

Regulations and guidelines 6/2013

Securities offerings and listings

J. No.
FIVA 7/01.00/2013

Issued
10.6.2013

Valid from
1.7.2013

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Legal nature of regulations and guidelines

Regulations

Financial Supervisory Authority (FIN-FSA) regulations are presented under the heading 'Regulation' in FIN-FSA's regulations and guidelines. FIN-FSA regulations are binding legal requirements that must be complied with.

FIN-FSA issues regulations only by virtue of and within the limits of legal provisions that entitle it to do so.

Guidelines

FIN-FSA interpretations of the contents of laws and other binding provisions are presented under the heading 'Guideline' in FIN-FSA's regulations and guidelines.

Also recommendations and other operating guidelines that are not binding are presented under this heading, as are FIN-FSA's recommendations on compliance with international guidelines and recommendations.

The formulation of the guideline shows when it constitutes an interpretation and when it constitutes a recommendation or other operating guideline. A more detailed description of the formulation of guidelines and the legal nature of regulations and guidelines is provided on the FIN-FSA website.

[Fin-fsa.fi > Regulation > FIN-FSA regulations > New set of regulations](#)

Contents

1	Scope of application and definitions	6
	1.1 Scope of application	6
	1.2 Definitions	6
2	Legal framework and international recommendations	8
	2.1 Legislation	8
	2.2 EU regulations	8
	2.3 EU directives	8
	2.4 International recommendations	9
3	Objectives	10
4	General principles	11
5	Obligation to publish a prospectus and exemptions	13
	5.1 Prospectus obligation	13
	5.1.1 <i>General</i>	13
	5.1.2 <i>Offer to the public</i>	14
	5.2 Exemptions from the prospectus obligation	14
	5.2.1 <i>General</i>	14
	5.2.2 <i>Exemptions from the prospectus obligation as regards certain securities</i>	15
	5.2.3 <i>Exemptions from the prospectus obligation when offering securities to the public</i>	15
	5.2.4 <i>Exemptions from the prospectus obligation upon seeking admission to trading on a regulated market</i>	17
	5.2.5 <i>Document to be published in connection with exemptions from the prospectus obligation</i>	18
	5.2.6 <i>Exemption from the prospectus obligation granted by FIN-FSA</i>	19
	5.3 Investment service providers' disclosure obligation	20
6	Contents of the prospectus	22
	6.1 EU prospectus and national prospectus	22



6.2	Structure and language of the prospectus	23
6.2.1	<i>Prospectuses composed of one or three documents</i>	23
6.2.2	<i>Presentation order of information items</i>	23
6.2.3	<i>Incorporation of information in the prospectus by reference</i>	24
6.2.4	<i>Language of the prospectus</i>	25
6.3	Substance of the prospectus	27
6.3.1	<i>General</i>	27
6.3.2	<i>Summary</i>	28
6.3.3	<i>Declaration of information contained in the prospectus</i>	30
6.4	Prospectuses under the proportionate disclosure regime	31
6.5	Financial information in the prospectus	32
6.5.1	<i>ESMA's recommendations on financial information</i>	32
6.5.2	<i>Selected financial information</i>	32
6.5.3	<i>Operating and financial review</i>	33
6.5.4	<i>Profit forecasts or estimates</i>	34
6.5.5	<i>Historical financial information</i>	35
6.5.6	<i>Restatement of financial information</i>	36
6.5.7	<i>Pro forma information and other adjusted financial information</i>	37
7	Approval and publication of the prospectus	40
7.1	Authority for prospectus approval and home member state of securities issue	40
7.2	Approval procedure for the prospectus	41
7.3	Publication of the prospectus	43
7.4	Submission of the approved prospectus to FIN-FSA's register of prospectuses	45
7.5	Supplements to the prospectus	45
7.6	Investor withdrawal right	47
7.7	Information on final number and price of the securities	48
7.8	Notification procedure	48
7.8.1	<i>Notification of another EEA member state performed by Finland</i>	48
7.8.2	<i>Notification of Finland performed by another EEA member state</i>	50
8	Issuance programmes	52
8.1	Securities issued using a base prospectus	52
8.2	Submission of issue-specific terms to FIN-FSA's register of prospectuses	52
8.3	Base prospectus summary and issue-specific summary	53
8.4	Supplements to the base prospectus	54



9	Procedures	56
	9.1 Procedures for securities offerings	56
	9.2 Due diligence investigation before listing	57
	9.3 Marketing material relating to the offerings	58
	9.4 Allotment	59
	9.5 Stabilisation	60
10	Repealed regulations and guidelines	61
11	Appendices	62

1 Scope of application and definitions

1.1 Scope of application

- (1) These guidelines apply to securities issuers and other natural or legal persons who in their business activities issue, offer or market securities in Finland or apply for admission to security trading on a regulated market in Finland (listing), as well as to their agents.
- (2) When the home state of the issue of a security as referred to in chapter 3, section 6 of the Securities Markets Act (SMA) is Finland, the guidelines also apply to securities issuers and other natural or legal persons who offer or market securities or apply for admission to security trading, as well as to their agents, when the securities are issued, offered or marketed in a state within the European Economic Area (EEA member state) other than Finland, or when admission to security trading on a regulated market in an EEA member state other than Finland is applied for.

1.2 Definitions

For the purposes of these guidelines, the following definitions apply:

- (3) *EU prospectus* means a prospectus governed by the Prospectus Directive and the Prospectus Regulation.
- (4) *Single passport for issuers* means that securities may be offered to the public or admission to security trading on a regulated market may be applied for in one or more EEA member states on the basis of an EU prospectus approved by the competent authority of one EEA member state, after notification has been made to such other EEA member states.
- (5) *National prospectus* means a prospectus not governed by the Prospectus Directive and the Prospectus Regulation.
- (6) *Simplified prospectus requirements* means requirements for the contents of the prospectus as referred to in Annexes XXIII–XXIX of the Prospectus Regulation on EU prospectuses as regards, for example, rights issues, small and medium-sized companies and companies with reduced market capitalisation.
- (7) *Qualified investor*, as referred to in chapter 3, section 5 of the SMA, means a professional investor in accordance with chapter 1, section 18 of the Investment Services Act (747/2012) or an eligible counterparty in accordance with chapter 1, section 19 of the same act.
- (8) *Issuers*, as referred to in chapter 2, section 3 of the SMA, means Finnish or foreign entities that have issued securities.

- (9) *Listing* means admission of securities for trading on a regulated market. Listing does not mean admission of securities for trading in a multilateral trading facility.
- (10) *Multilateral trading facility* means a trading procedure maintained by an operator of multilateral trading, as referred to in the Act on Trading in Financial Instruments (748/2012), or a corresponding trading operator in another EEA member state.
- (11) *Notification* means a procedure in which the authority that has approved a prospectus provides the authority in another EEA member state with a certificate of approval of the prospectus or supplements thereto.
- (12) *Equity securities* means shares in limited liability companies or corresponding interests in other entities, as referred to in chapter 3, section 4 of the SMA, certificates of deposit entitling the holder to shares, and other securities entitling the holder to acquire shares or interests in the issuer either through exchange or exercise, provided that the exercising rights have been issued by the issuer of the shares or corresponding interests or a company within the same group as the issuer. Such securities are, for example, options, convertibles and warrants entitling to buy the issuer's own shares.
- (13) *Small and medium-sized companies* means issuers, as referred to in chapter 1, section 8 of the Decree of the Ministry of Finance on certain prospectuses referred to in chapters 3–5 of the SMA, that fulfil at least two of the following conditions according to the financial statements or consolidated financial statements for the preceding financial year: average number of employees during the period fewer than 250, maximum balance sheet total EUR 43 million, and maximum net annual turnover EUR 50 million.
- (14) *Investment service providers* means Finnish and foreign investment firms as well as credit institutions providing investment services.
- (15) *Regulated market* means a regulated market, as referred to in chapter 1, section 2, paragraph 6 of the Act on Trading in Financial Instruments (748/2012), operated by a stock exchange or a corresponding market operator in another EEA member state. A multilateral trading facility does not constitute a regulated market.
- (16) *Profit estimate* means a profit forecast, as referred to in article 2 of the Prospectus Regulation, for a financial period which has expired and for which results have not yet been published.
- (17) *Profit forecast* means a form of words (a kind of statement), as referred to in article 2 of the Prospectus Regulation, which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data which enable calculation of such a figure for future profits or losses, even if no particular figure is mentioned and the word 'profit' is not used.
- (18) *Companies with reduced market capitalisation* means issuers, as referred to in chapter 1, section 7 of the Decree of the Ministry of Finance on certain prospectuses referred to in chapters 3–5 of the SMA, whose securities have been admitted for trading on a regulated market and whose average market value is less than EUR 100 million. The market value of the company is calculated as the average of the market values for the three preceding calendar years based on the closing share price at the end of those calendar years.



2 Legal framework and international recommendations

2.1 Legislation

These guidelines are related to the following acts and decrees:

- the Securities Markets Act (746/2012, below also the SMA)
- the Decree of the Ministry of Finance on certain prospectuses referred to in chapters 3–5 of the SMA (1019/2012, below also the MFD)
- the Investment Services Act (747/2012)
- the Decree of the Ministry of Finance on rules governing the listing of securities on the stock exchange (1027/2012).

2.2 EU regulations

These guidelines are related to the following directly applicable EU regulations:

- Commission Regulation (EC) No 809/2004 (32004R0809) 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 (OJ L 149, 30.4.2004, p.1 / L 186, 18.7.2005, p. 1–123) (below the Prospectus Regulation)
- Commission Regulation (EC) No 2273/2003 (32003R2273) of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33–38) (below the Buy-back and Stabilisation Regulation).

2.3 EU directives

These guidelines are related to the following EU directives:

- Directive 2003/71/EC (32003L0071) 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 (OJ L 345, 31.12.2003, p. 64–89) (below the Prospectus Directive)

- Directive 2003/6/EC (32003L0006) of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 096, 12.4.2003, p. 16–25)
- Directive 2001/34/EC (32001L0034) of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1–66).

2.4 International recommendations

These guidelines take account of the following guidelines and recommendations of the European Securities and Markets Authority (below also ESMA) and of ESMA's predecessor, the Committee of European Securities Regulators (CESR). ESMA has decided that the latter should remain in force unchanged.

- ESMA's update of the CESR recommendations for the consistent implementation of Commission Regulation No 809/2004 implementing the Prospectus Directive (below ESMA's prospectus recommendation)
- CESR's publication Stabilisation and Allotment – A European Supervisory Approach (CESR/02-020b)
- CESR's Recommendation on Alternative Performance Measures (CESR/05-178b).

ESMA's guidelines and recommendations are available on the ESMA website at www.esma.europa.eu. ESMA's prospectus recommendation is also available on FIN-FSA's website.

FIN-FSA participates in the supervisory authority cooperation in ESMA in order to harmonise interpretations and routines concerning prospectus rules within the EEA. On the basis of this cooperation, ESMA publishes common interpretations on its website www.esma.europa.eu (see the publication Questions and Answers on Prospectuses, below ESMA's Q&A document).

3 Objectives

- (1) These guidelines deal with securities offerings and listings as well as the related disclosure obligation (particularly the preparation of prospectuses) and procedures.
- (2) The purpose of the disclosure obligation regulation and these guidelines is to promote investors' access to adequate information on securities and issuers thereof. These guidelines seek to encourage application of as clear and consistent disclosure principles as possible.
- (3) The purpose of the procedure regulation and these guidelines is to ensure equal treatment of investors and prevent market distortion in connection with securities offerings and listings.
- (4) To enable investors to make an informed assessment of securities and issuers thereof in connection with securities offerings and listings, the information disclosed must be reliable, understandable, timely, comparable and comprehensive. In addition, the information in prospectuses prepared in accordance with the SMA must be presented in a consistent and easily comprehensible manner.
- (5) These guidelines comprise FIN-FSA's most important recommendations and interpretations as regards securities offerings and listings as well as the related disclosure obligation and procedures. FIN-FSA publishes other more detailed interpretations (in Finnish) of prospectus requirements or individual cases in its interpretation register on its website.
- (6) A further purpose of these guidelines is to inform the counterparties about ESMA's guidelines and recommendations, and about interpretations that they should take into account.
- (7) Here FIN-FSA also presents practical application and procedure guidelines pertaining to the prospectus obligation.



4 General principles

- (1) In accordance with chapter 1, section 2 of the SMA, it is prohibited to act contrary to good practice in the securities markets.
- (2) In accordance with chapter 1, section 3, subsection 1 of the SMA, it is prohibited to provide false or misleading information in the marketing and exchange of securities and other financial instruments carried out in business as well as in fulfilling the disclosure obligation in accordance with this act.

In accordance with chapter 1, section 3, subsection 2 of the SMA, information the untruthful or misleading nature of which is revealed following the provision of the information and which may be of material significance to the investor, shall, without delay, be corrected or supplemented in an adequate manner.

- (3) In accordance with chapter 1, section 4 of the SMA anyone who, by himself or on the basis of an assignment, offers securities or seeks admission to trading of a security on a regulated market or in a multilateral trading facility or who, under chapters 3–9 or 11, is subject to the disclosure obligation towards the investors, shall impartially make available to the investors sufficient information on factors that may have a material effect on the value of the security.

GUIDELINE (paragraphs 4–12)

- (4) By virtue of chapter 1, sections 2–4 of the SMA, these general provisions also apply to securities offerings where there is no obligation to publish a prospectus.
- (5) According to FIN-FSA's interpretation, the issuing of new securities and the continued offering of earlier issued securities can both be considered securities offerings. Securities offerings mean not only securities issues but any offering of securities for a consideration, such as securities sales and exchange offerings.¹ Chapter 1, section 4 of the SMA applies to all parties referred to in the provision regardless of whether or not the securities in question are subject to trading on a regulated market or in a multilateral trading facility.
- (6) The requirement in chapter 1, section 4 of the SMA for equal availability of sufficient information constitutes a general obligation to provide information, and it also applies to situations where no prospectus is required. According to FIN-FSA's interpretation, securities offerings directed only to qualified investors or to fewer than 150 non-qualified investors represent such situations. The basic principle is that investors should be provided with sufficient information on the securities and the issuers thereof.

¹ GB 32/2012 p. 105 and GB 38/2005 p. 30.



- (7) According to FIN-FSA's interpretation, the factors referred to in chapter 1, section 4 of the SMA that can have a material effect on the value of the securities may, in addition to information on the issuer and securities, also comprise information on the issuer's operating environment and its medium-term prospects.
- (8) FIN-FSA recommends that if an issuer introduces a new type of product, the necessary information should be provided in connection with the issue, including information on the security type, its properties and taxation. In order to ensure that the information can be compared and assessed, the information selection criteria, calculation methods, relevant grounds, sources of information, including background material and assumptions, should be indicated as unambiguously, clearly and consistently as possible. To the extent possible, the disclosure of information should be consistent with generally accepted methods employed by the markets.
- (9) According to FIN-FSA's interpretation, when assessing, in accordance with chapter 1, section 4 of the SMA, the sufficiency of information provided in a situation where no prospectus is required, the disclosure obligation should be adjusted to the target group's investment experience, the investors' knowledge of the securities or issuers in question and other possible special features of the offer. According to FIN-FSA's interpretation, the scope of information to be provided approaches the content requirements of a national prospectus when a less detailed level of information cannot be justified by the target group's investment experience, knowledge or other special reasons.
- (10) According to FIN-FSA's interpretation, the obligation referred to in chapter 1, section 4 of the SMA regarding equal availability of information requires that essential information that has been provided only to part of the target group of the offer should be equally provided to all investors to which the offer has been directed. If new essential information is provided at, for example, road shows or events for analysts or investors, the relevant information should be made available to all investors at the same time by virtue of chapter 1, section 4 of the SMA. New essential information that has inadvertently been provided at such occasions or events shall be made available to all investors without delay by virtue of chapter 1, section 4 of the SMA. If a prospectus for the offer has been published, the prospectus shall also be supplemented in this respect in accordance with chapter 4, section 14 of the SMA. In case of a listing or an application for listing of a security, information shall, in accordance with chapter 6, section 6 of the SMA, be provided also on the basis of the ongoing disclosure obligation.
- (11) The ongoing disclosure obligation referred to in chapter 6, section 4 of the SMA shall be applied to companies whose securities are subject to trading on a regulated market. According to FIN-FSA's interpretation, the provision presupposes that earlier undisclosed prospectus information that inclines to materially affect the value of the security shall be disclosed at the latest together with the prospectus.
- (12) According to FIN-FSA's interpretation, when securities of the same type as securities traded on a regulated market in Finland are offered only abroad, information on this should, by virtue of chapter 1, section 4 of the SMA, be published also in Finland even if no prospectus for the offer is approved or published here, because the offer may affect the value of the security.



5

Obligation to publish a prospectus and exemptions

5.1 Prospectus obligation

5.1.1 General

- (1) In accordance with chapter 3, section 1 of the SMA, the provisions of chapters 3–5 of the SMA apply to a prospectus to be published for securities, the offer of securities to the public, and the seeking of securities to be admitted to trading on a regulated market.
- (2) In accordance with chapter 4, section 1, subsection 1 of the SMA, anyone who offers securities to the public and seeks securities to be admitted to trading on a regulated market shall publish a prospectus for the securities prior to entry into force of the offer or the admission of securities to trading on a regulated market and make it available to the public while the offer is open, as provided for in chapter 4 of the SMA.

GUIDELINE (paragraphs 3–6)

- (3) The provisions of chapters 3–5 of the SMA always apply by virtue of chapter 3, section 1 of the SMA when securities are offered to the public or securities are sought to be admitted to trading on a regulated market in Finland. If the home state of a securities issue is Finland, the provisions of chapters 3–5 of the SMA also apply when securities are offered or sought to be admitted to trading on a regulated market in another EEA state.²
- (4) According to FIN-FSA's interpretation, securities may be issued to the public for subscription, purchase, exchange, or otherwise for acquisition for a consideration. The consideration may be a pecuniary consideration, a securities consideration, or any other type of consideration with a clearly identifiable value. Providing securities without consideration does not create an obligation to publish a prospectus.³
- (5) According to FIN-FSA's interpretation, if securities are offered as consideration in merger or takeover transactions, the acquiring company or offeror should, by virtue of chapter 4, section 1 of the SMA, publish a prospectus at the same terms as in connection with offers of securities to the public. If securities in new companies emerging as the result of a division are offered as consideration in the division transactions, the company offering the consideration in the division should publish a prospectus as detailed above. According to

² See section 7.1 Authority for prospectus approval and home state of securities issue. See also section 7.8.1 Notification of another EEA member state performed by Finland.

³ GB 32/2012 p. 105 and GB 38/2005 p. 30.



FIN-FSA's interpretation, securities offerings made in connection with a merger or division take place when the decision on the merger or division is made by the annual general meeting.

- (6) According to FIN-FSA's interpretation, the subscription of shares based on convertible bonds or options does not constitute a separate obligation to publish a prospectus if the subscription may be regarded as being based on the execution of a previous offer, whether or not a prospectus has been disclosed thereon. This is the case when, for example, shares are subscribed on the basis of options provided as part of a staff incentive programme, whether or not the options are listed.

5.1.2 Offer to the public

- (7) In accordance with chapter 2, section 12 of the SMA, the offer of securities to the public means communication to persons, providing or intending to provide sufficient information on the terms of the offer and the security offered, so as to enable a decision to purchase or subscribe for the security.

GUIDELINE (paragraphs 8–12)

- (8) According to the relevant Government Bill, target-oriented efforts to sell securities can be seen as offers to the public.⁴ According to FIN-FSA's interpretation, mere communication of information to the public cannot be considered as offers to the public, as referred to in chapter 2, section 12 of the SMA, if it is not aimed at promoting a security offer.
- (9) According to FIN-FSA's interpretation, advertising, for example, a share issue in public media represents a security offer to the public, as referred to in chapter 2, section 12 of the SMA, if the advertisement does not clearly limit the target group to qualified investors.
- (10) According to FIN-FSA's interpretation, the criteria for an offer to the public, as referred to in chapter 2, section 12 of the SMA, may also be fulfilled when contact information on persons interested in subscription or other potential investors is collected publicly with the aim of later addressing an offer to the interested members of such a group.⁵
- (11) According to FIN-FSA's interpretation, security offers directed at company shareholders constitute security offers to the public, as referred to in chapter 2, section 12 of the SMA.⁶
- (12) According to FIN-FSA's interpretation, a one-off deal between two parties or security trading on a regulated market or in a multilateral facility is, however, not an offer to the public, as referred to in chapter 2, section 12 of the SMA.

5.2 Exemptions from the prospectus obligation

5.2.1 General

- (13) Chapter 4, sections 2–5 of the SMA contain provisions on exemptions from the prospectus obligation. Exemptions are dealt with in sections 5.2.2–5.2.5.

⁴ GB 32/2012 p. 105.

⁵ GB 32/2012 p. 105.

⁶ ESMA's Q&A 63.



GUIDELINE (paragraph 14)

- (14) The prospectus obligation should, by virtue of chapter 4, section 1 of the SMA, always be assessed separately for security offers and applications for trading. Even if securities offerings would not create a prospectus obligation, the obligation may still arise if an application is made for admission of the offered securities to trading on a regulated market. Exemptions from the prospectus obligation depend on the nature of the security and whether the security is to be offered or listed. Some such exemptions are granted only by FIN-FSA.

5.2.2 Exemptions from the prospectus obligation as regards certain securities

- (15) In accordance with chapter 4, section 2, subsection 1 of the SMA, a prospectus need not be published when an offer is made to the public or an admission to trading on a regulated market is sought as regards:
- 1) non-equity securities issued by the State of Finland, the Bank of Finland, a Finnish municipality or a joint municipal authority or by another EEA member state, its central bank or its regional administrative unit, or by a public international body, whose members comprise at least one EEA state, or by the European Central Bank; or
 - 2) securities for which the State of Finland, a Finnish municipality or a joint municipal authority or another EEA member state or its regional or local administrative unit has issued an absolute guarantee.
- (16) In accordance with chapter 4, section 2, subsection 2 of the SMA, a prospectus need also not be published if an offer is made to the public or an admission to trading on a regulated market is sought as regards non-equity securities issued in a continuous or repeated manner by a credit institution, provided that the total consideration for offers in the EEA is less than EUR 75 million, which shall be calculated over a period of 12 months. A further precondition is that the securities are not subordinated, convertible or exchangeable, do not carry the right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.
- (17) Anyone offering the securities referred to in chapter 4, section 2, subsections 1 and 2 of the SMA or seeking admission to trading thereof on a regulated market shall, however, be entitled to publish a prospectus. If a prospectus is published, it shall be governed by the provisions of chapters 3–5 of the SMA and the provisions issued thereunder.

GUIDELINE (paragraph 18)

- (18) According to FIN-FSA's interpretation, the exemption from the prospectus obligation pertaining to credit institutions, as referred to in chapter 4, section 2, subsection 2 of the SMA, only applies to debt securities whose return is based on a fixed or floating interest rate and that are unsubordinated to other unsecured debt securities of the debtor.

5.2.3 Exemptions from the prospectus obligation when offering securities to the public

- (19) In accordance with chapter 4, section 3, subsection 1 of the SMA, a prospectus need not be published if the securities are offered:
- 1) solely to qualified investors;

- 2) to fewer than 150 investors per EEA member state, other than qualified investors;
 - 3) to be acquired for a total consideration of at least EUR 100,000 per investor and per offer, or in units with a denomination or consideration of at least EUR 100,000;
 - 4) for a total consideration of less than EUR 1.5 million within the EEA over a period of 12 months; or
 - 5) for a total consideration of less than EUR 5 million within the EEA over a period of 12 months and the securities are sought to be admitted to trading in a multilateral trading facility in Finland, and a company description in accordance with the rules of the trading facility is made available to the investors over the period of the offer.
- (20) In accordance with chapter 4, section 3, subsection 2 of the SMA, if the same securities are offered or intermediated with a new offer to the final investors and the preconditions referred to in subsection 1 for non-publication of a prospectus are not met, a prospectus shall be published for the new offer. However, a prospectus need not be published, if a prospectus, which is valid, has been published for the original offer if the issuer or another party responsible for publication of the prospectus has, in writing, consented to the use of the original prospectus for the new offer or intermediation of the same securities to the final investors.
- (21) In accordance with chapter 4, section 3, subsection 3 of the SMA, a prospectus need also not be published if:
- 1) shares are offered in substitution of shares of the same class already issued, provided this does not involve any increase in the issued capital;
 - 2) the shares offered are issued to the shareholders of the issuer instead of a dividend payable in cash as shares of the same class as the shares yielding the dividend, provided that the offeror publishes a document containing information on the number and class of the shares to be offered as well as on the reasons for and terms of the offer; or
 - 3) an employing company or a company affiliated thereto offers securities to existing or former directors or employees of the employing company, provided that the corporate domicile of the offeror is in an EEA member state and that the offeror publishes a document containing information on the number and class of the securities to be offered as well as on the reasons for and terms of the offer.

GUIDELINE (paragraphs 22–29)

- (22) According to FIN-FSA's interpretation, the offeror of securities is responsible for ensuring that the preconditions for exemptions laid down in chapter 4, section 3 of the SMA are fulfilled.
- (23) According to FIN-FSA's interpretation, no prospectus obligation does arise by virtue of chapter 4, section 3, subsection 1, paragraphs 1 and 2 when securities are only offered to qualified investors, as referred to in the SMA, or in addition to them to, or only to, fewer than 150 non-qualified investors.
- (24) According to FIN-FSA's interpretation, for determining the scope of the target group, as referred to in chapter 4, section 3, subsection 1, paragraph 2 of the SMA, the number of



non-qualified investors the offer is originally addressed to is relevant but how many investors subscribe for the securities is not.

- (25) FIN-FSA recommends that if the purpose is to limit the number of non-qualified investors to fewer than 150, a list of non-qualified investors to whom the offer of securities will be addressed in Finland should be compiled in advance. The list should be retained so that it can be submitted to FIN-FSA on request.
- (26) According to FIN-FSA's interpretation, closely associated parties may qualify as a single investor if the number of investors belonging to the target group of the offer is calculated in accordance with chapter 4, section 3, subsection 1, paragraph 2 of the SMA. Consequently, for example, entities controlled by the same person, as defined under chapter 2, section 4 of the SMA, may qualify as a single investor as long as their investment decisions are taken by a single body. Similarly, the clients of an asset manager may qualify as a single investor if their investment decisions are taken by an asset manager authorised to perform discretionary asset management.
- (27) According to FIN-FSA's interpretation, when calculating the total consideration of less than EUR 1.5 million for an offer (offers) over a period of 12 months, as referred to in chapter 4, section 3, subsection 1, paragraph 4 of the SMA, only those offers should be taken into account to which the exemption criterion in question has been applied.
- (28) The provision in chapter 4, section 3, subsection 2 of the SMA applies to situations where a prospectus has been prepared for the original offer and the same securities are offered with a new offer to the final investors. If the prospectus exemptions do not apply, a prospectus obligation arises concerning the new offer by virtue of the provision in question. A valid original prospectus can then also be used for the new offer, provided that the prospectus includes a consent thereto. More detailed information on the expression of consent in the prospectus is provided in article 20a and Annex XXX of the Prospectus Regulation.
- (29) According to FIN-FSA's interpretation, a situation where an investment service provider acting as manager or underwriter of the offering subscribes for securities for the purpose of intermediating or distributing them to final investors does not constitute a new offer, as referred to in chapter 4, section 3, subsection 2 of the SMA. In such cases the offer shall be reviewed as a whole rather than in parts and the prospectus obligation shall be based on the total group of investors to which the security is offered and the minimum subscription amount of the security.

5.2.4 Exemptions from the prospectus obligation upon seeking admission to trading on a regulated market

- (30) In accordance with chapter 4, section 4 of the SMA, a prospectus need not be published if admission to trading on a regulated market is sought for:
- 1) shares representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;
 - 2) shares received as a substitution for shares already admitted to trading on the same regulated market, provided that the issuing of such new shares does not involve any increase in the issued capital;

- 3) shares allotted to holders of such shares of the issuer as are admitted to trading on the same regulated market instead of a dividend or interest payable in cash, as shares of the same class as the shares yielding the dividend or interest, provided that the offeror publishes a document containing information on the number and class of the shares sought to be admitted to trading as well as on the reasons for and terms of the offer;
- 4) securities that an employing company or a company affiliated thereto offers to existing or former directors or employees of the employing company, provided that the company's securities are already admitted to trading on the same regulated market and that the offeror publishes a document containing information on the number and class of the securities to be offered as well as on the reasons for and terms of the offer;
- 5) shares resulting from the exchange or conversion of securities or from the exercise of other rights conferred by securities, provided that the shares are of the same class as shares already admitted to trading on the same regulated market.

GUIDELINE (paragraphs 31–32)

- (31) According to FIN-FSA's interpretation, the applicant for listing of securities is responsible for ensuring that the preconditions for exemptions laid down in chapter 4, section 4 of the SMA are met.
- (32) In accordance with chapter 2, section 18, subsection 1 of the Act on Trading in Financial Instruments, the stock exchange also has a supervisory task. According to FIN-FSA's interpretation, the provision requires that when the stock exchange decides on admitting the listing of certain securities or an additional lot thereof, it shall ensure that the preconditions for exemptions referred to in chapter 4, section 4 of the SMA are met.

5.2.5 Document to be published in connection with exemptions from the prospectus obligation

- (33) In accordance with chapter 4, section 3, subsection 3, paragraphs 2 and 3 and chapter 4, section 4, paragraphs 3 and 4 of the SMA, application of a prospectus exemption requires that the offeror or applicant for trading publishes a document containing information on the number and class of the securities to be offered or admitted to trading on a regulated market as well as on the reasons for and terms of the offer.

GUIDELINE (paragraphs 34–36)

- (34) FIN-FSA recommends that the document mentioned in paragraph 33 should comprise the following information:⁷
 - identification of the issuer and indication of where additional information on the issuer can be found
 - explanation of the reasons for the offer or application for admission to trading
 - key terms and conditions of the offer or application for admission to trading, such as information on the
 - addressees of the offer
 - time frame of the offer

⁷ Items 173–176 of ESMA's prospectus recommendation.

- minimum and maximum amount of subscriptions
 - nature of the offer (issue or sale)
 - conditions upon which the securities will be issued or admitted to trading
 - price of the securities or, if the price is not yet determined, information on where details on the price can be found
- number and nature of the securities involved in the offer or application for admission to trading and a summarised description of the rights attached to the securities
 - if the document is also used in other EEA states, information on the section of the Prospectus Directive which removes the need to publish a prospectus.

(35) According to FIN-FSA's interpretation, the document referred to in paragraph 33 need not necessarily be disclosed in accordance with chapter 10, section 3 of the SMA or published in the same manner as the prospectus, but if not it should be made available to the addressees of the security offer. If an application is made for securities to be admitted to trading on a regulated market, the information in the document should, however, be disclosed in accordance with chapter 10, section 3 of the SMA in connection with the admission of the securities to trading. In such case the information can be disclosed in a stock exchange announcement published in connection with, for example, the admission of the securities to trading or an increase of the equity.

(36) According to FIN-FSA's interpretation, publication of a document as referred to in paragraph 33 is not the same as fulfilling the general disclosure requirement. In addition to publication of the document, in accordance with chapter 1, section 4 of the SMA, the issuer is thus liable to make sufficient information on factors that may have a material effect on the value of the security impartially available to investors over the period of the offer.

5.2.6 Exemption from the prospectus obligation granted by FIN-FSA

(37) In accordance with chapter 4, section 5, subsection 1 of the SMA, FIN-FSA may, upon application, grant a partial or complete exemption from the obligation to publish a prospectus if the securities offered to the public or sought to be admitted to trading on a regulated market comprise:

- 1) securities offered in connection with a takeover bid by means of an exchange offer, and the offeror has published an offer document, as referred to in chapter 11, section 11 of the SMA, or another document containing information which is regarded by FIN-FSA as being equivalent to that of a prospectus, taking into account the requirements of European Union legislation; or
- 2) securities offered as consideration in connection with a merger or division and the party offering the consideration has published a document containing information which is regarded by FIN-FSA as being equivalent to that of a prospectus, taking into account the requirements of European Union legislation.

(38) In accordance with chapter 4, section 5, subsection 3 of the SMA, FIN-FSA may, upon application, also grant a partial or complete exemption from the obligation to publish a prospectus if securities are offered to finance operations for the public good, mainly non-profit making operations, and the granting of the exemption does not jeopardise the position of the investors.

GUIDELINE (paragraphs 39–40)

- (39) If an application for admission to trading on a regulated market is made as regards securities offered at mergers or divisions, an exemption from the prospectus obligation can be applied for by virtue of chapter 4, section 5, subsection 1, paragraph 2 of the SMA. As a rule FIN-FSA grants an exemption if a prospectus approved by the authorities has been published on the merger or division. Generally the exemption requires that the earlier published prospectus and decisions by the issuer made subsequent to the publication of the prospectus, and any facts that may have a material effect on the value of the securities concerned, are made available to the investors.
- (40) A so-called single passport for issuers, as referred to in the Prospectus Directive, is not applicable to exemptions from the prospectus obligation. Thus the fulfilment of the exemption criteria should be assessed individually in each state in which the securities are offered and listed.

5.3 Investment service providers' disclosure obligation

- (41) In accordance with chapter 1, section 4 of the SMA, anyone who, by himself or on the basis of an assignment, offers securities or seeks admission to trading of a security on a regulated market or in a multilateral trading facility or who, under chapters 3–9 or 11, is subject to the disclosure obligation towards the investors, shall be liable to make sufficient information on factors that may have a material effect on the value of the security equally available to the investors.
- (42) In accordance with chapter 4, section 1, subsection 4 of the SMA, in addition to the offeror and the issuer of the securities, the party handling the offer or seeking securities to be admitted to trading on a regulated market on the basis of an assignment shall also be liable for the drawing up and publication of the prospectus.
- (43) Chapter 1, section 4 and chapter 4, section 1 of the SMA apply to all parties acting on the basis of an assignment. This section only deals with the disclosure obligation of investment service providers acting on the basis of an assignment.

GUIDELINE (paragraphs 44–47)

- (44) According to FIN-FSA's interpretation, the offeror of securities or applicant for admission to trading has the primary disclosure obligation, as referred to in chapter 1, section 4 and chapter 4, section 1 of the SMA. According to FIN-FSA's interpretation, the lead manager's obligation to obtain information, as the disclosure obligation referred to in chapter 1, section 4 and chapter 4, section 1 of the SMA requires, further extends to obtaining such information on the issuer that it can reasonably be expected to obtain upon acceptance and exercise of the assignment. Other managers are responsible for seeing that the disclosure obligation, as referred to in chapter 1, section 4 and chapter 4, section 1 of the SMA, is fulfilled to the extent that they have had access to the information referred to in the provisions.
- (45) According to FIN-FSA's interpretation, the fulfilment of the disclosure obligation referred to in chapter 1, section 4 and chapter 4, section 1 of the SMA as regards the prospectus obligation further requires that the prospectus is appropriately published and kept updated



and available to investors throughout the offer period, or in the case of application for admission to trading, until the securities have been admitted.

- (46) According to FIN-FSA's interpretation, the disclosure obligation, as referred to in chapter 1, section 4 and chapter 4, section 1 of the SMA, of an investment service provider who only serves as the place of subscription is confined to providing investors access to information disclosed on the issuer and relevant to the issue, primarily the prospectus. However, if the information service provider has special reason to suspect that an investor has not understood the information, the legal nature of the securities offered, or the financial risk involved in the investment, chapter 1, section 2 of the SMA and chapter 10, section 2, subsection 1 of the Investment Services Act require, according to FIN-FSA's interpretation, that the investment service provider should explain these matters to the investor prior to the investment decision.
- (47) In addition, the disclosure and other obligations, as referred to in chapter 10 of the Investment Services Act and FIN-FSA's Regulations and guidelines 16/2013 on code of conduct for the provision of financial services, apply to investment service providers.

6 Contents of the prospectus

6.1 EU prospectus and national prospectus

- (1) In accordance with chapter 4, section 6, subsection 3 of the SMA, a prospectus shall contain the information required in the SMA, the provisions issued thereunder and the Prospectus Regulation. If the securities are included in an offer with a total consideration of less than EUR 5 million calculated in the EEA over a period of 12 months and the securities are not sought to be admitted to trading on a regulated market, a prospectus may, however, be drawn up solely in accordance with the requirements set in the SMA and the decree of the Ministry of Finance.

GUIDELINE (paragraphs 2–5)

- (2) An EU prospectus should be drawn up by virtue of chapter 4, section 6, subsection 3 of the SMA if the total consideration of the offer is at least EUR 5 million over the preceding 12 months and in any case if securities are sought to be admitted to trading on a regulated market.
- (3) A national prospectus should be prepared by virtue of chapter 4, section 6, subsection 3 of the SMA if the total consideration of the offer is at least EUR 1.5 million, but less than EUR 5 million, over the preceding 12 months and securities are not sought to be admitted to trading on a regulated market.⁸ However, an EU prospectus may always be prepared instead of a national prospectus by virtue of chapter 4, section 6, subsection 3 of the SMA.
- (4) In assessing the above-mentioned limit of EUR 5 million, offers of the same class of securities in the EEA member states over a 12 month period prior to approval of the prospectus should, by virtue of chapter 4, section 6, subsection 3 of the SMA, be taken into account. According to FIN-FSA's interpretation, when the limit is assessed, the offers should be taken into account to which the exemption criteria of chapter 4, section 3, subsection 1, paragraph 4 or 5 of the SMA have been applied or for which a national prospectus has been prepared. Offers for which the subscription or offer period ended during the 12-month period preceding application, or for which the subscription or offer period is in progress at the time of application, qualify as offers made during the preceding 12-month period.
- (5) In accordance with the Prospectus Directive, securities may be offered to the public or admitted to trading on regulated markets in all EEA member states using an EU prospectus approved by an authority in one EEA state (the so-called single passport for

⁸ No prospectus obligation arises when, for example, the offer is less than EUR 1.5 million. For more detailed guidance, see section 5.2 Exemptions from the prospectus obligation.



issuers). A national prospectus can only be used for offering securities to the public in Finland.

6.2 Structure and language of the prospectus

6.2.1 Prospectuses composed of one or three documents

- (6) In accordance with chapter 4, section 6, subsection 4 of the SMA, the prospectus shall be published either as a single document or as a document consisting of three parts. If the prospectus is published as a three-part document, the parts are to be named the registration document, the securities note and the summary.
- (7) In accordance with chapter 4, section 7, subsection 1 of the SMA, the registration document shall contain information on the issuer.
- (8) In accordance with chapter 4, section 8 of the SMA, the securities note shall contain information on the securities offered to the public or sought to be admitted to trading on a regulated market. If necessary, the securities note shall also present information on such changes in the registration document as may be of material importance to investors.
- (9) In accordance with chapter 4, section 9, subsection 1 of the SMA, the prospectus shall contain a summary.
- (10) Under chapter 1, section 2, subsection 3 of the MFD, if the prospectus is made up of a separate registration document, securities note and summary, the parts may be distributed as separate documents, provided that they contain information on where the other parts of the prospectus are made available to the public.

GUIDELINE (paragraphs 11–13)

- (11) By virtue of chapter 4, section 6, subsection 4 of the SMA, the issuer may itself choose to publish the prospectus as a single document or as a document consisting of three parts.
- (12) By virtue of chapter 4, section 16, subsection 3 of the SMA, if a three-part prospectus is prepared, the valid registration document may be used when securities are later offered or sought to be admitted to trading on a regulated market. For the offer or application for admission to trading, a new securities note, as referred to in chapter 4, section 8 of the SMA, and a new summary as referred to in chapter 4, section 9 of the SMA, should then be prepared and approved.
- (13) Section 6.3.2 elaborates on the summary of the prospectus and chapter 8 on the base prospectus.

6.2.2 Presentation order of information items

- (14) In accordance with article 25.1 of the Prospectus Regulation applicable to EU prospectuses, a prospectus drawn up as a single document shall be composed of the following parts in the following order: 1) a clear and detailed table of contents, 2) the summary provided for in article 5.2 of Directive 2003/71/EC, 3) the risk factors linked to the issuer and the type of security covered by the issue, and 4) the other information items

included in the schedules and building blocks according to which the prospectus is drawn up.

- (15) In accordance with article 25.2 of the Prospectus Regulation, a prospectus composed of separate documents shall be composed of the following parts in the following order: 1) a clear and detailed table of contents, 2) as the case may be, the risk factors linked to the issuer and the type of security covered by the issue, and 3) the other information items included in the schedules and building blocks according to which the prospectus is drawn up.
- (16) In accordance with article 25.3 of the Prospectus Regulation, in the cases mentioned in paragraphs 1 and 2, the preparer of the prospectus may freely define the order in the presentation of the required information items included in the schedules and the building blocks according to which the prospectus is drawn up.
- (17) The presentation order in a national prospectus drawn up as a single document is prescribed in chapter 1, section 9, subsection 2 of the MFD. If the prospectus is drawn up as a single document, the information items shall be presented in the following order: 1) table of contents, 2) summary, 3) information, as referred to in chapter 2, sections 1 and 11 or chapter 3, sections 1 and 10 of the MFD, on risk factors linked to the issuer and securities, and 4) other information required in chapter 2 or 3.
- (18) A national prospectus drawn up as three separate documents is prescribed in chapter 1, section 9, subsection 3 of the MFD. If the prospectus is drawn up as three separate documents, the information in the registration document and the securities note shall be presented in the following order: 1) table of contents, 2) information as referred to in chapter 2, sections 1 and 11 or chapter 3, sections 1 and 10 of the MFD on risk factors linked to the issuer and securities, and 3) other information required in chapter 2 or 3 of the MFD.

GUIDELINE (paragraphs 19–20)

- (19) According to FIN-FSA's interpretation, basic information may be provided on the prospectus cover and on the inside of the cover, notwithstanding article 25 of the Prospectus Regulation, such as information on regulation applicable to the prospectus and on prospectus approval. The table of contents should follow immediately after the inside of the cover.
- (20) By virtue of the Prospectus Regulation and the MFD, the preparer of the prospectus may freely decide on the presentation order of the information items in EU prospectuses and national prospectuses, except for the table of contents, summary and risks.

6.2.3 Incorporation of information in the prospectus by reference

- (21) In accordance with chapter 4, section 11, subsection 1 of the SMA, information may be incorporated in the prospectus by reference to a previously or simultaneously published document provided that the document has earlier been approved by FIN-FSA or submitted to FIN-FSA in connection with the application for prospectus approval or publication, as referred to in chapter 10.

In accordance with chapter 4, section 11, subsection 2 of the SMA, information may not be provided in the summary by reference to another document.

- (22) In accordance with chapter 1, section 6 of the MFD, if information is incorporated in the prospectus by reference, the prospectus shall include a list of the information and documents referred to. The references shall be to the latest relevant information available to the issuer. The documents referred to in the prospectus shall also be made available to the public in accordance with chapter 1, sections 2 and 3 in the MFD.
- (23) The incorporation of information in EU prospectuses by references is prescribed in article 28 of the Prospectus Regulation.

GUIDELINE (paragraphs 24–26)

- (24) In accordance with chapter 4, section 11 of the SMA, documents referred to in the prospectus are part of the prospectus. Documents referred to may be, for example, financial statements, management reports, audit reports, interim reports, interim management statements, stock exchange announcements, merger and division plans, earlier approved prospectuses, and articles of association.
- (25) Documents referred to in the prospectus are not the same documents as those that, in accordance with certain Annexes of the Prospectus Regulation, shall be kept on display as regards EU prospectuses. By virtue of chapter 4, section 11 of the SMA, the information incorporated by reference forms part of the prospectus and, in accordance with chapter 1, section 2, subsection 2 of the MFD, the documents shall always be provided to investors on request, whereas documents kept on display provide additional information that investors, according to the Prospectus Regulation, must have the opportunity to examine at, for example, the issuer's head office.
- (26) FIN-FSA recommends that national prospectuses should, as applicable, comply with the procedure for incorporation of information by reference that is to be followed as regards EU prospectuses.

6.2.4 Language of the prospectus

- (27) Chapter 4, section 12, subsection 1 of the SMA provides that the prospectus shall be drawn up in Finnish or Swedish if the securities are offered to the public or sought to be admitted to trading on a regulated market solely in Finland. However, FIN-FSA may, upon application, consent to the drawing up of the prospectus in another language.

Chapter 4, section 12, subsection 2 of the SMA provides that if securities are offered to the public or sought to be admitted to trading on a regulated market only in an EEA member state other than Finland, the prospectus shall be drawn up in the language accepted by the competent authority of the host EEA member state or in a language customary in the international financial markets. The summary of the prospectus shall, upon request of the competent authority of the host EEA member state, be translated into one or several official languages as required by such authority. However, for the purpose of approval by FIN-FSA the prospectus shall be drawn up in a language customary in the international financial markets or in another language accepted by FIN-FSA.

Chapter 4, section 12, subsection 3 of the SMA provides that if securities are offered to the public or sought to be admitted to trading on a regulated market in Finland and in another EEA member state, the prospectus shall be made available in the host EEA member states in the language accepted by the competent authority of each of the host EEA member states or in a language customary in the international financial markets. The

summary of the prospectus shall, upon request of the competent authority of the host EEA member state, be translated into one or several official languages.

Chapter 4, section 12, subsection 4 of the SMA provides that if non-equity securities with a denomination or accounting par value of at least EUR 100,000 are sought to be admitted to trading on a regulated market in one or several EEA member states, the prospectus may be drawn up in a language customary in the international financial markets or in a language accepted by FIN-FSA and the competent authority of each of the other host EEA member states. FIN-FSA may request that the summary should be drawn up in Finnish or Swedish or in both of these languages, if this is necessary to protect the investors. The summary of the prospectus shall, upon request of the competent authority of the host EEA member state, be translated into one or several official languages as required by such authority.

Chapter 4, section 12, subsection 5 of the SMA provides that a prospectus approved in another EEA member state and its supplements shall be drawn up in a language customary in the international financial markets or in another language accepted by FIN-FSA. FIN-FSA may request that a summary of the prospectus translated into Finnish or Swedish or both should be attached to the notification, if this is necessary to protect the investors.

GUIDELINE (paragraphs 28–35)

- (28) According to the relevant Government Bill, the language customary in the international financial markets, as referred to in chapter 4, section 12 of the SMA, is English.⁹
- (29) FIN-FSA may, upon application, give its consent, as referred to in chapter 4, section 12 of the SMA, to drawing up the prospectus in English in, for example, the following situations:
- the prospectus is drawn up in order to have an additional lot of shares listed in connection with an acquisition or private placement, provided that the operations or size of the company do not undergo material changes as a result of such acquisition or private placement
 - the prospectus covers non-equity securities
 - a prospectus drawn up in English does not jeopardise investors' access to information due to limited size, expertise and language skills of the target group.
- (30) If the home state of a securities issue of a foreign issuer is Finland, FIN-FSA may give its consent to the prospectus being prepared partly or entirely in English.
- (31) FIN-FSA's approval for drawing up a prospectus in English should at the latest be applied for when the prospectus is submitted for approval. Approval of the language of disclosure is granted by FIN-FSA on a case-by-case basis.
- (32) However, when FIN-FSA gives its consent to the prospectus being prepared in English, as referred to in chapter 4, section 12 of the SMA, a summary of the prospectus shall also be drawn up in Finnish or Swedish. As a rule FIN-FSA does not require a translation of the summary if the prospectus relates to non-equity securities with a unit denomination of at least EUR 100,000.

⁹ GB 32/2012 p. 113.



- (33) If another member state is notified of an approved EU prospectus and the aim is to use the prospectus for offering or listing securities by virtue of chapter 4, section 12 of the SMA, the translation of the approved prospectus should be true to the original approved prospectus. FIN-FSA recommends that the prospectus contain a note saying that the preparer of the prospectus is responsible for the translation.¹⁰
- (34) According to FIN-FSA's interpretation, chapter 4, section 12 of the SMA provides that the translation of the prospectus, part of the prospectus (registration document, securities note, summary), base prospectus or final terms shall not be referred to by the name¹¹ of the official document concerned, unless the translation is quite true to the original approved prospectus or part of the prospectus. If the translation is not true to the original prospectus, by virtue of chapter 1, section 3 of the SMA, the translation should not be provided with a name that may cause the document to be confused with the official approved prospectus. By virtue of chapter 4, section 12 of the SMA, such a document shall also not be used in the notification made to another member state.
- (35) According to FIN-FSA's interpretation, in a situation where a base prospectus has been approved in Finnish and translated into English and another EEA state has been so notified, the terms and conditions of the issue may, by virtue of chapter 4, section 12, subsection 2 of the SMA, be drawn up in English, if the securities are offered to the public or listed only in such other country.

6.3 Substance of the prospectus

6.3.1 General

- (36) In accordance with chapter 4, section 6, subsection 1 of the SMA, the prospectus shall provide the investor sufficient information to enable the investor to make an informed assessment of the securities and their issuer as well as of the possible guarantor. The prospectus shall contain essential and sufficient information on the assets, liabilities, financial condition, profits and losses and prospects of the issuer and the possible guarantor as well as on the rights attached to the securities and other factors with a material effect on the value of the securities. The information shall be presented in a consistent and easily comprehensible form.

GUIDELINE (paragraphs 37–43)

- (37) The requirements for the contents of an EU prospectus depend on the type of issuer and securities, as provided in the Prospectus Regulation and its Annexes I–XXX.
- (38) In accordance with chapters 2–3 of the MFD, the requirements for the contents of national prospectuses depend on the type of securities.
- (39) FIN-FSA recommends that the regulatory basis for the preparation of the prospectus be disclosed in the prospectus. An EU prospectus should furthermore list the Annexes of the Prospectus Regulation under which the prospectus has been drawn up.

¹⁰ ESMA's Q&A 33.

¹¹ In English, for example, prospectus, registration document, securities note, summary, base prospectus and final terms.



- (40) ESMA's prospectus recommendation provides recommendations pertaining to the requirements for the contents of EU prospectuses. In its Q&A document, ESMA publishes its interpretations of the Prospectus Directive and the Prospectus Regulation. FIN-FSA recommends compliance with ESMA's prospectus recommendation and interpretations.
- (41) FIN-FSA recommends that the following disclaimer be included in the prospectus: "FIN-FSA has approved this prospectus but assumes no responsibility for the accuracy of the information contained therein." This disclaimer should appear either on the cover or the inside of the cover of the prospectus.
- (42) FIN-FSA recommends that the prospectus should be dated in accordance with its approval of the prospectus.
- (43) FIN-FSA recommends that the prospectus should describe the procedure in a situation where a right to withdraw from the subscription may arise for the investor.

6.3.2 Summary

- (44) In accordance with chapter 4, section 9 of the SMA, the prospectus shall contain a summary. The summary shall, briefly and in non-technical language, convey the essential information which, together with the rest of the prospectus, is helpful in making an informed assessment of the securities in question. The information in the summary and the manner of presenting it shall be helpful in comparing summaries drawn up on similar securities.
- A summary need not be drawn up if the prospectus relates to the seeking of admission to trading on a regulated market of non-equity securities with a denomination or consideration of at least EUR 100,000.
- (45) In accordance with chapter 1, section 4 of the MFD, the summary shall comprise the following core information:
- 1) a short description of essential characteristics and risks related to the issuer and possible guarantor, including assets, liabilities and financial condition;
 - 2) a short description of essential characteristics and risks related to the investment in the security in question, including possible rights attached to the security;
 - 3) general terms of the offer, including assessed charges collected from the investor by the issuer or offeror;
 - 4) more detailed information on the admission to trading; and
 - 5) reasons for the offer and use of the funds obtained through the issue.
- (46) Chapter 1, section 5 of the MFD contains a provision on a warning text to be included in the summary.
- (47) Article 24 of the Prospectus Regulation applicable to EU prospectuses provides that:
- A summary shall contain the key information items set out in Annex XXII. Where an item is not applicable to a prospectus, such an item shall appear in the summary with the words 'not applicable'.

- The length of the summary shall take into account the complexity of the issuer and of the securities offered, but it shall not exceed 7% of the length of the prospectus or 15 pages, whichever is longer.
- The summary shall not contain cross-references to other parts of the prospectus.
- The order of the sections and elements referred to in Annex XXII shall be mandatory.
- The summary shall be drafted in clear language, presenting the key information in an easily accessible and understandable way.
- Where an issuer is not obliged to include a summary in a prospectus, but produces an overview section in the prospectus, such section shall not be titled 'Summary' unless the issuer complies with all disclosure requirements for summaries.

GUIDELINE (paragraphs 48–54)

- (48) According to the Prospectus Directive, the summary serves as an introduction to the other parts of the prospectus. In other words, the information contained in the summary should be presented more extensively elsewhere in the prospectus.
- (49) According to FIN-FSA's interpretation, the requirement in chapter 1, section 4 of the MFD of a short description of essential risks presupposes that the summary describes the key risk elements. The requirement may be fulfilled by listing the headings of the risks presented in the prospectus, if they are sufficiently descriptive.
- (50) In accordance with Annex XXII of the Prospectus Regulation, the summary of an EU prospectus shall consist of five tables presented in the following order:
- Section A Introduction and warnings
 - Section B Issuer and any guarantor¹²
 - Section C Securities
 - Section D Risks
 - Section E Offer
- (51) FIN-FSA recommends that the elements in the summary of an EU prospectus be numbered and each element provided with a short descriptive heading. If some regulatory element does not apply to the company or issue in question, the heading should still be kept in the table but followed by "not applicable" and a short explanation.¹³
- (52) FIN-FSA recommends that the following explanatory text be presented in the beginning of the summary of an EU prospectus:
- Summaries are made up of disclosure requirements known as 'Elements', which are numbered in sections A–E (A.1–E.7).*
- This summary contains all the elements required to be included in a summary for this type of securities and issuer. Because some elements need not be addressed in this summary*

¹² If there is no guarantor of the issue, no such party needs to be mentioned in the heading of section B.

¹³ ESMA's Q&A 80.

due to the type of securities and issuer, there may be gaps in the numbering sequence of the elements.

Even though an element may be required to be inserted in the summary because of the type of securities and issuer, it is possible that no relevant information can be given regarding the element. In this case a short description of the element is included in the summary with the words “not applicable”.¹⁴

- (53) A short example is given below of section B of the summary in a situation where a registration document is drawn up in accordance with Annex I of the Prospectus Regulation.

Section B - Issuer		
B.1	Name	The company name is Example Ltd.
B.2	Domicile and other information	Example Ltd. is a public limited liability company whose domicile is Helsinki. The company is established in Finland and operates under Finnish legislation.
B.3	Description of operations	[...]
B.4a	Recent developments	[...]
B.5	Group	Not applicable. The company is not a member of any group.

- (54) By virtue of chapter 1, section 4 of the MFD, the preparer of the prospectus may freely choose the presentation format and the order of the information items in a summary of a national prospectus.

6.3.3 Declaration of information contained in the prospectus

- (55) An EU prospectus shall include a declaration by those responsible for the prospectus, as referred to in the Prospectus Regulation. A declaration must be made by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omissions likely to affect its import. As the case may be, a declaration must be made by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
- (56) National prospectuses shall comprise a declaration as referred to in chapter 2, section 2, paragraph 2 and section 12, paragraph 2 or chapter 3, section 2, paragraph 2 and section 11, paragraph 2 of the MFD.

¹⁴ ESMA's Q&A 80.

GUIDELINE (paragraphs 57–59)

- (57) By virtue of the annexes of the Prospectus Regulation and the MFD, the declaration by those responsible for the prospectus shall be presented in accordance with the wording of the regulation as regards EU prospectuses and in accordance with the wording of the MFD as regards national prospectuses. According to FIN-FSA's interpretation, no reservations or other statements may be added to the declaration.
- (58) If a declaration by those responsible for the prospectus is dated, FIN-FSA recommends that the date be the same as the date of the prospectus.
- (59) According to FIN-FSA's interpretation, if an issuer of securities is obliged to publish a prospectus, at least the issuer is by virtue of chapter 4, section 1 of the SMA responsible for the prospectus and the information disclosed therein. Thus the prospectus should at least include a declaration by the issuing company of the information contained in the prospectus. In addition to the party subject to the prospectus obligation, some other party (for example a guarantor) may be responsible for the prospectus or parts thereof.

6.4 Prospectuses under the proportionate disclosure regime

- (60) Articles 26a–c of the Prospectus Regulation contain the criteria for applying proportionate schedules for the contents of EU prospectuses.
- (61) Article 26a.3 of the Prospectus Regulation, on rights issues, provides that a statement at the beginning of the prospectus shall clearly indicate that a rights issue is addressed to shareholders of the issuer and that the level of disclosure of the prospectus shall be proportionate to that type of issue.

GUIDELINE (paragraphs 62–66)

- (62) In accordance with articles 26a–c of the Prospectus Regulation, simplified requirements for the contents of the prospectus should, for example, be applied:
- to rights issues, provided that the issuer has shares of the same class already admitted to trading on a regulated market or, on certain conditions, in a multilateral trading facility
 - when securities issued by small and medium-sized companies and companies with reduced market capitalisation are offered to the public or admitted to trading on a regulated market
 - to credit institutions that issue non-equity securities, as referred to in chapter 4, section 2, subsection 2 of the SMA.
- (63) According to FIN-FSA's interpretation, article 24 of the Prospectus Regulation requires that a summary as referred to in Annex XXII of the regulation shall be incorporated in prospectuses prepared according to the simplified requirements for the contents of the prospectus.¹⁵
- (64) ESMA's prospectus recommendation states which prospectuses, as referred to in the annexes of the Prospectus Regulation, each item of the recommendation applies to. FIN-

¹⁵ ESMA's Q&A 82.

FSA recommends that ESMA's prospectus recommendation be complied with as applicable also in prospectuses prepared according to the simplified prospectus requirements.

- (65) According to FIN-FSA's interpretation, registration documents prepared according to the simplified prospectus requirements by virtue of articles 26a–c of the Prospectus Regulation cannot be used later in situations in which the simplified prospectus requirements are inapplicable.
- (66) If such topics from the annexes of the Prospectus Regulation are incorporated in the prospectus as are not required under the simplified prospectus requirements, FIN-FSA recommends that information on the topic in question, such as allocation, should be presented exhaustively. The necessity of incorporating information should be assessed particularly on the basis of whether the prospectus provides investors with sufficient information.

6.5 Financial information in the prospectus

6.5.1 ESMA's recommendations on financial information

GUIDELINE (paragraph 67)

- (67) ESMA's prospectus recommendation provides recommendations on the following financial information to be included in EU prospectuses:
- Selected financial information
 - Operating and financial review
 - Capital resources
 - Profit forecasts or estimates
 - Historical financial information
 - Pro forma financial information
 - Financial data not extracted from issuer's audited financial statements
 - Interim financial information
 - Working capital statements
 - Capitalisation and indebtedness.

6.5.2 Selected financial information

- (68) In accordance with item 3, Annex I (on shares) of the Prospectus Regulation¹⁶, selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, shall be presented in the same currency as the financial information. The selected historical financial information must provide the key figures that summarise the financial condition of the issuer. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be

¹⁶ See also Annexes IV, X, XXV, XXVI and XXVIII of the Prospectus Regulation.

provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year-end balance sheet information.

- (69) National prospectuses shall provide key figures, as referred to in chapter 2, section 7 and chapter 3, section 6 of the MFD, calculated according to FIN-FSA's guidelines.

GUIDELINE (paragraphs 70–72)

- (70) FIN-FSA recommends that the selected financial information presented in prospectuses should be consistent with the financial information published earlier by the issuer, including at least the key performance indicators presented in the financial statements and management reports and, if necessary, the calculation formulas of the key performance indicators.
- (71) The issuer may also publish any other financial information that is considered relevant for the issuer. Other financial information may be alternative performance measures¹⁷ derived from financial statements, management reports or interim reports or measures based on other financial information presented in the prospectus (such as pro forma information). FIN-FSA recommends that the issuer in that case disclose the reasons for presenting the information, as well as the source of the information, calculation formulas, and, if necessary, reconciliation calculations for the financial statement information.
- (72) FIN-FSA's Regulations and guidelines 7/2013 on issuers' disclosure obligation should be applied to the presentation of key figures.

6.5.3 Operating and financial review

- (73) In accordance with item 9, Annex I (on shares) of the Prospectus Regulation¹⁸ on EU prospectuses, the prospectus shall, to the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for understanding the issuer's business as a whole. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected, shall also be presented. Where the financial statements disclose material changes in net sales or revenues, a narrative discussion of the reasons for such changes shall be provided.

GUIDELINE (paragraphs 74–77)

- (74) FIN-FSA recommends that the analyses of operations and financial condition in the issuer's operating and financial review¹⁹ adopt the management's point of view. To enhance the comprehensibility and analysability of the prospectus, the review should be presented as a whole and not simply refer to, for example, the issuer's financial statements, management reports and interim reports.

¹⁷ See also CESR's Recommendation on Alternative Performance Measures (CESR/05-178b).

¹⁸ In compliance with the simplified prospectus requirements for small and medium-sized companies (item 9, Annex XXV of the Prospectus Regulation), the prospectus shall provide a short operating and financial review of the issuer, if financial statements and management reports as referred to in the directives on certain types of companies are not attached to the prospectus.

¹⁹ Often the abbreviation OFR is used for operating and financial review.

- (75) FIN-FSA recommends that the review include all the relevant trends and factors that have affected the operating environment and the issuer's operation and financial condition. The review should provide the reasons for significant changes in the financial information. It should analyse the factors that have affected the earnings and cash flow and state which factors are recurring and which are non-recurring. The review should also provide an analysis of the key balance sheet items and other resources available to the company, if they are not described elsewhere in the prospectus.
- (76) The review may also include other information required by the Prospectus Regulation, such as capital resources, research and development, and investments.
- (77) FIN-FSA recommends that the following principles in ESMA's prospectus recommendation be followed in preparing the operating and financial review²⁰:
- Audience: The review should focus on matters that are relevant to investors, in order to provide an overall understanding of the issuer's business operations. The review should be understandable and comprehensive and should neither assume detailed prior knowledge of the issuer's business nor of its operating environment.
 - Time frame: The review should provide a balanced analysis of all the periods covered by the historical financial information. Historical performance should be examined in relation to the issuer's long-term objectives.
 - Comparability: The review should be comparable between financial years. Comparability with other issuers should be enhanced by applying widely used and accepted measures in the analysis.
 - Reliability: The review should be neutral, free from bias, dealing even-handedly with both good and bad aspects. Company management should ensure that the review also covers such unfavourable matters whose exclusion could misguide investors. If such matters are described elsewhere in the prospectus, they should be referred to.

6.5.4 Profit forecasts or estimates

- (78) Item 13, Annex I (on shares) of the Prospectus Regulation contains provisions on the presentation of profit forecasts and estimates in EU prospectuses and on related audit reports.²¹

GUIDELINE (paragraphs 79–82)

- (79) According to FIN-FSA's interpretation, if an issuer has provided a profit forecast or estimate in, for example, the management report, by virtue of chapter 4, section 6 of the SMA, the issuer should assess whether the provided forecast or estimate is still valid and material to the issue and, if so, include it in the EU prospectus.²² According to FIN-FSA's interpretation, based on chapter 4, section 6 of the SMA, a profit forecast or estimate that has been provided elsewhere is material information that should be included in the prospectus at least in connection with share issues and particularly in initial public offerings. If an earlier profit forecast is no longer up-to-date, FIN-FSA recommends that a statement to this effect, including the reasons, should be presented in the prospectus.

²⁰ Item 32 of ESMA's prospectus recommendation.

²¹ See also, for example, item 9, Annex IV, item 8, Annex IX, item 13, Annex X, item 8, Annex XI, item B.9, Annex XXII, item 8, Annex XXIII and item 13, Annex XXV of the Prospectus Regulation.

²² Item 43 of ESMA's prospectus recommendation.

According to FIN-FSA's interpretation, chapter 6, section 4 of the SMA requires that, if a share is subject to trading, information on any change in the profit forecast or estimate should be disclosed.

- (80) By virtue of the Prospectus Regulation²³, an audit report on a profit forecast or estimate should follow the wording of the regulation.
- (81) A profit forecast issued in connection with the fulfilment of periodic information requirements will as such become part of the prospectus if the stock exchange announcement based on the periodic information requirements is incorporated in the prospectus either as such or by reference. However, FIN-FSA does not, as a rule, require that an audit report on the profit forecast be incorporated in a prospectus for non-equity securities, if the forecast has not been issued specifically for the purpose of the prospectus but as part of the issuer's fulfilment of periodic information requirements.
- (82) FIN-FSA's Regulations and guidelines 7/2013 on issuers' disclosure obligation should also be applied to the presentation of profit forecasts and estimates.

6.5.5 Historical financial information

- (83) The Prospectus Regulation on EU prospectuses requires presentation in the prospectus of audited historical financial information covering at least
- the latest three financial years as regards the registration document for shares (item 20.1 of Annex I)
 - the latest two financial years as regards the registration documents for debt securities and derivative instruments (item 13.1 of Annex IV, item 11.1 of Annex IX, item 11.1 of Annex XI)
 - the latest financial year as regards the registration document for rights issues (item 15.1 of Annex XXIII)
- or such shorter period as the issuer has been in business.
- (84) The Prospectus Regulation on EU prospectuses requires that prospectuses prepared in compliance with the proportionate schedules shall, for small and medium-sized companies and companies with reduced market capitalisation, include a statement that audited historical financial information has been prepared according to the financial reporting standards as well as information on how to gain access to the financial statements (item 20.1 of Annex XXV).
- (85) In addition, the Prospectus Regulation contains provisions on the situations in which interim financial information shall be presented.
- (86) Chapter 2, section 7 of the MFD on national prospectuses provides that the balance sheets, income statements and cash flow statements drawn up for the latest two financial years as well as the notes on the financial statements and the management report for the latest financial year shall be included in a prospectus regarding shares and other equity securities. Chapter 3, section 6 of the MFD provides that the balance sheet, income

²³ See item 13.2, Annex I, item 9.2, Annex IV, item 13.2, Annex X, item 8.2, Annex XI, item 8.2, Annex XXIII, item 13.2, Annex XXV, item 9.2, Annex XXVI, item 13.2, Annex XXVIII and item 8.2, Annex XXIX of the Prospectus Regulation.

statement, cash flow statement, notes on the financial statements and management report for the latest financial year shall be included in a prospect regarding non-equity securities.

GUIDELINE (paragraphs 87–89)

- (87) The Prospectus Regulation provides that at least consolidated financial statement information shall be presented as historical financial information. According to FIN-FSA's interpretation, the information should either be presented in the form of a table of comparison (comprising all consolidated financial statement information, including notes on the financial statements) or the prospectus should contain a Finnish issuer's financial statements and management report, as referred to in the Accounting Act (including not only consolidated financial statement information but also financial statements and management report of the parent company).
- (88) According to FIN-FSA's interpretation, if the historical financial information is presented in the form of a table of comparison, the prospectus should, by virtue of the Prospectus Regulation²⁴, comprise an audit report including a statement on whether the historical financial information provides a true and fair view for the registration document of the issuer's result and financial condition. When financial statements and management reports are presented as historical financial information, the prospectus should comprise audit reports on those statements and reports.
- (89) FIN-FSA recommends that, if the historical financial information is not presented as part of the registration document, the prospectus should contain financial information presented, for example, in table format to enhance comprehensibility and analysability. The information should cover at least consolidated financial statements, balance sheets and cash flow statements for the required periods. The information may be disclosed in a condensed version, but the material items should be specified.

6.5.6 Restatement of financial information

- (90) Share prospectuses prepared under the Prospectus Regulation must present historical financial information for the latest two financial years, prepared according to the same principles and in the same form as the financial statements to be disclosed for the issuer's next entire financial year. As regards prospectuses for debt securities and derivative instruments the requirement is limited to the latest financial year.²⁵

GUIDELINE (paragraphs 91–94)

- (91) The provision on unified accounting principles mainly applies to situations in which the issuer prepares its financial statements in accordance with national accounting standards and for the first time applies for listing of its securities. When the securities have been listed, by virtue of chapter 7 a, section 2 of the Accounting Act, the obligation arises for the issuer to apply the International Financial Reporting Standards (IFRSs), instead of national accounting standards, in the consolidated financial statements to be disclosed next.
- (92) According to FIN-FSA's interpretation, the provision on unified accounting principles also applies to situations in which a prospectus is drawn up immediately after the end of the

²⁴ See, for example, item 20.1, Annex I, item 13.1, Annex IV, item 11.1, Annex IX and item 11.1, Annex XI of the Prospectus Regulation.

²⁵ See, for example, item 20.1, Annex I and item 11.1, Annex IX of the Prospectus Regulation.



financial year but before closure of the accounts, when the issuer is not yet obliged to prepare the financial statements to be disclosed next in accordance with the IFRSs.

- (93) FIN-FSA recommends that in order to maintain comparability between reporting periods as regards the financial information disclosed in prospectuses, even in situations where not all the financial statements are restated, the financial statements should be presented by applying the 'bridge approach'. In the bridge approach, the financial statements of the earliest restated financial year are presented in accordance with both the national accounting standards initially applied and the IFRSs applied in the restatement.²⁶
- (94) According to FIN-FSA's interpretation, if the earliest restated financial statements are included as comparative information in the issuer's first audited IFRS financial statements, the Prospectus Regulation does not require a separate audit report on the restated IFRS information for the comparative period, if the financial statements for the year in question, prepared in accordance with the national accounting standards initially applied, and an audit report thereon are incorporated in the prospectus.

6.5.7 Pro forma information and other adjusted financial information

- (95) In accordance with chapter 4, section 6 of the SMA, the prospectus shall provide the investor with sufficient information to enable the investor to make an informed assessment of the securities and their issuer as well as of the possible guarantor. The prospectus shall contain essential and sufficient information on the assets, liabilities, financial position, profits and losses and prospects of the issuer and the possible guarantor as well as on the rights attached to the securities and other factors with a material effect on the value of the securities.
- (96) In accordance with article 4a.1 of the Prospectus Regulation on EU prospectuses, when the issuer of a share²⁷ has a complex financial history or has made a significant financial commitment, and in consequence the inclusion in the registration document of certain items of financial information relating to another entity than the issuer is necessary, those items of financial information shall be deemed to relate to the issuer. The competent authority of the home member state shall in such cases request that the issuer, the offeror or the person asking for admission to trading should include those items of information in the registration document.
- Those items of financial information may include pro forma information prepared in accordance with Annex II. In this context, if the issuer has made a significant financial commitment, any such pro forma information shall illustrate the anticipated effects of the transaction that the issuer has agreed to undertake.
- (97) A complex financial history is defined in article 4a.4 of the Prospectus Regulation.
- (98) In accordance with article 4a.6 of the Prospectus Regulation on EU prospectuses, a significant gross change means a variation of more than 25% in the situation of an issuer, relative to one or more indicators of the size of the issuer's business.
- (99) In accordance with item 20.2, Annex I of the Prospectus Regulation on EU prospectuses, in the event of a significant gross change, a description shall be presented on how the

²⁶ See chapter 5 A of ESMA's prospectus recommendation.

²⁷ The requirement also applies to other securities as referred to in article 4.2 of the Prospectus Regulation.

transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information.

(100) Annex II of the Prospectus Regulation contains provisions on preparation of pro forma information and an audit report thereon.

(101) In accordance with chapter 2, section 7, subsection 8 of the MFD on national prospectuses, the issuer may, with FIN-FSA's consent, provide pro forma information in the registration document in addition to financial statements and interim reports.

GUIDELINE (paragraphs 102–109)

(102) Situations as referred to in paragraph 96, in which the financial information and interim reports do not give a true and fair view of the issuer's business operations at the time when the prospectus is published, may be occasions when the issuer has carried out or is intending to carry out a significant merger or acquisition or the issuer has been reorganised as a separate legal entity following the division of an existing business.

(103) Due to the complex nature of transactions, it is impossible to issue comprehensive guidelines on the additional information to be included in prospectuses as a result of a planned or executed transaction. Thus FIN-FSA recommends that issuers and their advisers contact FIN-FSA at the earliest possible stage to find out what information should be included in the prospectus.

(104) Information as referred to in paragraph 103 may be, for example, adjusted information based on financial information in financial statements and interim reports, such as carve-out financial information prepared in connection with the spin-off or split-up of a subgroup, or pro forma financial information prepared in connection with business acquisitions.

(105) As required in article 4a of the Prospectus Regulation, in some situations the prospectus must also provide additional financial information on legal corporate entities other than the issuer. According to FIN-FSA's interpretation, this provision requires that a prospectus on, for example, a significant corporate acquisition should provide the same financial information on the target company and its group as on the issuer.

(106) Such financial information is generally information that is presented in addition to historical financial information. However, FIN-FSA may, by virtue of chapter 4, section 13, subsection 4 of the SMA, on a case-by-case basis, consider and give its consent to presenting such financial information instead of historical financial information. In such a case FIN-FSA requires an audit of the financial information.

(107) According to FIN-FSA's interpretation, the significance of arrangements, as referred to in article 4a of the Prospectus Regulation, should be assessed relative to the key figures indicating the size of the issuer's business prior to the arrangement in question. The key figures should be based on the latest financial statements disclosed or on the next financial statements to be disclosed. Such key figures may be, for example, total assets, revenue, and profit or loss for the financial year.²⁸ According to FIN-FSA's interpretation, a significant change may also refer to a situation in which several arrangements with a total

²⁸ Items 92–94 of ESMA's prospectus recommendation.



effect of over 25% have occurred or will occur in the financial year, even if none of the individual transactions exceeds the 25% reference value.

- (108) FIN-FSA recommends that pro forma financial information be presented in national prospectuses under corresponding conditions. In the presentation of the information, the provisions of the Prospectus Regulation and Annex II thereof should be applied.
- (109) FIN-FSA recommends that the instructions for pro forma reporting provided in a brochure (Pro forma -tiedot esitteessä) issued by the Finnish Institute of Authorised Public Accountants be followed as applicable when preparing financial pro forma information.

7 Approval and publication of the prospectus

7.1 Authority for prospectus approval and home member state of securities issue

- (1) In accordance with chapter 5, section 1, subsection 1 of the SMA, FIN-FSA is the competent authority to process applications for approval of prospectuses, if 1) the home member state of the issue of securities referred to in the application is Finland, 2) the competent authority of another EEA member state has requested it to process an application for approval of a prospectus and notified ESMA of the request and FIN-FSA has consented to the request, or 3) the prospectus is not governed by the Prospectus Regulation.
- (2) In accordance with chapter 3, section 6, subsection 1 of the SMA, Finland is the home member state of an issue of securities, if the corporate domicile of the issuer is in Finland and the issued securities are equity securities or securities other than those referred to in subsection 3.
- (3) In accordance with chapter 3, section 6, subsection 2 of the SMA, the home state of an issue of securities is also Finland, if the corporate domicile of the issuer is in a third country and equity securities or securities other than those referred to in subsection 3 are offered to the public or sought to be admitted to trading within the EEA and this is done for the first time in Finland. If the decision to offer to the public or seek admission to trading on a regulated market has been made by another party than the issuer, the issuer may later choose another EEA member state as the home state of the issue.
- (4) In accordance with chapter 3, section 6, subsection 3 of the SMA, anyone who offers other than equity securities to the public or seeks admission to trading on a regulated market of such securities may choose Finland as the home member state of the issue, if the securities are offered to the public or sought to be admitted to trading on a regulated market in Finland or if the corporate domicile of the issuer is in Finland, and
 - the denomination or accounting par value of the securities is at least EUR 1,000, or
 - the securities carry the right to other securities or to receive a payment based on the performance of other securities or another key figure.

GUIDELINE (paragraphs 5–6)

- (5) The home member state of an issue of securities, as referred to in chapter 3, section 6 of the SMA, determines which EEA member state authority is the competent one to approve

the prospectus. Under the Prospectus Directive the competent authority may, on the applicant's request, transfer the approval of an EU prospectus to the authority in another EEA member state. A national prospectus must always be approved by FIN-FSA.

- (6) On the basis of the definition of equity securities, the home member state of the issue of shares, options or convertibles issued by a Finnish issuer is, by virtue of chapter 3, section 6, subsection 1 of the SMA, always Finland. According to the Government Bill the definition of equity securities provided in chapter 3, section 4 of the SMA also covers cash-settled covered warrants whose underlying assets are shares of a company belonging to the same group as the issuer.²⁹

7.2 Approval procedure for the prospectus

- (7) In accordance with chapter 5, section 1, subsection 2 of the SMA, FIN-FSA shall decide on the approval of the prospectus within 10 banking days from submission of the prospectus for approval. If the prospectus pertains to securities of an issuer whose securities have not earlier been offered to the public or admitted to trading on a regulated market or to corresponding trading in an EEA member state, FIN-FSA shall make the decision referred to above within 20 banking days following submission of the prospectus for approval.
- (8) In accordance with chapter 5, section 1, subsection 3 of the SMA, if FIN-FSA finds that the documents submitted are incomplete or that supplementary information is needed, the period set for approval of the prospectus shall start on the day on which the supplementary information is submitted to FIN-FSA. FIN-FSA shall within 10 banking days following submission of the application ask the applicant to supplement its application.
- (9) In accordance with chapter 5, section 1, subsection 4 of the SMA, FIN-FSA must approve the prospectus if it fulfils the criteria laid down in chapters 3–5 of the SMA.

GUIDELINE (paragraphs 10–23)

- (10) Even if an issuer's securities have earlier been offered to the public or non-equity securities earlier admitted to trading on a regulated market, FIN-FSA recommends that the issuer in initial public offerings allow FIN-FSA 20 banking days for the processing due to the special characteristics of such listings.
- (11) According to FIN-FSA's interpretation, when a new company arises in a merger or division or the securities of the acquiring company have not previously been offered to the public or admitted to trading on a regulated market, the processing time for a merger or division prospectus is, by virtue of chapter 5, section 1, subsection 2 of the SMA, 20 banking days.
- (12) A draft version of the prospectus may be sent to FIN-FSA already before the prospectus is submitted for approval. Such a document should be explicitly identifiable as a draft version. At this stage FIN-FSA mainly focuses its inspection on the structure of the prospectus, the terms of the issue and, if necessary, the financial information presented in the prospectus.
- (13) FIN-FSA recommends that the issuer submit to it the terms and conditions of a public issue for comments before the annual general meeting or board of directors have taken a final decision on them. In cases of a complex financial history, a draft version of the prospectus should also be submitted to FIN-FSA for early comments.

²⁹ GB 32/2012 p. 106.



- (14) Particularly in connection with initial public offerings (IPOs), if the issuer for the first time applies the IFRSs, FIN-FSA, as part of the approval of the prospectus, assesses the financial information included in the prospectus also as regards the application of IFRSs. FIN-FSA recommends that the company seeking listing contact them in good time before the start of the approval process, to resolve any questions involving the application of IFRSs.
- (15) The prospectus application, including appendices, should be delivered to kirjaamo@finanssivalvonta.fi, to the Financial Supervisory Authority, P.O.Box 103, 00101 Helsinki, or to FIN-FSA's office reception, Snellmaninkatu 6, Helsinki.
- (16) FIN-FSA recommends that the prospectus approval application describe the requirements for prospectus contents complied with in preparing the prospectus. If the prospectus is drafted according to a proportionate schedule, information on its applicability should be included in the prospectus. All integral parts of the prospectus package, including documents incorporated by reference, should be appended to the application for prospectus approval. If the issuer authorises an agent other than a solicitor or lawyer to handle the prospectus approval process, the application should include a power of attorney.³⁰
- (17) With the application for prospectus approval, a cross reference list should be submitted to FIN-FSA listing the pages of the prospectus where each required information item (as referred to in the Prospectus Regulation or MFD) can be found.³¹ FIN-FSA recommends that the cross reference list include all applicable items and sub-items of the annexes of the Prospectus Regulation and correspondingly all applicable sections, subsections and paragraphs of the MFD. If some required information is missing, this should be stated and, if necessary, justified in the cross reference list.
- (18) If FIN-FSA's consent, as referred to in chapter 4, section 13 of the SMA, for the omission of some required information is applied for, FIN-FSA recommends that the matter be discussed already prior to submission of the application. However, the consent should be applied for at the latest in the application for prospectus approval. The reasons for omission of required information should be presented in the relevant items of the cross reference list.
- (19) According to FIN-FSA's interpretation, the application documents or the prospectus may be considered incomplete, as referred to in chapter 5, section 1, subsection 3 of the SMA, if the financial statements and management reports included in the prospectus are unaudited at the time of application. An interim report that is to be incorporated in a prospectus but that is disclosed only after the start of the processing period of the application may, with FIN-FSA's consent, be included in the prospectus during the processing of the application, but in the case of prospectuses for share issues it must be included before the first half of the processing period has passed.
- (20) According to FIN-FSA's interpretation, the application documents or the prospectus may be considered incomplete, as referred to in chapter 5, section 1, subsection 3 of the SMA, if, for example, required topics are missing, the documents comprise several unsettled matters or conditions, or documents incorporated by reference have not been submitted with the prospectus. Significant omissions in the financial information or operating and

³⁰ Section 12 of the Administrative Procedure Act.

³¹ Article 25.4 of the Prospectus Regulation.



financial review are also factors that render a prospectus incomplete. The fact that a prospectus has to be amended during the review process based on comments by FIN-FSA does not affect the processing time of the prospectus, provided that the applicant does not unreasonably delay the submission of a new version of the prospectus.

- (21) As a rule FIN-FSA delivers its prospectus review comments in writing by email, using a separate form.
- (22) In certain situations, such as cases of complex financial history or listings, FIN-FSA, in processing the prospectus approval, goes through the financial statement information in the prospectus to assess whether the prospectus contains sufficient information presented in a logical and easily comprehensible manner so as to enable an informed assessment of the securities or issuer. However, this does not prevent FIN-FSA from a later processing of financial statements and other financial information in the prospectus as part of its financial reporting supervision.
- (23) If the applicant wants to discontinue the processing of the prospectus, FIN-FSA recommends that it so inform them in writing.

7.3 Publication of the prospectus

- (24) In accordance with chapter 4, section 1, subsection 1 of the SMA, anyone who offers securities to the public and seeks securities to be admitted to trading on a regulated market shall publish a prospectus for the securities prior to entry into force of the offer or the admission to trading on a regulated market and make it available to the public while the offer is open, as provided for in chapter 4 of the SMA.

In accordance with chapter 4, section 1, subsection 2 of the SMA, the prospectus may be published when FIN-FSA has approved it or the competent authority in another EEA member state has notified FIN-FSA of the approval of the prospectus, as referred to in chapter 5, section 2 of the SMA.

In accordance with chapter 4, section 1, subsection 3 of the SMA, the approved prospectus shall be published with the same contents and in the same form as it has been approved.

- (25) In accordance with chapter 1, section 2, subsection 1 of the MFD, the prospectus is considered published when it has been made available to the public:
- 1) in electronic form either on the issuer's website, on the website of an investment service provider intermediating or selling securities, or on the website of an agent transferring payments related to the securities in question;
 - 2) in electronic form on websites of such operators of regulated markets where admission for trading on a regulated market is applied for;
 - 3) without fee and in printed form in the offices of the regulated market operator to the trading of which admission is applied for, in the office of the issuer, and in the offices of issuer agents who transfer payments related to the securities in question, or;
 - 4) by publication in one or several national or widely published newspapers in the EEA member states where the offer or the application for admission to trading is made.

- (26) In accordance with chapter 1, section 2, subsection 2 of the MFD, a prospectus that has been published in the manner described in subsection 1, paragraph 3 or 4 shall always also be published in electronic form as described in subsection 1, paragraph 1. A paper version of an electronic prospectus shall on request be provided to the investor free of charge.
- (27) Chapter 1, section 3, subsection 1 of the MFD provides that the prospectus shall be published at least two banking days prior to the start of the offer of securities to the public. However, when an offer to the public pertains to a share class sought to be admitted to trading on a regulated market for the first time, the prospectus shall be published at least six banking days prior to the earliest expiry of the offer.

Chapter 1, section 3, subsection 2 of the MFD provides that if securities are not offered to the public in connection with the admission to trading thereof on a regulated market, the prospectus shall be published at least 2 banking days prior to the start of trading of the securities referred to in the prospectus.

Chapter 1, section 3, subsection 3 of the MFD provides that the prospectus may, with the consent of FIN-FSA in connection with the approval, be published after the time limit mentioned in the first sentence of subsection 1 and in subsection 2, but at the latest in connection with the start of the offer or admission to trading.

GUIDELINE (paragraphs 28–34)

- (28) In accordance with article 14 of the Prospectus Directive, the prospectus shall be made available to the public as soon as practicable and in any case at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. FIN-FSA recommends that the approved prospectus be published as soon as possible after the approval.
- (29) In accordance with FIN-FSA's interpretation, the provision in chapter 4, section 1, subsection 3 of the SMA means that the final version of the prospectus shall be available upon the approval. Changes cannot be made in the prospectus after it has been approved, except through supplements approved by FIN-FSA. FIN-FSA recommends that the approved prospectus should be the final page proof version.
- (30) FIN-FSA recommends that a company whose shares have been admitted to trading on a regulated market should at least inform the public as to the publication of the share prospectus, as provided in chapter 6, section 4 of the SMA. In connection with such a disclosure, it should also be disclosed where such a prospectus can be obtained.
- (31) As regards offerings of securities, FIN-FSA, upon giving its consent as referred to in chapter 1, section 3, subsection 3 of the SMA, requires that the issuer commit itself to refrain from discontinuing the offer period before the investor has been able to inspect the prospectus for at least two banking days and effect a possible subscription during one banking day.
- (32) As regards applications for admission to trading, FIN-FSA may give its consent in situations where the prospectus has been drawn up for the listing of an additional lot of shares in connection with corporate acquisitions or private placements, provided that the operations or size of the issuer do not undergo material changes as a result of the acquisition or private placement.

- (33) FIN-FSA recommends that the prospectus be made available in electronic form for 12 months after the approval thereof.
- (34) As regards mergers or divisions, according to FIN-FSA's interpretation, the two-day period for publication of the prospectus, as referred to in chapter 1, section 3, subsection 1 of the SMA, shall be calculated from the board meeting deciding on the merger or division. However, FIN-FSA recommends that the merger or division prospectus be made available at least 1 week prior to the board meeting deciding on the merger or division.

7.4 Submission of the approved prospectus to FIN-FSA's register of prospectuses

- (35) In accordance with chapter 1, section 2 of the MFD, a prospectus that has been approved by FIN-FSA shall be submitted to them at the latest simultaneously with the publication.

GUIDELINE (paragraphs 36–42)

- (36) FIN-FSA publishes all approved prospectuses and offer documents in the register of prospectuses available on its website. The register of prospectuses also contains information on prospectuses of which FIN-FSA has been notified and that have been approved by competent authorities in other EEA member states.
- (37) The prospectus and documents incorporated by reference should be submitted to FIN-FSA by e-mail for publication in its register of prospectuses.
- (38) Possible supplements to prospectuses, final price and volume information on offers, and final offer terms related to base prospectuses including issue-specific summaries should also be submitted to the register of prospectuses at the latest simultaneously with the publication.
- (39) The documents should be sent by e-mail to esitteet@finanssivalvonta.fi. The documents should be in PDF format, unless otherwise agreed. More detailed instructions on the information to be given on the prospectuses when sending them to FIN-FSA's register of prospectuses are provided on the FIN-FSA website in connection with the register.³²
- (40) FIN-FSA recommends that if there is a printed prospectus, the printed version of the approved prospectus should also be sent to FIN-FSA.
- (41) If language versions other than the approved prospectus are published, FIN-FSA recommends that one copy of each language version be submitted to them.
- (42) According to FIN-FSA's interpretation, submission of the prospectus to FIN-FSA's register of prospectuses does not represent an official channel of publication for the prospectus as referred to in chapter 1, section 2 of the MFD.

7.5 Supplements to the prospectus

- (43) In accordance with chapter 4, section 14, subsection 1 of the SMA, an error or shortcoming in the prospectus or material new information which arises or is noted after approval of the prospectus but before the closing of the offer or the admission of the

³² www.finanssivalvonta.fi/fi/Listayhtiolle/Esitteet/Esiterekisteri/Pages/Default.aspx



security to trading on a regulated market, and which may be of material importance to the investor, shall be communicated to the public without undue delay by publishing a correction or supplement to the prospectus in the same manner as the prospectus.

- (44) In accordance with chapter 4, section 14, subsection 2 of the SMA, the correction or supplement may be published when FIN-FSA has approved it or the competent authority in another EEA member state has notified FIN-FSA of the approval thereof, as referred to in chapter 5, section 2 of the SMA.
- (45) In accordance with chapter 5, section 1, subsection 3 of the SMA, FIN-FSA shall decide on the approval of the supplement within seven banking days following submission of the supplement for approval.

GUIDELINE (paragraphs 46–55)

- (46) FIN-FSA recommends that prospectuses be supplemented by a separate supplementing document which clearly indicates which error or shortcoming of the earlier approved prospectus is rectified in the supplement or by what material new information the prospectus is supplemented. When providing a supplement to an EU prospectus by virtue of articles 25 and 26 of the Prospectus Regulation, a separate evaluation should always also be conducted as to whether the summary of the prospectus should be supplemented.
- (47) According to FIN-FSA's interpretation, chapter 4, section 14 of the SMA requires that a supplement to the prospectus be made available in connection with the prospectus.
- (48) FIN-FSA recommends that information on a supplement to a share prospectus and the right to withdraw be published in a stock exchange announcement, if the shares of the issuer are listed.
- (49) According to FIN-FSA's interpretation, a significant error or shortcoming or material new information as referred to in chapter 4, section 14 of the SMA means that it can influence a prudent investor's informed assessment of the issuer or securities and thus the investment decision. An informed assessment based on a share prospectus generally involves assessment of the issuer's assets and liabilities, financial position, performance, prospects, rights attached to the securities and any other circumstances with a material effect on the value of the security. An informed assessment based on a prospectus for non-equity securities (for example bonds and covered warrants) generally involves assessment of the issuer's abilities to fulfil its obligations arising from the securities, rights attached to the securities, and other circumstances with a material effect on the value of the securities.
- (50) The concept of prudent investor has not been defined in detail in legislation or legal praxis. According to FIN-FSA's interpretation, a prudent investor as referred to in paragraph 49 should have reasonable understanding of business activity and general financial operations. In addition, a prudent investor should be prepared to examine the provided information with due diligence. However, assessments of reasonable understanding and due diligence should take the target group of the securities offer into account. Thus qualified investors can be expected to demonstrate a better general understanding and perform a deeper analysis of the information than the general public.
- (51) According to FIN-FSA's interpretation, for example periodic information releases in share prospectuses normally constitute material information as referred to in chapter 4, section 14 of the SMA, which requires a supplement, whereas the effect on issuer repayment



capacity of information disclosed in prospectuses for non-equity securities should be assessed on a case-by-case basis. According to FIN-FSA's interpretation, a lowered credit rating is, for example, material new information that has an effect on the repayment capacity of the issuer and that always creates an obligation to also supplement a prospectus for non-equity securities.

- (52) However, according to FIN-FSA's interpretation, a change of the terms of the offer, such as an extension of the subscription period or an increase in the number of securities, does not require any supplement to the prospectus, if the explicit possibility of such a change has been included in the terms of the offer and if such a change does not cause other changes in the terms or otherwise significantly weaken the position of investors. However, according to FIN-FSA's interpretation, if the extension of the subscription period also causes a change in the issue or valuation date of a bond, the prospectus should be supplemented by virtue of chapter 4, section 14 of the SMA.
- (53) Even if no obligation to supplement the prospectus should arise, FIN-FSA recommends that information on a change of the terms of the offer be disclosed in the same manner as the prospectus and made available to investors at the places of subscription, and submitted to FIN-FSA.
- (54) The prospectus may contain matters that cannot be considered significant errors or shortcomings but which the issuer would wish to rectify for the sake of clarity. According to FIN-FSA's interpretation, chapter 4, section 14 of the SMA does not prevent the issuer from bringing the error and the correct information to the investors' attention through a separate release or announcement without supplementing the prospectus. This information can be disseminated via the issuer website, and FIN-FSA furthermore recommends that it should be made available at the places of subscription. However, this type of information release should be clearly distinguishable from a supplement to the prospectus.
- (55) According to FIN-FSA's interpretation, chapter 4, section 14, subsection 1 of the SMA provides that when admission to trading on a regulated market is applied for, the obligation to supplement the prospectus continues up to the listing of the securities, even if the securities have already been delivered to the investors.

7.6 Investor withdrawal right

- (56) In accordance with chapter 4, section 14, subsection 3 of the SMA, investors who have agreed to subscribe for or purchase securities before the correction or supplement is published shall have the right, exercisable within a period of at least 2 banking days after publication of the correction or supplement, to withdraw their decisions. A precondition for the right to withdraw is that the error, shortcoming or material new information arose before the delivery of the securities to the investors. Information on the right to withdraw shall be provided in the correction or supplement.

GUIDELINE (paragraphs 57–58)

- (57) According to FIN-FSA's interpretation, if investors wish to withdraw from their investment decisions due to supplement to the prospectus, this should be possible free of charge by virtue of chapter 4, section 14, subsection 3 of the SMA.

- (58) FIN-FSA recommends that information on the right to withdraw be provided not only in the supplement but also in connection with the prospectus.

7.7 Information on final number and price of the securities

- (59) In accordance with chapter 4, section 15, subsection 1 of the SMA, if the final number or price of the securities to be offered cannot be included in the prospectus at its publication or supplementation, the prospectus shall disclose the criteria or conditions in accordance with which the final number or price of the securities will be determined, and the maximum price in accordance with the offer. The final number or price shall be published and submitted to FIN-FSA without undue delay after the decision has been made.
- (60) In accordance with chapter 4, section 15, subsection 2 of the SMA, if the criteria for determining the number and price of the securities, or the maximum price, has not been published in the prospectus, the investors shall have the right to withdraw their security subscriptions or purchase decisions within two banking days following publication of the final number and price of the securities.

GUIDELINE (paragraphs 61–64)

- (61) The information on the final number and price of a security offer may comprise, for example, the share subscription price in the offer, the number of shares or the final loan amount. According to FIN-FSA's interpretation, the participation rate used for calculating the bond index return may also be compared to them. On the basis of chapter 4, section 15 of the SMA, the publication of the final offer terms does not require a supplement to the prospectus and thus no approval decision thereof by FIN-FSA. FIN-FSA recommends that the prospectus contain information on when and how the final offer terms will be published.
- (62) The final offer terms should be submitted to FIN-FSA by e-mail to esitteet@finanssivalvonta.fi.
- (63) According to FIN-FSA's interpretation, the right to withdraw, as referred to in chapter 4, section 15, subsection 2 of the SMA, also applies in a situation where a preliminary price range has been provided in the prospectus and the final price falls outside this range. FIN-FSA recommends that in situations where prospectuses do not provide the criteria for determining the number and price of securities nor the maximum price, the prospectus should provide information on the right to withdraw.
- (64) FIN-FSA recommends that the prospectus always contain the maximum price of the security, at least concerning tranches other than the tranche for institutional investors.

7.8 Notification procedure

7.8.1 Notification of another EEA member state performed by Finland

- (65) In accordance with chapter 5, section 7, subsection 1 of the SMA, if the purpose is to offer securities to the public or apply for admission to trading on a regulated market in one or several EEA member states other than Finland, FIN-FSA shall, upon the request of the applicant, provide the competent authority of the said state with a certificate of approval attesting that the approved prospectus and any supplements thereto have been drawn up

in accordance with the Prospectus Directive as well as with a copy of the prospectus and its supplements. FIN-FSA shall provide the competent authority with the certificate within three banking days following presentation of the request for the certificate or, if the request is submitted simultaneously with the submission of the prospectus or its supplement for approval, within one banking day after approval of the prospectus or any supplement thereto.

In accordance with chapter 5, section 7, subsection 2 of the SMA, the notification shall, if necessary, be accompanied by a translation of the summary, produced under the responsibility of the applicant, into the official language required by the competent authority of the host EEA member state.

GUIDELINE (paragraphs 66–74)

- (66) By virtue of chapter 5, section 7 of the SMA and using an EU prospectus approved by FIN-FSA, securities may be offered to the public or sought to be admitted to trading on a regulated market in all EEA member states (the so-called single passport for issuers) by requesting FIN-FSA to notify the authority in another EEA member state of the prospectus. The content requirements of national prospectuses do not fully correspond with the requirements in the Prospectus Directive and Prospectus Regulation and thus other EEA member states cannot be notified about national prospectuses.
- (67) According to FIN-FSA's interpretation, chapter 5, section 7 of the SMA requires a separate notification by FIN-FSA as to supplements to the prospectus.
- (68) On the basis of the Prospectus Regulation, notified prospectuses should provide legally required information also on securities offerings and listings in the host member state. If an earlier approved prospectus does not contain this information, by virtue of chapter 4, section 14 of the SMA, the prospectus should be supplemented to this effect prior to the notification. By virtue of the Prospectus Regulation, information on securities offerings or listings taking place in the host member state includes information on the procedures and instructions relating to offerings and information on the withholding of taxes at the source.
- (69) For such notification FIN-FSA will use the approved language version of the prospectus. Translations of the prospectus, of a possible supplement and of the summary should be appended to the notification, if necessary.
- (70) By virtue of chapter 4, section 12 of the SMA, such translations must be true to the original approved prospectus, supplement and summary. FIN-FSA recommends that the prospectus should contain a note that the preparer of the prospectus is responsible for the translation.³³
- (71) If the authority in another member state has been notified of a base prospectus, on the basis of chapter 4, section 10 of the SMA, no separate notification of the individual issues in the programme is required. All issue-specific terms and summaries of securities issued as part of the programme must, by virtue of chapter 4, section 10 of the SMA, be submitted to FIN-FSA as referred to in sections 7.4 and 8.2, as well as to the authority in the host EEA member state.

³³ ESMA's Q&A 33.



- (72) FIN-FSA recommends that the issuer submit the final information on the number and price of securities pertaining to prospectuses for individual issues to the authority in the host member state.
- (73) Under the Prospectus Directive, the home member state regulation should be applied to the publication of the prospectus. However, some member states may impose additional national requirements on the publication of prospectuses. Such additional requirements may involve, for example, the publication of a separate announcement on the publication of the prospectus.
- (74) According to FIN-FSA's interpretation, chapter 5, section 4 of the SMA provides that marketing material related to securities offerings and listings taking place exclusively in another member state must also be submitted to FIN-FSA, esitteet@finanssivalvonta.fi.

7.8.2 Notification of Finland performed by another EEA member state

- (75) In accordance with chapter 5, section 2, subsection 1 of the SMA, a prospectus approved by another EEA member state and any supplements thereto shall be valid in Finland and shall be made available to the public herein, if the home member state of the issue is a state other than Finland and the securities are offered to the public or sought to be admitted to trading on a regulated market in Finland and the competent authority of the said other member state has provided FIN-FSA and ESMA with copies of the prospectus and any supplements thereto as well as a certificate of approval attesting that they have been drawn up in accordance with the Prospectus Directive.
- (76) In accordance with chapter 4, section 10, subsection 4 of the SMA, unless included in the base prospectus or a supplement to the prospectus, the final terms of the security offer shall be submitted to FIN-FSA, the competent authority in the host EEA member state and ESMA at the same time as they are published as provided for in subsection 2.
- (77) In accordance with chapter 4, section 12, subsection 5 of the SMA, a prospectus approved in another EEA member state and supplements thereto shall be drawn up in a language customary in the international financial markets or in another language accepted by FIN-FSA. FIN-FSA may request that a summary of the prospectus translated into Finnish or Swedish or to both be attached to the notification, if this is necessary to protect the investors.

GUIDELINE (paragraphs 78–82)

- (78) FIN-FSA recommends that if the purpose is to seek securities to be admitted to trading in Finland, the issuer should so inform FIN-FSA.
- (79) Under the Prospectus Directive, the home member state regulation applies to publication of prospectuses. Thus section 7.3 does not apply to prospectuses that have been approved by the competent authority in another EEA member state and of which FIN-FSA has been notified.
- (80) By virtue of chapter 4, section 10, subsection 4 of the SMA, issuers shall submit the final terms of issues in Finland related to a notified base prospectus and the issue-specific summaries to FIN-FSA for information. The information should be submitted by e-mail to esitteet@finanssivalvonta.fi.

- (81) FIN-FSA recommends that marketing material related to securities offerings in Finland should also be submitted to FIN-FSA.
- (82) As a rule FIN-FSA requires that the summary, and as regards base prospectuses also the issue-specific summary, shall be translated into Finnish or Swedish, by virtue of chapter 4, section 12, subsection 5 of the SMA.

8

Issuance programmes

8.1 Securities issued using a base prospectus

- (1) In accordance with chapter 4, section 10, subsection 1 of the SMA, if non-equity securities or such equity securities as entitle the holder to shares or to a payment based on share performance are offered as part of an issuance programme, the prospectus may be published in the form of a base prospectus.
- (2) In accordance with article 22.4 of the Prospectus Regulation, the final terms attached to a base prospectus shall contain only such information as listed in the regulation item in question. The final terms shall not amend or replace any information in the base prospectus.

GUIDELINE (paragraphs 3–6)

- (3) According to FIN-FSA's interpretation, so-called private placements may also be carried out as part of an issuance programme, if the security terms and conditions and the basis of earnings per security comply with the general terms stated in the base prospectus, as provided in article 22 of the Prospectus Regulation. The final terms and issue-specific summaries pertaining to these issues should also be sent to FIN-FSA's register of prospectuses, by virtue of chapter 4, section 10, subsection 4 of the SMA.
- (4) According to FIN-FSA's interpretation, the underlying asset of the securities should be such that adequate information, as referred to in chapter 1, section 4 of the SMA, can be provided thereon. FIN-FSA recommends that this information should be kept available to the investors in Finnish, Swedish or English.
- (5) FIN-FSA recommends that all promotional and other material published in connection with an issue of securities, where the face value may be fully or partly lost, should clearly indicate that the securities differ from securities whose face value is redeemed in full.
- (6) If the product to be offered is new to the Finnish market, FIN-FSA recommends that they should be informed well in advance, to allow them to review the special nature of the product and any special features related to the disclosure requirements and to agree on the procedures necessitated by the product.

8.2 Submission of issue-specific terms to FIN-FSA's register of prospectuses

- (7) In accordance with chapter 4, section 10, subsection 2 of the SMA, the base prospectus shall contain the information in the registration document, securities note and summary. If

the final terms of the security offer cannot be included in the base prospectus at its publication or supplementation, the terms shall be published without undue delay after the decision is made thereon.

- (8) In accordance with chapter 4, section 10, subsection 4 of the SMA, unless included in the base prospectus or a supplement thereto, the final terms of the security offer shall be submitted to FIN-FSA, the competent authority of the host EEA member state and ESMA at the same time as they are published as provided for in subsection 2.

GUIDELINE (paragraphs 9–11)

- (9) The final terms of security offers should, by virtue of chapter 4, section 10, subsection 4 of the SMA, be submitted to FIN-FSA at the same time as they are published. FIN-FSA recommends that any preliminary terms and conditions published before the offer period starts should also be submitted to them for information.
- (10) The final terms should be submitted by e-mail to esitteet@finanssivalvonta.fi. The e-mail message may be prepared in Finnish, Swedish or English.
- (11) E-mail addresses or information on some other information channel to the competent authority in each EEA member state for submission of final terms are available at www.esma.europa.eu.

8.3 Base prospectus summary and issue-specific summary

- (12) In accordance with article 24.2 of the Prospectus Regulation applicable to EU prospectuses, the summary of the base prospectus may contain the following information:
- a) information included in the base prospectus;
 - b) options for information required by the securities note schedule and its building block(s);
 - c) information required by the securities note schedule and its building block(s) left blank for later insertion in the final terms.
- (13) In accordance with article 24.3 of the Prospectus Regulation applicable to EU prospectuses, the summary of the individual issue shall provide the key information of the summary of the base prospectus and the relevant parts of the final terms. The summary of the individual issue shall contain the following:
- a) the information in the summary of the base prospectus that is relevant only to the individual issue;
 - b) the options contained in the base prospectus that are relevant only to the individual issue as determined in the final terms;
 - c) the relevant information given in the final terms which has previously been left blank in the base prospectus.

Where the final terms relate to several securities which differ only in some very limited details, such as the issue price or maturity date, a single summary of the individual issue may be attached for all those securities, provided the information referring to the different securities is clearly segregated.

The summary of the individual issue shall be subject to the same requirements as the final terms and shall be annexed to them.

GUIDELINE (paragraphs 14–16)

- (14) In accordance with article 24.1, paragraph 2 of the Prospectus Regulation, a summary shall contain the key information items set out in Annex XXII. According to FIN-FSA's interpretation, the provision requires that the summary of a base prospectus cover all types of securities issued under the programme.
- (15) In Annex XX of the Prospectus Regulation applicable to EU prospectuses, the information items of the base prospectus are divided into categories A, B and C depending on how the information can be incorporated in the final terms. By virtue of article 24 of the Prospectus Regulation, the summary of the base prospectus should provide the key information listed in Annex XXII of the regulation. Alternative information on different securities or issues (for example, alternative interest rate calculation methods) may also be presented in the summary, and blank fields may be left for information that does not become available to the issuer until the final terms have been set (for example the ISIN code of the security).
- (16) In addition to the provisions of this section, section 6.3.2 of this document applies to the summary of the base prospectus.

8.4 Supplements to the base prospectus

- (17) In accordance with chapter 4, section 10, subsection 3 of the SMA, the base prospectus shall be supplemented in compliance with the provisions of chapter 4, section 14 of the SMA.
- (18) In accordance with article 2a.2 of the Prospectus Regulation applicable to EU prospectuses, when the conditions of article 16.1 of Directive 2003/71/EC apply, a supplement is required.
- (19) In accordance with article 22.7 of the Prospectus Regulation applicable to EU prospectuses, if the issuer needs to prepare a supplement concerning information in the base prospectus that relates to only one or several specific issues, the right of investors to withdraw their acceptances pursuant to Article 16.2 of Directive 2003/71/EC shall apply only to the relevant issues and not to any other issues of securities under the base prospectus.

GUIDELINE (paragraphs 20–26)

- (20) In accordance with FIN-FSA's interpretation, supplementing the prospectus without undue delay, as referred to in chapter 4, section 14 of the SMA, pertains to errors, shortcomings and material new information discovered during the offer period or prior to security listings. Otherwise a base prospectus should, if necessary, be supplemented, as referred to in chapter 4, section 14 of the SMA, at the start of each new offer.
- (21) According to FIN-FSA's interpretation, the obligation to prepare a supplement, as referred to in chapter 4, section 10, subsection 3 of the SMA, pertains to both the base prospectus itself and the issue-specific terms for securities issued thereunder.

- (22) In accordance with chapter 4, section 14, subsection 3 of the SMA, information on the right to withdraw should be provided in the correction or supplement. FIN-FSA recommends that the supplement, if necessary, indicate whether the right to withdraw on the basis of article 22.7 of the Prospectus Regulation applies only to a certain issue.
- (23) FIN-FSA recommends that supplementing the base prospectus should be carried out in a consistent manner. If the issuer has previously supplemented the base prospectus with, for example, an interim report, the prospectus should in future always be supplemented with an interim report without undue delay. However, if the issuer does not have an issue under way or securities unlisted when the interim report is published, the base prospectus may be supplemented with the interim report in connection with the following issue.
- (24) According to FIN-FSA's interpretation, if the validity of the base prospectus expires during the subscription period for a security or prior to the security's possible admission to trading on a regulated market and the issuer publishes a new base prospectus, the situation is comparable to supplementing the base prospectus, and thus the right to withdraw by virtue of chapter 4, section 14, subsection 3 of the SMA applies for investors who have implemented the subscription.
- (25) In situations mentioned in paragraph 24 above, the general terms of the old base prospectus are incorporated in the new base prospectus by reference in accordance with article 28.1, paragraph 5 of the Prospectus Regulation, and FIN-FSA recommends that the following information on the exchange of the base prospectus be presented in the issue-specific terms:
- Information on the fact that the prospectus is supplemented with a new base prospectus during the security subscription period or prior to admission of securities to trading
 - Assessed publication date for the new base prospectus (at the latest on the same day as the previous base prospectus expires)
 - Reminder to investors considering an investment that new information on the issuer is provided in a new base prospectus
 - Information on the subscriber's right to withdraw due to the publication of a new base prospectus.
- (26) In addition to the provisions of this section, the provisions of section 7.5 apply to supplements to base prospectuses.

9 Procedures

9.1 Procedures for securities offerings

- (1) In accordance with chapter 1, section 2 of the SMA, it is prohibited to act contrary to good practice in the securities market.
- (2) In accordance with chapter 10, section 2, subsection 1 of the Investment Services Act, the providers of investment and ancillary services shall act honestly, fairly and professionally and in the best interest of the customer.
- (3) The provisions laid down in this chapter apply to both securities offerors and investment service providers, unless otherwise indicated.

GUIDELINE (paragraphs 4–13)

- (4) Investment service providers are obliged to afford investors fair treatment by virtue of chapter 10, section 2, subsection 1 of the Investment Services Act. FIN-FSA recommends that investors in the offer target group be afforded equal opportunities to participate in the offer.
- (5) If sufficient information has not been provided to investors in advance, FIN-FSA recommends that the investors should have the opportunity to review the information prior to their investment decision. Information required under the SMA should continuously be made available at the place of subscription throughout the offer period.
- (6) If investors may subscribe for securities in a so-called advance subscription prior to the start of the subscription period, or if investors may in advance issue a power of attorney to subscribe for securities, FIN-FSA recommends that adequate information thereon be disclosed in the prospectus. If advance subscriptions or powers of attorney to subscribe for securities are accepted already prior to publication of the prospectus, this information should be made public well before advance subscriptions or powers of attorney are accepted. Investors should then also be given an opportunity to examine the prospectus before the subscriptions become binding.
- (7) FIN-FSA recommends that if subscriptions are made via Internet, the reliability and adequate capacity of the subscription system and the proper identification of subscribers should be ensured. It should also be ensured that investors have a genuine opportunity to subscribe for the shares on offer. The subscriber should be able to verify the contents and acceptance of his subscriptions.
- (8) FIN-FSA recommends that the prospectus indicate whether information on the demand for the offer will be provided in the course of the offer period. If information on the demand is



to be provided, the disclosures should be made at the regular intervals set out in the prospectus and should include information on the demand for shares at least at the offer price.

- (9) FIN-FSA recommends that the offer begin and end simultaneously at all places of subscription. However, the subscription periods for different tranches of the offer may deviate from each other.
- (10) In accordance with FIN-FSA's interpretation, chapter 4, section 6 of the SMA requires that sufficient information be provided on the criteria for termination of the subscription period. FIN-FSA recommends that the issue should neither be terminated during the first subscription day nor generally in the middle of the day. If the offer is terminated, this should be disclosed immediately after the termination. The offer should be terminated simultaneously at all places of subscription. Furthermore, it should be ensured that the actual subscription period does not become unimportant due to the large number of advance subscriptions or subscriptions by powers of attorney, as referred to in paragraph 6 above.
- (11) FIN-FSA recommends that after expiry of the offer, information on the allocation of subscriptions between investor groups (mainly between the public and institutional investors and between investors resident in Finland and in other countries), together with details of the allocation principles, should be disclosed so that no misleading impression arises as regards the total demand.
- (12) FIN-FSA recommends that all subscribers be notified without delay in writing or otherwise verifiably of the number of shares allotted to them or on the fact that they have not been allotted any shares.
- (13) If a legally required prospectus has not been published on a securities offer even though such a prospectus should have been published, FIN-FSA recommends that the subscribers be given the opportunity to withdraw their subscription. The same applies to situations in which a prospectus requirement does not exist but in which the investment decision was based on material that has later been proven to be misleading or untruthful.

9.2 Due diligence investigation before listing

GUIDELINE (paragraphs 14–17)

- (14) FIN-FSA recommends that prior to the listing a due diligence investigation should be performed as regards the company's operational and structural properties to qualify as a listed company, that is a mapping of the qualitative listing requirements. A further purpose of the investigation is to ensure that the prospectus provides sufficient information on the company and group. The investigation should also produce information for determining the value of the company.
- (15) The qualitative listing requirements include timeliness, reliability and quality of financial reports prepared by the company, appropriate monitoring of reports, realistic and reliable forecasts, consideration of disclosure requirements as to the management's working methods and resource allocation and internal instructions.

- (16) FIN-FSA recommends that the investment service provider acting as issue manager or underwriter should follow systematic procedures for performing the investigation. Furthermore, a brief summary of the investigations undertaken should be prepared to ensure the subsequent availability of condensed information on the investigations and observations. In its supervisory work FIN-FSA may, if necessary, request a summary of the investigations undertaken.
- (17) An appendix to this document provides a description of the sub-areas and objectives that FIN-FSA recommends should be covered by the investigation. Corresponding investigations should be conducted in connection with significant mergers and acquisitions.

9.3 Marketing material relating to the offerings

- (18) In accordance with chapter 1, section 3 of the SMA, presentation of false or misleading information in the marketing of securities or other financial instruments is prohibited.
- (19) In accordance with chapter 5, section 4 of the SMA, any marketing material relating to an offer or to admission to trading on a regulated market shall be submitted to FIN-FSA at the latest upon commencement of the marketing. The marketing material shall include a reference to the prospectus and state the place where the prospectus is available.
- (20) In accordance with article 34.2 of the Prospectus Regulation, if no prospectus is required under the Prospectus Directive, any advertisement shall include a warning to that effect unless the preparer of the prospectus chooses to publish a prospectus which complies with the Prospectus Directive and the Prospectus Regulation.

GUIDELINE (paragraphs 21–28)

- (21) In accordance with article 15.3 of the Prospectus Directive, the information provided in the marketing material should also be consistent with the information contained in the prospectus. According to FIN-FSA's interpretation, the marketing is misleading, as referred to in chapter 1, section 3 of the SMA, if this requirement of the directive is not complied with.
- (22) FIN-FSA does not issue comments on marketing material on a regular basis, except for marketing material on initial public offerings and first-time issuers of securities.
- (23) According to FIN-FSA's interpretation, marketing material, as referred to in chapter 5, section 4 of the SMA, comprises any material referring to the marketed offer or listing. This material includes, for example, newspaper advertisements, posters and campaign letters. FIN-FSA should also be provided with the scripts for radio and television spots, and, on request, the final versions of such spots. FIN-FSA may also request any material related to promotional occasions with invited guests. Versions of marketing material amended at a later date should also be submitted to FIN-FSA.
- (24) If a marketing campaign is launched before the start of the actual offer period, the marketing material should be submitted to FIN-FSA at the latest when the marketing commences. FIN-FSA recommends that in such a case the marketing material should indicate when the actual offer period will start and when the prospectus will be published. If the marketing material contains references to other than final offer terms, it should clearly indicate which terms are final and which are still preliminary due to, for example, pricing.

- (25) FIN-FSA recommends that particular diligence should be exercised in the provision of information in the premarketing or market testing stage with the purpose of exploring the interest of professional and other potential investors before publication of the offer. The information provided on the planned event should be limited only to the necessary premarketing details, emphasising the confidentiality of such information and, if necessary, drawing attention to the applicability of insider rules and membership of a company-based insider register³⁴.
- (26) The marketing material may be submitted by e-mail to esitteet@finanssivalvonta.fi or kirjaamo@finanssivalvonta.fi.
- (27) According to the Prospectus Directive the warning referred to in article 34 of the Prospectus Regulation is compulsory only as regards the scope of application of EU prospectuses in situations where securities are offered for a total consideration of at least EUR 5 million over a period of 12 months, or securities are sought to be traded on a regulated market. FIN-FSA recommends that a corresponding warning also be included in the marketing material when securities are offered for a total consideration of at least EUR 1.5 million over a period of 12 months and no national prospectus has been published for the offer.
- (28) The marketing of securities is also dealt with in FIN-FSA's Regulations and guidelines 15/2013 on marketing of financial services and products.

9.4 Allotment

- (29) A plan for distribution and allotment³⁵ including pre-allotment disclosure³⁶ shall be described in share prospectuses prepared in accordance with the Prospectus Regulation.

GUIDELINE (paragraphs 30–34)

- (30) By virtue of the Prospectus Regulation, the prospectus should provide adequate information on the division of the complete offer into tranches for individual investor groups, that is information on the allotment of the offered number of shares between the public, employees, if any, and institutional investors.
- (31) By virtue of the Prospectus Regulation³⁷, the prospectus should describe possible maximum changes and minimum sizes of the tranches in percentages. FIN-FSA recommends that tranches for individual groups of addressees of the offer may not be altered without limit. Instead, the public should be guaranteed a minimum tranche that cannot be reduced in the event that the issue is fully subscribed or oversubscribed.
- (32) If investors may participate in the issue via several tranches, FIN-FSA recommends that this should be mentioned in the prospectus. If this is not possible, the prospectus should outline the procedure for handling subscriptions composed of several tranches.

³⁴ Chapter 13, section 7 of the SMA.

³⁵ See item 5.2, Annex III of the Prospectus Regulation. A plan for distribution and allotment should also be described in prospectuses for debt securities with a denomination per unit of less than EUR 100,000 (item 5.2, Annex V of the Prospectus Regulation) and in prospectuses for derivative securities (item 5.2, Annex XII of the Prospectus Regulation), but no pre-allotment disclosure is required.

³⁶ See item 5.2.3, Annex III of the Prospectus Regulation.

³⁷ See item 5.2.3, Annex III of the Prospectus Regulation.



- (33) FIN-FSA recommends that the prospectus disclose whether the allotment in the event of oversubscription is based on, for example, the order of subscriptions.
- (34) FIN-FSA recommends that information on the principles of allotment, as referred to in the Prospectus Regulation, should also be presented correspondingly in national prospectuses.

9.5 Stabilisation

- (35) In accordance with chapter 14, section 4, subsection 1 of the SMA, the provisions of chapter 14, section 3 of the SMA on market manipulation shall not apply to trading when the issuer acquires its own shares or when the investment service provider stabilises the price of the securities as provided for in the Commission Buy-back Regulation.
- (36) In accordance with chapter 14, section 2, subsection 9 of the SMA, the provisions of chapter 14, section 2 of the SMA on the use of inside information shall not apply to trading in financial instruments when the issuer acquires its own shares or when the investment service provider stabilises the price of the securities as provided for in the Commission Buy-back Regulation.
- (37) In accordance with article 9.2 of the Buy-back and Stabilisation Regulation, the details of all stabilisation transactions must be submitted by issuers, offerors, or entities undertaking the stabilisation and acting on behalf of such persons or themselves to the competent authority of the relevant market no later than at the end of the seventh daily market session following the date of execution of such a transaction.

GUIDELINE (paragraph 38)

- (38) According to FIN-FSA's interpretation, it is sufficient that notification of commenced stabilisation is made on the seventh trade date following the start of the stabilisation transactions, and that notification of ended stabilisation occurs on the seventh trade date following the date on which stabilisation ended. The notifications should indicate the contact person for further information. The notifications should be sent by email to markkinat@finanssivalvonta.fi.

10 Repealed regulations and guidelines

When these guidelines enter into force, they repeal the following provisions:

- FIN-FSA's standard 5.2a on securities offerings and listing.

11 Appendices

The following appendix is attached to these guidelines:

- Appendix: Due diligence investigation before listing.