

European Securities and Markets Authority, ESMA
103, rue de Grenelle
F-75007 Paris
France

– Submitted online via ESMA's website –

20 August 2012

Comments of the EAPB on the ESMA technical advice on further delegated acts concerning the Prospectus Directive

Dear Madam or Sir,

The European Association of Public Banks, EAPB, welcomes the opportunity to comment on the ESMA consultation paper on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU (ESMA/2012/380).

Generally speaking, information on the underlying shares can and should be only those that are **publicly available**. The issuer of the debt obligation usually does not have and is not provided with internal company information of the issuer of the underlying share. To establish a requirement that goes beyond the public availability of the information would signify a product ban. With regard to the level of information it should be kept in mind that the **key risks are connected with the issuance of the debt obligation** and not with the subscription of the underlying share.

Remarks to the questions:

Q1. Yes, the Prospectus Regulation should be amended in order to create a legal basis for the provision in Annex XVIII according to which only the disclosure requirements in item 4.2.2 of annex XII are applicable to underlying shares already admitted to trading on a regulated market.

Q2. Although issues of debt securities convertible or exchangeable into third party shares not admitted to trading on a regulated market are very rare in the European capital markets the additional requirements will further restrict such issues. If and to the extent Annex XIV (with the exception of item 2) was applicable it would be required to conduct a due diligence on the third party shares in order to comply with the disclosure requirements of Annex XIV.

In cases where such third parties do not have any interest or incentive in providing such information in connection with issues of convertible or exchangeable bonds – which is the normal case – the willingness of those third parties to offer due diligence access will be limited if not completely restricted. Thus, cash-or-share bonds where the underlying are third party shares not admitted to trading on a regulated market will be highly limited.

Q3. Yes, it is necessary to clarify in Annex XVII of the Prospectus Regulation the disclosure regime.

Q4–6. The EAPB agrees with ESMA's proposal.

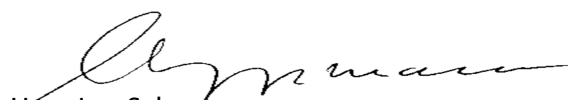
Q7. In general, the costs of drawing up the working capital statement and the capitalisation and indebtedness tables depend on the specific issuer and its auditors.

Q8. Please clarify the scope of Article 29.6 of the Second Directive.

Q9. The EAPB agrees with ESMA's proposal.

Should you have additional questions or comments, please do not hesitate to contact us.

Kind regards,

A handwritten signature in black ink, appearing to read 'Schoppmann', written over a horizontal line.

Henning Schoppmann
EAPB

A handwritten signature in black ink, appearing to read 'Bartels', written over a horizontal line.

Boris Bartels
EAPB

The European Association of Public Banks (EAPB) represents the interests of 40 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.