

Group Briefing August 2017

ESMA Consultations: Key Points for Equity Issuers

KEY CONTACTS

For further information,
please contact:



Maura McLaughlin
PARTNER
+353 1 920 1182
Maura.McLaughlin@arthurcox.com



Suzanne Kearney
PROFESSIONAL SUPPORT LAWYER
+353 1 920 1649
Suzanne.Kearney@arthurcox.com



Katie Burns
ASSOCIATE
+353 1 920 1276
Katie.Burns@arthurcox.com

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

BACKGROUND

The new Prospectus Regulation (*Regulation (EU) 2017/1129*) (known as **PD3**) was published in the Official Journal on 30 June 2017. It will apply from 21 July 2019 (with some limited exceptions) and will be directly effective in Member States. [Read more.](#)

ESMA CONSULTATION PAPERS

The European Securities and Markets Authority (**ESMA**) has published three consultation papers setting out draft technical advice on various aspects of the prospectus regime under PD3. Comments on the consultation papers are due by 28 September 2017. ESMA plans to deliver the technical advice to the European Commission by 31 March 2018. This briefing sets out an overview of aspects of those consultation papers relevant to equity issuers.

CONSULTATION PAPER: FORMAT AND CONTENT OF THE PROSPECTUS

The basic format of the Prospectus (registration document, securities note and summary) is already set out in PD3. Regarding the more detailed format and content of the Prospectus, ESMA carried out a review of the existing EU Prospectus Regulation in order to establish which elements can be carried over into the new regime under PD3, and which provisions may no longer be fit for purpose.

Primary issuances: ESMA proposes largely maintaining the existing regime in relation to the format and content of the prospectus for primary issuances, but

proposes a number of targeted changes aimed at reducing the burden and costs on issuers, including removing the requirement for a report by auditors or independent accountants on profit forecasts and estimates.

Simplified disclosure regime for secondary issuances: ESMA proposes a simplified prospectus for secondary issuances, streamlining of information in order to take greater account of publicly available information, particularly in the case of registration documents, and identifies existing disclosure requirements that may be omitted. In particular, ESMA proposes that the operating and financial review should not be required as this information should already be published by the issuer in compliance with the Transparency Directive and the Market Abuse Regulation.

Requirements for new URD: the proposed requirements for the universal registration document (a stand-alone document which will operate as a type of shelf registration document) are based on the requirements for the share registration document, with additional disclosures relating to the publication of annual and half-yearly financial reports.

Other proposals include making a cover note mandatory, including an explanation and breakdown on the use of proceeds of a new issuance in a dedicated prominent section of the prospectus, and aligning the requirements and terminology with other directives, including the Accounting Directive and Transparency Directive.

CONSULTATION PAPER: FORMAT AND CONTENT OF EU GROWTH PROSPECTUS

ESMA's proposal aims to ensure a more proportionate regime to alleviate the length and complexity of prospectus content for SMEs.

Format: ESMA proposes a standardised format and sequence for the SME focused EU Growth Prospectus (i) when it is prepared as a single document; and (ii) when it is prepared as separate documents (the EU Growth registration document and the EU Growth securities note).

Content: The consultation paper details the proposed disclosure items for an EU Growth registration document and securities note for equity issuances.

CONSULTATION PAPER: SCRUTINY AND APPROVAL OF THE PROSPECTUS

ESMA's proposal sets out criteria for scrutiny and procedures for approval and filing of the Prospectus.

Scrutiny: ESMA proposes that standard criteria be employed for scrutiny of completeness, comprehensibility and consistency of the Prospectus. Where deemed necessary for further investor protection, national competent authorities may apply additional criteria.

Approval and Filing: ESMA proposes procedures for national competent authorities and market participants for the approval and filing of the Prospectus which are largely based on the existing provisions of the *Commission Delegated Regulation (EU) 2016/301*.

CONCLUSION

ESMA's consultation will close on 28 September 2017 and ESMA will deliver the technical advice to the European Commission by 31 March 2018. We will issue a further update when ESMA's final technical advice has been published.

arthurcox.com

DUBLIN

+353 1 920 1000
dublin@arthurcox.com

LONDON

+44 207 832 0200
london@arthurcox.com

SILICON VALLEY

+1 650 943 2330
siliconvalley@arthurcox.com

BELFAST

+44 28 9023 0007
belfast@arthurcox.com

NEW YORK

+1 212 782 3294
newyork@arthurcox.com