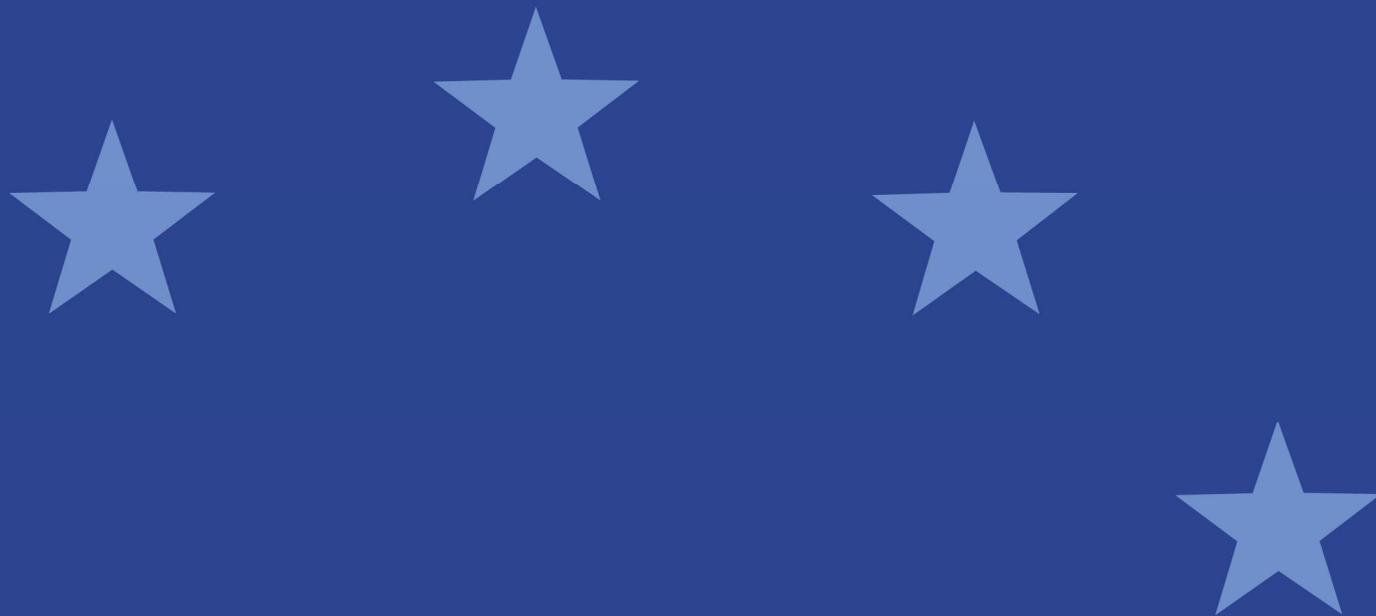




European Securities and
Markets Authority

Consultation Paper

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



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **15 July 2011**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Disclaimer'.

Who should read this paper

All stakeholders are invited to comment on this consultation paper, it would primarily be of interest to issuers, offerors or persons asking for admission to trading on a regulated market, investors, as well as to any market participant which is affected by Directive 2003/71/EC of 4 November 2003 (**the PD, the Prospectus Directive or the Amended Prospectus Directive**) and its Regulation (Commission Regulation (EC) No 809/2004).

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Annex I: List of questions.

Annex II: Members of the Consultative Working Group.

Annex III: European Commission's request for ESMA technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU.

Annexes to Part 3 of the Consultation Paper (Format of the final terms):

- Annex A: List of Securities Note Schedules and Building Block(s).
- Annex B: List of "Additional Information".

Annexes to Part 5 of the Consultation Paper (Proportionate disclosure regime):

- Annex 1 – Rights Issues: analysis of annexes I and III Commission Regulation (EC) No. 809/2004 and ESMA's proposals.
- Annex 2 – Proportionate Schedule for rights issues.
- Annex 3 – Disclosure requirements applicable to companies listed on regulated markets.
- Annex 4 – SMEs and Small Caps: analysis of annexes I, IV, IX and X Commission Regulation (EC) No. 809/2004 and ESMA's proposals.
- Annex 5 – Proportionate Schedule for the share registration document for SMEs and Small Caps.

1. Executive Summary

The purpose of this consultation document from ESMA is to seek comments on the technical advice that ESMA proposes to give to the European Commission on a number of possible delegated acts.

On Tuesday 25 January 2011, the European Commission published its request to ESMA for advice on possible delegated acts concerning the Prospectus Directive as amended by Directive 2010/73/EU. The Mandate to ESMA sets out the areas on where the Commission is requesting advice in sections 3, 4 and 5. ESMA has been asked to deliver its advice on sections 3.1 and 3.2 by 30 September 2011 and has also decided to deliver its advice on the areas included in section 3.3 by 30 September because of the importance of the areas concerned.

In order to deliver its advice to the Commission, ESMA has decided to split its advice giving this first advice on possible delegated acts concerning the Prospectus Directive responding to sections 3.1, 3.2 and 3.3 of the Commission Mandate by 30 September 2011. In order to finalise the advice by the due deadline, ESMA considers it necessary to conduct a shortened consultation on these sections of the Mandate in order to deliver robust advice to the Commission.

In order for ESMA to best consider the relevance of comments, please indicate any material concerns over the impact of the advice being considered, including if you consider it may lead to unfair or disproportionate financial or administrative burden. In addition please also indicate any possible advantages or benefits deriving from the implementation of the advice.

2. Introduction

1. The publication of Directive 2010/73/EU of 24 November 2010¹ (**the Amending Directive**) amending the Prospectus Directive in the Official Journal of the EU took place on 11th December 2010.
2. On 20 January the European Securities and Markets Authority (**ESMA**) received a formal request (**the Mandate**) from the European Commission (**the EC or the Commission**) to provide technical advice to the Commission on possible delegated acts concerning the Prospectus Directive as amended by the Amending Directive.
3. On 25 January 2011, the European Commission published its request to ESMA on its Internal Market website and on 26 January ESMA published a call for evidence (**the Call for Evidence**) inviting all interested parties to submit views by 25 February on the issues which ESMA should consider in its advice to the Commission. ESMA received around 36 submissions by the end of February and those that are public can be viewed on ESMA's website.

¹ Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

4. In relation to the issues on which technical advice is requested, the Mandate has the following sections:
 - 3.1- Format of the final terms to the base prospectus (Article 5(5)).
 - 3.2- 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)).
 - 3.3- Proportionate disclosure regime (Article 7).
 - 3.4- Equivalence of third-country financial markets (Article 4(1)).
 - 3.5- The consent to use a prospectus in a retail cascade (Articles 3 and 7).
 - 4- Review of the provisions of the Prospectus Regulation (Articles 5 and 7).
 - 5- Comparative table of the liability regimes applied by the Member States in relation to the PD.
5. As stated in the Amending Directive, the Commission is under an obligation to adopt delegated acts by 1 July 2012 in relation to the delegated acts referred to in sections 3.1 and 3.2 and that is why ESMA has been given a deadline to provide its advice by 30 September 2011 at the latest in relation to those sections.
 6. The present consultation paper (**CP**) addresses the technical advice that ESMA is required to deliver by 30 September 2011 plus section 3.3. of the Commission's Mandate (i.e. this consultation paper covers sections 3.1, 3.2 and 3.3 of the Mandate).
 7. ESMA regrets that it has been necessary to bring forward the consultation closing date by one month to ensure that consultation comments can be fully reflected in the final advice to be approved by the ESMA Board of Supervisors (**the BoS**).
 8. To enable it to fulfil the request for advice, ESMA set up under the remit of its Corporate Finance Standing Committee (**the CFSC**) a Prospectus Level 2 Task Force (**the Task Force**). The Task Force set up three drafting groups dealing respectively with sections 3.1, 3.2 and 3.3 of the Mandate.
 9. In addition, ESMA has benefited from the advice of the Consultative Working Group (**the CWG**), established to assist the CFSC on an on going basis, and is grateful for its ongoing assistance. There has been one meeting between the Task Force and the CWG on the issues covered by the said Mandate, during which the CWG provided comment and guidance on developing drafts of the papers the Task Force had produced. The CWG will continue to offer its views and advice to ESMA as its work progresses. A full list of members of the CWG can be found at Annex II.
 10. ESMA will consider the feedback received to this consultation and will provide by 30 September 2011 its advice on the sections mentioned in paragraph 6 to the Commission. In order for ESMA to best consider the relevance of comments, please indicate any material concerns over the impact of the advice being considered, including if you consider it may lead to unfair or disproportionate financial or administrative burden. In addition please also indicate any possible advantages or benefits deriving from the implementation of the advice.

3. Format of the final terms to the base prospectus (Article 5(5))

Part 3.I	Introduction.
Part 3.II	Format of final terms.
Part 3.III	Instructions in relation to the requirements of the securities note schedules and the building block(s).
Part 3.IV	Supplement to the base prospectus.
Part 3.V	Combination of summary and final terms.
Annex A	List of Securities Note Schedules and Building Block(s).
Annex B	List of “Additional Information”.

Part 3.I

Introduction

11. Recital 21 of the Commission Regulation 809/2004 (EC) (“**Prospectus Regulation**”) states that, where the final terms are not included in the base prospectus, they do not have to be approved by the competent authority.
12. On 26 January 2011, ESMA published a Call For Evidence² inviting all interested parties to submit views by 25 February 2011 on the issues ESMA should consider on its advice to the European Commission. In relation to final terms, the responses to the Call For Evidence conveyed a clear message for total flexibility.
13. ESMA found that current market practices vary in relation to the form of presentation and the content of the final terms filed as a separate document in accordance with Article 26 (5) of the Prospectus Regulation.
14. Even in 2007, the Committee of European Securities Regulators (**CESR**) had noted a certain level of inconsistency in the different practices and intended to reach a more consistent approach in relation to the final terms by issuing CESR FAQ N°57³.

² Call for evidence on the request for technical advice on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU (Ref. : ESMA/2011/35).

³ “CESR is aware of the fact that there is a certain level of inconsistency in the different competent authorities practices and intends to promote cooperation among its members to work towards a more consistent approach. Taking into account the feedback given by the market participants and the results of the survey, CESR considers that it should maintain the flexible approach incorporated in Article 22.2 Regulation and not produce any detailed guidance on information items that should be in a base prospectus or final terms.

However, CESR also considers that the flexible system provided for in the Regulation should not be abused by using the final terms as a mean of circumventing the obligation to publish a supplement when the prerequisites as set forth in Article 16 Directive are met. In this context, CESR considers that it is the issuer’s responsibility to bear in mind the general obligation to comply with Article 16 Directive.

It should also be noted that the Directive is intended to regulate disclosure of information rather than to regulate products that are appropriate to be offered to the public. Thus, there is usually no need to require information specific to a certain underlying or redemption structure to be vetted by the competent authorities.

Requirements of the Prospectus Regulation:

- The issuer may omit information items which are not known when the base prospectus is approved and which can only be determined at the time of the individual issue (Article 22.2)
- The final terms may only contain information items from the applicable securities note schedule (Article 22.4)
- All information relating to registration document schedules must be given in the base prospectus or supplements to it
- The base prospectus must indicate information that will be included in the final terms and the method of publication of the final terms or the indication of how the public will be informed about the method of publication of final terms (Article 22.5)
- All the general principles applicable to a prospectus are applicable also to the final terms (second sentence of Recital 21)

Along these lines, CESR considers that a base prospectus should be easily analysable and comprehensible. Thus, in addition to information about the issuer, the base prospectus should include general information (e.g. general terms and conditions, risks) relating to different types of securities and underlying assets that can be issued under the final terms. Information relating to specific securities to be issued under the base prospectus and required by the applicable securities note schedule can be given in final terms where the information relates to the individual issue and can only be determined at the time of the issue. However, issuers should keep in mind the fact that final terms – as part of the prospectus – should be drafted so that they are easily analysable and comprehensible as required by

15. There was a common understanding within the Task Force that, in general, the final terms still contain information which needs to be vetted by the competent authorities. Such information includes, among others, material changes of the risk factors, redemption structures and terms and conditions included in the approved base prospectus to which the final terms relate and new information which ESMA considers to be significant pursuant to Article 16 of the Prospectus Directive.
16. Accordingly, ESMA has come to the conclusion that the guidance issued by CESR in its FAQ N°57 did not reach the goal of a harmonized approach of the final terms, because it still provides for too much flexibility.
17. Following the above, ESMA considers it necessary to adopt a more restrictive approach in relation to the content of the final terms, in accordance with the Mandate received on 20 January 2011 from the Commission. (Parts 3.II and 3.III of this CP)
18. In addition to the development of the format of final terms, ESMA is mandated by the Commission to clarify what new information, capable of affecting the assessment of the issuer and the securities should be included in a supplement to the base prospectus rather than in the final terms. (Part 3.IV of this CP)
19. Finally, the Mandate invites ESMA to provide technical advice on the mechanism and the procedure according to which issuers should combine the summary of a base prospectus with relevant parts of its final terms in a way that is easily accessible to investors. (Part 3.V of this CP)
20. For the avoidance of doubt, the delegated acts to be adopted by the Commission in accordance with Article 5 (5) of the Amending Directive, shall only apply to final terms issued under a base prospectus which has been approved, by the competent authority, after the date of entry into force of these delegated acts.

Article 5.1 of the Directive. CESR intends to continue working in this area towards a common understanding among its members and, therefore, feedback from market participants would be welcomed.”

Part 3.II

Format of final terms

Extract from the Mandate:

“ESMA is invited to develop the possible format of the final terms as a separated document and provide technical advice on possible schedules and building blocks for the final terms to the base prospectus while at the same time preserving the flexibility of the base prospectus regime.”

A. Content of final terms

21. ESMA initially discussed the possibility of developing a format for final terms which would list exhaustively the items allowed to be included in the final terms. ESMA based such work on the format produced by ICMA (International Capital Market Association), which is used for the securities issued on the “Euromarket” and already broadly employed by a large number of domestic markets.
22. From the very wide range of complex structured products existing in the market, ESMA concluded that it is virtually impossible to develop such a format of final terms which would exhaustively list the items and related definitions that would be allowed to be included in final terms. This conclusion is further underpinned by the fact that every structured security has specific characteristics which can not be described in a standardized way.
23. Moreover, ESMA would like to ensure flexibility for innovation in the development of financial products in the future and acknowledges that the purpose of the Prospectus Directive is to regulate disclosure of information rather than to assess which of the products are appropriate to be offered to the public or admitted to trading on the regulated market.
24. The approach under paragraphs 22 and 23 is in accordance with the majority of the comments received in response to ESMA’s Call For Evidence that the final terms shall not go into excessive details in order to take into account the different types of securities covered by the Prospectus Directive.
25. For the reasons set out above, ESMA focused its discussion on producing a list of information items from the applicable securities note schedules of the Prospectus Regulation indicating whether such items they can or cannot be included only in the final terms. (Annex A)
26. Even though Article 5 (4) of the Prospectus Directive, as amended by the Amending Directive, and Article 22 (4) of the Prospectus Regulation provide that the final terms shall contain only information that relates to the securities note, ESMA is of the opinion that the final terms may also contain information which does not relate to the securities note but is considered by ESMA as useful to investors. In line with its more restrictive approach, ESMA firmly believes that such “Additional Information” shall be limited, especially given the difficulty to clearly define the term “additional” in a restrictive manner. (Annex B).

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” (included in Annex B), please provide the information which could fall under this item.

27. Even though Article 5 (4) of the Prospectus Directive, as amended by the Amending Directive, and Article 22 (4) of the Prospectus Regulation provides that the final terms shall contain only information that relates to the securities note, ESMA considers that the summary referred to under paragraph 65, fully completed for the individual issue, shall be annexed to the final terms, particularly as such summary contains key information for investors and to ensure the comparability of the summaries (as required by Recital 15 of the Amending Prospectus Directive and the Mandate). This summary shall form part of the final terms and is therefore subject to the same requirements of the Prospectus Regulation and the Prospectus Directive as the final terms document; this means for instance that the summary must also be filed with the competent authority of the home Member State and communicated, by the issuer, to the competent authority of the host Member State(s) in accordance with Article 5(4) of the Amending Prospectus Directive, and comply with the means of publication of the Prospectus Directive.
28. The base prospectus has to include all information that is knowable at the time of the approval of the base prospectus. For this purpose, “knowable” means information that the issuer could have already included in the base prospectus at the time of its drawing up.
29. The base prospectus can contain options with regard to all the information required by the relevant securities note schedule and its building block (if applicable) and with regard to the Additional Information. The final terms should then determine which of this optional information is applicable for the individual issue, by referring to the relevant sections of the base prospectus or by replicating such information.
30. The items of the relevant securities note schedule and its building block(s) (if any) which are already known at the time of the approval of the base prospectus, and therefore determined by the base prospectus, cannot be reproduced in the final terms. ESMA is of the opinion that final terms should not be used as a kind of short form prospectus or securities note, where investors would need to only revert to the base prospectus for the information of the issuer, as this approach is not clearly foreseen by the Prospectus Directive regime. The argument that final terms shall not constitute a stand alone securities overview, but would need to be read together with the base prospectus is supported by the following legal basis:
 - Recital 17 of the Amending Prospectus Directive provides that the final terms can contain only information relating to the securities note which can be determined only at the time of the individual issue. ESMA understands that the items already determined and included in the base prospectus cannot be reproduced in the final terms as they are not “determined only at the time of the individual issue”.
 - Article 26 (5) of the Prospectus Regulation provides that final terms may replicate some information which has been included in the approved base prospectus according to the relevant securities note schedule that has been used for drawing up the base prospectus. As the aforementioned article only refers to “some information”, ESMA considers that replication of information must remain limited and cannot cover the whole securities note.
 - From a practical point of view, some issuers feel the need, under the current Prospectus Directive regime, to provide investors with expanded final terms in order to give them a complete picture of

the product. However, this practice is not necessary anymore as, according to the Amending Prospectus Directive, issuers have to provide investors with a summary that includes the key information on the product offered (such summary gives a full picture to investors as it includes information from the final terms).

31. Additional Information which is already known at the time of the approval of the base prospectus, and therefore determined by the base prospectus, can be reproduced in the final terms.
32. In brief, and following the paragraphs above, the following information is allowed to be included in the final terms:
 - information categorized as “**CAT. B**” and “**CAT. C**”, as more fully defined in paragraph 44 and described in Annex A.
 - “Additional Information”, as listed under Annex B .
 - any replication in relation to options already provided for in the base prospectus.
 - the summary fully filled out for the individual issue, to be annexed to the final terms.
33. According to Recital 21 of the Prospectus Regulation, all the general principles applicable to a prospectus are also applicable to final terms. Therefore, issuers should keep in mind that final terms shall be prepared in an easily analysable and comprehensible form.
34. In order to enhance the readability of the final terms document, ESMA is of the opinion that all non-applicable information in relation to the individual issue should not be included in the final terms.
35. In order to avoid the issues described under paragraph 15 above, the final terms are not allowed to amend or replace any information contained in the base prospectus. The issuer shall prepare a supplement in cases where such amendment or replacement is significant within the meaning of Article 16 of the Prospectus Directive or produce a new prospectus in all other cases. If the information is not material pursuant to Article 16 of the Prospectus Directive, the issuer may publish a notice in accordance with national laws and CESR FAQ No 23⁴.
36. Pursuant to the Prospectus Directive, investors can only make an informed investment decision if they consult the final terms along with the base prospectus and the summary. Therefore, ESMA considers it necessary to include an introductory text in the final terms which points investors to the base prospectus and the supplements (if any) to which the final terms relate, and also to the annexed summary concerning the individual issue (see Part 3.V below).

⁴ “The PD states that the text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, shall at all times be identical to the original version approved by the home CA (Art. 14.6). Moreover, according to Article 16.1, every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities shall be published through a supplement to the prospectus. There are cases when the information is not significant in the PD meaning, however could be useful for investors. For example, where the prospectus contains mistakes or inaccuracies which are not material.

As prescribed by Article 14, the prospectus approved by the competent authority can not be subsequently modified (apart from the supplement procedure). However, in case the prospectus contains a mistake or inaccuracy that is not material or significant pursuant to Article 16 of the Directive, the issuer should be entitled to make an announcement to the market explaining the mistake or inaccuracy.

The above comments are without prejudice to the obligations imposed to issuers having their securities admitted to trading on a regulated market by other Directives, in particular Directive 2003/6/EC on Market Abuse.

The competent authority of Poland considers that also in case of new factors that refer only to the organisation of the subscription or admission to trading of the securities, that are not material or significant pursuant to Article 16 of the Directive, the issuer is entitled to make an announcement to the market explaining that new factor.”

The introductory text shall specify at least the following:

- Final Terms have been prepared for the purpose of Article 5 (4) of the Prospectus Directive and must be read in conjunction with the base prospectus and its supplement(s) (if any).
- Indication of how the base prospectus and its supplement(s) (if any) is/are made available and where it/they can be obtained by the public (Article 26 (5) of the Prospectus Regulation).
- Full information on the issuer and on the offer is only available on the basis of the combination of base prospectus and final terms (Article 26 (5) of the Prospectus Regulation).
- Summary, fully completed for the individual issue, is annexed to these final terms.

B. Form of presentation of final terms

37. There is no need to require the final terms to follow the order of the disclosure requirements of the relevant securities note schedule and its building block(s) (if any), as it seems that there is no added value for investors.
38. From the work ESMA has carried out, it emerged that current market practices vary considerably in relation to the form of presentation of final terms and, accordingly, imposing one common format of final terms would increase documentation costs for most issuers. More particularly, ESMA believes it to be inappropriate to develop a detailed form of presentation as experience has shown that the order of presentation depends on the nature of the specific product.
39. The argument that a detailed form of presentation would benefit investors by facilitating comparability among final terms, was outweighed by the fact that comparability is only required for the summaries of the prospectus and not the final terms.
40. According to Recital 26 of the Prospectus Regulation, the base prospectus has to set out in an easily identifiable manner what information will have to be included as final terms. For this purpose, to allow the competent authorities to easily check whether the principles relating to the final terms have been respected and in order to better ensure the effectiveness of the recommendations given in this paper, the base prospectus shall include a section containing a template, the “form of final terms”, which will have to be filled out for each individual issue.
41. According to the relevant national law, final terms may include the signature of the legal representative.

Part 3.III

Instructions in relation to the requirements of the securities notes and the building block(s)

Extract from the Mandate:

“It should specify the disclosure requirements of the securities note the final terms should contain and what information can be considered specific to the issue and can be determined only at the time of the individual issue. Such information might, for example, include the international securities identification number, the issue price and date, the date of maturity, any coupon, the exercise date, the exercise price, the redemption price and other terms not known at the time of drawing up the prospectus.”

A. Principles

42. Some respondents on the Call For Evidence argued that there is no need to have schedules and building blocks in relation to final terms and that delegated acts should be limited to establishing certain principles to be observed when preparing final terms. ESMA did not take on board this comment which appears neither to comply with the requirement of the Mandate to specify “the disclosure requirements of the securities note, the final terms should contain” nor ESMA’s intention to adopt a more restrictive approach in relation to the content of the final terms.
43. Following paragraph 25 above, ESMA developed detailed instructions on what information required by the securities note schedule and its building block(s) may be included only in the final terms, when not known at the time of the approval of the base prospectus. Such instructions are disclosed in Annex A.
44. The table in Annex A refers to 3 different categories of items. Such categories determine the degree of flexibility by which the information can be given.

- When an item is categorized as “**CAT. A**”, the base prospectus cannot include any placeholder in this respect. The relevant information has already to be included in the base prospectus. No additional information in relation to such item can be added in the final terms but would require a supplement (if Article 16 of the Prospectus Directive is applicable) or a new prospectus.

Example:

THE BASE PROSPECTUS:

“ Status of the Securities:

The Securities constitute direct, unsubordinated, unconditional and unsecured obligations of the Issuer and rank *pari passu* among themselves.”

THE FINAL TERMS:

N/A

- When an item is categorized as “**CAT. B**”, the base prospectus should contain all the general principles of such item and only placeholders for the relevant details not known at the time of the approval of the base prospectus. Such details can only refer to amounts, currencies, dates, time periods, percentages, reference rates, screen pages, names and places. The final terms

may replicate or refer to such principles and fill out the relevant placeholders, pursuant to Recital 26 of the Prospectus Regulation⁵.

a) Example of final terms replicating the principle:

THE BASE PROSPECTUS:

“Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

(i) if the Final Reference Price is equal to or greater than [□] of the Initial Reference Level, then the Settlement Amount shall be [□]

(ii) if the Final Reference Price is less than [□] of the Initial Reference Level, then the Settlement Amount shall be [□]”

THE FINAL TERMS:

“Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

(i) if the Final Reference Price is equal to or greater than 80 per cent of the Initial Reference Level, then the Settlement Amount shall be 200 EUR

(ii) if the Final Reference Price is less than 80 per cent of the Initial Reference Level, then the Settlement Amount shall be 0 EUR”

b) Example of final terms referring to the principle:

THE BASE PROSPECTUS:

”XY. Redemption at the option of the Issuer (Issuer Call)

If Issuer Call is applicable, the Issuer may:

(a) in not less than 15 nor more than 30 days’ notice to the Noteholders; and

(b) in not less than 4 days before the giving of the notice referred to in a notice to the Trustee

redeem all or some only of the Notes then outstanding on any Optional Redemption Date and at the Optional Redemption Amount specified in, or determined in the manner specified in, the applicable Final Terms.”

THE FINAL TERMS:

”Redemption at the option of the Issuer (as referred to under condition XY)

⁵ “With respect to base prospectuses, it should be set out in an easily identifiable manner which kind of information will have to be included as final terms. This requirement should be able to be satisfied in a number of different ways, for example, if the base prospectus contains blanks for any information to be inserted in the final terms or if the base prospectus contains a list of the missing information.”

Optional Redemption Date: 09/04/11
Optional Redemption Amount: 1000 EUR”

- When an item is categorized as “CAT. C”, the base prospectus should contain a placeholder, when the information has not been known at the time of the approval of the base prospectus. Such placeholder could then be filled out in the final terms.

Examples:

a)
THE BASE PROSPECTUS:
“Maturity date: [□]”

THE FINAL TERMS:
“Maturity date: 05/01/13”

b)
THE BASE PROSPECTUS:
“Estimated total expenses: [□]”

THE FINAL TERMS:
“Estimated total expenses: The estimated total expenses that can be determined as of the issue date are up to 10,000 EUR consisting of listing fees, such expenses exclude certain out-of pocket expenses incurred or to be incurred by or on behalf of the issuer in connection with the admission to trading.”

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.

45. It should be clarified that for all categories referred to under the previous paragraph, the information can always be included in the base prospectus also by way of options in the meaning of paragraph 29; the final terms would then determine which of the option(s) would be applicable to the individual issue.

a) Example of status of the securities (CAT. A Item):

THE BASE PROSPECTUS:
“The Notes are issued in bearer form or in registered form.”

THE FINAL TERMS:
“The Notes are issued in bearer form.”

b) Example of return on derivative securities (CAT. B Item):

THE BASE PROSPECTUS:

“Option 1:

Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

(i) if the Final Reference Price is equal to or greater than of the Initial Reference Level, then the Settlement Amount shall be

(ii) if the Final Reference Price is less than of the Initial Reference Level, then the Settlement Amount shall be

Option 2:

Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

Face Value* $\text{MAX} \left(0,1 - \frac{\text{Initial Reference Currency Rate}}{\text{Settlement Rate}} \right)$

“Face Value” per certificate means

“Initial Reference Currency Rate” means

“Settlement Rate” means the Reference Exchange Rate on the Expiration Date

Reference Exchange Rate: means the spot exchange rate for the Reference Currency quoted against the USD

Expiration date: means

Reference Currency:

THE FINAL TERMS:

“Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

(i) if the Final Reference Price is equal to or greater than 80 per cent of the Initial Reference Level, then the Settlement Amount shall be 200 EUR

(ii) if the Final Reference Price is less than 80 per cent of the Initial Reference Level, then the Settlement Amount shall be 0 EUR”

B. Comments

General comments

46. In accordance with Article 22 (6) of the Prospectus Regulation, final terms can only contain information required by the following securities note schedules and additional building blocks: V, VI, VIII, XII, XIII, and XIV.
47. When assessing which items of the securities note schedule and its building block(s) (if any) can be included only in the final terms, ESMA wanted to avoid imposing on issuers the obligation to systematically produce a supplement as this would greatly impair the flexibility of the final terms regime by creating excessive administrative and procedural burdens for issuers and would not be in accordance

with Recital (4) of the Amending Prospectus Directive, which intends to enhance the international competitiveness of the European Union.

48. For the securities linked to or backed by an underlying asset, the base prospectus shall disclose all possible types of such underlying (e.g. index, share, interest rate, ...). The specific elements in relation to the underlying asset required by the Prospectus Regulation can be set out in the final terms as ESMA understands that the individual selection of the relevant underlying asset is usually influenced by market conditions.
49. Some respondents to the Call For Evidence expressed the view that the pay out formulas shall be included in the final terms as they are specific to the issue and given that the economic appropriateness of such formulas are not the object of a specific analysis by the competent authorities. However, 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.

Comments on debt securities (Annex V of the Prospectus Regulation)

50. In order to better ensure the effectiveness of the recommendations given in this paper, and taking the general comment in paragraph 48 into account, ESMA is of the opinion that item 4.7 of Annex V and item of 4.8 of Annex XIII would need to be amended in order to explicitly include the type of the underlying as already provided under item 4.2.2 of Annex XII. For this purpose, ESMA suggests a relevant wording in the attached Annex A (4.7.(vi) of Annex V and 4.8.(vi) of Annex XIII) which would ensure a harmonized approach among all competent authorities so that the types of underlying assets must always be included in the base prospectus.

Comments on derivative securities (Annex XII of the Prospectus Regulation)

51. Even though the Prospectus Directive does not confer the right to the competent authorities to make an economic assessment of a product, such authority has nevertheless the obligation to review structured products in accordance with the comprehensibility, consistency and completeness criteria set out under Article 2 of the Prospectus Directive. Therefore, ESMA considers that the general principles of the way of redemption and the settlement procedure of the derivative security shall be laid down in the base prospectus. ESMA further points out that a new “pay out” of the derivative security can be interpreted as a new product and shall, for this reason, be already disclosed in the base prospectus instead of the final terms.
52. If information of the redemption structure of the derivative security has to be included in the base prospectus, a description of the effect of the underlying asset on the investment and risk factors associated with the security should also be known at the time of the drafting of the base prospectus. ESMA further argues that all risk factors need to be approved by the competent authorities as they play a critical role in investment decisions.
53. In cases where the underlying constitutes an index composed by the issuer, ESMA considers that the description required of such index shall not be provided in the final terms for the following reasons:

- Indices composed by issuers are often governed by a complex set of rules.
- The criteria for selecting an index for an issue depends more on the issuer itself than on market conditions.

54. As market disruption events and related adjustment rules concerning the underlying depend more on the type of underlying asset than on the individual selection of the underlying asset, they should already be known at the time of the drafting of the base prospectus in the same way as the type of underlying asset.

Comments on asset backed securities (Annex VIII of the Prospectus Regulation)

55. As the information in relation to the structure and cash flow of the asset backed security transaction is generally not issue specific, it must be provided in the base prospectus.

56. If the underlying assets are already admitted to trading on a regulated market, ESMA considers that the information in relation to these assets can be determined in the final terms, as the information relating the underlying assets has already been reviewed by a competent authority of the EU.

57. In case the underlying assets are not admitted to trading on a regulated market:

- the description relating to the obligors of the underlying assets, pursuant to the relevant registration document, must be disclosed in the base prospectus or a related supplement.
- Only issue specific details in relation to these underlying assets may be included in the final terms. ESMA takes this view as the nature of the main terms of the underlying asset usually depends on the type of underlying asset rather than the individual choice of the underlying asset.

58. The confirmation that the underlying assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities shall be provided in the base prospectus. This confirmation should be considered as some sort of general assurance given by the issuer to investors that it only intends to issue, under the relevant base prospectus, securities backed by underlying assets which fulfill the necessary conditions.

59. The swap counterparty shall be described in the base prospectus, as this entity performs a defining role in the transaction by providing material forms of credit/liquidity enhancement. The same reasoning applies to the general description of the obligors and their economic environment.

Comments on warrants falling under Article 17 of the Prospectus Regulation (Annex XIV of the Prospectus Regulation)

60. Most of the information required by Annex XIV can be disclosed in the base prospectus as ESMA considers that the underlying share has to be issued by the issuer of the warrants or an entity belonging to the same group of that issuer (see Annex XVIII Prospectus Regulation). Only in case that the underlying asset constitutes fungible shares that are issued after the approval of the base prospectus, some issue specific information is permitted to be provided in the final terms (see Annex A).

Part 3.IV

Supplement to the base prospectus

Extract of the Mandate:

“It should clarify what new information, capable of affecting the assessment of the issuer and the securities should be included in a supplement to the base prospectus rather than in the final terms.”

61. All the information that is not allowed by this document, to be included in the final terms, requires the approval of a supplement or a new prospectus. The information can be included by way of supplement, only if it may be considered as significant pursuant to Article 16 of the Prospectus Directive by the issuer or the person responsible for the drawing up of the base prospectus.
62. ESMA assumes, that its rather restrictive approach in relation to the content of final terms, may lead to an increased number of supplements to the base prospectus in the future.

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?

63. ESMA is aware that a situation may occur where issuers need to prepare a supplement for information that relates only to a specific issue but not to the content of the base prospectus. In this case, the withdrawal right pursuant to Article 16 of the Prospectus Directive shall only apply to the relevant individual issue and not to any other possible issues under the base prospectus. In order to better ensure the effectiveness of the recommendations given in this paper, ESMA considers it would be necessary to amend Article 22 (7) of the Prospectus Regulation consistently with the above mentioned interpretation, in order to harmonize the content of such withdrawal right across subscribers of different countries.

Part 3.V

Combination of summary and final terms

Extract of the Mandate:

“When the final terms are presented in the form of a separate document containing only the final terms, in order to fulfill the obligation to provide key information in the summary document also under the base prospectus regime, ESMA is also invited to specifically define the mechanism and the procedure according to which issuers should combine the summary of a base prospectus with relevant parts of its final terms in a way that is easily accessible to investors. In such cases no subsequent approval of the summary and the final terms should be required.”

64. The summary of the base prospectus may contain three different types of information:

- **information that is already known at the date of the base prospectus**, and therefore already included in the base prospectus
- **options** for “Additional Information” and for information required by the securities note schedule and its building block(s) (if any). Such options are disclosed in the base prospectus; the final terms should determine which of those options are applicable to the individual issue
- **placeholders** for “Additional Information” and for information required by the securities note schedule and its building block(s) (if any). Such information may be included only in the final terms in accordance with the instructions given in this document.

65. In order to ensure the comparability of the summaries (as required by Recital 15 of the Amending Prospectus Directive and the Mandate), a summary of each individual issue should also be drawn up. The summary of the base prospectus should therefore be fully completed and annexed to the relevant final terms. In this context:

- **the information that is already known at the date of the base prospectus**, and therefore already included in the base prospectus, should be replicated in the summary of the individual issue,
- as for the **options** disclosed in the base prospectus, the summary of the individual issue should replicate all applicable information as determined in the final terms,
- the **placeholders** should be filled out accordingly to the information provided in the final terms.

66. In cases where final terms relate to several securities but where the individual securities are very similar and differ only in some very limited details (e.g. the issue price or the maturity date), it is possible to attach one single completed summary for all such securities where the different information of the different securities are clearly segregated.

67. Under the Prospectus Directive regime, the summary included in the base prospectus is subject to approval by the competent authority. However, the fully completed summary for the individual issue is not required to be approved, because:

- for **the information that is already known at the date of the base prospectus**: such information has already been approved and is only a replication from the summary of the base prospectus
- for the **options**: all possible options have been approved in the summary of the base prospectus. The summary of the individual issue only replicates the applicable information.

- for the **placeholders**: this concerns only information which is considered to be given only in the final terms, which are not approved. Therefore, a summary of such information does not need to be approved as well.
68. In order to better ensure the effectiveness of the recommendations given in this paper, ESMA is of the opinion that the final terms should be drawn up in the same language as the approved version of the form of final terms of the base prospectus and the summary of the individual issue should be drawn up in the same language as the summary of the base prospectus.
69. In order to better ensure the effectiveness of the recommendations given in this paper, ESMA is of the opinion that, in relation to the communication of the final terms to the competent authority of the host Member State(s) in the meaning of Article 5 (4) of the Amending Prospectus Directive, the following language rules shall apply to the final terms and the annexed summary:
- (i) When the summary of the base prospectus needs to be translated pursuant to Article 19 of the Prospectus Directive, the summary annexed to the final terms shall be subject to the same translation requirements as the summary of the base prospectus.
 - (ii) When the base prospectus needs to be translated in its entirety in compliance with Article 19 of the Prospectus Directive, the final terms, including the annexed summary, shall be subject to the same translation requirements as the base prospectus.

The issuer shall communicate the said translation(s), together with the final terms, to the competent authority of the host Member State(s).

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.

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

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))

- Part 4.I Introduction to section 3.2 of the Mandate.
- Part 4.II Discussion.
- Part 4.III General principles.
- Part 4.IV Final terms and summaries.
- Part 4.V Format and Contents of Summaries for Annexes I to XVII of the Prospectus Regulation.

Part 4.I

Introduction to section 3.2 of the Mandate

70. The European Commission has issued a mandate to ESMA for advice on possible delegated acts concerning the Prospectus Directive as amended by the Amending Directive.

71. Section 3.2 of the Mandate is titled “*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)).*”

72. It explains that:

- a. the summary to a prospectus is a key source of information for retail investors. The summary should focus on the key information that investors need in order to be able to decide which offers and admissions of securities to consider further
- b. a common format should facilitate comparability among summaries of similar products by ensuring that equivalent information always appears in the same position in the summaries

73. The Mandate invites ESMA:

- a. to advise the Commission on possible schedules and building blocks of the summary document. Common formats of the summary are to be developed of the summary document and its key information in order to facilitate comparability among summaries of similar products and to ensure that equivalent information always appears in the same position in the summary document.
- b. in relation to the content of summaries ESMA is invited to reflect on a detailed and exhaustive description of the essential and appropriately structured key information to be provided to investors as generally defined in Article 2(1)(s) of the Amended Directive.

74. The Mandate states that the summary document should contain:

Extract of the Mandate:

- ”
- *An introduction stating the purpose of the summary document.*
 - *A short description of the essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position. This section should briefly and clearly summarize at least the "Information about the issuer" and the guarantor, the "Business overview," and the "Financial information concerning assets and liabilities, financial position, and profits and losses," as described in the Regulation (EC) 809/2004 (the "Prospectus Regulation").*
 - *A short description of the essential characteristics of the security, including any rights attaching to the securities. This section should briefly and clearly summarize at least the "Information concerning the securities," the items of "Terms and the conditions of the offer" relevant to the security, the nature and scope of the guarantee, the "Admission to trading and dealing arrangements," as described in the Prospectus Regulation.*
 - *A short description of the risks involved in investing in the securities such as factors that are*

specific to the issuer, the guarantor and their industry, which can affect their ability to fulfil their obligations, and factors which are material for the purpose of assessing the inherent and market risks associated with an investment in the securities.

- *A short description of the offer. This section should briefly and clearly summarize the relevant items of the "Terms and the conditions of the offer," the "Reasons for the offer and use of proceeds," as described in the Prospectus Regulation, including the estimate of the total expenses of the issue and any selling restrictions."*

75. ESMA is asked to take account of the objectives of the Commission's work on Packaged Retail Investment Products (PRIPs). In particular the summary should take into account the "key investor information" as developed under the PRIPs initiative.
76. Article 5.2 of the amended PD requires ESMA to develop draft implementing technical standards in relation to a uniform template for the presentation of the summary and to allow investors to compare the security concerned with other relevant products. ESMA will address this after the adoption by the Commission of the delegated acts, which the Mandate explains are to be in place by 31 December 2011 and subject to the objection period for the European Parliament and the Council. This will allow some specific issues to be addressed such as the interaction of final terms and the summary of the base prospectus for certain securities such as warrants or bank certificates, or some other outstanding issues related to PRIPs.

Part 4.II

Discussion

Call for Evidence

77. ESMA has benefited from the responses to the Call for Evidence issued on 26 January 2011.

Modular approach

78. ESMA has considered the disclosure requirements set out in Annexes I to XVII of the Prospectus Regulation and has adopted a modular approach for summaries. Based on which of the annexes, I to XVII, are addressed in the main body of the prospectus, an issuer will be able to construct the appropriate summary.

Q8: Do you agree with our modular approach?
--

Five sections to summaries

79. ESMA has adopted the model of five sections set out in the Mandate and has identified the mandatory key information to be in a summary. Each of the five sections is made up of a number of “Points”.

Mandatory key information

80. The Mandate requires ESMA to reflect on the key information to be in summaries. ESMA has done this by examining the disclosure requirements of for each of Annexes I to XVII of the Prospectus Regulation. The result does not select individual “items” from Annexes I to XVII but instead identifies the key information to be included in the summary in the form of the new “Points”.

81. In preparing the requirements for disclosure in summaries, the test for inclusion of “Points” is whether that information is key information in the context of Art 5.2 of the Amended Prospectus Directive – “[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.”

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

Other information

82. ESMA considered whether there should be an additional section to allow for “*other information*” to be included in a summary. It concluded that this was undesirable as it would reduce the comparability of summaries. For the same reasons it rejected the idea of including within each section a “Point” to specifically accommodate “*other information*”. The mandatory requirements for the key information to be in summaries provides the flexibility for summaries to be drafted so that all information appears within a framework that provides comparability between summaries.

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?

Length of summaries

83. ESMA has considered whether there should be a numeric limit of some sort on the length of summaries. Recital 15 of the Amending Directive [2010/73/EU] requires summaries to set out the key information that investors need to be able to decide which offers and admission of securities to consider further and to allow comparison between summaries of similar products. The amending directive has not renewed the 2,500 word limit in recital 21 of the Prospectus Directive. Instead the Amending Directive has changed the focus onto the comparability of summaries. The general principles for summaries in Part 4.III of this paper focus on the length of summaries – but do so without setting a numeric limit on summaries. ESMA has not adopted a numeric limit but is aware that a limit could be based on an absolute number of words or pages – or on a percentage of the words or pages which appear in the main body of the prospectus. ESMA’s proposed approach is that summaries should contain the key information that investors need and should be short.

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

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?

PRIPs

84. Recital 27 of the Amending Directive states that delegated acts may be necessary to specify the detailed content and specific form of the summary in accordance with the outcome of the debate launched by the Commission’s communication on Packaged Retail Investment Products (PRIPs) of 30 April 2009 aligning to the greatest extent possible the content and form of the summary for securities with that outcome, preventing the duplication of documents and potential confusion as well as minimising the costs.

85. The work on PRIPs Key Investor Information Document (KIID) is still at the Level 1 drafting stage. This meant that there has been no Level 2 material for ESMA to engage with. Consequently, ESMA has focused on identifying the information from the main body of prospectuses that should be in summaries. This could then be augmented by the work being done on PRIPs. Our work will, as far as possible, seek to ensure that any benefit in the form of alignment of requirements that arises as a result of work on the KIID or work on the requirements of other Directives is reflected in the requirements for prospectuses.”

86. ESMA noted CESR’s template for the Key Investor Information Document for UCITS [CESR/10-1321]. Included in this information are sections showing risk and reward profiles and the past performance of the instrument. ESMA supports the objectives and work undertaken of KIIDS PRIPs but notes that if such information were to appear in a summary it would be introducing new disclosure into prospectuses which do not, for example, have requirements to disclose past performance of the securities to which the prospectus relates.



Annexes I to XVII

87. For ease of reference a list of the annexes I to XVII in the Prospectus Regulation is attached below.

List of annexes in Prospectus Regulation EC/809/2004

Annex	Schedule/ Building Block	Schedule type	Key words in title	Annex title (key words shown in bold)
I	Sch	RD	Shares	Minimum disclosure requirements for the share registration document
II	B Block		Pro forma	Pro forma financial information building block
III	Sch	SN	Shares	Minimum disclosure requirements for the share securities note
IV	Sch	RD	Debt + derivative <€50,000	Minimum disclosure requirements for the debt and derivative securities registration document (debt and derivative securities with a denomination per unit of less than €50,000)
V	Sch	SN	Debt <€50,000	Minimum disclosure requirements for the securities note related to debt securities (debt securities with a denomination per unit of less than €50,000)
VI	B Block		Guarantees	Minimum disclosure requirements for guarantees
VII	Sch	RD	Asset-backed	Minimum disclosure requirements for asset-backed securities registration document
VIII	B Block		Asset-backed	Minimum disclosure requirements for the asset-backed securities additional building block
IX	Sch	RD	Debt + derivative >=€50,000	Minimum disclosure requirements for the debt and derivative securities registration document (debt and derivative securities with a denomination per unit of at least €50,000)
X	Sch	[RD+SN]	Depository receipts	Minimum disclosure requirements for the depository receipts issued over shares
XI	Sch	RD	Banks	Minimum disclosure requirements for the banks registration document
XII	Sch	SN	Derivatives	Minimum disclosure requirements for the securities note for derivative securities
XIII	Sch	SN	Debt >=€50,000	Minimum disclosure requirements for the securities note for debt securities with a denomination of at least €50,000
XIV	B Block		Underlying share	Additional information building block on underlying share for some equity securities

Annex	Schedule/ Building Block	Schedule type	Key words in title	Annex title (key words shown in bold)
XV	Sch	RD	Closed-end collective investment undertakings	Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type
XVI	Sch	RD	MS, third countries & regional + local authorities	Minimum disclosure requirements for the registration document for securities issued by Member states, third countries and their regional and local authorities
XVII	Sch	RD	Public international bodies and OECD guarantees	Minimum disclosure requirements for the registration document for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD

Note: Annexes I to XVII are either Schedules or Building Blocks. Schedules relate to either Registration Document (RD) or Security Note (SN)



Tables

88. The disclosure requirements for prospectus summaries are set out in the tables below (please see Part 4.V).
89. The disclosure requirements for summaries are taken from the disclosure requirements in the annexes to the Prospectus Regulation. In many cases this has been expressed in new words.
90. The approach is to require disclosure of key information in five sections in the summary: (A) Introduction and warnings; (B) Issuer and any guarantor; (C) Securities; (D) Risks; & (E) Offer.
91. Information may not be disclosed in a summary outside of the five sections A to E. In particular no provision has been made for a separate section in which additional material might be disclosed. This approach has been adopted to ensure that all information in the summary appears in a way in which it can be readily compared with disclosure in the summaries of other prospectuses.

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?

Profit forecasts

92. ESMA has considered whether profit forecasts are key information to be included in summaries and concluded that they are. Consequently at Point B.9 the disclosure requirement for summaries states “Where a profit forecast or estimate is made, state the figure.”
93. ESMA has considered whether Point B.9 should be supported by additional disclosure to ensure that the profit forecast is presented in the summary in context. This might be done by including an additional requirement for the summary to disclose the key assumptions on which the forecast or estimate has been made. Also, there could be a mandatory reference to the forecast being reported on in the main body of the prospectus.

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?

Role for competent authorities in scrutinising prospectuses.

94. There is an important role for Member States’ competent authorities in the prospectus scrutinising process to ensure that the correct balance is maintained between ensuring that the summary provides an appropriately brief description of the issuer and the issue and yet contains all the information required to be in a summary.
95. ESMA therefore recommends that Article 3, 3rd paragraph, Prospectus Regulation should be amended so that it also applies to summaries.

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

Length of summaries

96. The disclosure in the tables below sets out the key information to be in summaries. To a great extent this limits the length of summaries.

Costs

97. ESMA would like information on the cost implications of the proposals for the content and format of summaries.

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

Part 4.III

General principles

98. The purpose of the summary is to present the key information that investors need in order to be able to decide which offers and admissions of securities to consider further.
99. A summary should be a fresh assessment by the issuer of the key information in the prospectus. It should not simply be a copy-out of text that appears in the main body of the prospectus.
100. There is not a numeric limit on how long a summary can be. However, the PD is clear that the key information in summaries should be presented as short descriptions. This precludes summaries from taking on an excessive length. According to Recital 15 of the amending Directive, which amended the Prospectus Directive, the summary “*should be a self-contained part of the prospectus and should be short, simple, clear and easy for targeted investors to understand.*” The summary should therefore be as short, as simple, as clear, and as easy for investors to understand as possible and avoid technical language. No superfluous information shall be included in the summary, since this would contradict the key information concept. In particular ‘boilerplate’ should not be copied from the main body of the prospectus into the summary. The length of the summary has to be appropriate to the length of the whole prospectus and to the complexity of the facts described in the prospectus.
101. Summaries should be written as though they formed the body of a letter from the chair, or managing board of the issuer, offeror, or person seeking admission to trading, to investors and market. As a consequence summaries should be drafted in plain language, presenting the information in an easily accessible way and ensuring that readers can understand the key information immediately.

Materiality

102. A materiality test for including information in a summary is set out in Article 5.2 PD which states: “... *and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities*”.
103. The test for whether information should be in a summary is not the same as the test for whether information should be in the prospectus [Article 5.1 PD].

Length of summaries, liability of issuer and, in particular, risk factors

104. The prospectus liability regime provides that no civil liability shall attach to any person solely on the basis of the summary, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in the securities to which the prospectus relates [Art 6.2 PD].
105. Issuers should ensure that summaries provide the reader with key information. For example, the disclosure requirements concerning risk factors should identify the key risks concerning the issuer and the securities and give key information on those key risks. Presentations which would not be acceptable are: (1) a minimalist approach of simply listing in the summary all the headings of the risk factors; or (2) an excessive approach of reproducing long tracts from the risk factors section.

Part 4.IV

Final terms and summaries

106. The combination of summaries and final terms is discussed in Part 3.V of this paper.



Part 4.V

Format and Contents of Summaries for Annexes I to XVII of the Prospectus Regulation

NB

- *The columns “Source” do not form part of the advice on the requirements for summaries – they are included as an aide to drafting and appear in blue and italics in the tables.*
- For ease of reading the Annexes are referred to below with Arabic numerals in addition to their Roman characters.

Guide to using the tables

1. Summaries are constructed on a modular basis according to the annexes from the Prospectus Regulation on which the prospectus has been based. For example, the summary for a share prospectus would disclose the information required for the points for annexes I and III.
2. Each summary will be made up of five tables as detailed below.
3. For each point the summary should disclose: the point’s number; the disclosure requirement; and the disclosure. Points should appear in the summary in their numeric order.
4. Where a point is not applicable to a prospectus the point should not appear in the summary. This would ensure that summaries do not contain “*not applicable*” for any point.
5. Summaries should not contain cross-references to specific parts of the prospectus.
6. Summaries for prospectuses using new annexes relating to proportionate disclosure should treat as non-applicable Points correlating to items not required for the proportionate prospectus annex.

Section A – Introduction and warnings

Annexes	Point	Disclosure requirement	Source
All	A.1	This summary is drawn up to facilitate comparability of the summaries of similar securities and sets out the key information about the [securities] in order to aid investors when considering whether to invest in such securities.	<i>Mandate Art 5.2 PD</i>
All	A.2	It provides the key information that retail investors need in order to be able to decide which offers and admissions of securities to consider further.	<i>Recital 15 Amending Directive</i>
All	A.3	Warning that: <ul style="list-style-type: none"> • <i>[this] summary should be read as introduction to the prospectus;</i> • <i>any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;</i> • <i>where a claim relating to the information contained in [the] prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and</i> • <i>civil liability attaches only to those persons who have tabled the summary including any translation thereof, and applied its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.</i> 	<i>Art 5.2 PD Art 6.2 PD</i>

Section B– Issuer and any guarantor

Annexes	Point	Disclosure requirement	Source
1, 4, 7, 9, 11	B.1	The legal and commercial name of the issuer.	<i>Annex 1, item 5.1.1 Annex 4, item 5.1.1 Annex 7, item 4.2 Annex 9, item 4.1.1 Annex 11, item 4.1.1</i>
1, 4, 7, 9, 11	B.2	The domicile and legal form of the issuer, the legislation under which the issuer operates and its country of incorporation.	<i>Annex 1, item 5.1.4 Annex 4, item 5.1.4 Annex 7, item 4.5 Annex 9, item 4.1.4 Annex 11, item 4.1.4</i>
1	B.3	A description of, and key factors relating to, the nature of the issuer's current operations and its principal activities, stating the main categories of products sold and/or services performed and identification of the principal markets in which the issuer competes.	<i>Annex 1, item 6</i>
1, 4, 11	B.4	A brief description of the most significant recent trends affecting the issuer and the industries in which it operates.	<i>Annex 1, item 12 Annex 4, item 8.2 Annex 11, item 7.2</i>
1, 4, 9, 11	B.5	If the issuer is part of a group, a brief description of the group and the issuer's position within the group.	<i>Annex 1, item 7.1 Annex 4, item 7.1 Annex 9, item 6.1 Annex 11, item 6.1</i>
1	B.6	In so far as is known to the issuer, the name of any person who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest. Whether the issuer's major shareholders have different voting rights. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control.	<i>Annex 1, items 18.1 Annex 1, items 18.2 Annex 1, items 18.3</i>
1	B.7	Selected historical key financial information regarding the issuer, presented for each financial year of the period	<i>Annex 1, items 3.1 &</i>

Annexes	Point	Disclosure requirement	Source
		<p>covered by the historical financial information, and any subsequent interim financial period accompanied by comparative data from the same period in the prior financial year except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.</p> <p>This should be accompanied by a brief narrative description of key performance indicators and of significant change to the issuer's financial condition and operating results during or subsequent to the period covered by the historical key financial information.</p>	<p>3.2</p> <p><i>Annex 1, item 9</i> <i>Annex 1, item 20.9</i></p>
1	B.8	A brief summary of any pro forma financial information, identified as such.	<i>Annex 1, item 20.2</i>
1, 4, 9, 11	B.9	Where a profit forecast or estimate is made, state the figure.	<p><i>Annex 1, item 13</i> <i>Annex 4, item 9</i> <i>Annex 9, item 8</i> <i>Annex 11, item 8</i></p>
1, 4, 9, 11	B.10	A brief description of the nature of any qualifications in the historical financial information.	<p><i>Annex 1, item 20.1 & 20.4.1</i> <i>Annex 4, item 13.3.1</i> <i>Annex 9, item 11.3.1</i> <i>Annex 11, item 11.3.1</i></p>
3	B.11	<p>Either of the following two statements:</p> <ul style="list-style-type: none"> • the working capital is sufficient for the issuer's present requirements; or • the working capital is not sufficient for the issuer's present requirements, together with a brief description of how it proposes to provide the additional working capital needed. 	<i>Annex 3, item 3.1</i>
4, 9, 11	B.12	<p><i>Use only the first paragraph of B.7, plus:</i></p> <ul style="list-style-type: none"> • „A statement that there has been no material adverse change in the prospects of the issuer since the date of its last published audited financial statements or a brief description of any material adverse change.“ • “A brief description of significant change to the issuer's financial condition and operating results during or subsequent to the period covered by the historical key financial information.” 	<p><i>Annex 4, item 3</i> <i>Annex 9, item 11</i> <i>Annex 11, item 11</i></p> <p><i>Annex 4, item 8.1</i> <i>Annex 9, item 7.1</i> <i>Annex 11, item 7.1</i></p> <p><i>Annex 4, item 13.7</i> <i>Annex 9, item 11.6</i></p>

Annexes	Point	Disclosure requirement	Source
			Annex 11, item 11.7
4, 9, 11	B.13	A brief description of any recent events particular to the issuer which are to a material extent relevant to the evaluation of the issuer's solvency.	Annex 4, item 5.1.5 Annex 9, item 4.1.5 Annex 11, item 4.1.5
4, 9, 11	B.14	<i>B.5 plus:</i> "If the issuer is a dependent upon other entities within the group, this must be clearly stated."	Annex 4, item 7.2 Annex 9, item 6.2 Annex 11, item 6.2
4, 9, 11	B.15	A brief description of the issuer's principal activities stating the main categories of products sold and/or services preformed, including its competitive position.	Annex 4, item 6 Annex 9, item 5 Annex 11, item 5
4, 7, 9, 11	B.16	<i>Use only the final paragraph of B.6</i>	Annex 4, item 12.1 Annex 7, item 7.1 Annex 9, item 10.1 Annex 11, item 10.1
5, 13	B.17	A brief description of credit ratings assigned to an issuer or its debt securities at the request or with the co-operation of the issuer in the rating process.	Annex 5, item 7.5 Annex 13, item 7.5
6	B.18	A brief description of the nature and scope of the guarantee including its terms and conditions.	Annex 6, items 1 & 2
6	B.19	Section B information about the guarantor as if it were the issuer of the same type of security that is the subject of the guarantee. Therefore provide such information as required for a summary for the relevant annex.	Annex 6, item 3
7	B.20	A statement whether the issuer has been established as a special purpose vehicle or entity for the purpose of issuing asset backed securities.	Annex 7, item 4.1
7	B.21	A brief description of the issuer's principal activities including a global overview of the parties to the securitisation program including information on the direct or indirect ownership or control between those parties.	Annex 7, items 5.1 & 5.2
7	B.23	Where, since the date of incorporation or establishment, an issuer has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect.	Annex 7, item 8.1
7	B.24	<i>Use only the first paragraph of B.7</i>	Annex 7, item 8.2
7	B.25	Where an issuer has prepared financial statements give a statement that there has been no material adverse change in the prospectus of the issuer since the date of its last published audited financial statement or a brief description of any material adverse change.	Annex 7, item 8.4

Annexes	Point	Disclosure requirement	Source
8	B.26	A brief description of the underlying assets including: <ul style="list-style-type: none"> • confirmation that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities • a brief description of the general characteristics of the obligors and in the case of a small number of easily identifiable obligors, a general description of each obligor • a brief description of the legal nature of the assets • loan to value ratio or level of collateralisation 	Annex 8, item 2
8	B.27	Where the assets comprise obligations that are not traded on a regulated market or equivalent market, a brief description of the principal terms and conditions of the obligations.	Annex 8, item 2.2.13
8	B.28	Where more than 10 per cent of the assets comprise equity securities that are not traded on a regulated or equivalent market, a brief description of those equity securities.	Annex 8, item 2.2.15
8	B.29	Where a valuation report relating to real property is included in the prospectus, a brief description of the valuation.	Annex 8, item 2.2.16
8	B.30	Where the assets comprise equity securities that are admitted to trading on a regulated or equivalent market, a brief description of the securities.	Annex 8, item 2.2.14
8	B.31	In respect of an actively managed pool of assets backing the issue a brief description of the parameters within which investments can be made, the name and description of the entity responsible for such management including a brief description of that entity's relationship with any other parties to the issue.	Annex 8, item 2.3/2.3.2
8	B.32	Where an issuer proposes to issue further securities backed by the same assets a statement to that effect.	Annex 8, item 2.4
8	B.33	A brief description of the structure of the transaction, including, if necessary, a structure diagram.	Annex 8, item 3.1
8	B.34	A brief description of the flow of funds including information on credit enhancements.	Annex 8, item 3.4
8	B.35	The name and a brief description of the originators of the securitised assets.	Annex 8, item 3.5
8	B.36	The names and addresses and a brief description of any swap counterparties and any providers of other material forms of credit/liquidity enhancement.	Annex 8, item 3.8
10	B.37	Information about the issuer of the underlying shares: <ul style="list-style-type: none"> • B.1 • B.2 • B.3 • B.4 • B.5 	Annex 10, items 1 to 25

Annexes	Point	Disclosure requirement	Source
		<ul style="list-style-type: none"> • B.6 • B.7 • B.9 • B.10 • D.4 	
10	B.38	Information about the issuer of the depository receipts: <ul style="list-style-type: none"> • “Name and registered office of the issuer of the depository receipts.” • “Legislation under which the issuer of the depository receipts operates and legal form which it has adopted under the legislation.” 	<i>Annex 10, items 26.1 & 26.3</i>
15	B.39	The following information from Annex 1: <ul style="list-style-type: none"> • B.1 • B.2 • B.5 • B.6 • B.7 • B.8 • B.9 • B.10 • C.4 • C.8 • D.2 	<i>Annex 15, preamble</i>
15	B.40	A brief description of the investment objective and policy which the collective investment undertaking will pursue with a description of the instruments used.	<i>Annex 15, item 1.1 and item 1</i>
15	B.41	The borrowing and/or leverage limits of the collective investment undertaking. If there are no such limits, include a statement to that effect.	<i>Annex 15, item 1.2</i>
15	B.42	A brief description of the regulatory status of the collective investment undertaking together with the name of any regulator in its country of incorporation.	<i>Annex 15, item 1.3</i>
15	B.43	A brief profile of a typical investor for whom the collective investment undertaking is designed.	<i>Annex 15, item 1.4</i>
15	B.44	A brief description of any investment restrictions which will apply to the collective investment undertaking.	<i>Annex 15, item 2</i>

Annexes	Point	Disclosure requirement	Source
15	B.45	Where the main body of the prospectus discloses that more than 20% of the gross assets of the collective investment undertaking may be invested, directly or indirectly, in a single underlying asset, or in one or more collective investment undertakings which may in turn invest more than 20% of gross assets in other collective investment undertakings, or there is an exposure to the creditworthiness or solvency of any one counterparty over that amount, the identity of the entity should be disclosed together with a brief description of the exposure (e.g. counter-party).	<i>Annex 15, item 2.2</i>
15	B.46	Where a collective investment undertaking may invest in excess of 40% of its gross assets in another collective investment undertaking the summary should briefly explain either: (a) the exposure, the identity of the underlying collective investment undertaking, and provide such information as would be required in a summary note by that collective investment undertaking; or (b) where the securities issued by an underlying collective investment undertaking have already been admitted to trading on a regulated or equivalent market, the identity of the underlying collective investment undertaking.	<i>Annex 15, item 2.5</i>
15	B.47	A brief description of the applicant's service providers including the maximum fees payable.	<i>Annex 15, item 3 and item 3.1</i>
15	B.48	The identity and regulatory status of any investment manager, investment advisor, custodian, trustee or fiduciary (including and delegated custody arrangements).	<i>Annex 15, items 4 & 5</i>
15	B.49	A description of how often the net asset value of the collective investment undertaking will be determined and how such net asset value will be communicated to investors.	<i>Annex 15, item 6</i>
15	B.50	In the case of an umbrella collective investment undertaking, a brief description of any cross liability that may occur between classes or investment in other collective investment undertaking.	<i>Annex 15, item 7.1</i>
15	B.51	B.7 plus: <ul style="list-style-type: none"> • “Where a collective investment undertaking has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect.” 	<i>Annex 15, item 8.1</i>
15	B.52	A brief description of the collective investment undertaking's portfolio.	<i>Annex 15, item 8.2</i>
15	B.53	An indication of the most recent net asset value per security (if applicable).	<i>Annex 15, item 8.3</i>
16	B.54	A brief description of the issuer, including: <ul style="list-style-type: none"> • The legal name of the issuer and a brief description of the issuer's position within the national government framework. 	<i>Annex 16, item 3</i>

Annexes	Point	Disclosure requirement	Source
		<ul style="list-style-type: none"> • The legal form of the issuer. • Any recent events relevant to the evaluation of the issuer's solvency. • A description of the issuer's economy including its structure with details of its main sectors. 	
16	B.55	A brief description/the key facts of public finance and trade information for the two fiscal years prior to the date of the prospectus. With a brief description of any significant changes to that information since the end of the last fiscal year.	<i>Annex 16, items 4 & 5</i>
17	B.56	A brief description of the issuer, including: <ul style="list-style-type: none"> • The legal name of the issuer and a brief description of the issuer's legal status. • The legal form of the issuer. • A brief description of the issuer's purpose and functions. • The sources of funding, guarantees and other obligations owed to the issuer by its members. • Any recent events relevant to the evaluation of the issuer's solvency. 	<i>Annex 17, item 3</i>
17	B.57	Selected key historical financial information covering the latest two financial years. This should be accompanied by a brief description of any significant changes to the issuer's financial position since the last audited financial information.	<i>Annex 17, item 4</i>

Section C – Securities

Annexes	Point	Disclosure requirement	Source
3, 5, 12, 13	C.1	A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (international security identification number).	<i>Annex 3, item 4.1 Annex 5, item 4.1 Annex 12, item 4.1.1 Annex 13, item 4.2</i>
3, 5, 12, 13	C.2	Currency of the securities issue.	<i>Annex 3, item 4.4 Annex 5, item 4.4 Annex, 12, item 4.1.5 Annex 13, item 4.5</i>
3, 5, 12, 13	C.3	An indication of whether the securities are in registered or bearer form.	<i>Annex 3, item 4.3 Annex 5, item 4.3 Annex 12, item 4.1.4 Annex 13, item 4.4</i>
1	C.4	The number of shares issued and fully paid and issued but not fully paid. The par value per share, or that the shares have not par value.	<i>Annex 1, items 21.1.1.(b) & (c)</i>
3	C.5	A brief description of the rights attached to the securities.	<i>Annex 3, item 4.5</i>
3, 5, 12, 13	C.6	A brief description of any restrictions on the free transferability of the securities.	<i>Annex 3, item 4.8 Annex 5, item 4.13 Annex 12, item 4.1.10 Annex 13, item 4.14</i>
3	C.7	An indication as to whether the securities offered are or will be the object of an application for admission to trading on a regulated market and the identity of all the regulated markets where the securities are or are to be traded.	<i>Annex 3, item 6</i>
1	C.8	A brief description of dividend policy and the amount of the dividend per share for each financial year for the period covered by the historical financial information.	<i>Annex 1, item 20.7</i>
5, 12, 13	C.9	<i>C.5 plus:</i> <ul style="list-style-type: none"> • “including ranking” • “including limitations to those rights” 	<i>Annex 5, item 4.5 Annex 5, item 4.6 Annex 12, item 4.1.6</i>

Annexes	Point	Disclosure requirement	Source
			<i>Annex 12, item 4.1.7 Annex 13, items 4.6 & 4.7</i>
5, 13	C.10	<p><i>C.9 plus:</i></p> <ul style="list-style-type: none"> • “the nominal interest rate” • “the date from which interest becomes payable and the due dates for interest” • “where the rate is not fixed, description of the underlying on which it is based” • “maturity date and arrangements for the amortisation of the loan, including the repayment procedures” • “an indication of yield” • “name of representative of debt security holders” 	<i>Annex 5, item 4.7 Annex 5, item 4.8 Annex 5, item 4.9 Annex 5, item 4.10 Annex 13, items 4.8, 4.9, 4.10 & 4.11</i>
5	C.11	<p><i>C.10 plus:</i></p> <ul style="list-style-type: none"> • “if the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident” 	<i>Annex 5, item 4.7</i>
5, 12	C.12	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question.	<i>Annex 5, item 6.1 Annex 12, item 6</i>
8	C.13	The minimum denomination of an issue.	<i>Annex 8, item 1.1</i>
10	C.14	<p>Information about the underlying shares:</p> <ul style="list-style-type: none"> • C.1 • C.2 • C.3 • C.4 • C.5 • C.6 • C.7 • C.8 	<i>Annex 10, items 20.6 & 21.1.1 Annex 10, item 27 Annex 10, item 30</i>
10	C.15	<p>Information about the depository receipts:</p> <ul style="list-style-type: none"> • C.1 	<i>Annex 10, item 28 Annex 10, item 28.8</i>

Annexes	Point	Disclosure requirement	Source
		<ul style="list-style-type: none"> • C.2 • C.3 • C.5 • C.6 • “Describe the exercise of and benefit from the rights attaching to the underlying shares, in particular voting rights, the conditions on which the issuer of the depository receipts may exercise such rights, and measures envisaged to obtain the instructions of the depository receipt holders – and the right to share in profits and any liquidations surplus which are not passed on to the holder of the depository receipt.” • “Brief description of the bank or other guarantee attached to the depository receipt and intended to underwrite the issuer’s obligations.” 	Annex 10, item 28.12
12	C.16	A brief description of how the value of the investment is affected by the value of the underlying instrument(s), unless the securities have a denomination of at least EUR 50 000.	Annex 12, item 4.1.2
12	C.17	The expiration or maturity date of the derivative securities – the exercise date or final reference date.	Annex 12, item 4.1.11
12	C.18	A brief description of the settlement procedure of the derivative securities.	Annex 12, item 4.1.12
12	C.19	A brief description of how the return on derivative securities takes place.	Annex 12, item 4.1.13
12	C.20	The exercise price or the final reference price of the underlying.	Annex 12, item 4.2.1
12	C.21	A brief description of the type of the underlying and where the information on the underlying can be found.	Annex 12, item 4.2.2
13	C.22	Indication of the market where the securities will be traded and for which prospectus has been published.	Annex 13, item 5
14	C.23	<p>Information about the underlying share:</p> <ul style="list-style-type: none"> • “A brief description of the underlying share.” • C.2 • C.3 • C.5 plus the words “... and procedure for the exercise of those rights.” • “Where and when the shares will be or have been admitted to trading.” • C.6 • “Where the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the information required by the share registration document. Therefore provide such information required for a summary for Annex 1.” 	Annex 14, item 1 Annex 14, item 1.4 Annex 14, item 1.3 Annex 14, item 1.5 Annex 14, item 1.7 Annex 14, item 1.8 Annex 14, item 2

Section D – Risks

Annexes	Point	Disclosure requirement	Source
1 & 3 together	D.1	Key information on the key risks that are specific and individual to the issuer and to the securities.	<i>Annex 1, item 4 & Annex 3, item 2</i>
1, 4, 7, 9, 11, 16, 17	D.2	Key information on the key risks that are specific and individual to the issuer.	<i>Annex 1, item 4 Annex 4, item 4 Annex 7, item 3 Annex 9, item 3 Annex 11, item 3 Annex 16, item 2 Annex 17, item 2</i>
3, 5, 13	D.3	Key information on the key risks that are specific and individual to the securities.	<i>Annex 3, item 2 Annex 5, item 2 Annex 13, item 2</i>
10	D.4	Information about the issuer of the underlying shares: • D.2	<i>Annex 10, item 4</i>
10	D.5	Information about the depository receipts: • D.3	<i>Annex 10, 31.3.1</i>
12	D.6	<i>D.3 plus:</i> • “This must include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor’s liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect.”	<i>Annex 12, item 2</i>

Section E – Offer

Annexes	Point	Disclosure requirement	Source
3, 10	E.1	The total net proceeds and an estimate of the total expenses of the issue/offer, including estimated expenses charged to the investor by the issuer or the offeror.	<i>Annex 3, 8.1 Art 2.1(s) (iii) PD Annex 10, item 32.1</i>
3, 5, 10, 12	E.2	Reasons for the offer, use of proceeds, estimated net amount of the proceeds.	<i>Annex 3, item 3.4 Annex 5, item 3.2 Annex 10, item 31.1.1 Annex 12, item 3.2</i>
3, 5, 10, 12	E.3	A brief description of the terms and conditions of the offer.	<i>Annex 3, item 5 Annex 5, item 5 Annex 10, item 29 Annex 12, item 5</i>
3, 5, 10, 12, 13	E.4	A brief description of any interest that is material to the issue/offer including conflicting interests.	<i>Annex 3, item 3.3 Annex 5, item 3.1 Annex 10, item 31.2.1 Annex 12, item 3.1 Annex 13, item 3</i>
3, 10	E.5	Name of the person or entity offering to sell the security. Lock-up agreements: the parties involved; and indication of the period of the lock up.	<i>Annex 3, item 7.1 Annex 3, item 7.3 Annex 10, item 27.14/15</i>
3, 10	E.6	The amount and percentage of immediate dilution resulting from the offer. In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer.	<i>Annex 3, item 9 Annex 10, item 27.16</i>
All	E.7	Estimated expenses charged to the investor by the issuer or the offeror.	<i>Art 2.1(s) (iii) PD</i>



5. Proportionate disclosure regime (Article 7)

Part 5.I Introduction

Part 5.II Proportionate disclosure regime regarding rights issues

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

Part 5.IV Proportionate disclosure regime regarding credit institutions and other issuers

Annex 1 – Rights Issues: analysis of annexes I and III Commission Regulation (EC) No. 809/2004 and ESMA’s proposals.

Annex 2 – Proportionate Schedule for rights issues.

Annex 3 – Disclosure requirements applicable to companies listed on regulated markets.

Annex 4 – SMEs and Small Caps: analysis of annexes I, IV, IX and X Commission Regulation (EC) No. 809/2004 and ESMA’s proposals.

Annex 5 – Proportionate Schedule for the share registration document for SMEs and Small Caps.

Part 5.I

Introduction

107. The Amending Directive, published on 11 December 2010, has amended Article 7(2) of the Prospectus Directive by :

- introducing the principle that the content of prospectuses shall be adapted for credit institutions issuing non-equity securities referred to in Article 1(2)(j) and companies with reduced market capitalisation ; and
- creating a proportionate disclosure regime applicable to offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights⁶.

108. The objectives of these amendments, as mentioned in Recital (18) of the Amending Directive, are “to improve the efficiency of pre-emptive issues of equity securities and adequately to take account of the size of issuers, without prejudice to investor protection”. This initiative is in line with the decision of the European Council to reduce administrative burdens on companies by 25% by the year 2012 in order to enhance their competitiveness in the European Union.

109. In this regard, Recital (2) of the Amending Directive states that “some of the obligations provided for in Directive 2003/71/EC of the European Parliament and of the Council [the Prospectus Directive] have been identified by the Commission as appearing to be excessively burdensome on companies.”

110. On 19 January 2011, the European Commission sent its request to ESMA for technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Amending Directive. In its Mandate, the Commission is requesting ESMA to provide advice on a proportionate disclosure regime applicable to the following types of offers:

- offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility, which are subject to appropriate disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights ;
- offers by SMEs, by issuers with reduced market capitalization (“Small Caps”) and by credit institutions issuing non-equity securities referred to in Article 1(2)(j) of the Prospectus Directive, when these institutions have decided to “opt in” the prospectus regime⁷.

⁶ Article 7(2) of the amended Prospectus Directive: “In particular, for the elaboration of the various models of prospectuses, account shall be taken of the following: (...)

(e) the various activities and size of the issuer, in particular **credit institutions issuing non-equity securities referred to in Article 1(2)(j), companies with reduced market capitalisation and** SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record; (...)

(g) a proportionate disclosure regime shall apply to offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility as defined in point (15) of Article 4(1) of Directive 2004/39/EC, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights.”

⁷ According to article 1(2)(j) of the Prospectus Directive amended, offers of non equity securities issued by credit institutions in a continuous or repeated manner for a total consideration of less than 75 MEUR over a period of 12

111. In its Mandate the EC further insists on the fact that ESMA should “*identify and select the disclosure requirements, as currently specified in the Prospectus Regulation, which are necessary to these types of offers taking into account a high level of investor protection, the amount of information already disclosed to the markets and the size of the issuers. ESMA should develop specific draft annexes in this respect.*” The Challenge is therefore to strike the right balance between the need to improve investor protection, the amount of information already disclosed to the markets and the size of the issuers.

112. ESMA has discussed and agreed the following points :

- although the Mandate is referring to offers of securities, the proportionate disclosure regime shall also apply to admission to trading on regulated markets, otherwise issuers benefiting from the proportionate regime for offers of securities to the public will have to establish a full prospectus for the admission to trading of these securities ;
- new disclosure requirements or amendments to existing requirements can be proposed ;
- the scope of Article 7(2)(g) of the Prospectus Directive amended regarding rights issues should be clarified.

months do not fall into the scope of the directive. However a Member State can decide to require specific disclosures for these types of issues. Credit institutions can also decide to draw up and file a prospectus in accordance with the directive in order to benefit from the passport mechanism.

Part 5.II

Proportionate disclosure regime regarding rights issues

Extract from the Mandate

“In relation to preemptive offers of equity securities, ESMA is invited to identify items which could possibly be considered redundant in annexes I and III to the Prospectus Regulation considering that shares of the same class are already admitted to trading on a regulated market or a multilateral trading facility (subject to appropriate disclosure requirements and rules on market abuse) and therefore a certain amount of information is already available to the investors and the financial markets.”

113. Rights issues are a common way for listed issuers to raise capital. This technique is protective for shareholders because it offers to existing shareholders the possibility to subscribe to the issue or sell their rights if they don't intend to subscribe: shareholders are not diluted if they decide to exert their pre-emptive rights; they will receive a compensation if they decide not to subscribe to the issue and sell their rights.
114. ESMA therefore considers that rights issues should be fostered. Improving the efficiency of the rights issue process will allow issuers to raise capital with lower costs while maintaining a high level of protection for shareholders.
115. ESMA also acknowledges that in several Member States, rights issues are often made by technically disapplying the statutory pre-emption rights and replacing them with near identical rights. The purpose of this is that it :
- facilitates the treatment of fractions ;
 - allows the offer not to be made into overseas jurisdictions - in particular the US so as to avoid SEC filing requirements ;
 - avoids the "Gazette timetable" (requirements for publishing in national gazettes add several days to the timetable).

Avoiding US filing requirements is an important issue because there will be little benefit for an issuer to be allowed to produce a shorter rights issue prospectus in the EU, if it still has to do a SEC filing which would require similar disclosure to a full EU prospectus.

116. Considering the practice of replacing statutory pre-emption rights with near identical rights, ESMA has discussed interpretation of Article 7(2)(g) of the Prospectus Directive : *“a proportionate disclosure regime shall apply to offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility as defined in point (15) of Article 4(1) of Directive 2004/39/EC, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights.”* This article sets the conditions to meet in order to benefit from the proportionate disclosure regime. Namely (i) the issuer must have shares of the same class listed on a regulated market or an MTF with appropriate disclosure requirements (ii) it has not disapplied the statutory pre-emption rights. A strict interpretation of Article 7(2)(g) would therefore bar the proportionate regime to issuers using the replacement technique described above which is, in substance, similar to a rights issue.

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 than pre-emption rights, meaning :

- the rights are allotted to shareholders free of charge ;
- the rights are allotted to shareholders in proportion of their holdings in order to avoid dilution;
- the rights are negotiable and transferable or, if not, the shares arising from the rights are sold at the end of the offer period for the benefit of those shareholders who did not take up their rights ;
- the exercise period of the rights is similar to the exercise period of the statutory pre-emption rights required by the national legislation of the issuer ;
- after expiration of the exercise period, the rights become null.

118. ESMA has also discussed what disclosure requirements and rules on market abuse would be considered appropriate in order to allow companies listed on MTFs where these requirements and rules apply, to benefit from the proportionate disclosure regime. It was considered that appropriate disclosures requirements would, as a minimum, include obligations to publish :

- annual financial statements and audit reports within 6 months after the end of each financial year,
- half-yearly financial statements within 3 months after the end of the first six months of each financial year, and
- inside information in the meaning of the Market Abuse Directive⁸.

It was however agreed that the 3 months deadline for half-yearly reports should not be definitive since the deadline for certain MTFs or so called “organised markets” is 4 months.

119. ESMA has also discussed whether there should be one single proportionate disclosure regime for rights issues or two separate regimes, one for regulated markets and one for MTFs. ESMA agreed that one single regime would be easier to implement. However, reporting standards on MTFs are generally lower than on regulated markets and disclosures specifically such as those regarding board practices and remuneration would not generally be required on MTFs. Issuers listed on MTFs would then have to include information on board practices and remuneration in their prospectuses.

120. As regards the appropriate rules on market abuse, ESMA considers that there should be provisions in order to prevent insider trading and market manipulation.

⁸ Directive 2003/6/EC of the European parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. Article 1 (1) states that : “ ‘Inside information’ shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.”

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?

121. The rationale behind adapting prospectuses for rights issues is that because the issuer is listed, a certain amount of information will already be available to shareholders and the public in general. The wording of section 3.3 of the Mandate from the EC states: “... *ESMA is invited to identify items which could possibly be considered redundant ... considering ... a certain amount of information is already available to the investors and the financial markets*”.

122. As a matter of fact, issuers listed on regulated markets will disclose information regarding, for instance, their activities, financial situation, prospects, risks, capital structure and history, limitations to the rights of their shares and corporate governance practices. This information is disclosed in accordance with the requirements of different EU directives (see Annex 3 for more detailed information):

- the Transparency Directive⁹ ;
- the Market Abuse Directive ;
- the 4th Directive on annual accounts¹⁰ ;
- the 7th Directive on consolidated accounts¹¹ ;

⁹ Directive 2001/109/EC of the European parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

¹⁰ Fourth Council Directive of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC).

- the takeover bids Directive¹².

123. Most of the information made public by issuers listed on regulated markets, and particularly regulated information in the meaning of the Transparency Directive, will be easily accessible to new investors because it will be stored by the officially appointed mechanism. However, this implies that MTFs with appropriate disclosure requirements will also be required to impose similar dissemination standards in order to allow issuers listed on these MTFs to benefit from the proportionate regime. A simple way for these MTFs to allow easy access to information would be to include in their rules, as a minimum, an obligation to post all disclosures on the issuers' website. Considering that most issuers have a website, this solution will allow easy access to the information without imposing additional costs to issuers.

124. Although rights issues are addressed to shareholders, many competent authorities have expressed their concern about the fact that since the rights could be negotiated and sold by shareholders not subscribing to the issue, rights issues could also be subscribed by new investors. Therefore any amendments to the content of prospectuses drawn up for rights issues shall be carefully thought, bearing in mind the objective of enhancing investor protection. The proportionate disclosure regime shall not empty prospectuses of their substance.

125. Some Member States have also expressed concern about investor protection in cases where prospectuses drawn up according with the proportionate regime for rights issues are passported. In such cases, the language requirements of the Prospectus Directive would only be applicable to the passported prospectus and not to all disclosures made in accordance with the Transparency or Market Abuse Directives. Article 19(3) of the Prospectus Directive requires that in case of passporting in several Member States, the prospectus "*shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance*". The Transparency Directive requires a translation of regulated information into a language accepted by host Member States or into a language customary in the sphere of international finance only when the issuer is listed on a regulated market in those Member States, and not when it is only listed in its home Member State. As a consequence, where a prospectus drawn up by an issuer listed only in its home Member State is passported, investors of the Home Member State will have access and will be able to understand all information made available by the issuer whereas investors from the Host Member States will be put at risk because they will not be able to understand all the information available.

126. ESMA acknowledges that the language regimes of the Transparency and Prospectus directives are different and that this situation could be a problem in case of passporting. However rights issues are addressed to existing shareholders who have already invested in the issuer and are aware of the language regime applicable to the company.

127. Having discussed these issues, ESMA considers that the following disclosures required by Annex I of the Prospectus Regulation are redundant as the information is already made available elsewhere and could therefore be deleted from the proportionate prospectus for rights issues (see Annex 1 for details):

- Item 3 : Selected financial information.

¹¹ Seventh Council Directive of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (83/349/EEC).

¹² Directive 2004/25/EC of the European parliament and of the Council of 21 April 2004 on takeover bids.

- Item 5.1 except 5.1.1 : History and development of the issuer.
- Item 7.2 : List of significant subsidiaries.
- Item 8 : Property, plants and equipment.
- Item 9 : Operating and financial review.
- Item 10 : Capital resources.
- Item 11 : Research and development, patents and licences.
- Item 17.1 : Number of employees.
- Item 21.1.3 : The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
- Item 21.1.7 : A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.
- Item 24 (c) : Documents on display / historical financial information for the two financial year preceding the publication of the registration document.
- Item 25 : Information on holdings.

Items 15 (Remuneration) and 16 (Board practices) would only be required for issuers listed on MTFs.

ESMA is also proposing to require only the last historical financial year (see below paragraph 131), meaning that the last financial statements will be presented with comparative data as required by IAS 1 but the comments in the notes to the financial statements will only cover the last year.

128. ESMA further considers that the following disclosures required by Annex III of the Prospectus Regulation are redundant as the information is already made available elsewhere or is not applicable and could therefore be deleted from the proportionate prospectus for rights issues (see Annex 1 for details):

- Item 4.9 : An indication of the existence of any mandatory takeover bids and/or squeeze-out and sellout rules in relation to the securities.
- Item 4.10 : An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.
- Item 5.2.1 : Various categories of potential investors.
- Item 5.2.3 : Pre-allotment disclosure.
- Item 5.2.5 : Over-allotment and greenshoe.
- Item 5.3.4 : Material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management.
- Item 6.5 : Stabilization.
- Item 7.1 : Name and business address of the person or entity offering to sell the securities.
- Item 7.2 : The number and class of securities being offered by each of the selling security holders.

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?

129. ESMA has also specifically discussed whether information regarding the issuer, its activities, business and markets and historical financial information could be removed from prospectuses drawn up for rights issues. As a matter of fact, some professionals in their contributions to the Call for Evidence suggested that information required in the proportionate regime should be restricted to the characteristics of the offer, or that historical financial information need not be included in prospectuses established under this new regime.

130. To tackle this issue, ESMA has considered the following elements:

- Article 5 of the Prospectus Directive requires that the prospectus *“shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities”*.
- Preemption rights can be sold to new investors and therefore allowing omission of information regarding the issuer’s activities and historical financial information would not meet the objective set by the Mandate and the Amending Directive in relation to investor protection.
- The summary shall provide key information to shareholders and investors. Key information¹³ includes a short description of the characteristics of the issuer and of its financial position. Therefore

¹³ Article 2(1) (s) of PD : “key information’ means essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, guarantor and the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to Article 5(2)(b), to decide which offers of securities to consider further. In light of the offer and securities concerned, the key information shall include the following elements:

- i) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;
- (ii) a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
- (iii) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;
- (iv) details of the admission to trading;”

the prospectus would not be consistent with its summary if information on the issuer’s activities and financial position were included in the summary but not in the registration document.

- The objective of reducing administrative burden for issuers can be achieved through incorporation by reference of documents previously filed with or approved by the Competent Authority as permitted by Article 11 of the Prospectus Directive¹⁴.

131. ESMA has therefore concluded that it would not be consistent with the objective of enhancing investor protection to allow omission of all information regarding the activities and business of the issuer and historical financial information. However, the following amendments to the current disclosure requirements are proposed:

- Disclosure requirements regarding the issuer’s activities and markets should be maintained and redrafted in order to require short and basic information along with an update on any significant events which have occurred since the publication of the last audited financial statements.
- It is essential and necessary to require historical financial information about the issuer. However requiring the last financial year is sufficient. If the issuer has been listed for less than 3 years, the financial statements related to the previous years will be available in the prospectus established for the initial public offering of the company. If the issuer has been listed for more than 3 years, the financial statements related to the previous years will already be available.

132. ESMA proposes therefore to redraft the following items of Annex I of the Prospectus Regulation:

Current wording	New proposed wording
Annex I of the Prospectus Regulation	
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.	A description, (including the amount) of the principal investments made since the end of the latest published audited financial and up to the date of the registration document.
6.1.1. A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information; and	A brief description of the issuer's operations and principal activities and of any significant changes impacting these operations and activities since the end of the latest published audited financial statements, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development.
6.1.2. An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.	
6.2. Principal Markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.	A brief description of the principal markets in which the issuer competes and of any significant changes impacting these markets since the end of the latest published audited financial statements.

¹⁴ This however raises an issue for issuers listed on MTFs since only documents approved by the Competent Authority or filed in accordance with the Transparency Directive can be incorporated by reference in a prospectus. ESMA will tackle this issue when dealing with point 4 of the mandate.

6.3. Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors, mention that fact .	Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors since the end of the latest published audited financial statements, mention that fact .
15. REMUNERATION AND BENEFITS In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1. (...)	In case of issuers not listed on a regulated market and in relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1. (...)
16. BOARD PRACTICES In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1. (...)	In case of issuers not listed on a regulated market and in relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1. (...)
20.1. Historical Financial Information Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.	Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation), and the audit report. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.
22. Material contracts A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document.	A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the last year immediately preceding publication of the registration document.

133. ESMA also proposes to redraft item 19 of Annex I regarding related party transactions, taking into account the fact that issuers listed on regulated markets and publishing consolidated financial statements will have to comply with International Financial Reporting Standards (IFRS). Information disclosed in the financial statements in accordance with IFRS is sufficient. However an update on any related party transaction which has occurred between the end of the last financial period for which audited financial information have been published and the date of the registration document would be required.

Current wording	New proposed wording
Annex I of the Prospectus Regulation	
19. Related party transactions Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in	If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document :

<p>accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.</p> <p>If such standards do not apply to the issuer the following information must be disclosed:</p> <p>a) The nature and extent of any transactions which are – as a single transaction or in their entirety – material to the issuer. Where such related party transactions are not concluded at arm’s length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p>	<p>a) The nature and extent of any transactions which are – as a single transaction or in their entirety – material to the issuer. Where such related party transactions are not concluded at arm’s length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p> <p>If international Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/200 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.</p>
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134. ESMA finally proposes to redraft the following items of the securities note, Annex III of the Prospectus Regulation.

Current wording	New proposed wording
Annex III of the Prospectus Regulation	
5.1.2 Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.	Total amount of the issue/offer.
5.2 Plan of distribution and allotment	Allotment
7. Selling securities holders	Lock-up agreements
9.2. In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer.	The amount and percentage of immediate dilution if shareholders do not subscribe to the new offer.

135. In order to ensure that new investors buying preemption rights with the intention to subscribe are aware of the fact that the prospectus does not contain all information required by the current schedule for shares (annexes I and III of the Prospectus Regulation), ESMA also proposes to include a statement in the proportionate prospectus drawing attention to the specific regime and level of disclosure applicable to rights issues. There should be a prominent statement at the beginning of the prospectus stating:

“Investors attention is drawn to the fact that:

- this rights issue is addressed to shareholders of the issuer;
- the level of disclosure of this prospectus is therefore proportionate to this type of issue.”

136. ESMA has finally agreed on a schedule for rights issues. This schedule is presented in Annex 2 of this consultation document.

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 proposal 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 Annex 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?

Part 5.III

Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation

Extract from the Mandate

“Concerning SMEs and companies with reduced market capitalisation, ESMA is invited to advise the Commission on a possible annex containing the minimum information to be disclosed in the registration document for SMEs and companies with reduced market capitalisation. Considering their size, the amount raised and, where appropriate, their shorter track record, ESMA is invited to identify the information which could be omitted from the registration document applicable to other issuers.”

137. Small and medium enterprises and companies with reduced market capitalisation are numerous in all Member States and contribute to the development of the European economy and financial markets. Small and medium enterprises (“SMEs”), within the meaning of the Prospectus Directive, are companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding 43 MEUR and an annual net turnover not exceeding 50 MEUR. Companies with reduced market capitalisation (“Small Caps”) are companies listed on a regulated market that had an average market capitalisation of less than 100 MEUR on the basis of the year-end quotes for the previous three calendar years.

138. ESMA acknowledges that the costs to access financial markets could be higher for SMEs and Small caps. In this regard however, the Prospectus Directive already contains provisions aimed at facilitating access to financial markets for SMEs and Small Caps:

- the threshold of 2.5 MEUR was raised and thus, offers of securities of a total denomination of 5 MEUR, calculated over a period of 12 months, are no longer within the scope of the directive ;
- offers of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors are exempted of the obligation to publish a prospectus ;
- the Prospectus Directive allows the incorporation of documents by reference when these documents have been previously filed, in accordance with the Transparency Directive, or approved by the Competent Authority.

Small Caps and SMEs listed on a regulated market or an MTF, with equivalent disclosure requirements and market abuse rules, will moreover benefit from the proportionate regime for rights issues.

139. ESMA has discussed the scope of the proportionate regime for SMEs and companies with reduced market capitalisation. The majority of competent authorities have expressed concern about the impact that the proportionate regime could have on the regulatory framework of regulated markets and investor protection. As a matter of fact, regulated markets in the EU are now governed by a robust and consistent framework based on four major pieces of EU legislation: the Market Abuse Directive, the Prospectus Directive, the Transparency Directive and the Markets in Financial Instruments Directive (MiFID). These directives are part of the action plan launched by the Commission a decade ago in order to improve the competitiveness of European financial markets. ESMA is therefore concerned that introducing a proportionate regime for SMEs and companies with reduced market capitalisation could dilute the regulatory framework applicable to regulated markets and lower investor protection.

140. This is because it is felt that reducing the requirements for SMEs and Small Caps is not consistent with the perceived higher risk profile of such companies. In the long run, this could also be detrimental to SMEs and Small caps because they will not meet the disclosure standards required by investors, both retail and professional. Moreover, Small Caps represent a significant part of the companies listed on regulated markets in many Member States and implementing such a proportionate regime will exclude most of the companies listed on these markets from the current prospectus regime. ESMA believes that this is not consistent with the objective of enhancing investor protection as stated in the Mandate.
141. The majority of competent authorities are not in favour of a proportionate disclosure regime for SMEs and Small Caps. This reflects concerns about the negative impact such a regime could have on the regulatory framework of regulated markets and investor protection.

However if a proportionate regime were to be implemented for SMEs and Small Caps, ESMA recommends that a “full prospectus” (drawn up in accordance with annexes I, III and, where applicable, II of the Prospectus Regulation) is always required when:

- a company does an Initial Public Offer (IPO) and the company’s shares are admitted to a regulated market ;
- the company’s shares are first admitted to a regulated market.

The rationale behind this is that ESMA believes that as these companies will be unknown to investors at this stage, investors should be afforded maximum protection. This proposal meets the objective of enhancing investor protection and will avoid diluting the regulatory framework applicable to regulated markets.

Subsequent public offerings by companies listed on a regulated market and public offerings of companies not listed on a regulated market (whether initial public offerings or subsequent public offerings) will benefit from a proportionate prospectus.

For this purpose, an IPO is defined as the offering of securities by a company for the first time to the public. Public offers of securities which are exempted from the obligation to publish a prospectus under the Prospectus Directive (for example, offers addressed to fewer than 150 persons) do not require a prospectus.

ESMA agreed that there should be one schedule for a proportionate prospectus.

ESMA’s proposal is summarized in the following table:

Market	Initial Public Offering	Subsequent Public Offering
Regulated	Full Prospectus*	Proportionate Prospectus
MTF	Proportionate Prospectus	Proportionate Prospectus
OTC	Proportionate Prospectus	Proportionate Prospectus

* and initial admission to a regulated market

142. ESMA has considered whether, as part of the solution, a proportionate disclosure regime for unlisted SMEs could better be delivered by creating a separate primary market regulatory framework for such companies. Although outside the mandate, such a primary MTF framework might be created via the revisions to MiFID currently being considered by the Commission. This could allow lower disclosure requirements for unlisted SMEs both for IPOs and for subsequent public offers and would help meet the Commission’s policy objective of creating more favourable disclosure regimes for SMEs by en-

couraging more public offers, but would ensure no further dilution of the regulated market framework.

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?

143. When identifying information which could be omitted from the registration document, the Mandate asks that the size, the amount raised and, where appropriate, the shorter track record of SMEs and Small Caps be considered. ESMA therefore agreed that any omission of information has to be adequately justified with respect to the elements mentioned in the Mandate but also the costs and burden of requiring the issuer to provide such information be assessed against the value of such information for the investor and the objective of enhancing investor protection.

144. ESMA has also considered the following points:

- Some disclosures required by annex I of the Prospectus Regulation are core – or at least specific – to the prospectus regime and cannot be omitted. This is the case for the risk factors section. Different items of the Prospectus Regulation also require negative statements which can not be omitted (items 16. Board practices, 18. Major shareholders, 20.8. legal and arbitration proceedings, 20.9 Significant changes in the issuer’s financial or trading position).
- Many items of annex I of the Prospectus Regulation already include a materiality test, for instance:
 - o 5.2.1 : a description of the issuer’s principal investments
 - o 6.1 : principal activities
 - o 6.2 : principal markets
 - o 9.2.2 : narrative discussion for any material changes in net sales or revenues
 - o 12.1: the most significant trends in production, sales...
 - o 22 : material contracts
 - o 25 : information on holdings likely to have a significant effect on the assessment of the issuer assets and liabilities, financial position or profits and losses

The materiality principle stems from Article 5(1) of the Prospectus Directive and allows SMEs and Small Caps, when fulfilling the disclosure requirements of the Prospectus Regulation, to adapt the information to their size. This principle is also applicable to ESMA’s recommendations on prospectuses (ESMA/2011/81). ESMA therefore considers that these items should be retained. In order to strike the right balance between disclosure requirements and investor protection, ESMA furthermore considers that quality of the information should prevail over

quantity. Issuers and all professionals involved in the drafting of prospectuses should therefore avoid boilerplate language.

- Other items are not burdensome and useful for investors, especially when the SMEs are not listed. This is the case regarding information about the issuer. ESMA considers that these items should be retained.
- As mentioned in paragraph 138 above, the Prospectus Directive allows issuers to incorporate documents by reference. ESMA believes that the use of incorporation can significantly alleviate the size of prospectuses as regards particularly historical financial information. Incorporation by reference however can be more difficult for unlisted SMEs because they do not fall into the scope of the Transparency Directive. SMEs listed on MTFs, for instance, will not be allowed to incorporate in a prospectus documents made public pursuant to the rules of the MTFs. ESMA intends to deal with this issue when tackling part 4 of the Mandate¹⁵.

145. ESMA proposes to delete the following requirements from the Registration Document for shares (see Annex 4 for details) :

Item 3: selected financial information

Item 8.1: information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon

Item 10.1: information concerning the issuer's capital resources (both short and long term)

Item 10.3: information on the borrowing requirements and funding structure of the issuer

Item 10.5: information regarding the anticipated sources of funds needed to fulfill commitments referred to in items 5.2.3. and 8.1

ESMA also propose to require only historical financial information covering the latest 2 financial years. This proposal will significantly reduce the burden of all items where information regarding the period covered by historical financial information is required.

146. ESMA also proposes to redraft the following items of the Registration Document for shares (see Annex 4 for details) :

Current wording	New proposed wording
Annex I of the Prospectus Regulation	
5.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments <u>and the anticipated sources of funds needed to fulfill these commitments.</u>
7.2. A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.	<u>If not included in the financial statements,</u> a list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.

¹⁵ 4. Review of the provisions of the Prospectus Regulation

<p>19. Related Party Transactions</p> <p>Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.</p> <p>If such standards do not apply to the issuer the following information must be disclosed:</p> <p>a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p>	<p>If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document :</p> <p>a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p> <p>If international Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/200 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.</p>
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147. As regards costs, any information requirements in relation to financial information, and in particular financial information which the issuer has to produce especially for the issue, probably imposes the highest disclosure burden. Considering especially the amounts raised by SMEs and Small Caps such requirements may appear inappropriate. ESMA has therefore identified and discussed the following items:

- The Operating and Financial Review (item 9 of annex I of the Prospectus Regulation) and whether this item could be omitted when the issuer includes its management reports for the period covered by the historical financial information.
- The requirement to include in historical financial information a statement of changes in equity and a cash flow statement when the audited financial statements are prepared according to national accounting standards and not IFRS (item 20.1 of annex I of the Prospectus Regulation).
- The requirement to produce interim financial statements when the registration document is dated more than nine months after the end of the last audited financial year (item 20.6.2 of annex I of the Prospectus Regulation).

The majority of ESMA however considers that these items were necessary in order to enable investors to make an informed assessment of the issuer's financial situation.

148. Since the Mandate refers to other issuers¹⁶, ESMA is also proposing amendments to annexes IV, IX and X relating respectively to the registration document for debt and derivative securities with a de-

¹⁶ "Concerning SMEs and companies with reduced market capitalisation, ESMA is invited to advice the Commission on a possible annex containing the minimum information to be disclosed in the registration document for SMEs and companies with reduced market capitalisation. Considering their size, the amount raised and, where appropriate, their shorter track record, ESMA is invited to identify the information which could be omitted from the registration document applicable to other issuers. "

nomination per unit < 50.000 EUR, the registration document for debt and derivative securities with a denomination per unit \geq 50.000 EUR and the schedule for depositary receipts issued over shares. The amendments listed in paragraphs 145 and 146 would also concern, where applicable, annexes IV, IX and X of the Prospectus Regulation (see Annex 4 for details).

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?

Part 5.IV

Proportionate disclosure regime regarding credit institutions and other issuers

Extract from the Mandate

“In relation to issues by credit institutions issuing non-equity securities referred to in Article 1(2)(j) of the Prospectus Directive which decided to opt into the regime of the Prospectus Directive, ESMA should advise the Commission on what information could be omitted from annexes XI and V of the Prospectus Regulation. ESMA should consider that these issuers are authorized and regulated to operate in the financial markets and that a proper balance should be sought so that the disclosure requirements are not excessively burdensome compared to the amount raised (EUR 75 000 000).”

149. Pursuant to Article 1(2)(j) of the Prospectus Directive amended, non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration for the offer in the Union is less than 75 MEUR, which shall be calculated over a period of 12 months, provided that those securities are not subordinated, convertible or exchangeable and do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument, are not in the scope of the directive.
150. Credit institutions issuing securities referred to in Article 1(2)(j) can however decide to “opt in” the prospectus regime and file a prospectus for approval with the relevant Competent Authority. The reason for such a decision is that once approved, the prospectus will benefit from the passport mechanism and the credit institutions concerned will be able to offer the securities or ask for admission to trading on regulated markets in other Member States.
151. When assessing which items could be omitted from prospectuses for such issues, ESMA has considered the amount raised and the fact that credit institutions are already regulated entities. ESMA has also taken the following elements into account:
- notwithstanding the fact that in some Member States, national legislation could require a certain amount of disclosures for this type of issues, credit institutions would voluntarily decide to “opt in” and therefore would be aware of the requirements of the Prospectus Directive;
 - although credit institutions are regulated entities, reporting obligations to prudential Authorities do not equal disclosure obligations to investors;
 - credit institutions drawing up a prospectus can benefit from a lighter regime since the disclosure requirements for the banks registration document (annex XI of the Prospectus Regulation) is already adapted to the specific situation and activities of these entities;
 - the passport mechanism is a key provision of the Prospectus Directive and it is therefore essential not to downgrade the requirements to meet in order to benefit from this mechanism.
152. As regards credit institutions issuing securities referred to in Article 1(2)(j), the majority of competent authorities believe that the only possible simplification is to require historical financial information covering only the last financial year and therefore ESMA proposes that amendment. Item 11.1 of annex XI of the prospectus Regulation would therefore need to be redrafted:

Current wording	New proposed wording
Annex XI of the Prospectus Regulation	
<p>11.1 Historical Financial Information Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the Community.</p>	<p>Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation), and the audit report. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the Community.</p>

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?

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?”

ANNEX I

List of 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.

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.

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?

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

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?

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

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?

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 (Article 7)

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 Annex 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?

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?"

ANNEX II

Members of the Consultative Working Group

1. **Wouter Kuijpers**, Senior Legal Counsel and Policy Advisor, Eumedion Corporate Governance Forum for Institutional Investors
2. **Klaus Künzel**, Senior Legal Counsel, Group Legal, Commerzbank AG
3. **Henri Wagner**, Managing Partner, Allen & Overy
4. **Luis de Carlos**, Managing Partner, Uría Menéndez
5. **Klaus Ilmonen**, Partner, Hannes Snellman Attorneys Limited
6. **José Neves Adelino**, Professor, the New University of Lisbon
7. **João Ramalho Talone**, Magnum Capital
8. **Laurent Guillot**, Chief Financial Officer, Saint-Gobain
9. **Peter Montagnon**, The Financial Reporting Council
10. **Steen Lønberg Jørgensen**, Head of Corporate Finance & Equity, Denmark Nordea
11. **Leif Vindevåg**
12. **Alexander Russ**, Legal Counsel, Oesterreichische Kontrollbank AG

ANNEX III

European Commission's request for ESMA technical advice on possible delegated acts concerning the prospectus Directive as amended by the Directive 2010/73/EU

FORMAL REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS CONCERNING THE AMENDED PROSPECTUS DIRECTIVE (2003/71/EC)

With this formal mandate to ESMA, the Commission seeks ESMA's technical advice on possible delegated acts concerning the amended Prospectus Directive (the "**Amended Directive**"). These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final policy decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"),¹⁷ the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**"),¹⁸ and the Framework Agreement on Relations between the European Parliament and the European Commission (the "**Framework Agreement**").¹⁹

This request for technical advice will be made available on DG Internal Market's website once it has been sent to ESMA.

The formal mandate consists of three separate parts:

Part I

The formal mandate focuses on technical issues which follow from the Directive 2010/73/EU amending the Prospectus Directive (the "**Amending Directive**").²⁰

- The Commission is under the obligation to adopt delegated acts by 1 July 2012 in relation to the format of the final terms to a base prospectus, to the format of the summary of the prospectus, and to the detailed content and specific form of the key information to be included in the summary (Article 5(5)).
- This part relates to the proportionate disclosure regime introduced for some preemptive offers of equity securities, offers by SMEs and issuers with reduced market capitalization, and offers of non-equity securities referred to in Article 1(2)(j) by credit institutions (Article 7(1)).
- It also focuses on the criteria to be applied in the assessment of the equivalence of a third country legal and supervisory framework (Articles 4(1)).

The legal bases for the delegated acts are Articles 4(1), 5(5), 7(1), 24a, 24b and 24c of the Amended Directive.

Part II

Moreover, in order to increase legal clarity and efficiency in the prospectus regime, the second part of the formal mandate covers possible additional delegated acts for technical adjustment and clarification of some existing Level 2 measures. The legal bases are Articles 7, 24a, 24b and 24c of the Amended Directive.

Part III

¹⁷ Communication of 9.12.2009. COM(2009) 673 final.

¹⁸ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. OJ L331/84, 15.12.2010, p.84.

¹⁹ OJ L304/47, 20.11.2010, p.47.

²⁰ Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. OJ L327/1, 11.12.2010, p.1.

ESMA is also invited to assist the Commission in the preparation of a comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive.

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advice by ESMA, in accordance with the Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, the Commission will continue to consult experts appointed by the Member States in the preparation of possible delegated acts in the financial services area.

In accordance with point 15 of the Framework Agreement, the Commission will provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. Upon request by the Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The powers of the Commission to adopt delegated acts are subject to Articles 24b and 24c of the Amended Directive. As soon as the Commission adopts a possible delegated act, the Commission will notify it simultaneously to the European Parliament and the Council.

1. Context.

1.1 Scope.

On 23 September 2009, the Commission published its proposal for the revision of the Prospectus Directive. On 17 June 2010 the European Parliament adopted a common approach, which was also endorsed by the Council on 11 October 2010. The Amending Directive was published on 11 December 2010.

The Amending Directive has three main objectives: (i) increasing efficiency in the prospectus regime, (ii) reducing administrative burdens for companies when raising capital in the European securities markets, and (iii) enhancing investor protection.

As for Parts I and II of this formal mandate, these principles taken up by the Amended Directive needs now to be translated into delegated acts:

- Part I: The Commission is under the obligation to adopt delegated acts by 1 July 2012 in relation to the format of the final terms to a base prospectus, to the format of the summary of the prospectus, and to the detailed content and specific form of the key information to be included in the summary (Article 5(5)). This part relates also to the proportionate disclosure regime introduced for some preemptive offers of equity securities, offers by SMEs and issuers with reduced market capitalization, and offers of non-equity securities referred to in Article 1(2)(j) by credit institutions (Article 7(1)). It also focuses on the criteria to be applied in the assessment of the equivalence of a third country legal and supervisory framework (Article 4(1)).
- Part II: In order to increase legal clarity and efficiency in the prospectus regime, the second part of the mandate covers possible additional delegated acts reviewing some existing Level 2 measures.

Part III of the mandate invites ESMA to assist the Commission in the preparation of a comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive.

1.2 Principles that ESMA should take into account.

On the working approach, SMA is invited to take account of the following principles:

- It should take account of the principles set out in the de Larosière Report, the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- The high level of investor protection that is the guiding principle of the Prospectus Directive.
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the Amended Directive. It should be simple and avoid creating excessive administrative or procedural burdens for issuers, in particular SMEs, and the national competent authorities.
- ESMA should respond efficiently by providing comprehensive advice on all subject matters covered by Parts I and II of the mandate regarding the delegated powers included in the Amended Directive.
- While preparing its advice, ESMA should seek coherence within the regulatory framework of the Union.
- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the delegated acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness. Moreover, where relevant it may indicate how the delegated acts should relate to technical standards to be developed in areas where empowerments for technical standards are given by the legislative act.²¹
- ESMA will determine its own working methods, including the roles of ESMA staff or internal committees. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by ESMA.
- In accordance with the ESMA Regulation, ESMA is invited to widely consult market participants (practitioners, consumers and end-users) in an open and transparent manner. ESMA should provide advice which takes account of different opinions expressed by the market participants during their consultation. ESMA should provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation.

²¹ See Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority). OJ L331/120, 15.12.2010, p.120.

- The technical advice carried out should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level.
- ESMA should provide sufficient factual data backing the analyses and gathered during its assessment. To meet the objectives of this mandate, it is important that the advice produced by ESMA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.
- ESMA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the Amended Directive, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by ESMA to the Commission should not take the form of a legal text. However, ESMA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology used in the field of securities markets in the Union.
- ESMA should address to the Commission any question they might have concerning the clarification on the text of the Amended Directive, which they should consider of relevance to the preparation of its technical advice.

2 Procedure.

The Commission would like to request the technical advice of ESMA on the content of the possible delegated acts to be adopted pursuant to the Amended Directive.

The mandate follows the agreement on implementing the Lamfalussy recommendations reached with the European Parliament on 5 February 2002, the 290 Communication, the ESMA Regulation, and the Framework Agreement.

According to Article 19 of the ESMA Regulation, ESMA should serve as an independent advisory body to the Commission, and may, upon a request from the Commission or on its own initiative provide opinions to the Commission on all issues related to its area of competence. Moreover, according to Article 6(1)(g) of the ESMA Regulation, ESMA shall take over, as appropriate, all existing and ongoing tasks from CESR.²²

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

²² Commission Decision 2009/77/EC of 23 January 2009 establishing the Committee of European Securities Regulators, OJ L25, 29.1.2009, p.18.

In accordance with the Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, and in accordance with the established practice, the Commission will continue to consult experts appointed by the Member States in the preparation of the delegated acts relating to the Prospectus Directive.

Moreover, in accordance with point 15 of the Framework Agreement, the Commission will provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. Upon request by the Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The Commission has duly informed the European Parliament and the Council about this mandate. As soon as the Commission adopts possible delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3 ESMA is invited to provide technical advice on the following issues:

3.1 Format of the final terms to the base prospectus (Article 5(5)).

When the final terms of an offer are not included in either the base prospectus or a supplement, Article 5(4) of the Amended Directive clarifies that the final terms must not be used to supplement the base prospectus but they must contain only information relating to the securities note which is specific to the issue and which can be determined only at the time of the individual issue.

Such information should, for example, include the international securities identification number, the currency, the issue price and date, the maturity date, any coupon, the exercise date, the exercise price, the redemption price and other terms not known at the time of drawing up the prospectus. Instead, any new information capable of affecting the assessment of the issuer and the securities must be included in the supplement to the prospectus.

- ESMA is invited to develop the possible format of the final terms as a separated document and provide technical advice on possible schedules and building blocks for the final terms to the base prospectus while at the same time preserving the flexibility of the base prospectus regime.
- It should clarify what new information, capable of affecting the assessment of the issuer and the securities should be included in a supplement to the base prospectus rather than in the final terms.
- It should specify the disclosure requirements of the securities note the final terms should contain and what information can be considered specific to the issue and can be determined only at the time of the individual issue. Such information might, for example, include the international securities identification number, the issue price and date, the date of maturity, any coupon, the exercise date, the exercise price, the redemption price and other terms not known at the time of drawing up the prospectus.

- When the final terms are presented in the form of a separate document containing only the final terms, in order to fulfill the obligation to provide key information in the summary document also under the base prospectus regime, ESMA is also invited to specifically define the mechanism and the procedure according to which issuers should combine the summary of a base prospectus with relevant parts of its final terms in a way that is easily accessible to investors. In such cases no subsequent approval of the summary and the final terms should be required.

3.2 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)).

The co-legislators have clarified in the Amended Directive the fundamental objectives and guiding principles of the summary document and the key information to be provided in the summary of the prospectus. This is an essential part of the Commission's drive to improve the effectiveness of disclosures and to increase investors' confidence in the financial markets.

In the prospectus regime, the summary of the prospectus is a key source of information for retail investors. It is a self-contained part of the prospectus and should be short, simple, clear and easy for targeted investors to understand. For this reason, it should focus on key information that investors need in order to be able to decide which offers and admissions of securities to consider further.

The format and the content of the summary should provide, in conjunction with the prospectus, appropriate information about the essential characteristics and the risks of the issuer, guarantor and the securities that are being offered or admitted to trading on a regulated market. A common format should facilitate comparability among summaries of similar products by ensuring that equivalent information always appears in the same position in the summaries.

ESMA is encouraged to reflect on possible ways to assist the persons responsible for drawing up the summary of the prospectus in practically achieving the fundamental objectives and observing the guiding principles as set by the co-legislators.

ESMA is invited to advise the Commission on possible schedules and building blocks of the summary document. It should develop common formats of the summary document and its key information in order to facilitate comparability among summaries of similar products and to ensure that equivalent information always appears in the same position in the summary document.

In relation to the content of the summary document, ESMA is invited to reflect on a detailed and exhaustive description of the essential and appropriately structured key information to be provided to investors as generally defined in Article 2(1)(s) of the Amended Directive. In particular, the summary document should contain:

- An introduction stating the purpose of the summary document.
- A short description of the essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position. This section should briefly and clearly summarize at least the "Information about the issuer" and the guarantor, the "Business overview," and the

"Financial information concerning assets and liabilities, financial position, and profits and losses," as described in the Regulation (EC) 809/2004 (the "**Prospectus Regulation**").²³

- A short description of the essential characteristics of the security, including any rights attaching to the securities. This section should briefly and clearly summarize at least the "Information concerning the securities," the items of "Terms and the conditions of the offer" relevant to the security, the nature and scope of the guarantee, the "Admission to trading and dealing arrangements," as described in the Prospectus Regulation.
- A short description of the risks involved in investing in the securities such as factors that are specific to the issuer, the guarantor and their industry, which can affect their ability to fulfill their obligations, and factors which are material for the purpose of assessing the inherent and market risks associated with an investment in the securities.
- A short description of the offer. This section should briefly and clearly summarize the relevant items of the "Terms and the conditions of the offer," the "Reasons for the offer and use of proceeds," as described in the Prospectus Regulation, including the estimate of the total expenses of the issue and any selling restrictions.

ESMA may reflect on possible schedules and building blocks to this proposed outline. The disclosure requirements should take into account the typical main features of the different types of issuers, guarantors and securities. They should also be adapted to the characteristics of the base prospectus.

ESMA, when delivering its advice in respect of the possible content and format of the summary including key information, should also take into account the objectives of the Communication on Packaged Retail Investment Products (PRIPs) and the work undertaken under this initiative.²⁴ In particular, in relation to PRIPs within the scope of the Prospectus Directive, the summary should take into account eventually the "key investor information" as developed under the PRIPs initiative in order to avoid any duplication of disclosure requirements and thus any additional costs and liability for PRIPs' offerors.

3.3 Proportionate disclosure regime (Article 7).

Without prejudice to investor protection, the co-legislators have agreed to introduce in Article 7 of the Amended Directive the principle of a proportionate disclosure regime for the following types of offers:

- Offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility, which are subject to appropriate disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights;

²³ Commission Regulation (EC) 809/2004 of 29 April 2004. OJ L215, 16.6.2004, p.3.

²⁴ SEC (2009) 1223 of September 23, 2009, p. 4.

- Offers by SMEs, by issuers with reduced market capitalization, and by credit institutions issuing non-equity securities referred to in Article 1(2)(j) of the Prospectus Directive within the scope of the Directive.

Such proportionate disclosure regime aims at improving the efficiency of the Union's securities markets and reducing the administrative costs of issuers when raising capital. It should strike a balance between the need to improve investor protection and the amount of information already disclosed to the markets and the size of the issuers.

- ESMA is invited to deliver its advice on the possible adaptation of the specific information requirements of Article 7 of the Prospectus Directive to the above-mentioned types of offers. In particular, ESMA should identify and select the disclosure requirements, as currently specified in the Prospectus Regulation, which are necessary to these types of offers taking into account a high level of investor protection, the amount of information already disclosed to the markets and the size of the issuers. ESMA should develop specific draft annexes in this respect.
- In relation to preemptive offers of equity securities, ESMA is invited to identify items which could possibly be considered redundant in annexes I and III to the Prospectus Regulation considering that shares of the same class are already admitted to trading on a regulated market or a multilateral trading facility (subject to appropriate disclosure requirements and rules on market abuse) and therefore a certain amount of information is already available to the investors and the financial markets.
- In relation to issues by credit institutions issuing non-equity securities referred to in Article 1(2)(j) of the Prospectus Directive which decided to opt into the regime of the Prospectus Directive, ESMA should advise the Commission on what information could be omitted from annexes XI and V of the Prospectus Regulation. ESMA should consider that these issuers are authorized and regulated to operate in the financial markets and that a proper balance should be sought so that the disclosure requirements are not excessively burdensome compared to the amount raised (EUR 75 000 000).
- Concerning SMEs and companies with reduced market capitalisation, ESMA is invited to advise the Commission on a possible annex containing the minimum information to be disclosed in the registration document for SMEs and companies with reduced market capitalisation. Considering their size, the amount raised and, where appropriate, their shorter track record, ESMA is invited to identify the information which could be omitted from the registration document applicable to other issuers.

3.4 Equivalence of third-country financial markets (Article 4(1)).

The Amending Directive extends the exemption in Article 4(1)(e) of the Prospectus Directive to employee share schemes of companies established outside the European Union whose securities are admitted to trading on a third-country market provided that:

- adequate information, including the document containing information on the number and nature of the securities and the reasons for and details of the offer, is available in a language customary in the sphere of international finance; and

- the Commission adopt an equivalence decision stating whether the regulatory (legal and supervisory) framework of that third country ensures that that market is authorized in that third country, it complies with legally binding requirements which are, for the purpose of the application of this exemption, equivalent to the requirements resulting from the Market Abuse Directive,²⁵ from Title III of the MiFID,²⁶ and from the Transparency Directive,²⁷ and it is subject to effective supervision and enforcement in that third country.

The Commission should adopt such equivalence decision in accordance with the procedure referred to in Article 24(2) of the Prospectus Directive upon assessment and request of the competent authority of a Member State which should indicate why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent, and should provide relevant information to this end.

Definition of equivalence

The Market Abuse Directive, the Transparency Directive and the MiFID have set up a strict legal and supervisory framework in the Union, which should be preserved by all actors and market participants in order to underpin confidence in the financial markets.

Given the objectives of the Market Abuse Directive, the Transparency Directive and the MiFID, it is appropriate that equivalence should be defined by reference respectively to the ability of a third-country regulatory framework to ensure a similar integrity of its financial markets, to the ability of investors to make similar informed assessment of the financial situation of issuers with securities admitted to trading on those financial markets, and to the ability of that third-country regulatory framework to ensure that those markets are subject to similar authorization, supervision and enforcement on an ongoing basis.

Therefore in the assessment in the request by the competent authority of a Member State whether a third-country financial market comply with legally binding requirements which are equivalent to the requirements resulting from the Market Abuse Directive, the Transparency Directive and the MiFID and whether it are subject to effective supervision and enforcement in that third country, the priority should lie in assuring that investors would benefit from similar protections in terms of market integrity and transparency.

The global and holistic assessment of the third-country regulatory framework should be based on its entirety and carried out from a technical point of view. The regulatory framework of the third country must include mandatory and not voluntary requirements. The assessment should focus on the differences between the regulatory regime established at the EU level and the third-country regulatory framework. It should evaluate the material importance of such differences. In doing so it should focus on technical criteria and not take into account any considerations of political nature.

²⁵ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse). OJ L 96, 12.4.2003, p.16.

²⁶ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. OJ L 145, 30.4.2004, p.1.

²⁷ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. OJ L 390, 31.12.2004, p.38.

Elements of the equivalence assessment

The third subparagraph in Article 4(1) of the Amended Directive set the minimum criteria for the assessment of such equivalence. A third-country legal and supervisory framework may be considered equivalent where that framework fulfills at least the following conditions:

- the markets are subject to authorization and to effective supervision and enforcement on an ongoing basis;
- the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

The fourth subparagraph in Article 4(1) empowers the Commission to adopt delegated acts in order to specify those criteria or to add further ones to be applied in the assessment of the equivalence.

ESMA is invited to specify the abovementioned criteria and to reflect on the possibility of adding further ones to be applied in the assessment of the equivalence by the requesting competent authority of a Member States.

An indicative description of the regulatory principles, which need to be respected by the to be assessed third-country regulatory framework and which need be considered in the assessment and request by the competent authority of a Member State for an equivalence decision by the Commission, should include the following:

Measures to ensure market integrity

- The third country regulatory regime provides for a prohibition of insider dealing and market manipulation and for an obligation to disclose inside information similar to Articles 2, 3, 4, 5, 6 and 9 of the Market Abuse Directive.

Measure to ensure market transparency and investor protection

- The third-country regulatory regime provides for disclosure requirements for the admission of the securities to trading on that third-country financial market similar to the minimum information of Articles 5 and 7 of the Prospectus Directive.
- The third-country regulatory regime provides for transparency requirements about issuers with securities admitted to trading on that third-country financial market similar to the periodic information requirements of Articles 4, 5 and 6 of the Transparency Directive and to the ongoing information requirements, relating to major holdings and for holders of those securities, of Chapter III of the Transparency Directive.

- The third-country regulatory regime ensures that its markets are subject to authorization and to effective supervision and enforcement on an ongoing basis; and that the markets have clear and transparent rules regarding admission of securities (equity and non-equity) to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. The requirements of the third-country regulatory regime should be similar to those in Articles 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of MiFID.
- The third-country regulatory regime ensures effective supervision and enforcement taking into consideration the legal and institutional setting in which the third-country supervisory authority operates as well as of its supervisory program and operational ability to ensure effective compliance. A cooperation framework between the third-country supervisory authority and the requesting competent authority or ESMA should be in place.

ESMA is also invited to take into consideration and ensure consistency with the ongoing reviews of the Market Abuse Directive, the Transparency Directive, and the MiFID.

3.5 The consent to use a prospectus in a retail cascade (Articles 3 and 7).

According to the Amending Directive, a valid prospectus, drawn up by the issuer or the person responsible for drawing up the prospectus and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the person responsible for drawing up the prospectus as long as this is valid and duly supplemented in accordance with Articles 9 and 16 of the Prospectus Directive and the issuer or the person responsible for drawing up the prospectus consents to its use.

The issuer or the person responsible for drawing up the prospectus should be able to attach conditions to his or her consent. The consent, including any conditions attached to it, should be given in a written agreement between the parties involved enabling assessment by relevant parties of whether the resale or final placement of securities complies with the agreement.

- ESMA is invited to advise the Commission on the possible format and modalities according to which the consent, including the conditions attached thereto, to use the initial prospectus by financial intermediaries placing or subsequently reselling the securities should be disclosed to the relevant parties. The consent, including any conditions attached thereto, should be given in a written agreement between the parties involved enabling assessment by relevant parties of whether the resale or final placement of securities complies with the agreement.
- The advice should focus on the duration of the consent, what conditions should be attached, the clarification on the respective liabilities of the issuer or the person responsible for drawing up the initial prospectus consenting to its use and the financial intermediaries placing or subsequently reselling the securities entitled to rely upon the initial prospectus, what resale or final placement of securities can be considered compliant with the written agreement.

4 Review of the provisions of the Prospectus Regulation (Articles 5 and 7).

Six years after the entry into force of the Prospectus Regulation, in consideration of the technical developments on the financial markets in the Union, the amendments to the Prospectus Directive, and the objectives of increasing legal clarity and efficiency in the prospectus regime, the Commission takes the opportunity of this mandate to ESMA to consider some technical adjustment and clarification to a number of requirements of the Prospectus Regulation.

ESMA is invited to reflect and advise the Commission on the possible technical adjustment and clarification of the following disclosure requirements of the Prospectus Regulation:

- Information on taxes on income from securities withheld at source (Items 4.11 of Annex III, 4.14 of Annex V, 27.11 and 28.11 of Annex X, and 4.1.14 of Annex XII). The Prospectus Regulation requires the disclosure in the prospectus of information on taxes from securities withheld at source. Does ESMA consider necessary to clarify that this only refers to information on any amount withheld at source by the issuer or by any agent appointed by it, because otherwise it would be impossible for the issuer to identify those custodians or agents in the payment chain not appointed by it?
- Information relating to an underlying index (Item 4.2.2 of Annex XII). The Prospectus Regulation requires the inclusion in the prospectus of a description of the index if it is composed by the issuer. However, if the index is not composed by the issuer, where information about the index can be obtained. ESMA is invited to consider the effects of allowing both the index owner and the others just to indicate where information on the index can be found? Would such a solution be applicable also in Item 2.10 of Annex XV?
- Profit forecasts or estimates (Items 13.2 of Annexes I and X, 9.2 of Annex IV, and 8.2 of Annex XI) should be currently accompanied by a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. ESMA is invited to consider the effects of repealing such requirement given that market announcements are usually issued in advance of the related financial results being finalized?
- Audited historical financial information (Items 20.1 of Annexes I and XI). In order to avoid any unnecessary costs for the issuers, ESMA is invited assess the effects of a possible reduction to the latest two financial years for the coverage of the audited historical financial information, while keeping the requirement of the latest three financial years only in case of an initial public offer.

5. Comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive.

Given the divergences among the liability regimes of the Member States in the application of the prospectus regime, the co-legislators have asked the Commission to prepare a comparative table in order to identify and monitor the different arrangements in the Member States.

- ESMA is invited to assist the Commission in compiling this comparative table. ESMA is invited to provide a complete and coherent set of information comparing the civil, administrative and government liability, criminal liability and sanctions applied in each Member State.

6. Indicative timetable.

This mandate takes into consideration that ESMA needs enough time to prepare its technical advice and that the Commission needs to adopt the delegated acts according to Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Articles 24b and 24c of the Amended Directive.

In particular, the Commission is under the obligation to adopt delegated acts by 1 July 2012 in relation to the format of the final terms to a base prospectus, to the format of the summary of the prospectus, and to the detailed content and specific form of the key information to be included in the summary (Article 5(5) of the Amended Directive). Therefore it is of utmost importance to start working on these measures as soon as possible.

The deadline set to ESMA to deliver the technical advice is **30 September 2011** at least with regard to the questions raised in sections 3.1 and 3.2. The establishment of the deadline is based on the following timetable.

Deadline	Action
31 December 2010	Entry into force of the Amending Directive (20 days after publication in the Official Journal of the European Union – 11 December 2010).
January 2010	Submission by the Commission of the formal mandate to ESMA.
30 September 2011	ESMA provides its technical advice.
October – December 2011	<p><i>Preparation of the delegated acts:</i> In the preparation of the delegated acts, the Commission will consult with experts appointed by the Member States within the European Securities Committee.</p> <p>The Commission will provide the European Parliament with full information and documentation on those meetings. If so requested by Parliament, the Commission may also invite Parliament's experts to attend those meetings.</p>
End of December 2011	<i>Adoption of the delegated acts:</i> Formal adoption by the Commission of the delegated acts and notification to the European Parliament and the Council.
March 2012 or June 2012	End of the objection period for the European Parliament and the Council (three months +

	three months).
1 July 2012	End of the transposition period for the Amending Directive (18 months after the entry into force of the Amending Directive).

ANNEX A

- List of Securities Note Schedules and Building Block(s)

As for the definitions of “CAT. A”, “CAT. B” and “CAT. C”, please refer to section A. “Principles” of Part 3.III “Instructions in relation to the requirements of the securities note schedules and the block(s)” above.

	ANNEX V	INSTRUCTIONS
1.	PERSONS RESPONSIBLE	
1.1.	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer’s administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	CAT. A
1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	CAT. A
2.	RISK FACTORS	
2.1.	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed ‘Risk Factors’.	CAT. A
3.	KEY INFORMATION	
3.1.	<i>Interest of natural and legal persons involved in the issue/offer</i>	
	A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest.	CAT. C
3.2.	<i>Reasons for the offer and use of proceeds</i>	
	Reasons for the offer if different from making profit and/or hedging certain risks. Where applicable, disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.	CAT. C
4.	INFORMATION CONCERNING THE SECURITIES TO	

	BE OFFERED/ADMITTED TO TRADING	
4.1.	(i) A description of the type and the class of the securities being offered and/or admitted to trading,	CAT. B
	(ii) the ISIN (International Security Identification Number) or other such security identification code.	CAT. C
4.2.	Legislation under which the securities have been created	CAT. A
4.3.	(i) An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. (ii) In the latter case, name and address of the entity in charge of keeping the records.	CAT. A CAT. C
4.4.	Currency of the securities issue	CAT. C
4.5.	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.	CAT. A
4.6.	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.	CAT. B
4.7.	(i) Nominal interest rate	CAT. C
	(ii) Provisions relating to interest payable	CAT. B
	(iii) The date from which interest becomes payable	CAT. C
	(iv) The due dates for interest	CAT. C
	(v) The time limit on the validity of claims to interest and repayment of principal	CAT. A
	Where the rate is not fixed,	
	(vi) statement setting out the type of underlying	CAT. A
	(vii) description of the underlying on which it is based	CAT. C
	(viii) and of the method used to relate the two	CAT. B
	(ix) an indication where information about the past and the further performance of the underlying and its volatility can be obtained	CAT. C
	(x) Description of any market disruption or settlement disruption events that affect the underlying	CAT. B
	(xi) Adjustment rules with relation to events concerning the underlying	CAT. B
	(xii) Name of the calculation agent	CAT. C
	(xiii) If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident.	CAT. B

4.8.	(i) maturity date	CAT. C
	(ii) arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions	CAT. B
4.9.	(i) An indication of yield	CAT. C
	(ii) Describe the method whereby that yield is calculated in summary form.	CAT. B
4.10.	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation.	CAT. A
4.11.	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	CAT. C
4.12.	In the case of new issues, the expected issue date of the securities.	CAT. C
4.13.	A description of any restrictions on the free transferability	CAT. A
4.14.	In respect of the country of registered office of the issuer and the country(ies) where the offer being made or admission to trading is being sought: <ul style="list-style-type: none"> o information on taxes on the income from the securities withheld at source o indication as to whether the issuer assumes responsibility for the withholding of taxes at source 	CAT. A
5.	TERMS AND CONDITIONS OF THE OFFER	
5.1.	<i>Conditions , offer statistics, expected timetable and action required to apply for the offer</i>	
5.1.1.	Conditions to which the offer is subject	CAT. C
5.1.2.	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.	CAT. C
5.1.3.	(i) The time period, including any possible amendments, during which the offer will be open	CAT. C
	(ii) description of the application process.	CAT. C
5.1.4.	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	CAT. C
5.1.5.	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest)	CAT. C
5.1.6.	Method and time limits for paying up the securities and for delivery of the securities	CAT. C
5.1.7.	A full description of the manner and date in which results of the offer are to be made public.	CAT. C
5.1.8.	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised	CAT. C

5.2.	<i>Plan of distribution and allotment</i>	
5.2.1.	(i) The various categories of potential investors to which the securities are offered	CAT. A
	(ii) If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	CAT. C
5.2.2.	Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made	CAT. C
5.3.	<i>Pricing</i>	
5.3.1.	(i) An indication of the expected price at which the securities will be offered or	CAT. C
	(ii) the method of determining the price and the process for its disclosure	CAT. B
	(iii) Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.	CAT. C
5.4.	<i>Placing and Underwriting</i>	
5.4.1.	Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.	CAT. C
5.4.2.	Name and address of any paying agents and depository agents in each country	CAT. C
5.4.3.	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	CAT. C
5.4.4.	When the underwriting agreement has been or will be reached.	CAT. C
6.	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
6.1.	(i) An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved.	CAT. B
	(ii) If known, give the earliest dates on which the securities will be admitted to trading	CAT. C
6.2.	All regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading	CAT. C

6.3.	Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	CAT. C
7.	ADDITIONAL INFORMATION	
7.1.	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	CAT. C
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report	CAT. A
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.	CAT. A
7.4.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	CAT. C
7.5.	(i) Credit ratings assigned to an issuer at the request or with the co-operation of the issuer in the rating process and brief explanation of the meaning of the rating if this has previously been published by the rating provider	CAT. A
	(ii) Credit ratings assigned to securities at the request or with the co-operation of the issuer in the rating process and brief explanation of the meaning of the rating if this has previously been published by the rating provider	CAT. C
ANNEXES XII		INSTRUCTIONS
1.	PERSONS RESPONSIBLE	
1.1.	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	CAT. A

1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	CAT. A
2.	RISK FACTORS	
2.1.	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed 'risk factors'. This must include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect	CAT. A
3.	KEY INFORMATION	
3.1.	<i>Interest of natural and legal persons involved in the issue/offer</i>	
	A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest	CAT. C
3.2.	<i>Reasons for the offer and use of proceeds when different from making profit and/or hedging certain risks</i>	
	If reasons for the offer and use of proceeds are disclosed provide the total net proceeds and an estimate of the total expenses of the issue/offer.	CAT. C
4.	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED AND ADMITTED TO TRADING	
4.1.	<i>Information concerning the securities</i>	
4.1.	(i) A description of the type and the class of the securities being offered and/or admitted to trading,	CAT. B
	(ii) the ISIN (International Security Identification Number) or other such security identification code.	CAT. C
4.1.2.	A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 50 000 or can only be acquired for at least EUR 50 000 per security.	CAT. B
4.1.3.	Legislation under which the securities have been created.	CAT. A
4.1.4.	(i) An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form.	CAT. A

	(ii) In the latter case, name and address of the entity in charge of keeping the records.	CAT. C
4.1.5.	Currency of the securities issue	CAT. C
4.1.6.	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.	CAT. A
4.1.7.	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of said rights.	CAT. B
4.1.8.	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	CAT. C
4.1.9.	The issue date of the securities	CAT. C
4.1.10.	A description of any restrictions on the free transferability of the securities	CAT. A
4.1.11.	(i) The expiration date of the derivative securities	CAT. C
	(ii) The exercise date or final reference date	CAT. C
4.1.12.	A description of the settlement procedure of the derivative securities	CAT. B
4.1.13.	(i) A description of how any return on derivative securities takes place	CAT. B
	(ii) the payment or delivery date	CAT. C
	(iii) the way it is calculated	CAT. B
4.14.	In respect of the country of registered office of the issuer and the country(ies) where the offer being made or admission to trading is being sought: <ul style="list-style-type: none"> o information on taxes on the income from the securities withheld at source o indication as to whether the issuer assumes responsibility for the withholding of taxes at source 	CAT. A
4.2.	<i>Information concerning the underlying</i>	
4.2.1.	The exercise price or the final reference price of the underlying	CAT. C
4.2.2.	A statement setting out the type of the underlying	CAT. A
	and details of where information on the underlying can be obtained	CAT. C
	(i) where the underlying is a security	

	<ul style="list-style-type: none"> ○ the name of the issuer of the security ○ the ISIN (international security identification number) or other such security identification code 	CAT. C
	<p>(ii) where the underlying is an index</p> <ul style="list-style-type: none"> ○ the name of the index ○ a description of the index if it is composed by the issuer. ○ If the index is not composed by the issuer, where information about the index can be obtained 	CAT. C CAT. A CAT. C
	<p>(iii) where the underlying is an interest rate</p> <ul style="list-style-type: none"> ○ a description of the interest rate 	CAT. C
	<p>(iv) others</p> <ul style="list-style-type: none"> ○ Where the underlying does not fall within the categories specified above the securities note shall contain equivalent information. 	CAT. C
	<p>(v) where the underlying is a basket of underlyings</p> <ul style="list-style-type: none"> ○ disclosure of the relevant weightings of each underlying in the basket 	CAT. C
4.2.3.	A description of any market disruption or settlement disruption events that affect the underlying	CAT. B
4.2.4.	Adjustment rules with relation to events concerning the underlying.	CAT. B
5.	TERMS AND CONDITIONS OF THE OFFER	
5.1.	<i>Conditions , offer statistics, expected timetable and action required to apply for the offer</i>	
5.1.1.	Conditions to which the offer is subject	CAT. C
5.1.2.	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.	CAT. C
5.1.3.	<p>(i) The time period, including any possible amendments, during which the offer will be open</p> <p>(ii) description of the application process.</p>	CAT. C CAT. C
5.1.4.	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest)	CAT. C
5.1.5.	Method and time limits for paying up the securities and for delivery of the securities	CAT. C
5.1.6.	A full description of the manner and date in which results of the offer are to be made public.	CAT. C
5.2.	Plan of distribution and allotment	
5.2.1.	(i) The various categories of potential investors to which the securities are offered	CAT. A

	(ii) If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	CAT. C
5.2.2.	Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made	CAT. C
5.3.	Pricing	
5.3.1.	(i) An indication of the expected price at which the securities will be offered or	CAT. C
	(ii) the method of determining the price and the process for its disclosure	CAT. B
	(iii) Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.	CAT. C
5.4.	Placing and Underwriting	
5.4.1.	Name and address of the coordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.	CAT. C
5.4.2.	Name and address of any paying agents and depository agents in each country	CAT. C
5.4.3.	Entities agreeing to underwrite the issue on a firm commitment basis, and entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Where not all of the issue is underwritten, a statement of the portion not covered	CAT. C
5.4.4.	When the underwriting agreement has been or will be reached.	CAT. C
5.4.5.	Name and address of a calculation agent.	CAT. C
6.	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
6.1.	(i) An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance shall be mentioned, without creating the impression that the admission to trading necessarily will be approved.	CAT. B
	(ii) If known, give the earliest dates on which the securities will be admitted to trading	CAT. C
6.2.	All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading	CAT. C
6.3.	Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	CAT. C
7.	ADDITIONAL INFORMATION	

7.1.	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	CAT. C
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	CAT. A
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest, if any, in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.	CAT. A
7.4.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information	CAT. C
7.5.	An indication in the prospectus whether or not the issuer intends to provide post-issuance information. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported and where such information can be obtained.	CAT. C
ANNEX XIII		INSTRUCTIONS
1.	PERSONS RESPONSIBLE	
1.1.	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	CAT. A
1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	CAT. A
2.	RISK FACTORS	

	Prominent disclosure of risk factors that are material to the securities admitted to trading in order to assess the market risk associated with these securities in a section headed 'Risk factors'.	CAT. A
3.	KEY INFORMATION	
	Interest of natural and legal persons involved in the issue	
	A description of any interest, including conflicting ones, that is material to the issue, detailing the persons involved and the nature of the interest.	CAT. C
4.	INFORMATION CONCERNING THE SECURITIES TO BE ADMITTED TO TRADING	
4.1.	Total amount of securities being admitted to trading.	CAT. C
4.1.	(i) A description of the type and the class of the securities being offered and/or admitted to trading,	CAT. B
	(ii) the ISIN (International Security Identification Number) or other such security identification code.	CAT. C
4.3.	Legislation under which the securities have been created	CAT. A
4.4.	(i) An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form.	CAT. A
	(ii) In the latter case, name and address of the entity in charge of keeping the records.	CAT. C
4.5.	Currency of the securities issue	CAT. C
4.6.	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.	CAT. A
4.7.	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.	CAT. B
4.8.	(i) Nominal interest rate	CAT. C
	(ii) Provisions relating to interest payable	CAT. B
	(iii) The date from which interest becomes payable	CAT. C
	(iv) The due dates for interest	CAT. C
	(v) The time limit on the validity of claims to interest and repayment of principal	CAT. A
	Where the rate is not fixed	
	(vi) Statement setting out the type of the underlying	CAT. A
	(vii) description of the underlying on which it is based	CAT. C
	(viii) and of the method used to relate the two	CAT. B
	(ix) Description of any market disruption or settlement disruption events that affect the underlying	CAT. B
	(x) Adjustment rules with relation to events concerning the underlying	CAT. B
	(xi) Name of the calculation agent	CAT. C

4.9.	(i) maturity date (ii) arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions	CAT. C CAT. B
4.10.	(i) An indication of yield	CAT. C
4.11.	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation.	CAT. A
4.12.	A statement of the resolutions, authorisations and approvals by virtue of which the securities have been created and/or issued.	CAT. C
4.13.	The issue date of the securities	CAT. C
4.14.	A description of any restrictions on the free transferability of the securities	CAT. A
5.	ADMISSION TO TRADING AND DEALING AGREEMENTS	
5.1.	(i) Indication of the market where the securities will be traded and for which prospectus has been published. (ii) If known, give the earliest dates on which the securities will be admitted to trading.	CAT.B CAT.C
5.2.	Name and address of any paying agents and depository agents in each country.	CAT.C
6.	EXPENSE OF THE ADMISSION TO TRADING	
	An estimate of the total expenses related to the admission to trading	CAT. C
7.	ADDITIONAL INFORMATION	
7.1.	If advisors are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	CAT. C
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	CAT. A
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.	CAT. A

7.4.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information	CAT. C
7.5.	(i) Credit ratings assigned to an issuer at the request or with the co-operation of the issuer in the rating process	CAT. A
	(ii) Credit ratings assigned to securities at the request or with the co-operation of the issuer in the rating process	CAT. C
ANNEX VIII		INSTRUCTIONS
1.	THE SECURITIES	
1.1.	The minimum denomination of an issue.	CAT. C
1.2.	Where information is disclosed about an undertaking/obligor which is not involved in the issue, provide a confirmation that the information relating to the undertaking/obligor has been accurately reproduced from information published by the undertaking/obligor. So far as the issuer is aware and is able to ascertain from information published by the undertaking/obligor no facts have been omitted which would render the reproduced information misleading. In addition, identify the source(s) of information in the Securities Note that has been reproduced from information published by an undertaking/obligor.	CAT. C CAT. C
2.	THE UNDERLYING ASSETS	
2.1.	Confirmation that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities.	CAT. A
2.2.	In respect of a pool of discrete assets backing the issue:	
2.2.1.	The legal jurisdiction by which the pool of assets is governed	CAT. C
2.2.2.	(a) In the case of a small number of easily identifiable obligors, a general description of each obligor	CAT. A
	(b) In all other cases, a description of: the general characteristics of the obligors; and the economic environment, as well as global statistical data referred to the securitised assets.	CAT. A CAT. C
2.2.3.	the legal nature of the assets	CAT. C
2.2.4.	the expiry or maturity date(s) of the assets	CAT. C
2.2.5.	the amount of the assets	CAT. C
2.2.6.	loan to value ratio or level of collateralization	CAT. C
2.2.7.	the method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria and any rights or obligations to make further advances	CAT. B

2.2.8.	an indication of significant representations and collaterals given to the issuer relating to the assets	CAT. C
2.2.9.	any rights to substitute the assets and a description of the manner in which and the type of assets which may be so substituted; if there is any capacity to substitute assets with a different class or quality of assets a statement to that effect together with a description of the impact of such substitution	CAT. B
2.2.10.	a description of any relevant insurance policies relating to the assets. Any concentration with one insurer must be disclosed if it is material to the transaction	CAT. B
2.2.11.	Where the assets comprise obligations of 5 or fewer obligors which are legal persons or where an obligor accounts for 20 % or more of the assets, or where an obligor accounts for a material portion of the assets, so far as the issuer is aware and/or is able to ascertain from information published by the obligor(s) indicate either of the following:	
	(a) information relating to each obligor as if it were an issuer drafting a registration document for debt and derivative securities with an individual denomination of at least EUR 50 000	CAT. A
	(b) if an obligor or guarantor has securities already admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.	CAT. C
2.2.12.	If a relationship exists that is material to the issue, between the issuer, guarantor and obligor, details of the principal terms of that relationship	CAT. C
2.2.13.	Where the assets comprise obligations that are not traded on a regulated or equivalent market, a description of the principal terms and conditions of the obligations	CAT. B
2.2.14.	Where the assets comprise equity securities that are admitted to trading on a regulated or equivalent market indicate the following:	
	(a) a description of the securities	CAT. C
	(b) a description of the market on which they are traded including its date of establishment, how price information is published, an indication of daily trading volumes, information as to the standing of the market in the country and the name of the market's regulatory authority	CAT. C
	(c) the frequency with which prices of the relevant securities, are published.	CAT. C
2.2.15.	Where more than ten (10) per cent of the assets comprise equity securities that are not traded on a regulated or equivalent market, a description of those equity securities and equivalent information to that contained in the schedule for share registration document in respect of each issuer of those securities	CAT. A

2.2.16.	Where a material portion of the assets are secured on or backed by real property, a valuation report relating to the property setting out both the valuation of the property and cash flow/income streams. Compliance with this disclosure is not required if the issue is of securities backed by mortgage loans with property as security, where there has been no revaluation of the properties for the purpose of the issue, and it is clearly stated that the valuations quoted are as at the date of the original initial mortgage loan origination	CAT. A
2.3.	In respect of an actively managed pool of assets backing the issue	
2.3.1.	equivalent information to that contained in items 2.1 and 2.2 to allow an assessment of the type, quality, sufficiency and liquidity of the asset types in the portfolio which will secure the issue	see items 2.1 and 2.2
2.3.2.	the parameters within which investments can be made, the name and description of the entity responsible for such management including a description of that entity's expertise and experience, a summary of the provisions relating to the termination of the appointment of such entity and the appointment of an alternative management entity, and a description of that entity's relationship with any other parties to the issue	CAT. B
2.4.	Where an issuer proposes to issue further securities backed by the same assets, a prominent statement to that effect and unless those further securities are fungible with or are subordinated to those classes of existing debt, a description of how the holders of that class will be informed	CAT. C
3.	STRUCTURE AND CASH FLOW	
3.1.	Description of the structure of the transaction, including, if necessary, a structure diagram	CAT. A
3.2.	Description of the entities participating in the issue and description of the functions to be performed by them	CAT. A
3.3.	Description of the method and date of the sale, transfer, novation or assignment of the assets or of any rights and/or obligations in the assets to the issuer or, where applicable, the manner and time period in which the proceeds from the issue will be fully invested by the issuer	CAT. B
3.4.	An explanation of the flow of funds including:	
3.4.1.	how the cash flow from the assets will meet the issuer's obligations to holders of the securities, including, if necessary, a financial service table and a description of the assumptions used in developing the table	CAT. B
3.4.2.	information on any credit enhancements, an indication of where material potential liquidity shortfalls may occur and the availability of any liquidity supports and indication of provisions designed to cover interest/principal shortfall risks	CAT. B
3.4.3.	without prejudice to item 3.4.2, details of any subordinated debt finance	CAT. C
3.4.4.	an indication of any investment parameters for the investment of temporary liquidity surpluses and description of the parties responsible for such investment	CAT. B

3.4.5.	how payments are collected in respect of the assets	CAT. B
3.4.6.	the order of priority of payments made by the issuer to the holders of the class of securities in question	CAT. A
3.4.7.	details of any other arrangements upon which payments of interest and principal to investors are dependent	CAT. A
3.5.	the name, address and significant business activities of the originators of the securitised assets	CAT. C
3.6.	Where the return on, and/or repayment of the security is linked to the performance or credit of other assets which are not assets of the issuer, items 2.2 and 2.3 are necessary	See items 2.2 and 2.3
3.7.	the name, address and significant business activities of the administrator, calculation agent or equivalent, together with a summary of the administrator's/calculation agents responsibilities, their relationship with the originator or the creator of the assets and a summary of the provisions relating to the termination of the appointment of the administrator/calculation agent and the appointment of an alternative administrator/calculation agent	CAT. C
3.8.	the names and addresses and brief description of:	
	(a) any swap counterparties and any providers of other material forms of credit/liquidity enhancement	CAT. A
	(b) the banks with which the main accounts relating to the transaction are held.	CAT. C
4.	POST ISSUANCE REPORTING	
4.1.	Indication in the prospectus whether or not it intends to provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. Where the issuer has indicated that it intends to report such information, specify in the prospectus what information will be reported, where such information can be obtained, and the frequency with which such information will be reported	CAT. C
	ANNEX XIV	INSTRUCTIONS
1.	Description of the underlying share	
1.1	Describe the type and the class of the shares	CAT. A
1.2.	Legislation under which the shares have been or will be created	CAT. A
1.3.	Indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records	CAT. A

1.4.	Indication of the currency of the shares issue	CAT. A
1.5.	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of those rights: – Dividend rights: – fixed date(s) on which the entitlement arises, – time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates, – dividend restrictions and procedures for non resident holders, – rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. – Voting rights. – Pre-emption rights in offers for subscription of securities of the same class. – Right to share in the issuer’s profits. – Rights to share in any surplus in the event of liquidation. – Redemption provisions. – Conversion provisions.	CAT. A
1.6.	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued and indication of the issue date.	CAT. C
1.7.	Where and when the shares will be or have been admitted to trading	CAT. C
1.8.	Description of any restrictions on the free transferability of the shares	CAT. A
1.9.	Indication of the existence of any mandatory takeover bids/or squeeze-out and sell-out rules in relation to the shares	CAT. A
1.10.	Indication of public takeover bids by third parties in respect of the issuer’s equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated	CAT. A
1.11.	Impact on the issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders.	CAT. C
2.	When the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the one required by the share registration document schedule	CAT. A
ANNEX VI		INSTRUCTIONS

1.	Nature of the Guarantee	
	<p>A description of any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, Keep well Agreement, Mono-line Insurance policy or other equivalent commitment (hereafter referred to generically as 'guarantees' and their provider as 'guarantor' for convenience).</p> <p>Without prejudice to the generality of the foregoing, such arrangements encompass commitments to ensure obligations to repay debt securities and/or the payment of interest and the description shall set out how the arrangement is intended to ensure that the guaranteed payments will be duly serviced.</p>	CAT. B
2.	Scope of the Guarantee	
	<p>Details shall be disclosed about the terms and conditions and scope of the guarantee. Without prejudice to the generality of the foregoing, these details should cover any conditionality on the application of the guarantee in the event of any default under the terms of the security and the material terms of any mono-line insurance or keep well agreement between the issuer and the guarantor. Details must also be disclosed of any guarantor's power of veto in relation to changes to the security holder's rights, such as is often found in Mono-line Insurance.</p>	CAT. B
3.	Information to be disclosed about the guarantor	
	<p>The guarantor must disclose information about itself as if it were the issuer of that same type of security that is the subject of the guarantee.</p>	CAT. A
4.	Documents on display	
	<p>Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.</p>	CAT. A

ANNEX B

- List of “Additional Information”

For the definitions of “CAT A ” and “CAT C”, please refer to section A. “Principles” of Part 3.III “Instructions in relation to the requirements of the securities note schedules and the building block(s)” above.

ADDITIONAL INFORMATION	INSTRUCTIONS
Name of issuer	CAT. A
Name of guarantor(s)	CAT. A
Name of the offeror(s)	CAT. A
Name of the person(s) asking for admission to trading on a regulated market	CAT. A
Responsibility statement for final terms	CAT. A
Example(s) of complex derivatives securities as referred to in recital 18 of the Prospectus Regulation ²⁸	CAT. C
Additional provisions, not required by the relevant securities note, relating to the underlying	CAT. C
Country(ies) where the offer(s) to the public takes place	CAT. A
Country(ies) where admission to trading on the regulated market(s) is being sought	CAT. A
Country(ies) into which the relevant base prospectus has been notified	CAT. C
Series Number	CAT. C
Tranche Number	CAT. C

The information of “country(ies) where the offer to the public takes place” and “country(ies) where admission to trading on the regulated market is being sought” is currently considered by ESMA as very useful information to investors, and therefore forms part of the section “Additional Information”. Even more, ESMA is of the opinion that the section entitled “Terms and conditions of the offer” of Annexes V and XII and the section entitled “Admission to trading and dealing agreements” of Annexes V, XII and XIII would need to be amended in order to explicitly include “country(ies) in which the offer to the public takes place” and “country(ies) where the admission to trading on the regulated market is being sought”. In case the Commission adopts the recommendation of ESMA to include this information in the relevant securities note schedules of the Prospectus Regulation, the references to “country(ies) in which the offer to the public takes place” and “country(ies) where the admission to trading on the regulated market is being sought” would need to be removed from the “Additional Information” list.

²⁸ “The schedule ‘securities note for derivative securities’ should be applicable to securities which are not covered by the other schedules and building blocks. The scope of this schedule is determined by reference to the other two generic categories of shares and debt securities. In order to provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying, issuers should be able to use appropriate examples on a voluntary basis. For instance, for some complex derivatives securities, examples might be the most effective way to explain the nature of those securities.”

Annex 1 – Rights Issues: analysis of annexes I and III Commission Regulation (EC) No. 809/2004 and ESMA’s proposals

✓ means that the corresponding items would be required in prospectuses.
 PD the Prospectus Directive.

Commission Regulation (EC) No. 809/2004 Annex I Minimum Disclosure Requirements for the Share Registration Document (schedule)	ESMA’s proposal	Comments
1. PERSONS RESPONSIBLE	✓	
1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	✓	
1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	✓	Identity of the persons responsible and the responsibility statements are specific disclosures required by PD and therefore are not redundant and can not be deleted.
2. STATUTORY AUDITORS	✓	
2.1. Names and addresses of the issuer’s auditors for the period covered by the historical financial information (together with their membership in a professional body).	✓	ESMA proposes to keep this item which is not burdensome and allows all investors (shareholders and new investors) to identify the statutory auditors at a glance.
2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.	✓	
3. SELECTED FINANCIAL INFORMATION		ESMA proposes to delete this item. As stated in CESR’s recommendations : “The

3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarize the financial condition of the issuer.		primary purpose of including selected historical financial information in a prospectus is to summarize key information coming out of the historical financial information of the issuer (...)” (CESR/05-054b, §20). Key information, including key information regarding the issuer’s assets, liabilities and financial position, are now required in the summary. Moreover, the issuer being listed, key information would also be available in management reports.
3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.		
4. RISK FACTORS	✓	ESMA proposes to keep this item which is core to the PD and can not be deleted considering the objective to enhance investor protection.
Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed “Risk Factors”.	✓	
5. INFORMATION ABOUT THE ISSUER		
5.1. History and Development of the Issuer		ESMA proposes to delete this item considering that the issuer being listed, information regarding its history and development would already be public.
5.1.1. the legal and commercial name of the issuer;	✓	ESMA propose to keep this item which is essential information and not burdensome to produce.
5.1.2. the place of registration of the issuer and its registration number;		ESMA proposes to delete these items considering that the issuer being listed, information regarding its history and development, date of incorporation and length of life would already be public.
5.1.3. the date of incorporation and the length of life of the issuer, except where indefinite		
5.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);		ESMA proposes to delete this item considering that the issuer being listed, information regarding its domicile, legal form... would already be public.
5.1.5. the important events in the development of the issuer's business.		ESMA proposes to delete this item. The issuer being listed any significant event impacting the business would be caught by the Market Abuse Directive. Events impacting the issuer’s financial condition would be caught by item 20.9.
5.2. Investments		
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	✓	ESMA proposes to redraft and require an update for any material investments made since the end of the latest published audited financial statements. Proposal : “A description, (including the amount) of the principal investments made since the end of the latest published audited financial and up to the date of the registration document”
5.2.2. A description of the issuer’s principal investments that are in	✓	ESMA proposes to keep this item. This is a specific requirement of the Prospectus

progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external)		Regulation and therefore can not be deleted.
5.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	✓	ESMA proposes to keep this item. This is a specific requirement of the Prospectus Regulation and therefore can not be deleted.
6. BUSINESS OVERVIEW		
	✓	Key information required in the summary includes a short description of the essential characteristics of the issuer. The prospectus must therefore contain information regarding the issuer's activities and business. Considering also the fact that preemptive rights can be sold to new investors, basic information regarding the issuer's business should be provided in the prospectus. ESMA proposes to keep item 6 and to redraft items 6.1, 6.2 and 6.3 to require a brief description of the issuer and updated information.
6.1. Principal Activities	✓	ESMA proposes to merge and redraft items 6.1 and 6.2.
6.1.1. A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information; and	✓	Proposal : "A brief description of the issuer's operations and principal activities and of any significant changes impacting these operations and activities since the end of the latest published audited financial statements, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development."
6.1.2. An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.	✓	The brief description of the issuer's operations and principal activities would be a general and brief description about the issuer's business. The update since the end of the latest published audited financial statements would apply to " <u>any significant changes impacting these operations and activities, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development.</u> "
6.2. Principal Markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.	✓	ESMA proposes to redraft item 6.2. Proposal : "A brief description of the principal markets in which the issuer competes and of any significant changes impacting these markets since the end of the latest published audited financial statements."
6.3. Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors, mention that fact .	✓	ESMA proposes to redraft item 6.3 accordingly. Proposal : "Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors since the end of the latest published audited financial statements, mention that fact ."
6.4. If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses, industrial, commercial or financial contracts or new manufacturing processes.	✓	ESMA proposes to keep these items. These disclosures are specific requirements of the Prospectus Regulation and therefore can not be deleted.

6.5. The basis for any statements made by the issuer regarding its competitive position.	✓	
7. ORGANIZATIONAL STRUCTURE		
7.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.	✓	ESMA proposes to keep this item : information required here is a brief description of the group to which the issuer belongs and its position within the group. This information cannot be found anywhere else and the requirement will not apply if the issuer is not part of a group.
7.2. A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.		ESMA proposes to delete this item since information on subsidiaries would be found in the notes to the financial statements.
8. PROPERTY, PLANTS AND EQUIPMENT		
8.1. Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.		ESMA proposes to delete this item considering that information found in the financial statements would be sufficient.
8.2. A description of any environmental issues that may affect the issuer's utilization of the tangible fixed assets.		
9. OPERATING AND FINANCIAL REVIEW		
9.1. Financial Condition To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.		ESMA proposes to delete this item. The issuer being listed, it will publish annual and half-yearly financial reports in accordance with Articles 4 and 5 of the Transparency Directive. Both reports must include a management report. Information required by item 9 regarding the issuer's operations, results and financial condition will be covered by the management and interim management reports.
9.2. Operating Results		
9.2.1. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.		As a matter of fact Article 4(5) of the Transparency Directive requires the management report to be drawn up in accordance with Article 46 of Directive 78/660/EEC and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC.
9.2.2. Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.		
9.2.3. Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.		
10. CAPITAL RESOURCES		ESMA proposes to delete item 10 considering that information included in the

10.1. Information concerning the issuer's capital resources (both short and long term);		financial reports would cover disclosures required by item 10.
10.2. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;		
10.3. Information on the borrowing requirements and funding structure of the issuer;		
10.4. Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.		
10.5. Information regarding the anticipated sources of funds needed to fulfill commitments referred to in items 5.2.3. and 8.1.		
11. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES		ESMA proposes to delete this item. This information will be covered by the management report.
Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.		
12. TREND INFORMATION	✓	ESMA proposes to keep this item. Item 12.1 refers to the most significant recent trends and item 12.2 covers the current financial year. These information cannot be found anywhere else : information in the management report will only be as of the date of the report.
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.	✓	
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.	✓	
13. PROFIT FORECASTS OR ESTIMATES	✓	ESMA proposes to keep this item. This is a specific requirement of the Prospectus Regulation which will only apply if the issuer chooses to include profit forecasts or estimates in the prospectus.
If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:	✓	
13.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.	✓	
13.2. A report prepared by independent accountants or auditors stating	✓	

that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.		
13.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information	✓	
13.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.	✓	
14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT		ESMA proposes to keep this item.
14.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) members of the administrative, management or supervisory bodies; b) partners with unlimited liability, in the case of a limited partnership with a share capital; c) founders, if the issuer has been established for fewer than five years; and d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. The nature of any family relationship between any of those persons. In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:	✓	Corporate governance is a major concern in all Member States. Composition of boards and senior management as well as experience and skills of directors and senior managers are essential information to shareholders and investors. Although many information would already be public in accordance with national reporting standards some disclosures required under item 14 are specific to the Prospectus Regulation.
(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;	✓	
(b) any convictions in relation to fraudulent offences for at least the previous five years;	✓	

<p>(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and(d) of the first subparagraph was associated for at least the previous five years;</p> <p>(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.</p> <p>If there is no such information to be disclosed, a statement to that effect is to be made.</p>		
<p>14.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</p> <p>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</p>	✓	
<p>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</p>	✓	
<p>Details of any restrictions agreed by the persons referred to in item 14.1 on the disposal within a certain period of time of their holdings in the issuer's securities.</p>	✓	
<p>15. REMUNERATION AND BENEFITS</p>	✓	<p>ESMA proposes to require this item only for issuers not listed on regulated markets and to redraft the first paragraph :</p> <p>“In case of issuers not listed on a regulated market and in relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.”</p>
<p>In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.</p>	✓	
<p>15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.</p> <p>That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.</p>	✓	

15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.	✓	
16. BOARD PRACTICES	✓	
In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1. :	✓	
16.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.	✓	ESMA proposes to require this item only for issuers not listed on regulated markets and to redraft the first paragraph : “In case of issuers not listed on a regulated market and in relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1.” For issuers listed on a regulated market, disclosures required by item 16 would be covered by the statement on corporate governance required by Article 46a of Directive 78/660/EEC.
16.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.	✓	
16.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.	✓	
16.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.	✓	
17. EMPLOYEES		
17.1. Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.		ESMA proposes to delete item 17.1 considering that information regarding employees would be disclosed in the management report.
17.2. Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.	✓	ESMA proposes to keep items 17.2 and 17.3. : 17.2 relates to directors and management shareholdings and stock-options and 17.3 to employees share plans. These disclosures allow shareholders and investors to have a clear view of the issuer's capital structure. They are essential information when deciding to subscribe to the rights issue.
17.3. Description of any arrangements for involving the employees in the capital of the issuer.	✓	
18. MAJOR SHAREHOLDERS	✓	ESMA proposes to keep item 18.
18.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies	✓	Although identity of major shareholders would already be public, item 18 requires specific disclosures that could be significant for rights issues : negative statements;

who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.		description of measures in place to ensure that when the issuer is controlled such control is not abused, arrangements which result in a change in control.
18.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.	✓	
18.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.	✓	
18.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.	✓	
19. RELATED PARTY TRANSACTIONS		ESMA proposes to require only an update for issuers establishing financial statements in accordance with IFRS. Non IFRS issuers will have to disclose information required by the second paragraph. Therefore ESMA proposes to delete the first paragraph and to redraft the second paragraph. Proposal : "If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document : a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.
Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable. If such standards do not apply to the issuer the following information must be disclosed: a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.	✓	
20. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES	✓	ESMA proposes to keep item 20. Key information required in the summary includes a short description of the essen-

<p>20.1. Historical Financial Information</p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.</p> <p>For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</p> <p>The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.</p> <p>If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.</p> <p>If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:</p> <p>(a) balance sheet; (b) income statement; (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and dis-</p>	✓	<p>tial characteristics of the issuer including the assets, liabilities and financial position of the issuer. The prospectus must therefore contain historical financial information regarding the issuer's activities and business. Historical financial information are also essential information in order to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses of the issuers, considering the fact that preemptive rights can be sold to new investors.</p> <p>However, requiring only the last financial year should suffice :</p> <ul style="list-style-type: none"> - the income statement, the statement of comprehensive income, the statement of financial position and the statement of cash flow will be presented with comparative data as required by IAS1 ; - the notes to the financial statements will only cover the last financial year. <p>This proposal is not burdensome since issuers will be able to incorporate their last financial statements by reference.</p>
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<p>tributions to owners; (d) cash flow statement; (e) accounting policies and explanatory notes</p> <p>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.</p>		
<p>20.2. Pro forma financial information</p> <p>In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.</p> <p>This requirement will normally be satisfied by the inclusion of pro forma financial information.</p> <p>This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.</p> <p>Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.</p>	✓	
<p>20.3. Financial statements</p> <p>If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.</p>	✓	
<p>20.4 Auditing of historical annual financial information</p>		
<p>20.4.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</p>	✓	
<p>20.4.2. Indication of other information in the registration document which has been audited by the auditors.</p>	✓	
<p>20.4.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</p>	✓	
<p>20.5. Age of latest financial information</p>	✓	
<p>20.5.1. The last year of audited financial information may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration docu-</p>	✓	

ment; (b)15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.		
20.6. Interim and other financial information	✓	
20.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.	✓	
20.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.	✓	
20.7. Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.	✓	
20.8. Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.	✓	
20.9. Significant change in the issuer's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.	✓	
21. ADDITIONAL INFORMATION		
21.1. Share Capital The following information as of the date of the most recent balance sheet		

included in the historical financial information:		
21.1.1. The amount of issued capital, and for each class of share capital: (a) the number of shares authorised; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10 % of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.	✓	ESMA proposes to keep items 21.1.1 and 21.1.2. Information regarding capital issued, non issued or “potential” is deemed significant for rights issues since the shareholders need to have a precise view of the structure of the issuer’s capital in order to decide to subscribe or not.
21.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.	✓	
21.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.		ESMA proposes to delete this item. Information would be available in annual financial statements.
21.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.	✓	
21.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.	✓	ESMA proposes to keep item 21.1.4, 21.1.5 and 21.1.6 : see above comments regarding items 21.1.1 and 21.1.2.
21.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.	✓	
21.1.7. A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.		ESMA proposes to delete these items.
21.2. Memorandum and Articles of Association		
22. MATERIAL CONTRACTS	✓	
A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.	✓	ESMA proposes to keep item 22 : specific requirement of the Prospectus Regulation but to require information only for the last financial year. “A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the <u>last year</u> immediately preceding publication of the registration document.”
23. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST	✓	ESMA proposes to keep item 23 : specific requirement of the Prospectus Regulation.

<p>23.1. Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.</p>	✓	
<p>23.2. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</p>	✓	
<p>24. DOCUMENTS ON DISPLAY</p>	✓	
<p>A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer; (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document; (c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. An indication of where the documents on display may be inspected, by physical or electronic means.</p>	✓	<p>ESMA proposes to keep item 24 : specific requirement of the Prospectus Regulation. However paragraph (c) could be deleted considering that the issuer is already listed.</p>
<p>25. INFORMATION ON HOLDINGS</p>		
<p>Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.</p>		<p>ESMA proposes to delete this item considering that information available in the notes to the (consolidated) financial statements will be sufficient.</p>
<p>Commission Regulation (EC) No. 809/2004 Annex III Minimum Disclosure Requirements for the Share Securities Note (schedule)</p>	<p>ESMA's proposal</p>	<p>Comments</p>
<p>1. PERSONS RESPONSIBLE</p>	✓	<p>ESMA proposes to keep this item.</p>

1.1.All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	✓	Identity of the persons responsible and the responsibility statements are specific disclosures required by PD and therefore can not be deleted.
1.2.A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	✓	
2. RISK FACTORS	✓	ESMA proposes to keep this item : although shares of the same class are already
Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".	✓	listed, the preemptive rights can be sold to new investors not informed about the risks associated with the securities being offered.
3. KEY INFORMATION		ESMA proposes to keep this item : this is a specific requirement of the Prospectus
3.1 Working capital Statement Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.	✓	Regulation and can not be deleted.
3.2 Capitalization and indebtedness A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.	✓	
3.3 Interest of natural and legal persons involved in the issue/offer A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer.
3.4 Reasons for the offer and use of proceeds Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with	✓	

regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.		
4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING		
4.1 A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer.
4.2 Legislation under which the securities have been created	✓	
4.3 An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.	✓	
4.4 Currency of the securities issue.	✓	
4.5 A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights. Dividend rights: – Fixed date(s) on which the entitlement arises, – Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates, – Dividend restrictions and procedures for non-resident holders, – Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. Voting rights. Pre-emption rights in offers for subscription of securities of the same class. Right to share in the issuer's profits. Rights to share in any surplus in the event of liquidation. Redemption provisions. Conversion provisions.	✓	
4.6 In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	✓	
4.7 In the case of new issues, the expected issue date of the securities	✓	
4.8 A description of any restrictions on the free transferability of the securities	✓	
4.9 An indication of the existence of any mandatory takeover bids and/or squeeze-out and sellout rules in relation to the securities.		

		lic information.
4.10 An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.		ESMA proposes to delete this item. For listed issuers, this information is public.
4.11 In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: - Information on taxes on the income from the securities withheld at source, - Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer.
5. TERMS AND CONDITIONS OF THE OFFER		
5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer and to redraft 5.1.2 : "Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer. "
5.1.1 Conditions to which the offer is subject.	✓	
5.1.2 Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.	✓	
5.1.3 The time period, including any possible amendments, during which the offer will be open and description of the application process.	✓	
5.1.4 An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	✓	
5.1.5 A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	✓	
5.1.6 Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).	✓	
5.1.7 An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	✓	
5.1.8 Method and time limits for paying up the securities and for delivery of the securities.	✓	
5.1.9 A full description of the manner and date in which results of the offer are to be made public.	✓	
5.1.10. The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription	✓	

rights not exercised.		ESMA proposes to redraft title of section 5.2.
5.2 Plan of distribution and allotment		
5.2.1. The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.		Items 5.2.1, 5.2.3 and 5.2.5 are not applicable : proposal to delete these items.
5.2.2. To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.	✓	
5.2.3. Pre-allotment Disclosure: a) The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches; b) The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches; c) The allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches; d) A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups. e) Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by; f) A target minimum individual allotment if any within the retail tranche; g) The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest; h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.		
5.2.4. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	✓	
5.2.5. Over-allotment and 'green shoe': a) The existence and size of any over-allotment facility and/or 'green shoe'. b) The existence period of the over-allotment facility and/or 'green shoe'.		

c) Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.		
5.3 Pricing	✓	
5.3.1. An indication of the price at which the securities will be offered. If the price is not known or if there is no established and/or liquid market for the securities, indicate the method for determining the offer price, including a statement as to who has set the criteria or is formally responsible for the determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser.	✓	
5.3.2. Process for the disclosure of the offer price.	✓	
5.3.3. If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal.	✓	Since ESMA is proposing to advise the EC services to have a wide interpretation of art. 7(2)(g) of PD amended in order to treat rights issues made by disapplying statutory rights and replacing them by near identical rights in the same way than rights issues, item 5.3.3 should be kept.
5.3.4 Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.		ESMA proposes to delete item 5.3.4 which is not applicable for rights issues.
5.4. Placing and Underwriting	✓	
5.4.1 Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place	✓	
5.4.2 Name and address of any paying agents and depository agents in each country.	✓	
5.4.3. Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under "best efforts" arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	✓	
5.4.4. When the underwriting agreement has been or will be reached.	✓	
6. ADMISSION TO TRADING AND DEALING ARRANGEMENTS	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer. 6.5 however would not be applicable.
6.1 An indication as to whether the securities offered are or will be the		

✓

object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.		
6.2 All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.	✓	
6.3 If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought, securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate.	✓	
6.4 Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	✓	
6.5 Stabilization: where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilizing activities may be entered into in connection with an offer:		
6.5.1. The fact that stabilization may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time,		
6.5.2. The beginning and the end of the period during which stabilization may occur,		
6.5.3. The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of publication,		
6.5.4. The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail.		
7. SELLING SECURITIES HOLDERS		ESMA proposes to delete this item which is not applicable for rights issues and redraft title of the section.
7.1 Name and business address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.		
7.2 The number and class of securities being offered by each of the selling security holders.		
7.3 Lock-up agreements	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer.

The parties involved. Content and exceptions of the agreement. Indication of the period of the lock up.		
8. EXPENSE OF THE ISSUE/OFFER	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer.
8.1. The total net proceeds and an estimate of the total expenses of the issue/offer.	✓	
9. DILUTION		
9.1 The amount and percentage of immediate dilution resulting from the offer.	✓	ESMA proposes to keep item 9.1
9.2. In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer.	✓	ESMA proposes to keep and redraft this item : “ In the case of a subscription offer to existing equity holders, The amount and percentage of immediate dilution if the existing shareholders do not subscribe to the new offer.”
10. ADDITIONAL INFORMATION	✓	ESMA proposes to keep this item : specific disclosure in relation to the offer.
10.1. If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	✓	
10.2. An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	✓	
10.3. Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.	✓	
10.4. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	✓	

Annex 2 – Proportionate Schedule for rights issues

Minimum Disclosure Requirements for the Share Registration Document for rights issues (schedule)
1. PERSONS RESPONSIBLE
1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
2. STATUTORY AUDITORS
2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).
2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.
3. RISK FACTORS
Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".
4. INFORMATION ABOUT THE ISSUER
4.1. the legal and commercial name of the issuer;
4.2. Investments
4.2.1. A description, (including the amount) of the principal investments made since the end of the latest published audited financial and up to the date of the registration document
4.2.2. A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external)
4.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.
5. BUSINESS OVERVIEW

<p>5.1. Principal Activities A brief description of the issuer's operations and principal activities and of any significant changes impacting these operations and activities since the end of the latest published audited financial statements, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development.</p>
<p>5.2. Principal Markets A brief description of the principal markets in which the issuer competes and of any significant changes impacting these markets since the end of the latest published audited financial statements.</p>
<p>5.3. Where the information given pursuant to items 5.1. and 5.2. has been influenced by extraordinary factors since the end of the latest published audited financial statements, mention that fact .</p>
<p>5.4. If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses, industrial, commercial or financial contracts or new manufacturing processes.</p>
<p>5.5. The basis for any statements made by the issuer regarding its competitive position.</p>
<p>6. ORGANIZATIONAL STRUCTURE</p>
<p>6.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.</p>
<p>7. TREND INFORMATION</p>
<p>7.1. 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.</p>
<p>7.2. 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.</p>
<p>8. PROFIT FORECASTS OR ESTIMATES</p>
<p>If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 8.1 and 8.2:</p>
<p>8.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.</p>
<p>8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.</p>
<p>8.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information</p>
<p>8.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.</p>
<p>9. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT</p>

<p>9.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:</p> <p>a) members of the administrative, management or supervisory bodies;</p> <p>b) partners with unlimited liability, in the case of a limited partnership with a share capital;</p> <p>c) founders, if the issuer has been established for fewer than five years; and</p> <p>d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.</p> <p>The nature of any family relationship between any of those persons.</p> <p>In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:</p> <p>(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;</p> <p>(b) any convictions in relation to fraudulent offences for at least the previous five years;</p> <p>(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;</p> <p>(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.</p> <p>If there is no such information to be disclosed, a statement to that effect is to be made.</p>
<p>9.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</p> <p>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 9.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</p> <p>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 9.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</p> <p>Details of any restrictions agreed by the persons referred to in item 9.1 on the disposal within a certain period of time of their holdings in the issuer's securities.</p>
<p>10. REMUNERATION AND BENEFITS</p> <p>In case of issuers not listed on a regulated market and in relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 9.1.</p> <p>10.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.</p> <p>10.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</p>
<p>11. BOARD PRACTICES</p>

In case of issuers not listed on a regulated market and in relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 9.1. :
11.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.
11.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.
11.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
11.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.
12. EMPLOYEES
12.1. Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 9.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.
12.2. Description of any arrangements for involving the employees in the capital of the issuer.
13. MAJOR SHAREHOLDERS
13.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.
13.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
13.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
13.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
14. RELATED PARTY TRANSACTIONS
If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document :
a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.
b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.
If international Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/200 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.

15. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

15.1. Historical Financial Information

Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation) and the audit report. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement;
- (e) accounting policies and explanatory notes

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

15.2. Pro forma financial information

In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.

This requirement will normally be satisfied by the inclusion of pro forma financial information.

This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.

Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.

15.3. Financial statements

If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.

15.4 Auditing of historical annual financial information

15.4.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.

15.4.2. Indication of other information in the registration document which has been audited by the auditors.

15.4.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.
15.5. Age of latest financial information
15.5.1. The last year of audited financial information may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.
15.6. Interim and other financial information
15.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.
15.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.
15.7. Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.
15.7.1. The amount of the dividend per share for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.
15.8. Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
15.9. Significant change in the issuer's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.
16. ADDITIONAL INFORMATION
16.1. Share Capital The following information as of the date of the most recent balance sheet included in the historical financial information:
16.1.1. The amount of issued capital, and for each class of share capital: (a) the number of shares authorised; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10 % of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.
16.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.

16.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
16.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
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.
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 and details of such options including those persons to whom such options relate.
17. MATERIAL CONTRACTS
A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the last year immediately preceding publication of the registration document. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.
18. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
18.1. Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.
18.2. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
19. DOCUMENTS ON DISPLAY
A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer; (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. An indication of where the documents on display may be inspected, by physical or electronic means.
Minimum Disclosure Requirements for the Share Securities Note for rights issues (schedule)
1. PERSONS RESPONSIBLE
1.1. All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

<p>1.2.A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</p>
<p>2. RISK FACTORS</p>
<p>Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed “Risk Factors”.</p>
<p>3. KEY INFORMATION</p>
<p>3.1 Working capital Statement Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer’s present requirements or, if not, how it proposes to provide the additional working capital needed.</p>
<p>3.2 Capitalization and indebtedness A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.</p>
<p>3.3 Interest of natural and legal persons involved in the issue/offer A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.</p>
<p>3.4 Reasons for the offer and use of proceeds Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.</p>
<p>4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING</p>
<p>4.1 A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.</p>
<p>4.2 Legislation under which the securities have been created</p>
<p>4.3 An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.</p>
<p>4.4 Currency of the securities issue.</p>
<p>4.5 A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights. Dividend rights: – Fixed date(s) on which the entitlement arises, – Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,</p>

<ul style="list-style-type: none"> – Dividend restrictions and procedures for non-resident holders, – Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. <p>Voting rights. Pre-emption rights in offers for subscription of securities of the same class. Right to share in the issuer's profits. Rights to share in any surplus in the event of liquidation. Redemption provisions. Conversion provisions.</p>
4.6 A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
4.7 The expected issue date of the securities
4.8 A description of any restrictions on the free transferability of the securities
4.9 In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: - Information on taxes on the income from the securities withheld at source, - Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
5. TERMS AND CONDITIONS OF THE OFFER
5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer
5.1.1. Conditions to which the offer is subject.
5.1.2. Total amount of the issue/offer.
5.1.3. The time period, including any possible amendments, during which the offer will be open and description of the application process.
5.1.4. An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.
5.1.5. A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.
5.1.6. Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).
5.1.7. An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.
5.1.8. Method and time limits for paying up the securities and for delivery of the securities.
5.1.9. A full description of the manner and date in which results of the offer are to be made public.
5.1.10. The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
5.2 Allotment
5.2.1. To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.
5.2.2. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
5.3 Pricing
5.3.1. An indication of the price at which the securities will be offered. If the price is not known or if there is no established and/or liquid market for the securities, indicate the method for determining the offer price, including a statement as to who has set the criteria or is formally responsible for the determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser.
5.3.2. Process for the disclosure of the offer price.
5.3.3. If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash,

together with the reasons for and beneficiaries of such restriction or withdrawal.
5.4. Placing and Underwriting
5.4.1 Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place
5.4.2 Name and address of any paying agents and depository agents in each country.
5.4.3. Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.
5.4.4. When the underwriting agreement has been or will be reached.
6. ADMISSION TO TRADING AND DEALING ARRANGEMENTS
6.1 An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.
6.2 All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
6.3 If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought, securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate.
6.4 Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.
7. LOCK-UP AGREEMENTS
7.1 Lock-up agreements The parties involved. Content and exceptions of the agreement. Indication of the period of the lock up.
8. EXPENSE OF THE ISSUE/OFFER
8.1. The total net proceeds and an estimate of the total expenses of the issue/offer.
9. DILUTION
9.1 The amount and percentage of immediate dilution resulting from the issue/offer.
9.2. The amount and percentage of immediate dilution if they do not subscribe to the new offer.

10. ADDITIONAL INFORMATION

10.1. If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.

10.2. An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.

10.3. Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.

10.4. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

Annex 3 – Disclosure requirements applicable to companies listed on regulated markets

The purpose of this annex is to provide more information on the disclosure requirements applicable to companies listed on regulated markets and which could be considered redundant with disclosures required by the Prospectus Regulation for offers and admission to trading of shares.

I. Periodic and ongoing information

Issuers whose shares are admitted to trading on a regulated market must comply with periodic and ongoing information obligations.

Periodic information

As regards periodic information, issuers shall make public:

- **An annual financial report** at the latest four months after the end of each financial year (Article 4 of the Transparency Directive). The annual financial report shall comprise :
 - o the audited financial statements ;
 - o the management report ; and
 - o a responsibility statement²⁹.
- **A half-yearly financial report** covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest two months thereafter (Article 5 of the Transparency Directive). The half-yearly financial report shall comprise :
 - o the condensed set of financial statements ;
 - o an interim management report ; and
 - o a responsibility statement.

Where the issuer is required to prepare consolidated accounts, the financial statements and the condensed set of financial statements shall be prepared in accordance with the international accounting standard.

The financial statements shall be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (The Fourth Directive) and, if the issuer is required to prepare consolidated accounts, in accordance with Article 37 of Directive 83/349/EEC. The audit report, signed by the person or persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.

If the half-yearly financial report has been audited, the audit report shall be reproduced in full. The same shall apply in the case of an auditors' review.

²⁹ “The annual financial report shall comprise: (...) (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.”

- **Interim management statements** covering the period between the beginning of the relevant six-month period and the date of publication of the statement and containing (Article 6 of the Transparency Directive)³⁰ :
 - o an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings ; and
 - o a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

- **A corporate governance statement** included in its annual report. The corporate governance statement shall be included as a specific section of the annual report and shall contain at least the following information (Article 46a of the Fourth Directive) :
 - a. A reference to:
 - (i) the corporate governance code to which the company is subject, and/or
 - (ii) the corporate governance code which the company may have voluntarily decided to apply, and/or
 - (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.
 - b. To the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under points (a)(i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points (a)(i) or (ii), it shall explain its reasons for doing so.
 - c. A description of the main features of the company's internal control and risk management systems in relation to the financial reporting process.
 - d. The information required by Article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, where the company is subject to that Directive.
 - e. Unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised.
 - f. The composition and operation of the administrative, management and supervisory bodies and their committees.

Information required by the corporate governance statement can be included in a separate report published together with the annual.

Content of the management report and interim management report

The management report included in the annual financial report shall be drawn up in accordance with Article 46 of the Fourth Directive and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC.

Article 46 of the Fourth Directive (Directive 78/660/EEC)

1. (a) The annual report shall include at least a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business ;

³⁰ Issuers “shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six month period of the financial year. Such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period.”

(b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters ;

(c) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.

2. The report shall also give an indication of :

(a) any important events that have occurred since the end of the financial year ;

(b) the company's likely future development ;

(c) activities in the field of research and development ;

(d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC ;

(e) the existence of branches of the company ;

(f) in relation to the company's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss

– the company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and

– the company's exposure to price risk, credit risk, liquidity risk and cash flow risk.

3. Member States may waive the obligation on companies covered by Article 11 to prepare annual reports, provided that the information referred to in Article 22 (2) of Directive 77/91/EEC concerning the acquisition by a company of its own shares is given in the notes to their accounts.

4. Member States may choose to exempt companies covered by Article 27 from the obligation in paragraph 1(b) above in so far as it relates to non-financial information.

Article 36 of Directive 83/349/EEC

1. The consolidated annual report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts;

(e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss,
– the financial risk management objectives and policies of the undertakings, including their policies for hedging each major type of forecasted transaction for which hedge accounting is used, and

– the exposure to price risk, credit risk, liquidity risk and cash flow risk³⁶;

(f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1). In the event that the consolidated annual report and the annual report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 46a of Directive 78/660/EEC.

If a Member State permits the information required by paragraph 1 of Article 46a of Directive 78/660/EEC to be set out in a separate report published together with the annual report in the manner prescribed by Article 47 of that Directive, the information provided under the first subparagraph shall also form part of that separate report. Article 37(1), second subparagraph of this Directive shall apply.

The interim management report shall include at least “an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions” (Article 5(4) of the Transparency Directive).

Ongoing information

- **Disclosure of major holdings** : when a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder shall notify the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.

The issuer shall make public, pursuant to Article 12(6) of the Transparency Directive, the notifications received from shareholders unless the issuer has been exempted from such requirement by its Home Member State and the notifications are made public by the Home Competent Authority.

- **Additional information** (Article 16 of the Transparency Directive) : Issuers of shares admitted to trading on a regulated market shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by them and giving access to the shares of those issuers. Issuers shall also make public without delay any new loan issues and in particular any guarantee or security in respect thereof.

II. Inside information and other disclosures

Inside information

Issuers whose shares are admitted to trading on regulated markets shall inform the public as soon as possible of inside information (Article 6(1) of the Market Abuse Directive).

Inside information means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Directive 2003/124/EC of 22 December 2003 implementing the Market Abuse Directive further specifies that :

- information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments ;
- information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

Other disclosures

Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids requires issuers listed on regulated markets to publish detailed information on :

- the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents ;
- any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities ;
- significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) ;
- the holders of any securities with special control rights and a description of those rights ;
- the system of control of any employee share scheme where the control rights are not exercised directly by the employees ;
- any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities ;
- any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights;
- the rules governing the appointment and replacement of board members and the amendment of the articles of association ;
- the powers of board members, and in particular the power to issue or buy back shares ;
- any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements ;
- any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.

This information shall be published in the company's annual report as provided for in Article 46 of the Fourth Directive and Article 36 of Directive 83/349/EEC(14).

III. Dissemination and access to information

Definition of regulated information

Article 2(1)(k) of the Transparency Directive defines regulated information as “all information which the Issuer (...) is required to disclose under this Directive, under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of this Directive ».

Dissemination and storage of regulated information

Pursuant to Article 21 of the Transparency Directive, issuers shall disclose regulated information in a manner ensuring fast access to such information on a non-discriminatory basis. The issuers shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the EU.

Article 12 of Directive 2007/14/EC of 8 March 2007 sets the minimum standards the dissemination of regulated information must comply with :

- Regulated information shall be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the home Member State and in the other Member States.
- Regulated information shall be communicated to the media in unedited full text.
- Regulated information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the regulated information.
- Regulated information shall be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the information by the issuer.

The issuers shall also make regulated information available to the officially appointed mechanism in charge of storing this information.

The Transparency Directive requires that the annual and half-yearly financial statements remain publicly available for at least five years.

Annex 4 – SMEs and Small Caps : analysis of annexes I, IV, IX and X Commission Regulation (EC) No. 809/2004 and ESMA’s proposals

✓ means that the corresponding items would be required in prospectuses.

PD the Prospectus Directive.

Commission Regulation (EC) No. 809/2004 Annex I Minimum Disclosure Requirements for the Share Registration Document (schedule)	ESMA’s proposal	Comments
1. PERSONS RESPONSIBLE		
1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	✓	
1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	✓	
2. STATUTORY AUDITORS		
2.1. Names and addresses of the issuer’s auditors for the period covered by the historical financial information (together with their membership in a professional body).	✓	
2.2. If auditors have resigned, been removed or not been re-appointed during the	✓	

period covered by the historical financial information, indicate details if material.		
3. SELECTED FINANCIAL INFORMATION		
3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarize the financial condition of the issuer.		ESMA proposes to delete this item. As stated in CESR's recommendations : "The primary purpose of including selected historical financial information in a prospectus is to summarize key information coming out of the historical financial information of the issuer (...)" (CESR/05-054b, §20). Key information, including key information regarding the issuer's assets, liabilities and financial position, are now required in the summary. Moreover considering the size of SMEs and Small Caps, selected financial information are not essential.
3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.		
4. RISK FACTORS		
Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".	✓	
5. INFORMATION ABOUT THE ISSUER		
5.1. History and Development of the Issuer	✓	
5.1.1. the legal and commercial name of the issuer;	✓	
5.1.2. the place of registration of the issuer and its registration number;	✓	
5.1.3. the date of incorporation and the length of life of the issuer, except where indefinite	✓	
5.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);	✓	
5.1.5. the important events in the development of the issuer's business.	✓	
5.2. Investments	✓	
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.	✓	

5.2.2. A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).	✓	
5.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	✓	Proposal to redraft item 5.2.3 : "Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments <u>and the anticipated sources of funds needed to fulfill these commitments.</u> "
6. BUSINESS OVERVIEW		
6.1. Principal Activities	✓	
6.1.1. A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information; and	✓	
6.1.2. An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.	✓	
6.2. Principal Markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.	✓	
6.3. Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors, mention that fact .	✓	
6.4. If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses, industrial, commercial or financial contracts or new manufacturing processes.	✓	
6.5. The basis for any statements made by the issuer regarding its competitive position.	✓	
7. ORGANIZATIONAL STRUCTURE		

7.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.	✓	
7.2. A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.	✓	Proposal to redraft item 7.2 : “If not included in the financial statements, a list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.”
8. PROPERTY, PLANTS AND EQUIPMENT		
8.1. Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.		ESMA proposes to delete this item. Considering the size of SMEs and Small Caps, information included in the financial statements is considered sufficient.
8.2. A description of any environmental issues that may affect the issuer's utilization of the tangible fixed assets.	✓	
9. OPERATING AND FINANCIAL REVIEW		
9.1. Financial Condition To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.	✓	
9.2. Operating Results	✓	
9.2.1. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.	✓	
9.2.2. Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.	✓	
9.2.3. Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.	✓	
10. CAPITAL RESOURCES		

10.1. Information concerning the issuer's capital resources (both short and long term);		ESMA proposes to delete this item which is redundant with item 3 annex 3.
10.2. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;	✓	
10.3. Information on the borrowing requirements and funding structure of the issuer;		ESMA proposes to delete this item which is redundant with item 3 annex 3.
10.4. Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.	✓	
10.5. Information regarding the anticipated sources of funds needed to fulfill commitments referred to in items 5.2.3. and 8.1.		Item deleted : see 5.2.3 and 8.1.
11. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES		
Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.	✓	
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.	✓	
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.	✓	
13. PROFIT FORECASTS OR ESTIMATES		
If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:	✓	
13.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the	✓	

<p>members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.</p>		
<p>13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.</p>	✓	
<p>13.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information</p>	✓	
<p>13.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.</p>	✓	
<p>14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT</p>		
<p>14.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:</p> <ul style="list-style-type: none"> a) members of the administrative, management or supervisory bodies; b) partners with unlimited liability, in the case of a limited partnership with a share capital; c) founders, if the issuer has been established for fewer than five years; and d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. <p>The nature of any family relationship between any of those persons.</p> <p>In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:</p>	✓	

<p>(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;</p> <p>(b) any convictions in relation to fraudulent offences for at least the previous five years;</p> <p>(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and(d) of the first subparagraph was associated for at least the previous five years;</p> <p>(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.</p> <p>If there is no such information to be disclosed, a statement to that effect is to be made.</p>		
<p>14.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</p> <p>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</p>	✓	
<p>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</p>	✓	
<p>Details of any restrictions agreed by the persons referred to in item 14.1 on the disposal within a certain period of time of their holdings in the issuer's securities.</p>	✓	

15. REMUNERATION AND BENEFITS		
In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.	✓	
15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.	✓	
15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.	✓	
16. BOARD PRACTICES		
In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1. :		
16.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.	✓	
16.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.	✓	
16.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.	✓	
16.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.	✓	
17. EMPLOYEES		
17.1. Either the number of employees at the end of the period or the average for	✓	

each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.		
17.2. Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.	✓	
17.3. Description of any arrangements for involving the employees in the capital of the issuer.	✓	
18. MAJOR SHAREHOLDERS		
18.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.	✓	
18.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.	✓	
18.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.	✓	
18.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.	✓	
19. RELATED PARTY TRANSACTIONS		
Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.		ESMA proposes to require only an update for issuers establishing financial statements in accordance with IFRS. Non IFRS issuers will have to disclose information required by the second paragraph.
If such standards do not apply to the issuer the following information must be	✓	Therefore ESMA proposes to delete the first paragraph and to redraft the second paragraph. Proposal :

<p>disclosed:</p> <p>a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p>		<p>“If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document :</p> <p>a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p> <p>If international Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/200 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.”</p>
<p>20. FINANCIAL INFORMATION CONCERNING THE ISSUER’S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</p>	<p>✓</p>	<p>ESMA proposes to require only the latest 2 financial years for SMEs and Small Caps.</p>
<p><u>20.1. Historical Financial Information</u></p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.</p> <p>For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country’s national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</p> <p>The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer’s next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.</p>	<p>✓</p>	<p>Redraft item 20.1 :</p> <p>“Audited historical financial information covering the latest <u>2</u> financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.(...)”</p>

<p>If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.</p> <p>If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:</p> <p>(a) balance sheet; (b) income statement; (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners; (d) cash flow statement; (e) accounting policies and explanatory notes</p> <p>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.</p>		
<p>20.2. Pro forma financial information</p> <p>In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.</p> <p>This requirement will normally be satisfied by the inclusion of pro forma financial information.</p> <p>This pro forma financial information is to be presented as set out in Annex II and</p>	<p>✓</p>	

<p>must include the information indicated therein.</p> <p>Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.</p>		
<p>20.3. Financial statements</p> <p>If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.</p>	✓	
<p>20.4 Auditing of historical annual financial information</p>	✓	
<p>20.4.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</p>	✓	
<p>20.4.2. Indication of other information in the registration document which has been audited by the auditors.</p>	✓	
<p>20.4.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</p>	✓	
<p>20.5. Age of latest financial information</p>	✓	
<p>20.5.1. The last year of audited financial information may not be older than one of the following:</p> <p>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</p> <p>(b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.</p>	✓	
<p>20.6. Interim and other financial information</p>	✓	
<p>20.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.</p>	✓	

<p>20.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year.</p> <p>The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.</p>	✓	
<p>20.7. Dividend policy</p> <p>A description of the issuer's policy on dividend distributions and any restrictions thereon.</p>	✓	
<p>20.8. Legal and arbitration proceedings</p> <p>Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.</p>	✓	
<p>20.9. Significant change in the issuer's financial or trading position</p> <p>A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.</p>	✓	
<p>21. ADDITIONAL INFORMATION</p>		
<p>21.1. Share Capital</p> <p>The following information as of the date of the most recent balance sheet included in the historical financial information:</p>	✓	
<p>21.1.1. The amount of issued capital, and for each class of share capital:</p> <p>(a) the number of shares authorised;</p> <p>(b) the number of shares issued and fully paid and issued but not fully paid;</p> <p>(c) the par value per share, or that the shares have no par value; and</p> <p>(d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10 % of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that</p>	✓	

fact.		
21.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.	✓	
21.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.	✓	
21.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.	✓	
21.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.	✓	
21.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.	✓	
21.1.7. A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.	✓	
21.2. Memorandum and Articles of Association	✓	
21.2.1. A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.	✓	
21.2.2. A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.	✓	
21.2.3. A description of the rights, preferences and restrictions attaching to each class of the existing shares.	✓	
21.2.4. A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.	✓	
21.2.5. A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.	✓	
21.2.6. A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or pre-	✓	

venting a change in control of the issuer.		
21.2.7. An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.	✓	
21.2.8. A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.	✓	
22. MATERIAL CONTRACTS		
A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.	✓	
23. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST		
23.1. Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.	✓	
23.2. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	✓	
24. DOCUMENTS ON DISPLAY		
A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:	✓	

<p>(a) the memorandum and articles of association of the issuer;</p> <p>(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;</p> <p>(c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.</p> <p>An indication of where the documents on display may be inspected, by physical or electronic means.</p>		
<p>25. INFORMATION ON HOLDINGS</p>		
<p>Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.</p>	✓	

* * *

<p style="text-align: center;">Commission Regulation (EC) No. 809/2004 Annex IV Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document (schedule) <50.000 EUR</p>	<p style="text-align: center;">ESMA's proposal</p>	<p style="text-align: center;">Comments</p>
<p>1. PERSONS RESPONSIBLE</p>	✓	
<p>2. STATUTORY AUDITORS</p>	✓	
<p>3. SELECTED FINANCIAL INFORMATION</p>		<p>ESMA proposes to delete this item.</p>
<p>3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.</p> <p>The selected historical financial information must provide the key figures that summarize the financial condition of the issuer.</p>		
<p>3.2. If selected financial information for interim periods is provided, comparative</p>		

data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.		
4. RISK FACTORS	✓	
5. INFORMATION ABOUT THE ISSUER	✓	
6. BUSINESS OVERVIEW	✓	
7. ORGANIZATIONAL STRUCTURE	✓	
8. TREND INFORMATION	✓	
9. PROFIT FORECASTS OR ESTIMATES	✓	
10. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES	✓	
11. BOARD PRACTICES	✓	
12. MAJOR SHAREHOLDERS	✓	
13. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES	✓	ESMA proposes to require only 1 year and redraft § 13.1 accordingly : “Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. ”
14. ADDITIONAL INFORMATION	✓	
16. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST	✓	
17. DOCUMENTS ON DISPLAY	✓	

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Commission Regulation (EC) No. 809/2004 Annex IX Minimum Disclosure Requirements for the Debt and Derivative Securi-	ESMA's proposal	Comments
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ties Registration Document (schedule) ≥50.000 EUR		
1. PERSONS RESPONSIBLE	✓	
2. STATUTORY AUDITORS	✓	
3. RISK FACTORS	✓	
4. INFORMATION ABOUT THE ISSUER	✓	
5. BUSINESS OVERVIEW	✓	
6. ORGANIZATIONAL STRUCTURE	✓	
7. TREND INFORMATION	✓	
8. PROFIT FORECASTS OR ESTIMATES	✓	
9. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES	✓	
10. MAJOR SHAREHOLDERS	✓	
11. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES	✓	Proposal to require only 1 year and redraft 11.1 accordingly : “Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation), and the audit report in respect of each year . Such financial information must be prepared according to Regulation (EC) No 1606/2002 s, or if not applicable to a Member’s State national accounting standards for issuers from the Community.”
12. MATERIAL CONTRACTS	✓	
13. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST	✓	
14. DOCUMENTS ON DISPLAY	✓	

* * *

Commission Regulation (EC) No. 809/2004 Annex X	ESMA's proposal	Comments
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Minimum Disclosure Requirements for the Depositary Receipts issued over shares (schedule)		
1. PERSONS RESPONSIBLE	✓	
2. STATUTORY AUDITORS	✓	
3. SELECTED FINANCIAL INFORMATION		
3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarize the financial condition of the issuer.		ESMA proposes to delete this item.
3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.		
4. RISK FACTORS	✓	
5. INFORMATION ABOUT THE ISSUER		
5.1.2. the place of registration of the issuer and its registration number;	✓	
5.1.3. the date of incorporation and the length of life of the issuer, except where indefinite	✓	
5.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);	✓	
5.1.5. the important events in the development of the issuer's business.	✓	
5.2. Investments	✓	
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 prospectus.	✓	
5.2.2. A description of the issuer's principal investments that are currently in pro-	✓	

gress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external);		
5.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	✓	Proposal to redraft item 5.2.3 : "Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments <u>and the anticipated sources of funds needed to fulfill these commitments.</u> "
6. BUSINESS OVERVIEW	✓	
7. ORGANIZATIONAL STRUCTURE		
7.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.	✓	
7.2. A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.	✓	Proposal to redraft item 7.2 : " <u>If not included in the financial statements</u> , a list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held."
8. PROPERTY, PLANTS AND EQUIPMENT		
8.1. Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.		ESMA proposes to delete this item. Considering the size of SMEs and Small Caps, information included in the financial statements is considered sufficient.
8.2. A description of any environmental issues that may affect the issuer's utilization of the tangible fixed assets.	✓	
9. OPERATING AND FINANCIAL REVIEW	✓	
10. CAPITAL RESOURCES		
10.1. Information concerning the issuer's capital resources (both short and long term);		ESMA proposes to delete this item which is redundant with item 3 annex 3.
10.2. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;	✓	
10.3. Information on the borrowing requirements and funding structure of the issuer;		ESMA proposes to delete this item which is redundant with item 3 annex 3.
10.4. Information regarding any restrictions on the use of capital resources that	✓	

have materially affected, or could materially affect, directly or indirectly, the issuer's operations.		
10.5. Information regarding the anticipated sources of funds needed to fulfill commitments referred to in items 5.2.3. and 8.1.		ESMA proposes to amend item 5.2.3 and to delete this item.
11. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES	✓	
12. TREND INFORMATION	✓	
13. PROFIT FORECASTS OR ESTIMATES	✓	
14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT	✓	
15. REMUNERATION AND BENEFITS		
In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.	✓	
15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. This information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.	✓	
15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.	✓	
16. BOARD PRACTICES	✓	
17. EMPLOYEES	✓	
18. MAJOR SHAREHOLDERS	✓	
19. RELATED PARTY TRANSACTIONS		
Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No		Proposal to delete the first paragraph and to redraft the second paragraph. Proposal : "If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following in-

1606/2002 if applicable.		
<p>If such standards do not apply to the issuer the following information must be disclosed:</p> <p>a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</p>	✓	<p>formation must be disclosed for the period covered by the historical financial information and up to the date of the registration document :</p> <p>a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</p> <p>b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.”</p>
<p>20. FINANCIAL INFORMATION CONCERNING THE ISSUER’S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</p>		
<p><u>20.1. Historical Financial Information</u></p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.</p> <p>For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country’s national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</p> <p>The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer’s next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.</p> <p>If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a</p>	✓	<p>ESMA proposes to require only the latest 2 financial years for SMEs and Small Caps.</p> <p>Redraft item 20.1 :</p> <p>“Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.”</p>

<p>Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.</p> <p>If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:</p> <p>(a) balance sheet; (b) income statement; (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners; (d) cash flow statement; (e) accounting policies and explanatory notes</p> <p>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.</p>		
<p>20.1. bis This paragraph may be used only for issues of depository receipts having a denomination per unit of at least EUR 50,000.</p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002 , or if not applicable to a Member's State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the prospectus:</p> <p>a) a prominent statement that the financial information included in the registra-</p>	<p>✓</p>	<p>Id. require only 2 years.</p> <p>“Audited historical financial information covering the lastest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002 , or if not applicable to a Member's State national accounting standards for issuers from the Community.”</p>

<p>tion document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information;</p> <p>b) immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements</p> <p>The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.</p> <p>If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:</p> <p>(a) the balance sheet; (b) the income statement; (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners; (d) the cash flow statement; (e) the accounting policies and explanatory notes.</p> <p>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the prospectus:</p> <p>a) a prominent statement disclosing which auditing standards have been applied; b) an explanation of any significant departures from International Standards on Auditing</p>		
<p>20.2. Financial statements</p> <p>If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration</p>	<p>✓</p>	

document.		
20.3 Auditing of historical annual financial information	✓	
20.3.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.	✓	
20.3.2. Indication of other information in the registration document which has been audited by the auditors.	✓	
20.3.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.	✓	
20.4. Age of latest financial information	✓	
20.4.1. The last year of audited financial information may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.	✓	
20.5. Interim and other financial information	✓	
20.5.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.	✓	
20.5.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.	✓	

20.6. Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.	✓	
20.6.1. The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.	✓	
20.7. Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.	✓	
20.8. Significant change in the issuer's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.	✓	
21. ADDITIONAL INFORMATION	✓	
22. MATERIAL CONTRACTS	✓	
23. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST	✓	
24. DOCUMENTS ON DISPLAY	✓	
25. INFORMATION ON HOLDINGS	✓	
26. INFORMATION ABOUT THE ISSUER OF THE DEPOSITARY RECEIPTS	✓	
27. INFORMATION ABOUT THE UNDERLYING SHARES	✓	
28. INFORMATION REGARDING THE DEPOSITARY RECEIPTS	✓	
29. INFORMATION ABOUT THE TERMS AND CONDITIONS OF THE OFFER OF THE DEPOSITARY RECEIPTS	✓	



30. ADMISSION TO TRADING AND DEALING ARRANGEMENTS IN THE DEPOSITARY RECEIPTS	✓	
31. KEY INFORMATION ABOUT THE ISSUE OF THE DEPOSITARY RECEIPTS	✓	
32. EXPENSE OF THE ISSUE/OFFER OF THE DEPOSITARY RECEIPTS	✓	

Annex 5 – Proportionate Schedule for the share registration document for SMEs and Small Caps

Minimum Disclosure Requirements for the Share Registration Document for SMEs and companies with reduced market capitalisation (schedule)
1. PERSONS RESPONSIBLE
1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer’s administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
2. STATUTORY AUDITORS
2.1. Names and addresses of the issuer’s auditors for the period covered by the historical financial information (together with their membership in a professional body).
2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.
3. RISK FACTORS
Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed “Risk Factors”.
4. INFORMATION ABOUT THE ISSUER
4.1. History and Development of the Issuer
4.1.1. the legal and commercial name of the issuer;
4.1.2. the place of registration of the issuer and its registration number;
4.1.3. the date of incorporation and the length of life of the issuer, except where indefinite
4.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);

4.1.5. the important events in the development of the issuer's business.
4.2. Investments
4.2.1. 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.
4.2.2. A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).
4.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments <u>and the anticipated sources of funds needed to fulfill these commitments.</u>
5. BUSINESS OVERVIEW
5.1. Principal Activities
5.1.1. A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information; and
5.1.2. An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.
5.2. Principal Markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.
5.3. Where the information given pursuant to items 5.1. and 5.2. has been influenced by extraordinary factors, mention that fact .
5.4. If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses, industrial, commercial or financial contracts or new manufacturing processes.
5.5. The basis for any statements made by the issuer regarding its competitive position.
6. ORGANIZATIONAL STRUCTURE
6.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.
6.2. <u>If not included in the financial statements</u> , a list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of ownership interest and, if different, proportion of voting power held.
7. PROPERTY, PLANTS AND EQUIPMENT

7.1. A description of any environmental issues that may affect the issuer's utilization of the tangible fixed assets.
8. OPERATING AND FINANCIAL REVIEW
8.1. Financial Condition To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.
8.2. Operating Results
8.2.1. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.
8.2.2. Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
8.2.3. Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
9. CAPITAL RESOURCES
9.1. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;
9.2. Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES
Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.
11. TREND INFORMATION
11.1. 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.
11.2. 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.
12. PROFIT FORECASTS OR ESTIMATES
If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 12.1 and 12.2:
12.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assump-

tions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.

12.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

12.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information

12.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration

document, and an explanation of why such forecast is no longer valid if that is the case.

13. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT

13.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:

- a) members of the administrative, management or supervisory bodies;
- b) partners with unlimited liability, in the case of a limited partnership with a share capital;
- c) founders, if the issuer has been established for fewer than five years; and
- d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.

The nature of any family relationship between any of those persons.

In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:

(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;

(b) any convictions in relation to fraudulent offences for at least the previous five years;

(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;

(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.

If there is no such information to be disclosed, a statement to that effect is to be made.

<p>13.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</p> <p>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 13.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</p>
<p>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 13.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</p>
<p>Details of any restrictions agreed by the persons referred to in item 13.1 on the disposal within a certain period of time of their holdings in the issuer's securities.</p>
<p>14. REMUNERATION AND BENEFITS</p>
<p>In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 13.1.</p>
<p>14.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.</p> <p>That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.</p>
<p>14.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</p>
<p>15. BOARD PRACTICES</p>
<p>In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 13.1. :</p>
<p>15.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.</p>
<p>15.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.</p>
<p>15.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.</p>
<p>15.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.</p>
<p>16. EMPLOYEES</p>
<p>16.1. Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.</p>
<p>16.2. Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 13.1. provide information as to their share</p>

ownership and any options over such shares in the issuer as of the most recent practicable date.
16.3. Description of any arrangements for involving the employees in the capital of the issuer.
17. MAJOR SHAREHOLDERS
17.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.
17.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
17.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
17.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
18. RELATED PARTY TRANSACTIONS
If International Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document : a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. b) The amount or the percentage to which related party transactions form part of the turnover of the issuer. If international Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/200 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.
19. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES
<u>19.1. Historical Financial Information</u> Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements. The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement;
- (e) accounting policies and explanatory notes

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

19.2. Pro forma financial information

In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.

This requirement will normally be satisfied by the inclusion of pro forma financial information.

This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.

Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.

19.3. Financial statements

If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.

19.4 Auditing of historical annual financial information

19.4.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.

19.4.2. Indication of other information in the registration document which has been audited by the auditors.

19.4.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.

19.5. Age of latest financial information
19.5.1. The last year of audited financial information may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.
19.6. Interim and other financial information
19.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.
19.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.
19.7. Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.
19.8. Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
19.9. Significant change in the issuer's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.
20. ADDITIONAL INFORMATION
20.1. Share Capital The following information as of the date of the most recent balance sheet included in the historical financial information:
20.1.1. The amount of issued capital, and for each class of share capital: (a) the number of shares authorised; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10 % of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.

20.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.
20.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
20.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
20.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
20.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.
20.1.7. A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.
20.2. Memorandum and Articles of Association
20.2.1. A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.
20.2.2. A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.
20.2.3. A description of the rights, preferences and restrictions attaching to each class of the existing shares.
20.2.4. A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.
20.2.5. A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.
20.2.6. A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.
20.2.7. An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.
20.2.8. A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.
21. MATERIAL CONTRACTS
A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document.
A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.

22. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST

22.1. Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.

22.2. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

23. DOCUMENTS ON DISPLAY

A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

- (a) the memorandum and articles of association of the issuer;
- (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;
- (c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

24. INFORMATION ON HOLDINGS

Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.