

A high-speed photograph of a water droplet falling into a pool of water, creating concentric ripples. The background is a solid teal color.

# PD3 – At a glance

Key features to monitor during the legislative process

A summary chart showing key features in the draft European Commission proposal to amend the Prospectus Directive published on 30 November 2015

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**C H A N C E**



# PD3 – At a glance

## Key features to monitor during the legislative process

A summary chart showing key features in the draft European Commission proposal to amend the Prospectus Directive published on 30 November 2015 (the **Draft New Regulation**)

Overview	
Legislative process	<ul style="list-style-type: none"> <li>■ The European Commission's proposal has been published (30 November 2015)</li> <li>■ The parliamentary process now begins. Our Topic Guide "EU legislative process explained", on the Clifford Chance Financial Markets Toolkit, highlights the stages: <a href="http://financialmarketstoolkit.cliffordchance.com/en/topic-guides/eu-explained.html">http://financialmarketstoolkit.cliffordchance.com/en/topic-guides/eu-explained.html</a></li> <li>■ As with Securitisation, the Prospectus Directive project is being expedited. We can expect fast turn-arounds</li> </ul>
Approach and timing	<ul style="list-style-type: none"> <li>■ The Prospectus Directive (2003/71/EC), as amended (PD) will be <u>repealed</u> in full and replaced by the Draft New Regulation</li> <li>■ The Draft New Regulation will take "direct effect" and will not need to be implemented by Member States, with a view to improving consistency</li> <li>■ Once finalised, the Draft New Regulation will enter into force 20 days after publication in the Official Journal of the EU and shall apply <b>12 months</b> after entry into force</li> <li>■ <i>N.B. The Draft New Regulation is Level 1. Do not confuse it with the current underlying Level 2 PD Regulation (809/2004/EC), with 30 Annexes relating to detail content and disclosure requirements</i></li> </ul>
"Big picture" underlying themes	<ul style="list-style-type: none"> <li>■ Prospectuses are now unwieldy "liability management" tools; Summaries are confusing; Risk factors are too generic</li> <li>■ "SMEs" are still not accessing capital markets, despite "proportionate disclosure"</li> <li>■ The "wholesale" disclosure regime and public offer exemptions for Euro 100,000 denominations encouraged large denominations, thus having "unintended consequences" of reducing liquidity/retail investors</li> </ul>
Content of the Draft New Regulation	
The "basics"	<ul style="list-style-type: none"> <li>■ "Approved prospectus" still needed for public offer or admission to trading on an EU regulated market.</li> <li>■ Not extending to MTFs, as had been mooted in the February 2015 Consultation</li> <li>■ The definition of "offer to the public" is unchanged from the PD</li> <li>■ Home Member State concept / choices stay same</li> <li>■ Passporting concept remains and so does the translation of summary requirement</li> <li>■ Prospectus supplements and investor withdrawal rights remain</li> <li>■ Proportionate disclosure regime replaced by specific disclosure regime for secondary issuances and SMEs, see "New concepts" below</li> <li>■ Prospectuses still have a 12 month life span</li> <li>■ Tri-partite prospectuses and base prospectuses are still available</li> <li>■ For base prospectuses, the problem of offers which span the end of the 12 month period has been addressed</li> </ul>
Prospectus content	<ul style="list-style-type: none"> <li>■ <b>Summaries</b></li> <li>■ These are now to be shortened: 6 pages, maximum, but with leniency where there is a range of securities in the prospectus</li> <li>■ A new format, with four sections, is prescribed</li> <li>■ To enhance clarity and readability, for Base Prospectuses, issue-specific summaries, only, will be required (with Final Terms)</li> <li>■ A PRIIPS KID can be used (PRIIPS = Packaged Retail Investment Products; KID = Key Information Document)</li> <li>■ <b>Risk factors</b></li> <li>■ Shortened and to be limited to material / specific risks relating to the issuer</li> <li>■ <b>Incorporation by reference</b></li> <li>■ Broader categories will be permitted</li> <li>■ <b>General disclosure requirements</b></li> <li>■ "Easily analysable, succinct and comprehensible"</li> <li>■ Distinction between "wholesale" and "retail" disclosure will be removed</li> <li>■ Unclear, as yet, what the detailed prospectus disclosure and content requirements will be. These are mandated at Level 2, in PD Regulation (809/2004/EC). However, the Explanatory Memorandum accompanying the Draft New Regulation states that the starting point will be Annexes IX and XIII (that is, wholesale disclosure), with additional material necessary for retail</li> </ul>
"Public offer" exemptions	<ul style="list-style-type: none"> <li>■ The major focus is that the Euro 100,000 minimum denomination (wholesale) exemption from the public offer regime prospectus requirement has been removed</li> <li>■ Impact on disclosure? See comment in "Prospectus content" above</li> <li>■ All other exemptions remain, including the "qualified investor" exemption, "fewer than 150 persons", minimum consideration of Euro 100,000. (This latter exemption is currently rarely used, but may become more prevalent.) There are also new exemptions, including for employee share offers</li> </ul>
"Admission to trading" exemptions	<ul style="list-style-type: none"> <li>■ Major items to mention from the list of exemptions are a new limited exemption for fungible issues and employee share schemes</li> </ul>
Scope	<ul style="list-style-type: none"> <li>■ Broader scope for issuers to opt in with a "voluntary prospectus"</li> </ul>
New concepts	<ul style="list-style-type: none"> <li>■ A lighter disclosure regime will be introduced for SMEs and certain secondary issuance by issuers with existing securities admitted to trading</li> <li>■ A concept of a "universal registration document" (or "shelf") for frequent issuers, to enable faster access to markets</li> <li>■ The Recitals suggest investors should seek their own tax advice and that tax disclosure should not be required</li> <li>■ ESMA is to create a central database of prospectuses</li> </ul>

# Aims of PD3

## Extracts: European Commission's Explanatory Note accompanying the Draft New Regulation, 30 November 2015

*"... Three years after Directive 2010/73/EU entered into application, statistical data and stakeholders' feedback suggest that the diagnosis made during the previous review is still very much valid today. Indeed, it seems that the trends identified back then (prospectus used as a "liability shield", retail investors shunning prospectuses and their summaries, inappropriate scaling of the disclosure requirements between initial public offerings and secondary issuances) have continued, arguably because the remedies proposed by the amending Directive either did not produce the expected results (the prospectus summary) or were not ambitious enough (the proportionate disclosure regimes), or because Directive 2010/73/EU did not contain measures to address them...."*

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*"... The revision of the Prospectus Directive pursues a simple goal: provide all types of issuers with disclosure rules which are tailored to their specific needs while making the prospectus a more relevant tool of informing potential investors. In consequence, the proposal puts special emphasis on four groups of issuers: (1) issuers already listed on a regulated market or an SME growth market, which want to raise additional capital by means of a secondary issuance, (2) SMEs, (3) frequent issuers of all types of securities and (4) issuers of non-equity securities. It also intends to further incentivise the use of the cross-border "passport" for approved prospectuses, which was introduced by the Prospectus Directive.*

*The proposed measures should (i) reduce the administrative burden of drawing up of prospectus for all issuers, in particular for SMEs, frequent issuers of securities and secondary issuances; (ii) make the prospectus a more relevant disclosure tool for potential investors, especially in SMEs; and (iii) achieve more convergence between the EU prospectus and other EU disclosure rules...."*

## Useful links

Draft New Regulation: [http://ec.europa.eu/finance/securities/docs/prospectus/151130-proposal\\_en.pdf](http://ec.europa.eu/finance/securities/docs/prospectus/151130-proposal_en.pdf)

Press Release, 30 November 2015: [http://europa.eu/rapid/press-release\\_IP-15-6196\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6196_en.htm)

Europa Prospectus Directive page: [http://ec.europa.eu/finance/securities/prospectus/index\\_en.htm#151130](http://ec.europa.eu/finance/securities/prospectus/index_en.htm#151130)

Prospectus Directive Consultation, February 2015:  
[http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index_en.htm)

Clifford Chance Prospectus Directive and Transparency Directive Topic Guide:  
<http://financialmarketstoolkit.cliffordchance.com/en/topic-guides/prospectus-directive-and-transparency-directive.html>

Clifford Chance Financial Markets Toolkit: <http://financialmarketstoolkit.cliffordchance.com/en/home.html>

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