

ERRATA CORRIGE

Paragraph [7.0] titled “Proportionate Disclosure regime” of Circular 02/12 dated 2nd August 2012 shall read as indicated below to better reflect the provisions of Article 1(7)(b)(iii) of Directive 2010/73/EU amending Directive 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.

“[7.0] Proportionate Disclosure regime

One of the main changes to the Prospectus Directive introduced by Directive 2010/73/EU was the creation of a proportionate disclosure regime. The proportionate disclosure regime would be applicable in the following circumstances:

- (i) offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights;
- (ii) debt securities issued by certain types of issuers where the information to be included in the prospectus is adapted according to the size of the issuer.

The specific requirements of the proportionate disclosure regime have been set out in Level 2 legislation, namely the Delegated Regulation amending Regulation 809/2004 which Delegated Regulation came into effect on the 1st July 2012.”

Circular 02/12 to all Company Secretaries of listed entities and Stockbroking Firms

1st August 2012

Subject: Transposition of Directive 2010/73/EU amending Directive 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

[1.0] Introduction

This circular relates to the issue of revised Listing Rules by the Listing Authority in terms of articles 11 and 13 of the Financial Markets Act (Cap.345 of the Laws of Malta) to address the above captioned matter.

[2.0] Background

The Prospectus Directive (Directive 2003/71/EC) established a framework at EU level for the preparation of prospectuses in public offers of securities as well as in instances where securities are admitted to trading on a regulated market. The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectuses that are published when securities are offered to the public or admitted to trading on a regulated market. This Directive was implemented into national legislation mainly through transposition (i) in the Companies Act in so far as public offers are concerned and (ii) in the Financial Markets Act and the Listing Rules as well as the European Wholesale Securities Markets Listing Rules in so far as admissibility to listing is concerned.

Under Article 31 of the Prospectus Directive, the European Commission was required to undertake a review of the effectiveness of the Prospectus Directive five years after its entry into force. The Commission's assessment revealed that certain elements of the the Prospectus Directive needed amendment primarily to simplify the regime for the benefit of issuers and improve the application of the Directive. Consequently, a number of amendments to the Prospectus Directive have been made through Directive 2010/73/EU. This Amending Directive which came into effect on the 31 December 2010, apart from making changes to the Prospectus Directive, also makes a number of complementary changes to the Transparency Directive.

The purpose of this circular is to highlight the principal amendments being made to the Listing Rules in order to implement the requirements of Directive 2010/73/EU in so far as securities to be admitted to trading on a regulated market are concerned.

[3.0] Exemptions and thresholds

Directive 2010/73/EU which amends the Prospectus Directive has made a number of amendments as to the scope of provisions and exemptions which determine when the Prospectus Directive applies and whether a prospectus is needed. Most of the increases in the threshold and

exemption amounts made require amendments to the Companies Act since they relate directly to offers to the public. One specific increase in the exemption threshold provided for in Article 1(2)(j) of the Prospectus Directive as amended would need to be reflected in the Listing Rules. Article 1(2)(j) of the Prospectus Directive provides that debt securities issued in a continuous or repeated manner by credit institutions over a twelve month period where the total consideration is less than €75 million (this amount was previously €50 million) would fall outside the scope of the Prospectus Directive. Listing Rule 4.6.6 is being amended to reflect this increase in the exemption threshold.

[4.0] Summary to a prospectus

[4.1] Directive 2010/73/EC introduced a number of changes in so far as summaries of prospectuses are concerned. The main change was the introduction of the concept of ‘key information’. Article 2(1)(s) of the amended Prospectus Directive defines ‘key information’ as essential and appropriately structured information that must be given to investors for them to understand the nature and the risks posed of the issuer, guarantor and the securities that are being offered to the public or admitted to trading on a regulated market.

The Prospectus Directive as amended also provides that the ‘key information’ should include:

- a) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;
- b) a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
- c) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;
- d) details of the admission to trading; and
- e) reasons for the offer and use of proceeds.

The definitions section as well as Listing Rule 4.9 are being amended to introduce this concept of ‘key information’.

[4.2] Another change is to clarify the liability attached to summaries for issuers. Currently, no liability is attached to the summary unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus. As a result of the amendments to the Prospectus Directive liability will also not attach to the summary unless, when read with the other parts of the prospectus, it fails to provide key information. Listing Rule 1.29 is being amended to transpose this change.

[4.3] The current exemption that a summary for a prospectus is not required in the case of non-equity securities having a denomination of €50,000 has been amended to apply to securities

having a denomination of at least €100,000. Listing Rule 4.10 is being amended to transpose this requirement.

[5.0] Final Terms

Directive 2010/73/EU sought to clarify the relationship between final terms and the base prospectus, including the level of disclosure that must be contained in the prospectus.

The Prospectus Directive as amended provides that:

- i) final terms may only contain information that relates to the securities note - final terms cannot be used to supplement the base prospectus; and
- ii) in addition to filing final terms with the home Member State and making these available to investors, the issuer must also submit final terms with the competent authority of the host Member State.

Chapter 4 of the Listing Rules is being amended to provide for the changes relating to final terms.

[6.0] Supplements

Article 16 of the Prospectus Directive specifies that an issuer must produce a supplement for any significant new factor, material mistake or inaccuracy that arises with respect to information in the prospectus, which might affect the investor's ability to assess the investment offered. Investors who have previously agreed to subscribe to an offer are entitled to withdraw their acceptance of an offer when the issuer produces a supplement. Prior to the amendments set out in Directive 2010/73/EU, the time specified for producing a supplement is either between the time the prospectus was approved and the offer closed, or the point when the instruments start to trade on a regulated market. Directive 2010/73/EU clarifies that whichever of the two events occurs later will apply. Directive 2010/73/EU has also made changes to an investor's right to withdraw his acceptance of an offer. Amendments to Listing Rules 4.26, 4.29 and 8.65 are required to transpose these changes.

[7.0] Proportionate Disclosure regime

One of the main changes to the Prospectus Directive introduced by Directive 2010/73/ was the creation of a proportionate disclosure regime. The proportionate disclosure regime would be applicable in the following circumstances:

- (i) offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility;
- (ii) pre-emptive offers of shares; and

- (iii) debt securities issued by certain types of issuers where the information to be included in the prospectus is adapted according to the size of the issuer.

The specific requirements of the proportionate disclosure regime have been set out in Level 2 legislation, namely the Delegated Regulation amending Regulation 809/2004 which Delegated Regulation came into effect on the 1st July 2012.

[8.0] Other amendments to the Prospectus Directive

[8.1] Omission of Information

Directive 2010/73/EC introduced a new provision, namely Article 8(3)(a) of the Prospectus Directive, which provides that offers or admission to trading of securities guaranteed by a Member State may omit information about the guarantor. This amendment is being reflected in Chapter 4 of the Listing Rules.

[8.2] Validity of prospectus

Directive 2010/73/EC stipulates that a prospectus is valid for twelve months from date of approval of the competent authority rather than publication of prospectus as previously required. Listing Rule 4.58 is being amended to reflect this change.

[8.3] Securities allotted in relation to a division

The obligation to publish a prospectus will now also apply to admission to trading of securities allotted in connection with a division, provided that a document is available containing information which is regarded as being equivalent to a prospectus. Amendments to Listing Rule 4.7.4 are being made to reflect this change.

[9.0] Amendments to the Transparency Directive

Article 2 of Directive 2010/73/EC also makes consequential amendments to the Transparency Directive. The changes primarily involve increasing the threshold for exemptions from certain reporting requirements, namely the requirement to publish annual accounts, half-yearly and interim management accounts, from €50,000 to €100,000. Minor changes to Chapter 5 are being made to reflect the increase in thresholds for the applicability of these exemptions.

[10.0] Other amendments

A number of minor amendments to the Listing Rules are also being proposed relating to the notification obligations to European Securities and Markets Authority by the MFSA as competent authority in terms of the Prospectus Directive. The notification obligations are as follows:

- (i) upon a prospectus having been approved, it shall be made accessible to ESMA through the Listing Authority.

(ii) ESMA shall be notified of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the issuer; and

(iii) the Listing Authority may transfer an application for the approval of a prospectus or a supplement to the prospectus to the competent authority of another Member State or EEA State, subject to the prior notification to ESMA.

[11.0] European Wholesale Securities Market

The Listing Rules for the European Wholesale Securities Market have also been amended to reflect the transposition of the relevant provisions of Directive 2010/73/EU. The amended Listing Rules may be downloaded from the MFSA's website www.mfsa.com.mt.

[12.0] Effective Date

The revised Listing Rules which are set out in Appendix I to this circular and the revised Listing Rules for the European Wholesale Securities Market are effective as from the 30th July 2012.

[13.0] Contacts

Any queries regarding the revised Listing Rules are to be directed to:

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