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Directorate General Internal Market and Services

The Director General

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Mr Carlos Tavares
Vice-Chairman
European Securities and Markets
Authority (ESMA)
11-13 avenue de Friedland
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Subject: Request for ESMA technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

Dear Carlos,

In the context of the Directive 2010/73/EU published in the Official Journal of the European Union on 11 December 2010, I enclose a mandate to ESMA for advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU.

The Directive 2010/73/EU has three main objectives: increasing efficiency in the prospectus regime, reducing administrative burdens for companies when raising capital in the European securities markets, and enhancing investor protection.

These principles taken up by the amended Prospectus Directive needs now to be translated into delegated acts. The mandate consists of three parts.

In particular, the Commission is under the obligation to adopt delegated acts by 1 July 2012 in relation to the format of the final terms to a base prospectus, to the format of the summary of the prospectus, and to the detailed content and specific form of the key information to be included in the summary. The first part of the mandate relates also to the proportionate disclosure regime introduced for some preemptive offers of equity securities, offers by SMEs and issuers with reduced market capitalization, and offers of non-equity securities referred to in Article 1(2)(j) by credit institutions. And it focuses on the criteria to be applied in the assessment of the equivalence of a third country legal and supervisory framework. The second part of the mandate covers possible additional delegated acts for technical adjustment and clarification to a number of requirements of the Prospectus Regulation. The third part of the mandate finally invites ESMA to assist the Commission in the preparation of a comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive.

This mandate takes into consideration that ESMA needs enough time to prepare its technical advice and that the Commission needs to adopt the delegated acts according to Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Articles 24b and 24c of the amended Prospectus Directive.

We anticipate receiving ESMA technical advice by 30 September 2011. It is important that both the Commission and ESMA cooperate very closely.

I am confident that DG MARKT services and ESMA will have a long standing and successful cooperation record in working together in the preparation of delegated acts, and that we all will deploy our best efforts for a successful outcome.

Yours sincerely,

Jonathan FAULL

Enclosure: Mandate to ESMA for technical advice

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