VERDIPAPIRFORETAKENES FORBUND

NORWEGIAN SECURITIES MARKETS ASSOCIATION

RECOMMENDATION NO. 1

Recommendation for certain investigations to be performed in the role of a manager/arranger for capital raising transactions in Norway

(This translation is provided for informational purposes only and may not be entirely accurate or complete. In the event of any discrepancies with the original Norwegian text, the Norwegian version shall prevail and take precedence over the English translation.)

Adopted by the board of the Norwegian Securities Markets Association on 19 November 2024. Entered into force on 25 November 2024.

1. Introduction

When issuers of financial instruments raise capital, investment firms act as advisors to the issuer and as intermediaries in relation to investors. Below, investment firms that have such a role are referred to as a manager.

This recommendation provides guidance on the investigations into the issuer that a manager should conduct in connection with the raising of capital, to ensure that sufficient and relevant information is included in the investor documentation that is shared with potential investors. It is not applicable to M&A-like capital raises, i.e. where the share issue is only aimed at a few industrial or financial investors that are given the opportunity to conduct their own investigations into the issuer. In such cases, the investor documentation should state that the investors must conduct their own investigations and that the manager has not itself conducted investigations to quality assure the information from the issuer.

The purpose of the recommendation is to provide managers with guidance on the scope of the investigations into the issuer that should be carried out in connection with capital raises. This is intended to help determine the correct level of these investigations so that both investor protection and the market's integrity is safeguarded, at the same time as it facilitates effective capital raise for the issuer.

The manager's obligation to investigate is closely linked to the issuer's obligation to prepare and publish the information on which the transaction is to be based. According to the Norwegian Securities Trading Act's provisions on "conduct of business rules", investment firms shall ensure that all information to clients or potential clients is balanced, clear and not misleading, see section 10-10 of the Securities Trading Act. The same follows from MiFID II and associated legislative acts that are implemented in the Securities Trading Act, etc, including Commission Delegated Regulation (EU) 2017/565. The manager is therefore responsible for contributing to sufficient information on the issuer, including relevant risk factors, being given through the investor documentation.

The recommendation states three different levels of investigation, in which the scope of the investigations vary: very limited investigations, limited investigations and a larger scope of investigations. The recommendation refers to various factors that affect the scope of the investigations. Investigations in this recommendation include any investigation into an issuer, including legal and/or financial due diligence. The recommendation refers to these as legal and financial reviews.

If the investigations reveal factors that are likely to influence the investors' investment decisions or the expected price of the financial instruments, the manager must ensure that such factors are clearly described in the investor documentation.

2. Scope

The manager's required investigations vary depending on, for example, the type of financial instrument, whether the issuer has financial instruments listed on a regulated market or multilateral trading facility or is unlisted, the target investors, what is emphasised in/focused on in the investor documentation, the risk represented by an investment in the financial

instruments, the investors' opportunities to conduct their own investigations, knowledge about the issuer, etc.

The investigations may, for example, include an accounting, financial, technical, environmental, tax-related and/or legal review of an issuer company with the aim of giving investors a basis for making well-informed investment decisions.

For capital-raising assignment that is not carried out according to Norwegian law, there may be other requirements and different market practices that set guidelines for the level of the investigations. It is therefore important to determine the requirements/expectations that may apply to such transactions.

The manager's obligation to investigate applies throughout the assignment and entails a responsibility to monitor and assess the information presented to investors. However, as regards the manager's control over this information, it will normally be acceptable to rely to a large extent on the investigations that the issuer's lawyer conducts in connection with the preparation of the offer prospectus. This is among other things because the company's board of directors/management must themselves provide a declaration of liability in the prospectus.

Normally, managers that become involved late in the process and/or play a limited role by, for example, only being a sales link will have limited opportunities to implement measures apart from those that have already been carried out, or to influence the investor documentation. A manager that enters a process at a late stage must therefore conduct its own assessment of whether the investigations that have been carried out appear suitable and whether the investor documentation seems sensible in light of the manager's own knowledge of the issuer. All the involved managers must together ensure that the information presented to investors is balanced, clear and not misleading. Managers that become involved late in the process should report any identified deviations from their own standards or any concerns to the enterprises that have been involved in the transaction from the start.

3. Investor documentation

3.1. In general

Through good preparation and quality assurance of the information in the investor documentation, both issuers and managers can reduce the risk of misunderstandings and legal complications. This will also give investors a better basis for making informed investment decisions. In the case of public offerings and listings on regulated markets, it follows from the Prospectus Regulation and/or the Securities Trading Act that a prospectus with specific requirements is to be prepared. For transactions that are exempt from the obligation to publish a prospectus, the investor documentation may include a presentation to investors or information memorandum, an application form, term sheet, deal mail, and any other documents that provide information on the investment opportunity. Irrespective of whether or not a prospectus is prepared, the objective of the aforementioned documentation is to give investors a sufficiently precise picture of the investment, with a presentation of the risk and the legal and financial factors.

For some types of transactions, the investor documentation will be simpler. When an Investment Grade bond loan is issued, the documentation will normally only consist of a term sheet unless the issuer is new in the bond market. If this is the case, a presentation to investors is normally also prepared. Similarly, for some share issues in listed companies, it may not be considered necessary to have a separate presentation to investors if, for example, the stock exchange notice is viewed as being adequate and investor-relevant information is otherwise deemed to be available in the market. In such cases, it may also be pertinent to prepare a less comprehensive presentation to investors or, for example, to enclose information on relevant risk factors with the application form.

3.2. Preparation of investor documentation

Formally speaking, it is the issuer that is liable for the content of the investor documentation, but the manager normally provides considerable assistance in the process of preparing this. The manager's role may entail giving advice on how the information should be structured, helping to prepare economic forecasts and assess risk factors and providing market information. It is important that the manager makes sure the issuer vouches for the content of the investor documentation and accepts full liability for the documentation being accurate and complete. This is normally confirmed through a summarising conversation with relevant persons in the issuer company and as part of the declaration of completeness, see items 4.8 and 4.9 below.

The situation may be different in project-financing assignments, where the manager may indirectly be the initiator of transactions by itself establishing a new project company that makes acquisitions and where investors are offered the chance to buy shares in the project company. In Norway, this model is often used for real estate and shipping. In such cases, the manager will often be in charge of preparing all the investor documentation without there being an assignment from any party other than the project company.

3.3. Review of investor documentation

In order to ensure that relevant aspects of the investment are presented correctly, the manager must conduct a thorough review of the investor documentation. This may include an assessment of the issuer's business model, market situation, financial data and specific risk factors where relevant. The manager should consider the extent to which key factors that are presented are to be verified.

3.4. Content of investor documentation

Depending on

- the structure of the transaction
- the type of financial instrument and risk involved in the investment
- whether the issuer already has financial instruments admitted to trading on a regulated market or multilateral trading facility or is unlisted

the investor documentation should include a number of elements to ensure balanced, clear and not misleading information to investors, such as:

- Risk factors: a description of relevant risk factors linked to the issuer and investment must normally be included. These may include risks related to the issuer's economic situation, the market, competition, legal factors, the financial instruments or other relevant aspects. The Prospectus Regulation's rules regarding how risk factors are to be presented may be used as guidance since it is normal to have subsequent listing processes or repair issues that require the preparation of a prospectus.

- Conditions for the transaction: investor documentation such as the term sheet and application/subscription form must clarify the legal obligations that accompany the investment – for both the issuer and investor. These include the subscription conditions and key rights and obligations linked to the financial instrument.

- Economic forecasts and analyses: if the material contains forecasts and financial analyses that provide information on the issuer's expected future incomes, these shall be founded on realistic assumptions based on the pertinent information/documentation received from the issuer and relevant public information. However, the manager provides no guarantee of the correctness of the information or documentation on which the forecasts and analyses are based, something that is normally regulated in the disclaimer included in the material.

- Other factors: any comments by auditors and current/potential legal disputes that are sufficiently important/relevant in light of the transaction in question.

Where applicable, anything the manager has done to verify the information and the extent to which other advisors have been involved in the investigations should normally be stated. For example, this may include information on whether, and if so to what extent, lawyers or other advisors have provided assistance, for example in auditing financial data or investigating legal matters. This will normally be included in the application form.

4. The investigations

4.1. Assessment of the need for investigations

The manager must always assess the need for investigations of the issuer and the issuer's activities and the scope of investigations that will be relevant. The manager should conduct these assessments as early as possible in the process. The assessments should be documented, for example in minutes of discussions by the enterprise's commitment committee or in some other suitable manner.

4.2. Who can conduct the investigations?

The investigations can be conducted by the manager either itself or in collaboration with external advisors. When it is desirable to use external advisors, the manager should choose advisors that have the necessary expertise and impartiality regarding the issuer and any advisors to the issuer. If the manager hires external advisors to conduct investigations, the reports from the manager's advisors must be reviewed by the manager with the aim of making significant factors known to investors, for example by findings being described in the risk factors linked to the issuer.

4.3. Scope of investigations

The scope of the manager's investigations must be specifically assessed in each individual case. The scope of the investigations conducted by external advisors, including, for example, legal and financial investigations, will depend on the manager's knowledge of the issuer and the underlying need for information to investors, as well as which investors are intended as investors in/buyers of the securities (target market) and what factors relating to the issuer, if any, are to be particularly emphasised in the investor materials.

4.4. Obligation to investigate – listing processes, etc

When financial instruments are admitted to trading on marketplaces or listed on a stock exchange, the individual marketplace often stipulates specific requirements as to investigations. These requirements may vary depending on the marketplace where the instrument is to be admitted to trading. The requirements may include a review of the issuer's accounts, management structure, financing, business model and significant contracts as well as company-law, labour-law, regulatory and any other legal circumstances and risk factors that may affect the issuer's suitability.

The Oslo Stock Exchange (Oslo Børs) requirements vary depending on the marketplace that the issuer wishes to be listed on, such as OSEBX, Euronext Expand or Euronext Growth. For example, OSEBX generally has stricter reporting and corporate governance requirements than Euronext Growth, which is suitable for small, rapidly growing companies and does not require as frequent reporting.

It is therefore crucial that the manager becomes very familiar with the requirements that apply to the marketplace in question at an early stage in the process. The manager must also ensure that an issuer that applies for admission is well prepared to fulfil these requirements. This often entails close cooperation with legal and financial advisors to ensure that all the documentation is in place and that the issuer fulfils the marketplace's requirements regarding transparency, reporting and corporate governance.

It may also be a requirement that an EEA prospectus must be prepared, for example in the case of admission to trading on a regulated market or a public offering to subscribe for or buy securities. An EEA prospectus requires extensive information about the issuer as well as investigations.

A good understanding of the admission requirements and a good plan for fulfilling them will help increase the likelihood of a successful admission to trading. Errors or defects in the investigation process may not only delay admission but also lead to less confidence on the part of investors and potential shareholders.

4.5. Very limited investigations

For some types of transactions, the need for investigations will be very limited. This may apply to both bond issues and share issues. For example, because the company has recently carried out a transaction where relevant investigations have already been conducted, or where bonds are issued by large, solid issuers (such as banks or manufacturing, energy or power enterprises) that have an official credit rating from a recognised credit agency, as well as for other types of issuers, such as some local/county councils and companies guaranteed by these. For local/county councils, however, it should be considered whether to obtain a

copy of a valid decision to borrow/any declaration or confirmation that such a decision exists.

The need for investigations will have to be assessed specifically with reference to how old the credit rating is, whether the issuer is listed, whether the issuer has a licence, whether the issuer has previously used the bond market, whether the issuer regularly reports financial information to the market, the investors that are to be approached, etc.

If the issuer of a bond loan has a credit rating of BBB- or better (Investment Grade) and the transaction primarily targets institutional investors, it is not normally considered necessary to conduct investigations in the form of a summarising conversation (bring-down call/DD call) or to obtain a declaration of completeness.

Where the issuer of an Investment Grade bond loan is new in the bond market, the manager should nonetheless consider holding such a summarising conversation with relevant persons in the issuer company and/or obtaining a declaration of completeness. The same will be the case if the bond loan is sold to institutional investors as an Investment Grade bond loan without there being an official credit rating that confirms this. This may be the case for completely obvious Investment Grade issuers (such as some power companies, local/county councils and companies guaranteed by these, and manufacturing and real-estate companies).

Correspondingly, there will be a more limited need for investigations if the issuer has, shortly before the transaction, carried out a transaction where relevant investigations have already been conducted, for example if a bond issuer carries out a subsequent "loss issue" shortly after the original bond issue, or in the case of a repair issue that an issuer carries out after a private placement of shares. In such a situation, it will normally be sufficient to obtain confirmation that there have been no material changes since the previous transaction as regards the investigations that were carried out at that time. In these cases, it will also not always be necessary to ask for such confirmation, for example where an offer prospectus is prepared for a repair issue. The manager will then normally be able to rely greatly on the work/checks the issuer's lawyer has carried out in connection with the preparation of the prospectus; including because the issuer's board of directors/management must themselves provide a declaration of liability in the prospectus.

Situations in which investors have themselves initiated their own investigations may also, depending on the circumstances, indicate that the need for the manager to conduct more detailed investigations is regarded as more limited.

4.6. Limited investigations

Apart from the cases discussed in item 4.5 above, where there are very limited investigations, there will be cases where there is a need for the manager to conduct some more investigations. Below are examples of such cases, and in these cases it will usually be sufficient if the manager obtains a declaration of completeness and has conversations with the management and/or board of directors.

- One of the issuer's financial instruments, i.e. either shares or a bond loan, is already listed on a recognised marketplace that requires regular reporting and where it can be expected that the information is up-to-date and known in the market. The same may be relevant if the issuer's financial instruments have until recently been listed on a corresponding marketplace.

- The issuer has a licence from a public authority and is subject to public supervision, such as a bank, and there is no non-conformance in the issuer's reporting.

- The manager knows the issuer and its owners well, for example based on previous collaboration with the issuer in similar or other types of transactions.

- The issuer is well known in the market and there is sufficient publicly available information on the company, for example if the issuer's shares have been registered on the NOTC for at least three years or the issuer is owned by a company that is already listed and reports to the market via this.

- The issuer has owners that the manager has previously carried out an assignment for, or that are well-known in the market and have a good reputation, or that include the issuer in their own reports. An example of this is companies owned by private equity players that report the portfolio to their own investors.

- Investigations of the issuer have recently been conducted in which the manager was given access to reports or suchlike and there are no indications of any significant changes since this review.

4.7. Larger scope of investigations

In some transactions, there may be a greater need for investigations by the manager to ensure that the information from the issuer is as correct and complete as possible. When assessing whether further investigations are necessary, the following may be relevant:

- The issuer is not very well known to the manager and/or market, and the issuer has complex operations or a complex corporate structure.

- A not insignificant part of the issuer's operations takes place in jurisdictions that the manager has little or no experience/knowledge of.

- It is more than one year since the issuer last published audited accounts.

- The issuer has undergone significant corporate actions since the last financial report, and these have not been made known in the market.

- The manager has limited knowledge of the sector in which the issuer operates.

- The issuer has a short corporate history.

- The auditor chosen by the issuer has been severely criticised by Finanstilsynet during the last couple of years and/or has not been in business for long.

The abovementioned criteria will not always be relevant. Where, for example, a separate company is established to issue a bond (SPV) within an existing corporate structure, this company's short history will not normally be a relevant criterion. The criteria must therefore always be assessed against the relevant context/transaction.

If the abovementioned criteria are relevant, a declaration of completeness is normally obtained, and conversations must also be held with the management and board of directors.

However, it may also be necessary to conduct additional investigations. Depending on the circumstances, such investigations may involve anything from asking the company and/or third parties additional questions to conducting a more extensive document-based review, including with the help of external advisors (such as lawyers and technical and/or financial advisors, etc).

4.8. Summarising conversation with the issuer (also called a bring-down call/DD call)

When capital is being raised, the manager must have a running dialogue with the issuer's administration, such as the general manager and finance director and possibly also the board of directors.

In addition to obtaining a declaration of completeness, the manager must hold a summarising conversation in which the issuer provides confirmations and gives an account of any deviations/items of significant importance to investors before the sales phase starts, unless there are special circumstances which indicate there is no need to hold such a conversation. The conversation must be documented by the manager in a recorded phone call.

The conversation should be held when the investor documentation is complete and as late in the process as possible, but also at a time that enables any findings in the investor documentation or suchlike to be addressed before the material is distributed.

The persons who have taken part in the running dialogue between the manager and issuer, as well as external advisors, should be present during this summarising conversation. As a starting point, the issuer's general manager and finance director, as well as a representative of the board, should be present. However, it can be considered whether it is necessary for board members to attend if the management of the company is expected to have all the relevant information, which will often be the case for listed issuers, for example.

VPFF has prepared a template for such a summarising conversation.

4.9. Declaration of completeness

In all cases where capital is being raised and the investors do not conduct their own investigations, the manager must obtain a declaration of completeness in which the issuer confirms that the information in the investor documentation is complete and correct. The manager normally relies on what the issuer confirms in the declaration of completeness unless the replies or other factors that are discovered in discussions with the issuer's management provide grounds for further investigations.

The declaration of completeness should be signed by the persons who have taken part in the running dialogue between the manager and issuer. As a starting point, the issuer's general manager and finance director, as well as a representative of the board (normally the chair of the board), should sign. However, it can be considered whether it is necessary for board members to sign if the management of the company is expected to have all the relevant information, which will often be the case for listed issuers, for example. This should at the same time be considered in relation to the issuer's signature rules and who in the issuer company has signed the manager's mandate.

VPFF has prepared a template for a declaration of completeness.

4.10. Legal review

If a manager considers it appropriate or necessary to conduct a legal review in connection with a manager assignment, this is normally carried out by external lawyers. The lawyers who conduct the legal review should be independent of the issuer and not be the issuer's current lawyers or a legal advisor to the issuer in the transaction. However, if, for example, it is desirable to conduct a limited investigation of a specific factor in an ongoing transaction, the manager may consider asking the issuer's lawyer about this instead of hiring a new lawyer solely for this purpose. This requires the manager to consider this to satisfactorily safeguard the investors' interests in light of the risk involved in the factor in question.

If the issuer is a foreign company or has significant operations in a country that is not Norway, the manager should consider whether a foreign lawyer should assist in the review or, if relevant, whether a Norwegian lawyer should conduct an investigation of Nordic- and English-language contracts if this is regarded as expedient.

The manager, together with an external advisor, should further consider the scope of the review and the need for it based on, for example, the sector, size of the company, financial instrument to be issued, risk related to the investment and investor documentation intended for the transaction. A legal review should focus on where the issuer, and indirectly the investors, are exposed to the greatest legal risk.

4.11. Financial review

Often, the manager will to a large extent be able to conduct a financial review of the issuer without the need to hire external advisors. If this is nonetheless considered expedient or necessary, external advisors that conduct the review shall be independent of the issuer and basically not be the issuer's auditor or employees of the same audit enterprise.