

PS12/9

Financial Services Authority and HM Treasury

UK implementation of Amending Directive 2010/73/EU

Simplifying the EU Prospectus and
Transparency Directives



HM TREASURY



Financial Services Authority

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This Policy Statement reports on the main issues arising from Consultation Paper 11/28 *UK implementation of Amending Directive 2010/73/EU* and publishes a draft statutory instrument and FSA near-final rules.

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Copies of this Policy Statement are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

CESR	Committee of European Securities Regulators
DTR	Disclosure and Transparency Rules
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union
FSA	the Financial Services Authority
FSMA	the Financial Services and Markets Act 2000
LR	Listing Rules
MiFID	Markets in Financial Instruments Directive
SMEs	small and medium sized enterprises
PR	Prospectus Rules

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Overview

Introduction

- 1.1 In this joint Policy Statement, HM Treasury and the FSA summarise the responses received and the policy decisions made in relation to Consultation Paper: CP11/28, *UK implementation of Amending Directive 2010/73/EU*. The FSA also presents its near-final rules. We are grateful for all the responses we have received during the course of the three-month consultation period.

Background

- 1.2 On 24 November 2010, the European Parliament and Council adopted the Amending Directive 2010/73/EU which revised the Prospectus Directive (2003/71/EC) and Transparency Directive (2004/109/EC). The Amending Directive was published in the Official Journal of the European Union on 11 December 2010 and came into force on 31 December 2010. **Member States have until 1 July 2012 to implement the Amending Directive into national legislation.**
- 1.3 In CP11/28 HM Treasury and the FSA set out the way in which we intend to take forward the implementation of the Amending Directive in the UK. Responsibility for this is shared between HM Treasury, which has the power to make changes to the Financial Services and Markets Act 2000 (FSMA), and the FSA, under its Prospectus Rules, Listing Rules and Disclosure and Transparency Rules.

Responses received

- 1.4 We received seven responses to CP11/28.

Changes to FSMA and FSA rules

- 1.5 In Chapter 2, we explain the changes that HM Treasury is making to FSMA, and why we have set these out as a draft statutory instrument in Appendix 1.
- 1.6 Chapter 3 explains the changes that the FSA is making to FSA rules, and why these appear in this Policy Statement as near-final rules. It also explains how the reproduction of extracts of changes to the European Commission's Prospectus Regulation¹ will be made to the FSA's Prospectus Rules.

Next steps

- 1.7 HM Treasury will make and lay before Parliament the statutory instrument to make the changes to FSMA. A draft of the statutory instrument appears in Appendix 1.
- 1.8 The FSA will make the rules set out in Appendix 2 to come into effect on 1 July 2012, contingent on HM Treasury making its statutory instrument and any consequential changes that may be needed to FSA rules.
- 1.9 The FSA will, for the convenience of the reader of FSA rules, reproduce in its Prospectus Rules relevant extracts of changes that the Commission is making to its Prospectus Regulation.

Who should read this Policy Statement?

Consumers

- 1.10 This Policy Statement will be of interest to consumers and investors – directly, or indirectly through institutions – as the Amending Directive raises issues concerned with the protection of investors.

Industry participants

- 1.11 This will be of direct interest to industry participants as the policy decisions addressed in Chapters 2 and 3 aim to simplify and clarify the prospectus regime and align it with other directives.

¹ Commission Regulation No 809/2004

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FSMA implementation: summary of responses

- 2.1 This chapter reports on the consultation responses received on those parts of the Amending Directive which will be implemented through changes to FSMA. The draft statutory instrument appears in Appendix 1, and has been prepared in close consultation with the FSA.
- 2.2 We have sought to publish this Policy Statement ahead of the implementation date of 1 July 2012 to allow the market to see the planned changes to FSMA.
- 2.3 HM Treasury provided the rationale for its legislative changes to FSMA (our draft statutory instrument) in our joint Consultation Paper CP11/28. We are not able to present the final version of HM Treasury's statutory instrument with this Policy Statement as the draft is still going through the Government's scrutiny and approval procedures. So although we do not expect further changes, we cannot rule that possibility out.
- 2.4 HM Treasury is fully aware of the need to lay the statutory instrument in Parliament so it is in place before the Amending Directive's implementation deadline of 1 July 2012.
- 2.5 Following the consultation, HM Treasury is making several changes to our final impact assessment which is submitted as part of the Government's scrutiny and approval procedures.
- 2.6 Similarly, following the consultation, and discussions with Parliamentary Counsel, HM Treasury is making several changes to the original draft statutory instrument.
- 2.7 The key changes are:
- certain changes to the order of the provisions;
 - clarification that the consent of either the issuer, or other person responsible for drawing up a prospectus (but not both), is required on a subsequent placement through an intermediary;
 - an adjustment to the definition of 'Qualified Investor' – the Directive requires that this concept ties in fully with MiFID, including taking account of any opt-downs; and

- clarifications of the content of the prospectus summary, and the definition of ‘key information’.

Responses to CP11/28

2.8 In CP11/28, HM Treasury asked:

Q1: How significant are the various threshold increases for industry? Which of these will be most used by the UK market, and are any not relevant to UK practice?

Q2: Of the stricter thresholds introduced, what effect and what costs (if any) will be imposed on the UK market?

2.9 We received no responses to these questions.

2.10 The third of HM Treasury’s questions asked:

Q3: Do you believe the consent of the issuer, individual responsible for drawing up the prospectus (if not the issuer), or both of the above, should be sought for subsequent resales of securities through intermediaries?

2.11 Two respondents felt that both parties in question should obtain consent. Two other respondents disagreed; one suggesting that only the consent of the issuer should be sought (on cost grounds) and the other, that the consent of an issuer who is not obligated to draw up the prospectus should not be obtained, as it would otherwise be disproportionate.

Our response

Retail Cascades are the subject of ESMA technical advice to the European Commission of 29 February 2012. (ESMA/2012/137). In view of these responses, and the objective of reducing burdens, we have taken the view that the consent of either the issuer, or other person responsible for drawing up a prospectus (but not both), is required on a subsequent placement through an intermediary.

2.12 HM Treasury asked:

Q4: Will investor protection be increased in the prospectus regime through comparability and the creation of 'key information' for summaries?

2.13 Two respondents agreed that investor protection would be increased as a result of comparability and key information for summaries. A third stated that key information is helpful for investor protection but it should be expected that prospective investors or their advisers were already asking for such information before investing. The potential duplication between ESMA's recommendations for prospectus summaries and the proposals for KIID (key investor information document) in PRIPs (Packaged retail Investment Product) were also highlighted.

2.14 One respondent partially agreed and expressed concern that the five sections in question were not future proofed sufficiently for key information which might be included in future prospectuses and the associated summary, and argued for an additional section marked 'other information'.

2.15 One respondent did not believe that there was evidence to show that investor protection will be increased because summaries do not change actual risks attaching to securities.

Our response

HM Treasury has considered these responses in the light of our final impact assessment.

In regard to the alignment of PRIPs KIID and prospectus summaries under the Prospectus Directive, ESMA has stated the PRIPs KIID work is 'still at the Level 1 drafting stage', and that 'ESMA has undertaken this work on a standalone basis. The Commission will need to consider how best prospectus summaries and PRIPs KIID might be aligned and what role the Commission wish ESMA to play in that work.'²

2.16 The fifth HM Treasury question asked:

Q5: Has summary liability altered significantly through the changes to the prospectus regime?

2.17 We received four responses to this question. Two respondents said they did not think that summary liability had altered significantly. However, another two did think that summary liability had altered significantly, given that liability was not previously attached to the summary unless the summary was misleading, but now liability will attach where key information is not met as part of the prospectus.

² ESMA Technical Advice to the Commission, (ESMA/2011/323), paras 208 and 210.

Our response

HM Treasury has considered these responses in the light of our final impact assessment.

2.18 The sixth HM Treasury question asked:

Q6: Do the changes regarding supplements in the prospectus regime codify existing market practice, or will they have a more significant effect on issuers and investors?

2.19 Two respondents said they thought that changes to supplements do codify existing market practice. One respondent said that they felt it ‘largely codified’ market practice which differentiates between final terms and the supplement. The same respondent also welcomed the clarifications on the timing for producing a supplementary prospectus and the parameters for exercising the right to withdraw from an investment.

Our response

HM Treasury has considered these responses in the light of our final impact assessment, specifically whether the Prospectus Directive amendments represent a significant deviation from existing market practice.

2.20 The seventh HM Treasury Question was:

Q7: What data protection legislation is relevant to take into account when applying the duties on investment firms set out in the Prospectus Directive?

2.21 We received no responses to this question.

2.22 HM Treasury also asked:

Q8: How will issuers be affected by the alignment of the Prospectus Directive with other EU legislation?

2.23 Three respondents said that the alignment of the Prospectus Directive with other EU legislation, in particular the alignment of the definition of ‘qualified investor’ with the MiFID classification of ‘professional investor’ would be of benefit to issuers.

2.24 One respondent suggested that the consultation proposal to align the Prospectus Directive definition of qualified investor with the definition of ‘professional client’ under MiFID goes

too far, in that the UK consultation proposal would effectively incorporate into the Prospectus Directive the MiFID provisions that allow professional clients to opt out of professional status. They argue that the MiFID ‘opt in/out’ concept works well in the context of advice and sales, but does not work well in the context of public offers under the Prospectus Directive, because in an issue involving several arrangers or managers, an investor may have opted out of professional status with some but not others. When the offer is made public, it would be unclear whether the investor was within the qualified investor exemption. The respondent also notes that there may be confusion if an investor decides to opt out of professional status at a later stage of the transaction, and also outlines other reasons that investors may wish to receive notifications of offers.

Our response

Taking account of the European Council and Parliament’s intention to align the definition of a qualified investor with the professional client classifications in MiFID, together with the range of views expressed and the approach of other Member States, we have concluded that the definition of qualified investor should closely follow the MiFID classification approach, including taking account of any opt-up or opt-down by a client.

2.25 HM Treasury asked:

Q9: How significant are the changes being made to the prospectus regime, and in what areas?

2.26 We received mixed responses to this question. One respondent said the changes being made to the prospectus regime are likely to have a significant impact, particularly on the offering of retail structured products. They acknowledged that the ongoing work of ESMA meant that only initial views could be formed.

2.27 One respondent commented that the changes were relatively restrained, but that they were significant for small companies seeking well-informed, creative retail investors. They said that the proposals to notify ESMA and (separately) issuers when a prospectus is approved represent a significant amendment.

2.28 Another respondent focused on the proportionate disclosure regime for SMEs and small caps. The respondent said that they believed ESMA had not fully carried out its mandate to provide technical advice on this issue, particularly on reducing cost burdens to SMEs in terms of actual reduced requirements and scope of application of the proportionate disclosure regime. They said that the proportionate disclosure regime itself offered the greatest scope for cost savings, but that expanded summary requirements may offset this saving to some extent.

Our response

HM Treasury has considered the comments on the proportionate disclosure regime as part of its final impact assessment, in which it assesses the costs and benefits of the proportionate disclosure regime.

2.29 HM Treasury asked:

Q10: Is the time and £0.4m familiarisation cost estimate accurate? Are there further costs incurred on UK business and what scale – for example, non-wage costs, or costs faced by non-issuers in familiarising themselves with the new regime?

2.30 We received two responses to this question. Both respondents felt that we had underestimated the time required for familiarisation, and that it was difficult to provide an accurate estimate.

Our response

HM Treasury has subsequently followed up with respondents to better inform our estimates on familiarisation costs as part of our final impact assessment. Our final cost estimates have been revised accordingly.

2.31 HM Treasury asked:

Q11: Do you consider the cost-saving for business of a proportionate disclosure regime to be in the region of the Commission's estimate? What level of cost saving will issuers experience?

2.32 We received two responses to this question. One respondent agreed with the Commission's estimates, another commented that while any cost saving is welcome, cost savings depend on factors such as the size of company and the number of offers.

Our response

HM Treasury based its original cost saving estimates in our impact assessment on the figures presented in the European Commission's impact assessment. In the light of the Commission's final Level 2 specifications for the proportionate disclosure regime, and consultation responses, HM Treasury has amended its cost saving estimates accordingly.

2.33 HM Treasury asked:

Q12: Do you agree with the overall costs and benefits outlined in this consultation paper and the impact assessment? Are there further costs and benefits and on what scale?

2.34 We received two responses to this question. One agreed with the overall costs and benefits, and another referred to their answer to question 10.

Our response

Please see HM Treasury's response to the previous question.

2.35 HM Treasury asked:

Q13: How helpful is the greater legal clarity being given to issuers? Will this reduce the costs or make equity finance more attractive, or do the changes simply codify current market interpretation of the Directive?

2.36 A respondent commented that the changes largely codified market practice. Another remarked that the greater legal clarity was helpful.

2.37 Another respondent said that legal clarity was helpful in keeping costs down, but it is doubtful that the cost of transactions are the key driver when raising equity finance.

Our response

HM Treasury has considered these responses as part of its final impact assessment on the Prospectus Directive.

2.38 HM Treasury asked:

Q14: Has investor protection been altered or strengthened through changes to the Directive?

2.39 One respondent commented that they considered that investor protection will be strengthened by the Amending Directive. In particular by upping the exemption threshold from €50k to €100k, and through the addition of key information.

- 2.40 Two respondents agreed with HM Treasury's assessment that there would be slight or largely incremental changes to investor protection, and that it will not materially change.

Our response

HM Treasury has considered these responses as part of its final impact assessment on the Prospectus Directive.

- 2.41 HM Treasury asked:

Q15: On balance, will investors and issuers benefit from the changes to the regime?

- 2.42 Two respondents said that, on balance, issuers and investors would benefit, with one saying they would like to be sure that additional investor protection measures would not come at a high financial time/cost.

- 2.43 One respondent said that the compliance cost and burden on issuers from the ESMA proposals are likely to increase considerably. In particular they singled out the requirement to produce a separate issue specific summary.

Our response

HM Treasury has considered these responses as part of its final impact assessment on the Prospectus Directive.

- 2.44 HM Treasury asked:

Q16: The Government's objective is to copy out the EU legislation. Do you have any comments on the way the Amending Directive has been implemented in the draft regulations, taking into account the existing implementation of the Prospectus Directive in 2005?

- 2.45 Two respondents said there has not always been a 'copy out' approach in the proposed provisions, and that while it would not make sense to do an exact copy out, the purposive language in the directive is better than the absolute requirements in the draft FSMA provisions. In particular, they highlighted the wording around summary language and key information.

- 2.46 Another respondent agreed with the Government's approach, saying it helps achieve consistency across member states.

Our response

HM Treasury has considered the responses concerning our approach to copy out and has amended the statutory instrument accordingly.

2.47 HM Treasury asked:

Q17: Do you have any other comments on the changes to the prospectus regime?

2.48 One respondent said that they would welcome clarification on how the UK intends to implement the grandfathering regime under the Amending Directive.

Our response

On 30 March 2012, the European Commission clarified this issue when it published its draft delegated Regulation which states that the new arrangements for base prospectuses '*... shall not apply to the approval of a supplement to a prospectus or base prospectus where the prospectus or base prospectus was approved before 1 July 2012*'.

2.49 One respondent identified an issue with withdrawal rights, relating to the wording 'before the delivery of securities', in the meaning of the draft statutory instrument.

Our response

HM Treasury has considered this, but – as stated – the objective has been to copy out the EU legislation.

3

FSA rules implementation: summary of responses

Responses to CP11/28

- 3.1 This chapter reports on the responses we received on those parts of the Amending Directive which will be implemented through changes to the FSA's rules. The changes relate to: Glossary of definitions; Prospectus Rules; Disclosure and Transparency Rules; and Listing Rules. The near final FSA rules appear in Appendix 2 and have been settled in close consultation with HM Treasury.
- 3.2 The first of the FSA's two questions in CP11/28 was:
- Q18: Do you have any comments on our proposals relating to implementation of the amendments to the Prospectus Directive?*
- 3.3 A respondent commented on the proposed new rule PR 1.2.2R(5)(c)(i). This provides an exemption from publishing a prospectus for companies that are established outside the EU and which have transferable securities admitted to trading on certain third country markets. The rule derives from Article 4(1) of the amended Prospectus Directive.
- 3.4 Under the proposed new rule PR 1.2.2R(5)(c)(i), the exemption from publishing a prospectus requires that '*a document is made available containing adequate information, including the number and nature of the transferable securities;...*'. The respondent points out that this requirement for '*adequate information*' differs from related exemptions in PR 1.2.2R(5)(a) and (b) where the word '*adequate*' is not included in relation to information to be in such documents.

- 3.5 The respondent refers to section III.3 of the ESMA update of the CESR recommendations³ (Recommendations) which gives ‘Recommendations for documents containing information on the number and nature of the securities and the reasons for and details of the offer, mentioned in Art. 4 of the Prospectus Directive’. The respondent suggests that ESMA should be asked to clarify that the Recommendations set out that the ‘information’ that is required for the existing exemptions should also cover the requirement for ‘adequate information’.

Our response

We are keeping the drafting of PR 1.2.2R(5)(c)(i) unchanged as it follows the wording used in the Article 4(1) of the Amended Prospectus Directive. However, we have asked ESMA to look at this point in its work, which falls under the Commission’s mandate of January 2011⁴ at section 3.4 (*Equivalence of third-country financial markets (Article 4(1))*).

In addition, ESMA has stated that the work in section 3.4 of the mandate has been postponed due to the ongoing reviews of the Transparency Directive, Market Abuse Directive and MiFID⁵.

- 3.6 In CP11/28 the FSA also asked:

Q19: Do you agree with our transitional provisions for changes to the DTRs as set out in paragraph 3.23?

- 3.7 No comments were raised on the transitional provisions for the DTRs. However a respondent commented on the Amending Directive deleting Article 10 of the Prospectus Directive which dealt with annual information updates.
- 3.8 They pointed out that DTR 1.1.1(4)R currently states that DTR 3 applies to a non-EEA state issuer which is required to file, with the FSA, an annual information update in relation to shares in line with Article 10 of the Prospectus Directive. As this article is being deleted the respondent suggested that DTR 1.1.1(4)R be amended to refer instead to a non-EEA issuer with the UK as its home Member State. Without this change the deletion of the annual information update might suggest that DTR 1.1.1(4)R is no longer relevant and that DTR 3 does not apply to non-EEA issuers.

3 ESMA/2011/81; 23 March 2011

4 The Commission’s: Formal request to ESMA for technical advice on possible delegated acts concerning the amended prospectus directive (2003/71/EC); Ref Ares(2011)56961 – 19/01/11.

5 ESMA/2012/137; Final Report, ESMA’s technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU; 29 February 2012; page 5 and 6.

Our response

We welcome the observation that deleting Article 10 of the Prospectus Directive will affect DTR 1.1.1(4)R. So we have amended DTR 1.1.1(4)R to refer to non-EEA state issuers with the UK as their home Member State.

- 3.9** In addition to the changes described above in this Chapter 3, the FSA has made consequential changes to reflect the changes that HM Treasury is making to FSMA. In particular we are:
- Amending the Glossary of definitions in respect of the changes being made to the terms ‘*key information*’ and to ‘*qualified investor*’.
 - Amending PR 1.2 to reflect the anticipated change in the statutory instrument to the FSMA definition of ‘*qualified investor*’, which appears at section 86(7) FSMA.

Changes to the Commission’s Prospectus Regulation

- 3.10** The Amending Directive requires the European Commission to make delegated acts concerning the Prospectus Directive. The Commission issued its formal mandate for this work to ESMA on 19 January 2011. The mandate required ESMA to provide the Commission with technical advice on possible delegated acts. ESMA undertook this work in a phased approach. Following public consultation ESMA published two sets of technical advice:
- 3.11** On 4 October 2011 it published ESMA/2011/323 which dealt with:
- i) Format of the final terms to the base prospectus (Article 5(5) Prospectus Directive);
 - ii) Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5) Prospectus Directive); and
 - iii) Proportionate disclosure regime (Article 7 Prospectus Directive).
- 3.12** On 29 February 2012 it published ESMA/2012/137 which dealt with:
- i) The consent to use a prospectus in a retail cascade (Article 7 Prospectus Directive); and
 - ii) Review of the provisions of the Prospectus Regulation (Articles 5 and & 7 Prospectus Directive).
- 3.13** With the benefit of ESMA’s advice, the Commission are adopting delegated acts to amend the Commission’s Prospectus Regulation.⁶ The delegated acts in relation to: (1) the format of the final terms to the base prospectus; and (2) the format of the summary of the

⁶ Commission Regulation No 809/2004

prospectus and detailed content and specific form of the key information to be included in the summary, have to be adopted by the Commission by 1 July 2012.

- 3.14** After the delegated acts have been published in the EU Official Journal they will be directly applicable EU law. The FSA will then reproduce relevant extracts in the Prospectus Rules sourcebook for the convenience of the reader.

HM Treasury making its statutory instrument

- 3.15** We have sought to publish this Policy Statement ahead of the implementation date of 1 July so as to allow the market to see the planned changes to the FSA rules.
- 3.16** Appendix 1 sets out HM Treasury's draft statutory instrument for the benefit of the reader. This is yet to be made and laid before Parliament, but we do not anticipate extensive changes to the draft statutory instrument. As changes to FSMA relevant to the FSA rules have not yet been made, we are not in a position to publish our final rules. However, the FSA Board has approved the rules as near final and it is our expectation that these will be ratified after the statutory instrument is made. If changes are required these will be published in the Handbook Notice. In either case, the rules will come into effect on 1 July 2012.⁷
- 3.17** In the FSA near-final rules we have included extracts from FSMA for the convenience of the reader where appropriate, in keeping with the current format of FSA rules. These include changes from the draft statutory instrument. Although extensive changes to the draft statutory instrument are not expected, it is, of course possible that the statutory instrument will be modified in some form. If the final statutory instrument differs from the text set out in Appendix 1 the FSA will make any necessary changes to make the final rules.
- 3.18** It is not possible to give a date when the statutory instrument will be made, but HM Treasury and the FSA are conscious that it must be made in time for implementation on 1 July 2012.

⁷ Transitional provisions are included for the approval of prospectuses and related documents submitted to the FSA prior to 1 July 2012.

Annex 1

List of non-confidential respondents

The City of London Law Society

The Institute of Chartered Accountants in England and Wales

International Capital Market Association

The Investor Relations Society

The Law Society of England and Wales

Lloyds Banking Group plc

The Quoted Companies Alliance

Appendix 1

Draft statutory instrument

2012 No.

FINANCIAL SERVICES AND MARKETS

The Prospectus Regulations 2012

Made - - - - *******
Laid before Parliament *******
Coming into force - - *1st July 2012*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to—

- (a) matters relating to the listing of securities on a stock exchange and information concerning listed securities; and
- (b) measures relating to prospectuses on offers of transferable securities to the public.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations:

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Prospectus Regulations 2012 and come into force on 1st July 2012.
- (2) In these Regulations, “the 2000 Act” means the Financial Services and Markets Act 2000(c).

Amendments to exemptions

- 2.—(1) In section 86(1) of the 2000 Act(d) (exempt offers to the public)—
 - (a) in paragraphs (c) and (d), for “50,000 euros” substitute “100,000 euros”;
 - (b) omit the “or” following paragraph (d);
 - (c) in paragraph (e), after “being offered” insert “in the EEA States”; and
 - (d) insert after paragraph (e)—
 - “; or
 - (f) the offer falls within subsection (1A).”

(a) S.I. 1992/1315.
(b) 1972 c.68; section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p.572).
(c) 2000 c.8.
(d) Section 86 was substituted by S.I. 2005/1433 and amended by S.I. 2011/1668.

(2) In section 86 of the 2000 Act, after subsection (1) insert—

“(1A) An offer (“the current offer”) falls within this subsection if the transferable securities are being sold or placed through a financial intermediary where—

- (a) the transferable securities have previously been the subject of one or more offers to the public;
- (b) in respect of one or more of those previous offers any of paragraphs (a) to (e) of subsection (1) applied;
- (c) a prospectus is available for the securities which has been approved by the competent authority no earlier than 12 months before the date the current offer is made; and
- (d) the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.”.

(3) In section 87A of the 2000 Act^(a) (criteria for approval of prospectus by competent authority), after subsection (2) insert—

“(2A) If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.”.

(4) In paragraph 8(2) of Schedule 11A to the 2000 Act^(b) (transferable securities), for paragraph (a) substitute—

“(a) that the total consideration for the transferable securities being offered in the EEA States is less than 75,000,000 euros (or an equivalent amount); and”.

(5) In paragraph 9(1) of Schedule 11A to the 2000 Act (transferable securities), for “the total consideration of the offer in the European Union” substitute “the total consideration for the transferable securities being offered in the EEA States”.

New definition of qualified investor

3.—(1) Omit section 84(3) of the 2000 Act^(c) (matters to be dealt with by prospectus rules).

(2) In section 86 of the 2000 Act (exempt offers to the public)—

- (a) in subsection (2)(a), for “Article 2.1(e)(i) of the prospectus directive” substitute “point (1) of Section I of Annex II to the markets in financial instruments directive”;
- (b) for subsection (7) substitute—

“(7) “Qualified investor”, in relation to an offer of transferable securities, means—

- (a) a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;

(a) Section 87A was substituted by S.I. 2005/1433.

(b) Schedule 11A was inserted by S.I. 2005/1433 and amended by S.I. 2006/3221, S.I. 2011/99 and S.I. 2011/1668. There are other amendments not relevant to these Regulations.

(c) Section 84 was inserted by S.I. 2005/1433.

- (c) a person who is an eligible counterparty in accordance with Article 24 of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive; or
 - (d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with Article 71(6) of that directive.”.
- (c) after subsection (7) insert—
- “(8) In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.
- (9) Investment firms and credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.
- (10) In subsections (8) and (9), “credit institution” means—
- (a) a credit institution authorised under the banking consolidation directive; or
 - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.”.
- (3) Omit section 87R of the 2000 Act(a) (register of investors).

Summaries and final terms

4. In section 87A of the 2000 Act (criteria for approval of prospectus by competent authority)—
- (a) for subsection (6) substitute—

“(6) The summary must convey concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities which are the subject of the prospectus and, when read with the rest of the prospectus, must be an aid to investors considering whether to invest in the securities.”; and
 - (b) in subsection (7) for the words from “the applicant must” to the end substitute—

“the applicant must, as soon as that element is finalised—

 - (a) inform, in writing, the competent authority and any competent authority of any EEA State which the applicant has requested be supplied with a certificate of approval under section 87I; and
 - (b) make that information available, in writing, to prospective investors.”.
 - (c) after subsection (7) insert—

“(7A) The document containing the final offer price or the amount of transferable securities to be offered to the public may only contain information that relates to the securities note and must not be used to supplement the prospectus.”.
 - (d) after subsection (8) insert—

“(9) “the key information” means the information which is essential to enable investors to understand the transferable securities to which the prospectus relates and to decide whether to consider the offer further.

(10) The key information must include —

 - (a) the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;

(a) Section 87R was inserted by S.I. 2005/1433.

- (b) the essential characteristics of, and risks associated with, investment in the transferable securities, including any rights attaching to the securities;
- (c) the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;
- (d) details of the admission to trading; and
- (e) the reasons for the offer and proposed use of the proceeds.”.

Supplementary prospectus

5.—(1) In section 87G of the 2000 Act(a) (supplementary prospectus) after subsection (3) insert—

“(3A) But where the prospectus relates both to an offer of transferable securities to the public and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period begins when the prospectus is approved and ends with the later of—

- (a) the closure of the offer to the public to which the prospectus relates, or
- (b) the time when trading in those securities on a regulated markets begins.”.

(2) In section 87Q of the 2000 Act(b) (right of investor to withdraw)—

(a) for subsection (4) substitute—

“(4) A person (“P”) may withdraw P’s acceptance of an offer of transferable securities to the public before the specified time where the conditions in subsection (5) are satisfied.”.

(b) after subsection (4) insert—

“(5) The conditions are that—

- (a) a supplementary prospectus has been published;
- (b) prior to the publication, P agreed to buy or subscribe for transferable securities to which the offer relates; and
- (c) the significant new factor, material mistake or inaccuracy referred to in section 87G(1) which caused the supplementary prospectus to be published arose before delivery of the securities.

(6) The specified time is—

- (a) the end of the second working day after the day on which the supplementary prospectus was published; or
- (b) such later time as may be specified in the supplementary prospectus.”.

Provision of information

6. In section 87I of the 2000 Act(c) (provision of information to host Member State)—

(a) in subsection (1A), for “to ESMA” substitute “to —

- (a) the person who made the request under this section; and
- (b) ESMA”; and

(b) in subsection (5)(a), for “the date of the request” substitute “the date the request is received”.

(a) Section 87G was inserted by S.I. 2005/1433.

(b) Section 87Q was inserted by S.I. 2005/1433.

(c) Section 87I was inserted by S.I. 2005/1433; subsection (1A) was inserted by S.I. 2012/916

Civil liability attaching to the summary

7. In section 90 of the 2000 Act(a) (compensation for statements in listing particulars or prospectus) for subsection (12) substitute—

“(12) A person is not to be subject to civil liability solely on the basis of a summary in a prospectus unless the summary, when read with the rest of the prospectus—

- (a) is misleading, inaccurate or inconsistent; or
- (b) does not provide key information (as defined in section 87A(9) and (10)),

and in this subsection a summary includes any translation of it.”.

Definitions

8. In section 103 of the 2000 Act(b) (interpretation of Part 6)—

- (a) in the definition of “the prospectus directive” after “admitted to trading” insert “as amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010”;
- (b) in the definition of “the transparency obligations directive” after “a regulated market” insert “as amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010”.

Review

9.—(1) The Treasury must from time to time—

- (a) carry out a review of the Prospectus Regulations 2011(c) and these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how those parts of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading that are amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 (which is implemented by means of the instruments mentioned in paragraph (1)(a) and rules made by the Financial Services Authority under the 2000 Act) are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by the instruments mentioned in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published not later than 30th June 2017.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Name
Name

(a) Section 90 was inserted by S.I. 2005/1433 and amended by the Companies Act 2006 (c.46), section 1272, Schedule 15, Part 1, paragraphs 1, 4, 5.
 (b) Section 103 was substituted by S.I. 2005/1433 and amended by the Companies Act 2006, sections 1265 and 1272, Schedule 15, Part 1, paragraphs 1 and 11.
 (c) S.I. 2011/1668.

Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions of the Financial Services and Markets Act 2000 (c. 8) ("the Act") to implement in part Directive 2010/73/EU (OJ No L 327, 11.12.2010, p.1) of the European Parliament and of the Council. That Directive amends Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading ("the Prospectus Directive") and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Regulation 2 makes amendments to exemptions to the obligation to produce a prospectus. Regulation 3 substitutes a definition of qualified investor based on concepts derived from Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1). Regulation 4 amends the purpose of prospectus summaries and the obligation to notify competent authorities of final terms of an offer of securities, and make these available to investors.

Regulation 5 amends the last date before which a supplementary prospectus must be prepared if a significant new factor, material mistake or inaccuracy arises, and the last date on which an investor may exercise their right to withdraw their acceptance of an offer in this situation. Regulation 6 makes minor amendments to the obligation to provide information to the competent authority of a host EEA State. Regulation 7 extends the scope of section 90 of the Act to provide that the omission of key information from a summary may also attract civil liability and regulation 8 inserts up-to-date definitions into the Act.

Regulation 9 provides for a review of the United Kingdom's implementation of the amendments made to the Prospectus Directive at five yearly intervals.

An Impact Assessment of the effect of this instrument on the costs of business and the voluntary sector has been prepared and is available on HM Treasury's website (www.hm-treasury.gov.uk) or from the Securities and Markets Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument at legislation.gov.uk.

Appendix 2

Near-final rules

PROSPECTUS DIRECTIVE AMENDING DIRECTIVE 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 79 (Listing particulars and other documents);
- (3) section 84 (Matters which may be dealt with by prospectus rules);
- (4) section 85 (Prohibition of dealing etc in transferable securities without approved prospectus);
- (5) section 87 (Election to have prospectus);
- (6) section 87A (Criteria for approval of prospectus by competent authority);
- (7) section 87G (Supplementary prospectus);
- (8) section 89A (Transparency rules);
- (9) section 89B (Provision of voteholder information);
- (10) section 89C (Provision of information by issuers of transferable securities);
- (11) section 89D (Notification of voting rights held by issuer);
- (12) section 89F (Transparency rules: interpretation etc);
- (13) section 89G (Transparency rules: other supplementary provisions);
- (14) section 96 (Obligations of issuers of listed securities);
- (15) section 96C (Suspension of trading);
- (16) section 99 (Fees);
- (17) section 101 (Part 6 rules: general provisions);
- (18) section 138 (General rule-making power);
- (19) section 156 (General supplementary powers);
- (20) section 157(1) (Guidance); and
- (21) schedule 7 (The Authority as Competent Authority for Part VI).

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 1 July 2012.

Amendments to the Handbook

D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Prospectus Rules sourcebook (PR)	Annex C
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex D

Notes

- E. In Annex D 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 Amending Directive (Amendment) Instrument 2012.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

<u>annual information update</u>	(in PR) the document referred to in PR 5.2.1R .
<u>Home State</u>	... (9) (in DTR) (a) in the case of an <i>issuer</i> of debt securities <u>securities</u> the denomination per unit of which is less than EUR 1 000 or an issuer <u>issuer</u> of <i>shares</i> : (i) where the <i>issuer</i> is incorporated in the <i>EEA</i> , the <i>EEA State</i> in which it has its registered office; (ii) where the <i>issuer</i> is incorporated in a third country, the <i>EEA State</i> in which it is required to file the annual information with the competent authority in accordance with Article 10 referred to in point (iii) of article 2(1)(m) of Directive 2003/71/EC.
<u>key information</u>	(in PR) (as defined in section 87A(9) and (10) of the <i>Act</i>) the <u>information which is essential to enable investors to understand the transferable securities to which the prospectus relates and decide whether to consider the offer further. The key information must include:</u> (a) <u>the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;</u> (b) <u>the essential characteristics of, and risks associated with, investment in the transferable securities, including any rights attaching to the securities;</u> (c) <u>the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;</u> (d) <u>details of the admission to trading; and</u>

- (e) the reasons for the offer and proposed use of the proceeds.
- qualified investor* (in *PR*) (as defined in section 86(7) of the *Act*) in relation to an offer of transferable securities:
- (a) ~~any entity within the meaning of Article 2(1)(e)(i), (ii) or (iii) of the *prospectus directive*~~ a person or entity described in points (1) to (4) of Section I of Annex II to *MiFID*, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with *MiFID*; or
- (b) ~~an investor registered on the register maintained by the competent authority under section 87R of the *Act*~~ a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to *MiFID* and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to *MiFID*; or
- (c) ~~an investor authorised by an *EEA State* other than the *United Kingdom* to be considered as a qualified investor for the purposes of the *prospectus directive*~~ a person who is an eligible counterparty in accordance with article 24 of *MiFID* and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of *MiFID*; or
- (d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with article 71(6) of *MiFID*.
- register* (1) ~~(in *PR*) the register of qualified investors maintained by the *FSA* under section 87R of the *Act*. [deleted]~~
- ...

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

4.2 Contents and format of listing particulars

...

Minimum information to be included

- 4.2.4 R The following minimum information from the *PD Regulation* must be included in *listing particulars*:
- (1) for an issue of bonds including bonds convertible into the *issuer's shares* or exchangeable into a third party *issuer's shares* or derivative *securities*, irrespective of the denomination of the issue, the minimum information required by the *schedules* applicable to debt and derivative ~~securities~~ *securities* with a denomination per unit of at least ~~50,000~~ 100,000 euros;
 - ...
 - (3) for an issue of *asset-backed securities*, irrespective of the denomination per unit of the issue, the minimum information required by the *schedules* and *building blocks* applicable to *asset-backed securities* with a denomination per unit of at least ~~50,000~~ 100,000 euros;
 - (4) for an issue of *certificates representing shares*, irrespective of the denomination per unit of the issue, the *schedule* applicable to depositary receipts over shares with a denomination per unit of at least ~~50,000~~ 100,000 euros (except that item 13.2 (relating to profit forecasts) in Annex 10 is not to apply);
 - ...

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

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

1.2 Requirement for a prospectus and exemptions

Requirement for a prospectus

- 1.2.1 U Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the
K *FSA* will be required:

...			
86	Exempt offers to the public		
	(1)	A person does not contravene section 85(1) if –	
		(a)	the offer is made to or directed at qualified investors only;
		(b)	the offer is made to or directed at fewer than 150 persons, other than qualified investors, per EEA State;
		(c)	the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 <u>100,000</u> euros (or an equivalent amount);
		(d)	the transferable securities being offered are denominated in amounts of at least 50,000 <u>100,000</u> euros (or equivalent amounts); or
		(e)	the total consideration for the transferable securities being offered <u>in the EEA states</u> cannot exceed 100,000 euros (or an equivalent amount); or
		(f)	<u>the offer falls within subsection (1A).</u>
	(1A)	<u>An offer (“the current offer”) falls within this subsection where transferable securities are resold or placed through a financial intermediary where:</u>	
		(a)	<u>the transferable securities have previously been the subject of one or more offers to the public;</u>
		(b)	<u>in respect of one or more of those previous offers, any of paragraphs (a) to (e) of subsection (1) applied;</u>

		(c)	<u>a prospectus is available for the securities which has been approved by a competent authority no earlier than 12 months before the date the current offer is made; and</u>
		(d)	<u>the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.</u>
	(2)	Where –	
		(a)	<u>a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive point (1) of Section 1 of Annex II to the markets in financial instruments directive to act as his agent; and</u>
		(b)	<u>the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client’s behalf without reference to the client,</u>
		<u>an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.</u>	
	...		
	(7)	<u>“Qualified investor” in relation to an offer of transferable securities, means -</u>	
		(a)	<u>an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;</u>
		(b)	<u>an investor registered on the register maintained by the [FSA] under section 87R a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;</u>
		(c)	<u>an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the</u>

		<u>purposes of the prospectus directive a person who is recognised as an eligible counterparty in accordance with article 24 of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of that directive;</u>
	(d)	<u>a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with article 71(6) of that directive.</u>
(8)		<u>In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.</u>
(9)		<u>Investment firms and credit institutions must communicate their classification of their clients as being or not being qualified investors on request to an issuer, subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.</u>
(10)		<u>In subsections (8) and (9) –</u> <u>“credit institution” means -</u> <u>(a) a credit institution authorised under the banking consolidation directive; or</u> <u>(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.</u>

Exempt securities - offers of securities to the public

- 1.2.2 R In accordance with section 85(5)(b) of the *Act*, section 85(1) of the *Act* does not apply to *offers* of the following types of *transferable securities*:
- ...
- (3) *transferable securities* offered, allotted or to be allotted in connection with a merger or division, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of *EU* legislation;
- (4) ~~shares offered, allotted or to be allotted free of charge~~ dividends paid out to existing shareholders, ~~and dividends paid out~~ in the form of shares of the same class as the shares in respect of which the dividends are paid, if a document is made available containing information on the number and nature of the shares and the reasons

for and details of the ~~offer~~ offer;

- (5) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer ~~which has transferable securities already admitted to trading~~ or by an affiliated undertaking, ~~if a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer. if:~~
- (a) the company has its head office or registered office in the EU, provided a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer; or
 - (b) the company is established outside the EU and has transferable securities that are admitted to trading, provided a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer; or
 - (c) the company is established outside the EU and has transferable securities admitted to trading on a third country market provided that:
 - (i) a document is made available containing adequate information, including the number and nature of the transferable securities; and
 - (ii) the reasons for and details of the offer in a language customary in the sphere of international finance; and
 - (iii) the European Commission has adopted an equivalence decision for the purpose of article 4(1) of the PD regarding the third country market concerned.

[**Note:** article 4(1) PD]

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*:
- ...
- (4) *transferable securities* offered, allotted or to be allotted in connection with a merger or a division, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of *EU* legislation;

...

...

2.1 General contents of prospectus

- 2.1.1 UK Sections 87A(2), (2A), (3) and (4) of the *Act* provide for the general contents of a *prospectus*:

(2)	The necessary information is the information necessary to enable investors to make an informed assessment of–	
	(a)	the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
	(b)	the rights attaching to the transferable securities.
<u>(2A)</u>	<u>If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.</u>	
(3)	The necessary information must be presented in a form which is comprehensible and easy to analyse.	
(4)	The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer <u>and any delegated acts adopted by the Commission under article 7(1) of the <i>prospectus directive</i>.</u>	

Summary

- 2.1.2 UK Sections 87A(5) and (6) of the *Act* set out the requirement for a *summary* to be included in a *prospectus*:

(5)	The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).
(6)	The summary must, briefly and in non-technical language convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates <u>convey concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities which are the subject of the prospectus and, when read with the rest of the prospectus, must be an aid to investors considering whether to invest in the securities.</u>

When a summary is not required

- 2.1.3 R In accordance with section 87A(5) of the *Act*, a *summary* is not required for a *prospectus* relating to *non-equity transferable securities* that have a denomination of at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount) if the *prospectus* relates to an *admission to trading*. [Note: article 5.2 PD]

Contents of summary

...

- 2.1.5 G ~~The *summary* should generally not exceed 2 500 words. [Note: recital 21 PD] [deleted]~~

...

- 2.1.7 R The *summary* must also contain a warning to the effect that:

...

- (4) civil liability attaches to those *persons* who are responsible for the *summary* including any translation of the *summary*, 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 consider an *offer* further as set out in section 90(12) of the *Act*.

[Note: ~~article~~ articles 5.2 and 6.2 PD]

2.2 Format of prospectus

...

- 2.2.5 R If PR 2.2.4R applies, the *securities note* must provide information that would normally be provided in the *registration document* ~~if where~~ there has been a material change or recent development which could affect an investor's assessment since the latest updated *registration document*, or any *supplementary prospectus*, was approved, unless such information is provided in a *supplementary prospectus*. The *securities note* and *summary* shall be subject to a separate approval. [Note: article 12.2 PD]

...

2.4 Incorporation by reference

Incorporation by reference

- 2.4.1 R (1) Information may be incorporated in the *prospectus* by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the *Home State* or filed with or notified to it in accordance with the *prospectus directive* or ~~titles IV and V of *CARD*~~ the *TD*. [**Note:** article 11.1 *PD*]
- 2.4.1 R (2) ~~In particular under paragraph (1), information may be incorporated by reference to information contained or referred to in an annual information update. [**Note:** article 11.1 *PD*] [deleted]~~
- 2.4.2 G Information under ~~titles IV and V of *CARD*~~ the *TD* that may be incorporated by reference includes, for example, ~~instruments of incorporation or statutes of a company~~, annual accounts and annual reports, interim management statements, equivalent information made available to markets in the United Kingdom, and half yearly reports, ~~listing particulars and supplementary listing particulars~~. [**Note:** for full details refer to these titles of *CARD*]
- 2.4.3 R Information incorporated by reference must be the ~~latest~~ most recent available to the *issuer*, *offeror* or *person* requesting admission. [**Note:** article 11.1 *PD*]

...

2.5 Omission of information

...

Omission of information from prospectus

- 2.5.1A UK Section 87A(2A) of the *Act* provides that information about certain guarantors may be omitted from a prospectus:

<u>87A</u>	<u>(2A)</u>	<u>If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.</u>
------------	-------------	--

...

3.2 Filing and publication of prospectus

...

- 3.2.4 R A *prospectus* is deemed to be made available to the public for the purposes of *PR* 3.2.1R to *PR* 3.2.3R when published either:

...

- (3) in ~~an~~ electronic form on the *issuer's* website ~~and~~ or, if applicable, on the website of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or

...

3.2.4A R A person requesting admission and drawing up a prospectus in accordance with PR 3.2.4R(1) or (2) must also publish their prospectus electronically in accordance with PR 3.2.4R(3).

[Note: article 14.2 PD]

...

3.4 Supplementary prospectus

3.4.1 UK Section 87G of the *Act* provides that:

...	
(3)	...
(3A)	<u>But where the prospectus relates both to an offer of transferable securities to the public and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period beings when the prospectus is approved and ends with the later of -</u>
	(a) <u>the closure of the offer to the public to which the prospectus relates; or</u>
	(b) <u>the time when trading in those securities on a regulated market begins.</u>
...	

...

4.1 Use of languages

Language

...

4.1.4 R If *admission to trading of non-equity transferable securities* whose denomination per unit amounts to at least ~~50,000~~ 100,000 euros (or an equivalent amount) is sought in the *United Kingdom* or in one or more other *EEA States*, the *prospectus* must be drawn up in either a language

accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer, offeror* or *person* requesting admission (as the case may be). [Note: article 19.4 PD]

...

5.1 Validity of prospectus

5.1.1 R A *prospectus* is valid for 12 months after its ~~publication~~ approval for an *offer* or an *admission to trading*, provided that the *prospectus* is updated by a *supplementary prospectus* (if required) under section 87G of the *Act*. [Note: article 9.1 PD]

...

5.1.4 R A registration document is valid for a period of up to 12 months after it is filed and approved, provided that it has been updated in accordance with *PR 2.2.5R* and *PR 3.4.2R*. [Note: article 9.4 PD]

Delete the whole of PR 5.2 (Annual information update). The deleted text is not shown.

Amend the following as shown.

5.3 Certificate of approval

5.3.1 UK Sections 87H and 87I of the *Act* provide:

...

Prospectus approved in another EEA State			
87I	...		
	(1A)	<u>If the competent authority supplies a certificate of approval to the competent authority of the specified EEA state, it must also supply a copy of that certificate to -</u>	
		(a)	<u>the person who made the request under this section; and</u>
		(b)	<u>ESMA.</u>
	...		
	(5)	The [FSA] must comply with a request under this section—	
		(a)	if the prospectus has been approved before the

			request is made, within 3 working days beginning with the date of the request <u>the date the request is received</u> ; or
		...	

Delete the whole of *PR* 5.4. The deleted text is not shown.

Amend the following as shown.

App 1.1 Relevant definitions

...											
<i>annual information update</i>	the document referred to in <i>PR</i> 5.2.1R										
...											
<i>CARD</i>	<i>Consolidated Admission and Reporting Directive</i>										
<i>company</i>	<u>any body corporate.</u>										
...											
<i>issuer</i>	...										
<u><i>key information</i></u>	<p>(in <i>PR</i>) (as defined in section 87A(9) and (10) of the <i>Act</i>) the information which is essential to enable investors to understand the <i>transferable securities</i> to which the <i>prospectus</i> relates and decide whether to consider the <i>offer</i> further. The <i>key information</i> must include:</p> <table border="1"> <tr> <td>(a)</td> <td><u>the essential characteristics of, and risks associated with, the <i>issuer</i> and any <i>guarantor</i>, including their assets, liabilities and financial positions;</u></td> </tr> <tr> <td>(b)</td> <td><u>the essential characteristics of, and risks associated with, investment in the <i>transferable securities</i>, including any rights attaching to the <i>securities</i>;</u></td> </tr> <tr> <td>(c)</td> <td><u>the general terms of the <i>offer</i>, including an estimate of the expenses charged to an investor by the <i>issuer</i> and the offeror, if not the <i>issuer</i>;</u></td> </tr> <tr> <td>(d)</td> <td><u>details of the <i>admission to trading</i>; and</u></td> </tr> <tr> <td>(e)</td> <td><u>the reasons for the <i>offer</i> and proposed use of the</u></td> </tr> </table>	(a)	<u>the essential characteristics of, and risks associated with, the <i>issuer</i> and any <i>guarantor</i>, including their assets, liabilities and financial positions;</u>	(b)	<u>the essential characteristics of, and risks associated with, investment in the <i>transferable securities</i>, including any rights attaching to the <i>securities</i>;</u>	(c)	<u>the general terms of the <i>offer</i>, including an estimate of the expenses charged to an investor by the <i>issuer</i> and the offeror, if not the <i>issuer</i>;</u>	(d)	<u>details of the <i>admission to trading</i>; and</u>	(e)	<u>the reasons for the <i>offer</i> and proposed use of the</u>
(a)	<u>the essential characteristics of, and risks associated with, the <i>issuer</i> and any <i>guarantor</i>, including their assets, liabilities and financial positions;</u>										
(b)	<u>the essential characteristics of, and risks associated with, investment in the <i>transferable securities</i>, including any rights attaching to the <i>securities</i>;</u>										
(c)	<u>the general terms of the <i>offer</i>, including an estimate of the expenses charged to an investor by the <i>issuer</i> and the offeror, if not the <i>issuer</i>;</u>										
(d)	<u>details of the <i>admission to trading</i>; and</u>										
(e)	<u>the reasons for the <i>offer</i> and proposed use of the</u>										

		<u>proceeds.</u>
<i>qualified investor</i>	(in <i>PR</i>) (as defined in section 86(7) of the <i>Act</i>) in relation to an offer of <i>transferable securities</i> :	
	(a)	<u>any entity within the meaning of Article 2(1)(e)(i), (ii) or (iii) of the <i>prospectus directive</i> a person or entity described in points (1) to (4) of Section I of Annex II to <i>MiFID</i>, other than a <i>person</i> who, before the making of the <i>offer</i>, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-<i>professional client</i> in accordance with <i>MiFID</i>; or</u>
	(b)	<u>an investor registered on the register maintained by the competent authority under section 87R of the <i>Act</i> a <i>person</i> who has made a request to one or more relevant firms to be treated as a <i>professional client</i> in accordance with Section II of Annex II to <i>MiFID</i> and has not subsequently, but before the making of the <i>offer</i>, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-<i>professional client</i> in accordance with the final paragraph of Section I of Annex II of <i>MiFID</i>; or</u>
	(c)	<u>an investor authorised by an <i>EEA State</i> other than the <i>United Kingdom</i> to be considered as a qualified investor for the purposes of the <i>prospectus directive</i> a <i>person</i> who is recognised as an <i>eligible counterparty</i> in accordance with article 24 of <i>MiFID</i> and has not, before the making of the <i>offer</i>, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-<i>professional client</i> in accordance with the final paragraph of Section I of Annex II of <i>MiFID</i>; or</u>
	(d)	<u>a <i>person</i> whom any relevant firm is authorised to continue to treat as a <i>professional client</i> in accordance with article 71(6) of <i>MiFID</i>.</u>
<i>register</i>	register of <i>qualified investors</i> maintained by the <i>FSA</i> under section 87R of the <i>Act</i> .	

Sch 4 Powers exercised

Sch 4.1 G

The following powers and related provisions in or under the *Act* have been

exercised by the <i>FSA</i> to make the <i>rules</i> in <i>PR</i> :	
	...
	Section 87R (Register of investors)
	...

Annex D

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

1.1.1 R The *disclosure rules* apply as follows:

...

- (4) *DTR 3 applies to a non-EEA state issuer which is required to file, with the FSA, annual information in relation to shares in accordance with Article 10 of the Prospectus Directive with the United Kingdom as its Home Member State.*

...

4.4 Exemptions

...

Debt issuers

4.4.2 R The *rules* on annual financial reports in *DTR 4.1* (including *DTR 4.1.7R(4)*), half-yearly financial reports (*DTR 4.2*) and interim management statements (*DTR 4.3*) do not apply to an *issuer* that issues exclusively *debt securities admitted to trading* the denomination per unit of which is at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount).

[**Note:** article 8(1)(b) of the *TD* and article 45(1) of the *Audit Directive*]

...

6.1 Information requirements for issuers of shares and debt securities

...

Information about meetings and payment of interest - debt security issuers

...

6.1.15 R If only holders of *debt securities* whose denomination per unit amounts to at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount) are to be invited to a meeting, the *issuer* may choose as a venue any *EEA State*, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that *EEA State*. [**Note:** article 18(3) of the *TD*]

...

6.2 Filing information and use of language

...

Language

...

6.2.8 R If *transferable securities* whose denomination per unit amounts to at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount) are *admitted to trading* in the *United Kingdom* or in one or more *EEA States*, *regulated information* must be disclosed to the public in either a language accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer* or of the *person* who, without the *issuer's* consent, has requested such admission.

[Note: article 20(6) of the *TD*]

TP 1 Disclosure and transparency rules

Transitional Provisions

(1)	(2) Material to which the Transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
19	<u>DTR 4.1, DTR 4.2 and DTR 4.3</u>	R	<u>The rules on annual financial reports (DTR 4.1), half-yearly financial reports (DTR 4.2) and interim management statements (DTR 4.3) do not apply to issuers of exclusively debt securities the denomination per unit of which is at</u>	<u>From 1 July 2012 for as long as the debt securities to which (19) applies are outstanding</u>	<u>1 July 2012</u>

			<p><u>least 50,000 euros or in the case of <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is at the date of the issue equivalent to at least 50,000 euros which have already been <i>admitted to trading on a regulated market in the EU</i> before 31 December 2010.</u></p> <p><u>[Note: article 8.1 TD]</u></p>		
<u>20</u>	<u>DTR 6.1.15</u>	<u>R</u>	<p><u>Where only holders of <i>debt securities</i> whose denomination per unit amount to at least 50,000 euros or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, are to be invited to a meeting, the <i>issuer</i> may choose as a venue any <i>EEA State</i>, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that <i>EEA State</i>, and only where those <i>debt securities</i> have already been admitted to trading</u></p>	<p><u>From 1 July 2012 for as long as the <i>debt securities</i> to which (20) applies are outstanding.</u></p>	<u>1 July 2012</u>

			<p><u>on a regulated market in the EU before 31 December 2010.</u></p> <p>[Note: article 18 <i>TD</i>]</p>		
<u>21</u>	<u>DTR 6.2.8</u>	<u>R</u>	<p>Where <i>debt securities</i> whose <u>denomination per unit amount to at least 50,000 euro, or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, and such <i>debt securities</i> are <u>admitted to trading in one or more EEA States, regulated information must be disclosed to the public in either a language accepted by the competent authorities of the <i>Home State</i> and <i>Host States</i> or in a language customary in the sphere of international finance, at the choice of the <i>issuer</i> or of the <i>person</i> who, without the <i>issuer's</i> consent, has requested such admission.</u></u></p> <p>[Note: article 20 <i>TD</i>]</p>	<p>From 1 July 2012 for as long as the <i>debt securities</i> to which (21) applies are outstanding.</p>	<p><u>1 July 2012</u></p>

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