



15 September 2011

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**ESMA consultation on the technical advice to the European Commission on possible delegated acts concerning the Prospectus Directive**

**Euroclear Bank response**

We are pleased to be given the opportunity to offer Euroclear Bank's views on ESMA's consultation on the technical advice to the European Commission on possible delegated acts concerning the Prospectus Directive. We apologise for the delay in responding, but hope that the following brief points will help guide your final Advice to the European Commission.

Euroclear Bank is a provider of settlement services for international bond, money-market, equity and fund instruments. We offer clients in around 90 countries a single access point to post-trade services for equities in 25 countries, bonds in 30 countries, as well as international securities. Together with Clearstream Luxembourg SA we provide services for the international securities markets with a current value of over €9 trillion.

**Comments**

We support the proposed amendments to the Prospectus Directive making a clear differentiation between the information that is provided in the Prospectus (and the Base Prospectus) and that which is provided in the Final Terms. We agree that the Final Terms should not be allowed to amend or replace information contained in the Base Prospectus.

**Part 3.IV - Supplement to Base Prospectus**

Euroclear understands that the technical advice could support supplements to the Base Prospectus which would apply to all issuances under that Base Prospectus or just to a particular issuance. However, if there is ambiguity in the scope of these supplements, so that it is unclear whether they apply to one issuance or to the entire future issuances, it could create confusion for investors. Central Securities Depositories (CSDs) and International CSDs would, in addition, face complexities in their delivery of custody services post-issuance, as the precise scope of the securities on which these services would be implemented would not be clear.



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We would suggest therefore, that ESMA issues clear guidelines in order to differentiate between supplements that are applicable to all future issuances and those that are specific only to a particular issuance. This could be achieved by requiring the issuer to provide additional information on the supplement to clarify its applicability.

Page 43, Section C – Securities

While we understand that the security information could be provided in the summary of a Prospectus for a single issuance, some of these items (e.g. ISIN, interest details, redemption details, due dates etc) could be difficult to provide in a Base Prospectus (for a programme) since this information is security specific.

We would suggest therefore, that ESMA creates two different lists of mandatory security information that would need to be provided in the summary of a Prospectus:

- One list for the security information that should be provided in the base prospectus like the items C1 (type of security offered but without the ISIN), C2, C3 etc. and,
- A second list for the security information that should be additionally provided (over and above the first list) in the prospectus of a single security such as items C10, C11, C17, C20 etc.

Additionally, there is certain information which could be added to the above mentioned 'Section C – Securities' that would be beneficial for investors in making their investment decisions. These include :

- Physical form of security (e.g. Global Bearer, Dematerialized, Definitive Notes etc).
- Applicability of US certification (e.g. W8, W9,...etc)
- Subordination details (whether a security is a subordinated or senior issuance, and to which securities)

Page 12 Paragraph 38

ESMA states that it does not intend to standardize market structure, since current market practices vary considerably. We would like to state that the international capital market has been trying to standardize the issuance and servicing of international securities through the ISMAG (International Securities Market Advisory Group) initiative. The ISMAG programme has aimed at achieving a high degree of standardisation and operational efficiency in the issuance and asset servicing of international securities issued through the ICSDs. The recommendations of ISMAG are produced through the involvement of different end-to-end intermediaries such as



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Issuers, Agents, Common Depositories, ICSDs, Custodians, Lead Managers and Trade Associations. We would strongly recommend that ESMA consults and reuses the ISMAG recommendations for the standardization of documentation. The ISMAG recommendations agreed by the different players in the international capital markets are summarized in a Market Practice Book which is available at [www.euroclear.com/ISMAG](http://www.euroclear.com/ISMAG).

Ideally we would like the information in the Final Terms to be built according to the ISMAG Asset Servicing Checklists, since this has already been agreed upon by the international capital markets. At a minimum, the following information should be included in the final terms:

- Day count fraction: What is the DCF convention that would be used for the security
- Adjustment of coupon period: Issuer to specify if the coupon period is fixed or variable
- Units/Nominal: Issuer to specify clearly whether the securities will be traded in units or nominal
- Payment Business Days: To specify the business days when the payments would be made
- Record dates: Issuer to specify the record dates for the different Corporate Action events for the securities
- Partial redemption: Pool factors used for partial redemption should be described

Page 17, paragraph 49

We agree with ESMA's recommendation to include the pay out formulas in the Base Prospectus. However, in case of a difference between the formula cited in the Base Prospectus and the Final Terms (due to manual errors) ESMA should specify which should prevail.

### **Contacts**

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