on the first drafts within 10 clear working days of submission and subsequent drafts within 5 clear working days (where they relate to a new applicant for admission) or 5 clear working days/3 clear working days respectively (where they relate to a further issue of shares by an issuer already admitted to listing) (https://www.fca.org.uk/markets/ukla/submit-prospectus-circular).

The final version of the draft prospectus (or registration document) must be submitted to the FCA before midday on the day on which the approval is required to be granted (PRR 3.1.6(3)).

**‘‘Documents to be provided 2 business days in advance**

These documents must be submitted to the FCA, in final form, no later than midday at least 2 business days before the FCA hears the company’s application for admission to listing. The required ‘‘documents are set out in UKLR 20.4.2. They include:

* The completed application form for listing
* The prospectus that has been approved by the FCA
* Written confirmation of the number of shares to be allotted

**Documents to be provided on the day of the admission hearing**

Where the company is applying for a listing of its shares for the first time (which will be the case on an IPO), the company’s sponsor must ensure that a completed Shareholder Statement is submitted to the FCA by 9.00 am on the day the FCA is to consider the application for admission (UKLR 20.4.4(1)). Essentially this confirms that at least 10% of the company's shares will be in public hands.​

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**Roadshows**

You will also see a reference in the timetable to roadshows. Roadshows involve the directors of the company presenting key information about the company to institutional investors. Roadshows are particularly important in a placing as they help to secure interest in the shares from potential placees such as institutional investors. The financial promotions regime (s 21 FSMA) and PRR 3.3 (Art 22 UK Prospectus Regulation and Arts 13-16 UK Prospectus RTS Regulation) on advertisements need to be considered in relation to roadshows.

**Summary**

* The most important document needed to obtain a listing is the prospectus. It is also used to market the issue to investors.
* A prospectus can be a single document, or it can be formed of a registration document, securities note and summary.
* The FCA must approve a prospectus before it can be published.
* In cases of an institutional-only offer with no retail element, a ‘pathfinder’ may be used for marketing purposes ahead of an FCA-approved prospectus.
* There are further documents that must be provided in advance of, and on the day of, the admission hearing.