ESMA Consultation Paper: “ESMA Guidelines on enforcement of financial information”

“FSR - danske revisorer” supports ESMA’s efforts to develop a common financial reporting enforcement approach and to ensure a level playing field across the EU for listed companies. The proposed updating of the CESR enforcement standards from 2003 and 2004 into a single document might be helpful in this respect.

“FSR – danske revisorer” is a member body of FEE (Federation of European Accountants). We are aware of that FEE will submit a comment letter and we support the main parts of the FEE comment letter.

We specifically like to draw to the attention that it is primarily up to the company’s management to provide the enforcer with the explanations and any additional information the enforcer might need (question 6 and question 14). In our view auditors are not the principal source of information about a company and direct contact between an auditor and a regulator could undermine management’s responsibility for financial reporting.

Furthermore, we find that companies and enforcers should be obliged to inform the statutory auditors of any ongoing enforcement activities and if possible consult with the auditors before any decision are taken on the financial statements. However, it should also be taken into consideration that the statutory auditor is subject to a professional duty of secrecy if the matter concerns confidential information regarding the client company.

Regarding pre-clearance we find that such an activity should be permitted for financial information as well as for prospectuses (question 8). We already today have a pre-clearance system in Denmark allowing for an exchange of views when difficult accounting issues arise. Pre-clearance however may also give rise to concerns; for instance whether discussions about anticipated transactions should be published the same way as enforcement decisions.

Regarding "materiality" we like to draw to the attention that this concept is crucial to financial reporting. To issue further guidance on the concept of "materiality" should be a responsibility of the IASB (question 15). We support the initiative by the IASB to start projects on disclosure overload and on materiality.
We find that paragraph 58 of the Draft guidelines ("When an immaterial departure is left intentionally uncorrected by an issuer...") is difficult to understand and should be re-worded. We do not think that it would be in the interest of market participants to have such immaterial corrections published.

We would be happy to elaborate further on our comments should you wish so.

Kind regards

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