

ESMA - European Securities Markets Authority

6 January 2012

Rue de Grenelle 103

75007 Paris

France

Response to Consultation Paper - ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU, 13 December 2011

Ladies and Gentlemen,

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.

We are pleased to provide the following response to certain aspects of the consultation paper referred to above.

Section 4. Review of the provisions of the Prospectus Regulation (Articles 5 and 7)

...

Q9: Do you agree with ESMA's view to keep the current requirement of the Prospectus Regulation to produce a report for profit forecasts and profit estimates?

If yes, please feel free to provide additional arguments.

If not, please provide the reasoning behind your position.

We do not believe it is longer necessary to obtain auditor's reports for profit forecasts and profit estimates in prospectuses of companies already listed.

We note that a profit forecast or estimate included in a prospectus would also be included in the financial reporting and financial disclosures of an issuer, which typically are subject to regulatory requirements and liability. It is not clear, then, why a formal statement regarding such forecasts/estimates should be required in the context of a prospectus.

In our experience, awareness among issuers has increased with respect to the importance of appropriate consideration and due diligence underlying profit forecasts and profit estimates included in corporate disclosures, including prospectuses. The volatility of market conditions over the past years has highlighted the need to carefully consider all published corporate forecasts and estimates. In connection with securities offerings, where a prospectus is drawn up, we have observed that careful deliberation typically underlies the inclusion of any profit forecast or profit estimate. When underwriters or managers participate in an offering, the basis for such estimates would typically be

subject to specific due diligence as the underwriters or managers typically also incur prospectus liability as gatekeepers. The issuance of a formal auditor's report for inclusion in the prospectus adds little to the quality of disclosure or the due diligence that is carried out in any case. However, due to formal procedures that auditors may need to conduct in order to issue such a statement, the requirement adds an unnecessary formal step in the prospectus process, and increases the costs of issuers.

Q10: Do you agree with ESMA's approach to exclude "preliminary statements" from the scope of Article 2.11. relating to "profit estimate" and to provide a definition of "preliminary statements" in the Prospectus Regulation? If not, please indicate your reasons.

Q11: Do you agree with the list of criteria that have been defined for "preliminary statements"? If not, please indicate your reasons.

We agree that preliminary statements could be excluded from the scope of Article 2.11.

We do not agree with the list of criteria defined for preliminary statements. In particular, we note that the requirement that the statutory auditor should have "agreed to" the preliminary statements seems counterintuitive. It is not clear what such agreement would entail with regard to the status of the preliminary statements or the liability of the auditor, and how such statements, in fact, would differ from audited financial statements. Such a requirement might, in fact, be misleading. In our view the auditor's formal sign-off should be limited to the final audited financial statements.

Q12: Do you agree to keep the current requirement of the Prospectus Regulation to produce audited financial information covering the latest three financial years?

If yes, please feel free to provide additional arguments.

If not, please provide the reasoning behind your position.

We recognize that the requirement of producing audited financial information covering the latest three financial years is an established international principle with regard to prospectuses for equity securities. However, steps could be taken to make the disclosure regime more flexible. In our experience it is typical that changes occur in the financial or business structure of issuers over time so that the financial periods covered by a prospectus are not entirely comparable. For example, segments may have been changed or accounting principles amended. It would be helpful if restatements (audited) could be avoided, even if audited financial statements as such would be included in the prospectus. In this regard it would also be helpful if the requirements of analytical comparison of the financial periods (typically key line items in the income statements) be clarified so that a more generic comparison of the relevant periods would be sufficient where such changes or amendments necessitate it.

Yours sincerely,

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