



## EU Prospectus Directive

### **The ABI's Response to ESMA's consultation paper on technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU**

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#### **Introduction**

1. The ABI is pleased to respond to ESMA's consultation on its technical advice on ESMA's technical advice
2. The ABI is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. As institutional investors controlling funds worth some £1.8 trillion, with substantial holdings in European markets, our members have a strong interest in the integrity and efficiency of the equity and debt markets in raising funds for business and providing the securities in which our members can invest with confidence.

#### **General Comments**

3. We are supportive of the work that ESMA work in providing advice to the European Commission on the operation of the revised Prospectus Directive. Our specific purpose in responding is to comment on the proposals relating to a proportionate disclosure regime in respect of rights issues. ABI and its members strongly support the rights issue system which allows companies both to raise equity capital on cost-effective terms while respecting the pre-emptive rights of its existing shareholders to subscribe for that capital and to avoid involuntary dilution of their holdings. Accordingly, we welcome ESMA's belief that rights issues should be fostered and that improving the efficiency of the rights issue process to allow issuers to raise capital with lower costs while maintaining a high level of protection is the right objective. We comment in greater detail in our specific response to Q16.
4. It is important that there should be disclosure of all information that is directly relevant to the rights issue itself, including details as to the costs of undertaking the issue in question. Where, under Transparency obligations, an announcement to the market is made relating to the rights issue we emphasise, for avoidance of doubt, the content of that announcement should be required to be included also in the streamlined prospectus.
5. On a more general level, we note the work being undertaken on summaries and agree with the importance of ensuring that *"[a summary's] content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities."*

## Questions for Consultation

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### *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?**

We agree it is important to ensure that pre-emptive issues that involve technical disapplication of statutory pre-emption rights should be facilitated for the reasons given in the consultation paper. We support the basic thrust of the definition proposed in paragraph 117 though ESMA may wish to incorporate detailed refinements of wording. We also consider that provision needs to be made for inclusion in the issue of holders of securities where they are entitled to take-up new shares in accordance with the terms of those securities. Such securities giving rights to subscribe for equity or convert into equity are themselves equity securities and it is in order that participation should be extended to them on appropriate terms.

It is right that there should be a requirement in the case of issues with negotiable and transferable rights that non-subscribing shareholders be compensated for the value of their rights. This is a fundamental feature of the ‘rights issue’ system (i.e. those issues which have renounceable tradable entitlements) as operated under the UK Listing Rules, where an issuer will have considerable discretion as to the discount to market price that it can employ.

We have considered whether it should be necessary for the streamlined prospectus requirements to include a similar requirement for compensation in the case of issues where those rights are not renounceable in favour of another party as will be the case in an open offer or ‘clawback’ issue. It can be argued that specific protection of those who do not invest as opposed to those who do invest is not in principle a necessary consideration under the Directive. It is also the case in the UK that share issuance made under open offers is not able to be made at wide discounts as may be the case in rights issues and the need for investor protection is not therefore so pressing. However, we do not think there is a convincing case for a less onerous regime for pre-emptive issues that do not have transferable and tradable rights. On balance, therefore, we think it would be desirable to require compensation of non-subscribing shareholders in such issues if they are to qualify for the streamlined disclosure regime. We therefore agree with the formulation in the consultation paper.

ABI 15/07/11

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