EBF Ref.: D1241E-2011
JM

Brussels, 15 July 2011

Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.

Response to ESMA consultation on technical advice on possible delegated acts concerning the Prospectus Directive

Key Points

- The European Banking Federation (EBF) supports the objective of enhancing investor protection. However, the EBF is concerned that ESMA is proposing a regulatory approach that is overly burdensome without delivering any real benefits for investors, issuers and the market as a whole. Furthermore, the insufficient consultation period prevents an exhaustive response.

- The EBF believes that the production of a fixed list of items which are permitted to appear within the final terms would make it very challenging for the investor to read and understand and may create confusion i.e. it will be hard to see the forest for the trees.

- In order to maintain the Amended Directive's intention of further increasing the transparency and comprehensibility of securities prospectuses, the EBF strongly opposes the proposals to ban (i) the well-established practice of including the integrated form of the terms and conditions of the securities in the final terms (ii) all changes to pay out formulas (iii) the inclusion of Risk factors in the final terms and (iv) the description of proprietary indexes.

- A summary for each issue should not be added to the final terms. Such an addition would only add costs for the issuers of structured products without any benefits for investors. In any case, non-retail issues should be exempted from this suggested requirement. The development of standards for summary per issue/offer should await the PRIPs initiative to avoid duplication and further confusion for investors.

- Furthermore, the proposed modular approach to constructing the summary risks making it too long. If the approach to the summary of the prospectus outlined by ESMA is maintained it should be modified in favour of providing more flexibility to allow the summary to be tailored to the specific character of the individual securities. The Key Investor Information document introduced by the UCITS IV Directive could provide a summary template(s) model.

EBF a.i.s.b.l
ETI Registration number: 4722660838-23
10, rue Montoyer B-1000 Brussels
+32 (0)2 508 37 11 Phone
+32 (0)2 511 23 28 Fax
www.ebf-fbe.eu

EBF Approach & Interest

Banks benefit from the Prospectus Directive in their roles as both issuers and distributors of financial products. The Directive allows banks to market products EU-wide, and it ensures that they can offer a larger number of products to their clients. The European Banking Federation (EBF) therefore takes great interest in the development of delegated acts concerning the Prospectus Directive and welcomes the consultation by ESMA.

General Remarks

I. ESMA Approach

The EBF fully agrees with the general objective of enhancing investor protection, i.e. the investors' possibility to easily understand the offers and financial instruments issued under a prospectus. One of the principle aims of the Directive was to reduce the administrative and compliance cost burdens faced by companies to a necessary minimum without compromising the protection of investors and the proper functioning of securities markets in the Union. However, due to the generally restrictive and rigid approach proposed in the Consultation Paper (CP) the EBF fears that the Directive in combination with the proposed secondary legislation will further increase both administrative burdens and costs for companies.

In particular, the EBF is of the view that the proposals and ideas concerning the final terms and base prospectus set out in the ESMA Consultation Paper will not help to reach the objective of enhancing investor protection. On the contrary, the EBF expects the opposite; it believes that the system proposed would lead to the investors becoming more confused and having less chance of understanding while simultaneously increasing the risk of investors misunderstanding the offers.

II. Consultation Period

Better Regulation that adds more value than the costs it generates requires adequate time to be invested in its pursuit. As a result, the EBF does not agree with the very short period of consultation for the present set of questions and fears that such a short , clearly insufficient, period could lead to legislation that will have unintended consequences. This is particularly so in the given case as the CP lacks any impact assessment examining the proposed rules for companies, investors and the market as a whole.

The very short consultation period, coinciding with the summer holidays period for many members, means that the EBF has been unable to answer all of the questions and it may also result in individual members sending ESMA additional comments of their own. Given the insufficient consultation period, the EBF has concentrated on responding to the questions posed by ESMA concerning (i) the format of the final terms to the base prospectus and (ii) the format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary.

The EBF wishes to state clearly that for future consultations, a consultation period of at least three months is justified in order to thoroughly analyse and provide detailed feedback on the proposed way forward.

III. Format of the final terms

ESMA has been asked to provide advice on the schedules and building blocks for final terms while at the same time preserving the flexibility of the base prospectus regime. The EBF believes that this is the wrong approach as regards delineation between items to be included in the Base Prospectus and the Final Terms. Citing all possible alternatives in the base prospectus will lead to the base prospectus becoming impossible to read and understand by the investor, i.e. the base prospectus will probably become a more or less useless document for investors while at the same time it will lead to a substantially increased work load (costs) for issuers and their advisors.

Banning the well-established practice (in some European markets such as Germany) of including the integrated form of the terms and conditions of the securities in the final terms ("integrated conditions" style of final terms) (Para 30. CP), would not only evidently contradict the Amended Directive's intention of further increasing the transparency and comprehensibility of securities prospectuses, it is also improperly justified on the basis of an interpretation of the Prospectus Regulation which is in our view incorrect. Furthermore, the explicit exclusion of all changes to pay out formulas (Para. 51 CP) and of risk factors from the final terms (Para. 52 CP), as well as the prohibition on describing proprietary indexes "composed by the issuer" in the final terms (Para. 53 CP) would substantially decrease the possibility for issuers to adapt to market demand, and would therefore not be in line anymore with the intention behind the rules on final terms in the Prospectus Directive.

The final terms, in that certain facts in the base prospectus may not be repeated in the final terms, will not in themselves give a good description of the offer or the relevant instrument. We believe it would be much better if there was a summary of and in the base prospectus and that some key features could be repeated in the final terms that, where relevant, could specifically refer to sections in the base prospectus. Standards for summary per issue/offer should not be developed at this point in time, but instead we should await the development of the Key Investor Information Document standards to be developed in good order under the planned PRIPs legislation. If we have waited for three years already we could wait another year/s to create something that indeed adds value for investors – values that are higher than the cost for the issuers in meeting such new requirements.

From a consumer law perspective, the presently proposed approach could create a real problem. Could the issuer really rely on the investor being legally bound by the terms etc. if documented as proposed in the CP? How would this very important factor be ensured? Any risk in this respect would have to be mitigated.

If, in the end, the proposed ESMA approach is adopted it would be important to clarify that the summary to be added to the final terms shall not be required to be updated as it would only be created for the offer. Otherwise the work load and costs for issuers will increase disproportionately.

IV. Format of the summary of the prospectus

The EBF has some doubts about whether the mandate conferred on ESMA and accordingly the proposal outlined in ESMA's consultation vis-à-vis the summary is in line with article 5 of the Directive. According to that article a summary should provide key information in a concise manner and in non-technical language. The summary should also facilitate comparability of the summaries of similar securities. The EBF fears that there is a considerable risk that instead of serving as a useful instrument for investors, the summary will be added to the already long list of unread documents with little real use for investors.

In response to ESMA's actual proposals concerning the summary, in the opinion of the EBF, it would be preferable not to adopt such a rigid approach to content and order. The approach taken has many disadvantages that basically would result in ESMA putting form over substance.

Nevertheless, if ESMA persists with its current line of thinking then it would be preferable to select the required summary content in a "top down" way i.e. the required content points should be determined abstractly in order to facilitate tailoring to the needs of investors.The EBF strongly believes that this would prove to be more effective at enhancing investor protection.

Finally, at an overall conceptual level, the EBF would like to register the concern that if an investor can make the decision on the basis of the summary without reading the actual prospectus, the issuer's responsibility for the summary and its contents may be too weighty.

Response to Questions

I. Format of the final terms to the base prospectus (Article 5(5))

Q1: Do you consider the list of „Additional information "in Annex B complete? If not, please indicate what type of information could be classified as? "Additional Information" and to what item they could belong to (CAT A, CAT B or CAT C, as defined in Part. 3.III). Please add your justifications.

First of all, the EBF would like to state from the outset that it does not believe that attempting to constitute an enumerative list of required items is an effective way to enhance consumer protection. This method greatly impinges on the flexibility to add issue-specific information that is considered useful to the investor at the time of issuance. The EBF believes it is necessary to add flexibility to the proposed approach. Even if a list is deemed to be complete today, a new development or a subsequently identified omission would require that some other items will need to be added. If such a list is considered absolutely necessary by ESMA, at least it should not be set in stone in a Regulation, but rather be published by ESMA (e.g. Q&A Lists), thus allowing flexible additions from time to time when ESMA agrees that they are useful.

Concerning the question posed, first of all, the description of conflict of interests could also be classified as "Additional information" belonging to category A. Furthermore, the proposed differentiation between category B and C items, which would both generally qualify as potential genuine final terms content, is artificial and unclear. It would not take account of the sole relevant substantive decision criterion, namely if the information at hand could only be determined at the time of issuance. In addition, just by way of example, there may be programmes providing for only one calculation agent invariably for all securities issued. In these cases, it would not be justified to leave this determination completely to the final terms, as the proposed classification of this information item would do.

Based on the general approach proposed in the CP, at least the following information would need to be added as "Additional Information":

- *Country specific information*: In some cases, additional information is provided in the Final Terms regarding information relevant to the offer of the particular securities in a specific country. One example is information on the tax situation of the investor beyond the general tax situation required within the relevant annexes to the Prospectus Regulation. Given the variety of possible information disclosures, this should be classified as "CAT C".
- *Inducements*: In some countries, many issuers disclose the inducements paid to distributors, to further enhance transparency for investors. This information would have to be classified as "CAT C".
- *Selling Restrictions*: Securities might be subject to selling restrictions, i.e. they may not be eligible for issue, offer or sale in certain jurisdictions or to certain persons. This information should be classified as "CAT C".

Q2: As for the "additional provisions, not required by the relevant securities note, relating to the underlying" (included in Annex B), please provide the information which could fall under this item.

The EBF believes that a more detailed description of underlying instruments/assets, such as a description of how an underlying fund is constructed, could fall under this item.

Banning the well-established practice (in some European markets such as Germany) of including the integrated form of the terms and conditions of the securities in the final terms ("integrated conditions" style of final terms), would not only contradict the Amending Directive's intention of further increasing the transparency and comprehensibility of securities prospectuses, it is also improperly justified on the basis of an interpretation of the Prospectus Regulation which is incorrect in our view.

Legal rationale

The draft paper refers to Art. 26 (5) of the Regulation and argues that this provision allows for the replication of some, but not all of the information which has been included in the base prospectus according to the relevant securities note schedule. However, the mentioned provision, according to its clear wording ("In the case that the final terms are included in a separate document …"), only applies in the first of the two alternatives mentioned in the previous sentence of Art. 26 (5) ("The final terms … shall be presented in the form of a separate document containing only the final terms …"), whereas the second alternative specified there at that point allows the final terms to be fully included in the base prospectus.

As regards the further reference to the amended Prospectus Directive itself, Recital 17 must be read together with Art. 5(4) 3rd subparagraph of the Directive and clearly only pertains to the delimitation with regard to information that requires a supplement to the Base Prospectus. An interpretation to the effect that the word "only" would prohibit the reproduction of the relevant parts of the Base Prospectus is not covered by the context.

Even apart from such legal considerations, the claim that the "integrated conditions" style of final terms would be rendered unnecessary by the summary as the latter would give "a full picture to investors" is not convincing. The summary focuses on key information (Recital 15 and Art. 5(2) of the Amended Prospectus Directive). If the summary were to provide "a full picture" there would be no reason for explicitly excluding that the summary as such triggers prospectus liability (Recital 16 of the Amended Prospectus Directive). Therefore, the retail investor is legally expected to read a Base Prospectus of several hundred pages plus the relevant supplements thereto so as to get a full picture of a derivative product he is interested in acquiring with the help of "election sheet" style final terms, i.e., do the work that is currently done for him by the issuer.

Therefore, the proposed prohibition of the integrated conditions style of final terms should, in our view, not be upheld.

Q3: Under "CAT. B" items, is the list of details which can be filled out in the final terms complete? If not, please indicate with your justifications what elements should be added.

Instead of the enumerative list of items eligible for inclusion in the final terms proposed under Para. 44 CP, permission should be given to add any kind of specific detailed information which is neither a legal rule nor a formula. Otherwise, there would be a high risk of excluding information which – also from the authorities' point of view – only fills out the general information contained in the base prospectus. Just one example of such detailed information not covered by the proposal in the CP is alternative assets – for example certain shares - sometimes specified for the determination of the payout or delivery amount in case of a market disruption. If this system is to be used at all then an extra item "Other" must be added to provide flexibility and at least there must be a swift process within ESMA/the European Commission to add and maybe even delete items to/from the lists.

In addition, the EBF does not agree with the categorisation of some of the items in Annex A of the CP, based on the proposed general approach. Therefore, if the general approach is maintained, the following changes should be made to the categorisation:

- Annex V 2/VII.3: As set out in the general remarks above regarding the proposed concept, there are cases where a certain underlying may have specific risks not covered by the base prospectus. Accordingly, risk factors should be made a Cat. C item.
- Annex V 4.5 / Annex XII 4.1.6: For the same reason as regards the determination of the payout amount, for which, as set out above, amendments may be needed due to market conditions at the time of issuance, amendments to the ranking of the securities as specified in the base prospectus should be possible under the same condition. Accordingly, this item should be categorised under C.
- Annex V 4.7 (v) – time limit on the validity of claims: As set out in the general remarks above, there may be a need to alter this period for certain securities. Accordingly, this should be made a Cat. C item.
- Annex V 4.7 (xiii) / Annex XII 4.1.2: For the same reasons as set out as regards the description of risk factors above, there is a need to amend the information given in the base prospectus for certain types of underlyings. Accordingly, the EBF thinks these items should be categorised under C.
- Annex V 4.14: The countries, in which particular securities are issued under a base prospectus and offered or admitted to trading, is one of the key factors determined by market conditions at the time of issuance. In our view, it would be excessive to require the base prospectus to list countries and contain information on the taxation at source for all potential offerings (the result would be that all base prospectuses would refer to all EEA countries on a standard basis). Furthermore, information regarding „*countries where the*

offer to the public takes place "may be useful for supervisory purposes but not for (retail) investors. Therefore, such additional information should only be given on a voluntary basis rather than being required as part of the Base Prospectus or the Final Terms.Accordingly, if included at all, this should be made a Cat. C item. Competent authorities will be kept informed in the course of the particular notification procedure anyway.

- 5.2.1: The categories of investors to which securities are offered clearly depend on the market conditions at the time of issuance. This item should therefore be categorised under C.

Payment Formula (Para. 49, 51 CP)

As set out above, the feasible content of final terms can only be determined based on the question of if the information could only be determined at the time of issuance. Accordingly, the reference in the CP to the obligation of authorities "to review algebraic formulas along with … related definitions and descriptions as regards … completeness, comprehensibility and consistency" (Para. 49 CP, repeated under Para. 51 CP) is not covered by the legal basis for the use of final terms. In so far as it seems to express the understanding that such information, by its very nature, does not qualify as possible final terms content, even if it could only be determined at the time of issuance. The CP (under Para. 51 CP) further refers to the fact that a new payout can be interpreted as a new product, and for this reason has to be disclosed in the base prospectus. However, whilst the point could be made that information about a separate (new) kind of product can always be given before the time of issuance of the respective securities, the rules proposed by the CP would also exclude simple variations of products described in the base prospectus, for example by adding a minimum payout amount at the request of potential investors. Such instances of market demands cannot always be predicted at the time when the base prospectus is drafted. This is exactly the kind of flexibility which the introduction of a base prospectus was meant to provide for. Furthermore, it would prove impossible to include all information in numerical form, confirm a pre-existing option or to fill in dates.

Accordingly, the proposed rules should be amended so as to explicitly allow small and/or technical amendments to payout formulas without triggering a requirement for a supplement to the options or formulas in the final terms. (E.g. new sentences) as long as they only modify the product described in the base prospectus, and do not turn the security into a different product.

Risk factors (Para. 52 CP)

The necessity to include risk factors in final terms in addition to those in the Base Prospectus reflects the specific nature of a certain kind of underlying which the Base Prospectus generally specifies for inclusion in the final terms (for example a market index replicating the performance of a market with particular investment risks). A general prohibition on risk factors in the final terms would accordingly practically ban investors from choosing certain kinds of underlying within the final terms.

Proprietary indices (Para. 53 CP)

It is unclear why an issuer should be prohibited from including in the final terms the description of an index composed by the issuer itself where, on the other hand, the description of indices can be included if composed by third-party service providers; the more so as these indices can often also be easily substituted by baskets.

If, however, the proposed prohibitions are maintained, it would be absolutely necessary to at least clearly state that new risk factors and any new kind of underlying (including proprietary indices composed by the issuer) may be filed in a supplement to the Base Prospectus. Currently, some authorities do not allow for this, with the effect that a new (base or stand-alone) prospectus would be required and would have to go through the lengthy approval procedures.

Q4: Based on the instructions given in this document, could you please estimate the increase of the number of supplements to be approved in per cent?

Q5: Based on the instructions given in this document, could you estimate the increase of the relevant costs?

Due to the rigid specifications and the fact that an issuer as a rule at the time of the approval of the prospectus does not know how the market will develop over the next 12 months (duration of the Base Prospectus), he will often want to emit "new products". Since these are not described in the Base Prospectus, this can only be achieved via either supplements or a "stand-alone" prospectus. In jurisdictions where supplements are rarely accepted by supervisory authorities (Sweden for example), the number of supplements are unlikely to increase to a very large extent. Instead the number of standalone prospectuses could increase, or worse, this method of financing and product creation (derivative products) which is requested by clients could cease. Worse again would be if certain kinds of activities would somehow move to shadow banking like systems or outside Europe due to the proposed system being so rigid and inflexible on the one hand without increasing the overall value for investors on the other hand. The overall result of this will be a delay in the issuance process and considerably increased costs.

While it is hard to estimate the costs, the EBF assumes that they will increase substantially. This is based on the expectation that this regime will require substantially increased resources from the supervisory authorities, resources that they find difficult to secure already today. It is not only a matter of costs but also a matter of access to relevant/knowledgeable resources.

Q6: Do you agree with the proposed mechanism of combining the summary with the final terms? If not, please provide your reasons and an alternative suggestion.

Q7: Please estimate any possible costs that this mechanism would imply for issuers.

On the contrary the EBF proposes that the system is kept as it is and that movement does not preempt the long awaited PRIPs legislation which could provide a mechanism of combining the summary with the final terms. See explanation under General Remarks. Furthermore, as a matter of principle, investors placing their confidence in the financial market for a source of guidance should be treated with respect.

The EBF expects that the possible costs will be dramatic for all kind of issuers. However, they are not possible to estimate exactly at this point in time.

II. Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5))

Q8: Do you agree with our modular approach?

The EBF believes that the modular approach is too detailed and too inflexible. In our view, it would be preferable not to base the required content of summaries on the information items within the different annexes to the Prospectus Regulation. Such a fragmented bottom-up approach entails a high risk of making the summary too long, as a result of basing this on the single information items within the annexes. It would also impose an order and form for the summary which impairs its understandability for investors. The proposed rigid requirements for content and order would also prevent tailoring of the summary to the specific character of the individual securities, for which information could be relevant which is not included in the general template, or for which a different order could make the summary easier to understand for investors.

If ESMA continues to proceed with the approach they have outlined then, it would be preferable to select the required summary content in a "top down" way. The required content points should be determined abstractly, and this should be done independently of the security classification system underlying the annexes to the Regulation. They should also just take account of the items defined as key information by the amended Prospectus Directive, but not just mirror these points.

The development of the summary template(s) could be modelled on the creation of the Key Investor Information document introduced by the UCITS IV Directive, which also functions as a summary to a full (fund) prospectus. This would, at the same time, also ensure a close alignment with the likely content of a future Key Investor Information Document for securities. The EBF would like to take the opportunity to remind ESMA that the KIID is a tool created to help the –retail – investor to make a reasonable choice between two or more products; in the case of KIID for general prospectuses the issue to consider is that most of the content shall be adapted to each specific instrument and issuer. A bond is not equity, nor is a derivative, and amongst bonds the relevant information may not be identical if it is a plain vanilla corporate bond or a structured note, thus the EBF would like to point out the need for a careful approach in order to avoid oversimplification.

At the very least, there should not be a strict order of the suggested points within the proposed sections. Whilst aiming to ensure maximum comparability between different securities, such order would on the contrary severely impair the summary's readability, as it would prevent the placing of the information where it makes most sense for the security in question. For the UCITS KIID, the aim of ensuring comparability has not prevented the provision of freedom for the drafting of this document on the level of the individual information items (which are of rather high level nature).

Q9: Do you agree with our approach of identifying the mandatory key information to be contained within five sections?

The EBF would like to raise some practical questions concerning the proposed approach of identifying the mandatory key information to be contained within five sections e.g. the issuer information cannot be provided as proposed – how do you summarize a balance sheet?– and for information therein, the investor should be advised to read the prospectus.

Q10: Do you agree that we have provided sufficient flexibility for issuers and their advisers in drafting summaries – whilst ensuring that summaries are brief and provide the reader with the necessary comparability between prospectuses?

Unfortunately the EBF must profoundly disagree with the assertion that sufficient flexibility has been provided for issuers and their advisers in drafting summaries. ESMA's list of points to be taken into account amounts to 13 pages of small print. The EBF fails to understand how the summary could be considered brief information with that number of points to consider. It might be that the comparability between prospectuses would increase, but the tradeoff cost is much too high since the document will not be reader friendly or it may be even considered as not readable at all by the investor. Furthermore, with a complex company form, the length of summaries may vary between different companies.

Q11a: Do you agree that our approach adequately limits the length of summaries?

Q11b: What is "short" for a summary for: (i) an issuer; & (ii) an investor?

Q11c: Do you think that there should be a numeric limit on the length of summaries? If so how might that be done?

The EBF does not agree with the statement that the proposed approach adequately limits the length of summaries. On the contrary, we see a substantial risk that summaries would in many cases be too long, given that the proposed rigid content requirements would not allow the adoption of a holistic approach in the drafting of the summary.

Instead, only real key items should be pointed out to be included in the summary and the length of the summery could depend on a number of reasonable factors such as the complexity of the product and the category of investors for which the issue is intended.

In our view, the question of whether a summary is "short" always depends on the circumstances of the individual prospectus. Accordingly, there should not be a numeric limit to the length of summaries. At least in some cases, a limit would force issuers to leave out information from the summary which they regard as substantial to investors, and therefore impair both compliance with the general objective behind the summary, and create legal risk. A numeric limit would also not be congruent with the proposed detailed rules for the content of the summary.

Q12a: Do you agree with our proposed content and format for summaries? Q12b: Are there other pieces of information which should appear in summaries? and are there disclosure requirements in our tables which are not needed for summaries?

The EBF does not agree with the proposal that no additional information may be given in addition to the items contained in the proposed sections A to E. For the summary, principally the same considerations apply regarding additional information not foreseen in the applicable Annexes to the Prospectus Regulation as for the final terms part of the full prospectus, provided such additional information also passes the specific materiality test applicable for the summary. For example, additional provisions relating to the underlying may constitute relevant information for the summary as well.

As a rule, appropriate additional information should neither be prohibited nor limited (cf recital 5 of the Prospectus Regulation[1]). Therefore, and in order to maintain both flexibility of issuances and full investor information, Final Terms information should not be listed in an exhaustive manner.

In case the proposed general approach regarding summaries is maintained, the EBF has the following comments on the proposed detailed content requirements:

- In general, the EBF believes A1-3 is fine.
- However, the EBF believes that the B section is far too long. Also, regarding Point B.15: There should not be a requirement to disclose the issuer's competitive position. This would go beyond the requirements of the full prospectus, as the relevant annexes only require the "basis for any statements in the registration document made by the issuer regarding its competitive position".
- Points C.5, C.6, C.9, C.10, C.11, C.12, C.16 to C.21: For debt and derivative securities, these points constitute the core part of the description which payout or other

[1] Recital 5: The issuer, the offeror or the person asking for admission to trading on a regulated market are entitled to include in a prospectus or base prospectus additional information going beyond the information items provided for in the schedules and building blocks. Any additional information provided should be appropriate to the type of securities or the nature of the issuer involved.

entitlements investors have under the respective securities. For this information, it would particularly impair the summary's readability if a strict predetermined order of information was required. For example, in many cases it will make sense to combine the required "brief description of how the value of the investment is affected by the value of the underlying instrument(s) …." (C.16) with the overall description "of the rights attached to the securities" (C.5), and to have the information described under C.16 to C.21 together with the other detailed payout information required under C.9 to C.11 and not only after the aforementioned description. Accordingly, for the mentioned items at least, there should be no predefined order but just bullet points leaving the exact position of this information to the issuer. With C.7, the information is in the final terms already.

- The D section should be handled by reference to the base prospectus, at least D1-D3.

Q13: Is there a need to augment Point B.9 with additional disclosure requirements, such as key assumptions, or to state that the forecast is reported on in the main body of the prospectus?

The EBF does not believe this is value adding.

Q14: Do you agree with our proposal for amending Article 3, 3rd paragraph, Prospectus Regulation?

The EBF strongly disagrees with such a proposal. Such scrutinizing must be done at an overall EU level, so if anything, it should be ESMA that ensures harmonised requirements in this respect.

Q15: Could you estimate the change in costs that will arise from the proposals in this document for summaries?

While the effects are hard to predict, some costs can be expected to arise from the extra effort that will be required. For example, the documentation effort will increase and the issuance process will be significantly extended. In particular, because not all possible products in the base prospectus can be described, this could lead to a marked increase in basic prospectuses. In addition to the cost and time required for approval, the disadvantage of a large number of "smaller" base prospectuses is that the issuer must ensure a constantly updated description. Again, this costs time and money.

Furthermore, if the very complex and burdensome system for the summary of derivative products leads to this kind of financing ceasing as the EBF fears, the Federation would like to point out that in the first place such a situation would affect banks, but in the long term it could affect external financing for SMEs and other non-huge companies.

III. Proportionate disclosure regime regarding rights issues

N/A

IV. Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation

As a general rule, regulations should be the same for all enterprises on a particular market. However, the lending industry is also interested in making the capital market attractive for small and medium-size enterprises (SMEs) in order to give them options for selecting the most affordable type of corporate financing from a broad spectrum of offerings. Various initiatives by the European exchanges are currently taking into account the special requirements of such enterprises, for example, for a less complex and cost-intensive reporting regime. The initiative by Deutsche Börse AG may be mentioned here as an example. Among other things, it has created the so-called Entry Standard to provide SMEs a simple, fast and cost-efficient mode of admission to exchange trading. The Entry Standard is a sub-segment within the OTC market, which is not an organised market within the meaning of MiFID. Enterprises which desire a more visible position within the OTC market and wish to provide the capital market with more information than is normal on the OTC market opt for a listing in this segment. The increased, and thus also more cost-intensive, requirements of the organised market, however, need not be satisfied. There are also similar initiatives at other European exchanges such as the London Stock Exchange, which has created the Alternative Investment Market (AIM).

On the other hand we are like ESMA (Para. 139 CP) hesitant regarding the idea of establishing a sub-market within the organised market having less stringent requirements. The term "organised market", which originates from MiFID, stands for governmentally approved and supervised markets. Consequently, an enterprise's admission to such a market must be seen as a quality characteristic, on which not least the investors also rely (investor protection). If SMEs that are traded on such an organised market were burdened with less stringent disclosure standards than other enterprises traded there, this would possibly lead to an overall degradation of the "organised market" quality characteristic. In this respect, caution appears to be advised with regard to simplification rules for SMEs in relation to organised markets.

Q37: Do you agree that a full prospectus should always be required for an IPO and for initial admission to a regulated market (as described in paragraph 141 above)?

Yes.

V. Proportionate disclosure regime regarding credit institutions and other issuers

Q46: Do you agree with the proposal to require historical financial information covering only the last financial year for credit institutions issuing securities referred to in Article 1(2)(j) of the Prospectus Directive?

The EBF agrees with the proposal that credit institutions issuing securities referred to in Article 1(2)(j) of the Prospectus Directive shall be required to provide historical financial information covering only the last financial year. However, the EBF would like to point out that if, in fact, no considerable facilitations shall be granted it is very unlikely that any opting in will take place.

Q47: "In performing its work on the proportionate disclosure regime, ESMA has sought to identify all possible omissions with regards to content of prospectuses as part of this Consultation Paper, however do you believe that further omissions are possible particularly with respect to the areas indicated in the request for advice by the Commission?"

The EBF is not opposed to the proposal regarding further justifiable omissions.