



Quoted Companies Alliance

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ESMA
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Dear Sirs,

Draft regulatory technical standards under the new Prospectus Regulation

We welcome the opportunity to respond to ESMA's consultation on the draft regulatory technical standards under the new Prospectus Regulation.

The Quoted Companies Alliance Legal and Primary Market Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A. We have responded below in more detail to the specific proposals from the point of view of our members, small and mid-size quoted companies.

Response

A. Key financial information in the summary

Q1 Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?

We do not consider that KFIs extracted from the issuer's historical financial information should be sign-posted. Sign-posting this data will bring very limited added value to the information disclosed. Any KFI disclosed by the issuers should be considered as relevant. As the summary is an introduction to the prospectus, investors will be able to find in the prospectus all the necessary details and explanations regarding historical financial information and APMs.

Q2 Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.

We have no comments, other than to say that issuers should have as much flexibility as possible to determine what KFI should be included; see also our response to question 12.

Q3 Do you agree that cash flow from operations is the most useful measure of cash flow for non-financial entities issuing equity and that cash flow from financing activities and cash flow from investing activities are not so relevant for investors in equity securities?

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

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We disagree that cash flow from financing activities and cash flow from investing activities are not so relevant for investors in equity securities. Both cash flows from investing and financing could be relevant to investors considering different investment opportunities.

Flexibility should be given to issuers to decide whether KFI extracted from the cash flow statement are or are not relevant to include in the summary of the prospectus.

Q4 Do you think that investment companies which are subject to capital requirements should be required to include regulated capital ratios in their summary?

We have no comments.

Q5 Do you agree with the proposal to allow the use of footnotes to describe APMs or could this result in lengthy footnotes and complicated explanations?

We do not agree with the proposal as it could indeed lead to lengthy footnotes and complicated explanations. Companies do not consider using footnotes to describe APMs as necessary. The summary is an introduction to the prospectus and detailed explanations regarding APMs mentioned in the summary would be found in the prospectus.

Q6 Do you agree that issuers should be given flexibility to present pro forma financial information as additional columns to the relevant tables or as a separate table? If not, should a format be mandated, bearing in mind the page limit for the summary as well as the requirement for the summary to be comprehensible?

Yes, we agree that issuers should be given flexibility to present pro forma financial information as additional columns to the relevant tables or as a separate table.

However, we question the need to require the disclosure of pro forma adjustments (paragraph 48 of the consultation paper and paragraph 5 of article 2 of the draft RTS). Where an issuer decides to add columns, this obligation would result in lengthy tables with two additional columns (a pro forma adjustments column and pro forma KFI column). Once again, we stress that the summary is an introduction to the prospectus and should be kept short; all details regarding pro forma information should be found in the prospectus. Issuers should be given flexibility regarding all these aspects.

Q7 Do you agree that complex financial information in the summary should be presented according to its presentation in the prospectus? If not, please specify and provide alternative ways of presentation.

Yes, we agree that complex financial information in the summary should be presented according to its presentation in the prospectus.

Q8 Which financial measures are most useful for retail investors to determine the health of a credit institution? Do you consider that the CET1 is comprehensible for retail investors? Please specify.

We have no comments.

Q9 Do you agree that it should be mandatory for credit institutions to disclose SREP information in relation to Common Tier One Equity, the minimum prudential capital requirements, the Total Capital Ratio and the Leverage Ratio in the summary?

We have no comments.

Q10 Do you agree with the choice of measures for insurance companies?

We have no comments.

Q11 Do you think it would be useful for retail investors to include a measure of historical performance for closed end funds in the summary?

We have no comments.

Q12 Given the page limit for the summary please provide your views on which items of historical financial information would be most useful for retail investors.

We believe that there should not be any limit on the inclusion of historical financial information in the summary, and that there is no specific piece of information that would be most useful for retail investors. All information an issuer chooses to include in a summary is useful for the reader to make an investment decision and should be treated equally.

The requirements imposed by the Prospectus Regulation regarding the maximum length of the summary will ensure that the summary remains short and user-friendly. There is therefore no rationale for imposing a limit on the number of key financial information (KFI), including alternative performance measures (APMs), or any benefit to gain from such measure.

Issuers should be given the flexibility to include any additional KFI they deem necessary. Limiting the number of KFI could also potentially raise liability issues if there is inconsistency between information disclosed in the summary, the prospectus and other reports and disclosures made public by the issuer (e.g. annual financial reports, registration documents or press releases).

Q13 Would the issuer, offeror or person asking for admission to trading incur costs if the proposed provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

Imposing stringent rules and templates that would not always be relevant for all issuers in different situations could generate additional costs in drafting prospectuses. We are particularly concerned that the requirements imposed on summaries (limit in number of pages and risks) could potentially raise liability concerns, which could in turn increase the fees for drafting and reviewing prospectuses and the overall costs for issuers.

B. Data and machine readability

Q14 Do you believe that the data related to the amount raised should be made mandatory? Please explain your reasons.

No, we do not believe that the data related to the amount raised should be made mandatory. Requiring this piece of information to be provided would impose additional burden on the competent authority and also on issuers.

Q15 Do you agree with the data items that have been identified as necessary for the purpose of classification as well as to allow for the compilation of the annual report under Article 47 of the Prospectus

Regulation? Would you like to propose any additional items or suggest items that should in your view be deleted? Please explain your reasons.

We could agree with the data identified by ESMA as long as the collection of these data does not impose additional administrative burdens or costs to issuers (Please refer to our answer to question 17).

Q16 Do you agree with the ESMA proposal to maintain the current system in place whereby NCAs submit data to ESMA in XML format as the practical arrangement to ensure that such data is machine readable? Do you agree that, by keeping the data submission system unchanged, adaptation costs are minimised for the market at large?

We have no comments.

Q17 Do you agree that the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on the way data referred to in Annex VII are collected by NCAs?

No, we do not agree that the proposed amendment to the technical advice on prospectus approval could contribute to provide clarity on the way data referred to in Annex VII are collected by NCAs. We are concerned that such an amendment would transfer the administrative burden and costs of collecting the data to companies, whereas the responsibility to provide data to ESMA lies, according to the Prospectus Regulation, with the national competent authorities.

National competent authorities are entitled to require from issuers some information that would not be public at the time of the approval, but ESMA should ensure that this does not result in a transfer of responsibilities (as well as costs) to the issuers. We would like to emphasise that any data should be provided by issuers to the national competent authorities in text format and not in XML format (it is the responsibility of national competent authorities to deliver the data to ESMA in the appropriate format).

Q18 Do you have suggestions in relation to how the efficiency, accuracy and timeliness of the data compilation and submission process can be further improved? In your experience, is there any specific reporting format or standard that you would deem most appropriate in this context?

We would like to raise the issue of additional costs. Requiring issuers to provide additional data will add to the administrative burden and the costs of accessing capital markets finance without benefits for issuers. Prospectuses will be available on the issuers' website as well as on those of the national competent authority, the stock exchange and of the Officially Appointed Mechanism required by the Transparency Directive. We believe that the data compilation, in this regard, is disproportionate and unhelpful for issuers.

C. Advertisements

Q19 Do you consider that an advertisement should contain at least a hyperlink to the website where it is published and where available and technically feasible additional information that would facilitate tracing the prospectus? Please provide examples of the additional information that you think would be helpful to include in the advertisement.

We believe that advertisements (except oral advertisements) should contain a hyperlink to the specific page of the website where the prospectus was published or will be published.

However, we do not agree that ‘communication’ should be interpreted as widely as ESMA suggests. If it had been intended to widen the scope of the advertisements regime to such extent beyond ‘announcements’ this should have been made clear and further debated as part of Level 1. To extend the advertisements regime to, for example, written or oral bilateral communications would place a disproportionate burden upon issuers and their advisers without any obvious corresponding benefit. Furthermore, it may also lead to confusion with, and impact upon the effectiveness of the market soundings regime under MAR for bilateral communications. We believe that ‘communications’ should be interpreted as only communications that are publicly or otherwise widely disseminated and that should be reflected in the RTSs. To interpret it otherwise would seem contrary to the spirit and principle of the advertisements regime and would impose significant burdens and complexity upon market participants, making use of the markets less attractive. It would also be likely to lead to inadvertent breaches by market participants who would not expect a regime designed to regulate ‘advertisements’ to catch such a broad range of communications.

Q20 Do you consider that the definition for complex securities set out in para 140 provides clarity to issuers and would be helpful in deciding when the comprehension alert referred to in Article 8(3)(b) of the PRIIPs Regulation should be included in an advertisement?

We do not consider that the definition set out in paragraph 140 of the consultation paper would be helpful as regards to when the PRIIPs Regulation warning should be included in advertisements.

We believe that the definition of complex securities under MiFID II should not be used to determine what type of securities fall under the scope of PRIIPs. The PRIIPs Regulation does not contain a reference to “complex securities”. Complex securities under MiFID II should not automatically be considered PRIIPs and vice-versa.

Q21 Do you agree with the requirements suggested for Article 11 of the RTS? If not, please provide your reasoning.

The consultation question refers to Article 11, which seems to be an error. Article 11 refers to using XML for machine readable data and does not concern advertisements. Our answer below is on the assumption that the question meant to refer to Article 12.

We agree with the requirements suggested for Article 12 of the draft RTS provided that the scope of application of the advertisements regime is limited as noted in our answer to question 19. If it is not so limited, consideration should be given to proportionality and introducing a different regime for communications which are not publicly or otherwise widely disseminated as the original regime was not intended for such communications and it would be disproportionate to apply it to them; Chapter III of Commission Delegated Regulation 2016/301 was designed, and has been used for, ‘advertisements’ as previously understood and not the proposed broader interpretation of what constitutes a ‘communication’. We also would note that part 2(c) should be removed as suggested by our answer to Q20.

Q22 In particular, do you agree with the requirement to include warnings in advertisements? Do you consider that the suggested warnings are fit for purpose in terms of investor protection?

Yes, we agree with the requirement to include warnings in advertisements.

Q23 Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including whether they are one-off or ongoing and, quantify them.

We have no comments.

D. Supplements

Q24 Do you agree that Article 2 of the First Commission Delegated Regulation should be carried over, in its entirety, to Level 2 under the new regime?

Yes, we agree that Article 2 of the First Commission Delegated Regulation should be carried over, in its entirety, to Level 2 under the new regime.

Q25 Do you agree that the additional requirements identified from ESMA's draft technical advice should also be included?

Yes, we agree that the additional requirements identified by ESMA regarding profit forecasts and estimates and changes in the working capital statement of the issuer of underlying securities of depositary receipts should be included in the draft RTS.

Q26 Do you agree that the publication of audited financial statements by an issuer of retail debt or retail derivative securities should not trigger the requirement to publish a supplementary prospectus?

We have no comments.

Q27 Would the issuer, offeror or person asking for admission to trading incur costs if the aforementioned provisions are adopted? If so, please specify the nature of such costs, including quantifying them.

We have no comments.

E. Publication

Q28 Do you agree that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation need to be carried over to Level 2 under the new regime?

Yes, we agree that only Article 6(1)(c) and 6(3) of the Second Commission Delegated Regulation need to be carried over to Level 2 under the new regime. However, we feel that guidance from ESMA will be important as to how to reconcile restrictions on publication in foreign jurisdictions which are currently used in practice to avoid breaches of local securities laws and regulations (e.g. the US, Canada and Australia) with the requirement to publish electronically and not to restrict access to such publications (so that potentially they could be accessed from any jurisdiction). ESMA may also wish to consider addressing this in the RTSs.

Q29 Do you agree that no other publication provisions of the new Prospectus Regulation need to be specified by way of RTS? If not, please identify the provisions which should be specified.

Please see our answer to question 28. We have no further comments.

Q30 Do you believe that the proposed publication provisions will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

We have no comments.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'TW', is positioned above the typed name.

Tim Ward

Chief Executive

Quoted Companies Alliance Legal Expert Group

Mark Taylor (Chair)	Dorsey & Whitney
Maegen Morrison (Deputy Chair)	Hogan Lovells International LLP
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Martin Kay	Blake Morgan
Paul Arathoon	Charles Russell Speechlys LLP
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Quoted Companies Alliance Primary Markets Expert Group

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