

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

25 February 2011

Dear Sirs

Request for ESMA technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

We are writing to you in response to your request for comments in relation to the request for technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU. We are delighted to work with you and will respond to any formal consultations you might make over the next few months.

In this letter we have concentrated on responding to points we consider it is appropriate for us to comment on, namely the proportionate disclosure regime, profit forecasts or estimates and audited historical financial information.

3.3 Proportionate disclosure regime

- (a) Non-pre-emptive further offers** – As set out in our previous response to the European Commission dated 4 March 2009 in relation to the Review of the Prospectus Directive, which we attach as Appendix 1, we fully support the recommendation to reduce the regulatory burden for non-pre-emptive further offers. In that response we highlighted a number of areas that we believe could be omitted in a prospectus relating to such offers. In addition, we would recommend consideration being given to the removal of the requirement for disclosure of capitalisation and indebtedness.

One further observation would be that, since the Transparency Directive is now fully implemented across the EU, is it appropriate to consider whether there is a need to include disclosures in a Prospectus that are already disclosed in an issuer's report and accounts (such as risk factors and financial review). In our experience, it appears that a major cost to issuers in producing a Prospectus is the re-presentation of information already in the public domain.

Whilst the proposed changes may benefit all issuers, we note that other developments have occurred since the introduction of the Prospectus Directive, such as the internationalisation of disclosure practices in prospectuses, which may mean that this benefit will not accrue to issuers that make offers in the international markets outside of Europe.

- (b) SMEs and companies with reduced market capitalisation** – We believe that a proportionate disclosure regime for non-pre-emptive further offers would be of significant benefit to SMEs and companies with reduced market capitalisation, since they are more likely to be regular issuers of further equity capital and the costs are typically higher relative

to the amounts of capital being raised. Furthermore, SMEs and companies with reduced market capitalisation are less likely to access the international capital markets and would therefore benefit from such reduced disclosure.

Should there be demand for proportionate disclosure for SMEs we believe this would be best achieved by extending the benefit of the proportionate disclosure regime for further issues to enable SMEs raising equity capital, where pre-emption rights have been waived, as is more often the case for such companies e.g. when making acquisitions using their shares or placing shares with a small number of new investors. This would also have the advantage of creating only one additional disclosure regime covering all circumstances when proportionate disclosure is permitted.

We believe that it would not be useful to reduce the disclosures for SMEs and companies with reduced market capitalisation in relation to the disclosures required for a registration document for an IPO.

We note that there are a number of markets that operate in various member states in Europe that have a reduced disclosure regime and are therefore attractive to SMEs wishing to raise equity capital as an alternative to an EU regulated market to which the Prospectus Directive applies.

4. Review of the provisions of the Prospectus Regulation (Articles 5 and 7).

- (a) Profit forecasts or estimates** – We believe it is difficult to differentiate, in legislative terms, circumstances when a report might be required from those when one might be considered to be unnecessary. For example, a report from an independent accountant on a profit forecast or estimate included in a prospectus explicitly as part of the support for an issue provides investors with confidence in the proper compilation of the forecast. In other circumstances a previously issued forecast could have less relevance for the prospectus, when for example a new holding company is introduced over an existing listed issuer.

One area where some relaxation might be considered is those circumstances where a fourth quarter results announcement or preliminary annual results announcement might be treated as a profit estimate. One potential amendment would be for announcements produced in accordance with IAS 34 to be considered historic financial information rather than a profit estimate and therefore should not be required to be reported on as a profit estimate.

On balance we believe that it may be appropriate to address these different situations in your Frequently Asked Questions rather than potentially over-complicating the drafting in the Prospectus Regulation itself.

- (b) Audited historical financial information** – we believe that our response in 3.3 above addresses this point and feel that historical financial information does not need to be disclosed in a prospectus for a non-pre-emptive further offer if it is already in the public domain.

We look forward to receiving further consultations on these matters. Should you wish to discuss our response, please contact Kevin Desmond at kevin.desmond@uk.pwc.com or Tessa Parry at tessa.parry@uk.pwc.com.

Yours faithfully

PricewaterhouseCoopers LLP

APPENDIX 1

By email to markt-g3@ec.europa.eu

European Commission
Directorate-General Internal Market and Services
B-1049 Brussels
Belgium

4 March 2009

Dear Sirs

Review of Prospectus Directive

We are writing to you, as representatives of the PricewaterhouseCoopers network of firms, in response to your request for comments on the proposals arising from your review of Directive 2003/71/EC on the prospectus to be published when securities are offered to trading (the "Prospectus Directive").

We welcome this consultation and support the overall objective of simplification and administrative burden reduction. We agree that the proposals you have proposed to amend the Prospectus Directive will meet these objectives. Specifically, we support the elimination of the Article 10 "annual list" disclosure requirement, which, in our view, serves no useful purpose. We have no objection to the other proposals that you are making that, collectively, reduce the number of circumstances when a prospectus might be required.

We do, however, have some comments on the other issues identified for comment in the "Background Document" accompanying the consultation proposals.

In particular, we do not believe that regulated markets are best served by eliminating the issue of a prospectus when, for example, a rights issue is taking place, as advocated in Section 4.5. However, we believe that there is scope for reducing the content requirements for a further issue prospectus. This would ease the administrative burden of preparing a prospectus particularly in those markets where rights issues are commonly used to raise further equity capital.

Such reduced disclosure requirements would be justified by reference to the fact that their operation would be restricted to those issuers whose equity securities are traded on an EU regulated market as they are bound by the periodic reporting requirements of the Transparency Obligations directive.

In passing, we would note that a number of Member States operated a lighter disclosure regime for further issues than initial listings prior to the implementation of the Prospectus Directive.

We have summarised in the appendix to this letter disclosures required by Annex I to EC Regulation on Prospectuses No 809/2004 that, we believe, should be considered for omission from a prospectus issued by a company already traded on an EU regulated market where the offer of

securities requiring the production of a prospectus is made wholly or mainly to the company's existing shareholders such as would be the case in connection with a rights issue. We would encourage you to work with the Committee of European Securities Regulators in bringing forward proposals to this effect.

Whilst advocating less disclosure in a rights issue prospectus as a measured response to the concerns of issuers over the cost and effort necessary to produce a prospectus, there are certain disclosures that we believe are critical to an investor when making an informed assessment of an issuer's financial position and prospects. Notable among these is the working capital statement which, we believe, provides an important disclosure that provides investors with comfort as to the short term financial health of the issuer.

A reduced disclosure approach would also have the benefit of addressing the concerns of small quoted companies whose equity shares are traded on an EU regulated market seeking to issue additional amounts of capital highlighted in paragraph 4.3 to the Background Document.

Should you wish to discuss our response, please contact Kevin Desmond at kevin.desmond@uk.pwc.com.

Yours faithfully

PricewaterhouseCoopers LLP

APPENDIX

Suggested disclosures that could be omitted from a rights issue prospectus

Annex	Item	Description	Reason
I	6	Business overview	Existing shareholders do not need this information to be repeated as they should already be aware of this.
I	7	Organisational structure	Existing shareholders do not need this information to be repeated as they should already be aware of this.
I	8	Property, plant and equipment	Existing shareholders do not need this information to be repeated as they should already be aware of this.
1	9	Operating and financial review	To the extent that historical financial information is not needed, see I, 20.1 below, it should not be necessary to include this.
I	11	Research and development	Existing shareholders do not need this information to be repeated as they should already be aware of this.
I	15	Remuneration and benefits	To the extent required to be disclosed by a Member State in or with an issuer's annual financial report this does not need to be repeated.
I	16	Board practices	To the extent required to be disclosed by a Member State in or with an issuer's annual financial report this does not need to be repeated.
I	20.1	Historical financial information	The Transparency Obligations Directive requires the disclosure of the annual financial report. This information does not need to be re-presented to existing shareholders. It should be noted that the complex financial history provisions should continue to apply as, for example, financial information on an acquired, or to be acquired, entity significant to the issuer would not be otherwise available to the issuer's shareholders.
I	20.6	Interim financial information	The Transparency Obligations Directive requires this to be published within 2 months of the end of the relevant period to all shareholders.
I	25	Information on holdings	This disclosure incurs cost to issuers in presenting information often previously published in the annual financial report by virtue of CESR's recommendations that is of little benefit to investors.