

PRESS RELEASE

ESMA advises European Commission on Prospectus Directive's overhaul **Advice covers possible delegated acts**

ESMA publishes today the second part of its final advice (ESMA/2012/137) on possible delegated acts for the Prospectus Directive (PD). The advice was submitted to the Commission on 29 February 2012. In its advice, ESMA proposes how to use a prospectus in a retail cascade and provides input on how to review the provisions of the Prospectus Regulation concerning tax information, indices, auditor's report on profit forecasts and estimates and audited historical financial information. Today's advice follows a public consultation started on 13 December 2011.

Overall, the technical advice aims to achieve a high-level of investor protection and to increase across Europe the legal clarity and efficiency of the prospectus regime. Investment prospectuses as such are aimed to provide investors with easily accessible information on financial products so as to foster informed decision-making.

Increased transparency in retail cascades

ESMA observed that there is no uniform model of retail cascades within the European financial markets and therefore concludes, with a view to increase transparency, legal certainty, investor protection and the supervisory needs of competent authorities, that the consent to use a prospectus needs to be included in the prospectus or base prospectus/final terms.

In order to take into account the current market practices where the issuer's ability to identify all financial intermediaries in the prospectus or final terms might be limited, ESMA proposes a two type consent approach, setting out principles which need to be respected by issuers or persons responsible for the drawing up the prospectus and financial intermediaries, as well as specifying the minimum content of the general consent and any conditions attached thereto.

Provisions for issues such as tax regime, indices, and auditor's report should be reviewed

Tax regime: As investors may be deprived of tax information in certain jurisdictions where an issuer is actively making a public offer, ESMA proposes to keep the current requirement of the PD but revise its FAQ to reflect that such information shall be included in the prospectus.

Indices: ESMA is of the view that, among all indices, there is a clear conflict of interest in the case of proprietary indices. Although disclosure on conflicts of interest is already required, a description of the index



in the prospectus would provide additional transparency on the issue, ensure that the respective competent authorities have the possibility to scrutinize the description and ensure comprehensibility of the prospectus. The description is required if the index is composed by the issuer and/or any entity belonging to the same group as the issuer.

Auditor's report on profit forecasts and estimates: ESMA proposes to keep the current requirement of an auditor's report on profit forecasts and estimates as it believes that reports prepared by independent accountants or auditors provide investors with confidence in and ensures a certain quality of the profit forecasts or estimates being prepared on the basis of the underlying assumptions.

Audited historical financial information: ESMA proposes to keep the current regime of including three years of audited historical financial information. A reduction of the disclosure requirement would result in less extensive information on which an investor can base the relevant investment decision.

Background and next steps

On 20 January 2011, ESMA received a mandate from the Commission to provide technical advice on possible delegated acts concerning the PD as amended by the Amending Prospectus Directive. The Mandate was split into three parts as regards the prioritisation of work and delivery of the technical advice. The first part was delivered on 4 October 2011.

ESMA will start the work on the remaining part of the mandate which covers a comparative table recording the liability regimes applied by the Member States; the work on equivalence of third-country financial markets is postponed due to the on-going review of the Transparency, Market Abuse and MiFID. Finally, the disclosure requirements for convertible bonds will be dealt with under the same technical advice (Part III of the Mandate).

With regards to the areas covered by the ESMA provided on 29 February, the Commission is due to adopt the delegated acts by 1 July 2012.



Notes for editors

1. ESMA is an independent EU Authority that was established on 1 January 2011 according to EU Regulation No. 1095/2010 as published on December 15, 2010, in the Official Journal of the European Union (L 331/84). The Authority contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).
2. ESMA's work on securities legislation contributes to the development of a single rule book in Europe. This serves two purposes; firstly, it ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised companies. As part of its role in standard setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory co-operation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan European reach.
3. ESMA also contributes to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the Union. ESMA is also responsible for coordinating actions of securities supervisors or adopting emergency measures when a crisis situation arises.
4. ESMA replaced the Committee of European Securities Regulators (CESR), an advisory body comprised of EU securities regulators that advised the European Commission from 2001 to 2010 on policy issues around securities legislation.

Further information:

Reemt Seibel

Communications Officer

Tel: +33 (0) 158 36 4272

Email: reemt.seibel@esma.europa.eu