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Your ref., Your message of Our ref., person in charge Extension Date

BSBV 64/Dr. Priester/Ha 3132 27th of June, 2013

**ESMA Consultation: Specific Situations that require the publication of a supplement to the prospectus**

The Division Bank and Insurance of the Austrian Federal Economic Chamber representing the entire Austrian banking industry appreciates the possibility to comment on "specific situations that require the publication of a supplement to the prospectus" and would like to submit the following observations:

* **General remarks to the approach "Mandatory supplement to the prospectus - Compelling legal consequence of a withdrawal right"**

The position, according to which the requirement to publish a supplement to the prospectus and all compelling legal consequences associated therewith should arise irrespective of whether changes are positive or negative, leads to inadequate results. Any associated deduction of a withdrawal right for the investor, even if the supplements are for positive changes, cannot be the purpose of this standard and must therefore be rejected or reinterpreted to ensure fulfilment of the actual protective purpose.

Article 16 of the Prospectus Directive requires publication of supplements to the prospectus in the event of any significant new factor, every material / essential mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities.

In practice, this requirement has almost always been interpreted to apply only for changes that negatively impact the investor, particularly since sec. 2 - without any reference to the occurrence of a positive or negative change - grants the investor a withdrawal right after every supplement.

The requirement under these standards to grant a withdrawal right even in the case of positive changes is too far-reaching and would upset the balance between the issuer and the investor. For instance, in the event of a positive change, e.g. the doubling of profit, the requirement to publish a supplement could give the subscriber of a bond a withdrawal right. In fact, the investor could then stand to gain from this option on other grounds (e.g. negative market performance), even though the investor's interests do not merit protection in that particular case.

* **Q1:**

In this respect, ESMA goes too far and fails to distinguish between supplement and prospectus data. It is unclear why, following a trigger event (e.g. annual report), all figures derived from the previous year's annual report need to be corrected after publication of the new report. Supplementing additional notes to the new report should suffice.

* **Q2:**

As long as this automatically triggers withdrawal rights for current issues - even if performance is positive - this question must be answered in the negative. To us, the obligation to provide a supplement in this case would require major resources and the cost impact would be very high.

Moreover, since issue programmes are valid only for one year, there is really no added value.

* **Q4:**

According to the Austrian Capital Market Act (KMG), a supplement is not required for every mistake, inaccuracy or every new factor. The law only includes material factors that can influence the assessment of the securities. We doubt whether every annual report is 'material' within the meaning of this provision - at least as far as the issuers of debt instruments are concerned. At any rate, there should be no automatic publication requirement that is not determined by the specific individual case.

* **Q5: NO**

As long as this always triggers automatic withdrawal rights for current issues - even in the event of positive performance.

* **Q7: NO**

As long as this always triggers automatic withdrawal rights for current issues - even in the event of positive performance.

* **Q8:**

The question is wrongly put, since it would presuppose a YES in response to the previous question.

For base prospectuses, the prospectus requirements for a subsequent offer / trading are often created in advance. An offer / trading in a new market does not influence the assessment of the issuer or of a security from the same programme available at the same time in another market.

It is not necessary to require a supplement in this case and to trigger withdrawal rights for current issues.

* **Q29:**

Please see our statements in response to Question 2; we would like to point out that these requirements necessitate major resources and thus go too far. We are therefore critical of both trigger events and reject them.

* **Q 30:**

Please see our statements in response to Question 2.

* **Q 33:**

The increase in the nominal programme size is no indication for the actual indebtedness of an issuer or their credit standing and liquidity. Every issuer is free to launch stand-alone issues, also outside an issue programme, or even prospectus-free issues.

Kindly give our comments due consideration.

Sincerely,

Dr. Franz Rudorfer

Managing Director

Division Bank and Insurance