

Equity capital markets

Proportionate disclosure checklist

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Further information

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This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

**THE UK PROPORTIONATE DISCLOSURE REGIME
UNDER THE REVISED PROSPECTUS DIRECTIVE**

In September 2009, the European Commission published proposals to amend the Prospectus Directive with the aim of simplifying its application and increasing efficiency. The proposals culminated in the publication of Directive 2010/73/EU (the "Amending Directive") which amended the Prospectus Directive and came into force on 31 December 2010. The Amending Directive was implemented in the UK with effect from 1 July 2012. One of the key changes was the creation of a new proportionate disclosure regime ("PDR").

Under the PDR, certain information that would otherwise need to be included in a prospectus may be omitted by certain issuers or in relation to certain offers. The creation of the PDR was driven by the recognition that the previous disclosure requirements of the Prospectus Regulation could be disproportionately burdensome for some issuers, and the costs involved in accessing the financial markets could have a deterrent effect. The PDR aims to ease these financial and administrative burdens whilst ensuring a harmonised approach to reduced disclosures.

The PDR applies to:

- all offerings made by small and medium-sized enterprises ("SMEs") and issuers with reduced market capitalisation ("Small Caps");

- credit institutions issuing non-equity securities; and
- rights issues made by companies with shares admitted to trading on a regulated market or on certain multilateral trading facilities.

"Rights Issues" are defined and encompass the following types of offers which are used in the UK market:

- a rights issue (whether or not it complies with statutory pre-emption rights);
- a compensatory open offer where shareholders receive the proceeds of the excess of the sale price over the subscription price in relation to shares that they do not subscribe for; and
- an open offer which complies with statutory pre-emption rights.

Open offers which disapply statutory pre-emption rights and which are not compensatory will not qualify for the PDR.

The PDR is voluntary for eligible issuers such that they may choose either to rely on the PDR or on the full disclosure regime.

The PDR came into force on 1 July 2012.

To make it easier to see what's in and what's out for a prospectus produced under the new regime, the following checklist shows, at a glance, what can now be omitted for:

- an SME or Small Cap producing a prospectus; and
- a "Rights Issue" prospectus.

DISCLOSURE REQUIREMENTS FOR THE SHARE REGISTRATION DOCUMENT

Rule	Annex I	Annex XXIII (<i>Rights Issue</i> ¹)	Annex XXV (<i>SMEs</i> ² and companies with reduced market capitalisation ³)
Applicability	All share issues unless issuer is eligible and chooses the appropriate proportionate disclosure regime	Issuers undertaking a rights issue and listed on a regulated market or with shares admitted to trading on a multi-lateral trading facility if the MTF's rules contain provisions relating to disclosure, market abuse and market manipulation	All SME and reduced market capitalisation issuers making an offer to the public or seeking admission to trading on a regulated market
1. Persons Responsible	✓	✓	✓
2. Statutory Auditors	✓	✓	✓
3. Selected Financial Information	✓	✗	✓
4. Risk Factors	✓	✓	✓
5. Information about the Issuer	✓	✓	✓*
		5.1 (History and development of the issuer) not included other than the legal and commercial name of the issuer 5.2.1 only requires disclosure of principal investments since the end of the period covered by the latest published audited financial statements	*NOTE: Item 5.2.3 now also requires disclosure of anticipated sources of funds to fulfil committed principal future investments
6. Business Overview	✓	✓*	✓*
		*NOTE: The requirements are amended to only require a brief description but also include disclosure of significant changes and extraordinary factors since the end of the period covered by the latest published audited accounts. Breakdown of total revenues by category of activity and geographic market is no longer required.	*NOTE: The requirements are amended to only require a brief description but also include disclosure of any significant changes since the latest two published audited financial statements. Breakdown of total revenues by category of activity and geographic market is no longer required.

¹ "Rights Issues" are defined in Article 2 paragraph 13 of Regulation (EC) No. 809/2004 (as amended by Regulation (EU) No 486/2012). A rights issue is any issue of statutory pre-emption rights which allow for the subscription of new shares and are offered only to existing shareholders. Pre-emptive issues where statutory pre-emption rights have been disapplied are also included provided that, amongst other criteria, the issue provides that the rights to subscribe are negotiable and transferable, or if not, that shares arising from the rights are sold at the end of the offer period for the benefit of shareholders who did not take up the rights (that is, rights issues and compensatory open offers would qualify under this limb).

² "SME"s are defined in Article 2 paragraph 1(f) of EU Directive 2003/7/EC. They are companies which meet at least two of the following three criteria (according to their last annual or consolidated accounts): an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 million and an annual net turnover not exceeding EUR 50 million.

³ "Companies with reduced market capitalisation" are defined in Article 2 paragraph 1(t) of Directive 2003/71/EC (as amended by Directive 2010/73/EU). They are companies listed on a regulated market that had an average market capitalisation of less than EUR 100 million on the basis of end-year quotes for the previous three calendar years.

DISCLOSURE REQUIREMENTS FOR THE SHARE REGISTRATION DOCUMENT			
Rule	Annex I	Annex XXIII (<i>Rights Issue</i> ¹)	Annex XXV (<i>SMEs</i> ² and companies with reduced market capitalisation ³)
7. Organizational Structure	✓	✓ Except for item 7.2 (List of significant subsidiaries)	✓* *NOTE: Item 7.2 only applies if it is not included in financial statements
8. Property, Plants and Equipment	✓	x	✓ ONLY item 8.2 (description of any environmental issues that may affect the issuer's utilization of tangible fixed assets)
9. Operating and Financial Review	✓	x	✓* *NOTE: only to be included if the annual reports for the periods covered by the historical financial information are not included in or annexed to the prospectus.
10. Capital Resources	✓	x	✓ Except for : 10.1 (information concerning the issuer's capital resources (both short and long term)); 10.3 (information on the borrowing requirements and funding structure of the issuer); and 10.5 (information regarding the anticipated sources of funds need to fulfil commitments referred to in items 5.2.3 and 8.1)
11. Research and Development, Patents and Licences	✓	x	✓
12. Trend information	✓	✓	✓
13. Profit Forecasts or Estimates	✓	✓	✓
14. Administrative, Management, Supervisory Bodies and Senior Management	✓	✓	✓
15. Remuneration and Benefits	✓	x* *NOTE: Except for issuers not listed on a regulated market who will still need to comply with this item	✓
16. Board Practices	✓	x* *NOTE: Except for issuers not listed on a regulated market who will still need to comply with this item	✓
17. Employees	✓	✓ Except for 17.1 (Number of employees)	✓

DISCLOSURE REQUIREMENTS FOR THE SHARE REGISTRATION DOCUMENT			
Rule	Annex I	Annex XXIII (<i>Rights Issue</i> ¹)	Annex XXV (<i>SMEs</i> ² and companies with reduced market capitalisation ³)
18. Major Shareholders	✓	✓	✓
19. Related Party Transactions	✓	✓*	✓*
		*NOTE: This item will be retained in full for non IFRS issuers. If IFRS applies to the issuer, it will only be required to disclose transactions since the period covered by its last published audited accounts.	*NOTE: This item will be retained in full for non IFRS issuers. If IFRS applies to the issuer, it will only be required to disclose transactions since the period covered by its last published audited accounts.
20. Financial Information concerning the Issuer's Assets and Liabilities, Financial Position and Profits and Losses	✓	✓*	✓*
		*NOTE: Although this item is being retained, the requirement for historical financial information will only be in respect of the last financial year (or such shorter period as the issuer has been in operation).	*NOTE: Although this item is being retained, the requirement for historical financial information and interim financial information is that: <ul style="list-style-type: none"> ➤ a statement that the last two years financial information (or such shorter period as the issuer has been in operation) and, if relevant, the quarterly or half yearly financial information which has been published can be obtained; and ➤ the audit report in respect of each year (or audit or review report in respect of interim financial information) must be included. If interim financial information has not been audited or reviewed, a statement must be made to this effect. <p>The last year of audited financial information may not be older than one of the following:</p> <ul style="list-style-type: none"> ➤ 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; and ➤ 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document. ESMA believes that the last year of audited financial information may not be older than 15 months from the date of the registration document in cases where the issuer <u>does not include</u> interim financial statements in the registration document.⁴

⁴ In May 2013, the European Securities and Markets Authority (ESMA) published its 19th updated version of "Questions and Answers on Prospectuses". In response to Q87, ESMA considers that if an issuer submits a prospectus to the competent authority and the audited financial information is older than 15 months (but up to 18 months), the competent authority could nevertheless approve the prospectus if the issuer includes audited interim statements in the registration document. Furthermore, ESMA believes that the interim financial period for interim financial statements should cover at least the first six months of the financial year.

DISCLOSURE REQUIREMENTS FOR THE SHARE REGISTRATION DOCUMENT			
Rule	Annex I	Annex XXIII (<i>Rights Issue</i> ¹)	Annex XXV (<i>SMEs</i> ² and companies with reduced market capitalisation ³)
			Item 20.6.2 (requirement for interim financial information) has been deleted.
21. Additional Information	✓	Except for: 21.1.3 (<i>The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer</i>); 21.1.7 (<i>A history of share capital, highlighting information about any changes, for the period covered by the historical financial information</i>); and 21.2 (<i>Memorandum and Articles of Association</i>)	✓
22. Material Contracts	✓	✓*	✓
		*NOTE: Although this item is being retained, the requirement to disclose material contracts is only in respect of the year preceding publication of the registration document.	
23. Third Party Information and Statement by Experts and Declarations of any Interest	✓	✓	✓
24. Documents on Display	✓	✓	✓
		Except for item 24 (c) (<i>Historical financial information for the two financial years preceding the publication of the registration document</i>)	
25. Information on Holdings	✓	x	✓

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