



*Federation of Finnish Financial Services (hereinafter “FFI”) represents banks, insurers, finance houses, securities dealers, fund management companies and financial employers operating in Finland. Its membership includes employee pension, motor liability and workers compensation insurers, all three providers of statutory insurance lines that account for much of Finnish social security. The Federation has about 460 members who employ a total of 43,000 people.*

ESMA  
European Securities and Markets Authority  
103 Rue de Grenelle  
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REF. ESMA/2011/141

RESPONSE TO ESMA CONSULTATION PAPER ON THE PROPOSED TECHNICAL ADVICE  
CONCERNING THE PROSPECTUS DIRECTIVE AS AMENDED BY THE DIRECTIVE  
2010/73/EU

KEY POINTS

- In order to keep up with the future market developments, issuers should have the right to make small amendments in the final terms. FFI sees this as an opportunity to reduce the administrative costs, which was also one of principle aims of the directive.
- FFI urges for more flexibility for the issuers. Therefore, we do not second any numeric limits for the length of summaries. Limiting the length of summaries could lead to a situation where important information is being omitted.



## General remarks

### Summary

First of all, FFI would like ESMA to keep in mind the following at an overall conceptual level. If an investor can make the investment decision on the basis of the summary without having to read the actual prospectus, the issuer's responsibility for the summary and its contents will be too heavy. Especially if the length of the summary will be limited, issuers would face challenges in bringing all the needed facts to the summary. 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. However, if ESMA considers it necessary to regulate the summary in such detail, it should also determine how the issuer's responsibility for the summary should be understood in relation to the issuer's responsibility for the whole prospectus.

FFI is of the opinion that, in any case, non-retail issues should be exempted from the suggested requirement of adding a summary of the prospectus to each issue.

FFI believes that the summary requirements should be the same according to PRIPS (KIID) and according to Prospectus Regulation. Therefore we agree with the EBF approach to wait for the PRIPS legislation to see whether it could provide a mechanism of combining the summary with the final terms. Furthermore, the connection between these two legislations should be thought very carefully.

## Responses to ESMA's specific questions

### 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 would belong to (CAT A, CAT B or CAT C, as defined in Part 3.III). Please add your justifications.*

*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.*

*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.*

We agree with the EBF that it is necessary to add flexibility to the proposed approach. It is probable that future developments would require some other items to fall under CAT. B.

According to paragraph 49 or Part 3.III, "ESMA believes that it is necessary for the competent authority to review algebraic formulas along with its related definitions and descriptions as regards to completeness, comprehensibility and consistency. Therefore, final terms shall not include any new payment formula and/or description of the payment condition, but taking on board the concerns raised in the Call For Evidence, such formulas may be filled out in the final terms."



In respect of payment formulas and/or descriptions of the payment conditions filled out in the final terms, FFI sees it practically impossible to only include information in certain ways, i.e. giving information in algebraic form, confirming a pre-existing option or filling in dates. In our opinion, this restriction may prevent any development of terms and conditions in the future as the market conditions change.

We suggest that, as a minimum, issuers should be entitled to make small and/or technical amendments and additions without a requirement for a supplement to the options or formulas in the final terms. These should be allowed as long as they only modify the product described in the base prospectus and do not turn it to a different product.

*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?*

*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 agree with the EBF.

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

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?*

FFI agrees with the EBF view that the modular approach does not leave enough room for the issuers to tailor the summaries according to the individual securities.

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

FFI accepts the selected model of five sections although we agree with the practical questions raised in the EBF response.

*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?*

FFI does not share the view of emphasizing comparability over flexibility.



ESMAs current approach may lead to too long summaries. Recital 15 of the amending Directive 2010/73/EU, which amended the Prospectus Directive, sets out the criteria for the summary. The recital clearly states that the summary should be short. ESMAs chosen approach amounts to 13 pages of print (see also response from the EBF) and in our opinion, this cannot be seen as “short”.

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

When the mandatory key information is specified with adequate preciseness, this is possible.

*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?*

In FFIs opinion, there should not be a numerical limit on the length of summaries. This could lead to important information being omitted in a situation where some parts of the summary need more space than others.

For example, the length of summaries may vary between companies, as their company structures are different. In a very complex financial group the description of the issuer would lead to a longer summary. The result would be the same with an unusual group structure.

While a numeric limit is not desirable, it however has to be ensured that summaries will be short, yet providing enough flexibility for the issuers and comparability for the investors.

*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?*

*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?*

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

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

*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?*



*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?*

*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?*

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

*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?*

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

*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?*

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

*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?*

*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?*

*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?*

*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?*



*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?*

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

*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?*

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

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

*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?*

*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?*

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

*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?*

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?*

*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?*





*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?*

*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?*

*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?*

*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.*

*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?*

*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?*

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?*

FFI agrees with the proposal and sees it as a profitable change. This could also lead to reduction of the administrative burden.

*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?"*

FFI has no specific suggestions at the moment, but we are not opposed to any further justifiable omissions.



Yours faithfully,

FEDERATION OF FINNISH FINANCIAL SERVICES

Mrs. Helena Laine  
Director