

SWEDISH SECURITIES DEALERS ASSOCIATION

SVENSKA FONDHANDLAREFÖRENINGEN

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European Securities and Markets Authority

Response to the Consultation Paper on Draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive

ESMA /2014/1186

The Swedish Securities Dealers Association (SSDA)¹ welcomes the opportunity to respond to the Consultation Paper from ESMA.

General Comments

The Omnibus II Directive requires ESMA to draft Regulatory Technical Standards (RTS) in relation to four topics in Directive 2003/71/EC (the Prospectus Directive); prospectus approval, incorporation by reference, prospectus publication and dissemination of advertisements.

SSDA supports the harmonization of the rule book for prospectuses and is in general supportive to the draft Regulatory Technical Standards (RTS). However, we are of the opinion that the draft RTS are too detailed and could raise the costs in a less desirable way for producing prospectuses without enough benefits. There must be a clear need and a real benefit for the market to adopt new rules in this already very detailed regulated field. In our

¹ SSDA represents the common interest of banks and investment-services-firms active on the securities market. The mission of SSDA is a sound, strong and efficient securities market in Sweden. SSDA promotes member's view in regards to regulatory, market and infrastructure-related issues. It also provides a neutral forum for discussing and exchanging views on matters which are of common interest to its members.

SSDA have a close cooperation with other trade associations in Sweden, in the Nordic area and in the UK. SSDA is also active on European arena via EBF (European Banking Federation) and EFSA (European Forum of Securities Associations) and globally through ICSA (International Committee of Securities Associations).

view some articles could be avoided (deleted) or, at least formulated in a more general way. Furthermore, it would in our opinion be prudent to proceed with caution regarding new detailed rules because of the forthcoming evaluation of the Prospectus Directive by the Commission as part of the REFIT initiative.

ESMA has made the decision not to draw up draft RTS regarding the conditions in accordance with which time limits may be adjusted. SSDA could support that decision but want to add the following. In our opinion there is a need to clarify that comments and questions from the competent authority do not imply that the application for approval is incomplete. Furthermore, according to the experience of our members the operation of the existing time limits could be a substantial problem. Prolonged time limits have negative impact on the market and could result in avoidance of such issues that require a prospectus as well as “forum shopping”.

Comments to some of the Questions

Question 1

It could be discussed if the list in Article 2.2 is really necessary and from the view of the national competent authority point 2.2 (6) should in reality cover all needs.

Question 2

As mentioned above, we are of the opinion that the draft RTS is too detailed and we propose that Article 2.2. (4-7) is substituted by a simpler and more straightforward wording.

“To facilitate an efficient and timely review process, the prospectus should always be submitted to the national competent authority at least in searchable electronic format. It is imperative that each draft of the prospectus submitted to the national competent authority clearly shows changes made since the previous submission and explains how such changes address the comments raised by the national competent authority.”

Question 3

It should be clarified that acknowledgement from the competent authority of the application for approval of a prospectus in no way have any impact on the day of submission which should be the day of application.

Question 4-7

In our opinion the list of information which could be incorporated by reference should be open-ended. There is a clear risk that an exhaustive list could be problematic and not cover information that could or should be incorporated by reference. At least quarterly financial reports – if applicable – should be included in the list.

In our opinion incorporation by reference should of course be possible for financial reports in prospectuses for wholesale debt instrument. It would be useful if ESMA could clarify the issue as the text in point 92 throws some doubts.

Question 9

Yes

Question 10-21

As the transaction in the prospectus could be made in dual tranches, one in the EU and the other tranche in a third country with different rules for disclosing information to investor (for example limitation on circulation). Such transactions should of course be acceptable and the RTS have to acknowledge that there could be situation where the RTS could not be followed because of third country regime.

As mentioned above, we are of the opinion that the draft RTS is too detailed. For example, it should not be regulated whether to include hyperlinks or not. Furthermore, it should be enough with one document with list of references.

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