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PRESS RELEASE

CESR finds Member States broadly compliant with Prospectus Directive

CESR publishes today an executive summary (Ref. CESR/10-123) of a mapping on the actual use and application of the Prospectus Directive (herein referred to as the PD) in Member States. The executive summary contains the key findings of the full report and gives a picture of the practices applied in Member States in relation to different organisational aspects and controls in place regarding prospectus controls. The mapping shows existing divergences in practices and in the day-to-day application.

This work of CESR is conducive to the ECOFIN Council of December 2007, which included the aim of reducing the discretions used in Member States' implementation and application of the Directives of the Financial Services Action Plan. The Council conclusions of May 2008 and June 2009 stressed the need to make progress in this direction in order to enhance European supervisory convergence.

The full report deals with those internal processes national supervisors follow to approve prospectus documents, the availability of the prospectus documents once approved, and Member States' use of the authorisation for the omission of information. CESR will take its findings as a basis for further internal work and is providing them to the European Commission for further consideration.

Jean Guill, Vice-Chair of CESR, Chair of the Commission de Surveillance de Secteur Financier of Luxembourg (CSSF) and Chair of the Review Panel that conducted the survey, stated:

“Today’s publication provides important insight into the practical application of the rules regarding scrutiny of prospectuses under the Prospectus Directive in the CESR Membership. It provides the necessary basis for the next phase of the work related to supervisory practice under the Prospectus Directive: developing best practices and conducting a peer review to ensure greater convergence going ahead.”

Prospectuses are key documents that inform investors on the risk of a company at the moment of the initial investment. The PD requires issuers to publish a prospectus when offering securities to the public or admitting them to trading, and defines content requirements. By mapping the actual use and application of the PD within the EU, CESR aims at contributing to further convergence. The mapping has looked into how Members of CESR, when they review prospectuses, deal with:

- The **accuracy and comprehensiveness of comments** provided on the prospectus – Key controls reported include the coordination of comments, having a senior reader, the existence of an internal work instruction for the person vetting prospectuses, and always having a second reader. The mapping shows a mixed picture with a system for coordination of comments being the tool most often used with 79% of CESR Members.
- The **checking of the completeness** – Key controls performed by a large majority of Members (of between 62 and 97 %) include formal checks that all items required are included, checks on publicly available information and comparison with previous documents, and meetings with the issuers and/or their advisors.
- **Checking consistency** – Key controls reported by almost all Members include checking the consistency of the information contained throughout the prospectus document itself and



documents incorporated by reference, while the control of consistency of prospectus information with information given in other instances was less often used, especially as a rule.

- **Verifying comprehensibility** – Key controls in this respect were reported by a large majority of Members, including the request for a glossary of technical/specialist words and a request for a description of mathematical formulas. In addition, some Members require standards for disclosure of risk factors and check that the language is comprehensible from the perspective of an average investor, the risk factor section is easily understandable, and the structure of the prospectus is clear.
- Ensuring that **all information is included to enable investors to make an informed decision** – Members reported with very few exceptions that their key controls include requirements on information given in the prospectus to be complete for each of the information items on a case-by-case basis as set out in Art 3 of the Prospectus Regulation, requiring supplementary information to be provided to the authority on a case-by-case basis as set out in Art 16 ensuring consistency and comprehensibility of information given in a prospectus, and requiring disclosure of all material information which may have an effect on the assessment of the securities admitted to trading as set out in Art 21(4)(a) of the Prospectus Directive.
- **Checks performed concerning financial information** – All Members reported ensuring steps were taken by issuers to meet the criteria of annex II of the Prospectus Regulation 809/2004.
- A majority of Members check that the **prospectus summary** does not contain information which is not detailed in the main part of the prospectus document.
- Regarding controls carried out over the **compliance of advertising activity**, the Members are almost evenly divided between those that perform ex ante controls, and those who perform ex post controls.

Next Steps

CESR is currently in the process of developing best practices for the handling of prospectuses. The Review Panel of CESR will in 2011 conduct a peer review of the application of those best practices.



Notes for editors:

1. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to improve co-ordination among securities regulators and act as an advisory group to assist the European Commission, in particular in its preparation of:
 - Draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States.

The Committee was initially established under the terms of the European Commission's decision of 6 June 2001 (2001/527/EC) which was repealed and replaced by the Commission Decision of 23 January 2009 (2009/77/EC). CESR was one of the two Committees first envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets chaired by Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.

2. Each Member State of the European Union has one Member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated as its representative the Director General of the DG MARKT. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

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