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ESMA Consultation Paper Guidelines on enforcement of financial information
ESMA/2013/1013

Danish Shareholders Association is the organisation representing private investors in Denmark.

Danish Shareholders Association finds the Consultation paper ESMA Guidelines on enforcement of financial information a very considerate document covering the important aspects of the enforcement of financial information.

Q1

Do you think that the proposed guidelines will improve the quality and consistency of financial reporting in Europe?

Yes

Q2

Do you have any comments on the potential costs to the financial reporting community of any aspects of these proposals?

No

Q3

Do you agree that a common European approach to the enforcement of financial information is required in order to avoid regulatory arbitrage by issuers? In this context, regulatory arbitrage refers to the position where an issuer's choice of the market on which to list its securities may be influenced by different approaches to enforcement being applied in different European jurisdictions.

Yes

Q4

Do you agree with the objective, definition and scope of enforcement set out in paragraphs 11 to 21 of the proposed guidelines?

Yes

Q5

Do you agree that issuers from third countries using an equivalent GAAP to IFRS should be subject to an equivalent enforcement and coordination system? Do you agree with the measures proposed to make this enforcement more efficient?

Yes

Q6

Do you agree that enforcers should have the powers listed in paragraph 30 of the proposed guidelines?

Yes

Are there additional powers which you believe that enforcers should have?

No

Q7

Do you agree that enforcers should have adequate independence from each of government, issuers, auditors, other market participants and regulated markets?

Yes

Are the safeguards discussed in paragraphs 38 to 41 of the proposed guidelines sufficient to ensure that independence?

Yes

Should other safeguards be included in the guidelines?

No

Do you agree that market operators should not be delegated enforcement responsibilities

Yes, market operators should not be delegated

Q8

Are you in favour of enforcers offering pre-clearance?

Yes

Do you have any comments on the way the pre-clearance process is described and the pre-conditions set in paragraph 42 to 45 are described?

Important financial information must be disclosed to the market without unnecessary delay. It is crucial that disclosure of important financial information is not delayed because the information becomes involved in a pre-clearance process.

Q9

Do you agree that in order to ensure investor protection, the measures included as part of a prospectus approval should be supplemented by additional measures of ex-ante enforcement in relation to financial information? If yes, could you please specify the exact nature of ex-ante enforcement that you would expect from enforcers?

A prospectus is used by investors as basis for the investment decision. Investors expect that the information in a prospectus is complete and that it can be trusted. Consequently must the ex-ante approval cover all aspects that the enforcers have the right and obligation to control.

Q10

Do you agree that a risk-based approach to selection should not be used as the only approach as this could mean that the accounts of some issuers would potentially never be selected for review?

Yes

Q11

Do you agree that the risk-based approach should take into account both the risk of an individual misstatement and the impact of the misstatement on financial markets as a whole?

Yes

Q12

Do you think that a maximum period should be set over which all issuers should have been subject to at least one full review (or to be used to determine the number of companies to be selected in sampling)?

Yes

Q13

What are your views with respect to the best way to take into account the common enforcement priorities established by European enforcers as part of the enforcement process?

The common enforcement priorities should be part of the planning of all the national enforcers.

The actual enforcement priorities and the methods used for selecting financial reports or issuers to be examined should not be disclosed in detail, because the more issuers know about the priorities the smaller the risk of being examined and the smaller the need to follow the regulations when they appear against the interests of the issuer.

Q14

Do you agree that the examination procedures listed in paragraph 54 of the proposed guidelines are appropriate for an enforcer to consider using?

Yes

Are there other procedures which you believe should be included in the list?

The term "press articles" used in paragraph 54 is too narrow. Articles and comments published on internet sites should also be reviewed.

Q15

Do you agree that, in determining materiality for enforcement purposes, materiality should be assessed according to the relevant reporting framework, e.g. IFRS?

Yes

Q16

What are your comments regarding enforcement actions as presented in paragraphs 57 to 67 of the proposed guidelines? Do you agree with the criteria proposed?

Yes, agree

Q17

Do you have any comments on the specific criteria for the submission of decisions or emerging issues to the EECS database?

No comments

Q18

What are in your opinion appropriate activities that would help to achieve a high level of harmonisation of the enforcement in Europe?

Common rules and close cooperation and dialogue between enforcers supported by public information about the fact that the rules are the same and that the enforcers cooperate in order to ascertain that the rules are used in the same way in all Member States.

Q19

Do you have any comments on the transparency, timing and frequency of the reporting done by the enforcers with respect to enforcement actions taken against issuers?

The transparency must be high. Reporting on enforcement actions should be made every 3 or 6 month. It is possible that reporting in some cases should not wait until a scheduled periodic reporting.

Q20

What are your views about making public on an anonymous basis enforcement action taken against issuers?

It is important the issuers, their advisors and the market as such get information about enforcement without unnecessary delay. In case of bona fide, small "misinterpretations" of the rules can the information be disclosed anonymous. Other wrongdoers should not be covered.

Kind regards

Danish Shareholders Association

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