

Consultation response

FCA CP 19/6: Changes to align the FCA Handbook with the EU Prospectus Regulation

28 March 2019

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the FCA's consultation paper published in January 2019 on aligning the FCA Handbook with the EU Prospectus Regulation.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

General comment

We note that the FCA's proposals in the consultation paper ([here](#)) cover the scenario where there is an implementation period following the UK's withdrawal from the EU as envisaged under the withdrawal agreement between the EU and the UK. It proposes a number of changes to ensure that the FCA's Prospectus Rules sourcebook is consistent with the new Prospectus Regulation EU 2017/1129 (Prospectus Regulation). We also note that in the event of no deal, the FCA intends to recast its proposals, based on the assumption that the Financial Services (Implementation of Legislation) Bill is enacted into UK law.

We would be pleased to meet the FCA to discuss any questions about this response.

Responses to the consultation questions

Q1. Do you agree with our plan to keep the structure of the new sourcebook as similar as possible to the current sourcebook, with reproduced key sections of the Regulation?

Yes. We agree with the FCA's proposal under which the FCA would replace its current PR sourcebook with a new Prospectus Regulation Rules Sourcebook (PRR Sourcebook). This will replicate key provisions of the Prospectus Regulation, other relevant EU legislation and domestic law and contain the rules required under the Prospectus Regulation. We agree that the structure of the new sourcebook should closely follow the format of the existing sourcebook but will have fewer rules and more text boxes with extracts of the relevant provisions. This is a logical structure and, as it is familiar to market participants, it is likely to minimise adaptive costs as market participants adapt to applying the new prospectus regime.

Q2. Do you agree with the new rules we have proposed to incorporate into the new sourcebook (excluding the rule regarding the submission of data to ESMA)?

Yes, it is helpful that the FCA intends to reference ESMA level 2 and 3 provisions and guidance in the PRR Sourcebook. It would be helpful also if it were to indicate where market participants may obtain copies of these source materials and also include a hyperlink to them.

Q3. Do you have any concerns about our potentially publishing a prospectus before an issuer has done so itself?

Yes. We acknowledge that the context is that Article 21 Prospectus Regulation does not require issuers to file an approved prospectus with the FCA (in contrast to the existing FCA PR 3.2.1R). However, as the

FCA has an obligation to publish all prospectuses that are approved (Article 21(5) Prospectus Regulation) the FCA has decided it will continue to publish all approved prospectuses on the NSM.

Our concern arises out of a timing mismatch between two provisions of the Prospectus Regulation. Article 21(5) requires publication when the prospectus has been approved. This provision implies a shorter timescale for publication than Article 21(1) which merely requires publication “a reasonable time in advance of the offer or admission”. Unless the FCA tells us otherwise, we tend to assume this discrepancy is unintentional yet it does give rise to the risk the FCA identifies that it may publish an approved prospectus before the issuer does so.

AFME members have two practical concerns:

- where a prospectus contains inside information (e.g. if it is for a rights issue or spin-off IPO), it will be important that the FCA does not publish the prospectus before the issuer has announced that inside information via an RNS and by publishing the prospectus itself, so that all investors are made aware of that inside information through the usual channels and at the same time. Were the FCA to publish the prospectus before announcement by the issuer, this could result in a disorderly market as many investors may not be aware of the inside information as a consequence of it having been published by the FCA rather than within an announcement by the issuer; and
- even where a prospectus does not contain inside information, it would be important for the issuer, underwriting banks and any sponsor under Chapter 8 of the FCA’s Listing Rules to understand the FCA’s proposed publication mechanism, including any logistics, for addressing the potential timing mismatch, so the issuer can align its arrangements with the FCA’s timing, including any associated RNS announcements (e.g. a ‘publication of a prospectus’ announcement for an IPO).

We would therefore ask that the FCA consider introducing a clear mechanism to determine the timing of publication of a prospectus by the FCA. Our preference is that, once comments are cleared, the FCA might agree in advance with any sponsor or the issuer when a prospectus will be formally “approved” e.g. by adding a line to the approval form stating the time and date requested for approval. We would be pleased to discuss this or alternative suggestions with the FCA.

On a related point, we also suggest that clarifying the interaction of the two provisions may be a suitable topic for ESMA Level 3 guidance.

Q4. Do you agree with the proposed rule to require issuers to submit the data detailed in Annex VII of the RTS to the FCA?

We note that competent authorities will be entitled to ask issuers to provide the data set out in the table in Annex VII of the Commission-adopted RTS (“Machine Readable data to be provided to ESMA”) ([here](#)) showing the data that competent authorities must provide to ESMA along with prospectuses to facilitate ESMA’s storing of the documents in a storage mechanism on its website. With respect to GDR issuance, our working assumption is that under Article 11 and 12 of the Commission Delegated Regulation ([here](#)) the RTS table in Annex VII will apply to the issuer of the shares underlying the GDR. This would be consistent with the approach to disclosure under Annex 5 and 13 of the Commission Delegated Regulation on content of prospectuses (Annexes - [here](#)), which apply most of the disclosure requirements to the issuer of the underlying securities.

It would be helpful if the FCA would confirm it agrees with this interpretation.

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