



European Securities and Markets Authority

## CONSULTATION ON DRAFT RTS ON PROSPECTUS RELATED ISSUES UNDER THE OMNIBUS II DIRECTIVE

**Q 6 Do you agree that the above mentioned information constitutes the information which complies with the requirement of being filed in accordance with the TD? If not, please provide your reasoning.**

No, we do not agree with the proposal of ESMA.

Article 11 of the Prospectus Directive (PD) sets out requirements for issuers incorporating information into a prospectus by reference. In particular, article 11 (1) states that “Member States shall allow information to be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the home Member State or filed with it in accordance with this Directive or Directive 2004/109/EC”.

ESMA has been asked to identify the information that meets the condition for “incorporation by reference”. In this context, ESMA proposes to limit the possibility to incorporate the annual or interim financial information by reference only if these fall within the definition of “regulated information” under Transparency Directive (TD).

We understand that only listed issuers will be able to use this mechanism for financial information, while others – non-listed and smaller issuers – will have to report whole sections of financial information in the prospectus. This is even more out of proportion for banks, as they are supervised entities by National Competent Authorities and their financial information is audited.

We also believe this proposal is in contradiction to the technical advice from August 2003, where the Committee of European Securities Regulators (CESR) suggested that information contained – among others – in the annual and interim financial information could be incorporated by reference in a prospectus. This proposal was incorporated in Article 28(1) of Prospectus Regulation (PR).

And, more importantly the proposal will not contribute to facilitating “the procedure of drawing up a prospectus and lower the cost for issuers” as it is foreseen in paragraph 71 of the Consultation Paper, referring to recital 29 of the PD.

We believe the proposal is burdensome and contradictory to the principle of proportionality and the objective of the idea to refer to incorporation by reference, which is to simplify and reduce the costs of drafting a prospectus.



We note that non-listed banks would be directly impacted by such a burdensome obligation. In our experience, prospectuses are documents which - for a regulated entity such as banks - do not offer new information to investors, as banks main information is publicly available and audited. This is why, in our view, prospectuses should be simpler and allow for the provision of information by reference. This would, in practice, improve investor protection as they will be able to access all relevant information without the need to assess a complicated prospectus.

With this in mind, we believe it is necessary to maintain the possibility for even non-listed banks to incorporate information by reference. This should be the case for at least the annual and interim financial information and audit report and the financial statements. We do not see any reason why this possibility would endanger investor protection in terms of comprehensibility and accessibility of the information.

Moreover, we suggest that apart from half-yearly financial reports also quarterly report should be included in the relevant list.

## **FEDERATION OF FINNISH FINANCIAL SERVICES**