

FINANSTILSYNET

THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Guidance

Historical financial information and pro forma financial information in share prospectuses

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1 Introduction

Finanstilsynet vets and approves EEA prospectuses for the public offering of transferable securities directed to the Norwegian market or for the admission of transferable securities to trading on a Norwegian regulated market¹.

Finanstilsynet notes the challenges that share issuers² are faced with when preparing historical financial information and pro forma financial information for inclusion in share prospectuses. The present guide sets out the content requirements with regard to these types of information and gives guidance on how to comply with them. The issuer itself has to consider how to comply with the content requirements in the particular prospectus before submitting the prospectus to Finanstilsynet for vetting.

The content requirements are based on Directive 2003/71/EC (hereafter termed Prospectus Directive)ⁱ, Commission Regulation (EC) No 809/2004 (hereafter termed Prospectus Regulation)ⁱⁱ and three regulations that amend the Prospectus Regulation (Amending Regulations)ⁱⁱⁱ, which are implemented in Norwegian legislation through chapter 7 of the Securities Trading Act and chapter 7 of the Regulations to the Securities Trading Act³ (hereafter termed Securities Trading Regulations). The European Securities and Markets Authority (ESMA) has published recommendations (the ESMA recommendations)^{iv} giving guidance on how a number of content requirements are to be understood. ESMA has also published a document answering frequently asked questions (ESMA FAQ)^v. Finanstilsynet points out that in its prospectus vetting, procedures are based on the ESMA Recommendations and ESMA FAQ. References made to the documents in this guidance are based

¹ See the Act on Securities Trading, 29 June 2007 No. 75 (hereafter termed the Securities Trading Act) chapter 7

² Entities that are issuers of shares, and that are required to publish a prospectus pursuant to the Securities Trading Act chapter 7 with further provisions

³ 29 June 2007 No. 876

on the ESMA Recommendations of 23 March 2011 and ESMA FAQ of June 2011, updated versions of which are available at ESMA's website^{vi}.

The content requirements with regard to historical and pro forma financial information are mutually independent. Their purposes differ, as does the information to be provided. Prospectuses should therefore in principle comply with all content requirements in both areas. However, historical financial information may in some cases cancel out the need for pro forma financial information, and vice versa. If the issuer considers this to be the case, the issuer must substantiate its view to Finanstilsynet. Finanstilsynet will make a concrete assessment of whether exemption may be granted.

2 Historical financial information of the issuer

2.1 Overview of legislation and relevant guidance

Requirements on financial information to be provided by the issuer follow from the Prospectus Regulation Annex I item 20.1 and item 20.3-6. Amending Regulations 2006 and 2008 deal with the accounting standards. Amending Regulation 2007 covers situations where historical financial information may be required from parties other than the issuer; see part 3 below. Amending Regulation 2007 also deals with the relevant time period to be covered by audited historical financial information. Guidance on complying with the requirements is given in the ESMA Recommendations paragraphs 51-86 and paragraphs 98-106, as well as ESMA FAQ nos. 14-17 and no. 24. The ESMA Recommendations give supplementary guidance on restatement, audit and content of historical financial information, including the content of interim information. ESMA FAQ gives further guidance on the same themes, but also guidance on what periods that are to be covered.

2.2 Content and presentation

Requirement of financial data for the latest three financial years

A prospectus must contain the issuer's audited historical financial information covering the latest three financial years⁴. The information must cover at least 36 months⁵. Finanstilsynet points out that this is particularly relevant where the annual financial statements do not coincide with the calendar year. If the issuer has prepared annual financial statements for the period 1 July 2008 to 30 June 2009, only to change the annual financial statements period to coincide with the calendar year for 2009 and 2010, the three sets of presented annual financial statements will only cover 30 months. In a prospectus dated for example end-2011, an audited set of financial statements (interim or annual financial statements) covering the period 1 January 2008 to 30 June 2008 must also be included in order for the requirement of at least 36 months of financial data to be met.

Issuers with less than three years of historical financial data

If the issuer has been in operation in its current sphere of economic activity for less than three years, its audited financial information would need to cover the period from incorporation to the last completed financial year. ESMA FAQ nos. 16 and 17 give guidance on this. Further, no. 16 gives

⁴ See Prospectus Regulation Annex I item 20.1

⁵ See Amending Regulation 2007 Article 1 paragraph 3

guidance on what audited historical financial information needs to be prepared in situations where the issuer has yet to prepare audited annual financial statements.

Finanstilsynet advises that newly incorporated issuers are also required to include audited historical financial information in their prospectuses. In such cases the information must cover the entire period that the issuer has been operating in its current sphere of economic activity. For issuers incorporated in the current financial year that have yet to prepare a set of annual financial statements, that period runs from the date of incorporation to "*the most recent practicable date before publication of the prospectus*"⁶. For listed issuers this normally means up to the latest published interim financial information. Unlisted issuers, including issuers that are seeking admission to trading, must specifically consider how close to the date of the prospectus it is possible to present historical financial information about the business.

Requirements on interim financial information

If the issuer has published interim financial information since the date of its last audited financial statements, this financial information must be included in the prospectus⁷. If the prospectus is dated more than nine months after the date of the last audited annual financial statements, interim financial information covering at least the first six months of the financial year must be included. Comparative statements for the same period of the preceding financial year must also be included. In the case of the balance sheet, the requirement for comparative balance sheet is met by including the year-end balance sheet for the preceding financial year. If the interim financial information has been audited or reviewed, the audit or review report must be included in the prospectus.

If the interim financial information has not been audited, this fact must be stated.

Age of audited historical financial information

The latest annual financial statements may be up to 15 months old if the issuer includes unaudited interim financial information in the prospectus⁸. If the latest audited annual financial statements are older than 15 months, the interim financial information that is included must have been audited. This means that any listed issuer that follows the calendar year and is planning to date a prospectus in April, must include audited interim financial information in its prospectus if it has yet to prepare annual financial statements for the latest completed financial year⁹. The latest audited annual financial statements must not be older than 18 months.

Language

Historical financial information should be in Norwegian, English, Swedish or Danish¹⁰. Finanstilsynet advises that where financial information is given in another language, a translation to one of the approved languages must be included in the prospectus. ESMA FAQ no. 7 gives further guidance on the language requirements.

Components of historical financial information

⁶ See ESMA FAQ no. 16

⁷ See Prospectus Regulation Annex I item 20.6.

⁸ See Commission Regulation Annex I item 20.5

⁹ See time-limit for publication of annual financial statements under the Securities Trading Act section 5-5 first subsection

¹⁰ See Securities Trading Act section 7-17

Historical financial information must contain the balance sheet, the income statement, changes in equity, the cash flow statement, and a summary of accounting policies and other explanatory notes in accordance with IAS 1 *Presentation of Financial Statements*¹¹. This also applies to issuers using national accounting standards¹². Finanstilsynet advises that, for issuers that have presented historical financial information in accordance with the rules governing small entities in the Act relating to annual accounts, etc.¹³ section 1-6, this implies an additional requirement to prepare an audited cash flow statement.

Requirements as to the content of interim financial information are set out in the ESMA Recommendations paragraphs 101-106. For issuers reporting under IFRS, interim financial statements should at base be in accordance with IAS 34 *Interim Financial Reporting* and should consequently comprise the same components as other historical financial statements. This is also the general rule for unlisted issuers seeking admission to trading. However, Finanstilsynet advises that issuers following national accounting standards, and not seeking admission to trading, need only to present balance sheet, income statement and a summary of accounting policies and other explanatory notes.

Where the issuer prepares both own and consolidated financial statements, at least the consolidated financial statements must be included in the prospectus¹⁴. If only the consolidated financial statements are included, the issuer must in Finanstilsynet's view clarify the matter with its auditor in advance. This is because, under many countries' legislations, the annual financial statements about which the auditor has issued an opinion comprises both own and consolidated financial statements.

Example of presentation

In the case of an issuer that has been operating in its current sphere of economic activity for the preceding three financial years, and has presented interim financial information for the third quarter of 2011 in accordance with IAS 34 *Interim Financial Reporting*, a presentation of historical financial results in a prospectus dated in December 2011 can comprise the following columns:

3 months		9 months		12 months	12 months	12 months
IFRS		IFRS		IFRS	IFRS	IFRS
3Q 2011 (unaudited)	3Q 2010 (unaudited)	YTD 2011 (unaudited)	YTD 2010 (unaudited)	2010 (audited)	2009 (audited)	2008 (audited)

Cash flow information can be presented in the same way. However, IAS 34 does not require three months of data on cash flow or changes in equity. Where such information is nonetheless included in the issuer's interim financial reporting, it should in Finanstilsynet's view, also be included in the prospectus.

An issuer in the above situation is in addition required to present balance sheet statements for the following periods:

¹¹ See ESMA Recommendations paragraph 83

¹² See ESMA Recommendations paragraph 85

¹³ 17 July 1998 No. 56

¹⁴ See Commission Regulation Annex I item 20.3

30.09	31.12	31.12	31.12
IFRS	IFRS	IFRS	IFRS
2011 (unaudited)	2010 (audited)	2009 (audited)	2008 (audited)

2.3 Accounting standards

Historical financial information shall be prepared under IFRS if the issuer is domiciled in the EEA and is listed, or is applying for listing, on a regulated market^{vii}. Third country issuers¹⁵ can use their national accounting language if this is considered to be equivalent to IFRS¹⁶. Generally Accepted Accounting Principles (GAAP) in the US and Japan are considered to be equivalent to IFRS on a permanent basis. For financial years beginning before 1 January 2012 Chinese, Canadian, South Korean and Indian GAAP are accepted in a transitional period pending these countries' implementation of IFRS. Other third country issuers must use IFRS, and this must be explicitly stated in the financial statements.

If the pursuer is domiciled in the EEA, but is neither listed nor applying for listing on a regulated market, the issuer shall use an accounting standard that is accepted under the issuer's national accounting legislation.

2.4 Restatement and comparability

Audited historical financial information covering the latest two financial years must be prepared and presented in a form consistent with that which will be used in the issuer's next published annual financial statements¹⁷. This requirement relates to the application of accounting standards, principles and the legislation governing annual financial statements. It is clear from the ESMA Recommendations paragraphs 51-55 that the provision aims to safeguard investors' need for comparable financial statements in situations where:

- A. the financial information for the latest two years is not consistent with that which will be used in the next annual financial statements. This could be the case where an issuer applies for listing on a regulated marketplace, and as a result of this is required to change its accounting standards from national GAAP to IFRS;
- B. the issuer, in its next annual financial statements, changes its accounting policies within the same accounting language.

Where situation A is concerned, the ESMA Recommendations provide guidance in paragraphs 56-67 on restatement of the historical financial information and use of the "bridge approach" to achieve comparability and continuity in the historical financial information being presented. Guidance is also given on when an issuer is considered as a first time adopter of IFRS, and on what an issuer

¹⁵ Issuers from non-EEA countries with securities that are quoted, or for which admission to quotation has been sought, on a Norwegian regulated market, and having Norway as their home state

¹⁶ See Securities Trading Regulations section 5-11

¹⁷ See Prospectus Regulation Annex I item 20.1 second paragraph

should do when, upon dating the prospectus, it is unclear what accounting principles will underlie the next annual financial statements.

As regards situation B, the ESMA Recommendations give guidance in paragraphs 68-74. It appears from these paragraphs that issuers meet the prospectus requirements by preparing annual financial statements in accordance with the applicable accounting rules. For IFRS-reporting issuers these are IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*. It may be relevant to include supplementary information in the prospectus if the annual financial statements give insufficient information about changes in accounting policies that are expected to have a significant effect on the profit and loss account and the balance sheet.

Third country issuers

Historical financial information that is prepared in an accounting language equivalent to IFRS does not have to be restated for prospectus purposes¹⁸.

Audit of restated historical financial information

If the issuer has restated historical financial information to comply with the requirement of comparability with the next annual financial statements, the auditor must provide an independent assessment as a replacement for the statutory audit. Finanstilsynet advises that an auditor's statement on the restated figures covering the second of the two years is sufficient to meet the requirements. This assumes that the first of the two years is included as comparable figures in the restated financial statements, and that the original annual financial statements for that year have been audited.

According to the Prospectus Regulation Annex I item 20.1, annual historical financial statements must be audited, or an independent assessment must be made of whether the financial information gives a true and fair view for the purposes of the prospectus. Finanstilsynet's assessment is that "*audited*" in this context refers to the statutory audit of the annual financial statements, whereas "*independent assessment*" refers to situations where the historical financial information has been restated for prospectus purposes. Finanstilsynet's understanding is that an auditor's review of historical financial information that has been restated for prospectus purposes should give investors the same degree of assurance as the statutory audit does for the issuer's annual financial statements.

3 Historical financial information of parties other than the issuer

3.1 Overview of rules and relevant guidance

A prospectus must contain the information needed for investors to make an informed assessment of the issuer's financial position and prospects¹⁹. It must therefore contain, among other things, historical financial information of the issuer; see part 2 above. However, the issuer may be so closely tied to other entities that historical financial information about the latter is also needed. This

¹⁸ See Amending Regulation 2008 new Article 35 paragraph 5a

¹⁹ See Securities Trading Act section 7-13 first subsection and Prospectus Directive Article 5(1)

may be the case where the issuer has carried out, or has agreed to carry out, a significant transaction. Amending Regulation 2007 deals with such cases²⁰. It distinguishes between situations where a transaction has been carried out prior to the date of the prospectus and situations where it is agreed to carry out a transaction after the date of the prospectus. The Regulation also states what information must be provided by the issuer in such cases, as well as the rationale behind the information requirements. Amending Regulation 2007 is based on principles and only to a limited extent draws up detailed information requirements.

The ESMA Recommendations give no guidance in this area. ESMA FAQ no. 16 Qc) establishes that financial information about entities other than the issuer may be required in situations where the issuer is a newly incorporated holding company inserted over an established business.

3.2 Transactions prior to the date of the prospectus

Transactions taking place prior to the date of the prospectus might constitute circumstances where the issuer has a complex financial history²¹. An issuer has a complex financial history if all the following conditions apply:

- (a) its entire business undertaking at the time that the prospectus is drawn up is not accurately represented in the historical financial information which it is required to provide under item 20.1 of Annex I;
- (b) that inaccuracy will affect the ability of an investor to make an informed assessment²², and
- (c) information relating to its business undertaking that is necessary for an investor to make such an assessment is included in financial information relating to another entity.

Amending Regulation 2007 establishes that it is not possible to prepare an exhaustive list of instances where the issuer is regarded as having a complex financial history. Examples of such cases may however be the following:

- The issuer has made a significant acquisition during the current financial year or the three preceding financial years;
- The issuer is a newly incorporated holding company inserted over an established business.

3.3 Transactions after the date of the prospectus

Transactions taking place after the date of the prospectus might constitute circumstances where the issuer has made a significant financial commitment²³. A significant financial commitment exists where the issuer has entered into a binding agreement to undertake a transaction which, when completed, is likely to give rise to a significant gross change in the issuer's business. The

²⁰ According to Amending Regulation 2007 new Article 4a, this applies to securities covered by the Commission Regulation Annex I (registration document for shares)

²¹ See Amending Regulation 2007 new Article 4a no. 4

²² Prospectus Directive Article 5(1)

²³ See Amending Regulation 2007 new Article 4a no. 5

assessment of what constitutes a significant gross change is made in the same way as in the case of pro forma financial information; see part 4.2 below.

An agreement to undertake a transaction may be subject to conditions, for example regulatory approval. An agreement that contains such conditions will be treated as binding if it is reasonably certain that those conditions will be fulfilled²¹.

The obligation to prepare a prospectus is triggered by offers of subscription or purchase, or by admission to trading, of shares. Where an agreement subject to the completion of a transaction is conditional on the carrying out of the offer or on admission to trading, the agreement is to be treated as binding²¹.

3.4 Compliance with information requirements

It is not possible on a general basis to specify what further financial information must be included in a prospectus where the issuer has a complex financial history, or has made a significant financial commitment. What further information is required will be that which is necessary for investors to make an informed assessment of the issuer's financial position and prospects²⁴. A concrete assessment must be made in each case. Existing financial information of entities other than the issuer may be sufficient to meet the information requirements. If the issuer has entered into a binding agreement to acquire another entity, and the acquisition has not taken place by the date of the prospectus, it may for example be sufficient to include the three latest sets of annual financial statements of the acquired entity in the prospectus. In other cases it is appropriate to prepare further historical financial information to meet the information requirements. In some cases this is done by preparing combined financial statements or carve-out financial statements. These terms are not defined in the prospectus legislation. Finanstilsynet employs the following definitions for the purposes of prospectus control:

- Combined financial statements
Historical financial information, presented collectively, of two or more entities or businesses that have been under joint control and have not previously constituted a collective reporting entity.
- Carve-out financial statements
Historical financial information of a business that has been part of a collective reporting entity and for which financial statements have not previously been prepared on an independent basis.

According to Amending Regulation 2007²⁵, the starting point for requirements as to further historical financial information is the Prospectus Regulation Annex I item 20.1. Hence Finanstilsynet's position is that combined and carve-out financial statements must be audited, and have the same components as historical financial information of the issuer. These are the balance sheet, the income statement, changes in equity, cash flow statement, and a summary of accounting

²⁴ See Securities Trading Act section 7-13 first subsection and Prospectus Directive Article 5(1)

²⁵ See Amending Regulation 2007 new Article 4a(2)

policies and other explanatory notes²⁶. Information on all central assumptions underlying the preparation of the financial statement must also be included, including allocation formulas.

Finanstilsynet points out that in some instances exemption from compliance with the information requirements may be granted²⁷. In such instances Finanstilsynet will consider the concrete fact in the individual case before deciding whether or not to grant exemption from the information requirement.

3.5 Regarding pro forma financial information

Historical financial information of parties other than the issuer is based on actual historical data. Pro forma financial information provides a hypothetical picture of the issuer's financial position and profit/loss had a transaction taken place at an earlier point in time. The purpose differs in the two cases, and there are differences in the information to be disclosed. For example, pro forma financial information has to be prepared for the last completed financial year and/or the last interim period, whereas historical financial information has in principle to be disclosed for the three latest financial years. The information requirements are therefore mutually independent. Hence issuers with a complex financial history, or a significant financial commitment, are in principle also required to meet pro forma financial information requirements where relevant.

In some cases historical financial information of entities other than the issuer may cancel out the need for pro forma financial information. Similarly, pro forma financial information may in some cases cancel out the need for historical financial information of entities other than the issuer. If the issuer is of the view that this is the case, and that the information requirements under the Securities Trading Act section 7-13 first subsection are met²⁸, the issuer must substantiate its view to Finanstilsynet. Finanstilsynet will make a concrete assessment of whether exemption may be granted.

3.6 Regarding admission rules at Oslo Børs and Oslo Axess

Finanstilsynet points out that the requirements regarding historical financial information in prospectuses are embedded in a body of rules other than those governing admission to Oslo Børs and Oslo Axess. The requirements regarding historical financial information in prospectuses follow from harmonised common European legislation, which presupposes uniform rule enforcement. Since prospectuses approved by Finanstilsynet can be passported to other EU/EEA countries without further vetting, uniform enforcement is of particular significance. Consequently the prospectus rules may in many cases require more, or other, historical financial information than do the stock exchange's admission rules. This is particularly relevant where the issuer has a complex financial history or has made a significant financial commitment. Issuers are asked to keep these matters in mind when preparing a prospectus.

²⁶ See ESMA Recommendations paragraphs 83 and 85

²⁷ See Amending Regulation 2007 item 13 of the preamble

²⁸ See Prospectus Directive Article 5(1)

4 Pro forma financial information

4.1 Overview of rules and relevant guidance

Pro forma financial information shows an issuer's financial position and profits and losses had a transaction taken place at an earlier point in time. Requirements regarding pro forma financial information follow from the Prospectus Regulation Annex I item 20.2. This requires pro forma financial information to be prepared and presented in accordance with the Prospectus Regulation Annex II, which sets out specific requirements. Amending Regulation 2007 gives guidelines as to when a requirement exists to prepare pro forma financial information²⁹.

Guidance on meeting the requirements is given in the ESMA Recommendations chapter 6 paragraphs 87-94, and ESMA FAQ nos. 50-55. Some concepts are clarified here. ESMA FAQ also gives guidance on what pro forma financial information is required in different instances. Further, ESMA FAQ no. 54 states that if the issuer includes pro forma financial information in situations where this is not required, it must do so in accordance with the requirements of the Prospectus Regulation Annex II.

4.2 Significant gross changes in the issuer's business

In the event of significant gross changes a description must be given of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction taken place at the start of the period being reported on or at the date reported³⁰. This requirement will normally be satisfied by the inclusion of pro forma financial information. However, there might be circumstances where the inclusion of pro forma information is not a feasible or fair means of describing the effects of the transaction³¹. In such cases the issuer still has to provide a description but will not have to follow the Prospectus Regulation Annex II.

Transactions where so far only a binding agreement has been signed should be treated on a par with transactions that have already taken place²⁹. As regards situations where there are several transactions, or where the issuer has recently published pro forma financial information in a previous prospectus, guidance is given in ESMA FAQ nos. 52 and 53.

The term "*significant gross change*" is defined in ESMA Recommendations paragraphs 90-93, and in Amending Regulations 2007 new Article 4a(6). A significant gross change is deemed to be a variation of more than 25% in the issuer's business as a result of a particular transaction. The event triggering the requirement to disclose pro forma financial information need not be the same event as that which triggers the requirement to publish a prospectus. The change is measured relative to one or more relevant indicators such as total assets, operating revenues or profit. Other indicators may also be suited if they are more relevant to the issuer's business. Finanstilsynet's understanding is that in order to assess the effect of the transaction on the business, the relevant indicators must be compared on a consistent basis. This may for example require that financial information of an acquired entity be restated to the same accounting principles as those of the issuer. Other adjustments may also be needed to assess the actual size of the change in the issuer's business. If the

²⁹ Amending Regulation 2007, new Article 4a paragraph 6

³⁰ Commission Regulation Annex I item 20.2 first paragraph

³¹ See ESMA FAQ no. 50

issuer has justified non-activation of the pro forma information requirement with a basis in such adjustments, it must explain this fully to Finanstilsynet.

The ESMA Recommendations paragraph 94 establish that "*the appropriate indicators of size should refer to figures from the issuer's last or next published annual financial statements*" In the great majority of cases the issuer's *last published annual financial statements* should provide the basis for deciding whether a significant gross change is present. In some cases the issuer's *next published annual financial statements* may be taken as a basis. Finanstilsynet's understanding is that this will be where the issuer has published its interim report for the fourth quarter (i.e. year to date).

Sale of business

Significant gross changes resulting from sale of business activate the requirement of pro forma financial information. There may however be less need for pro forma financial information if the sold business is presented in the historical financial information as a discontinued operation under IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*. Historical financial statements under IFRS 5 will normally provide sufficient information if the period is identical. Finanstilsynet will make a concrete assessment of whether exemption from the requirement to prepare pro forma financial information can be granted.

4.3 Description of the transaction

Pro forma financial information must include a description of the transaction, the businesses or entities involved and the period to which it refers³², and must clearly state the following:

- (a) the purpose for which it has been prepared;
- (b) the fact that it has been prepared for illustrative purposes only, and
- (c) the fact that because of its nature the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the issuer's actual financial position or results.

As regards letter (a), the issuer must state that the purpose is to illustrate the issuer's financial performance had the transaction taken place at the start of each specified period. The purpose is also to illustrate the issuer's financial position had the transaction had taken place at the specified date of the pro forma balance sheet. The periods and dates for which pro forma information has been prepared must be clearly stated by way of introduction; see 4.6 below. Finanstilsynet is moreover of the view that the wording of letters (b) and (c) above in the prospectus must be identical to that in the Prospectus Regulation.

4.4 Presentation

In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes depending on the circumstances may be included³³. Pro forma financial information must normally be presented in columnar format, composed of the historical unadjusted information, the pro forma adjustments and the resulting pro forma financial information

³² See Prospectus Regulation Annex II item 1

³³ See Prospectus Regulation Annex II items 2 and 3

in the final column. Historical unadjusted information is normally based on published annual and interim financial statements³⁴.

In Finanstilsynet's experience it is also worthwhile to show adjustments resulting from harmonisation of accounting principles in a separate column; see part 4.5 below regarding consistent application of accounting principles. Finanstilsynet recommends such an approach.

Presentation of pro forma financial information may for example comprise the following columns:

Unadjusted information (issuer) IFRS	Unadjusted information (acquired business or entity) NGAAP	Adjustments NGAAP/IFRS	Pro forma adjustments	Pro forma financial information IFRS
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Historical unadjusted information, for each individual entity included in the pro forma financial information, should as a rule be shown in separate columns. Finanstilsynet recommends preparation of a separate statement of this information when a large number of entities are involved, including a separate column for combined figures. Such a statement can either be incorporated in the prospectus or form an annex to the prospectus.

Finanstilsynet points out that the sources of pro forma financial information must be stated. Normally these will comprise the historical unadjusted information for each individual entity included in the transaction. It must also be stated whether the financial information has been subject to audit or review. The financial statements of any acquired businesses or entities must be included in the prospectus.

In Finanstilsynet's experience a closer description of the sources of pro forma financial information is needed in many cases. This may, for example, be the case where one or more parts of a wider entity have not previously been subject to separate financial reporting. In such case the issuer must clarify what constitutes acquired business, what financial information underlies this business, and which accounting principles have been applied.

All GAAP adjustments made to achieve consistent presentation and pro forma adjustments must be explained in appurtenant notes. See further accounts in part 4.5 and part 4.7 below.

4.5 Consistent application of accounting principles

Pro forma information must be prepared in a manner consistent with the accounting principles applied in the issuer's most recent or next³⁵ financial statements³⁶. The following must be stated:

- (a) the basis on which the information has been prepared

³⁴ See ESMA Recommendations paragraph 50 Q(b)

³⁵ If the issuer wishes to switch from NGAAP to IFRS in its next annual financial statements, and as a result of this has restated historical financial information (see Commission Regulation Annex 1 item 20.1), the issuer must apply IFRS when preparing pro forma financial information

³⁶ See Prospectus Regulation Annex II item 4

- (b) the source for each item of information and assessment

If the application of accounting principles differs between the issuer and other entities included in the basis for pro forma financial information, the issuer must identify and adjust for effects of the differing application of principles. Finanstilsynet expects the issuer to undertake a complete reconciliation and conversion of accounting principles between the respective entities. Hence it is important for the issuer to confirm unreservedly in the prospectus that the pro forma financial information has been prepared in a manner consistent with the issuer's accounting principles. It is also important for the prospectus to provide information on the accounting principles applied in historical unadjusted information of each individual entity.

Any adjustments made by the issuer as a result of differing application of principles must be elaborated on in notes to the pro forma financial information in accordance with letters (a) and (b) above. In Finanstilsynet's view it is useful to distinguish between notes that explain adjustments as a result of harmonisation of accounting principles and notes that explain pro forma adjustments. See a further account of pro forma adjustments in part 4.7 below.

4.6 Periods

Pro forma information may only be published in respect of³⁷:

- (a) the current financial period
- (b) the most recently completed financial period, and/or
- (c) the most recent interim period for which relevant unadjusted information has been or will be or is being published in the same document

The definitions of the various periods are amplified in ESMA FAQ no. 50 Ac). Letter (a) of this item states that the "*current financial period*" refers to situations where the issuer decides to prepare and publish interim financial information for a period other than a statutory interim period. In Finanstilsynet's experience this is a relatively rare occurrence in Norway due to the quarterly financial reporting requirement for listed entities. Where letter (b) is concerned, ESMA considers this to refer to "*the last full financial year (normally 12 months) and not an interim period*". This will normally be the most recently published annual financial statements. Letter (c) refers to the issuer's statutory interim reporting which is normally the one already published by the issuer, or that "*is being published in the prospectus where the pro forma information is being provided*". Finanstilsynet advises that the most recently published interim period should be employed at all times, and that pro forma financial information must be updated if a new interim financial report is published before the date of the prospectus.

In cases where the issuer has published an interim financial report for the fourth quarter (including YTD income statement for the 12 month period), this report can in Finanstilsynet's view be accepted as the most recently completed financial period with reference to letter (b) above. Hence presentation of pro forma financial information is not required if the transaction has taken place prior to the 12 month period reported on in the interim report; see 2) below. If changes are made so that the final annual financial statements diverge from the interim reporting, pro forma financial information based on the interim reporting may not be reproduced in subsequent prospectuses.

³⁷ See Prospectus Regulation Annex II item 5

Internationally practices differ in terms of executive authorities' enforcement of the requirements regarding the periods in respect of which pro forma financial information must be prepared³⁸. Finanstilsynet has essentially decided to continue established practice in Norway. This can be summarised as followed:

- 1) If a significant³⁹ transaction has taken place since the most recently completed financial year, or a binding agreement on such significant transaction has been established, the following are required:
 - pro forma profit and loss account for 12 months as if the transaction had taken place at the start of the most recently completed financial year;
 - pro forma profit and loss account for the period from the start of the current financial year to the balance sheet date for the most recently published interim report as if the transaction had taken place at the start of the current financial year, and
 - pro forma balance sheet at the most recently published balance sheet date (only if the transaction has not been incorporated in the interim reporting that has already been published).
- 2) If a significant⁴⁰ transaction has taken place in the most recently completed financial year, the following is required:
 - pro forma profit and loss account for 12 months as if the transaction had taken place on 1 January of the most recently completed financial year.

Finanstilsynet points out that in situation 1) above, a pro forma profit or loss account is required for two separate periods. Previously the issuer has been able to decide to show pro forma financial information as if the significant transaction took place at the start of each period, or at the start of the first period. In order to achieve consistent practice, Finanstilsynet's conclusion is that the solution presupposing that the transaction took place at the start of each period must be applied.

4.7 Pro forma adjustments

The Prospectus Regulation Annex II item 6 establishes that pro forma adjustments must be:

- (a) clearly shown and explained;
- (b) directly attributable to the transaction;
- (c) factually supportable.

In addition, in respect of a pro forma profit and loss statement, a clear distinction must be drawn between adjustments expected to have a continuing impact on the issuer and those which are one-time effects.

Letter (a) is normally complied with by presenting pro forma adjustments in a separate column with appurtenant notes. Finanstilsynet emphasises that each pro forma adjustment must be specified. The

³⁸ See ESMA FAQ no. 51.

³⁹ See part 4.2 above concerning significant gross changes

⁴⁰ See part 4.2 above concerning significant gross changes

notes must clearly explain the particular adjustment and the underlying assumptions so as to make it easily understandable to the users of the prospectus.

Pro forma adjustments should only reflect matters that are a direct consequence of the transaction giving rise to the preparation of pro forma financial information. Accordingly all adjustments made must be justified in this transaction. For example, adjustment should not be made for matters which are dependent on events after the transaction has taken place (synergy effects, future agreements etc). This applies even where such events are central to the issuer's decision to enter into the transaction⁴¹. Similarly, adjustments should not be made to "normalise" historical results by adjusting for previous restructurings, write-downs or the like.

Each individual pro forma adjustment must be supported by facts that are capable of some reasonable degree of objective determination⁴². Support might be typically provided by published accounts, other financial information in the prospectus, or agreements in connection with the transaction.

A pro forma balance sheet is not intended to reflect the cumulative effect of pro forma adjustments on profit/loss. For example, results could be adjusted for interest expenses as if debt incurrence had taken place at the start of the period, whereas the pro forma balance sheet should only reflect debt raised and not interest expenses.

4.8 Auditor's statement

Pro forma financial information must be accompanied by a statement prepared by an auditor⁴³. The statement must state that in the auditor's opinion:

- (a) the pro forma financial information has been properly compiled on the basis stated;
- (b) that basis is consistent with the accounting policies of the issuer.

The requirements on the auditor's statement are elaborated on in ESMA FAQ no. 55 to the effect that the auditor's statement on pro forma information is required to include the exact wording as set out in section 7 of Annex II of the Prospectus Regulation. No statement involving a modified conclusion or qualified opinion is accepted⁴⁴. In Finanstilsynet's experience some auditors include the wording "*in all material respects*" when describing their responsibilities and work carried out, as well is in the actual conclusion in the auditor's statement. Finanstilsynet advises that any such reservation will not be accepted.

ESMA FAQ no. 55 also argues against the inclusion of emphasis of matter paragraphs in the auditor's statement. Accordingly no emphasis of matter paragraph is acceptable. Finanstilsynet is aware that the International Standard on Assurance Engagements (ISAE) 3000 *Assurance*

⁴¹ See ESMA Recommendations paragraph 88

⁴² See ESMA Recommendations paragraph 87

⁴³ See Prospectus Regulation Annex II item 7

⁴⁴ See also ESMA's (prev. CESR) written submission of 22 October 2010 regarding a new audit standard "*Assurance Engagements to Report on the Compilation of Pro Forma Financial Information in a Prospectus – International Standard on Assurance Engagements 3420*"

*Engagements other than Audits or Reviews of Historical Financial Information*⁴⁵, and new standard 3240 *Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus*⁴⁶, allow the inclusion of emphasis of matter paragraphs. Hence the possibility cannot be ruled out that it may in some cases be appropriate to include an emphasis of matter paragraph in the auditor's statement. In that case the auditor must substantiate to Finanstilsynet why the information concerned, which has to be disclosed in the prospectus's chapter on pro forma financial information, is of crucial significance to the investor's understanding of the pro forma financial information. Finanstilsynet will make a concrete assessment of whether any emphasis of matter paragraphs in the auditor's statement are to be accepted.

Finanstilsynet also advises that the concrete periods and dates in respect of which pro forma financial information is prepared must be consistent with the references to periods and dates on which the auditor expresses an opinion; see part 4.6 above. General wordings in the auditor's statement, for example referring to preparation of pro forma information "*as if the transaction had taken place in previous periods*", are not sufficient.

5 Dialogue with Finanstilsynet

It is the issuer's responsibility to familiarise itself with the body of applicable rules and to consider what financial information is to be included in the prospectus. In cases where it is not clear to the issuer or adviser what financial information is to be included in a prospectus, Finanstilsynet recommends that this be clarified well before submission of the prospectus for vetting. This can be done by transmitting a thorough account to Finanstilsynet's e-mail address prospekter@finansstilsynet.no. The account must contain a description of the issuer, the transaction, and how the issuer intends to fulfil the financial information requirements in the prospectus.

6 Reference list

i Directive 2003/71/EC 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, Official Journal of the European Union, 31.12.2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF>.

ii Commission Regulation (EC) No 809/2004 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 advertisement, Official Journal of the European Union, 30.04.2004, http://ec.europa.eu/internal_market/securities/docs/prospectus/reg-2004-809/reg-2004-809_en.pdf.

iii The Prospectus Regulation has been amended by Commission Regulation (EC) No 1787/2006 of 4 December 2006 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:337:0017:0020:EN:PDF>), Commission Regulation (EC) No 211/2007 of 27 February 2007 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:061:0024:0027:EN:PDF>) and Commission

⁴⁵ See no. 50

⁴⁶ Applicable as from 31 March 2013

Regulation (EC) No 1289/2008 of 12 December 2008 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:340:0017:0019:EN:PDF>).

iv ESMA update of the CESR recommendations – The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive, ESMA/2011/81, 23 March 2011, <http://www.esma.europa.eu/popup2.php?id=7515>.

v Frequently Asked Questions – Prospectuses: common positions agreed by ESMA Members 13th updated version – June 2011, ESMA/2011/85, 9 June 2011, <http://www.esma.europa.eu/index.php?page=groups&mac=0&id=40>.

vi www.esma.europa.eu

vii REGULATION (EC) No 1606/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 July 2002 on the application of international accounting standards, 11.09.2022, http://www.esma.europa.eu/system/files/Reg_1606_02.pdf.