HANNES SNELLMAN

KII/AFl
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European Securities and Markets Authority (ESMA)
11-13 avenue de Friedland
75008 PARIS
FRANCE

COMMENTS TO CONSULTATION PAPER ESMA/2011/141

Dear ladies and gentlemen,

We refer to your Consultation Paper ESMA/2011/141 on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU (the "**PD**") (the "**Consultation Paper**").

Hannes Snellman Attorneys Ltd ("**Hannes Snellman**" or "**we**") is a leading Nordic law firm with offices in Denmark, Sweden, Finland and Russia. Our firm's practice covers corporate transactions and dispute resolution. We have significant experience in matters related to securities laws and contribute to the development of legal practice in the fields of corporate and securities laws in our respective jurisdictions. Our lawyers participate actively in regulatory work, including self-regulation and legislative work in these fields of law. We believe that our views in relation to the EU prospectus regime are based on broad experience from legal practice. As our firm practices in three Nordic countries, we also believe that we are able to present a position that represents the perspective of Nordic legal practice on the issues raised in the Consultation Paper.

Please find below our comments with respect to the Consultation Paper and the proposals included therein. In drafting the comments we have focused on questions/sections being in our immediate scope of expertise. In the below we have indicated which part of the mandate and, where applicable, which specific question(s) posed in the Consultation Paper the comment refers to. We hereby consent to our comments being published together with the other contributions received.

Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5))

Q10: Do you agree that we have provided sufficient flexibility for issuers and their advisers in drafting summaries – whilst ensuring that summaries are brief and provide the reader with the necessary comparability between prospectuses?

We do not concur with the proposition not to allow a section for "other information" in the summary (paragraphs 82 and 91 of the Consultation Paper). Whilst the five mandatory sections proposed would most likely cover the information required for investors to consider the investment in the majority of situations, both issuer-specific features and/or the circumstances in which a prospectus is issued may,

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in our opinion, in certain situations strongly advocate the allowance of inclusion of additional information in the summary.

The range of industries and markets in which issuers operate is endless and new fields of business are constantly evolving. These sectors may differ from each other substantially in terms of business models, capital requirements, development activities and other fundamental elements, which may only be known to the market participants themselves. For example the special features of the biotech and software development industries may not allow themselves to be described naturally in the other proposed sections of the summary. If such additional branch or issuer specific significant information would not be allowed to be described in the summary, this would create a difficult situation from the point of view of the existing liability regime with respect to summaries.

Furthermore, prospectuses are issued in a broad range of situations and may be directed to several different markets. For instance in situations in which the prospectus is intended to be used both in the EU and in the United States, the incongruence of the non-allowance of additional information in the summary of an EU prospectus and the disclosure standards followed in the US would lead to a situation in which two separate prospectuses would be required for the two markets. With deals in the capital markets increasingly following international business practice, we would not find it advisable for the European prospectus regime to disregard such development for technical reasons. In addition to the international aspects presented above, prospectuses may in a purely European context be issued in various circumstances, such as in connection with the listing of new shares forming the consideration in a merger or acquisition, in which situations the fundamental description of the transaction at hand would not necessary fall within the scope of the five summary sections proposed, and could without the permission of additional information even have to be omitted from the summary.

Q12a: Do you agree with our proposed content and format for summaries?

With respect to the presentation of the risk factors in the summary, we find the proposed approach of not allowing the copy-out of text from the main body of the prospectus (paragraph 99) together with the non-acceptance of the listing of the headings of the risk factors (paragraph 105) problematic from the point of view of the liability regime with respect to summaries. In our experience, the prevailing market practice with respect to summaries in general (and thus not only the risk factors) has explicitly been the exact reproduction of the relevant text from the other parts of the prospectus in order to avoid the summary wording being different than the text in the body of the prospectus and the summary ultimately being considered “misleading, inaccurate or inconsistent when read together with the other parts of the prospectus” in a manner resulting in civil liability in accordance with Article 5 of the PD.

The approach presented in the Consultation Paper, according to which neither the mere listing of the risk factor headings nor the reproducing of longer tracts from the risk factors section would suffice (paragraph 105) may in our view become burdensome for issuers due to the liability reasons described above. The description of the individual risk factors in the body of the prospectus itself is often not long and reducing the length of the already short text may submit the issuer to a disproportionally difficult task. With respect to the headings used in the main body of the prospectus, we find that at least two different approaches have been used: the first merely stating the type of risk with a single or a few words only and the second opening up the implication of the specific risk in a full sentence. In our opinion the listing of the headings of the risk factors should be considered sufficient when using the second (long form) alternative for headings described above.

Proportionate disclosure regime (Article 7)

Q35: Do you agree with the schedule for rights issues presented in Annex 2 of this consultation paper?

Q44: Taking into account the items which ESMA proposes to delete or redraft as per Annex 4, do you consider the proportionate disclosure regime for SMEs/Small Caps could strike the right balance between investor protection, the amount of information already disclosed to the markets and the size of the issuers?

Q45: Given the number and nature of the items ESMA proposes to delete and to redraft listed in Annex 4, do you consider the proposal would suppose a significant reduction of the costs to access financial markets for SMEs and Small Caps? Can you estimate the costs that the proposed proportionate prospectus will allow SMEs and Small Caps to save?

The disclosure regime set up by the PD and the Prospectus Regulation (the "**PR**") is in our view largely designed for large issuers and large issues. The costs (e.g. in the form of advisor fees) and administrative burden caused by the regulation has to some extent been "fixed" and thus not related to the size of the issue at hand and as a consequence hereof, often been perceived as disproportionate in relation to smaller issues. Although not to be argued based on investor protection grounds, the proportionate disclosure regime for SMEs and Small Caps (as defined in the Consultation Paper) is in our view a welcome proposal, which could be justified as a policy issue aiming at lowering the hurdle for smaller companies to enter into the regulated markets and to reduce the burden of the existing SMEs and Small Caps in collecting funds.

In our experience, larger issues often have an overseas dimension and, as indicated above, follow international markets practice. The implication of this is that we find it unlikely that the concessions offered by the proportionate disclosure regime for rights issues would in practice be applied with respect to large issues. For smaller issuers the proposed regime could, on the other hand, have a significant impact.

Especially the removal of item 9 (Operating and Financial Review) of Annex I of the PR and requiring historical information for only the last financial year (paragraphs 127 and 131) could in our view result in a significant reduction of the costs in relation to the drafting of the prospectus. The operating and financial review has often been considered one of the most time-consuming parts to draft and correspondingly the historical financial information, although available, often causes significant costs for the issuer in the form of auditors' fees in relation to their verification.

With respect to the requirement for historical financial information we would, instead of the proposed model with information for the last year for rights issues (paragraph 127 and 131) and for the two last years for SMEs and Small Caps (paragraph 145), argue for a consistent set of rules with only the last financial year required, which could make the cost saving significant enough for the reform to have the sought consequences.

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