



FINANSTILSYNET
THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Control of prospectuses in 2021

EEA prospectuses concerning public
offerings and listing on Oslo Børs or
Euronext Expand

DATE:
21 January 2022

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1 Introduction

Finanstilsynet controls and approves EEA prospectuses concerning public offerings of transferable securities targeting the Norwegian market and the listing of transferable securities on a Norwegian regulated market.

In 2021, there was a significant increase in the number of prospectuses for initial public offerings and prospectuses containing complex financial information and pro forma financial information. There has also been an increase in enquiries to Finanstilsynet relating to prospectuses. The enquiries are often incomplete or characterised by insufficient knowledge of the regulations or inadequate preparations in connection with the prospectus process.

The prospectuses also often appear not to be thoroughly prepared before being submitted to Finanstilsynet. Finanstilsynet notes that there are more errors and omissions than in the past in historical financial information, combined or carve-out financial information and pro forma financial information in the prospectuses.

This report describes observations from the control of prospectuses and enquiries to Finanstilsynet concerning prospectuses.

Finanstilsynet would like to point out that there is a need for significant improvements in the quality of both prospectuses subject to approval and other enquiries to Finanstilsynet. The financial information in prospectuses must be compliant with relevant requirements and be thoroughly prepared in advance.

Finanstilsynet publishes a guidance on the prospectus rules on its website, including the following documents (in Norwegian only) practices and specifications,¹ guidance on prospectus control² and guidance on historical financial information and pro forma financial information in share prospectuses.³

¹ Finanstilsynet: [Prospectus control – practices and specifications](#)

² Finanstilsynet 2021: [Guidance: Prospectus control](#)

³ Finanstilsynet 2016: [Guidance: Historical financial information and pro forma financial information in share prospectuses](#)

2 Enquiries relating to prospectuses

In 2021, Finanstilsynet experienced a significant increase in the number of enquiries from advisers who assist companies in the prospectus process. The enquiries are often incomplete, reveal that the advisers have insufficient knowledge of the prospectus regulations or that inadequate investigations have been carried out when preparing for the process. Typical enquiries in this regard are applications for prospectus control, requests for advance guidance, exemption applications or interpretation enquiries. Examples:

- Procedural requirements that are readily available in guidelines on Finanstilsynet's website are not taken into consideration before submitting the enquiry. These include requirements for a timetable for the control process, attachments to the application for prospectus control, the submission of exemption applications, if relevant, and the completion of checklists.
- The enquiry contains incorrect or inconsistent information, including errors that could easily have been avoided if the enquiry had been thoroughly prepared or proofread before being sent. In the most serious cases, information that is crucial to how a case should be handled under the prospectus regulations is incorrect.
- The enquiry is from a legal adviser, but is based on an incorrect interpretation of the regulations in cases where the content of the relevant regulations has been discussed in key legal sources in this field.
- The enquiry is from a legal adviser and includes questions that have already been clarified, where the clarification is readily available in guidelines on Finanstilsynet's website.
- The enquiry contains an incomplete assessment of matters that are relevant to enable Finanstilsynet to provide advance guidance relating to financial information. This applies, among other things, to descriptions of the accounting treatment of transactions and restructurings. See also section 3 below, which concerns financial information in prospectuses.

If enquiries are incomplete or inadequate, they will be returned by Finanstilsynet. Finanstilsynet will then specify what needs to be rectified before the enquiry can be processed. For the companies, this can lead to delays in the control process, which in turn may delay ongoing or planned transactions or listings. In addition, increased use of resources on following up inadequate enquiries puts a strain on Finanstilsynet's capacity, whereby control processes and the processing of complete enquiries may take longer than normal.

Finanstilsynet will continue its practice of returning incomplete and inadequate enquiries. Advisers in particular are expected to become better at preparing enquiries to be submitted to Finanstilsynet and ensuring that they are of adequate quality. Finanstilsynet also expects advisers to better familiarise themselves with requirements and clarifications that are readily available and have been published by Finanstilsynet or ESMA⁴, or can be found in key sources of law in this field. Where the adviser uses employees with little experience with the

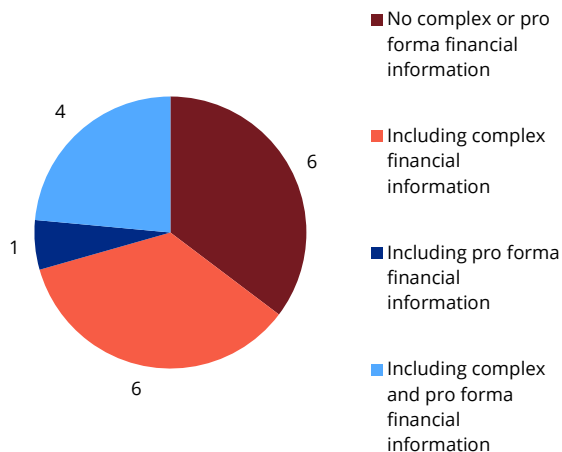
⁴ The following regulations are of particular relevance: ESMA (2021) [Guidelines on disclosure requirements under the Prospectus Regulation](#), (ESMA 2019) [Guidelines on Risk Factors under the Prospectus Regulation](#), and ESMA (2019) [Questions and Answers on the Prospectus Regulation](#). See also [ESMA's website](#) for the prospectus regulations.

prospectus regulations as contact persons in the control process, these contact persons are expected to be given the necessary in-house training and support.

3 Control of information in prospectuses

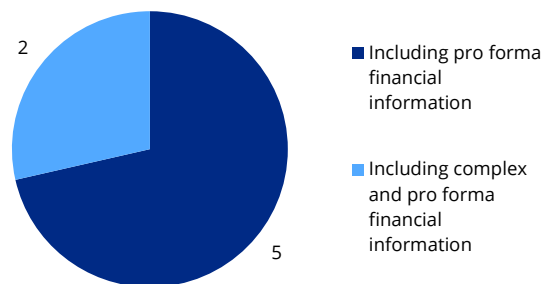
The observations below stem from the control of financial information included in prospectuses for initial public offerings and prospectuses with complex financial information and pro forma financial information and stem from 24 prospectuses. Charts 1 and 2 show the distribution of various types of prospectuses controlled by Finanstilsynet during the period from 1 January to 1 October 2021. A significant number of the prospectuses for initial public offerings have included either complex financial information, pro forma financial information or both.

Chart 1 Distribution of prospectuses for initial public offerings



Source: Finanstilsynet as at 30 September 2021

Figure 2 Distribution of other prospectuses



Source: Finanstilsynet as at 30 September 2021

3.1 Observations relating to information in prospectuses

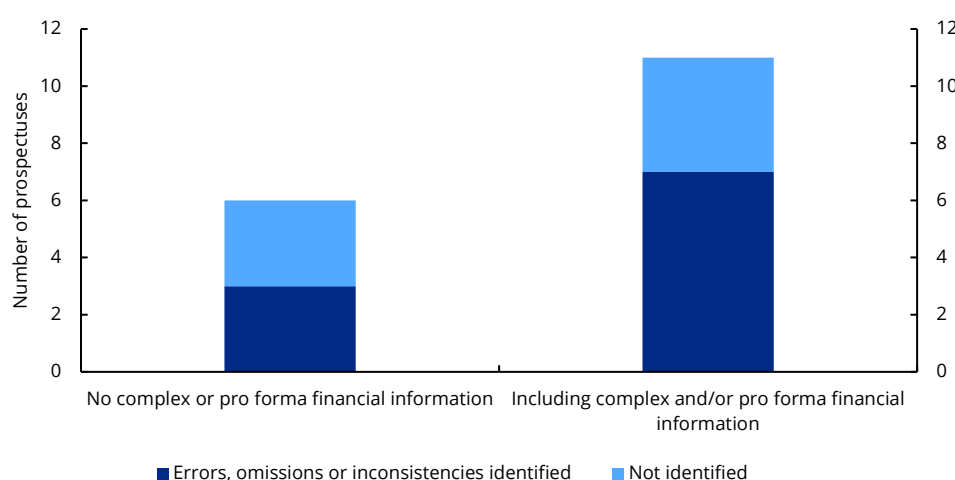
In several cases, Finanstilsynet has found that the information in the prospectuses has not been thoroughly prepared before being sent to Finanstilsynet. In ten of the prospectuses, Finanstilsynet's feedback has focused on errors, insufficient information or inconsistencies in the information provided in the prospectus. The following are examples of this:

- The financial information attached to the prospectus is misrepresented or inaccurate in the prospectus. In one case, it was stated in the prospectus that the company does not make use of derivatives, while the opposite was clearly stated in the financial statements.
- The financial information presented in the prospectus is so incomplete that the information in the prospectus becomes biased. In some cases, Finanstilsynet has observed that too much emphasis has been placed on financial information that is beneficial for the company.

- New material information is included in the prospectus during the process with Finanstilsynet. In one case, information about licences was omitted from the prospectus upon submission, but was included when requested by Finanstilsynet.
- There is insufficient information in the prospectus about significant factors in the financial statements, for example the assumptions underlying goodwill measurement.
- The conclusion in the auditor’s report has been misrepresented in the prospectus.

Chart 3 shows an overview of the number of prospectuses for initial public offerings where Finanstilsynet has identified errors, omissions or inconsistencies in the prospectus. Finanstilsynet notes that errors, omissions or inconsistencies have been identified in a higher percentage of the prospectuses that include complex financial information and/or pro forma financial information.

Chart 3 Errors, omissions or inconsistencies identified in prospectuses for initial public offerings

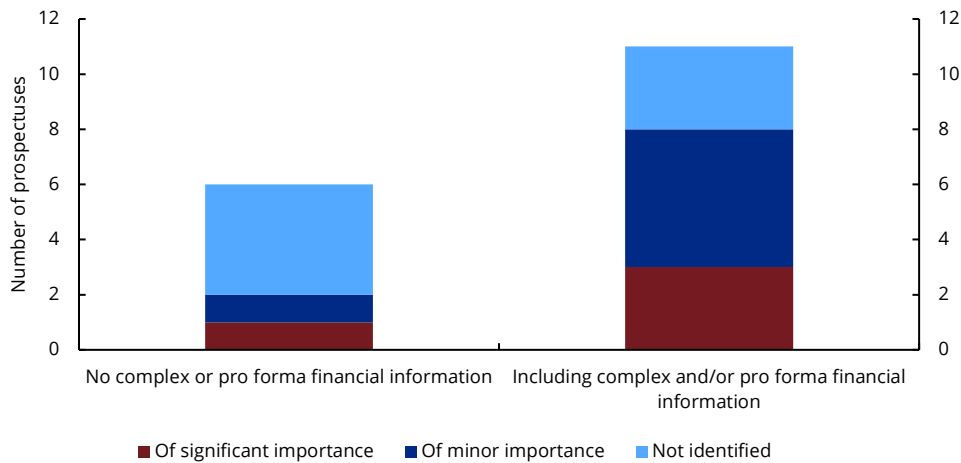


Source: Finanstilsynet as at 30 September 2021

3.2 Observations concerning financial information attached to the prospectuses

In a number of cases, Finanstilsynet has also identified errors or omissions in historical, combined or carve-out financial information that has already been audited and presented. This applies to prospectuses for initial public offerings where such financial information has been included and attached. Chart 4 shows an overview of the number of prospectuses containing identified errors and omissions in financial information that Finanstilsynet considers to be of either significant or minor importance, and the number of prospectuses where no errors or omissions have been identified. Finanstilsynet identifies errors and omissions in a greater number of prospectuses that contain complex or pro forma financial information.

Chart 4 Errors or omissions identified in financial information attached to prospectuses for initial public offerings



Source: Finanstilsynet as at 30 September 2021

In four cases, Finanstilsynet has identified errors and omissions that may be considered to be of significant importance to the financial information. Examples:

- Weaknesses/omissions in the assessment of the acquirer/acquiree in a business combination.
- Incorrect classification of a significant consideration from the sale of a subsidiary in the cash flow statement.
- Inadequate assessment and information about impairment indicators.
- Incorrect classification of seller's credit in connection with the sale of a subsidiary.
- A provision was reversed as an adjustment to the company's alternative performance measures.
- Failure to recognise seller's credit.
- Inadequate or misleading disclosures that are considered to be material to the company.

In addition, the following challenges related to the financial reporting were found in three other prospectuses:

- One case where incorrect financial statements were submitted.
- One case where there were material omissions in the management report.
- One case where a new and amended management report and financial statements were submitted during the ongoing process with Finanstilsynet without these documents being approved by the company's board of directors or a new audit report being submitted.

3.3 Observations relating to pro forma financial information

Twelve of the prospectuses contained pro forma financial information, and Finanstilsynet notes that this is where the omission of information is most prevalent. In eight of these prospectuses, errors and omissions were identified in pro forma financial information. They include:

- Failure to make adjustments to the pro forma financial information. An example of this is that no depreciation charge is recognised for identified excess values.
- No or incomplete explanations of the adjustments made.
- No or incorrect explanation of the assessment of whether pro forma financial information is required.
- Omission of transactions that should have been included in the pro forma financial information. This was the case in two of the prospectuses, and the transactions were included at Finanstilsynet's request.
- The pro forma financial information and the information in the prospectus is not consistent the specifications in the advance guidance.
- New pro forma financial information is prepared during the process with Finanstilsynet. This was the case for four of the prospectuses with pro forma financial information.

In May 2021, Finanstilsynet changed its practice concerning pro forma financial information.⁵ Pro forma financial information used to be included in the main part of the prospectus. Pro forma financial information is now required to be included as an appendix to the prospectus. A signed assurance report from the auditor shall be enclosed with the pro forma financial information when submitting the prospectus.

Finanstilsynet refers to the guidance on prospectus control as well as other regulations and publications. Finanstilsynet expects both the companies and their auditors to familiarise themselves with the content requirements in the advance guidances and pro forma financial information. Finanstilsynet emphasises that a signed assurance report from the auditor concerning the pro forma financial information shall be enclosed when submitting the prospectus. In cases where the company prepares new pro forma financial information, it must obtain a new assurance report from the auditor. The new assurance report must specify that it replaces the previous report.

3.4 Observations relating to alternative performance measures in prospectuses

19 of the prospectuses included information about alternative performance measures. In six of these, lack of compliance with the guidelines for the use of alternative performance measures established by ESMA was identified,⁶ including:

⁵ Finanstilsynet: [Prospectus control - practices and specifications](#) (in Norwegian only)

⁶ ESMA (the European Securities and Markets Authority) (2015): [ESMA Guidelines on Alternative Performance Measures](#)

- Four cases where information on the use, definition and reconciliation of alternative performance measures used in the prospectus had been omitted.
- One case where the previous year's segment information, which had been prepared for prospectus purposes, represented pro forma financial information, but was nevertheless assessed in accordance with the guidelines for alternative performance measures. In accordance with Section 4 of the Guidelines on Alternative Performance Measures, these do not apply to pro forma financial information. It is the pro forma regulations that regulate the use of such measures.
- One case where errors in the financial statements were corrected in the company's alternative performance measures.

3.5 Finanstilsynet's follow-up of financial information in prospectuses

In most cases where Finanstilsynet is of the opinion that information should have been reflected in the company's financial reporting, compensatory information will be required in the prospectus. Finanstilsynet emphasises that this is unfortunate, and that all relevant information should be reflected in the financial reporting that has been presented. The company is responsible for assessing how much compensatory information can be included in the prospectus without having to present restated financial statements. Finanstilsynet will interrupt the prospectus control if the shortcomings are material, and will require that new financial information is presented even if this will delay the listing process.

In cases where there are errors or omissions in historical financial information, the companies are expected to correct this in future financial reporting. Finanstilsynet would like to remind the companies that they are responsible for ensuring that the financial information that is presented is in accordance with current requirements. Finanstilsynet's approval of the prospectus is not a confirmation of the company's accounting policies. After the listing on Oslo Børs or Euronext Expand, Finanstilsynet may review the company's published financial statements (financial reporting supervision).⁷

Finanstilsynet emphasises that companies subject to an ongoing financial reporting enforcement case by Finanstilsynet when a prospectus is submitted for approval must state this in the prospectus. Finanstilsynet noted several cases in 2021 where this information was omitted from the prospectus upon submission.

⁷ Finanstilsynet: [Financial reporting](#) (in Norwegian only):

