ASSIREVI
Associazione Italiana Revisori Contabili

Il Presidente

ESMA
European Securities and Markets Authority
103 rue de Grenelle
CS 60747
75345 Paris Cedex 07
France

28 June 2013

Consultation Paper – Draft Regulatory Technical Standards on specific situations that require the publication of a supplement to the prospectus

Dear Sirs,

Assirevi is the association of Italian audit firms. Its member firms represent the majority of the audit firms under the oversight of CONSOB (*Commissione Nazionale per le Società e la Borsa*) and are responsible for the audit of almost all of the companies listed on the Italian stock exchange. Assirevi promotes technical research in the field of auditing and accounting and publishes technical guidelines for its members. It collaborates with Governmental bodies, CONSOB, the Italian accounting profession and other bodies in the development of auditing and accounting standards.

Assirevi is pleased to submit its comments on the Consultation Paper *"Draft Regulatory Technical Standards on specific situations that require the publication of a supplement to the prospectus"* issued by the European Securities and Markets Authority ("ESMA") on 15 March 2013.

Our detailed comments are set out in the attached document.

Should you wish to discuss our comments, please do not hesitate to contact us.

Yours faithfully,

Mario Boella
Chairman of Assirevi

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COMMENTS ON THE ESMA CONSULTATION PAPER

"Draft Regulatory Technical standards on specific situations that require the publication of a supplement to the prospectus"

(March 2013)

Assirevi has focused on the involvement of the auditor in the profit estimates to which the questions Q10-Q14 make reference, as more relevant to the auditor's work; on the contrary, it has not provided precise answers to the questions submitted in the Consultation Paper.
In this regard, Assirevi hopes that the considerations reported below may be useful to the ESMA in performing its activity.

1. On a preliminary basis, in replying to this paper, Assirevi deems it appropriate to point out that it does not share the amendment, which was already introduced by Regulation 862/2012/EU to Annex I of Regulation (EC) 809/2004 and, in particular, the type of involvement of the auditor outlined in the second paragraph of point 13.2 of the abovementioned Annex I (the so-called "Agreement").
   In fact, in the opinion of Assirevi, there is a serious risk that the market might rely on the Agreement to an extent that goes far beyond the type of contribution which the auditor is able to provide from a technical point of view.

   As it is known, the second paragraph of point 13.2 referred to above provides that "*Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:*
   (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
   (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
   (c) this financial information has not been audited".

   In this regard, it should be pointed out that in no case may the auditor provide, within the framework of the Agreement (which must be released before the publication of the audited financial statements by the issuer), a real form of assurance with regard to profit estimates.

   In fact, auditors may provide their opinion on the reliability of the approved financial statements, as a whole, as prepared by the governing body of the company being audited, only within the framework of the audit, through the performance of specific procedures set out in the Standards on Auditing and based on the related findings.
   Auditors may provide the market with suitable elements to support the reliability of the data submitted to their judgment only with the issue of the audit report on the financial statements, which is given when all audit procedures referred to above have been

completed. Otherwise, any position expressed by auditors on historical financial data, before the issuance of the audit report, would be partial and limited in scope, as well as without any assurance function, as clarified by the Standards on Auditing themselves.

For this reason, the Agreement is likely to give rise to the expectation by the market that auditors may provide, before expressing their opinion in the audit report, a form of assurance as to the reliability of financial information that is circulated by the issuer, which will not necessarily be confirmed in the audited financial statements that will be subsequently published.

This would create a strong mismatch between the auditors' role (and the type of assurance they can provide on unaudited annual financial information) and the expectations of the market: consequently, this would also widen the expectation gap as to the duties that are actually performed by the auditors themselves.

For example, we can just think about the fact that the release by the auditor of the Agreement assumes, *inter alia*, that the financial information dealt with the Agreement itself "*only contains non-misleading figures.*"

It follows that, in order to protect the market itself, it would be inconsistent to describe the Agreement as an instrument aimed at strengthening the reliability of profit estimates and, therefore, it would be necessary to limit its scope of application as much as possible.

In light of the reasons reported above, it is absolutely evident that Assirevi does not even share the case outlined in question Q12, i.e. the possibility of extending the scope of application of the second paragraph of point 13.2 under Annex I attached to Regulation 809/2004 to the cases in which "*the prospectus is drawn up in accordance with the following registration document schedules: Annex I, IV, IX, XI, XXIII, XXV, XXVI, XXVII and XXIX or in accordance with a depositary receipts schedule (Annex X or Annex XXVIII) or in accordance with the additional building block for guarantees (Annex VI)*".
In this case, in fact, the expectation gap relating to the auditors' role, which is already strong and high, would be further widened.

The position taken herein is valid regardless of the possible extension of the scope of application of provisions under point 13.2 of Annex I. In fact, Assirevi believes that, should this provision be applied, the auditor might be required to carry out only the activity referred to in the first paragraph of point 13.2 under Annex I, i.e. the verification of the "proper compilation", as this activity is consistent with the role of the auditors themselves.

2. In any case, and, all the more, should the extension assumed in the Consultation Paper be subsequently transposed into the EU regulations, it would be necessary, at least, to lay down, also through specific interpretations on the part of the ESMA, a series of clarifications and conditions, under which the Agreement could be issued, also to monitor the risk of misunderstanding the auditors' role outlined above:

   (i) firstly, the financial statements should have already been approved by the governing body of the issuer and the profit estimates should be taken from the same. On the other hand, it seems that instructions to this effect could be inferred from letter a) of second paragraph of point 13.2 under Annex I;

(ii) secondly, the audit work on the financial statements should be at an advanced stage and close to completion. Actually, the formalities still to be accomplished should consist of formal completion only, while the audit work as whole should be in an already substantially defined form for the purpose of the expression of the opinion on the financial statements. In fact, only in this manner, the auditor may reasonably believe that the procedures still to be carried out before the issue of the audit report may not however bring out elements such as to have a significant impact for the purposes of expressing the opinion;

(iii) thirdly, the auditors may not provide the Agreement in the event that they would intend, on the basis of the available information, to give an opinion on the financial statements that is different from a clean opinion. Furthermore, as required under ISA 705, in the event that the auditors intend to modify their opinion with respect to the clean opinion, they shall give written notice thereof to the governance bodies and, in Italy, in certain circumstances also to Consob, the Italian Securities and Exchange Commission. Assirevi believes that when the auditor is to issue a modified opinion, the communication of these conclusion can only occur with the audit report issued by the auditor himself, because the communication of these conclusions in other ways and/or by other parties could be misleading and not appropriate. Additionally, considering that the Agreement should be released before the issue of the audit report, there would be the risk that inconsistencies between the information reported in the Agreement and the one subsequently outlined in the audit report exist.

(iv) next, the information provided by the directors in the supplement to the prospectus should faithfully report the information reported by the auditor in the Agreement;

(v) lastly, for the sake of clarity and in order to avoid any instrumentalisation, the scope of application of the Agreement may only be relating to the circumstances provided in the Annexes attached to Regulation (EC) 809/2004, where it is referred to therein. In fact, in no case may the auditor's work relating to the Agreement be intended as the possibility for the auditor to release the so called "clearance letters" on the financial statements before the issue of the opinion on the same.

3. As regards question Q13, we cannot but raise serious doubts about the extension of the scope of application of point 13.2 under Annex I, which is already characterized by the limits referred to above, to any cases of interim profit estimates. On the other hand, it should be pointed out that the interim financial statements reported in the prospectus or the supplement are not mandatorily subject to audit (including any review).

   It is worth noting that the review of interim financial statements already represents, due to its nature, a limited audit process that, as it is known, is performed through review procedures, the conclusions of which are drawn in terms of negative assurance. Actually, this type of conclusions provides a degree of assurance that is less than that provided by the audit and it does not appear to be suitable, in itself, to ensure the absence of misleading information within interim financial statements. This circumstance makes the release by the auditors of the Agreement on interim profit estimates almost impracticable.

   In the light of the above, Assirevi deems it appropriate to not share the extension assumed by question Q13 of the Consultation Paper.

In any case and, all the more, should the extension assumed in the Consultation Paper be subsequently transposed into the EU regulations, the conditions and limits specified in paragraph 2 above should also be applied in relation to the Agreement on interim profit estimates.

4. Finally, Assirevi deems it appropriate to submit some considerations in relation to costs and, in particular, in relation to those that would arise from the extension of the scope of application of the Agreement.

   In this regard, without prejudice to what has been pointed out above in relation to the critical issues connected to the type of work required of auditors, it should be noted that also the Agreement is anything but an activity characterized by limited costs or, even costless.

   Actually, the release of the Agreement would entail the performance by auditors of specific duties aimed at checking for the appropriateness of the profit estimates in correlation with the data reported in the financial statements. This work includes, but is not limited to, the following activities: preparation of the Agreement, preparation of letters of appointment, verifying that the published profit estimates comply with the financial statements, verification of qualitative information (disclosures) included in the supplement, obtaining a representation letter from the governing body. On the other hand, some of the activities to be carried out for the release of the Agreement end up with the audit work being duplicated. For example, we can think about the completion procedures, such as quality control and interviews with governance bodies. Therefore, the release of the Agreement is an activity that is different from and additional to the work the auditor is usually required to carry out for issuing the opinion on the financial statements and it inevitably entails additional costs with respect to the audit work. Furthermore, any activities connected with the Agreement should be carried out at a time when the audit work, despite being at an advanced stage and close to completion, is still in progress, with consequent possible organizational inefficiency and related additional charges.