



European Securities and  
Markets Authority

# Questions and Answers

## on the Prospectus Regulation



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## 1. Purpose and status

1. The purpose of this document is to promote common, uniform and consistent supervisory approaches and practices in the day-to-day application of the Prospectus Regulation. It does this by providing responses to questions asked by the public, financial market participants, competent authorities and other stakeholders. The question and answer (Q&A) tool is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation. Further information on ESMA's Q&A process is available on our website.
2. ESMA intends to update this document on a regular basis and, for ease of reference, ESMA provides the date each question was first published as well as the date/s of amendment beside each question. A table of all questions in this document is provided in Section 3.
3. Additional questions on the Prospectus Regulation may be submitted to ESMA through the Q&A tool on our website. Please see the guidance available on our website before submitting your question.

## 2. Legislative references and abbreviations

### Legislative references

<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>1</sup>
<i>Prospectus Directive / PD</i>	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 and amending Directive 2001/34/EC <sup>2</sup>
<i>Prospectus Regulation / PR</i>	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC <sup>3</sup>

### Abbreviations

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84

<sup>2</sup> OJ L 345, 31.12.2003, p. 64

<sup>3</sup> OJ L 168, 30.6.2017, p. 12

<i>CP</i>	Consultation Paper
<i>CESR</i>	Committee of European Securities Regulators
<i>EC</i>	European Commission
<i>EEA</i>	European Economic Area
<i>EU</i>	European Union
<i>ESMA</i>	European Securities and Markets Authority
<i>RD</i>	Registration Document
<i>SMSG</i>	Securities and Markets Stakeholder Group
<i>URD</i>	Universal Registration Document

### 3. Summary table

4. This table summarises the Q&As set out in section 4 entitled ‘Questions and Answers’ by subject and topic. Furthermore, it sets out the provisions which the Q&As aim to clarify, the date the Q&As have been last updated and the number of the Q&As, e.g. 1.1, 1.2, 2.1, etc.

Subject	Q	Topic of the Question	Level 1 / Level 2 / Other provision	Last updated
Grandfathering/ Implementation of the Prospectus Regulation	1.1	Application of provisions on advertisements under the Prospectus Regulation to prospectuses approved under national laws implementing the Prospectus Directive.	Article 46(3) PR	27 March 2019
Grandfathering/ Implementation of the Prospectus Regulation	1.2	Use of Registration Document approved under national laws implementing the Prospectus Directive in a prospectus approved under the Prospectus Regulation.	Article 46(3) PR	27 March 2019
Grandfathering/ Implementation of the Prospectus Regulation	1.3	Passporting of a prospectus approved under national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation.	Article 46(3) PR	27 March 2019

Grandfathering/ Implementation of the Prospectus Regulation	1.4	Supplementing of a prospectus approved under national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation.	Article 46(3) PR	27 March 2019
Grandfathering/ Implementation of the Prospectus Regulation	1.5	Filing of final terms in relation to a base prospectus approved under national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation.	Article 46(3) PR	27 March 2019
Status of level 3 guidance following the transition from the PD to the PR.	2.1	Applicability of the Level 3 guidance relating to the Prospectus Directive after the entry into application of the Prospectus Regulation.	ESMA update of the CESR Recommendations (20 March 2013) ESMA/2013/319 & ESMA Q&As on prospectuses (29th updated version – January 2019) ESMA31-62-780.	27 March 2019
Updating information in an RD or URD	3.1	Updating information in a registration document before it is part of a prospectus.	Article 10(1) PR Article 26(5) PR	27 March 2019
Updating information in an RD or URD	3.2	Updating information in a universal registration document before it is part of a prospectus.	Article 9(7) PR Article 9(9) PR Article 9(10) PR Article 10(3) PR Article 26(2) PR	27 March 2019
Updating information in an RD or URD	3.3	Updating information in a registration document or a universal registration document after it is part of a prospectus.	Article 9(1) PR Article 10(1) PR Article 12 PR Article 23 PR Article 23(2) PR Article 23(5) PR Article 26(3) PR	27 March 2019

## 4. Questions and Answers

### Grandfathering/Implementation of the Prospectus Regulation

#### 1.1 Application of provisions on advertisements under the Prospectus Regulation to prospectuses approved under national laws implementing the Prospectus Directive

Updated: 27/03/2019

**Q1.1** If advertisements are published in relation to securities in a prospectus approved in accordance with the national laws implementing the Prospectus Directive, do the national laws implementing the Prospectus Directive apply or the rules relating to advertisements in the Prospectus Regulation?

**A1.1** *Advertisements do not fall within the scope of the grandfathering provisions in Article 46(3) of the Prospectus Regulation, because they do not form a part of a prospectus and the scope of the grandfathering provisions is limited to prospectuses approved in accordance with the national laws implementing the Prospectus Directive. This means that all advertisements published after the full entry into application of the Prospectus Regulation will need to comply with the Prospectus Regulation.*

*This means that if an advertisement is published in May 2019 before the entry into application of the Prospectus Regulation, the national rules implementing the Prospectus Directive will apply. However, where an advertisement is published in, for example, August 2019, the rules in the Prospectus Regulation will apply to it, even if it relates to securities that are subject to a prospectus that was approved pursuant to the national laws of a Member State implementing the Prospectus Directive.*

#### 1.2 Use of Registration Document approved under national laws implementing the Prospectus Directive in a prospectus approved under the Prospectus Regulation

Updated: 27/03/2019

**Q1.2** Can a Registration Document approved or filed in accordance with the national laws implementing the Prospectus Directive be used as a constituent part of a prospectus approved under the Prospectus Regulation?

**A1.2** *It is not possible to use a registration document approved or filed under the Prospectus Directive as a constituent part of a prospectus approved under the Prospectus Regulation. Although registration documents are approved or filed under the Prospectus Directive, they do not qualify as a prospectus without a securities note and summary. Article 46(3) of the Prospectus Regulation only applies to full prospectuses (i.e. a registration document, securities note and summary) approved or filed in accordance with the national laws implementing the Prospectus Directive.*

*Nevertheless, information from a registration document approved or filed in accordance with the national laws implementing the Prospectus Directive can be incorporated by reference into a prospectus that will be approved in accordance with the Prospectus Regulation pursuant to Article 19(1)(a). However, information included in a registration document that was approved or filed in accordance with the national laws of a Member State implementing the Prospectus Directive and that is incorporated by reference will still need to comply with the relevant disclosure requirements set out in the Prospectus Regulation. This may require including information in the prospectus, so that the disclosure requirements in the Prospectus Regulation are satisfied.<sup>4</sup> The person(s) responsible for the prospectus should take care to ensure that the comprehensibility of the prospectus is not endangered when updating the information in the registration document.*

*Additionally, it is not possible to supplement registration documents that were approved or filed in accordance with the national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation. This is a result of the fact that registration documents do not fall within the scope of Article 46(3) of the Prospectus Regulation, as previously explained in this Q&A. However, if a registration document is incorporated by reference into a prospectus that is approved under the Prospectus Regulation, then it is possible to supplement the entire prospectus, including the registration document information.*

### **1.3 Passporting of a prospectus approved under national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation**

**Updated: 27/03/2019**

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<sup>4</sup> For example, an issuer incorporates by reference an equity registration document approved or filed under the national laws implementing the Prospectus Directive into an equity prospectus to be approved under the Prospectus Regulation. As the Prospectus Regulation disclosure requirements for equity registration documents differ from those under the Prospectus Directive, the issuer may need to include information in the prospectus to satisfy the Prospectus Regulation disclosure requirements and to ensure that the information relating to the issuer is up-to-date.

**Q1.3** Is it possible to passport a prospectus approved in accordance with the national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation?

**A1.3** *It is possible to notify a prospectus approved under the national laws of a Member State implementing the Prospectus Directive to a competent authority in a host Member State after the entry into application of the Prospectus Regulation. However, this notification will need to be done pursuant to the national laws implementing the Prospectus Directive in the Member State of the competent authority that approved the prospectus, because Article 46(3) of the Prospectus Regulation states that prospectuses approved under national laws implementing the Prospectus Directive shall continue to be governed by those laws after the entry into application of the Prospectus Regulation.*

#### **1.4 Supplementing of a prospectus approved under national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation**

**Updated: 27/03/2019**

**Q1.4** Is the supplement regime under the Prospectus Regulation applicable when supplementing a prospectus approved in accordance with the national laws implementing the Prospectus Directive?

**A1.4** *Article 46(3) of the Prospectus Regulation states that prospectuses approved under national laws implementing the Prospectus Directive shall continue to be governed by those laws after the entry into application of the Prospectus Regulation. Accordingly, any prospectuses approved in accordance with the national laws of the issuer's home Member State implementing the Prospectus Directive will need to be supplemented in accordance with those national laws. This is because the supplement relates to the information included in the prospectus and the prospectus itself is governed by the national laws implementing the Prospectus Directive of the issuer's home Member State.*



## 1.5 Filing of final terms in relation to a base prospectus approved under national laws implementing the Prospectus Directive after the entry into application of the Prospectus Regulation

Updated: 27/03/2019

**Q1.5** When filing final terms in relation to a base prospectus approved under national laws implementing the Prospectus Directive, should the rules relating to the filing of final terms under the Prospectus Regulation be applied?

**A1.5** *The final terms relating to a base prospectus approved under the national law of a Member State implementing the Prospectus Directive must be filed pursuant to those same national laws. This means that the content of the final terms and the specific summary attached to those final terms must comply with the provisions of national law implementing the Prospectus Directive. This is because the final terms form part of a prospectus approved under the national laws implementing the Prospectus Directive and, therefore, fall within the scope of Article 46(3) of the Prospectus Regulation. This also means that the rules relating to the filing of final terms in the Prospectus Regulation should not be applied when filing final terms in relation to a base prospectus approved in accordance with national laws implementing the Prospectus Directive.*

## Status of level 3 guidance following the transition from the PD to PR

### 2.1 Applicability of the Level 3 guidance relating to the Prospectus Directive after the entry into application of the Prospectus Regulation

Updated: 27/03/2019

**Q2.1 To what extent do the ESMA Q&As relating to prospectuses and the ESMA update of the CESR Recommendations apply to prospectuses drawn up in accordance with the Prospectus Regulation?**

**A2.1** *ESMA Q&As relating to prospectuses<sup>5</sup> and the ESMA update of the CESR recommendations<sup>6</sup> should be applied to prospectuses drawn up under the Prospectus Regulation to the extent they are compatible with the Prospectus Regulation. The application of both documents can help to facilitate the review process and assist issuers when drawing up prospectuses.*

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<sup>5</sup> ESMA31-62-780 – Q&As on prospectuses (29<sup>th</sup> updated version – January 2019).

<sup>6</sup> ESMA/2013/319 – ESMA update of the CESR recommendations (20 March 2013).

## Updating information in an RD or URD

### 3.1 Updating information in a registration document before it is part of a prospectus

Updated: 27/03/2019

#### **Q3.1** How should the information in a registration document be updated before it is a constituent part of a prospectus?

**A3.1** *The information in a registration document is updated via a supplement pursuant to Article 10(1) of the Prospectus Regulation if it is not a constituent part of a prospectus. This supplement must be submitted for approval to the competent authority that approved the registration document.*

*Where the registration document was passported before the supplement was approved, the approved supplement must be passported to the same Member States as the registration document pursuant to Article 26(5) of the Prospectus Regulation.*

#### Withdrawal rights

*According to Article 10(1) of the Prospectus Regulation, the right to withdraw acceptances does not apply when a registration document is supplemented. This is a consequence of the fact that there is no offer of securities to the public if a registration document is not a constituent part of a prospectus.*

### 3.2 Updating information in a universal registration document before it is part of a prospectus

Updated: 27/03/2019

#### **Q3.2** How should information in a universal registration document be updated before it is a constituent part of a prospectus?

**A3.2** *According to Article 9(10) of the Prospectus Regulation, the information in a universal registration document can only be updated via an amendment, under Articles 9(7) and 9(9) of the Prospectus Regulation, in the period before the universal registration document forms a constituent part of a prospectus. This amendment is filed with the competent authority that*

*approved the universal registration document or where the universal registration document was filed. The filing of this amendment shall not require an approval by the competent authority until the URD becomes part of a prospectus or is passported.*

*Amendments to a universal registration document, which has been filed but not approved*

*Where an issuer has filed a universal registration document without prior approval and wishes that such universal registration document (and any amendments thereto) form part of a prospectus, Article 10(3) of the Prospectus Regulation states that the entire documentation (including any amendments) shall be subject to approval. This process ensures that the universal registration document and any amendments are approved before their use as a constituent part of a prospectus.*

*In addition, a filed universal registration document and any amendments thereto must be approved before they can be passported to a competent authority in another Member State.*

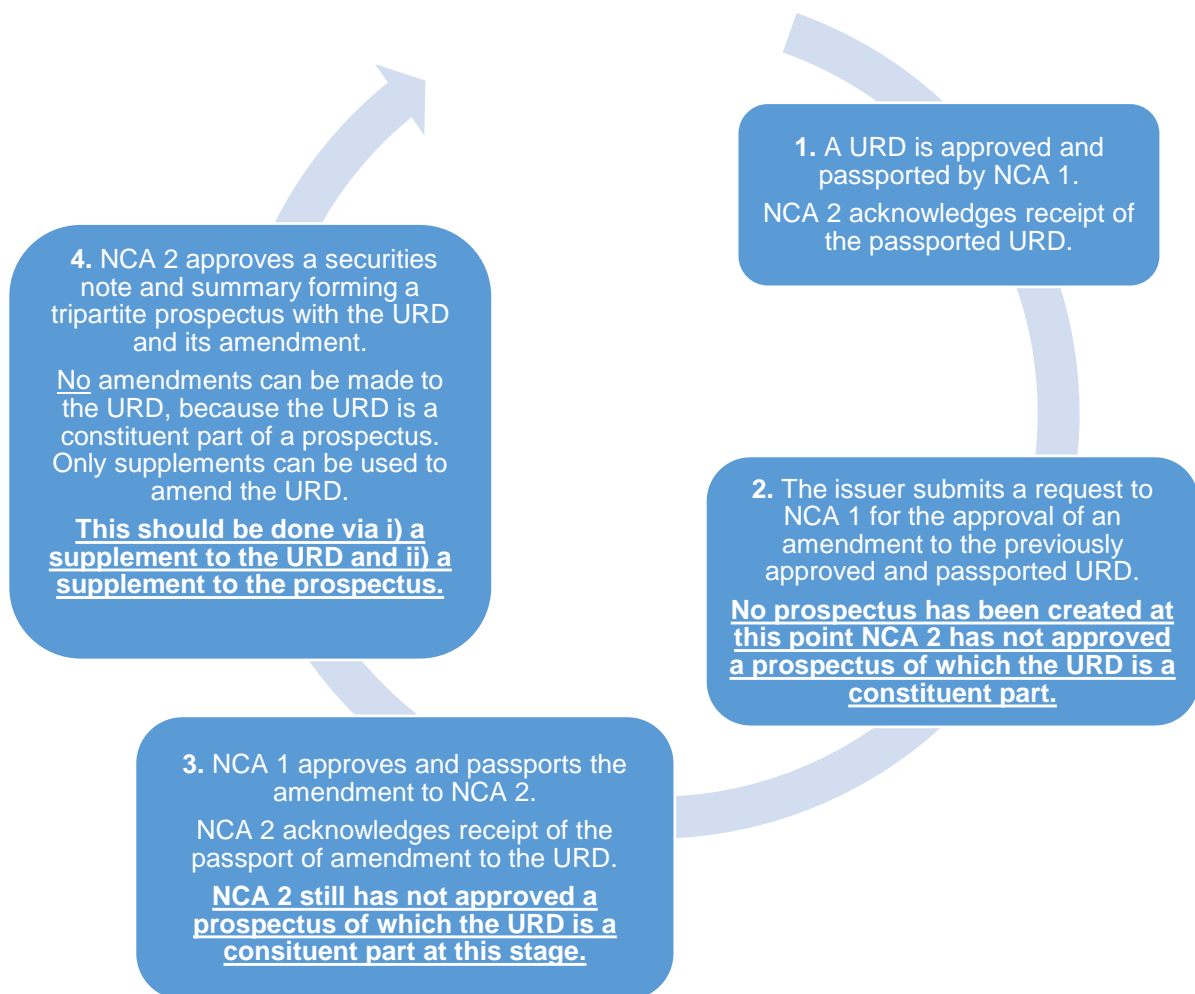
*Amendments to an approved universal registration document, which is not a constituent part of a prospectus*

*Where a universal registration document has already been approved, any amendments that were filed since the approval of the universal registration document will need to be approved before that universal registration document (and the amendments thereto) can be used as a constituent part of a prospectus. In addition, a universal registration document and any amendments thereto must be approved before they can be passported to a competent authority in another Member State.*

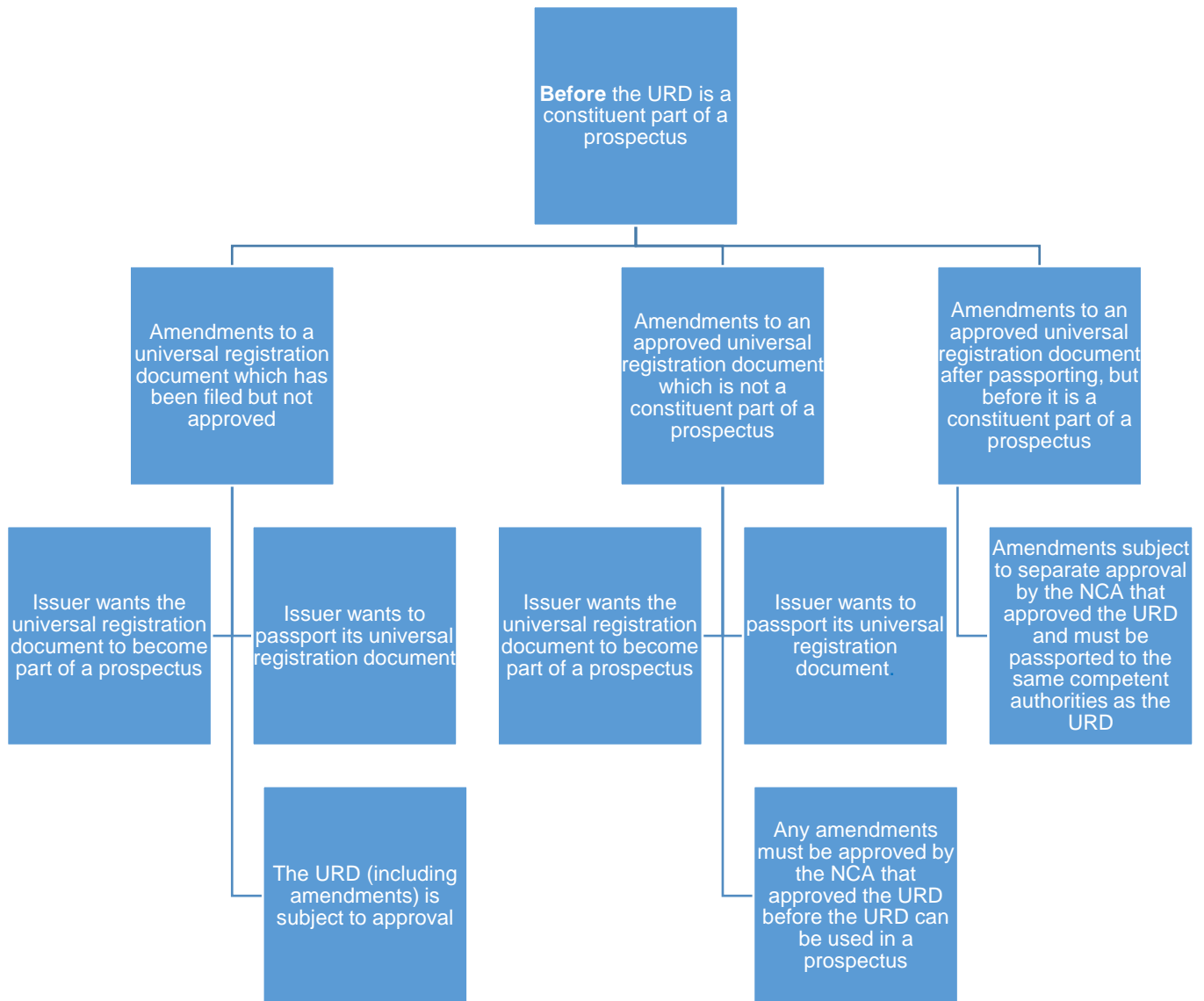
*Amendments to an approved universal registration document after passporting, but before it is a constituent part of a prospectus*

*Where a universal registration document has been approved and passported but is not yet a constituent part of a prospectus, then amendments to that universal registration document would be subject to separate approval in accordance with the second sub-paragraph of Article 10(3) of the Prospectus Regulation before a prospectus, with the universal registration document as a constituent part, can be approved by the competent authority of another Member State. After approval, the amendment should be passported to the same competent authorities as the universal registration document had been passported in accordance with Article 26(2) of the Prospectus Regulation.*

**Figure 1:** Timeline regarding the update of a passported universal registration document (URD)



**Figure 2:** Updating the information in a universal registration document (URD) before it is a constituent part of a prospectus



### 3.3 Updating information in a registration document or a universal registration document after it is part of a prospectus

Updated: 27/03/2019

#### **Q3.3 How should information in a registration document or a universal registration document be updated after it is a constituent part of a prospectus?**

**A3.3** Article 9(1) of the Prospectus Regulation explains that issuers can draw up a registration document in the form of a universal registration document. After a registration document or universal registration document has become a constituent part of a prospectus, the information in that registration document or a universal registration document is updated via a supplement. Additionally, the prospectus(es) of which the registration document or universal registration document is a constituent part must also be supplemented in accordance with Article 23 of the Prospectus Regulation. Both the supplements to the registration document, or to the universal registration document, and the supplement to the prospectus should be published in a single document.

Where the supplement updates several prospectuses in accordance with Article 23(5) of the Prospectus Regulation, the supplement should clearly identify all the prospectuses to which it relates.

#### The competent authority to approve the supplements

Article 26(3) of the Prospectus Regulation provides that the competent authority in Member States receiving a passported registration document or universal registration document shall not undertake any scrutiny or approval of the registration document, universal registration document and any amendments thereto.

This creates a division of responsibility between the competent authority that approved the registration document or universal registration document and the competent authority in the home Member State for the prospectus approval that approves the securities note and summary. From this, ESMA understands that:

- the authority that approved the registration document or universal registration document is competent to approve any supplements to the information in the registration document or the universal registration document; and
- the authority in the home Member State for the approval of the prospectus is competent to approve any supplements to information in the securities note.

Consequently:

- *where a prospectus and its registration document, or universal registration document, has been approved by just one competent authority, then a single document can be approved that is a supplement to the prospectus and to the registration document, or universal registration document, and securities note; and*
- *where the registration document, or universal registration document, has been approved by one competent authority and the securities note (and the prospectus itself) has been approved by another competent authority, each competent authority can only approve as follows:*
  - *the competent authority which approved the registration document, or universal registration document, can only approve a document which is a supplement to the registration document, or universal registration document, and to the prospectus; and*
  - *the competent authority which approved the securities note (and the prospectus itself), can only approve a document which is a supplement to the securities note and to the prospectus.*

#### Withdrawal rights

*The provision in Article 10(1) of the Prospectus Regulation stating that withdrawal rights shall not apply in relation to a supplement to a registration document is only valid for a registration document before it is a constituent part of a prospectus. Therefore, investors have the right to withdraw their acceptances in accordance with Article 23(2) of the Prospectus Regulation when a prospectus of which a registration document or a universal registration document is a constituent part is supplemented.*

#### If a registration document or a universal registration document is no longer a constituent part of a prospectus

*A prospectus may have a life that is shorter than the validity period, under Article 12 of the Prospectus Regulation, of the registration document or the universal registration document that is a constituent part of the prospectus. In such cases:*

- *if a registration document is no longer a constituent part of a prospectus, then the information in that registration document is updated in accordance with Article 10(1) of the Prospectus Regulation:*
- *if a universal registration document is no longer a constituent part of a prospectus, then the information in that universal registration document should be updated via an amendment in accordance with Articles 9(7) and 9(9) of the Prospectus Regulation. See further the Q&A relating to updating the information in a universal registration document before it is a constituent part of a prospectus.*



**Figure 1:** Updating the information in registration documents (RDs) and universal registration documents (URDs) after they are a constituent part of a prospectus

