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European Securities Markets Authority
For the attn. of Verena Ross,
Executive director
103 Rue de Grenelle
75007 Paris, France

15 July 2011

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

Dear Verena,

ESMA's advice fails to achieve the aim of reducing administrative costs and burden to issuers when raising capital, as set out in the Commission's mandate and as supported by the European Parliament. Our key concerns are:

A summary should remain a summary, not become a mini prospectus
According to the Commission "*The summary of the prospectus... is a self-contained part of the prospectus and should be short, simple, clear and easy for targeted investors to understand.*"

ESMA's proposals would not fulfil this aim and would lead to excessively lengthy summaries. We disagree with ESMA's recommendation that a summary should be a fresh assessment of the key information in the prospectus and that no cross-references should be inserted.

We want a truly proportionate disclosure regime for SMEs and Small Caps
Again, ESMA has failed to fulfil its mandate by not taking into account the size of issuers. We disagree with ESMA's objections to the proportionate disclosure regime for SMEs and Small Caps. Disclosure should focus on material information based on what investors really want, rather than a formalistic approach which considers all annexes as key information.

We are very concerned by the costs of being listed, which act as a disincentive for companies when compared to private placements. Public offers have declined in Western Europe in the last 10 years, while bank capital is expected to be reduced for smaller companies, but the advisory costs of producing a full prospectus are simply not worth an IPO for most SMEs.

No mini-prospectus via final terms
The proposals for the format of the final terms would lead to a major limitation of the use of base prospectuses especially in the context of multi-issuer debt programmes: ESMA's proposals seem to demand a "mini-prospectus" for each issue under a base prospectus because a summary should be fully completed for the individual issue and annexed to the final terms.

A truly proportionate disclosure regime regarding rights issues
We estimate that the costs for a full prospectus can range from €500,000 to €2,000,000; these costs include fees paid to law firms, audit firms and the costs to print copies.

Issuers listed on regulated markets (and to an extent those on MTFs) are already subject to the Transparency, Market Abuse, 4th & 7th company law and Takeover Bids directives, as well as recommendations 2004/913/CEE and 2009/385/CE on remuneration. We therefore propose the deletion of: i) all financial information already available under the Transparency Directive; and ii) information about major shareholders already available in the directors' report, Takeover Bids and Transparency Directives. We support wide use of incorporation by reference in order to reduce administrative burdens.

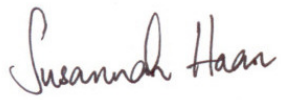
We believe that the proportionate disclosure regime for rights issues should recognise that there are differences in ongoing disclosure for those companies on regulated markets (where all the European Financial Services Directives apply) and those on MTFs (where some Directives do not apply).

Exclusion of smaller companies from EU policymaking debate
This consultation is particularly relevant to smaller companies, who have only limited resources. The timescale given to respond (1 month) was too short to enable a proper discussion at EU level on all technical issues, especially given the lengthy consultation paper (181 pages of technical detail).

We attach a more detailed response prepared and supported by our members The Quoted Companies Alliance, MiddleNext, Deutsches Aktieninstitut and Associação de Empresas Emitentes de Valores Cotados em Mercado. Others were unable to join due to the short deadline and reserve the right to come back with additional comments later.

We urge ESMA to allow more time in the future, as otherwise the views of smaller companies will be effectively excluded from participation in EU policy debates. It is hard to see how this is in the best interests of European markets.

Yours sincerely,



Susannah HAAN
Secretary General

Enclosure:
- Technical response to the consultation prepared and supported by our members The Quoted Companies Alliance, MiddleNext, Deutsches Aktieninstitut and Associação de Empresas Emitentes de Valores Cotados em Mercado.

CC :
- Ugo Bassi, Head of Unit Securities Markets, European Commission;
- Sharon Bowles, MEP, Chair of the Economic and Monetary Affairs Committee;
- Wolf Klinz, MEP;
- Anna Lekston, Financial Attaché, Polish Permanent Representation to the EU.

EuropeanIssuers' *aim is to represent the views of publicly traded companies in Europe as users of financial markets, and to promote good corporate governance and responsible share ownership. Our members include both national associations and companies from all sectors in 14 European countries, where there are some 9.200 such companies with a combined market value of some € 5.000 billion.*

More information can be found at www.europeanissuers.eu.

ANNEX

Response to ESMA – Technical advice on possible delegated acts concerning the Prospectus Directive

Response prepared and supported by The Quoted Companies Alliance, MiddleNext, Deutsches Aktieninstitut and Associação de Empresas Emitentes de Valores Cotados em Mercado.

Introduction

As asked by ESMA to indicate any material concerns over the impact of the advice being considered, including considerations if it may lead to unfair or disproportionate financial or administrative burden, we would like to indicate the following: we have appreciated very much the Amending Directive's (2010/73/EU) (hereinafter the AD) main objectives as are increasing efficiency in the prospectus regime, reducing administrative burdens for companies when raising capital in the European securities markets, and enhancing investor protection. Now ESMA has a second chance to promote all of these aims in a balanced way when proposing possible delegated acts.

Part 3 – Format of the final terms of 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 would belong to (CAT A, CAT B or CAT C, as defined in Part 3.III). Please add your justifications.

We agree that in final terms there has to be additional information which is not technically part of the securities note, but materially belongs to it, like the name of the issuer. It should be made clear by ESMA, though, if such information is a repetition of information in the base prospectus which would be the case for the name of the issuer: no legal uncertainty should be left in this respect.

Also, it should be considered that also the following is such "additional information":

- Country specific information which can be relevant for the offer of particular securities in a specific country
- Inducements paid to distributors which issuers disclose to further enhance transparency for investors.
- Any other product specific information like risk factors that may have impact on the assessment of the securities from an investor perspective.

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

No answer.

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.

ESMA's proposals for the format of the final terms will lead to a major limitation of the use of base prospectuses especially in the context of multi-issuer debt programmes: simple variations of debt products, even if they are not material and may therefore be covered by a general description in the base prospectus and its summary, may according to the suggestions no longer be included in final terms.

No. 51-54: ESMA is of the opinion that redemption and settlement procedure of the derivative and so effect of the underlying asset on the investment and risk factors associated with the issue shall be laid down in the base prospectus.

On the other hand, the possible content of final terms is based on information available only by the time of the issue. We are of the opinion that ESMA's view that authorities are obliged "to review algebraic formulas along with (…) related definitions and descriptions as regards (…) completeness, comprehensibility and consistency" (p. 17) cannot overrule this basic principle for the use of final terms in a way that even if such information can only be provided at the time of issuance it cannot be included in final terms. This would, by nature, exclude some financial instruments from the reasonable use of the base prospectus regime. Until now it was possible to issue index linked financial instruments under a base prospectus. This does not make sense anymore if changes to the index in a later issue have to be supplemented to the base prospectus. Also, simple variations of e.g. debt products that are not material for the evaluation of key information and risks described in the base prospectuses due to later market demand should not be seen as new products and be allowed to be included in final terms.

Also, integrated terms and conditions should not be restricted in final terms as it enables investors to read the full (integrated) text of the terms and conditions in one document and not necessarily the long form terms and conditions as outlined in the base prospectus together with an "election style" form of the final terms. Especially for retail investors it is advantageous to have the legal terms applicable to the issuance in one document only. There is a well established practice in the European market.

The proposals would restrict issuers from including different debt products in one base prospectus which would lead to the necessity to have many base "specialised" prospectuses, each covering different variations of debt products. The alternative to provide supplements for variations of debt products is not only burdensome but causes the problem that each such supplement triggers a withdrawal right pursuant to Article 16 (No. 63).

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?

The categorisation of possible final terms content seems rather complicated and is in our view not always led by the principle that some information on the issue just cannot be determined by the time of approval, or that supplements are now generally given a priority. As stated above, the new clarification could lead to special prospectuses which would only be useful for some issues under a programme.

This was not the kind of guidance that issuers had hoped to get in order to achieve more legal security. In point 63 ESMA sees the problem that the Prospectus Directive (hereinafter the PD) would have to be amended again so that the supplement in regard to one issue would not lead to the right to withdraw for investors for all issues under the base prospectus which would open the door for abuse.

There will be a loss of flexibility which the base prospectus regime was intended to provide and increased liability. So, a lot more specialised base prospectuses will have to be set up in order to avoid this (see also our answer to Q3).

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

Under the new approach regarding final terms for every issue additional time and internal resources for documentary efforts and internal or external legal advice would be required which would lead to relevant additional costs. The decreased flexibility in use of market conditions and the increased withdrawal opportunities would lead to unpredictably high costs.

In order to avoid withdrawal rights due to supplements more specialised base prospectuses will have to be set up.

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.
We appreciate the co-legislators' aims to improve the summary of the prospectus. It is important especially for retail investors to grasp the significance of a possible investment via a short description of the securities and to be able to easily compare different securities. We see a lot of problems, though, which are referred to in the response.

We have also appreciated the aim to clarify what kind of new information may be included in final terms or in a supplement. However, ESMA should carefully take into account that the requirement to issue a supplement has the consequence that the investors may withdraw their acceptances ac-cording to Art. 16 (2) regardless of the materiality of the new or corrected information. The economic risks are shifted unilaterally to the issuer. This jeopardises the market access.

We are concerned about the new approach regarding base prospectuses and final terms and wonder if there has been an abuse of the base prospectus regime amongst bond issuers who would be deeply affected.

ESMA's proposals seem to demand a "mini-prospectus" for each issue under a base prospectus because a summary shall be fully completed for the individual issue and be annexed to the final terms. We strongly oppose this idea. We agree with ESMA's finding that Article 5 (4) of the PD as amended by the AD and Article 2 22 (4) of the Prospectus Regulation provide that final terms shall only contain information that relates to the security note and some additional information (see our answer to Q1). We do not see that completing a summary for the individual issue was intended by the Amending Directive. In the discussions concerning that Directive it had been

acknowledged that base prospectuses of course can only contain information that is "knowable" at the time of the approval and not contain details of the issues to come later. In contrast ESMA is asked for suggestions preserving the flexibility of the base prospectus regime (cited on p. 9 of consultation paper).

The idea behind base prospectuses is their flexibility. If a summary has to be drawn up for the issue maybe in another language, than the final terms ad hoc issues in order to take advantage of windows of good market conditions that can be only hours are not possible anymore.

Recital 17 of the AD states that "[….] Furthermore, in order to fulfil the obligation to provide key information also under a base prospectus, issuers should combine the summary with relevant parts of final terms in a way that is easily accessible to investors. No separate approval should be required in those cases". This does not mean that the summary has to be completed for the individual issue and annexed to the final terms. Also, neither PD nor AD speak of "summaries" to one base prospectus, only "summary". Such summary may be up to date only until another issue has been done, maybe at the same day.

As such, would ESMA so demand several summaries, or does the one just amended have to be amended once more? What happens if there are two issues at the same time? ESMA gives the main argument and legal basis against this scope. In regard to replicating information of the base prospectus in final terms ESMA is of the opinion that final terms should not be used as a kind of short form prospectus. On the other hand ESMA now requires a full summary for each issue which is only valid for this issue and together with the final terms finally also would build a new kind of "mini prospectus" as a stand alone securities and issuer overview.

The rules expressing this idea have not been changed and ESMA's proposals are changing the scope of base prospectuses dramatically in a way that only European legislators may. In our reading, ESMA has no mandate to demand summaries for each issue under a base prospectus.

We also like to refer to Recital 4 of the AD which intends to enhance the international competitiveness of the EU. In our view, the opposite is going to be achieved under the described new summary approach for final terms.

We would propose to disclose the summary (again) together with final terms.

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

Under the new approach additional time, internal resources for documentary efforts, internal or external legal advice and translation services would be required which would lead to relevant additional costs. We estimate a minimum of 20.000 EUR per issue under a base prospectus depending on the complexity of the product. The decreased flexibility in use of market conditions would lead to unpredictably high costs.

4. 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?

We have considered the scope of providing guidance for the content of the summary very helpful as this may lead to more legal certainty especially as regards the liability in respect of key information.

We agree on the principle of a modular approach, which could combine the advantages of comparability and flexibility since issuers will be able to construct their summary based on the annexes addressed in the main body of the prospectus.

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

We understand ESMA's logic of identifying "Points" for each of the five sections but we feel the proposed list of key information enters in too many details, which leads to two inappropriate consequences: the summary would be too long and the approach would introduce excessive rigidity.

We do not agree that all requirements of the annexes of the Prospectus Regulation is such key information. From there, possible contents for the summary should be chosen very carefully in order to avoid overloading it (A first check of the proposal for the content of the summary by our members has shown that it would be even longer than before). This may include taking into account if an issuer or guarantor is listed on a regulated market which means ongoing information disclosures that go far beyond what the prospectus regime demands are provided. And this may include a testing which is more material than described by ESMA. For example, in B.6 ESMA demands disclosure of major shareholders as key information in the summary. Please be aware that reports of significant shareholdings can be very long, due to a number of companies holding the share indirectly in a chain of control. As one of these shareholding reports alone can be longer than one page, issuers must at least have the opportunity to abbreviate them in the summary. Considering the request for a material key information test, for a short check in summaries for investors it would be of interest if there are controlling shareholders or shareholdings around 30 % in order to estimate any take over chances that can affect the share price. For the rest they can consult the main body of the prospectus.
Also, considering multi-issuer debt programs and base prospectuses, ESMA's proposals sometimes can only be fulfilled in an additional summary that ESMA proposes for each issue under the base prospectus, an approach which we strongly oppose (please see also our answer to Q6, 12a).

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?

For the reasons stated above, we do not consider that the proposed approach is flexible enough, as it prescribes the contents and the order of the sections in a very detailed way. The objective of comparability would be reached but it is not compatible with the objective to limit the length of summaries. In our view, the summary should give investors a first impression of the securities and help to quickly find out more to each topic by means of reference to information in the rest of the prospectus.

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

No, we do not agree that ESMA's approach would limit the length of summary. The proposed selection of items is too long and, on this basis, too many details may be requested by National regulators.

Although the summary is not limited to 2.500 words anymore, as the new recitals dealing with the summary of the AD do not reflect recital (21) of the PD, the guidance for key information should enable issuers to keep it short.

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?

As stated in the mandate, the summary should provide investors with key information. This should mean short summaries of some pages that give guidance to investors as where to find more information on issues that are of crucial interest for them.

We consider a limit based on a percentage of the words or pages of the main body of the prospectus as a good proposal as a fixed limit does not allow for flexibility.

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

We disagree with ESMA's recommendation that a summary should be a fresh assessment of the key information in the prospectus and that no cross-references should take place. Summaries are part of the liability regime and once approved declarations on certain topics in financial market communication must not be changed in wording. The main objective is to be consistent and concise and carefully selected wordings should be kept, including for risks.

When it comes to reducing administrative burdens it should be considered if an issuer or guarantor is subject to the ongoing disclosure obligations under Directives 2004/109/EC and 2003/6/EC. The AD calls for clarification of the links between Directive 2003/71/EC and Directives 2003/6/EC and 2004/109/EC in Article 4. Already the delegated acts can help to take the special transparency of such issuers into account under the current regime. Debt issuances should not be forgotten in this context.

Part 5 – Proportionate disclosure regime (Article 7)

Part 5.II Proportionate disclosure regime regarding rights issue

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 suggest that paragraph 117 of the technical advice should be restated as noted below for the reasons given in the explanation that follows the new text. We completely agree with the comments at paragraph 115 but in our view those comments have not been well reflected in the current paragraph 117 and we believe that the new paragraph below will be considered an improvement.

Revised paragraph 117

117. ESMA considers therefore that Article 7(2)(g) should be implemented in a broad manner in order to allow the technical replacement of statutory pre-emption rights with similar pre-emptive provisions to be treated as though they were statutory pre-emption issues. ESMA also agreed that a precise definition of "near identical rights" should then be established in order to avoid abuses and prevent any such issue to be structured in a way that the obligation to file a prospectus would be circumvented. ESMA proposes therefore to consider that "near identical rights" should have the same characteristics as pre-emption rights, meaning:

(i) shareholders are offered entitlements free of charge;

(ii) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings;

(iii) if there are holders of other securities, those holders are entitled to take-up new shares in accordance with the terms of those securities;

(iv) the issuer is able, as regards entitlements under (b) and (c) above, to impose limits or restrictions or exclusions and make arrangements it considers necessary or appropriate to deal with treasury shares, fractional entitlements, record dates and legal, regulatory or practical problems in, or under the laws of, or requirements of any territory or regulatory body ;

(v) the minimum period during which shares may be taken up is similar to the period for the take-up of statutory pre-emption rights under the national legislation of the issuer;

(vi) after expiration of the exercise period, the rights lapse.

Explanation

The changes at (b), (c) and (d) above reflect the basis on which shareholders disapply pre-emption rights in relation to pre-emptive offers. All types of pre-emptive offer should benefit from the proportionate disclosure regime as they would all be "offers of shares" falling within article 7(2)(g) of the PD, which does not restrict the proportionate disclosure regime to offers which include a negotiable instrument and involve the sale of rights for the benefit of shareholders who do not take up their rights. For example, an open offer would be made to shareholders in proportion to their existing holdings. However, shareholders would not be entitled to sell their rights nor to be paid the proceeds of the sale of the rights. The second company law directive does not require a pre-emptive offer to include a renounceable right of allotment nor a requirement for a sale of rights.

The points referred to at paragraph 115 of the consultation should be expressly referred to in the description of "near identical rights". The above drafting seeks to achieve this.

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?

Yes, we agree that there should be one regime, so long as the one regime recognises that there are differences in ongoing disclosure for those companies on regulated markets (where all the European Financial Services Directives apply) and those on MTFs (where some Directives do not apply). However, we believe that ESMA has sufficiently recognised this issue in its proposal for a reduced disclosure regime.

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 statements within a limited deadline after the end of the first six months of each financial year, and**
- **inside information?**

Yes, we agree.

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

We believe that the maximum deadline should be four months.

Q20: For issuers listed on MTFs where there is no disclosure requirements on board practices and remuneration, do you agree that this information should be included in the prospectus?

Yes, we agree.

Q21: Are there any other disclosure requirements not listed above which should be required for MTFs?

No.

Q22: Regarding the appropriate rules on market abuse, do you agree that there should be provisions in order to prevent insider trading and market manipulation? Do you consider it necessary to require that the rules of the MTFs fully comply with the provisions of the Market Abuse Directive?

Yes, we do agree that there should be provisions in order to prevent insider trading. However, we do not think that MTFs should be required to fully comply with all the provisions of the Market Abuse Directive in order to take advantage of the proportionate regime for rights issues.

We note that the Market Abuse Directive ('MAD') is currently under review and that the Commission is consulting on extending MAD to MTFs. We believe that, before any extension of MAD, the Directive must be simplified in certain areas so as to not be overly burdensome for growing companies on these markets. In particular, we do not believe that MTFs should have to implement the requirement for insider lists, which are burdensome and time-consuming and do not provide a significant benefit to the market.

Q23: Are there any other EU Directive or Regulation not listed in paragraph 122 which should be taken into account?

No.

Q24: As regards MTFs with appropriate disclosure requirements and market abuse rules, do you agree that in order to benefit from the proportionate prospectus, issuers should be required to make available their periodic and ongoing disclosures in a way that facilitates access to information by posting them on their websites?

We agree that periodic and ongoing disclosures should be made readily available by the issuer. Unless there is already a disclosure requirement for a specific MTF market that covers this issue, issuers should be required to put their disclosures on their websites.

Q25: Do you agree with the approach proposed in order to determine which items to delete from Annexes I and III of the Prospectus Regulation?

We agree with the approach in terms of deleting redundant information that is already available. However, we believe that there are more items that could be deleted, as shareholders would already be familiar with basic information of the company (e.g. auditors, business overview, history and development, organisational structure etc).

As a general principle, information which, by virtue of European Directives, is required to be, and has been, disclosed in an issuer's latest report and accounts should not be required to be included. A list of information falling in this category is set out below, as is the source of the requirement to make disclosure in the report and accounts. In each case there should instead be a requirement to disclose any significant changes to the information previously disclosed, similar to the concept recognised at paragraph 14 of the Annex. In some cases ongoing disclosure requirements differ for certain types of companies; this is noted below. Where this is the case, it would be appropriate for that particular type of company to include the relevant information in its share registration document.

Paragraph of Annex II	**Reason**
Minimum Disclosure Requirements for the Share Registration Document for rights issues (schedule)	
2 – Statutory Auditors	The auditors' report in the annual report would contain this information. Source:

	4th and 7th Company Law Directives
3 - Risk factors Prominent disclosure of risk factors that are specific to the issuer or its industry.	The business review in the annual report and accounts is required to contain a description of the principal risks and uncertainties facing the company. Source: *Article 46(1)(a) Directive 78/660/EEC (substituted by Article 1(14)(a) Directive 2003/51/EC)* ***[Note: excludes small companies. These are companies which meet at least two of the following requirements: (i) annual turnover of not more than €8.8m; (ii) balance sheet total of not more than €4.4m; (iii) average number of employees is not more than 50. (Articles 11 and 46(3) Directive 78/660/EEC).]*** The management report for companies with securities admitted to trading on an EU regulated market must contain a description of the principal risks and uncertainties facing the issuer. Source: *Article 4(5) Directive 2004/109/EC (the Transparency Directive)* The interim management report for companies with securities admitted to trading on an EU regulated market must contain a description of the principal risks and uncertainties for the remaining six months of the financial year. Source: *Article 5(4) Directive 2004/109/EC (the Transparency Directive)*
5 - Business overview 5.1. Principal Activities A brief description of the issuer's operations and principal activities… 5.2. Principal Markets A brief description of the principal markets in which the issuer competes… 5.4. If material to the issuer's business or	The business review in the annual report and accounts is required to contain a description of operations and principal activities. Source: *Article 46(1)(a) Directive 78/660/EEC (substituted by Article 1(14)(a) Directive*

profitability, summary information regarding the extent to which the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes. [*Note: Where section 5 requires disclosure of significant changes since the last financial statements, these requirements should remain.*]	*2003/51/EC)* ***[Note: excludes small companies.]*** The management report in the annual report and accounts for companies with securities admitted to trading on an EU regulated market is required to contain the relevant information. Source: *Article 4(5) Directive 2004/109/EC (the Transparency Directive)* The interim management report for companies with securities admitted to trading on an EU regulated market is required to contain the relevant information. Source: *Article 5(4) Directive 2004/109/EC (the Transparency Directive)*
6 - Organisational Structure A brief description of the group and issuer's position within the group.	The name and place of incorporation of each related undertaking must be provided in the notes to a company's annual accounts. Financial information relating to each undertaking's capital and reserves and profit and loss may also need to be provided. Source: *Regulation 7 and paragraphs 1 and 5 of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, SI 2008/410* *Article 43.1(2), Directive 78/660/EEC*
9 - Administrative, management and supervisory bodies and senior management 9.1. Names, business addresses and functions of: (a) members of the administrative, management or supervisory bodies; (b) partners with unlimited liability in the case of limited partnerships with a share capital; (c)	<u>Companies with securities traded on an EU regulated market:</u> The corporate governance statement must contain a description of the composition and operation of the issuer's administrative, management and supervisory bodies. Source:

founders if the issuer has been established less than five years; and (d) certain senior managers. The nature of any family relationship between any of those persons.	*Article 46a(1)(f) Directive 78/660/EEC (inserted by Article 1(7) Directive 2006/46/EC)*
12 – Employees 12.1 Directors' shareholdings and stock options 12.2 Employee Share Schemes	These items are disclosed in a company's annual report and accounts, which would be available to the market.
13 – Major shareholders 13.1 List of major shareholders 13.2 Different voting rights 13.3 Control	Major shareholders are required under the Transparency Directive to be disclosed to the market once their holdings reach a certain threshold. Source: *Article 9-12(1) Directive 2004/109/EC (Transparency Directive)*
16 - Share capital 16.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.	<u>IFRS:</u> Companies with shares admitted to trading on an EU regulated market are required to prepare consolidated accounts in accordance with International Financial Reporting Standards. These standards require disclosure of shares reserved for issue under options and contracts for the sale of shares, including terms and amounts. Source: *Articles 3 and 4 Regulation (EC) 1606/2002* *Paragraph 79(a)(vii), IAS 1* *Article 43(5) Directive 78/660/EEC ("*(5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;*")*
16.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option	As above.

and details of such options including those persons to whom such options relate.	
Minimum Disclosure Requirements for the Share Securities Note for rights issues (schedule)	
3 – Key Information 3.2 Capitalization and indebtedness	The indebtedness statement is a costly aspect of the prospectus for issuers to produce and requires the advice of both accountants and lawyers. In addition, the information provided in the indebtedness statement is already captured in the working capital statement of the prospectus (3.1 Annex III).

In addition, it should not be necessary to include financial information already made available to the market. Thus, disclosure of the information noted at paragraphs 15.1, 15.3, 15.4.1, 15.6 and 15.7.1 should be excluded.

We also believe that the ability to incorporate by reference should be extended to companies on MTFs. Currently, only companies on regulated markets are able to take advantage of this. Please see our response to Question 30 for more.

We do not think that removing this information would decrease investor protection, especially since this information is already available in the market. Ultimately, a director must sign a responsibility statement on the prospectus, which says that the document contains all material information, which should provide adequate legal assurance that all necessary information to make an informed decision is contained in prospectus.

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?

Yes, we agree with the proposed items which could be deleted; however, as stated in our response to Q25, we believe that there are more items which could be deleted.

Q27: Do you consider that the language regime could be a concern in terms of investor protection in case of passporting? Do you consider that the proportionate disclosure regime should be conditional upon compliance with the language requirements of Article 19 of the Prospectus Directive?

We do not believe that this would be a major concern and agree with ESMA's analysis in paragraph 126 that shareholders should already be familiar with the language regime of the applicable company.

Q28: In case of issuers listed on regulated markets, do you consider that disclosures on remunerations required by item 15 of Annex I of the Prospectus Regulation are redundant with information already made available to shareholders and the public in general and could therefore be deleted from the proportionate prospectus for rights issues?

Yes, we agree.

Q29: Considering the objective to enhance investor protection, do you agree that information regarding the issuer's activities and markets and historical financial information cannot be omitted?

No. We believe that all material and price sensitive information would have already been disclosed to the market and as such shareholders would already have access to this information, including recent activities and historical information. Please see our response to Question 25.

Q30: Do you consider that, in order to reduce administrative burden, incorporation by reference could be a solution? Do you have any suggestions to improve the incorporation mechanism?

Yes. Currently, only companies on regulated markets are able to take advantage of this. We believe it should be extended to companies on MTFs. This would both decrease the administrative burden of having to add existing information to a prospectus for an issuer and also help create a document that was more focused on the relevant information to a subsequent offer to shareholder, thus making it more comprehensible.

Q31: Do you agree with the proposal to require basic and updated information regarding the issuer's principal activities and markets?

No. Please see our response to Questions 25 and 29.

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

No, we do not agree because this information is already available to the market. Please see our response to Question 25.

Q33: Do you agree with the proposal to redraft certain items of Annexes I and III of the Prospectus Regulation as proposed in paragraphs 132 to 134? Are there any other items which should be redrafted?

No. We do not believe it necessary to provide additional information in the prospectus as shareholders would already have access to this. Please see our response to Question 25.

Q34: Do you agree with the proposal to include a statement in the proportionate prospectus drawing attention to the specific regime and level of disclosure applicable to rights issues?

Yes, we agree with the proposal.

Q35: Do you agree with the schedule for rights issues presented in Annex 2 of this consultation paper?

Yes, but as stated and outlined in our response to Question 25, we believe that there is additional content that could be deleted without compromising investor protection.

Q36: What are the costs for drawing up a full prospectus? What are the most burdensome disclosure requirements? Can you provide any data? Can you assess the costs that the proposed proportionate prospectus will allow issuers to save?

We note that in the study commissioned by DG Internal Market and Services on the impact of the prospectus regime on EU financial markets (June 2008) it was estimated that it the total cost for producing a prospectus was €912,000.[1]

Our members throughout the various Member States estimate that the costs of doing a full prospectus range from €500,000 to €2,000,000 depending on the offer.

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

We support the view that the proportionate regime should strike a balance between investors' protection and administrative burden for companies.

We are very concerned by the facts that the requirements and costs of being listed do act as a disincentive for companies when compared to private placements. SMEs and Small Caps are increasingly kept away from the markets as reflected by the drastic decline of Public Offers in Western Europe in the last 10 years.
We disagree with ESMA' s objections to the proportionate disclosure regime for SMEs and Small Caps, based on 1) the risk of diluting the regulatory framework 2) a perceived higher risk profile 3) the objective of enhancing investor protection.

Our position stems from the following:

- Paragraphs 137 & 139: Current figures show there is no risk of diluting the regulatory framework in place.

The definitions of SMEs and Small Caps within the meaning of the PD and the AD are extremely restrictive.

It should be noted that the markets use different definitions. The Federation of European Securities Exchanges (FESE) uses the following breakdown:

Large cap (L): market cap > €1 billion
Mid cap (M): € 150mn < market cap < €1 billion

[1] Study available at: http://ec.europa.eu/internal_market/securities/docs/prospectus/cses_report_en.pdf

Small cap (S): € 50mn < market cap < € 150mn

The French regulator *Autorité des Marchés Financiers* (AMF) keeps the same limit of a market capitalisation < €1 billion to define Midcaps.

Most of all, investors draw the line at €3 billion according to the EFAMA fund classification for Small Cap Universes. This amount is in line with our discussions with French investors.

Even if we keep the €1 billion market cap definition, nearly 90% of all companies listed on regulated markets in Europe are of small or medium size but they are very small in terms of number of trades and turnover: according to FESE figures[2], they do represent less than 15% of trades and 4% in terms of turnover.

A study by the French regulator showed that 85% of companies listed on the French regulated market are of small or medium size, but they only represent 4% of market cap and 2% of trades.

This makes the Commission mandate all the more appropriate and important: a large number of companies would benefit from a proportionate approach but, according to FESE figures, 85% of trades and 96% - nearly all - of turnover would remain under the current prospectus regime.

As for French figures, 96% of market cap and 98% - nearly all - of trades would remain under the current prospectus regime.

- Paragraph 140 & 141: Recent history show that risk profile and investor protection are not at stake

SMEs and Small Caps are considered too risky but shares of companies quoted in SME markets are non complex instruments. SMEs are not financial companies and despite a very violent crisis, SMEs have been exceptionally resilient.

Moreover, most of the time SMEs and Small Caps investors are not institutional investors but smaller ones who carry deep level analysis before committing themselves. It has to be remembered that the Study on the impact of the Prospectus Regime on EU Financial Markets published in June 2008 underlined that "unlike institutional investors, small retail investors do not, on average, make uses of prospectuses for their investment decisions".

[2] Source FESE.: Mid caps represent 20% of regulated markets in terms of number but 9,8% in terms of trades and 3,4% in terms of turnover; Small caps represent 16% of regulated markets in terms of number but 2,2% in terms of trades and 0,4% in terms of turnover; Micro caps represent 50,7% of regulated markets in terms of number but 2,6% in terms of trades and 0,3% in terms of turnover.

There couldn't be any clearer indication that the current prospectus regime is not only too costly and burdensome for small and medium issuers but has also become ineffective for their investors.

- Being in favour of a proportionate regime for SMEs and Small Caps is about concentrating on significant and relevant information.

Some information may be omitted but mainly the process should be about reducing the length of the explanations required and sticking to core information. The materiality test should be taken seriously and far more radically and the Commission should give clear indications to the National regulators as to how to enforce it (e.g. length limit); quality should prevail over quantity.

Including for the sake of enhancing investors' protection, we request a proportionate regime (including for an IPO and for initial admission to a regulated market) for SMEs and Small Caps, which would concentrate on significant and relevant information. Ultimately, directors have to sign a responsibility statement that all material information is included in a prospectus. Therefore, we do not believe that having more concise requirements would necessarily decrease investor protection, as investors would have the legal assurance of the responsibility statement.

The AMF specific French recommendation in force since January 2008 for small and mid-caps, in accordance with European legislation, show that the quality increases when issuers are guided toward providing only significant and relevant information.

Moreover, the Commission's mandate is about taking into account the size of the issuers. The advisory costs of producing a full prospectus are simply not worth an IPO for most SMEs and Small Caps.

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)?

No. For the reasons stated above, we do not agree and believe that even for an IPO on a regulated market, a proportionate regime should be available for SMEs and Small Caps.

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

No, for the reasons stated above.

Q39: Do you agree that there should be only one schedule for a proportionate prospectus for both unlisted and listed SMEs and Small Caps or do you believe that further consideration should be given to having a separate regime for unlisted companies, dealt with under the proposed revision to MiFID?

Yes, we agree there should only be one schedule for both unlisted and listed SMEs and Small Caps.

Q40: Can you provide data on the average costs for SMEs and Small Caps to draw up a prospectus? What are the most burdensome parts of a prospectus to produce?

As noted in our response to Question 36, the average costs of drawing up a prospectus range from €500,000 to €1,000,000.

The most burdensome parts are IFRS and IFRS annexes.

Q41: Do you consider that the three items identified in paragraph 147 (the OFR and the requirements to include a statement of changes in equity and a cash flow statement when the audited financial statements are prepared according to national accounting standards and to produce interim financial statements when the registration document is dated more than nine months after the end of the last audited financial year) could be omitted without lowering investor protection?

Yes we do consider that these three items could be omitted without lowering investor protection (especially if the issuer includes its management reports for the period covered by the historical financial information as far as the OFR is concerned).

Q42: Do you agree with the items ESMA proposes to delete and to redraft listed in Annex 4 and the proportionate schedule for the share registration document presented in Annex 5?

Yes, we agree with the items ESMA proposes to delete and redraft in Annex 4 and 5 but we believe this approach should go much further for the prospectus to be proportionate in a realistic way.

Q43: Are there any other items which could be deleted or redrafted? Please justify any suggestions, including, if possible, the costs that would be saved and the impact on investor protection.

Yes, we do believe there can be other items which could deleted and/or redrafted.

MiddleNext, the independent French association representing listed SMEs and mid-caps, and The Quoted Companies Alliance, the UK association representing small and mid-cap quoted companies – have prepared detailed proposals, taking two different approaches on what could be removed and/or redrafted. We refer to those.

Moreover, we consider that the striking cord is the state of mind of resisting to the pressure to provide always more information. As stated above, information in prospectuses is too diluted and too abundant even for investors and analysts.

We believe that ESMA should send a clear signal by undertaking a far more exhaustive review of which items could be removed.

Q44: Taking into account the items which ESMA proposes to delete or redraft as per Annex 4, do you consider the proportionate disclosure regime for SMEs/Small Caps could strike the

right balance between investor protection, the amount of information already disclosed to the markets and the size of the issuers?

No. See answer to question 43.

Q45: Given the number and nature of the items ESMA proposes to delete and to redraft listed in Annex 4, do you consider the proposal would suppose a significant reduction of the costs to access financial markets for SMEs and Small Caps? Can you estimate the costs that the proposed proportionate prospectus will allow SMEs and Small Caps to save?

No, based on ESMA's proposal, we do not believe that there would be a significant cost reduction for SMEs and Small Caps to access financial markets, and we urge ESMA to reconsider what further items could be removed or reduced to decrease the burden on these companies.