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ESMA's Technical Advice on Possible Delegated Acts Concerning Amendments to The Prospectus Directive

On October 4, 2011, the European Securities and Markets Authority ("ESMA") delivered its final advice to the European Commission on the implementation of amendments to the Prospectus Directive[1] (the "ESMA Advice").

If adopted, the ESMA Advice is likely to make debt programmes more burdensome for issuers, in particular issuers of complex securities. It will do this by making the delineation of disclosure between base prospectuses, their summaries and final terms[2] more rigid. As a result, it may take longer than it does now to issue securities under a debt programme and transaction costs may well increase.

The approach of the ESMA Advice to summaries will affect all issuers of prospectuses under the Prospectus Directive regime. Summaries will be subject to strict format and content requirements, as well as an overriding requirement to include all key information. Issuers will be faced with a difficult tension between, on the one hand, complying with these requirements and, on the other hand, complying with the strict limit on the length of the summary. Given the new head of liability for summaries introduced by the Amending Directive, this continues to be a cause for concern.

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1 Directive 2010/73/EU (the "Amending Directive"), amending Directive 2003/71/EC (the "Prospectus Directive"), was published in the official journal of the European Union on December 11, 2010. Member States have until July 1, 2012 to implement its provisions into national law. To ensure harmonization in the application of the Amending Directive throughout the EU, the European Commission is required to adopt "delegated acts" by July 1, 2012. Such delegated acts are expected to consist of, *inter alia*, an amended version of Regulation 809/2004 (the "Prospectus Regulation").

2 Final terms are used in securities programmes. Under the Prospectus Directive, an issuer can establish a securities programme by producing an approved base prospectus, which is valid for 12 months, subject to being supplemented for material changes or developments. The base prospectus can be used to issue multiple series of securities with different terms. Each time the issuer wishes to issue securities, it prepares final terms, which is a short document that sets out information relating to the specific securities being issued (including, for example, issue price and maturity date). Final terms are not required to be approved by competent authorities – they are simply notified to the regulator and the market when the securities are issued.

Separately, the ESMA Advice advances the reduced disclosure regime intended to facilitate rights issues by public companies.

I. ESMA ADVICE

The ESMA Advice concerns three areas of the Prospectus Directive regime: (i) final terms for debt programmes; (ii) prospectus summaries; and (iii) a proportionate disclosure regime for rights issues and offers by certain issuers.

1. Key Recommendations

(a) Final Terms

- The contents of final terms should be subject to strict limitations.
    - Complicated pay-out and other formulae, for example, would be required to be disclosed in the base prospectus, thus subject to competent authority approval.
- The base prospectus must include all information required by the Prospectus Directive and Prospectus Regulation that is "knowable" at the time of approval of the prospectus.
- Accordingly, final terms must not amend, replace or (save in limited circumstances) replicate any information included in the base prospectus.
    - Amendments to the base prospectus must be done by way of a supplementary prospectus[3] or, if the amendment is not material, a notice to the market.
    - Expected to result in a significant increase in the publication of supplementary prospectuses and may result in the increased use of specialised drawdown prospectuses.[4]
- As well as preparing a summary for the base prospectus, issuers with securities programmes must prepare an issue specific summary for each issuance under the programme, fully tailored to the individual issue and annexed to the final terms.

[3] Even if a base prospectus is valid for a year, it must be updated by a supplementary prospectus if any material information arises. Events triggering the need for a supplementary prospectus include the publication of, for example, interim financial information, profit warnings, material changes in the issuer's business and updated credit ratings.

[4] A drawdown prospectus is a special prospectus prepared for a particular issuance of notes under a securities programme. It combines details of issuer (which may be incorporated by reference from an earlier base prospectus), the securities (i.e. the final form terms of the securities) and the offering into one single document approved by the competent authority. Separate final terms are not required.

(b) Prospectus Summaries

- For all prospectuses (not just base prospectuses for programmes), summaries must follow a standard prescribed format, consisting of five tables.

- Each of the five tables in summaries must contain certain mandatory information, consisting of prescribed subset of disclosure items the full prospectus is required by the Prospectus Regulation schedules and building blocks to contain.

- Summary word limit to be extended from 2,500 words to seven percent of the total length of the prospectus[5] up to a maximum of 15 pages.

(c) Proportionate Disclosure Regime

- PDR should be extended beyond pre-emptive rights issues to offerings where investors receive near identical rights to pre-emption rights.

- Issuers benefiting from the PDR would not be required to comply with certain disclosure items in the Prospectus Regulation schedules and building blocks.

- For rights issues (and offerings of near identical rights), PDR would lower the requirements of financial disclosure as well as disclosure on technical details relating to the issuer and the offering.

2. Timeline

The Commission is required to adopt implementation measures by December 31, 2011, after which date there will be a period of up to six months during which the European Parliament and Council will be able to object to the measures. Upon expiry of that period, the measures will be published and enter into force. This is expected to occur on July 1, 2012, which is also the deadline for Member States to implement into national law the provisions of the Amending Directive.

The new regime will apply to base prospectuses approved on or after July 1, 2012. It is expected that there will be grandfathering for base prospectuses approved prior to that date, meaning that issuers will not be required to prepare final terms and issue specific summaries in accordance with the new regime for issues of securities under such a base prospectus during its 12-month shelf life.[6] While this might result in a stampede of issuers seeking approval for base prospectuses prior to July 1, 2012, it is possible that the practical benefits of doing so will be limited, since regulators are unlikely to allow issuers to continue to use final terms as liberally as some may have in the past. Indeed, some issuers might

[5] Prepared in normal typeface and layout, excluding the financial pages.

[6] Equally, issuers will be able to passport base prospectuses prepared and approved under the old rules.

wish to bring their base prospectuses into line with the anticipated new regime in advance of its entry into force. One concern, however, is whether it will be permissible to do that within the current rules. For example, it is not clear that an issuer would be able to prepare a summary in accordance with the ESMA Advice given the current 2,500 word limit.

II. FINAL TERMS

1. Content of final terms

ESMA believes that "market participants have taken advantage of the lack of regulation to disclose information in the final terms which needs to be vetted by competent authorities", that is, ESMA believes that market participants have been dumping disclosure into the final terms that should have been included in the base prospectus or in a supplement to the base prospectus, thereby avoiding review by the regulators. To address this, ESMA recommends that the contents of final terms should be strictly limited by reference to the following categories:

(a) Certain limited securities note information

ESMA has specified which securities note information may be included in the final terms by dividing the securities note schedules and building blocks in the Prospectus Regulation into the following three categories:

- "*CAT A*"

  Information categorised as CAT A must be included in the base prospectus only (or any supplement to the base prospectus) and may not be included in the final terms. CAT A information includes, for example, credit ratings assigned to the issuer and risk factors (including risk factors relating to particular types of securities that might be issued under the programme – issuers will not be permitted to fill out risk factors in final terms).

- *"CAT B"*

  When an item is categorised as CAT B, the base prospectus (or a supplement to the base prospectus) should contain all the general principles relating to such item, with placeholders[7] only for certain issue-specific details not known at the time of the approval of the base prospectus. For example, the base prospectus (or supplement) should describe the type and class of the securities, the rights attaching to them and the interest provisions, but issuers will be permitted to include placeholders, for example, for the particular

[7] We understand references in the ESMA Advice to "placeholders" to mean square brackets and blobs.

interest rate at which the product will be offered. The final terms may replicate or refer to such principles and fill out the relevant placeholders.[8]

- *"CAT C"*

  When an item is categorised as CAT C, the base prospectus (or a supplement to the base prospectus) should contain a placeholder if the information is not known at the time it is approved (if it is known at that stage, it should be disclosed in the base prospectus (or supplement)). Any such placeholder would be filled out in the final terms. Examples include maturity date and estimated expenses for the issue.

(b) The replication of certain securities note information already included in the base prospectus

An issuer may want to use a single base prospectus to issue a number of different securities. In such circumstances, the base prospectus must include all "knowable" information relating to each security. For example, if a base prospectus provides for three different types of securities to be issued (securities A, B and C), it will be required to set out the redemption mechanics for each of the three types. When the issuer issues securities using that base prospectus, the final terms would be required to contain a statement to the effect that "the redemption mechanics applicable to security C apply to this issue" so that it is clear to investors which parts of the base prospectus are relevant to the particular issue. The issuer would do the same for all required disclosure items regarding which the securities differ.

While the ESMA Advice states that in this context issuers may replicate base prospectus information in the final terms, it appears likely that issuers will do this by way of cross references to the base prospectus, rather than by copying and pasting large chunks of it into the final terms. This will require some care when drafting the base prospectus to ensure that the information relating to each security is clearly segregated and easily identifiable by way of cross reference or, for example, a statement that "the risk factors applicable to security A apply to this issue".

(c) Certain "additional information"

Final terms may include (on a voluntary basis) a strictly limited range of additional information that is not required by the securities note schedules to the Prospectus

[8] In an earlier consultation paper, ESMA proposed that the following types of information could be left blank in the base prospectus and provided later in the final terms: "amounts, currencies, dates, time periods, percentages, reference rates, screen pages, names and places". Market participants expressed concerns that such a list was too restrictive and would impair issuers' flexibility to react to changing market conditions in relation to specific issues. ESMA says that it will look at this issue more closely, but it appears to be wedded to the idea of a fixed and restrictive list.

Regulation, but which would nonetheless be useful to investors.[9] Issuers will be permitted to include such information both in the base prospectus and in the final terms. ESMA will specify a list of permitted additional information at a later stage.

(d) Issue specific summary

ESMA recommends that final terms should include an issue specific summary. This will consist of the base prospectus summary, fully tailored to the individual issue and annexed to the final terms. See section II.4. below for further details.

2. Base prospectus to include all "knowable" information

Part of ESMA's solution to the problem of too extensive disclosure in the final terms is the requirement for the base prospectus to contain all information that is "knowable" at the time of its approval. In practice, this will mean that base prospectuses will need to disclose, for example, complicated pay-out formulae for structured products. Where multiple products may be issued under the same base prospectus, the disclosure would have to cover all knowable details in respect of each product (with the information relating to each product being carefully segregated). This is likely to result in longer, more complicated base prospectuses.

Importantly, the ESMA Advice repeatedly refers to prospectuses having to be easily analysable and comprehensible,[10] signaling that regulators will not accept complicated base prospectuses, whether or not the complexities result from the disclosure regime established for programmes. Some market participants are concerned that this will inevitably result in the simplification of products so that they can be more easily described in base prospectuses (allowing prospectuses to be more easily analysable and comprehensible), stifling innovation. Much will depend on how regulators enforce the already existing obligation on base prospectuses to be easily analysable and comprehensible in the context of this new regime.

3. Amending the base prospectus

ESMA makes it clear that final terms cannot be used to amend or update the base prospectus. If the base prospectus requires amendment and the amendment is material within the meaning of Article 16(1) of the Prospectus Directive, the issuer must prepare a supplement, which would have to be approved by the competent authority. If the required amendment is not material within the meaning of Article 16(1), issuers will be required to

[9] The permitted additional information is expected to include the name of the issuer and any guarantors and the countries where the offer(s) to the public will take place.

[10] See Article 2 of the Prospectus Directive.

publish an announcement to the market.[11] Given the proposed restrictions on the content of final terms, the incidence of these supplementary prospectuses is likely to increase, with a commensurate increase in workload for competent authorities.

As an alternative to a supplementary prospectus, issuers may choose to prepare a specific drawdown prospectus.[12] ESMA encourages the use of drawdown prospectuses, stating that it "expects that issuers will factor that an important number of supplements to one base prospectus may affect the readability of the documentation" and therefore "expects and encourages market participants to have recourse to more specialised base prospectuses or stand alone prospectuses". Indeed, ESMA appears to envision competent authorities *requiring* issuers to produce a drawdown prospectus in certain circumstances, stating that it will provide "guidance on when a supplement is possible or a [full] prospectus would be required".

One reason issuers might prefer to prepare a drawdown prospectus, rather than a supplementary prospectus, is to avoid triggering investor withdrawal rights that arise in certain circumstances when an issuer publishes a supplementary prospectus.[13] The ESMA Advice clarifies that where a supplementary prospectus is prepared in relation only to a specific issue of securities, the resulting withdrawal right will apply only to that issue. However, investor withdrawal rights are clearly undesirable for issuers and it is therefore likely that some will seek to avoid them altogether by opting to prepare a drawdown prospectus rather than a supplement.

4. Issue specific summaries

ESMA recommends that issuers should be required to produce an issue specific summary in connection with each issue of securities under a base prospectus. The issue specific summary will consist of the base prospectus summary, fully tailored to the individual issue and annexed to the final terms. Where final terms relate to several different products with similar terms, issuers may attach one single completed summary covering all products, provided the information relating to each product is clearly segregated. While the

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[11] Issuers may not welcome the requirement to publish such announcements to make immaterial amendments to their base prospectus. To that end, issuers might prefer for necessary amendments to be material in the context of Article 16(1), thereby enabling them to publish a supplementary prospectus – the more conventional means by which to amend a base prospectus.

[12] A drawdown prospectus is a special prospectus prepared for a particular issuance of notes under a debt programme. It combines details of issuer (which may be incorporated by reference from an earlier base prospectus), the securities (i.e. the final form terms of the notes) and the offering into one single document approved by the competent authority. Separate final terms are not required.

[13] Article 16(2) of the Prospectus Directive provides that when an issuer publishes a supplementary prospectus, investors who have agreed to purchase the issuer's securities receive the right to withdraw from the agreement. This right is exercisable within a period not less than two working days after the publication of the supplementary prospectus. The Amending Directive limits the scope of Article 16(2) by providing that the investor withdrawal right only arises in the context of a public offer of securities.

issue specific summary would not be subject to separate competent authority approval, the requirement to prepare a summary is highly likely to slow down the issue process and lead to additional costs for issuers.

There are particular concerns in relation to the costs involved in preparing issue specific summaries, particularly where the base prospectus summary has been translated into a number of languages in connection with the passporting of the base prospectus into other EU jurisdictions. In such circumstances, the issuer will be required not only to prepare an issue specific summary, but also to translate it into each language into which the base prospectus has been translated. While ESMA maintains that this requirement is unlikely to have a significant impact on costs (because the issue specific summary will be based on the base prospectus summary, and therefore the majority of the translation work will have already been done), it is not difficult to foresee that this further translation requirement will only add to the cost and time involved in issuing securities under a debt programme.

5. Integrated terms and conditions

ESMA has stated that issuers will not be permitted to produce integrated terms and conditions (i.e. expanded final terms, in which the terms of the securities are extracted from the base prospectus and reproduced, together with all issue specific information not known at the time the base prospectus was approved). This is a well established practice in certain European markets such as Germany, predicated on the idea that it is easier for an investor to understand the terms of the securities if they are set out in full in a single document. Without integrated terms and conditions, investors will have to piece together information from the final terms, the base prospectus and any supplementary prospectuses.

ESMA's view is that the requirement to annex an issue specific summary to the final terms is sufficient to provide investors with a full picture of the securities because it provides all "key information" (see section III.2. below) and that, in any event, it is the issuer's responsibility to ensure that products are easily analysable on the basis of combining information from the final terms and the base prospectus.

III. PROSPECTUS SUMMARIES

The Amending Directive introduced a number of changes to prospectus summaries to try to make them more retail investor friendly. The changes were intended to harmonise the form and general content of summaries and to ensure that summaries contain "key information" to aid investors when considering whether to invest.

The ESMA Advice proposes a standard form for summaries, under which each summary will consist of five tables and each table will contain the same mandatory information "elements" that track selected disclosure items required under the Prospectus Regulation schedules and building blocks.

ESMA acknowledges that certain prospectuses, such as those relating to wholesale debt, are not required to include a summary. In such cases, if the issuer decides to include a summary on a voluntary basis it must conform to the form and contents requirements set out in the ESMA Advice. Such an issuer may instead include a brief overview section, but it should avoid labeling it a "summary", or else it will be subject to the requirements.

1. Form of Summary

Each summary must be comprised of five tables in the following order: (i) introduction and legends; (ii) information on the issuer and guarantor; (iii) information on the securities; (iv) information on key risks; and (v) information on the offer. Each table must contain certain mandatory information elements (described below in section III.2.), though issuers will have discretion as to the ordering of the elements within each table.[14]

When preparing the summary, issuers should consider the following:

- Summaries should be drafted in plain language.[15]
- Summaries should present information in an easily accessible way to ensure that readers can understand the key information immediately.
- Summaries should be self-contained and should not contain cross references.
- Summaries should not copy and paste large exerts of text from the main body of the prospectus.

2. Content of Summary

Each summary must contain the same mandatory information elements, which track certain disclosure items required under the Prospectus Regulation schedules and building blocks. The only exception to this requirement is where the relevant information element is not applicable to the transaction and therefore is not discussed in the main body of the prospectus.[16] ESMA believes that by prescribing the contents of all summaries, it will

[14] Note, however, that if an issuer chooses to order the elements in a manner that differs from that proposed by ESMA, it will be required to provide a cross reference checklist to enable the competent authority to determine that all mandatory elements have been provided.

[15] Helpfully, ESMA has dropped the ideas, present in its earlier consultation papers, that the summary should read like a chairman's letter and that it should constitute a "fresh assessment" of the relevant disclosure item.

[16] Unhelpfully, ESMA recommends that where a mandatory element is not applicable, issuers will be required to delete references to such element, rather than simply stating that it is not applicable. ESMA was not persuaded that it is clearer to investors to read that a particular matter is "N/A" than to require investors to search through the entire document to find out whether a particular element is a feature of the transaction.

ensure (i) that the summary will contain the key information; and (ii) the maximum correlation between a summary and the main body of its prospectus.

In addition to the mandatory information elements, issuers must consider whether further information should be included in the summary pursuant to the overriding obligation for it to provide "key information".[17] In such cases, the issuer must find a way to include the additional information in one of the five tables – ESMA rejected the idea of an optional sixth table for "other information".

ESMA envisions competent authorities actively policing the contents of summaries,[18] not only to ensure that the mandatory information elements are included, but also to require, on a case by case basis, the inclusion of additional information that the issuer has included elsewhere in the main body of the prospectus.

With respect to risk factors, ESMA's earlier consultation paper had proposed a prohibition on the commonly used practice of listing risk factor headings in the summary. Helpfully, ESMA has dropped this suggestion, acknowledging that it is possible that a risk factor heading could contain the key information on a particular risk. However, ESMA maintains that "reproducing long tracts from the risk factors section […] is not appropriate for summaries" and, moreover, states that issuers will still have to decide which of the risk factors included in the main body are "key risks" that should be referred to in the summary. This is potentially problematic, in that it suggests that issuers will be required to create, in effect, two tiers of risk factors, carrying with it inevitable liability concerns.

3. Length

ESMA recommends replacing the previous 2,500 word limit to the length of the summary with a new limit of either seven percent of the length of the prospectus (excluding the financial statements) or, if shorter, 15 pages in normal layout (using the same font size as the rest of the document).[19]

The rules applicable to summaries are clearly imposing a greater burden on their content. Issuers will be faced with a potential challenge meeting that burden within what appears to be a rather arbitrary limit on the length of the summaries, regardless of the

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[17] Article 5(2) of the Prospectus Directive, as amended.

[18] The ESMA Advice recommends the extension of Article 3 of the Prospectus to give competent authorities the express power to require information included elsewhere in the prospectus to be included in the summary, on a case by case basis.

[19] ESMA rejected the suggestion that it should delay its recommendations on prospectus summaries until the outcome of the consultation on key investor information documents ("KIIDs") in the context of packaged retail investment products ("PRIPs"). ESMA's recommendations relating to summaries clearly take the market in the direction of longer summaries, notwithstanding the findings of research in the PRIPs context, which suggest that investors only find very short documents to be useful.

number and complexity of products that might be issued pursuant to the relevant prospectus. Given the new head of liability for summaries introduced by the Amending Directive, we expect this to continue to be a cause for concern for issuers.[20]

IV. PROPORTIONATE DISCLOSURE REGIME

The Amending Directive provided for a proportionate disclosure regime for rights issues, SMEs and issuers with reduced market capitalization and credit institutions that operate certain types of debt programmes. The PDR relaxes the disclosure burden that would ordinarily apply to such offers and issuers under the Prospectus Directive and Prospectus Regulation, aiming to lower transaction costs and thereby enabling the more efficient raising of capital in what remains a challenging time for participants in the global equity markets.

1. Scope of PDR for rights issues

The ESMA Advice recommends that the PDR will be available to issuers undertaking pre-emptive rights issues or offerings where existing shareholders are offered "near identical rights",[21] provided the shares offered are of the same class as the shares of the issuer already admitted to trading on an EEA regulated market[22] or on a multilateral trading facility ("MTF").[23]

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[20] Prior to the Amending Directive, civil liability could only be incurred on the basis of the summary if it was shown to be misleading, inaccurate or inconsistent when read together with the other parts of the prospectus. Pursuant to the Amending Directive, a new head of civil liability will apply if a summary does not "provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities". The change is subtle, and is better than the one originally proposed. However, one potential interpretation of the changed language is that the summary has to contain all the key information, though one can look to the rest of the prospectus for context and further detail, and that failure to comply could result in civil liability for the issuer. We hope that implementation at Member State level pays greater regard to the recital in the Amending Directive, which replicates the original Prospectus Directive provision, stating that Member States should ensure that no civil liability attaches to any person solely on the basis of the summary unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. If it does, it is difficult to see what the change in the Amending Directive was intended to achieve.

[21] ESMA has proposed that this would be the case only where (i) shareholders are offered entitlements free of charge; (ii) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings; (iii) the entitlements to subscribe are negotiable and transferable or, if not, the shares arising from the rights are sold at the end of the offer period for the benefit of those shareholders who did not take up those entitlements; (iv) the issuer is able to impose limits or restrictions or exclusions and make arrangements it considers necessary or appropriate to deal with treasury shares, fractional entitlements, and legal or regulatory requirements in, or under the laws of, or requirements of any territory or regulatory body; (v) the minimum period during which shares may be taken up is similar to the period for the take-up of statutory pre-emption rights; and (vi) after expiration of the exercise period, the rights lapse.

[22] Such as the Main Market of the London Stock Exchange.

[23] Provided that the MTF is subject to appropriate ongoing disclosure requirements and rules on market abuse. The Alternative Investment Market of the London Stock Exchange is an example of an MTF.

The Amending Directive stated that the PDR would apply to rights issues only in cases where issuers had not disapplied statutory preemption rights. ESMA's recommendation that the PDR should apply where shareholders are offered rights that are "near identical" to pre-emption rights extends the scope of the PDR in recognition of the fact that it is common practice for companies to disapply pre-emption rights and offer similar rights for legitimate reasons (for example, to avoid having to deal with fractional entitlements).

2. Content of the PDR for rights issues

ESMA recommends that issuers undertaking rights issues and eligible for the PDR will enjoy a number of concessions from the standard disclosure regime under the Prospectus Regulation, including the following:

- Only the latest annual financial statements would be required.[24]
- No Operating and Financial Review[25] section would be required.
- Shorter business description would be required, for example, information on assets, employees, R&D and share capital not required.
- Fewer details would be required on the issuance, for example, no requirement to disclose over-allotment and stabilization.

One question that remains is how the PDR is compatible with the requirement under Article 5(1) of the Prospectus Directive for a prospectus to contain all material information necessary to enable investors to make an informed assessment. The ESMA Advice suggests that ESMA has considered this question and concluded that they are compatible, provided the PDR requires issuers to include a certain minimum level of information regarding the issuer (ESMA rejected that idea that issuers could drop all information relating to the issuer and its financial history).[26] This would require issuers, and their advisers, however, to make some rather difficult judgment calls.

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[24] This is a significant concession, predicated on the fact that the issuer is already a listed entity and therefore will have produced an IPO prospectus and will have been subject to ongoing reporting obligations for the duration of its listing. Accordingly, investors will be in a position to access and review sufficient financial and other information relating to the issuer at the time of the rights issue, without that information being included in the prospectus.

[25] The Operating and Financial Review is a discussion of the development of the issuer's financial position setting forth, among other things, a detailed analysis of period on period changes in results of operations.

[26] In addition to concerns about the compatibility of the PDR with Article 5(1), ESMA was also concerned about the following: (i) pre-emption rights can be sold to new investors and it is necessary to provide such investors with a certain minimum level of information to ensure they are adequately protected; and (ii) a PDR prospectus should contain at least those information items that will be required to be included in the prospectus summary (which would still be subject to the requirements described above in section III) to ensure consistency.

It may nevertheless prove to be the case that issuers will still favour providing a level of disclosure above and beyond the minimum requirements of the PDR, both for liability management purposes and because this is likely to be more attractive to investors. This might be achieved by incorporating by reference other documents (such as the annual report) into the prospectus, which ESMA recommends as a way to further reduce the administrative burden involved in preparing a PDR prospectus.

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If you would like to discuss any of the above issues further, please feel free to contact any of your regular contacts at the firm on +44 (0) 207 614 2200 or any of our partners and counsel listed under Capital Markets in the "Practices" section of our website (http://www.clearygottlieb.com).

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