

## PUBLIC STATEMENT

### **Update on the process of revising the guidance published under the Prospectus Directive and applicability of the CESR recommendations concerning specialist issuers**

The European Securities and Markets Authority (ESMA) is issuing this Public Statement to promote consistent application of the current legal framework and coordinated action by National Competent Authorities (NCAs) regarding the approval of prospectuses.

In accordance with Article 31(2) of Regulation (EU) No 1095/2012 (the 'ESMA Regulation'), ESMA is issuing this Public Statement to provide clarity to market participants drawing up prospectuses, such as issuers and their advisors.

#### **Background**

On 12 July 2019, ESMA published a news item relating to the publication of twenty-five Q&As relating to Regulation (EU) 2017/1129 (the 'Prospectus Regulation')<sup>1</sup>. The news item provided guidance concerning the process of updating the Q&As that were published under the Prospectus Directive, including further information on which published Q&As will not be updated in relation to the Prospectus Regulation.

The news item went on to state that the existing Q&As relating to the Prospectus Directive would continue to be available on ESMA's website during the period in which they are still applicable, which is until 21 July 2020. The news items stated that these Q&As will no longer apply after this period.

#### **The applicability of Q&As published under the Prospectus Directive**

Although ESMA has continued to work on updating the Q&As that were originally published in relation to Directive 2003/71/EC (the 'Prospectus Directive'), this work is not complete. This is primarily due to the new procedures that ESMA is putting in place in order to handle Q&As in accordance with the provisions of the revised ESMA Regulation<sup>2</sup>.

ESMA has now resumed this work and is publishing this statement to inform market participants about the process going forward. In particular, ESMA has determined that the guidance provided in Prospectus Directive Q&As 9, 16a, 16b, 16c, 17, 26a, 26b, 26c, 26d, 26e, 26f, 29, 31a, 31b, 32, 34, 38, 39b, 40, 46b, 67(2), 72, 74, 76a, 77, 84(1), 84(2) 96, 99, 102, 103 and 104 needs to be updated. As ESMA considers that the necessary clarifications to Prospectus Directive Q&As 26a, 26b, 26c, 26d, 26e, 26f, 38, 40, 46b, 67(2), 74, 84(1) and

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<sup>1</sup>ESMA updates its Q&As relating to the Prospectus Regulation, 12 July 2019.

<sup>2</sup> More information about these changes can be found on the following webpage: <https://www.esma.europa.eu/questions-and-answers>.

84(2) relate to the interpretation of Union law, ESMA will forward these Q&As to the European Commission, in accordance with Article 16b of the ESMA Regulation.

ESMA has determined that the following Prospectus Directive Q&As do not relate to the interpretation of Union law<sup>3</sup>: 9, 16a, 16b, 16c, 17, 29, 31a, 31b, 32, 34, 39b, 72, 76a, 77, 96, 99, 102, 103 and 104, and has begun the process of updating those Q&As. ESMA has also determined that Prospectus Directive Q&As 3, 10, 11, 20, 28, 46a, 58, 59, 76b, 76c, 92 and 94 will be deleted.

The following summarising table sets out the status of the Q&As that were published in relation to the Prospectus Directive.

Action	Q&A number
<b>Q&amp;As that will be deleted<sup>4</sup></b>	1, 2, 3, 4, 8, 10, 11, 15, 20, 22, 25, 28, 30, 35, 37, 44, 45, 46a, 58, 59, 60, 62, 65, 70, 71, 73, 75, 76b, 76c, 80, 82, 86, 87, 88, 89, 90, 92, 93, 94 and 101
<b>Q&amp;As that have been previously updated</b>	5, 6, 7, 13, 14, 18, 19, 23, 33, 36, 42, 43, 47, 48 (merged with 47), 49, 64, 66, 69, 78, 79, 83, 85, 91, 95, 98 and 100
<b>Q&amp;As to be updated by ESMA in the coming months</b>	9, 16a, 16b, 16c, 17, 29, 31a, 31b, 32, 34, 39b, 72, 76a, 77, 96, 99, 102, 103 and 104
<b>Q&amp;As to be transferred to the Commission for potential update</b>	26a, 26b, 26c, 26d, 26e, 26f, 38, 40, 46b, 67(2) <sup>5</sup> , 74, 84(1) and 84(2)

The Q&A document that was originally published in relation to the Prospectus Directive contains Q&As that have not yet been updated and are not being deleted<sup>6</sup>. Those Q&As are still applicable to the extent that they are compatible with the Prospectus Regulation in accordance with Q&A 2.1<sup>7</sup>. Therefore, the document containing these Q&As in relation to the Prospectus Directive will remain available on ESMA's website.

<sup>3</sup> The Q&As published in relation to the Prospectus Directive can be downloaded using the following link: [ESMA31-62-780](#) Questions and Answers – Prospectuses, 30<sup>th</sup> updated version – 8 April 2019.

<sup>4</sup> ESMA previously announced that Prospectus Directive Q&As 1, 2, 4, 8, 15, 22, 25, 30, 35, 37, 44, 45, 60, 62, 65, 70, 71, 73, 75, 80, 82, 86, 87, 88, 89, 90, 93 and 101 would be deleted in the [news item](#) published on 12 July 2019 relating to the update of Q&As published in relation to the Prospectus Regulation.

<sup>5</sup> Please note that Q&A 67(1) has already been transferred to the European Commission.

<sup>6</sup> These are the Q&As listed in the last two lines of the table set out above.

<sup>7</sup> Questions and Answers on the Prospectus Regulation, Version 4 ([ESMA31-62-1258](#) | 18 February 2020).

## **The applicability of the CESR recommendations concerning specialist issuers**

Even though, the CESR recommendations<sup>8</sup> relating to specialist issuers<sup>9</sup> have not been carried over in the Guidelines on prospectus disclosure<sup>10</sup> ESMA notes that these recommendations have not been rescinded. ESMA plans to address these recommendations in the future. In the meantime, in line with ESMA's Prospectus Regulation Q&A 2.1, ESMA recommends that issuers and their advisors continue to apply the recommendations relating to specialist issuers.

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<sup>8</sup> ESMA update of the CESR recommendations for the consistent implementation of the Commission Regulation (EC) 809/2004, (Ref.: [ESMA/2013/319](#) | 20 March 2013).

<sup>9</sup> The CESR recommendations include guidance relating to the following types of specialist issuers: property companies, mineral companies, scientific research-based companies, start-up companies and shipping companies

<sup>10</sup> Final report concerning the Guidelines on prospectus disclosure requirements (Ref.: [ESMA31-62-1426](#) | 15 July 2020).