

COVER NOTE

Public statement containing information on shareholder cooperation and acting in concert under the Takeover Bids Directive (ESMA/2013/1642)

In accordance with its mandate to take appropriate action in the context of takeover bids as per Article 1.3 of Regulation (EU) 1095/2010 (ESMA Regulation), ESMA is releasing a public statement on shareholder cooperation and acting in concert under the Takeover Bids Directive (Directive 2004/25/EC).

This statement has been prepared following the review and report by the European Commission on the application of the Takeover Bids Directive¹ and is based on information collected about the practices and application of that Directive.

The statement has been prepared in order to help shareholders identify activities in relation to which they can cooperate (insofar as those activities are available to them under national company law), without that cooperation, in and of itself, leading to a conclusion that the shareholders are acting in concert and thus being at risk of having to make a mandatory bid under the Takeover Bids Directive. These activities are presented in the statement in the form of a “White List”.

The statement has been prepared by the Takeover Bids Network, a permanent working group operating under the auspices of ESMA that promotes exchange of information on practices and application of the Takeover Bids Directive across the European Economic Area, thereby strengthening a common supervisory culture. The Takeover Bids Network is a specialist group composed of the national competent authorities appointed under the Takeover Bids Directive.

The competent authorities represented on the ESMA Board of Supervisors² are not in all cases appointed as competent authorities within the Takeover Bids Directive. The authorities not represented on the Board of Supervisors but competent within the area of takeovers are the Austrian Takeover Commission, the Irish Takeover Panel, the Oslo Stock Exchange of Norway, the Takeover Panel of Sweden and the Takeover Panel of the United Kingdom. These five authorities have contributed to the public statement and will have regard to it in the same manner as the other members of the Takeover Bids Network when assessing whether shareholders are acting in concert under their national takeover rules.

¹ COM(2012)347.

² Appointed under Article 4.3 of the ESMA Regulation.