

## **THE DANISH FINANCIAL SUPERVISORY AUTHORITY'S MEMO ON HISTORICAL FINANCIAL DATA IN SHARE PROSPECTUSES**

In a memo of 6 August 2014, the Danish Financial Supervisory Authority ("FSA") has defined which historical financial data an issuer must provide in a share prospectus.

The reason for the memo is that in practice, it has been difficult for issuers of shares to get an overview of the requirements for financial data in a prospectus. Thus, it is not a question of making any changes to the regulations, but a question of the FSA providing a summation and systematization as a service to issuers.

With the FSA's memo, the formal and substantive requirements which an issuer must meet regarding historical financial data in share prospectuses have now been clarified, as have the relaxations applicable to the issuer.

### **Requirement of financial Data from the Issuer**

It follows from the Executive Order on Prospectuses for Securities Admitted to Trading on a Regulated Market and for Offers to the Public of Securities of more than EUR 5,000,000 that the issuer must compose a prospectus containing the information necessary to enable investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, results and future prospects.

### **Information Requirements of historical financial Data**

The information requirements to prospectuses for securities can be found in the Prospectus Regulation ((809/2004/EC) as amended, which prescribes the issuer's requirements to publication of historical financial data. Issuers classified as small or medium-sized companies ("SMEs") or companies with a limited market value, as well as prospectuses for pre-emptive rights issues, are subject to less stringent information requirements than major issuers.

Pre-emptive rights issues mean where the issuer only offers shares to existing shareholders.

#### *SMEs and Companies with a limited Market Value*

An SME is defined as a company which satisfies at least two of the three following criteria: i) an average number of fulltime employees during the financial year of less than 250 persons; ii) a total balance of less than EUR 43m; or iii) an annual net turnover of less than EUR 50m. A company with a limited market value is a company which is listed on a regulated market and has a market value under EUR 100m based on the quoted value at the end of the year in the previous three calendar years.

The table below shows the information requirements in the different cases that the issuers must meet regarding historical financial data.

<b>Subject</b>	<b>Ordinary requirements</b>	<b>Requirement to pre-emptive rights issues</b>	<b>Requirement to SMEs or companies with a limited market value</b>
<b>Period of relevance</b>	Three years' historical financial data.	One year's historical financial data.	Two years' historical financial data.
<b>Formal requirements</b>	<p>The financial statements from the last two years must be in the same form as the upcoming financial statements.</p> <p>The historical financial data must be incorporated into the prospectus or must be reflected by reference.</p> <p>Financial statements composed in accordance with national standards (for issuers within EU/EEA) must as minimum contain balance sheets, income statement, statement of changes in equity, statement of cash flow, and accounting principles and notes.</p>	The same as the normal requirements, but adapted as only one year's historical financial statements are required.	<p>It is not required that the historical financial statements must be in the same form as the upcoming financial statements.</p> <p>It is not required that the historical financial statements must be incorporated into the prospectus or must be reflected by reference</p> <p>There are no requirements as to which information financial statements composed in accordance with national standards (for issuers within EU/EEA) must contain.</p>
<b>Description</b>	Overview of selected financial statements, description of the operation and accounts, and capital resources.	There is no requirement to selected financial statements, description of the operation and accounts, capital resources, or a review of operation.	The same as the normal requirements.

<b>Subject</b>	<b>Ordinary requirements</b>	<b>Requirement to preemptive rights issues</b>	<b>Requirement to SMEs or companies with a limited market value</b>
<b>Interim financial data</b>	If any interim financial data has been published, it must be included in the prospectus.	The same as the ordinary requirements.	The interim financial data may be omitted provided that the prospectus includes a reference as to where it can be found.
<b>Age</b>	The annual accounts may be up to 15 months old if there is interim financial data in the prospectus, irrespective of whether it has been reviewed or not.	The same as the ordinary requirements.	The same as the ordinary requirements.
<b>Information referrals</b>	Information may be incorporated by reference, provided that the prospectus contains a cross-reference list.	The same as the ordinary requirements.	It is not necessary to include a cross-reference list that shows which references the prospectus contains to the accounts.
<b>Third country issuers</b>	It is not necessary to include a cross-reference list that shows which references the prospectus contains to the accounts.	The same as the ordinary requirements.	Accounts composed in accordance with national standards may be used, provided that those regulations correspond to IFRS.
<b>Substantial gross change</b>	In case of any substantial gross changes, pro forma earnings must be made.	The same as the ordinary requirements.	The same as the ordinary requirements.

## **Expanded Information Requirement to the Issuer's financial Data**

In certain cases, an extended information requirement is imposed on the issuer, according to which the prospectus must state pro forma earnings and/or information about other companies than the issuer. This follows directly from the Prospectus Order which also in certain cases authorizes the Danish Financial Supervisory Authority to increase the information requirement.

The expanded information requirements are imposed on the issuer in the following cases:

- The issuer has had a substantial gross change – meaning that due to a single event, the issuer undergoes changes of more than 25% in relation to relevant indicators, for example balance, revenue, net income etc.
- The issuer has a complex accounting history – meaning that i) the issuer's business activity is not actually reflected in the historical financial data; ii) which can affect the investors' valuation of the issuer; and iii) the detailed financial data relates to a different company.
- The issuer has taken on a considerable financial obligation – meaning that the issuer has entered into an agreement that has not yet been executed, and the implementation of the agreement will result in a considerable gross change.

The extended information requirement, which follows directly from the Prospectus Order, precedes the FSA's authority which is why the issuer must be aware of whether the issuer incurs such liability. If the issuer is included by the extended information requirement, the issuer must publish pro forma accounts relating only to the periods of the current accounts, the most recent closed accounts, or the most recent closed interim accounts, of relevance.

The pro forma accounts must be presented in three columns with the first column containing the historical unadjusted information; the second column containing potential adjustments, including notes; and the third column containing the historical adjusted information.

In case the issuer has a complex accounting history or has taken on a considerable financial obligation, the FSA must also make a specific assessment of whether information is to be included in the prospectus of another company and if so, the amount of information. The FSA's principle is that the information which is included about the other company must correspond to the information which is included about the issuer.

## **Timeframe**

In the event that the issuer has any doubts about which information to include in the prospectus, the issuer must clarify such doubts with the FSA before the first draft prospectus is submitted to the FSA.

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