

**Jonathan Faull
Director-General
DG MARKT
European Commission
Rue de la Loi 200
1040 Brussels
Belgium**

Ref: ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

Dear Mr Faull,

On 20 January 2011 ESMA received a formal request (the Mandate) from the European Commission to provide technical advice to the Commission on possible delegated acts concerning the Prospectus Directive 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:

Part I:

- section 3.1: Format of the final terms to a base prospectus (Article 5(5))
- section 3.2: Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5))
- section 3.3: Proportionate Disclosure Regime (pre-emptive offers of equity securities, offers by SMEs and issuers with reduced market capitalization, and offers of non-equity securities referred to in Article 1(2)(j) by credit institutions (Article 7(1))

Part II:

- section 3.5: Consent to use a prospectus in a retail cascade (Articles 3 and 7)
- section 4: Review of the provisions of the prospectus Regulation (Articles 5 and 7)

Part III

- section 3.4: Equivalence of third-country financial markets (Article 4(1))
- section 5: Comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive



- section 6: ESMA received a letter from the Commission extending the scope of the Mandate to also include convertible bonds

Part I – sections 3.1, 3.2 and 3.3 of the Mandate

Part I was delivered to the Commission on 30 September 2011 (Ref. ESMA/2011/141) in accordance with the agreed prioritisation of issues in the Mandate with the Commission as set out in a letter dated 14 November 2011.

Part II – sections 3.5 and 4 of the Mandate

Part II was delivered to the Commission on 29 February 2012 (Ref. ESMA/2012/444).

Part III – sections 3.4, 5 and 6 of the Mandate

I am pleased to submit to you ESMA's final technical advice on section 6, Part III (Ref. ESMA/2012/ xx) of the Mandate. It was published for consultation on 20 June 2012 (Ref. ESMA/2012/380), and covers the prospectus disclosure requirements for convertible or exchangeable debt securities.

For Section 6 of the Mandate (the issue of convertible bonds) ESMA received a letter from the Commission extending the scope of the Mandate to also include the issue of the prospectus disclosure requirements for convertible or exchangeable debt securities.

This Technical Advice sets out ESMA's proposals for:

- (i) clarifications of and amendments to the Prospectus Regulation in order to increase legal clarity;
- (ii) expanding the application of disclosure requirements concerning the statements on working capital and capitalization and indebtedness in Annex III, item 3.1 and 3.2 of the Prospectus Regulation to convertible/exchangeable debt securities provided that they are equity securities and their underlying shares are not admitted to trading on a regulated market; and
- (iii) application of the proportionate disclosure regime for rights issues to pre-emptive rights of debt securities convertible/exchangeable into new shares issued by the same entity issuing the debt securities.

For section 5 of the Mandate (Comparative table of liability regimes applied by the Member States in relation to the Prospectus Directive) the Commission is not under a legal obligation to adopt delegated



acts; as such, the Commission invited ESMA to assist in compiling this comparative table. ESMA has set up a dedicated task force currently dealing with section 5 and is currently drafting the first draft of the report. ESMA would expect to submit its final report to the European Commission by the third quarter of 2013.

With regard to section 3.4 of the Mandate (Equivalence of third-country financial markets (Article 4.1)) the Commission has expressed to ESMA on 17 February 2012 that considering the proposals adopted on 20 October 2011 on the review of the Market Abuse Directive (MAD) and on 25 October 2011 on the review of the Transparency Directive the Commission considers that the issue in section 3.4 is postponed until a later stage following completion of the revisions on the aforementioned directives.

Should you have any questions on this letter, please do not hesitate to contact either myself or Verena Ross, Executive Director of ESMA.

Yours sincerely,

A handwritten signature in blue ink, appearing to be "S/M", written over a light blue grid background.

Steven Maijoor
Chair ESMA