

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

Luxembourg, 6 September 2011

Dear Sirs,

Consultation Paper – ESMA’s technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

Clearstream Banking S.A. is responding to the above, as an International Central Securities Depository (“ICSD”), acting in this role for some 40 years jointly with Euroclear Bank S.A./N.V., representing the International securities market with a current value of €9 Trillion, and in excess of 200,000 new securities issues each year, more than 80% of which are issued under programme.

Our main observations and comments are listed below. We firmly believe that some of ESMA’s proposals, if adopted and translated into a formal update of the Prospectus Directive, may have far-reaching implications for issuers and also for intermediaries that service securities throughout their lifetime, and may bear negative consequences for the development of international capital markets overall. We would therefore be grateful if these various points can be integrated by ESMA in their review.

Restrictive Approach to Final Terms

- We welcome ESMA’s push for a more restrictive approach in relation to the amendment of a Base Prospectus. It appears essential to us that any (material) change to the options existing in a Base Prospectus must be formalised through an official addendum or a revised version of the said Prospectus. No amendment should be allowed via the Final Terms.
- We however do not support ESMA’s proposals to limit the content of Final Terms to information applicable to the individual issue only and to prohibit replication in the Final Terms of the information contained in the Base Prospectus. We found the latter proposal is actually detrimental to the principle of transparency for investors. We consider that the Final Terms should provide all the information required to constitute the legal security (terms and conditions) and to allow a proper processing and servicing of the security. Both investors and intermediaries must be able to access the terms and conditions of a security in a single document, which the existing Base Prospectus regime has allowed for many years. Any move away from this principle would not play in favour of issuers, investors and intermediaries. A more restrictive approach would undoubtedly force costly process

adaptation throughout the industry, costs which would likely be passed to investors, lessening investment returns and/or pushing issuers' funding costs up.

- Facility programmes are used by the majority of issuers active in the international securities market. Today, more than 80% of all new securities are issued off programmes (mostly CPs, CDs and MTNs). Any change that would make the running of programmes less flexible and more onerous could have negative consequences for the development of the securities market in Europe. The proposed information categorisation would, for instance, ban the possibility to have multi-issuers programmes (issuer name identified as CAT. A). When assessing and proposing which operational information must be included in the Final Terms and/or the Base Prospectus, ESMA should actually consider what information is critical for both the investors and the various intermediaries (for intermediated models). ESMA should engage into a detailed dialogue with the relevant trade associations and market experts so as to define precisely what must be contained in information Categories A, B and C, and to preserve the flexibility that has characterised European securities' markets thus far. We would encourage ESMA to consult and re-use to that effect the different templates developed under the International Securities Market Advisory Group ("ISMAG") programme, which contain exhaustive lists of operational information required to service a security fully and properly, including a number of specific recommendations for Issuers to improve documentation clarity. We can, for instance, identify needs for information such as issuer name, legal form or tax regime to be classified as Category B or C rather than Category A.

New Prospectus Summary

- We are uncertain that the production of a new and separate "prospectus summary" in a non-technical language will be of real value, especially if it must be produced for each and every issue. The proposal will in practice extend requirements to file the prospectus and/or supplements and make the handling of summaries more complex. As a result, Omnibus programmes could be broken down into more product-specific documents, multiplying costs, and could even be replaced by drawdown prospectuses or stand-alone notes with individual registration documents. Some issuance (types) may simply become uneconomical and be discontinued. This will reduce the number of funding channels for European issuers at a time where Basel III and CRD IV may increase capital needs. All this will affect issuers' cost base and will impact their ability to structure securities to respond to investors' needs in a timely and efficient manner. At the very least, ESMA should consider exempting non-retail offerings from this additional requirement.
- Increasing the number of prospectus and/or addendums would also adversely impact regulators, who are required to approve programme documentation in line with the requirements of the Prospectus Directive, forcing some of them to boost significantly their staffing levels. Any induced delay in the regulatory approval process could damage issuers financially by depriving them access to opportunistic funding windows. Likewise, more stringent requirements in terms of Final Terms content (see comments 2 & 3) will likely negatively impact the possibility for issuers and dealers to quickly react to dynamic market

conditions and evolving investor demand. Timing-to-market will become a very challenging objective. More generally, adding complexity to documentation types and content may prove more costly to issuers and may ultimately be counter-productive. Too restrictive reforms could adversely impact some market segments (e.g. wholesale structured products market) where retail investor protection is not relevant. This could possibly force wholesale issuers to opt for non-EU jurisdictions for their future issuances in an effort to keep issuance and funding costs under control. This would be damaging for the European economy. We would therefore suggest that the new measures to be implemented take account of the type of products, of the targeted investors' categories and their respective levels of expertise.

- The introduction of these changes will likely impose additional administrative burden and associated cost increases on all intermediaries and investors, thereby impacting issuers' funding levels and investor servicing costs negatively.
- Alignment of requirements and format between the new prospectus summary and the Key Investor Information Documents (KIID - discussed under the PRIIPS initiative) is desirable to avoid duplicative documentation and to keep issuers' compliance costs manageable. ESMA may therefore be advised to keep the item on hold until the PRIIPS work has progressed sufficiently to provide a useful guidance.

As noted above, we should be grateful if these points, albeit late, would be included in ESMA's review. We remain at ESMA's disposal for any clarifications that would be required and look forward to entering into a constructive dialogue with them.

Yours faithfully,



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