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**Response to The Committee of European Securities Regulators consultation on  
Possible Level 2 Implementing Measures for the Proposed Prospectus Directive  
By The Institute of Chartered Secretaries And Administrators based in the United  
Kingdom.**

**Introduction**

The Institute appreciates the opportunity to comment on this wide ranging consultation document. It is broadly supportive of the proposals. As the Institute's members, who are affected by the proposals, are predominantly involved in the issue and subsequent management of equity by issuing companies, we have restricted our comments to the areas of the report predominantly concerned with those processes.

We have therefore decided to not express any views on the issues and questions raised in paragraphs 124 to 234, which relate in the main to debt securities and derivatives.

Within the remainder of the document, where we have a view on the issue we have prepared a response. For the questions that we have no comment and are broadly supportive to the proposal, no answer or reference to them has been made.

**Question 44**

We have reviewed the items contained within annex A and have the following comments:

II.B The requirement to disclose any risk factors specific to the industry may, we believe, be difficult to verify; compulsory detailed disclosure could be commercially sensitive.

III.C.5,6,7,8 A requirement to over specify in relation to a business' markets could, once again, be commercially sensitive.

VI.A.1.b The requirement to disclose significant changes in the percentage ownership levels of major shareholders in the past three years needs to be defined, as the requirement to disclose all movements in say 3% shareholdings could be very onerous.

### **Questions 51,52,53**

Whilst we are fully supportive of the need to prepare a prospectus where there may be a significant gross change in the size of a company due to a transaction, we believe that the 25% level should be retained to necessitate issuers to seek shareholder approval. It should not be reduced to 10%.

### **Question 85,86,87**

Although the timescale involved may result in little movement in a profit forecast, we firmly believe that when a prospectus is published, it should contain the directors' latest opinion on the issuer's financial position. This result needs to be carefully reviewed by the board as part of its normal process and confirmed by the company's financial advisors. This practice is currently well accepted.

### **Question 89**

Although we feel that directors should be required to disclose any previous fraudulent offences or bankruptcies, we believe that the term "public criticism" is too vague and more detailed guidance for each jurisdiction will be needed.

### **Question 91**

We cannot think of any further limiting disclosures that could be made, other than the ones described in the consultation document.

**We have no comments to make on sections 124 to 234.**

### **Question 249**

Although we are broadly supportive of the facility to allow three main schedules, we would caution against it becoming too prescriptive, and thereby over expensive for companies which make infrequent applications for further equity by listing shares.

### **Question 250**

We believe that the format of common and specific items for each type of security is appropriate.

**Question 251**

We believe that the competent authority should be able to amend the requirements to suit the type of security and market that it is being traded on, although these amendments need to be contained within overall parameters.

**Question 252**

Advisors who have proffered an opinion within the document should be detailed and held liable for their opinions.

**Question 254**

Responsibility for all three parts of the prospectus must rest with the board of the issuer.

**Question 255, 256**

No opinion on this topic

**Question 257**

We agree that the prospectus should allow an investor to consider and be able to fully analyse the level of risk, however, this should not be at the price of disclosing commercially sensitive information to the detriment of the issuer. To a certain extent, the disclosures detailed under subsection 3 a & b, could be deemed to just become standard warnings, which will give no deeper portent of the potential risks.

**Question 258**

No opinion on this issue

**Question 259**

We believe that items a, b & c should be added. However any rating should not as it should be up to the investor to refer to the rating agency not the issuer.

**Questions 260, 261, 262**

We have no views on this area, which refers to derivatives.

**Question 281**

We believe that the list is acceptable, but believe that issuers should be able to refer to an electronic link to permit access to key documents.

**Question 293**

We no longer see national newspapers as an effective means of disseminating financial information, and believe that their use should become optional as long as the issuer has made the information available either in a free brochure, or in electronic form.

**Question 307**

We feel that any legislation or regulation should refer to the term “in any accessible electronic form” should be used. We are keen to see more use made of electronic communications and believe that this format permits developments in technology to be covered.

**Question 314**

Please refer to our answer to question 293, where we suggest that the use of national press be dropped for prospectuses.

The Institute is the professional body for Chartered Secretaries and Administrators with some 45,000 members and 27,000 students worldwide. A large proportion of this membership remains involved in the ICSA’s original area of expertise – company secretarial practice in the UK. In addition, in the company secretarial field, ICSA also runs a Company Secretaries Group which is open to non members of the Institute so that we are better able to speak for Company Secretaries as a whole. ICSA takes a leading role in corporate governance in all sectors providing supporting materials and Best Practice Guidance on relevant topics. For further information see our web site [www.icsa.org.uk](http://www.icsa.org.uk)