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ESMA - Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata (ESMA32-117195963-1276)

Here: Response

Ladies and Gentlemen,

We are grateful for the opportunity to provide feedback on the consultation paper concerning the draft technical advice related to the Prospectus Regulation. We greatly value ESMA's efforts to enhancing the utility and relevance of the prospectus for its readers.

The global PricewaterhouseCoopers network offers a large pool of interdisciplinary experts with outstanding specialised knowledge. The PwC network consists of legally independent member firms and is present with approximately 364,000 employees worldwide in 151 different countries. Aside from providing trust in our capacity as auditors, we provide expert advice to our clients in capital market transactions.

Our attached response reflects selected views of the PwC network across Europe, which has been gathered by the German PwC network firm. We do not have any feedback to questions not covered.

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Should you require further information or clarification regarding our feedback, please do not hesitate to contact the undersigned via email at [REDACTED] and [REDACTED].

Yours faithfully,

PricewaterhouseCoopers GmbH
Wirtschaftsprüfungsgesellschaft

Annex

- List of questions for Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

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List of questions for Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

Q6: Do you have any other concerns about the disclosure items as proposed? If so, please explain.

A6:

1. We note that the proposal entails the removal of the requirement to produce an ‘Operating and Financial Review’ (“OFR” - formerly Section 7 of Annex 1) from the registration document for equity securities (Annex 1), and elsewhere. Instead, issuers will be required to include or incorporate by reference their management reports and describe their KPIs for each financial year (as per item 6.4.1). We recommend reconsidering the removal of the OFR for the following reasons:
 - Issuers typically provide extensive information in their marketing materials (e.g., analyst and investor presentations), concerning business drivers and financial developments, which may exceed the content of management reports and a mere description of KPIs. The consistency rule between marketing information and the prospectus (Art. 22 para. 4 Regulation (EU) 2017/1129 (“Prospectus Regulation”)) would necessitate the mandatory inclusion of such information in the prospectus, unless covered by the management report or elsewhere in the prospectus.
 - Management reports may not be prepared from the perspective of public markets and may contain limited information that can be of little value for prospective investors. Instead, management reports are prepared solely to fulfill reporting obligations. Therefore, management reports may in general not be suitable to replace an OFR.
 - In the absence of an OFR and due to page limitations, issuers may include information in their management reports that is not required from an accounting perspective. Consequently, management reports may evolve from a balanced and comprehensive review of the development and performance of the business into overloaded marketing tools.

We suggest retaining the OFR requirement, especially in cases, where no management report is available. ESMA might also consider tailoring the OFR to ensure the information included is more beneficial to investors. This could be achieved, for example, by focusing on key factors affecting results of operations to understand the (financial) impact of the issuer’s equity story, segment reporting, cost structure (variable vs. fixed) and working capital management.

2. We also note that, for the equity registration document, the requirement to incorporate by reference the sustainability reporting (if applicable) has been directly transferred into Annex 1, Section 3 from Annex II, Section III of the Prospectus Regulation (as amended by Regulation (EU) 2024/2809). A similar requirement exists in the registration document for non-equity securities (Annex 6, item 5.1.1a), where the content, particularly regarding the assurance opinion, appears to exceed what is required for equity securities. We recommend aligning these requirements so that the registration document for equity securities stipulates the same assurance opinion requirements as those in the registration document for non-equity securities.
3. Although item 2.1.1 of Annex 1 requires issuers to provide information on material changes on their borrowing and funding structure, we encourage ESMA to reconsider the removal of the statement of capitalisation and indebtedness requirement (former item 3.2 of Annex 11). In addition to the requirement in item 2.1.1 of Annex 1, these tables provide significant and valuable information for investors, particularly for highly leveraged companies and issuers with complex funding structures. This is evidenced by many issuers of non-equity securities who voluntarily include these tables, despite no formal requirement under prospectus law. Additionally, removing the stipulation that this statement must not be older than 90 days from the date of the prospectus is desirable. Preferably, the statement should be linked to the latest (interim) financial information included in the prospectus to ensure consistency with the rest of the financial information presented in the prospectus.
4. Regarding the introduced page limits in Art. 6 para. 5 of the Prospectus Regulation (as amended by Regulation (EU) 2024/2809), it should be clarified that the inclusion (just like the incorporation by reference) of historical financial information, including auditor's reports, should not count against the page limit. Issuers and investors may have a valid interest in having a full information package within a single document and issuers should not be pushed to opt for incorporation by reference. This also applies to the requirement in Annex 1, Section 3 to either incorporate by reference or include the management reports. Due to the page limits, the given option would de facto lead to a mandatory incorporation by reference.
5. You have requested particular feedback on the inclusion of a cash flow statement requirement for situations in which audited financial information is prepared according to national accounting standards in relation to equity securities. We support this proposal, as cash flow statements provide key information for equity investors.