

Insights

ESMA PUBLISHES GUIDELINES ON DISCLOSURE REQUIREMENTS UNDER THE PROSPECTUS REGULATION

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SUMMARY

ESMA has updated its CESR recommendations in line with the Prospectus Regulation and has taken this opportunity to clarify its expectations on key areas such as working capital statements and pro forma information. The 'comply or explain' principles will apply to the Guidelines and the Guidelines will come into force two months after they have been published on ESMA's website in all the official languages.

The existing recommendations relating to specialist issuers (eg. property, mineral companies etc) have not been carried forward into the Guidelines and ESMA plans to address these recommendations in the future. In the meantime, companies and advisers should continue to apply the current recommendations relating to specialist issuers.

Key changes

- **OFR:** currently the CESR Recommendations provide detail on some of the elements that should be discussed in the OFR for an understanding of the company's development, performance or condition by using financial and, where appropriate, non-financial key performance indicators relevant to the particular business including information on environmental and employee matters. To reflect the growing importance of ESG (Environmental, Social and Governance), the Guidelines now reference disclosure on ESG matters (Guideline 3);
- **Profit forecast:** if a profit forecast or estimate is based on pro-forma or additional financial information, it should be made clear that this is the case. The profit forecast or estimate should be compared with the pro forma or additional financial information and the same principles should be used. If changes have occurred within the issuer's accounting policy, the profit forecast or estimate should be comparable with the issuer's historical and interim financial information;

- **Pro Forma information:** ESMA has maintained its position in relation to the aggregation of several transactions for the purposes of Pro Forma information unless it is disproportionately burdensome to produce such pro forma financial information. In determining if it is disproportionately burdensome, the costs of producing the pro forma financial information versus the value of the information for investors should be considered and explained to the FCA; and
- **Working capital:** there is new guidance on how offerings should be considered when determining if an issuer can provide a clean working capital statement. Only offerings that are underwritten on a firm commitment basis and irrevocable undertakings should be included in the calculation of an issuer's working capital to ensure that there is certainty about the proceeds of an offering. The issuer should not include the proceeds of an offer when calculating its working capital if it is necessary to make any significant assumptions concerning whether the offering will be underwritten or whether any irrevocable undertakings will be withdrawn.

When applying the Guidelines, ESMA expects that the persons responsible for the prospectus will not include information that is not material in the context of the issuer or the securities and will also refrain from duplicating information in the prospectus.

[Final Report – ESMA Guidelines on disclosure requirements under the Prospectus Regulation](#)

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