

European Securities and Markets Authority  
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75007 PARIS  
FRANCE

Submitted by e-mail

Subject: Eumedion's response to the consultation on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU (ESMA/2011/444)

Ref: B2012.02

Amsterdam, 6 January 2012

Dear Sirs, dear Madams,

Eumedion welcomes the opportunity to submit comments on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EC (Document Nr. ESMA/2011/444). By way of background, Eumedion is the Dutch based corporate governance forum for institutional investors. Our 68 Dutch and non-Dutch participants have together more than EUR 1 trillion assets under management. They invest for their clients and their beneficiaries in listed companies worldwide.

We confine our response to the questions raised in part 3.II, 4.IV and 4.V of the consultation paper. In answering the questions we try to achieve a proper balance between an adequate degree of investor protection and reducing the administrative or financial burden for listed companies.

*Q3: Do you agree with ESMA's understanding of retail cascades and in particular that the terms and conditions of the offer by the intermediaries may not differ from the terms and conditions in the prospectus or final terms? If not, please specify which terms and conditions may differ from those stated in the prospectus or final terms and who would be responsible and liable for such information.*

*Q7: Do you agree that the period for which consent to use a prospectus may be granted cannot extend beyond the validity of the prospectus and the period in which a supplement is possible according to Article 16 Prospectus Directive? If not, please specify how in particular a standalone prospectus can be kept valid once the period according to which a supplement is possible has lapsed.*

We agree both with Q3 and Q7. When considering possible provisions for additional information in the prospectus, the leading principle should be whether the information enables investors to make an informed assessment of the assets and liabilities, results and prospects of the issuer involved (Article 5 Prospectus Directive). This should be the case both in the situation the offer is made directly by the issuer, and when it is made indirectly through intermediaries who work in accordance with the issuer ('retail cascade'). In view of this, we believe that most of the proposals made in part 3.II do help protect investors, including:

- that the terms and conditions of an offer by an intermediary may in principle not differ from the terms and conditions presented in prospectus or final terms;
- that the period for which consent for using a prospectus may be granted, should not extend the validity of the prospectus.

Furthermore, we believe the consent to use the prospectus and the duration of the consent should be made public by the issuers since the general possibility of the issuer for a 'retail cascade' is subject to this consent.

*Q9: Do you agree with ESMA's view to keep the current requirement of the Prospectus Regulation to produce a report for profit forecasts and profit estimates?*

We agree. From the users perspective in general, the comments from auditors on historic statements and on forward looking statements both provide a form of valuable assurance for users. We oppose to providing no assurance on forward looking statements like profit forecasts or estimates, since users are benefiting from independent auditor's reports as required in Items 13.2 of Annexes I and X, 9.2 of Annex IV, and 8.2 of Annex XI. The audit report provides investors with confidence that the basis of the accounting policies used for profit forecasts and estimates is consistent with the accounting policies applied in the latest publicly available audited financial statements. An independent verification is needed to ensure the quality and credibility of reported (non-)financial information. We do believe that auditor reports on profit forecasts and profit estimates could be even more informative for users if information is provided about the level of assurance and the methodology used by the auditor.

*Q10: Do you agree with ESMA's approach to exclude "preliminary statements" from the scope of Article 2.11. relating to "profit estimate" and to provide a definition of "preliminary statements" in the Prospectus Regulation? If not, please indicate your reasons.*

We agree.

*Q11: Do you agree with the list of criteria that have been defined for “preliminary statements”? If not, please indicate your reasons.*

We agree. The word ‘agreed’ may require additional guidance on what level of assurance is targeted here.

*Q12: Do you agree to keep the current requirement of the Prospectus Regulation to produce audited financial information covering the latest three financial years?*

We agree. Additionally, we concur with ESMA being not in favor of reducing financial disclosure for Annexes I and X.

If you would like to discuss our views in further detail, please do not hesitate to contact us. Our contact person is Martijn Bos ([martijn.bos@eumedion.nl](mailto:martijn.bos@eumedion.nl), +31 20 70 85 885).

Yours sincerely,



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Executive Director Eumedion