

ESMA Stakeholder ID: [YourID]

Submitted under Article 16(2), ESMA Regulation (EU) 1095/2010

Submission Ref: ESMA31-62-1428

Date: 20250826

## **LETTER 2: PROSPECTUS REGULATION DISCLOSURE REFORM**

To: ESMA – Consultation on the Prospectus Regulation Review

Ref: ESMA31-62-1428

Deadline: 21 July 2025

### **Context**

This submission responds to ESMA's Prospectus Regulation review, assessing whether prospectus disclosure requirements adequately communicate the risks and issuer discretions embedded in leveraged certificates.

### **Executive Summary**

Prospectuses commonly bury critical mechanics—knockout triggers, leverage-reset formulas, and 'good faith' valuation fallbacks—behind technical annexes and legalese, preventing meaningful retail understanding and impeding supervisory review.

### **Empirical Evidence of Harm**

Audit of 15 prospectuses (2023–2025): 100% include intraday leverage-reset clauses in annexes; 85% do not highlight knockout barriers in the summary; 90% place liquidity disclaimers in small font. (Retail Prospectus Transparency Audit 2025)

### **Behavioral Evidence**

83% of retail respondents underestimate knockout frequency due to marketing that omits §4(4); 79% believe the Determination Agent is an independent regulator. (ESMA Investor Behavior Study 2024)

### **Empirical Data**

68% of observed knockouts occurred during Asian trading hours when liquidity voids and §4b(2) pricing adjustments peaked — AFM Market Abuse Dataset Q4 2024.

### **Recommendations & Enforcement**

1. Ban knockout traps in prospectus approval — amend PR Annex V to prohibit approval where  $\text{Knockout Barrier} \leq \text{Strike Price} + 2\%$ .

2. Void intraday leverage reset clauses — amend PR Art. 23(3) to nullify post-issuance leverage adjustments.
3. Invalidate §4b(2) 'good faith' fallbacks — insert PR Art. 23(3)(ba) rendering such clauses void.
4. Enforcement expansion: mandatory Key Features summary in  $\geq 12$  pt font; real-time disclosure of strike/leverage adjustments; NCAs empowered to revoke prospectuses lacking daily liquidity quotes (MiFIR Art. 48(12)).

### Legal Basis

Prospectus Regulation Arts. 7(1), 8(4); ECJ C-604/11; ECJ C-156/21.

Yours faithfully,

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