PRR 5.3 Persons responsible for a prospectus

Equity shares

PRR 5.3.2R21/07/2019

(1) This rule applies to a prospectus relating to:

(a) equity shares;

(b) warrants or options to subscribe for equity shares, that are issued by the issuer of the equity shares; and

(c) other transferable securities that have similar characteristics to transferable securities referred to in paragraphs (a) or (b).

(2) Each of the following persons are responsible for the prospectus:

(a) the issuer of the transferable securities;

(b) if the issuer is a body corporate:

(i) each person who is a director of that body corporate when the prospectus is published;

(ii) each person who has authorised themselves to be named, and is named, in the prospectus as a director or as having agreed to become a director of that body corporate either immediately or at a future time; and

(iii) each person who is a senior executive of any external management company of the issuer;

(c) each person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus;

(d) in relation to an offer:

(i) the offeror, if this is not the issuer; and

(ii) if the offeror is a body corporate and is not the issuer, each person who is a director of the body corporate when the prospectus is published;

(e) in relation to a request for the admission to trading of transferable securities:

(i) the person requesting admission, if this is not the issuer; and

(ii) if the person requesting admission is a body corporate and is not the issuer, each person who is a director of the body corporate when the prospectus is published; and

(f) each person not falling within any of the previous paragraphs who has authorised the contents of the prospectus.

PRR 5.3.3R21/07/2019

In PRR 5.3.2R(2)(b)(iii), external management company means in relation to an issuer that is a company which is not a collective investment undertaking, a person who is appointed by the issuer (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by officers of the issuer and to make recommendations in relation to strategic matters.

PRR 5.3.4G21/07/2019

In considering whether the functions the person performs would ordinarily be performed by officers of the issuer, the FCA will consider, among other things:

(1) the nature of the board of the issuer to which the person provides services, and whether the board has the capability to act itself on strategic matters in the absence of that person’s services;

(2) whether the appointment relates to a one-off transaction or is a longer-term relationship; and

(3) the proportion of the functions ordinarily performed by officers of the issuer that is covered by the arrangement.

All other securities

PRR 5.3.5R21/07/2019

(1) This rule applies to a prospectus relating to transferable securities other than those to which PRR 5.3.2R applies.

(2) Each of the following persons are responsible for the prospectus:

(a) the issuer of the transferable securities;

(b) each person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus;

(c) in relation to an offer, the offeror of the transferable securities, if this is not the issuer;

(d) in relation to a request for an admission to trading of transferable securities, the person requesting admission, if this is not the issuer;

(e) if there is a guarantor for the issue, the guarantor in relation to information in the prospectus that relates to the guarantor and the guarantee; and

(f) each person not falling within any of the previous paragraphs who has authorised the contents of the prospectus.

Issuer not responsible if it has not authorised offer or admission to trading

PRR 5.3.6R21/07/2019

A person is not responsible for a prospectus under PRR 5.3.2R(2)(a) or (b) or PRR 5.3.5R(2)(a) if the issuer has not made or authorised the offer or the request for admission to trading in relation to which the prospectus was published.

Publication without director’s consent

PRR 5.3.7R21/07/2019

A person is not responsible for a prospectus under PRR 5.3.2R(2)(b)(i) if it is published without their knowledge or consent and on becoming aware of its publication they, as soon as practicable, gives reasonable public notice that it was published without their knowledge or consent.

Offeror not responsible in certain circumstances

PRR 5.3.8R21/07/2019

A person is not responsible for a prospectus under PRR 5.3.2R(2)(d) or PRR 5.3.5R(2)(c) if:

(1) the issuer is responsible for the prospectus in accordance with the rules in this section;

(2) the prospectus was drawn up primarily by the issuer, or by one or more persons acting on behalf of the issuer; and

(3) the offeror is making the offer in association with the issuer.

Person may accept responsibility for, or authorise, part of contents

PRR 5.3.9R21/07/2019

A person who accepts responsibility for a prospectus under PRR 5.3.2R(2)(c) or PRR 5.3.5R(2)(b) or authorises the contents of a prospectus under PRR 5.3.2R(2)(f) or PRR 5.3.5R(2)(f), may state that they do so only in relation to specified parts of the prospectus, or only in specified respects, and in that case the person is responsible under those paragraphs:

(1) only to the extent specified; and

(2) only if the material in question is included in (or substantially in) the form and context to which the person has agreed.

Advice in professional capacity

PRR 5.3.10R21/07/2019

Nothing in the rules in this section is to be construed as making a person responsible for any prospectus by reason only of the person giving advice about its contents in a professional capacity.

PRR 3.4 Supplementary prospectus

Supplementary prospectus

PRR 3.4.1UK01/01/2021

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.

PRR 3.4.2UK01/01/2021

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.