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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 June 2012
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../... of 4.6.2012 amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors

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Delegations will find attached Commission document C(2012) 3505 final.

Encl.: C(2012) 3505 final



EUROPEAN COMMISSION

Brussels, 4.6.2012  
C(2012) 3505 final

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 4.6.2012**

**amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Adopted in 2003, the Prospectus Directive 2003/71/EC is an essential instrument to the achievement of the internal market, facilitating the widest possible access to investment capital on a Union-wide basis by granting a single passport to issuers. Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements sets out in detail the information for different kinds of securities which must be included in a prospectus.

Despite its broad success, the Directive was amended in November 2010 to further strengthen the framework's original objectives of ensuring investor protection and market efficiency.

Efficiency is increased for both issuers and financial intermediaries placing or subsequently reselling the securities through the clarification of the use of the prospectus, and thus of the respective rights and obligations following thereof, within securities distribution networks. The disclosure of the consent given by the issuer or the person responsible for drawing up the prospectus ensures that investors know whether the issuer accepts responsibility for use of the prospectus by financial intermediaries. Moreover, the further harmonisation of some technical requirements is an opportunity to adapt the scope of these requirements in order to take into account latest market developments. In particular, issuers will benefit from the clarification that financial information complying with the criteria set in this Delegated Regulation does no longer need to be accompanied by an auditors or independent accountants report, required for profit forecasts and estimates. They will also benefit from the clarification of cases where a description of the underlying index is required. Moreover, the requirement to describe underlying proprietary indices, also when the index is composed by an entity belonging to the same group of the issuer, would provide investors with additional transparency on conflicts of interest.

The Amended Directive requires amendments to the Commission Regulation No 809/2004/EC (the "Regulation") through a Delegated Regulation, on the basis of the empowerments in Article 7(1) on the minimum information which must be included in the prospectus and Article 5(5) on the format of the prospectus and base prospectus, the summary, final terms and supplements. This Delegated Regulation is the vehicle for delivering the objectives established by the Amended Directive, while ensuring a single rulebook and level playing field.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

This initiative is the result of extensive consultations with all major stakeholders, including public authorities (governments and securities regulators), issuers, intermediaries and investors.

It takes into consideration the technical advice from the European Securities and Markets Authority (ESMA) established by the Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010, amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. ESMA set up a Task Force which

developed and consulted the public on possible options for its advice. ESMA then launched a consultation on its technical advice on possible delegated acts concerning the Prospectus Directive on 13 December 2011. ESMA's final advice, also reflecting consultation comments, was received on 29 February 2012. The Expert Group of the European Securities Committee was also consulted.

The measures concerned by the present delegated acts have been considered in the summary of impact assessment (SWD(2012) 76 FINAL) and impact assessment (SWD(2012) 77 FINAL) carried out for the first Delegated Regulation adopted by the Commission on 30 March 2012, as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements. These provisions have been already the object of a full and proper impact assessment at the time of the review of the Prospectus Directive (COM(2009) 491 final). Others are purely technical adjustments to a number of requirements of the Regulation and in line with the general objectives of increased investor protection and legal clarity.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

#### **3.1. Subsidiarity and proportionality**

According to the principle of subsidiarity (Article 5.3 Treaty on the European Union), action at Union level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union. As the Prospectus Directive creates a passport valid for the whole Union, a harmonised approach is essential for investor protection, legal certainty and harmonised supervision. Further, and since this issue is already covered by the *acquis* of the existing Prospectus framework, a consistent approach is essential in order to avoid regulatory arbitrage addressing the problems highlighted above. Moreover, the direct applicability of a Regulation will reduce regulatory complexity and offer greater legal certainty for those subject to the legislation across the Union introducing core uniform rules and contributing to the functioning of the Single Market.

The principle of proportionality requires that any intervention is targeted and does not go beyond what is necessary to achieve the objectives. This principle has guided the process from the identification and evaluation of the envisaged measures to the drafting of this Delegated Regulation.

#### **3.2. Detailed explanation of the proposal**

##### *3.2.1. The modalities to disclose the consent given by the issuer or the person responsible for drawing up the prospectus (Article 20a, section A of Annex XXII and Annex XXX)*

Article 3(2) of the amended Prospectus Directive specifies that no new prospectus is required in case of subsequent resale or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.

The objective is to enable the assessment by all involved actors whether the resale or final placement of securities complies with that agreement. By granting consent to use the prospectus and attaching conditions to that use, including a limitation of the duration of that

use, the issuer could therefore control the use of the prospectus and its own liability. Also, intermediaries would know whether they can use, and rely on, the prospectus of the issuer. Investors would have clarity whether the issuer accepts responsibility for use of the prospectus and thus whether to seek recourse against the issuer or the intermediary in case of incorrect or incomplete information in the prospectus. At last, competent authorities would know whether a public offer is made on the basis of an approved prospectus or not.

This Delegated Regulation therefore requires the publication of the consent in the prospectus while allowing some flexibility in cases where financial intermediaries are appointed only after the beginning of the offer or not appointed at all and therefore unknown to the issuer or the person responsible for drawing up the prospectus. In these cases, a general consent from the issuer to use the prospectus will be included in the prospectus, subject to certain conditions. The Delegated Regulation also envisages the possibility for an issuer or a person responsible for drawing up a prospectus to restrict its consent to individual financial intermediaries, based on an individual bilateral written agreement between the parties.

### *3.2.2. Review and clarification of certain technical requirements in the Prospectus Regulation*

#### *3.2.2.1. Information relating to an underlying index (items 4.2.2 of Annex XII and 2.10 of Annex XV)*

The existing Regulation (item 4.2.2 of Annex XII) requires the inclusion in the prospectus of a description of the index if it is composed by the issuer ("proprietary indices"), whereas in case the index is composed by a third party only an indication where information about the index can be obtained is required. Further clarification was needed in relation to this requirement in light of the latest developments in the financial markets, in particular the practice of indexes composed by entities belonging to the same group as the issuer or by entities acting on behalf of, or in association with, the issuer.

Issuers may face a conflict of interest between their obligations as index creators and as the issuers of the securities having as underlying the same index. Without the description of proprietary indices in the prospectus, competent authorities would not be able to scrutinize information concerning the governing rules of the index, often very complex, with regard to comprehensibility as set out under Article 2(1)(q) of the Prospectus Directive.

The Delegated Regulation therefore clarifies that the description of proprietary indices should be disclosed in the base prospectus, so as to ensure that such information is set out in the most objective and transparent way to investors as it may play a defining role in their investment decisions. Also, the Delegated Regulation clarifies, in order to prevent circumvention of the obligation to produce an index description in the base prospectus, that indices composed by an entity belonging to the same group as the issuer are also covered by the same obligation. Nevertheless, and subject to defined conditions, indices composed by entities acting in association with, or on behalf of the issuer are out of the scope of the requirement of item 4.2.2 of Annex XII.

At last, item 2.10 of Annex XV should be amended in order to clarify that issuers are only required to indicate where information about the index can be found instead of having to provide a description of the composition of the index, which is in this case a broadly based and recognised published index.

3.2.2.2. The independent accountants or auditors' report on profit forecasts and estimates (items 13.2 of Annexes I, X, XXV and XXVIII, items 9.2 of Annexes IV and XXVI and items 8.2 of Annexes XI, XXIII and XXIX)

The existing Prospectus Regulation requires profit forecasts or estimates (items 13.2 of Annexes I, X, XXV and XXVIII, 9.2 of Annex IV, 8.2 of Annexes XI and XXIII, 9 of Annex XXVI) be accompanied by a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. The Delegated Regulation suggests that the report should be kept as it provides investors with confidence that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. It nevertheless clarifies, therefore enhancing clarity and reducing administrative burdens, that this report is not required for certain financial information if specific conditions are complied with.

#### **4. BUDGETARY IMPLICATION**

There are no budgetary implications for the EU budget.

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 4.6.2012**

**amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC<sup>1</sup>, and in particular Article 5(5) and Article 7(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements<sup>2</sup> sets out the minimum information to be included in a prospectus for different kinds of securities in order to comply with Article 5(5) and Article 7(1) of Directive 2003/71/EC.
- (2) Directive 2003/71/EC was amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>3</sup> in order to enhance investor protection, reduce administrative burdens for companies when raising capital in the securities markets in the Union and increase efficiency in the prospectus regime. Regulation (EC) No 809/2004 should therefore be amended regarding the consent of the issuer or the person responsible for drawing up the prospectus to the use of the prospectus by financial intermediaries and the information to be included in the prospectus relating to underlying indexes and profit forecasts and estimates.

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<sup>1</sup> OJ L 345, 31.12.2003, p. 64.

<sup>2</sup> OJ L 149, 30.4.2004, p. 1.

<sup>3</sup> OJ L 327, 11.12.2010, p. 1.

- (3) For the purposes of the third subparagraph of Article 3(2) of Directive 2003/71/EC, Regulation (EC) No 809/2004 should specify what information is to be provided where the issuer or the person responsible for drawing up the prospectus consents by means of a written agreement to its use by financial intermediaries.
- (4) In order to take account of technical developments on financial markets, and notably the increase in the use of indexes as underlying of structured securities, certain requirements of Regulation (EC) No 809/2004 should be reviewed and clarified. By conferring the responsibility to compose the index on another entity of the group, issuers could circumvent the requirement to include in the prospectus a description of the index composed by the issuer (item 4.2.2 of Annex XII) and thus avoid liability where the description is inaccurate. Accordingly, that requirement should also be extended to indexes composed by an entity belonging to the same group as the issuer.
- (5) With a view to increasing efficiency and reducing administrative burdens, this Regulation should also lay down conditions under which a description of the index within the prospectus is not required when the index is composed by entities acting in association with or on behalf of the issuer. Moreover, as item 2.10 of Annex XV only refers to broadly based and recognised published index, a statement in the prospectus specifying where the information about the index can be found should be sufficient without a description of the composition of the index being necessary.
- (6) In order to reduce the administrative costs for issuers when raising capital, this Regulation should lay down conditions under which the report prepared by independent accountants or auditors accompanying profit forecasts and estimates is not required, notably where independent accountants or auditors are not able to sign the audit report because the complete set of documents constitutive of annual financial statements are not available to them.
- (7) Directive 2010/73/EU replaced the term "key information" by the term "essential information" in a number of provisions of Directive 2003/71/EC. The Annexes to Regulation (EC) No 809/2004 should therefore be adapted.
- (8) Regulation (EC) No 809/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Amendments to Regulation (EC) No 809/2004**

Regulation (EC) No 809/2004 is amended as follows:

- (1) The second paragraph of Article 3 is replaced by the following:

"A prospectus shall contain the information items required in Annexes I to XVII and Annexes XX to XXX depending on the type of issuer or issues and securities involved. Subject to Article 4a(1), a competent authority shall not require that a prospectus contains information items which are not included in Annexes I to XVII or Annexes XX to XXX."



- (2) The following Article 20a is inserted:

*"Article 20a*

**Additional information building block for consent given in accordance with  
Article 3(2) of Directive 2003/71/EC**

1. For the purposes of the third subparagraph of Article 3(2) of Directive 2003/71/EC, the prospectus shall contain the following:
    - (a) the additional information set out in Sections 1 and 2A of Annex XXX where the consent is given to one or more specified financial intermediaries;
    - (b) the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.
  2. Where a financial intermediary does not comply with the conditions attached to consent as disclosed in the prospectus, a new prospectus shall be required in accordance with the second paragraph of Article 3(2) of Directive 2003/71/EC."
- (3) The second subparagraph of Article 22(1) is replaced by the following:
- "A base prospectus shall contain the information items required in Annexes I to XVII, Annex XX and Annexes XXIII to XXX depending on the type of issuer and securities involved. Competent authorities shall not require that a base prospectus contains information items which are not included in Annexes I to XVII, Annex XX or Annexes XXIII to XXX."
- (4) The Annexes are amended in accordance with the Annex to this Regulation.

*Article 2*

**Transitional provision**

1. This Regulation shall not apply to the approval of a supplement to a prospectus or base prospectus where the prospectus or base prospectus was approved before 1 July 2012.
2. Where in accordance with Article 18 of Directive 2003/71/CE the competent authority of the home Member State notifies the competent authority of the host Member State with a certificate of approval in relation to a prospectus or a base prospectus approved before 1 July 2012, the competent authority of the home Member State shall clearly and explicitly indicate in the certificate that the prospectus or base prospectus was approved before 1 July 2012.

*Article 3*

**Entry into force**

This Regulation shall enter into force on 1 July 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4.6.2012

*For the Commission  
The President  
José Manuel BARROSO*

## ANNEX

The Annexes to Regulation No 809/2004/EC are amended as follows:

- (1) In Annex I, item 13.2 is replaced by the following:

"13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

- (2) In Annex III, the heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION".

- (3) In Annex IV, item 9.2 is replaced by the following:

"9.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;

- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
  - (c) this financial information has not been audited."
- (4) In Annex V, the heading of Section 3 is replaced by the following:
 

"3. ESSENTIAL INFORMATION".
- (5) Annex X is amended as follows:
  - (a) Item 13.2 is replaced by the following:
 

"13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

    - (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
    - (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
    - (c) this financial information has not been audited."
  - (b) The heading of Section 31 is replaced by the following:
 

"31. ESSENTIAL INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS".
- (6) In Annex XI, item 8.2 is replaced by the following:
 

"8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures

to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

(7) Annex XII is amended as follows:

(a) The heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION";

(b) The third indent of item 4.2.2 is replaced by the following:

"– where the underlying is an index:

- the name of the index.
- a description of the index if it is composed by the issuer or by any legal entity belonging to the same group.
- a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements:
  - the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website;

and

- the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.

If the index is not composed by the issuer, where information about the index can be obtained."

(8) In Annex XIII, the heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION".

(9) In Annex XV, item 2.10 is replaced by the following:

"2.10. Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognised published index. A statement setting out details of where information about the index can be obtained shall be included."

(10) Annex XX is amended as follows:

(a) In the Section entitled "Annex V", the heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION";

(b) In the Section entitled "Annex XII", the heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION";

(c) In the Section entitled "Annex XII", point (ii) of item 4.2.2 is replaced by the following:

"(ii) where the underlying is an index:	
<ul style="list-style-type: none"><li>the name of the index.</li></ul>	<b>Category C</b>
<ul style="list-style-type: none"><li>a description of the index if it is composed by the issuer or by any legal entity belonging to the same group.</li></ul>	<b>Category A</b>
<ul style="list-style-type: none"><li>a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements:<ul style="list-style-type: none"><li>the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website;</li></ul></li></ul>	<b>Category A</b>
and	
<ul style="list-style-type: none"><li>the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.</li></ul>	
<ul style="list-style-type: none"><li>if the index is not composed by the issuer, an indication of where to obtain information about the index.</li></ul>	<b>Category C"</b>

- (d) In the Section entitled "Annex XIII", the heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION";

- (e) The following Section is added:

	"ANNEX XXX"	INSTRUCTIONS
<b>1.</b>	<b>Information to be provided regarding consent by the issuer or person responsible for drawing up the prospectus</b>	
1.1	Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.	<b>Category A</b>
1.2	Indication of the period for which consent to use the prospectus is given.	<b>Category A</b>
1.3	Indication of the offer period upon which subsequent resale or final placement of securities by financial intermediaries can be made.	<b>Category C</b>
1.4	Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.	<b>Category A</b>
1.5	Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.	<b>Category C</b>
1.6	Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, this financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.	<b>Category A</b>
<b>2A</b>	<b>Additional information to be provided where a consent is given to one or more specified financial intermediaries</b>	
2A.1	List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.	<b>Category C</b>

2A.2	Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.	<b>Category A</b>
<b>2B</b>	<b>Additional information to be provided where a consent is given to all financial intermediaries</b>	
2B.1	Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions attached thereto.	<b>Category A"</b>

(11) In Annex XXII, Section A, the following element A.2 is added:

<b>"All</b>	<b>A.2</b>	<ul style="list-style-type: none"> <li>• Consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus for subsequent resale or final placement of securities by financial intermediaries.</li> <li>• Indication of the offer period within which subsequent resale or final placement of securities by financial intermediaries can be made and for which consent to use the prospectus is given.</li> <li>• Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</li> <li>• Notice in bold informing investors that information on the terms and conditions of the offer by any financial intermediary is to be provided at the time of the offer by the financial intermediary."</li> </ul>
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(12) In Annex XXIII, item 8.2 is replaced by the following:

"8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.



Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

(13) In Annex XXIV, the heading of Section 3 is replaced by the following:

"3. ESSENTIAL INFORMATION".

(14) In Annex XXV, item 13.2 is replaced by the following:

"13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

(15) In Annex XXVI, item 9.2 is replaced by the following:

"9.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting

used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

(16) Annex XXVIII is amended as follows:

(a) Item 13.2 is replaced by the following:

"13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

(b) The heading of Section 31 is replaced by the following:

"3. ESSENTIAL INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS".

(17) In Annex XXIX, item 8.2 is replaced by the following:

"8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited."

(18) The following Annex XXX is added:

**"ANNEX XXX**

Additional information regarding consent as referred to in Article 20a  
(Additional building block)

<b>1</b>	<b>Information to be provided regarding consent by the issuer or person responsible for drawing up the prospectus</b>
1.1	Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.
1.2	Indication of the period for which consent to use the prospectus is given.
1.3	Indication of the offer period upon which subsequent resale or final placement of securities by financial intermediaries can be made.
1.4	Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.
1.5	Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.

1.6	Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, the financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.
<b>2A</b>	<b>Additional information to be provided where a consent is given to one or more specified financial intermediaries</b>
2A.1	List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.
2A.2	Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.
<b>2B</b>	<b>Additional information to be provided where a consent is given to all financial intermediaries</b>
	Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions attached thereto."