

Promemoria

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Till CESR Expert Group on Prospectuses and Consultative Working Group

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Comments to Draft Consultation Paper regarding CESR's guidelines for the consistent implementation of the European Commission's Regulation on Prospectuses n 809/2004, Ref: CESR/04-225

In general, I think that the draft guidelines are good and a proof that the Working Group has made an astonishing achievement in a short period of time. In my reading, I have mainly concentrated on non-financial information items. My comments below follow the paragraph numbers in the draft guidelines. Furthermore, I have in this document tried not to include remarks outside the scope of our work, such as criticism of the rules in the Regulation.

Paragraphs 45 and 46

I agree that an outstanding profit forecast is material information under Article 5.1. When I read paragraph 46, I read it as the issuer being in control - besides potential negative reactions by the market to a withdrawn forecast - of whether or not there is any outstanding profit forecasts. However, the debate in Paris clearly showed that this text ought to be clarified.

Paragraph 189

The business of a start-up issuer can vary. An innovative issuer can also offer new services/products for which there are no one outside the issuer that can claim to be an expert. Therefore, I believe that an expert's report should not be mandatory. In the choice between alternative (iii) and (iv), (iii) seems a bit odd with its requirement that the reason for not providing an expert's report shall be "very good". Will it be the Financial Supervisory Authority's task to judge which reasons are very good and which are just good. This seems like an impossible task, why I believe that alternative (iv) should be chosen.

Paragraph 234

This paragraph aims more to the actions of an entity controlling the issuer, than to actions by the issuer, why it can be hard for the issuer make any meaningful statement in the prospectus. Furthermore, a controlling entity will, of course, state that it will not abuse its power (item 2) but an honest controlling entity will not say what is written in item 2. Any controlling entity has the full right to exercise its control against the interests of the issuer, as long as it is made within the frames set up by law and the articles of association. The paragraph ought to be deleted or replaced with a requirement that the prospectus shall contain a description of the relevant applicable legislation.

Paragraph 243

This paragraph contains a list of different types of legal and arbitration proceedings, the information on which should be included in the prospectus. However, the list does not make it clear whether or not it is complete. Since, for example, a legal proceeding, in which a shareholder is challenging a resolution by the general meeting in the issuer, is not included in the list, I assume that the list should be read as a list of examples. Provided my assumption is correct, this ought to be explicitly stated in the text.

Paragraph 256 a

As the text is written now, I can not conclude what information that should be included in the prospectus. At least in Sweden, we do not attach voting rights to various classes of shares, but to shares of various classes. The proposed text could, therefore, be interpreted in two ways. Either information shall be given on changes in the relative voting power of all the shares belonging to different classes, or information shall be given on changes in the voting power of a share from a certain class. Since I assume that it is the latter alternative that is what is meant, I propose that the text is amended to: "description of changes in voting rights attached to the shares of various classes during the time". If such an amendment is made, the text is perfectly clear to me.

Paragraph 261

This paragraph is strange. In Sweden, item a), b) and c) are, for issuers that are companies, mandatory regulated in the Companies Act and may not be dealt with in the articles of association. Item d) and e) could lawfully be inserted in the articles of association, but hardly ever are. As the proposed text is written, it is hard to find any guidance as to what a Swedish company in this respect shall state in its prospectus. The text ought to be amended to reflect the fact that parts of this paragraph are not applicable in at least some jurisdictions.