

Securities: issuers trading on a regulated market, transparency requirements

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC.

On 30 November 2011, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (1) (hereinafter the ‘proposed directive’).

The proposed directive amends Directive 2004/109/EC to achieve inter alia the following regulatory objectives.

(1) Limit the reporting burden for issuers of listed securities by eliminating or harmonising certain reporting obligations: the proposed directive abolishes the requirement for the issuers to make public interim management statements with a view to decreasing the reporting burden that has become excessive particularly for small and medium-sized enterprises. The ECB in principle supports these amendments, while it considers that the obligation to make public interim management statements should continue to apply to financial institutions with a view to contributing to public confidence in such institutions and to preserving financial stability. At the same time, the standard forms and templates used to prepare management reports and interim management reports should be harmonised through technical standards to be developed by the European Securities and Markets Authority (ESMA). The contents of financial statements accompanying the management reports and interim management reports should also be harmonised with the use of technical standards.

(2) Ensure the effectiveness of the obligation to report acquisitions of major holdings of shares, including such acquisitions made with the use of derivative financial instruments: the proposed directive introduces an obligation to report financial instruments with economic effects similar to entitling their holder to acquire the underlying shares of a listed company, also where this economic effect is achieved without a formal agreement between the holder of a financial instrument and its counterparty. Consequently, the proposed directive subjects three categories of holdings to the reporting obligation: (a) major holdings of shares or holdings of major proportions of voting rights, (b) holdings of instruments having equivalent effect to the holdings in the first category, and (c) aggregate holdings in the two preceding categories. The ECB agrees with this amendment, while it also supports maintaining the existing exemptions from the disclosure obligations, including the exemption of holdings related to market making activity.

(3) Improve access to financial information disclosed by the issuers: the proposed directive delegates to the Commission the power to adopt measures, and technical standards to be developed by ESMA, which will: (a) introduce interoperability rules to be followed by the national officially appointed mechanisms collecting regulated information from issuers of listed securities, and (b) facilitate the creation of a central access point to such regulated information at Union level. The ECB supports these amendments but makes a number of drafting proposals aimed at increasing their effectiveness and legislative precision.

Where the ECB recommends that the proposed directive is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.