



06 January 2012

Our ref: ICAEW Rep 01/12

ESMA
103 rue de Grenelle
75007 Paris
France

Dear Sirs

Consultation paper, Technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

ICAEW welcomes the opportunity to comment on the consultation paper *Technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU* published by ESMA on 13 December 2011, a copy of which is available from this [link](#). ICAEW is listed in the European Commission's Interest Representative Register (ID number: 7719382720-34).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

ICAEW's Corporate Finance Faculty is a network of over 6,000 corporate finance professionals, including sponsors, nominated advisers and reporting accountants. Our comments, which are based on views from this network, concentrate on some of the requirements in section 4. Review of the provisions of the Prospectus Regulation. Our comments are set out in the Appendix.

Yours faithfully

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APPENDIX

4. Review of the provisions of the Prospectus Regulation (Articles 5 and 7)

4.II Information on Taxes withheld at source

Q5: In cases where tax treaties mitigate or prevent applicable double taxation, do you consider it useful for investors to be informed of this fact?

1. We agree such information would be useful for investors but its provision would only be practicable if it is limited to treaties between the country of registered office of the issuer and the country(ies) where the offer is being made.

4.IV Profit Forecast and Estimate

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? If yes, please feel free to provide additional arguments. If not, please provide the reasoning behind your position.

2. We support retaining the report for profit forecasts and profit estimates and agree with the arguments put forth in the paper. We believe another benefit of the independent review is that it can motivate companies to ensure that forecasts and estimates properly reflect their thinking.

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.

3. We agree with the approach to exclude "preliminary statements" from the scope of Article 2.11 relating to "profit estimate". This is sensible for the additional reason that the timing of publication of preliminary or quarterly announcements differs between EU jurisdictions.
4. We also agree that a definition of "preliminary statements" would be helpful and will also set the context as that of preliminary statements published in a prospectus rather than ongoing preliminary statements. We are of the view, however, that such a definition would be better located in the Transparency Directive and referred to in the Prospectus Regulation.

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

5. We support the principle of having a list of criteria for "preliminary statements" and, subject to the observations below, are broadly comfortable with ESMA's list.
6. Criterion 1. could be more specific as to what constitutes "non-misleading figures".
7. In criterion 5. we believe that there is scope for wide interpretation of the proposal that "preliminary statements" have to be 'agreed by' the statutory auditor as it is not clear on the form the agreement with the auditor should take or the extent of work expected of the auditor. We would suggest that the term 'agreed by' is replaced with 'agreed with'. We refer ESMA to guidance for auditors concerning their responsibilities with regard to preliminary announcements such as [*Bulletin 2008/2 The Auditor's Association with Preliminary Announcements made in Accordance with the requirements of the UK and Irish Listing Rules*](#), published by the UK's Auditing Practices Board. ESMA could consider whether some of the principles therein might be useful in the proposed criterion.

4.V Audited Historical Financial Information

Q12: Do you agree to keep the current requirement of the Prospectus Regulation to produce audited financial information covering the latest three financial years? If yes, please feel free to provide additional arguments. If not, please provide the reasoning behind your position.

8. We agree.