



European Securities and Markets Authority (ESMA)
11-13 avenue de Friedland
75008 Paris
France

14 July 2011

Dear Sirs

Response to ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

We are writing to you as representatives of the PricewaterhouseCoopers network of firms and are pleased to have the opportunity to respond to your request for comments on the technical advice on a number of possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU set out in the consultation paper of 15 June 2011 (EMSA/2011/141).

We welcome this consultation and support the overall proposals for the standardisation of summaries and the introduction of proportionate disclosure regime in certain situations. In particular, we are highly supportive of the initiative to introduce a proportionate disclosure regime for rights issues in order to reduce the regulatory burden on issuers, particularly because such issuers are already bound by the periodic reporting requirements of the Transparency Directive. We also agree with you that the proposals for proportionate disclosure could be extended beyond just rights issues to further offers which have similar characteristics to rights issues.

We support the general proposal to introduce a standard summary which would provide readers with comparable information. There are certain areas, however, where we have concerns that the proposals will restrict the flexibility of issuers and potentially significantly increase the length of the summary.

Whilst it is not possible for us to give any detailed analysis in terms of the cost implications of the proposals, our expectation is that the cost to issuers would be lower if the proposals were adopted in their current form.

We have not answered all of the questions but our response covers those questions where we have a view, as set out in the attached appendix. Should you wish to discuss our response, please contact Kevin Desmond at kevin.desmond@uk.pwc.com or Sarah Harvey at sarah.l.harvey@uk.pwc.com.

Yours faithfully

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP, 1 Embankment Place, London WC2N 6RH
T: +44 (0) 20 7583 5000, F: +44 (0) 20 7822 4652, www.pwc.co.uk

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Part 4.II - Discussion

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?

- A list of disclosure requirements does not provide any flexibility for issuers and potentially runs the risk of damaging the quality of the prospectus. A summary should be an appropriate summary of the prospectus to which it relates; as the matters affecting each issuer are different, the prospectus for each issuer will also be different. An example may be a mineral company, for whom the expert's report is key information; or a property company, for whom the property valuation report would be significant information for investors. Both of these reports would normally be explicitly referred to in the summary.

Q12a: Do you agree with our proposed content and format for summaries?

We have a number of comments in this area and have summarised the relevant points below:

For each point the summary should disclose: the point's number; the disclosure requirement; and the disclosure.

- We believe that listing each disclosure requirement will make the summary long and disjointed to read. Whilst we support the principle of ensuring each disclosure point is covered in the summary we do not agree with the proposal to include the full disclosure requirement; the same goal could be achieved by the inclusion of the disclosure point reference. The current proposal would increase the length of the summary considerably.

Point B.8 – A brief summary of any pro forma financial information, identified as such

- We do not see any real benefit in including additional pro forma information in the summary. Our concern is that a pro forma statement requires the footnotes for an investor to read it in the correct context. Whilst a pro forma statement is a useful tool, it is not necessarily key to an investment decision and reproducing the full statement and footnotes in the summary would make the summary longer than necessary. Also in our experience the full pro forma statement is not included in summaries currently being prepared by issuers and therefore there may be no real benefit of including it in future.

Point B.10 – A brief description of the nature of any qualifications in the historical financial information

- We suggest that the text be reworded as “A brief description of the nature of any qualifications in the audit report on the historical financial information.”.



Point B.11 – The working capital statement

- It would be simpler for the disclosure requirement to be ‘The statement on working capital’ or to track the wording of item 3.1 of Annex III rather than including further detail here.

Points D.1, D.2 and D.3 – Key risks

- The description of key risks in the document is important to investors. Currently it is normal for summaries to include the risk factor title but no further information. It is difficult to know how much to write about a risk factor in order to provide ‘key information’ because arguably the entire risk factor is key information. We suggest that the current practice of listing the risk factor titles is maintained.

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?

- Yes, there is a need to augment point B.9 - we believe that it would be essential to include key assumptions with the forecast as they are important in providing the reader with the correct context of the forecast.

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

- Whilst it is difficult to quantify, we believe that costs would increase as a result of the proposal to include mandatory information in the summary for example additional legal costs in discussing and finalising the drafting, together with additional printing costs.

Part 5.II – Proportionate disclosure regime regarding rights issues

Q16: Do you agree with the proposal to consider that ‘near identical rights’ should have the same characteristics than pre-emption rights? Do you agree with the definition given in paragraph 117? Are there any other characteristics which should be taken into account?

- We agree with the principle of this proposal; however we believe that this would be best dealt with by a change in the law rather than the current proposed process. Whilst understanding the aim of the proposal, we believe that issuers need legal certainty; allowing a practice to develop which may not be legally certain would, in our view, be best avoided.

Q17: Do you agree that there should be only one single proportionate regime and not two separate regimes, one for regulated markets and one for MTFs?

- We agree with the principle of a single proportionate regime for regulated markets and MTFs.



Q18: Do you agree with the proposal to consider that appropriate disclosures requirements for MTFs would include as a minimum, obligations to publish:

- **annual financial statements and audit reports within 6 months after the end of each financial year,**
- **half-yearly financial information within a limited deadline after the end of the first six months, and**
- **inside information?**

- We agree with the proposals in relation to the obligations to publish annual financial statements and audit reports within 6 months of the year end, half yearly information in relation to the first six months within a limited deadline and inside information.

Q19: What should be the maximum deadline for publishing half-yearly financial statements?

- We note that many MTFs already have rules requiring them to publish financial information within certain deadlines and we believe that 4 months would be an appropriate deadline and in line with current deadlines for certain MTFs.

Q26: Do you agree with the proposed items which could be deleted from Annex I (Minimum Disclosure Requirements for the Share Registration Document) and Annex III (Minimum Disclosure Requirements for the Share Securities Note) of the Prospectus Regulation?

- We agree with the list of proposed items and we also suggest that the requirement to disclose capitalisation and indebtedness of an issuer be deleted on the basis that the capitalisation information is derived from the issuer's previously published information and the indebtedness statement could be misleading without the context of the issuer's full balance sheet drawn up at that date.
- Whilst we agree that the Operating and financial review could be deleted, we note that market practice in certain territories may cause issuers to continue to include such information.

Q32: Do you agree with the proposal to require only the issuer's historical financial information relating to the last financial year?

- In our view, no financial information is needed, on the basis that the audited financial statements have already been published and the issuer will extract selected financial information from these for inclusion in the prospectus. However, if you do require financial information to be presented, we support the proposal to include only the last year of historical financial information, together with comparative data as required by IAS 1. We note that IAS 1 requires full comparatives to the notes to the financial statements and therefore we suggest deleting the words 'but the comments in the notes to the financial statements will only cover the last year' in the final line of paragraph 127. Issuers will then use the most recent audited financial statements as published.



Part 5.III – Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation

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)?

Q38: Do you agree with the proposal summarized in the table in paragraph 141?

- We agree with the principle that a full prospectus should always be required for an IPO because companies will be unknown to investors at this stage; we also agree that for further offers a proportionate prospectus would be appropriate.