

Latest thoughts on changes to the Prospectus Directive



October 2011

Background

On 31 December 2010, a European Directive (click [here](#)), amending the Prospectus Directive, came into force (the "**Amending Directive**"). The Directive has to be implemented in the UK by 1 July 2012.

We have previously reported on two of the key changes made by the Amending Directive which have been implemented early by the UK (the increased 150 person exemption and the increase to the minimum fundraising size) (click [here](#)).

The European Securities and Markets Authority ("**ESMA**") has now completed the first stage of its consultation on certain aspects of the changes and has provided advice to the European Commission (click [here](#) for the consultation paper and [here](#) for the final report). Whilst ESMA's advice is only a recommendation, it indicates the likely direction of travel.

The key advice for equity capital markets advisers is on the format of prospectus summaries and the proportionate disclosure regime regarding rights issues.

Prospectus summaries

Modular approach

ESMA recommends a modular approach to setting out the summary of a prospectus. It suggests every summary should be set out in five mandatory sections in the following order:

- Introduction and warnings;
- Issuer and any guarantor;
- Securities;
- Risks; and
- Offer.

N.B. The reference to "warnings" in the Introduction section does not require risk factors to be set out, merely the usual rubric about the summary being an introduction to the prospectus.

Length of summaries

ESMA considers that the requirement for summaries to be no more than 2500 words is now outmoded. The length of the summary will, in reality, be a function of the complexity of an issuer and its securities. That said, ESMA favours a length limit for summaries and has proposed a maximum length of 7% of the length of the prospectus, or 15 pages, if shorter (i.e. the prospectus is 215 pages or longer). ESMA anticipates that it might make further recommendations at a later stage, e.g. excluding financial information from the 7% calculation.

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Profit forecasts

Where a profit forecast or estimate is made, ESMA requires the issuer to state the figure in the summary. However, ESMA does not propose that additional disclosure is made in the summary to place the forecast in context as this would render the summary too long. It is sufficient that the detailed background information in relation to the forecast and/or estimate is contained in the main body of the prospectus.

Proportionate disclosure regime regarding rights issues

The Amending Directive has introduced a proportionate disclosure regime for pre-emptive offers. This amendment is designed to improve the efficiency of pre-emptive issues by avoiding the duplication of information already available in the market. ESMA has accepted that this regime should apply to issuers who carry out a rights issue by technically disapplying statutory pre-emption rights but replacing them with "near identical rights". It does not however recommend that the regime be extended to open offers.

Next Steps

The European Commission must adopt measures relating to: (i) the detailed content and specific form of the key information to be included in the summary; and (ii) the final terms of the base prospectus (which is outside the scope of this briefing note), by 1 July 2012.

ESMA is continuing to work on other aspects of its advice and will report on those in due course.

Advisers might wish to adopt the proposed new modular format for prospectus summaries on documents to be submitted to the UKLA.

If you would like further information on any of the issues covered in this briefing note, please contact Aaron Stocks or your usual contact at the firm.

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