

ESMA Call for evidence: Request for technical advice on possible delegated acts concerning the Prospectus Directive

Submission from The Association of Investment Companies

The Association of Investment Companies (AIC) welcomes the opportunity to respond to the European Securities and Markets Authority's call for evidence on technical advice on possible delegated acts concerning the Prospectus Directive.

The AIC is the trade body representing some 345 closed-ended investment companies, the vast majority of which are listed on the London Stock Exchange. Our Members are closed-ended funds that invest in a portfolio of assets, which may include shares listed on EU regulated markets, to provide shareholders with an investment return. Investment companies have an interest in the impact of the Prospectus Directive as both issuers and investors.

General comments

The AIC continues to support the main objectives of the Prospectus Directive, that is ensuring investor protection and market efficiency. It also welcomed the Commission's recent initiative to remove excessive burdens placed on companies as a result of complying with the obligations of the Prospectus Directive.

Format and content of the summary

The call for evidence paper refers to the relationship between Packaged Retail Investment Products (PRIPs) and the Prospectus Directive. Requiring issuers to prepare both a 'Key Investor Information Document' (KIID), as proposed for PRIPs, and the summary document for a prospectus creates an unnecessary regulatory burden. Both documents are aimed at retail investors and are intended to provide short, simple and clear descriptions of the essential characteristics of the product on offer. In many cases there will be little or no benefit for retail investors from having two documents which seek to achieve a similar objective.

The AIC **recommends** that issuers of shares in PRIPs should have a regulatory obligation to prepare a KIID and that there should be no additional regulatory requirement to publish the summary document as well. However, issuers should be allowed to continue to publish a summary document if they so choose. This approach will remove duplication and unnecessary compliance burden for issuers and will not disadvantage investors who will still receive the essential information.

Proportionate disclosure regime

The AIC welcomes the introduction of a proportionate disclosure regime for offers of shares by companies whose shares of the same class are admitted

to trading on a regulated market. The AIC **recommends** that the scope of this exemption from producing a full prospectus should be as wide as possible. For example, it should apply to the resale of treasury shares which is permissible in the UK. Investment companies are able to buy back their shares and hold them 'in treasury' for possible future sale, instead of having to cancel them. These types of transactions should be able to benefit from the reduced disclosure regime.

The AIC **recommends** that, as far as possible, there should be no requirement to produce any form of prospectus at all where companies are issuing shares identical to those already trading on a secondary market. An investor already has access to a vast amount of publicly available information, including the annual report and accounts and other regulatory announcements required under the Transparency Directive, to make a decision about whether or not to buy equivalent existing shares. There is no reason why purchasers of new shares need different information from those buying identical shares on the secondary market. In these cases, issuers should be exempt from publishing a prospectus. This will significantly reduce administrative burden and compliance costs for issuers.

Profit forecasts and estimates

The call for evidence invites comments on the effect of removing the requirement for profit forecasts and estimates to be accompanied by a report prepared by an independent accountant or auditor. The AIC **recommends** that ESMA also reviews the treatment of dividend targets or forecasts. Details about expected dividends can form part of the key information conveyed in a prospectus. Indeed, some investment companies may have a dividend target as part of their overall investment objective. The AIC **recommends** that there should be no obligation for dividend targets or forecasts to be accompanied by an independent report.

Audited historical financial information

The AIC **supports** the reduction in audited historical financial information to two years. This will lessen the compliance burden and reduce costs for preparers of prospectuses. If the user of the prospectus requires additional historical financial information this is likely to be easily accessible from other sources. For example, the Transparency Directive requires the issuer to make the annual financials reports public for at least the last five years.

Comparative table of the liability regimes

The AIC **recommends** that, once completed, the comparative table is made public. It will be a useful tool for identifying the differences between the liability regimes across Member States.

February 2011

For more information on the issues raised by this paper please contact:

Guy Rainbird, Public Affairs Director, The Association of Investment Companies. E-mail: guy.rainbird@theaic.co.uk

Alison Andrews, Project Manager, The Association of Investment Companies. E-mail: alison.andrews@theaic.co.uk