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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant 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

1. Introduction

Adopted in November 2003, the Prospectus Directive (PD)¹ lays down common rules governing the prospectus that has to be published for a public offer or admission to trading of transferable securities on an EU regulated market. Following a review process, the PD was amended in November 2010 by Directive 2010/73/EU ("PD II", in application from July 2012). It was last amended by Directive 2014/51/EU (the "Omnibus II" Directive).

The PD II includes, in its Article 4, a review clause requiring the Commission to assess by 1 January 2016 the application of the PD as amended by PD II. This report should be presented to the European Parliament and the Council, and accompanied, where appropriate, by proposals to amend the PD.

2. Legal basis

This report is required under Article 24a PD. Pursuant to this provision, the power to adopt delegated acts referred to in Article 1(4), Article 2(4), Article 3(4), the fifth subparagraph of Article 4(1), Article 5(5), Article 7(1), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and the first subparagraph of Article 20(3) PD shall be conferred on the Commission for a period of 4 years from 31 December 2010. The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 24b PD.

3. Exercise of the delegation

Article 1(4) PD

To date, an adjustment of the limits referred to in Article 1(4) PD was not undertaken by the Commission. The limits will be assessed in the course of the review required by Article 4 PD II, by 1 January 2016.

Article 2(4) PD

To date, an adjustment of the definitions and thresholds referred to in Article 2(4) PD was not undertaken by the Commission. The definitions and thresholds will be assessed in the course of the review required by Article 4 PD II, by 1 January 2016.

¹ 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

Article 3(4) PD

To date, an adjustment of the thresholds referred to in Article 3(4) PD was not undertaken by the Commission. The thresholds will be assessed in the course of the review required by Article 4 PD II, by 1 January 2016.

Article 4(1) PD fifth subparagraph

To date, no requests for such assessments were made to specify the criteria for the equivalence of third-country regulatory frameworks. Furthermore, the equivalence assessment can be done directly, i.e. without specifying or adding further criteria, taking into account the relevant provisions of the Markets in Financial Instruments Directive 2004/39/EC, of the Transparency Directive 2004/109/EC and of the Market Abuse Directive 2003/6/EC and the general criteria set out in Article 4(1)(e) PD. All equivalence provisions for third countries will be assessed in the course of the review required by Article 4 PD II, by 1 January 2016.

Article 5(5) PD and Article 7(1) PD

These empowerments have been used to adopt the following Commission Delegated Regulations:

- Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 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.
- Commission Delegated Regulation (EU) No 862/2012 of 4 June 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.
- Commission Delegated Regulation (EU) No 759/2013 of 30 April 2013 amending Regulation (EC) No 809/2004 as regards the disclosure requirements for convertible and exchangeable debt securities.

Article 8(4) PD

This empowerment has not been used because discussions with the European Securities and Markets Authority (ESMA) and National Competent Authorities (NCAs) have not shown the need to further specify details about the omission of information from the prospectus.

Article 11(3) PD

The "Omnibus II" Directive amended the empowerment contained in the PD in order to take into account the creation of ESMA within the European System of Financial Supervision (ESFS). Before the adoption of the Omnibus II Directive, the empowerment conferred the power on the Commission to adopt delegated acts. The adoption of the Omnibus II Directive amended the empowerment to confer the power on ESMA to develop draft regulatory technical standards (RTS) to specify the information to be incorporated by reference. ESMA is to submit these draft RTS to the Commission by 1 July 2015, and the Commission is empowered to adopt the RTS in accordance with Articles 10 to 14 of Regulation (EU) No

1095/2010. ESMA undertook a public consultation on the draft RTS which closed on 19 December 2014.

Article 13(7) PD

The "Omnibus II" Directive amended the empowerment contained in the PD. The amended empowerment confers the power on ESMA to develop draft RTS to specify the procedures for the approval of the prospectus and the conditions in accordance with which time limits may be adjusted. ESMA is to submit these draft RTS to the Commission, for adoption, by 1 July 2015. ESMA undertook a public consultation on the draft RTS which closed on 19 December 2014.

Article 14(8) PD

The "Omnibus II" Directive amended the empowerment contained in the PD. The amended empowerment confers the power on ESMA to develop draft RTS to specify the provisions relating to the publication of the prospectus in paragraphs 1 to 4 of Article 14. ESMA is to submit these draft RTS to the Commission, for adoption, by 1 July 2015. ESMA undertook a public consultation on the draft RTS which closed on 19 December 2014.

Article 15(7) PD

The "Omnibus II" Directive amended the empowerment contained in the PD. The amended empowerment confers the power on ESMA to develop draft RTS to specify the provisions concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and specify the provisions laid down in paragraph 4 of Article 15. ESMA is to submit these draft RTS to the Commission, for adoption, by 1 July 2015. ESMA undertook a public consultation on the draft RTS which closed on 19 December 2014.

Article 20(3) PD first subparagraph

To date, the Commission has not used the empowerment to adopt delegated acts establishing general equivalence criteria for third country prospectuses. In the meantime, ESMA has developed a non-binding "framework for third country prospectuses under Article 20 of the Prospectus Directive" (see Public statement ESMA/2011/36). The issue of general equivalence criteria for third country prospectuses will be assessed in the course of the review required by Article 4 PD II, by 1 January 2016.

4. Conclusion

The Commission has exercised some of its delegated powers. The empowerments contained in Article 11(3), Article 13(7), Article 14(8) and Article 15(7) PD were amended by "Omnibus II" Directive and ESMA is currently working on drafting the respective RTS, which will be adopted by the Commission in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. While the Commission believes that the delegation of powers to it has been crucial to further develop the single rulebook and thus establish more harmonised, high quality rules, the Commission has not used some of those powers yet. The provisions

concerned will also form part of the PD review required by Article 4 PD II, by 1 January 2016. The Commission considers that the European Parliament and the Council should not revoke those delegations of powers in accordance with Article 24b PD, as it may need to use those powers to adopt certain delegated acts in the future, in light of the developments on the financial markets. The Commission invites the European Parliament and the Council to take note of this report.