

Contribution of the Hellenic Bank Association on Consultation Paper from ESMA, dated 15/7/2011, concerning the Prospectus Directive as amended by the Directive 2010/73/EU

Question 10 = No, we think that the proposed five sections must not be so restrictive. The issuers must have the option to include in the summary other information, that they think it's important and does not fall in the above 5 sections. Also (see paragraph 105) it's very important not to draft the risk factors twice. We must have the option to adopt the "minimalist" approach. It's far more time consuming and costly to disclose each risk factor in a "long" and "short" format in the same document. We will need with the lawyers twice the time and fees to draft twice the same risk factor.

Question 11c = We agree with the abolishment of the 2,500 words limitation, nevertheless a short summary in any case must not exceed 10% of the prospectus (words count or pages). For example a 300 page prospectus should not include more than a 30 pages summary.

Question 12a-b = We don't agree with paragraph 91 on page 30. The issuer must have the option to disclose additional information, since every company/offer has specific characteristics and peculiarities that must be addressed in the summary.

Also on pages 36-37 "Section B – Issuer and any guarantor" the following Points should be amended:

Point B.2 on page 36 for a Rights Issue: should be partially deleted, because as already proposed by ESMA in Annex 1 for the Proportionate Prospectus (on page 108), corresponding paragraphs 5.1.2, 5.1.3 and 5.1.4 are to be deleted.

Point B.3 on page 36 for a Rights Issue: a brief description should suffice, as already proposed in paragraph 6.1.1 (on page 109)

Point B.7 on page 36 for a Rights Issue: historical financial information should be provided for the last financial year as already proposed in paragraph 20 (on pages 115-116)

Points B.8, B.9 and B.11 on page 37: information for the auditors should also be included as well as other information that is relevant according to the annexes I and III of Commission Regulation (EC) 809/2004 and deemed necessary.

Also on page 43 "Section C – Securities" the following Point should be amended:

Point C.5 should be more specific on the information that should be presented (i.e. Do we need all the information of point 4.5 of Annex III of Commission Regulation (EC) 809/2004?). A statement that the rights attached to the securities are the rights imposed by the local corporate laws suffices combined with the listing of any exceptions or limitations.

Also on page 46 “Section D – Risks” the following Points should be amended:

Point D.1 should be deleted since it is included in D.2 and D.3.

Point D.2 should be extended for industry (i.e. ... to the issuer and/or its industry).

Moreover, presentation of the risk factors in points D.2 and D.3 should be limited to a listing of all the headings. The risk factors will be analyzed in Registration Document and Securities Note section as these described in Annexes I and III of Commission Regulation (EC) No 809/2004. Presenting all this information here would lengthen the summary a lot. On the other hand, given their significance for investor protection and the liability for the offeror, summary of the risk factors would require a re-drafting with the lawyers, increasing the burden and relevant expenses. Please see relevant comment on Question 10.

Also on page 47 “Section E – Offer” the following Point should be amended:

The second part of point E.1 ‘the estimated expenses charged to the investor by the issuer or the offeror is also mentioned in point E.7 and should therefore be deleted from here (or point E.7 should be deleted)

Question 13 = Yes, the profit forecast must include the key assumptions and the fact that an auditor has reviewed these assumptions (see also comment on question 12a-b point B.9).

Question 14 = We agree in amending article 3, paragraph 3 of Prospectus Regulation – however, this should be considered in relation with our comment in Question 12 that there should be a section to allow for “other information” in the summary.

Question 17 = Yes we agree that for simplicity and uniformity, there should be one single proportionate regime for regulated markets and MTFs.

If an SME implements a rights issue which of the 2 proposed annexes (2 or 4) is applicable?

Question 25 = We do not agree with the obligatory deletion of items 9 “Operating and financial review (OFR)”, item 8 “Property, plants and equipment”, item 10 “Capital resources” and other data. We understand that (page 110) OFR must “be covered by the management and interim management reports” but in case the issuer wants to supplement such disclosure in the prospectus, in order to support the equivalent financial information in investor presentations and roadshows, we think that a provision is necessary to include at least on an optional basis such information in a prospectus.

Many times management reports (and especially interim reports), are not as detailed as management wants to be in an international roadshow and when the company announces the financial results, it is very difficult to know beforehand the level of detail that a future rights offering will entail. We all must acknowledge that in a rights issue, the potential underwriters and end investors require more information and detail when they must invest more funds. Consequently, at issuer’s discretion Annex I and III must be an alternative building block for a prospectus.

Question 26 and Question 35:

Comments on “Annex 1 – Rights Issues: Analysis of annexes I and III Commission Regulation (EC) No 809/2004 and ESMA’s Proposals”

Commission Regulation (EC) No 809/2004 Annex I Minimum Disclosure Requirements for the Share Registration Document (schedule)	Comments
5.1.3 the date of incorporation and the length of life of the issuer, except where indefinite;	Not to be deleted - significant information
5.2.1 A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the registration document;	<p>ESMA proposes to redraft and require an update for any material investments made since the end of the latest published audited financial statements.</p> <p>The update for any material investment should cover the period either from the end of the latest published audited financial statements (as proposed) or from the end of the latest published audited interim financial statements, if the latest include this information.</p>
10.5 Information regarding the anticipated sources of funds needed to fulfill commitments referred to in items 5.2.3. and 8.1	Not to be deleted except from reference to 8.1 since ESMA proposes to delete 8.1
19. Related party transactions	<p>The following ESMA proposal: “If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published”, should be revised in order to cover any potential interim financial statements (i.e. “If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information or interim financial information have been published.”)</p> <p>Moreover, the way of calculating point b)</p>

	should be clarified for transactions that took place after the latest financial statements and up to the date of the Registration Document.
22. MATERIAL CONTRACTS	It should be clarified whether a contract has to be included which states that an issuer or any member of the group was a party during last year immediately preceding the publication of the Registration Document but on the Registration Document publication date this situation is no longer valid.

Question 27 = Yes, language regime is a concern in case of passporting. The proportionate disclosure regime must specify that all supporting documents (by reference), must be at least in English.

Question 29 and **Question 32** = We do not agree with the obligatory deletion of these items because many times especially in international or sizeable rights issues investor presentations and concurrent offering circulars for private placement refer to a 3 year period and include more information than that of a typical management report. The issuer must have the option to include more information if the transaction “dictates” so. It is not prudent to obligatory minimize investor information for the sake of cost, in a multibillion rights issue or in any case if in today’s adverse market condition, management wants to bolster investor attention and provide more relevant information. Consequently, at issuer’s discretion Annex I and III must be an alternative building block for a prospectus.

Question 34 = No, we do not agree with the wording. Article 9 of Directive 2003/71 says that “A prospectus shall be valid for 12 months after its publication” and responsible persons have liability towards all investors (shareholders or not) who bought shares based on the information of the prospectus. What it is mentioned on paragraph 135 (“this rights issue is addressed to shareholders of the issuer”) is not true. Any investor can buy rights or new shares and ask for damages because of an ill - conceived proportionate prospectus.

Question 38 = No we do not agree. At an I.P.O. investors read for the first time information about a new company and even if the market is characterized as regulated, MTF or OTC, it is a very important reference point. Thus the prospectus must be a full version, not proportionate.

Question 42 and Question 43:

We do not agree with the obligatory deletion of the proposed items because many times especially in specialized sectors and cases (for example, hi tech / biotech companies, turnaround cases/restructurings, public offerings in two or more jurisdictions etc) investor presentations and concurrent offering circulars for private placement might refer to a three (3) year period and include more information than that of a typical management report. The issuer must have the option to include more information if the situation “dictates” so.

It is not prudent to obligatory minimize investor information for the sake of cost, in a complex transaction or in any case if in today’s adverse market condition, management wants to bolster

investor attention and provide more relevant information. Consequently, at issuer's discretion Annex I and III must be an alternative building block for a prospectus.

Our comments for the minimal "building block" are as follows:

Comments on 'Annex 4 –SME's and Small Caps: Analysis of annexes I, IV, IX and X Commission Regulation (EC) No 809/2004 and ESMA's Proposals'

Commission Regulation (EC) No 809/2004 Annex I Minimum Disclosure Requirements for the Share Registration Document (schedule)	Comments
12. TREND INFORMATION	
12.1 The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.	It should be extended from the last financial year to the last financial period that is included in the registration document, if this information is included in the latest.
12.2 Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.	It should be extended from the last financial year to the last financial period that is included in the registration document, if this information is included in the latest.
19. Related party transactions	<p>The following ESMA proposal: "If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published", should be revised in order to cover any potential interim financial statements (i.e. "If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information or interim financial information have been published.")</p> <p>Moreover, the way of calculating point b) should be clarified for transactions that took place after the latest financial statements and up to the date of the Registration Document.</p>

Commission Regulation (EC) No 809/2004 Annex X Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)	Comments
12. TREND INFORMATION	
12.1 The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.	It should be extended from the last financial year to the last financial period that is included in the registration document, if this information is included in the latest.
12.2 Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.	It should be extended from the last financial year to the last financial period that is included in the registration document, if this information is included in the latest.
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