

Final report

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

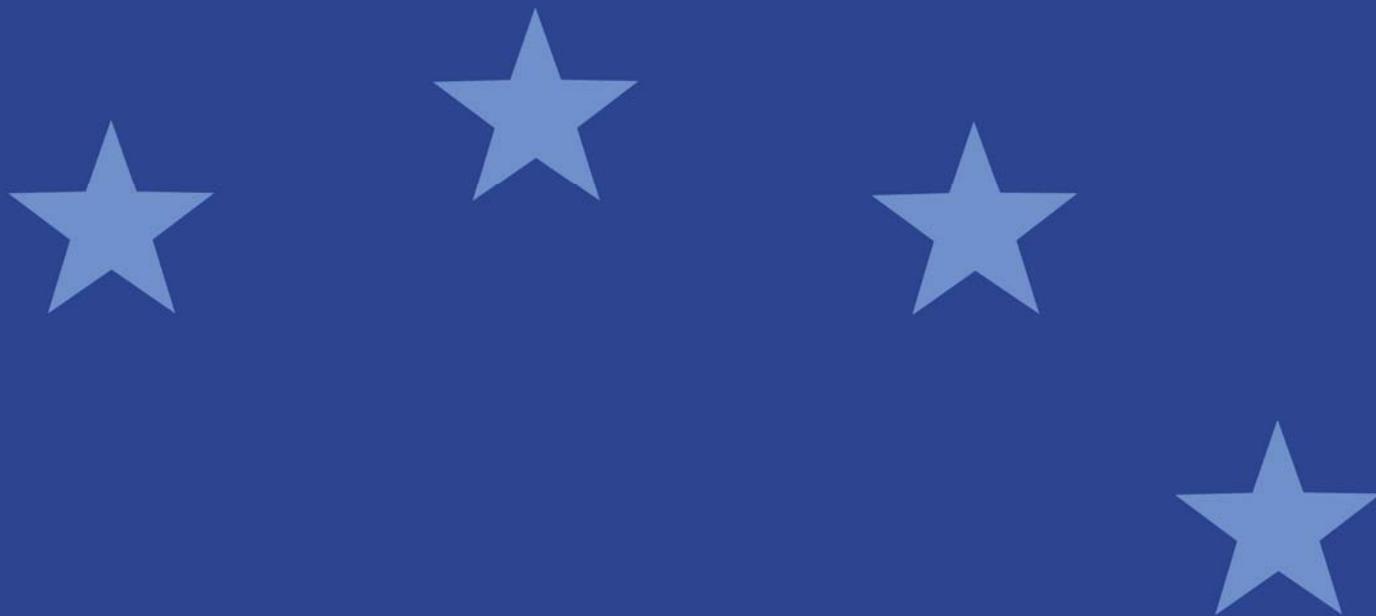


Table of Contents

I.	Executive Summary	5
II.	General Introduction	6
III.	Feedback Statement on format of the final terms to the base prospectus	9
III.I	General Observations	9
IV.	Technical Advice on Format of the final terms to the base prospectus	22
IV.I.	Introduction	22
IV.II.	Format of final terms	23
IV.III.	Instructions in relation to the requirements of the securities notes schedules and the building block(s)	28
IV.IV.	Supplement to the base prospectus	32
IV.V.	Combination of summary and final terms	32
IV.VI.	List of securities note schedules and building block(s)	35
V.	Feedback Statement on summaries	54
VI.	Technical Advice on summaries	66
VI.I.	Changes to the Prospectus Regulation	66
VI.II.	General principles	67
VI.III.	Format and content of summaries for annexes I to XVII of the Prospectus Regulation	69
VIII.	Technical Advice on the Proportionate Disclosure Regime	96
VIII.I.	Proportionate disclosure regime regarding rights issues	96
VIII.II.	Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation	105
VIII.III.	Proportionate disclosure regime regarding credit institutions	110
VIII.IV.	Proportionate schedules (minimum disclosure requirements)	112

Annex I: European Commission request to ESMA for technical advice on possible delegated acts concerning the Prospectus Advice as amended by the Directive 2010/73/EU



Acronyms used

Amended Directive

The Prospectus Directive as amended by Directive 2010/73/EU

Amending Directive, AD, Amending Prospectus Directive

Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directive 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.

Call for Evidence

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).

CFSC Corporate Finance Standing Committee

CP Consultation Paper

CWG Consultative Working Group

4 th Directive on annual accounts

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)

7 th Directive on consolidated accounts

Seventh Council Directive of 13 June 1983 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (83/349/EEC)

FB Feedback Statement

IFRS International Financial Reporting Standards

IPO Initial Public Offering

KIID Key Investor Information Document

Mandate

European Commission's "Formal request to ESMA for technical advice on possible delegated acts concerning the amended prospectus directive (2003/71/EC)". See Annex 1

Market Abuse Directive

Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

**MiFID**

Markets in Financial Instruments Directive

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

MTF

Multi Trading Facility as defined in MiFID

OFR

Operating and Financial Review

Prospectus Directive or PD

Directive 2003/71/EC of the European Parliament and of the Council-and, where the context requires, the Amended Directive

Prospectus Regulation or PR

Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements

PRIPs

Packaged Retail Investment Products

SMEs

Small and Medium Enterprises as defined in the Prospectus Directive

TA

Technical Advice

TF

Task Force

Transparency Directive

Directive 2004/109/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.

I. Executive Summary

Reasons for publication

The European Commission (the Commission) sent a formal request on Tuesday 25 January 2011 to ESMA to provide technical advice on possible delegated acts concerning the Prospectus Directive as amended by Directive 2010/73/EU. The Mandate to ESMA set out the areas where the Commission was requesting advice in sections 3, 4 and 5. The advice on sections 3.1 and 3.2 was due to be delivered to the Commission by September 2011 and ESMA 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.

On 15 June 2011, ESMA released a consultation paper requesting input from markets participants to assist it in providing advice to the European Commission.

Contents

In accordance with the terms of the Mandate, ESMA presents by means of this final advice a combined document that comprises both its feedback statement (FB) and its final technical advice (TA) for each of the sections 3.1, 3.2 and 3.3 of the Mandate. This combined document has been structured in such a way that the technical advice immediately follows the feedback statement in relation to each individual section of the Mandate.

In relation with the drafting of the FB and TA, the Task Force has carefully considered all comments received during the consultation process. The FB discusses in detail the comments which emerged during the consultation process and provides in this advice the relevant position for which ESMA has finally opted. The TA takes into account the changes set out in the feedback statement.

Next steps

Regarding the first part of the mandate, the Commission is under the obligation to adopt delegated acts by 1 July 2012 (18 months after the entry into force of the Amending Directive) in relation to the format of the final terms to a base prospectus, the format of the summary of the prospectus, and the detailed content and specific form of the key information to be included in the summary (Article 5(5)). This part of the mandate also covers the proportionate disclosure regime proposed to be introduced for some pre-emptive 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)).

ESMA has recently started to work on the remaining parts of the mandate. The second part of the formal mandate covers in section 3.4 the criteria to be applied in assessing the equivalence of a third-country financial market (Article 4 (1)), in section 3.5 a possible format and form of a consent to use a prospectus in a retail cascade (Article 3 and 7) and in section 4. a review of other provisions of the Prospectus Regulation including possible additional delegated acts for technical adjustment and clarification of some existing Level 2 measures (see Articles 5, 7, 24a, 24b and 24c of the Amended Directive). Finally, in section 5 of the mandate ESMA is invited to assist the Commission in the preparation of a comparative table recording the liability regimes applied by the Member States in relation to the Prospectus Directive.

II. General Introduction

Background

1. Directive 2010/73/EU of 24 November 2010¹ (**the Amending Directive**) amending the Prospectus Directive was published in the Official Journal of the EU on 11th December 2010.
2. On 20 January 2011, 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 Prospectus Directive.
3. Following receipt of the Mandate, on 26 January 2011 ESMA launched a call for evidence (**the Call for Evidence**) for interested parties to submit comments by 25 February 2011 on the issues which ESMA should consider in its advice to the Commission. ESMA received 36 submissions and those that are public can be viewed on ESMA's website.
4. As part of the process for producing its advice, ESMA published, on 15 June 2011, a consultation paper covering the following:
 - 3- Format of the final terms to the base prospectus (Article 5(5))
 - 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))
 - 5- Proportionate disclosure regime (Article 7)
5. ESMA received 55 responses to the consultation document and these can be viewed on ESMA's website to the extent permission has been given for their publication. The responses came from European and national associations representing issuers and financial service providers, as well as regulated markets, stock exchanges and individual issuers.
6. In this context, ESMA has 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 is composed of three drafting groups dealing respectively with sections 3.1, 3.2 and 3.3 of the Mandate.
7. ESMA has benefited from the advice of the Consultative Working Group (**the CWG**), established to assist the CFSC on an ongoing basis.

The members of the CWG are:

- Wouter Kuijpers, Senior Legal Counsel and Policy Advisor, Eumedion Corporate Governance Forum
- Klaus Künzel, Senior Legal Counsel, Group Legal, Commerzbank AG
- Henri Wagner, Managing Partner, Allen & Overy
- Luis de Carlos, Managing Partner, Uría Menéndez
- Klaus Ilmonen, Partner, Hannes Snellman Attorneys Limited
- José Neves Adelino, Professor, the New University of Lisbon
- João Ramalho Talone, Magnum Capital
- Laurent Guillot, Chief Financial Officer, Saint-Gobain
- Peter Montagnon, The Financial Reporting Council
- Steen Lønberg Jørgensen, Head of Corporate Finance & Equity, Denmark Nordea

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.



- Leif Vindevåg
- Alexander Russ, Legal Counsel, Oesterreichische Kontrollbank AG

The CWG has met once with the Task Force to give guidance on the drafting of the consultation paper. Furthermore, its members have provided written comments on the consultation paper which have been taken into account when drafting ESMA's feedback statement and technical advice.

8. ESMA has discussed the Consultation Paper with the Securities and Markets Stakeholder's Group who have not formed a formal opinion on it. Nevertheless, ESMA has considered the opinions expressed by some members through the Prospectus Working Group who have submitted a written summary of comments on ESMA's Consultation Paper which does not represent an agreed Stakeholder Group position.
9. ESMA asked the EC whether an impact assessment was needed when discussing the mandate. The Commission responded that a formal impact assessment might not be needed but that all the proposals included in the advice should be well justified. ESMA approved not carrying out a formal impact assessment because of the tight timeframe. Furthermore, the questions of the consultation paper contained quantitative issues related to costs and administrative burdens to the sector and, moreover, when factual data have been given by the respondents, it has been included in the feedback statements.

Introduction

10. Due to the structure of the consultation paper, sections 3.1 and 3.2 of the Mandate are presented differently in the FB than section 3.3 of the Mandate. In sections 3.1 and 3.2, the FB presents a thematic analysis of all the responses received during the consultation, while in section 3.3, the order of the questions as set out in the consultation paper has been followed.
11. It is considered important that the delegated acts, to be adopted by the Commission in accordance with Articles 5 (5) and 7 of the Amended Prospectus Directive, shall only apply to prospectuses and base prospectuses which have been approved by a competent authority after the date of entry into force of these delegated acts. In this regard it should be clarified that:
 - where a supplement is issued on or after 1 July 2012 in relation to a prospectus or base prospectus approved before that date, the supplement should simply address the Article 16 requirements of the Prospectus Directive existing prior to 1 July 2012 (providing a new factor, material mistake and inaccuracy) rather than needing to provide a re-write of the prospectus to reflect changes introduced by the Amended Prospectus Directive.
 - however, where a registration document has been approved before 1 July 2012 and the prospectus is drawn up on or after that date, the prospectus will have to meet the requirements of the Amending Directive.
12. Article 18 of the Prospectus Directive requires competent authorities to confirm that a prospectus has been drawn up "*in accordance with this Directive*". Owing to the fact that the Prospectus Directive is in the process of being amended, this confirmation will have a slightly different meaning when made prior to 1 July 2012 than it will have if made afterward. This could lead to difficulties if a competent authority were asked to passport a prospectus post 1 July 2012 which had been approved before that date. In relation to the notification procedure in Article 18 of the Amended Prospectus Directive it should be clarified that:



- a competent authority may passport a prospectus or base prospectus on or after 1 July 2012 even though the prospectus or base prospectus was approved before that date and that in such cases the certificate of approval should clearly indicate that the prospectus or base prospectus was approved before 1 July 2012 in accordance with the requirements of the Directive as applied at that time.

III. Feedback Statement on format of the final terms to the base prospectus

III.I General Observations

1. Some respondents argued that certain proposals contained in the consultation paper will significantly detract from the success of the Prospectus Directive leading to a less flexible and less competitive marketplace for the issuance of securities in Europe. As a consequence, this could result in fewer products being offered to investors and increase costs to issuers and investors. The suggestions put forward in the consultation paper were considered by some of the respondents to be beyond the scope of the Prospectus Directive and to fall some way short of striking an appropriate balance between limiting administrative burdens and promoting investor protection. Furthermore, the proposed changes are disproportionate to the aim of eliminating inconsistencies in the use of final terms.
2. Overall, respondents argued that the proposals will most acutely impact the structured products market. The entire structured products industry will be required to significantly adapt their existing base prospectuses at considerable cost to include the universe of potential features of products they expect to issue. In addition, the consultation paper would lead to a major limitation of base prospectuses in the context of multi-issuer debt programs.
3. There was a general consensus among respondents that, because of the detailed product descriptions required in the base prospectus, the latter would significantly increase in length and become less comprehensible. The proposed approach would lead to many supplements, “specialized” base prospectuses and stand alone prospectuses which would force issuers to go through lengthy and costly approval procedures. Under the most pessimistic scenario, the current proposals might even have the effect of driving wholesale securities out of EU regulated markets.
4. ESMA acknowledges that the proposals will reduce the flexibility of the base prospectus regime as understood by some market participants but would like to reiterate that market participants have taken advantage of the lack of regulation of the current base prospectus system to disclose information in the final terms which needs to be vetted by the competent authorities. The proposed approach is necessary to prevent any further excesses in the use of final terms as well as to strengthen and harmonize supervisory practices. ESMA considers that any loss of flexibility of the base prospectus regime (delays due to approval) and additional costs incurred by issuers should be addressed to the markets on national levels and/or by ESMA at a further stage. Furthermore, ESMA believes that the proposed approach provides issuers with clarity and legal certainty of what can be included in final terms.
5. ESMA is aware that the proposed approach will have an impact on the structured products industry but considers it necessary that competent authorities scrutinize the redemption structure of structured products in accordance with the comprehensibility, consistency and completeness criteria set out under Article 2 of the Prospectus Directive. It should be noted that the consultation paper does not propose to prohibit the issue of structured products under a base prospectus and such securities can still be issued using final terms if they are compliant with the rules on final terms and article 2 of the Prospectus Directive. However, taking into consideration that structured products have become increasingly complex over the last years, ESMA notes where the terms of

the different types of complex products have not been clearly presented in base prospectuses, this has affected the readability and comprehensibility of the base prospectuses.

6. ESMA sees no direct link between the length and comprehensibility of information included in any one base prospectus but would like to clarify that, if the base prospectus becomes incomprehensible as indicated by some respondents, competent authorities cannot grant an approval on the basis of article 2 of the Prospectus Directive. In addition, ESMA would like to remind market participants that it is still possible to include different securities in a base prospectus provided that the information on the various products is clearly segregated (Article 22 (6) of the Prospectus Regulation). On the other hand, ESMA acknowledges that the base prospectus regime may not be the appropriate way anymore to issue certain types of products as there may be insufficient information available to be included in the base prospectus at the time of its approval. ESMA is convinced that the proposals are necessary to satisfy an adequate level of investor protection which ensures confidence in EU regulated markets.
7. By only insisting on the issues of flexibility and costs, none of the respondents analyzed whether specific items of information should be approved by competent authorities as they affect the assessment of the security and need to be scrutinized in accordance with the comprehensibility, consistency, and completeness criteria set out under Article 2 of the Prospectus Directive. ESMA believes that the proposals comply with the requirement of the Mandate to “preserve flexibility of the base prospectus regime” as issuers can still access the market quickly via the production of final terms.

Fixed list of securities note items (paragraph 25 of the consultation paper)

8. Most respondents argued that ESMA’s proposal to set out an exhaustive list of information items that can be included in final terms would significantly reduce flexibility of the base prospectus regime, hinder the comprehensibility of offering documents, limit financial innovation and would not provide any additional benefits for investors. Therefore, ESMA should adopt a general principles-based approach in order to clarify what information can only be determined at the time of the individual issue.
9. The suggestion to issue abstract general rules does not appear to comply with the requirement of the Mandate to specify “the disclosure requirements of the securities note, the final terms should contain”. The approach adopted by ESMA ensures legal clarity and harmonization by eliminating inconsistent practices with regard to the delineation of information between the base prospectus and the final terms.

Additional information (paragraph 26 of the consultation paper)

10. Respondents were supportive of ESMA’s proposal that final terms may also contain information that is not required by the securities note schedules. However, a large number of respondents indicated that restricting such “Additional Information” to an exhaustive list of items, does not enhance investor protection and limits the flexibility of adding issue specific information that is considered useful to investors. If, ESMA should nevertheless insist on limiting the list of “Additional Information” , the following items would need to be added: country specific information, induce-

ments paid to distributors, selling restrictions, transaction management, product specific risk factors, description of conflicts of interest and increase of securities issue.

11. One respondent suggested that the list of “Additional Information” should be published by ESMA in its FAQ which would allow flexible additions from time to time when ESMA deems them useful.
12. Others expressed doubts whether it is mandatory for issuers to provide “Additional Information” in the final terms.
13. ESMA considers it necessary that the list of “Additional Information” should be exhaustive in order to ensure harmonization and the readability of the final terms document. However, ESMA recognizes that there should be flexibility and will amend its proposal to reflect that the content of the list will be determined by ESMA at a further stage.
14. ESMA will revise its text to clarify that “Additional Information” shall only be provided on a voluntary basis.

“Knowable” information (paragraph 28 of the consultation paper)

15. A few respondents commented that the term “all” can be interpreted in a way that the base prospectus has also to contain information that will not affect an investment decision as long as it is known at the time of the approval of the base prospectus. Such a requirement would not be in accordance with Article 5 (1) of the Prospectus Directive which does not require that “all” the terms of the securities should be included in a prospectus but only information on the securities that enables investors to take an informed investment decision.
16. ESMA will amend its proposal to reflect that information required by the Prospectus Directive and Prospectus Regulation has to be included in the base prospectus if it is known at the time of the approval of the base prospectus.

Reference to applicable options (paragraph 29 of the consultation paper)

17. One respondent indicated that cross references to options listed in the base prospectus may have a negative impact on the readability of the final terms or even make it impossible for an investor to understand final terms without looking at the base prospectus.
18. Issuers always have the ability to refer to or replicate the applicable option from the base prospectus. In order to determine whether a reference to or a replication of the applicable option is appropriate, issuers have to bear in mind that final terms should be drafted in an easily analysable way.

Replication of securities note items already determined by the base prospectus (paragraph 30 of the consultation paper)

19. ESMA has interpreted Article 26 (5) of the Prospectus Regulation in a way that final terms can only replicate “some” and not all information items from the securities note schedules, implying that, as long as they are determined in the base prospectus, securities note items cannot be reproduced in the final terms. A number of respondents reminded ESMA that the requirement not to replicate securities note information only applies to final terms filed as a separate document.

Hence, the respondents put forward that integrated terms and conditions are not filed as a separate document but included in the base prospectus.

20. ESMA expressed the view that the summary of the individual issue renders expanded final terms unnecessary as such a summary would provide a “full picture” to investors. Some respondents did not concur with this view by arguing that the summary only contains key information and thus does not provide a full picture to investors.
21. ESMA interpreted Recital 17 of the Amending Prospectus Directive in a way that the securities note items already determined by the base prospectus cannot be reproduced in the final terms as they are not only determined at the time of the individual issue. A few respondents disagreed and argued that the aforementioned Recital should be read in conjunction with Article 5 (4) of the Amended Prospectus Directive and only concerns delimitation with regard to information that requires a supplement to the base prospectus.
22. Some respondents stressed the fact that the consultation paper ruled out the possibility of including integrated terms and conditions in the final terms which is a well established practice in some European markets (e.g. Germany) for securities offered to retail investors. As a result, investors are prevented from receiving a full picture of the relevant security in a single document and will have to collect the information from the final terms, the base prospectus and any supplements thereto. Banning the well established practice of including integrated terms and conditions in final terms contradicts the Amending Prospectus Directive’s intention of further increasing the transparency and comprehensibility of securities.
23. Some respondents commented that retail investors may have difficulty in understanding a “schedule-based format” of final terms.
24. A few respondents argued that issuers would not be able to meet the civil law requirements determined on national level, especially in the retail business.
25. ESMA fails to see why integrated terms and conditions should be considered as being directly included in the base prospectus as the fully completed integrated terms and conditions are, as a matter of fact, filed as a separate document with the competent authorities. ESMA considers that the concept of directly including final terms in the base prospectus implies that all the terms of the securities are known at the time of the approval of the base prospectus and that therefore no separate filing is necessary.
26. In light of comments received, ESMA would like to clarify that the summary provides a “full picture” of the securities, in the meaning of providing all key information on the securities.
27. The respondents based their arguments on Article 5 (4) of the Amended Prospectus Directive which states that “final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus”. However, respondents did not take into consideration Article 26 (5) of the Prospectus Regulation which further requires that:
 - a. “full information on the issuer and on the offer is only available on the basis of the combination of base prospectus and final terms”: The base prospectus shall not be reduced to a registration document in the meaning of Article 5 (4) of the Prospectus Directive.

- b. “in the case that the final terms are included in a separate document, final terms may replicate some information...”: As the aforementioned article only refers to “some information” of the relevant securities note schedule, replication of information must remain limited and can not cover the whole securities note.
28. With regard to the concerns expressed by some respondents that investors would have to collect information from different sources, ESMA would like to point out that base prospectus structures always require investors to revert to the final terms and the base prospectus (as required by Article 26 (5) of the Prospectus Regulation). Based on some comments received, ESMA understands that there is a need to extract the integrated terms and conditions from the base prospectus as the latter may not be easily analyzable and comprehensible to retail investors. However, ESMA would like to remind issuers that the base prospectus has to be comprehensible in order to comply with article 2 of the Prospectus Directive and that it is the issuer’s responsibility to ensure that the product is easily analyzable on the basis of combining information from the final terms and the base prospectus.
29. The point made by respondents, that the “schedule type” format is not suitable for retail investors, is put into question by current market practices which predominantly use this format for both retail- and wholesale investors. In relation to complex products, ESMA recognizes that it may, for some CAT.B items (e.g. redemption structure), not be advisable to refer to the base prospectus while providing only technical terms in the “schedule type” format of the final terms. ESMA would like to remind, that in order to determine whether a reference or a replication to the relevant CAT.B item is appropriate, issuers have to bear in mind that final terms should be drafted in an easily analyzable way.
30. It should be noted that the civil law problems should be solved on national levels.

Deletion of non-applicable information in final terms (paragraph 34 of the consultation paper)

31. One respondent commented, that final terms which have been drafted for a specific issue, may be used in practice by issuers as a precedent for all future issues. When all non-applicable information needs to be deleted instead of being marked as “non-applicable” in respect of that specific issue, the likelihood that the subsequent issues will be incorrectly documented increases.
32. ESMA believes that the provision, to delete all non-applicable information in final terms, improves the readability of the final terms documentation and enables investors to quickly locate the terms not known at the time of the individual issue. ESMA has confidence that issuers will invest the necessary time and effort in the drafting of the final terms and arrange for the most effective internal organizational process. (e.g. use of templates)

Amendments to base prospectus by way of final terms (paragraph 35 of the consultation paper)

33. One respondent disagreed with the prohibition that final terms are not allowed to amend or replace any information contained in the base prospectus. Issuers should be permitted to make changes to the conditions set out in the base prospectus if such amendments are not prejudicial to the interests of the holders, particularly as they may be beneficial to holders, or requested by investors.

34. ESMA rejects this suggestion which may be used as a mean to circumvent the obligation to publish a supplement pursuant to Article 16 of the Prospectus Directive which requires competent authorities to review information that affects the assessment of the security, in accordance with Article 2 of the Prospectus Directive. Based on the experience of competent authorities, final terms currently include significant changes to the redemption structures, the risk factors and the terms and conditions that should have triggered the need to produce a supplement.

Signing of final terms (paragraph 41 of the consultation paper)

35. One respondent commented that, it may be worth clarifying whether ESMA intends to prohibit the signing of final terms in the absence of specific national law requirements.
36. ESMA will revise its proposal to clarify that final terms may be signed by legal representatives at the discretion of the issuer or the person responsible for the prospectus.

Distinction between categories A, B and C (paragraph 44 of the consultation paper)

37. Many respondents believed that the proposed differentiation between categories A, B and C seems to be rather arbitrary and not compatible with the substantive criterion provided for by the Prospectus Directive and Prospectus Regulation, namely if the information could only be determined at the time of the individual issue. In particular, a large number of information items classified as CAT.A could be subject to changes in individual issuances after the base prospectus has been published.
38. Some respondents considered that the purpose of this very formalistic proposal is to allow competent authorities to easily scrutinize base prospectuses and final terms based on categorization.
39. One respondent asked for clarification that CAT.B and CAT.C items have to be included in the base prospectus if already known at the time of the approval of the base prospectus.
40. ESMA disagrees with the interpretation that any information can be included in the final terms on the sole basis that it is only known at the time of the individual issue. Instead, ESMA considers that only information not known at the time of the approval of the base prospectus is eligible for inclusion in the final terms, but issuers are not automatically entitled to include all such information in the final terms. The differentiation between categories A, B, and C has mainly been assessed on the basis whether information must be scrutinized by the competent authorities in accordance with Article 2 of the Prospectus Directive. Although the rather subjective “issue specific” criteria has been taken into account, it was not the determining factor in assessing which information items can be produced in final terms.
41. Although ESMA acknowledges that the proposed approach determines the scope of scrutiny for competent authorities, it would like to clarify that a smoother review process was not the reason for opting in favour of the classification system.
42. ESMA would like to clarify that CAT.B and CAT.C items have to be included in the base prospectus if they are already known at the time of the approval of the base prospectus but does not consider it necessary to amend its initial proposal as this has already been clarified in paragraph 44 of the consultation paper.

List of issue specific details for “Cat. B” items (paragraph 44 of the consultation paper)

43. A number of respondents raised the concern that the explicit restriction of issue specific details to “amounts, currencies, dates, time periods, percentages, reference rates, screen pages, names and places” may have a negative impact on the flexibility of issuers to react to changing market conditions. As a consequence, permission shall be given to add any kind of issue specific detail which is not a legal rule or a formula as there is a high risk that the list excludes important issue specific details.
44. Some respondents raised the point that there will be discussions and different interpretations for information that may not fall easily into the existing categories of the issue specific list of details. One market participant argued that, if ESMA considers such a list absolutely necessary, there must be a swift process to add or even delete items from it.
45. ESMA believes that requiring a defined and limited list of issue specific details ensures legal certainty and harmonization of the final terms.
46. ESMA will redraft its initial proposal to reflect that guidance on the content of the issue specific details shall be provided by ESMA at a further stage.

Supplement to the base prospectus (paragraphs 61-63 of the consultation paper)

47. According to estimates provided by a few respondents, the number of supplements may substantially increase (one respondent believed that between 5-15% of final terms would be subject to a supplement; another respondent believed that the number of supplements would more than double) which would result in a loss of flexibility of the base prospectus regime and may render documentation less analyzable. As a general rule, the supplement should maintain its original function to add information that became relevant due to unexpected circumstances.
48. A few respondents indicated that ESMA should carefully take into account that, when a supplement is published, investors have the right to withdraw their acceptances to purchase or subscribe for the securities pursuant to Article 16 (2) of the Prospectus Directive. This implies that the economic risks are shifted unilaterally to the issuer. Moreover, in order to avoid withdrawal rights due to supplements, issuers would have to produce “specialized” base prospectuses or even stand alone prospectuses which would lead to materially higher costs.
49. A number of respondents indicated that it is unclear whether competent authorities would require a supplement or a prospectus for information that concerns, among others, new features in the terms and conditions, new pay-out structures or additional underlying disclosure.
50. When deciding whether it is appropriate to issue certain types of securities under the base prospectus regime, ESMA expects that issuers will factor that an important number of supplements to one base prospectus may affect the readability of the documentation. As a consequence, ESMA expects and encourages market participants to have recourse to more “specialized base prospectuses” or stand alone prospectuses.
51. ESMA would like to clarify that competent authorities must approve the supplement specific to an individual issue before the filing of the final terms.
52. ESMA shall provide, at a further stage, guidance on when a supplement is possible or a prospectus would be required.

Combination of summary and final terms (paragraphs 64-69 of the consultation paper)

Summary mechanism

53. There was a general consensus among respondents that the proposed mechanism would slow down the issue process and lead to disproportionate administrative and financial burdens. According to some estimates, the summaries of the individual issues would lead to costs of approximately 2,000€ - 10,000€ per final terms.
54. Some respondents had difficulties understanding the legal basis upon which ESMA is requiring summaries of individual issues.
55. A few respondents argued that base prospectus summaries would become excessively long which would fail to enhance comparability and comprehensibility.
56. ESMA's recommendation to append a summary of the individual issue to each set of final terms could potentially drive investors towards reliance on the final terms and the summary alone. The proposed mechanism to require a sort of "mini-prospectus" for each issue under a base prospectus contrasts with the position adopted by ESMA, regarding replication of securities note items, where the final terms not be used as a kind of short form prospectus or securities note.
57. Instead of annexing the summary to the final terms, respondents almost unanimously agreed that the summary of the base prospectus should only be read together with the final terms. Some suggested that the summary of the base prospectus could simply contain placeholders for the information not known at the time of the approval of the base prospectus; others suggested that the summary of the base prospectus shall provide only the general terms of the securities.
58. One respondent indicated that it would be important to clarify that the summary of the individual issue shall not be required to be updated as it would only be created for the offer.
59. ESMA considers that the additional costs and work will rather be limited given that the summaries of the individual issues only replicate the applicable options from the summary of the base prospectus and only fill out the outstanding key information not known at the time of the approval of the base prospectus. The proposed mechanism is in line with the Mandate as the summary is easily accessible to investors and will not be subject to a subsequent approval by the competent authority.
60. Although there may be a slight risk for investors to rely only on the final terms and the annexed summary, it should be pointed out that the same criticisms could be made to stand alone prospectuses. The proposed mechanism complies with the Mandate ESMA received in relation to the content and format of a summary which requires ESMA to develop "a common format which should facilitate comparability among summaries of similar products by ensuring that equivalent information always appears in the same position in the summaries".
61. ESMA does not see a correlation between length and comprehensibility of information included in any one base prospectus. ESMA would like to remind issuers in this respect, that in those cases where a base prospectus relates to different types of securities, the information on the different products contained in the summary, shall be clearly segregated. (Article 26 (6) of the Prospectus Regulation). ESMA would like to confirm that the wholesale market may always include a "general

overview” section in the base prospectus that does not contain any placeholders or different options.

62. ESMA considers that the proposal to annex the summary to the final terms enables investors to easily identify the key information of the summary which is only known at the time of the individual issue.
63. Referring to Article 25 (5) of the Prospectus Regulation, ESMA will clarify in its technical advice that, if the summary of the base prospectus is amended by way of a supplement pursuant to Article 16 of the Prospectus Directive, the filing of a second set of final terms replacing the first set of final terms is not required.

Translation of the summary of the individual issue

64. Overall, respondents considered that there should be no translation requirement for the summary of the individual issue. Such a requirement would be contrary according to them to the principles of the base prospectus regime and, in the words of the Prospectus Directive, discourages cross border offers and multiple trading. Moreover, it further undermined the flexibility intended by the base prospectus regime by giving rise to significant delays.
65. Some respondents believed that a translation of the summary of the individual issue is not necessary for investor protection reasons and is incompatible with Recital 4 of the Amending Prospectus Directive which aims to enhance the international competitiveness of the European Union. Moreover, the proposed approach misjudged the fact that the summary of the individual issue is an integral part of the final terms and is subject to the same language regime as the base prospectus.
66. Some respondents asked for clarification whether final terms must only be filed in those Member States where a public offering of the individual tranche takes place, independent of the possible previous notification of the base prospectus.
67. ESMA questions whether a translation of the summary of the individual issue will significantly impact on flexibility and costs as only the missing key information not known at the time of the approval of base prospectus will be subject to translation.
68. ESMA considers the summary of the individual issue as an updated and final version of the base prospectus summary. Such a summary of the individual issue only replicates the applicable options from the approved summary and fills out outstanding key information not known at the time of the approval of the base prospectus. Following this logic, the summary of the individual issue, as the finalized version of the base prospectus summary, has to be subject to the same translation requirements as the approved summary. Finally, ESMA considers that the comment that the translation of the summary of the individual issue is not necessary in terms of investor protection automatically questions the need to translate the summary of the base prospectus.
69. ESMA believes that the Prospectus Directive provides all applicable rules in relation to when and where final terms would need to be communicated to the host competent authorities. If further clarification is needed, ESMA will provide guidance at a further stage.

No distinction between wholesale- and retail markets

70. A few market participants criticized that ESMA's proposals make no distinction between different types of investor as the point can be made that information is less relevant to be approved when the buyer is a qualified investor. Reference was made in this respect to Recital 16 of the Prospectus Directive which expressly states that, in pursuit of the objective of protecting investors, "it is appropriate to take account of the different requirements for protection of the various categories of investors and their level of expertise" and further states "that disclosure provided by the prospectus is not required for offers limited to qualified investors".
71. ESMA would like to point out that the Prospectus Regulation already sets out different disclosure requirements for wholesale- and retail markets. It seems obvious that, while information required to be disclosed by the wholesale market may be less extensive, it should not be scrutinized with less care by competent authorities if an approval pursuant to article 2 of the Prospectus Directive is required. This approach is consistent with Recital 16 of the Prospectus Directive according to which no approval procedure is required for offers limited to qualified investors. ESMA would also like to draw the attention of issuers to the fact that they can prepare separate base prospectuses for the wholesale- and the retail markets.

Amendments to securities note schedules (Annex A of the consultation paper)

72. Respondents required the reclassification of a number of securities note items and criticized the classification of risk factors, proprietary indexes and pay out formulas.

Risk factors (Item 2 of Annexes V, XII, XIII)

73. Several respondents argued that, there may be a need to disclose, at the time of the individual issue, additional risk factors in final terms which may arise from the specific nature of the underlying . A general ban on risk factors in final terms would in practice, prevent issuers from choosing certain kinds of underlying .
74. After analyzing market practices, ESMA has come to the conclusion that it is not customary to disclose underlying specific risk factors in final terms but rather to replicate existing risk factors from the base prospectus. Therefore, ESMA has decided to keep the current classification of risk factors.

Pay out Formulas (Item 4.1.13, Annex XII)

75. The majority of respondents indicated that any attempt to set out all possible pay-outs in full in the base prospectus would seriously compromise financial innovation and exclude some financial instruments from the reasonable use of the base prospectus regime. The length of base prospectuses would significantly increase and the latter may become incomprehensible to the majority of investors.
76. The current proposition excludes simple variations of products which cannot be predicted before the time of issuance (e.g. adding a minimum payout) as some product's popularity can be very short-lived and superseded by more innovative or better performing pay-outs as soon as market factors change. Therefore, minor amendments to pay out formulas should be allowed by way of final terms as long as they would not give rise to a wholly new product. Otherwise, each new for-

mula would require a supplement or a stand alone prospectus for minor alterations to existing pay-offs which do not mirror the terms contained in the prospectus.

77. One respondent was concerned that there is a danger that investors will perceive the approval of the competent authority of the individual supplements as a form of regulatory seal of approval of the product itself.
78. Another respondent requested clarification of whether, if a component of the formula is 0 or 1 and the respective component is not used for a specific issue, there should be the possibility to render the formula in the final terms without the unapplied component.
79. ESMA acknowledges that the base prospectus regime may not be the appropriate way anymore to issue certain financial instruments, but questions that financial innovation will be seriously compromised as issuers may always prepare a prospectus. ESMA also disagrees with the categorical statement that, due to the inclusion of all possible pay outs, base prospectuses would become incomprehensible. Based on experiences from competent authorities, there are currently base prospectus of structured securities which set out, in a clear and comprehensible manner, the different pay out features. (e.g. structured bonds).
80. ESMA is aware that changes in formulas may be influenced by market conditions. However, it can be argued that any amendment to existing formulas in the base prospectus affects the assessment of the security and triggers the need to prepare a supplement pursuant to Article 16 of the Prospectus Directive or a prospectus. Therefore, ESMA has decided to keep the current classification of “pay out formulas” and to provide more guidance at a further stage.
81. In order to avoid any doubt, ESMA may reflect, at a further stage, on the possibility of requiring a statement in prospectuses that the competent authority shall not give an undertaking as to the economic and financial soundness of the security or the quality or solvency of the issuer.
82. ESMA will revise its proposal to reflect that if a component of the formula is 0 or 1 and the respective component is not used for a specific issue, there should be the possibility to render the formula in the final terms without the unapplied component.

Indices composed by the issuer (Item 4.2.2., Annex XII)

83. One respondent was concerned that disclosure in relation to proprietary indices is likely to be significant and thus adversely affect the readability of the base prospectus documentation. The result of the increased costs of producing base prospectuses covering proprietary indices may even have the effect that many of these products will no longer be available for sale to retail investors or to be admitted to trading on regulated markets within the EU.
84. A few respondents argued that it is necessary to treat indices in the same way irrespective of whether they are composed by the issuer or a third party so as to avoid the risk that changes to an issuer-composed index, which are likely to be made due to market developments, will need to be explained in a supplement.
85. One respondent did not agree with ESMA’s reasons why indices composed by the issuer shall be included in the base prospectus as 1) the rules for all indices are complex irrespective of who the provider of the index is and 2) the criteria for selecting the proprietary index is driven by client demand and market innovation.

86. ESMA recognizes the validity of the argument that the base prospectus documentation will be affected by the inclusion of proprietary indices but argues that length and comprehensibility are not necessarily connected. Issuers could for example annex the index descriptions to the base prospectus.
87. ESMA would like to point out that the Prospectus Regulation distinguishes between proprietary indices and indices not composed by the issuer. Accordingly, a description of the index is required for proprietary indices whereas only an indication of where information about the index can be found is required for indices not composed by the issuer. Therefore, ESMA understands that the criticism of respondents is rather directed towards the Prospectus Regulation than related to the format of final terms.
88. While ESMA recognizes that all indices are governed by complex rules, it would like to point out that a description, in respect of indices not composed by the issuer, is not required to be included in the prospectus and thus not subject to the review of competent authorities in accordance with Article 2 of the Prospectus Directive. ESMA recognizes the validity of the argument that proprietary indices may also be driven by client demand and market innovation but nevertheless, has decided to keep the current classification of “indices composed by the issuer” on the basis of the arguments set out above.
89. However, if in the future, it is decided to only indicate where information about the index composed by the issuer can be obtained, such item shall be reclassified as a CAT.C item.

Representation of debt 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. (Item 4.10., Annex V)

90. Some respondents indicated that the specification of the bondholder trustee may only be included at the time of the individual issue. Moreover, ESMA’s proposal would be in contradiction to legislation of certain member states pertaining to the nomination of bondholder trustees and its current suggestion to classify the calculation agent as a CAT. C item.
91. ESMA has reconsidered its initial position and will reclassify the representation of debtholders as a CAT.B item in order to avoid any inconsistency with its classification of the calculation agent.

Type of underlying (Item 4.2.2, Annex XII)

92. A few respondents asked for clarification that the type of underlying asset is understood to be an umbrella term which refers to broad categories of underlying (“share” or “index”). If on the other hand, ESMA considers that a more detailed description is meant by “type of the underlying”, the item should have been reclassified as CAT.C.
93. ESMA shall provide, at a further stage, guidance on the interpretation of “type of the underlying” (Item 4.2.2. of Annex XII).

General description of the obligors and their economic environment (item 2.2.2., Annex VIII)

94. Respondents indicated that, particularly in the context of asset backed programs involving revolving pools of assets, certain obligor information may not be available prior to the issue date (e.g. pool-specific statistical information and descriptive obligor information). Therefore, the classifica-

tion of this item gives rise to practical uncertainties given its close connection with “global statistical data referred to the securitised assets” which has been classified as a CAT.C item.

95. Having considered this comment, ESMA will revise its text to reclassify this item as a CAT.B item.

The names and addresses and brief description of any swap counterparties and any providers of other material forms of credit/liquidity enhancement (item 3.8 Annex VIII)

96. Swap arrangements may be series specific and, as such, the identity of the relevant swap provider may only be known on the issue date.
97. Having considered this comment, ESMA still considers as mentioned already above that information not known at the time of the approval of the base prospectus is only eligible for an inclusion in the final terms, but issuers are not automatically entitled to include all such information in the final terms. Therefore, ESMA believes that this item should not be reclassified and stay a CAT. A item.

Some other requests for classification

98. Respondents submitted some other requests for reclassification, but based their opinions on arguments already analysed by ESMA in this feedback statement. To avoid any duplication, ESMA decided therefore not to specifically include such additional comments in the feedback statement.

IV. Technical Advice on Format of the final terms to the base prospectus

IV.I. Introduction

99. 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.
100. 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.
101. 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.
102. 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

103. There was a common understanding within the Task Force that, in general, the final terms still contain information which needs to be vetted by 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.
104. 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 to final terms, because it still provides for too much flexibility.
105. 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. (See Section IV.II and IV.III of this Final report)
106. 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. (See Section IV.IV of this Final report).
107. 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. (See Section IV.V of this Final report).
108. For the avoidance of doubt, the delegated acts to be adopted by the Commission in accordance with Article 5 (5) of the Amended 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.

IV.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

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 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.”

109. 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 the ICMA (International Capital Market Association), which is used for securities issued on the “Euromarket” and is already broadly employed by a large number of domestic markets.
110. From the very wide range of complex structured products existing in the market, ESMA concluded that it is virtually impossible to develop 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 cannot be described in a standardized way.
111. 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 products are appropriated to offer to the public or admit to trading on a regulated market.
112. The approach under paragraphs 110 and 111 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.

ADVICE

113. **The base prospectus has to include all information required by the Prospectus Directive and the Prospectus Regulation 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 it is drawn up.**

ADVICE

114. **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 can or cannot be included in the final terms. (Section IV.VI List of securities note schedules and building block(s))**

ADVICE

115. **Even though Article 5 (4) of the Amended 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, on a voluntary basis, 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. The list of items which could be considered as “Additional Information” shall be determined by ESMA at a further stage.**

ADVICE

116. **Even though Article 5 (4) of the Amended 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 considers that the summary referred to under paragraph 158, 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 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.**

ADVICE

117. **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.**
118. 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 137 and described in Section IV.VI List of securities note schedules and building block(s).
 - “Additional Information”
 - 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.
119. 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 only need to revert to the base prospectus for 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 will 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, in the meaning of providing all key information on the securities, to investors as it includes information from the final terms).

ADVICE

120. **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.**

ADVICE

121. **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.**
122. According to Recital 21 of the Prospectus Regulation, all the general principles applicable to a prospectus are also applicable to final terms.

ADVICE

123. **Therefore, final terms shall be prepared in an easily analysable and comprehensible form.**

ADVICE

124. **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.**
125. The issuer shall prepare a supplement in cases where an amendment or replacement to the base prospectus 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 ESMA FAQ No 23⁴). Therefore, amendments or replacements of any information in the base prospectus

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

are made by a supplement or by a notice, depending on the materiality of such information, and not by way of final terms.

ADVICE

126. **The final terms are not allowed to amend or replace any information contained in the base prospectus.**
127. 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.

ADVICE

128. **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.**

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)**
- **A Summary, fully completed for the individual issue, is annexed to these final terms.**

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."

ADVICE

129. **Final terms may include the signature of the legal representative at the discretion of the issuer or the person responsible for the prospectus.**

B. Form of presentation of final terms

130. 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.
131. 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.
132. 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.
133. 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 and to allow the competent authorities to easily check whether the principles relating to the final terms have been respected:

ADVICE

134. **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.**

IV.III. Instructions in relation to the requirements of the securities notes schedules 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

135. 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.

136. Following paragraph 114 above, ESMA developed detailed instructions on what information required by the securities note schedule and its building block(s) may be included in the final terms, when not known at the time of the approval of the base prospectus.

ADVICE

137. **The table in Section IV.VI. List of securities note schedules and building block(s) 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.**
- **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. The final terms may replicate or refer to such principles and fill out the relevant placeholders, pursuant to Recital 26 of the Prospectus Regulation⁵. The list of details shall be limited and its content shall be determined by ESMA at a further stage.**
- **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.**

138. 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 117; the final terms would then determine which of the option(s) would be applicable to the individual issue.

B. Comments

General comments

139. 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.

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.”

140. When assessing which items of the securities note schedule and its building block(s) (if any) can be included 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.
141. 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.
142. 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 (Annexes V and XIII of the Prospectus Regulation)

143. In order to better ensure the effectiveness of the recommendations given in this paper, and taking the general comment in paragraph 141 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.

ADVICE

144. **ESMA suggests a relevant wording in Section IV.VI. List of securities note schedules and building block(s) for item 4.7.(vi) of Annex V and item 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)

145. Even though the Prospectus Directive does not confer the right to competent authorities to make an economic assessment of a product, they nevertheless remain obliged 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.

146. 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.
147. 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 as indices composed by issuers are often governed by complex sets of rules.
148. 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)

149. As information relating to the structure and cash flow of an asset backed security transaction is generally not issue specific, it must be provided in the base prospectus.
150. If the underlying assets are already admitted to trading on a regulated market, ESMA considers that the information in relation to those 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.
151. In cases where the underlying assets are not admitted to trading on a regulated market:
 - the general 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 depend on the type of underlying asset rather than the individual choice of the underlying asset.
152. 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 fulfil the necessary conditions.
153. 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)

154. 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 cases where the underlying asset constitutes fungible shares that are issued after the approval of the base prospectus, it is permissible to provide some issue specific information in the final terms (see Section IV.VI. List of securities note schedules and building block(s)).

IV.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.”

ADVICE

155. **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.**

ADVICE

156. **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.**

IV.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.”

ADVICE

157. **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.**

ADVICE

158. **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.**

ADVICE

159. **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 is clearly segregated.**

160. 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 **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 **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 **placeholders**: these concern 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 either.

161. If the summary of the base prospectus is amended by way of a supplement pursuant to Article 16 of the Prospectus Directive, the filing of a second set of final terms replacing the first set of final terms is not required.

ADVICE

162. **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.**

ADVICE

163. **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).

IV. VI. 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 IV. III Part A. “Principles” 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. B
	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 (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
4.9.	(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. B
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 (ii) description of the application process.	CAT. C 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 ⁶	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"> ○ 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 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

⁶ If a component of the formula is 0 or 1 and the respective component is not used for a specific issue, there should be the possibility to render the formula in the final terms without the unapplied component.

4.2.2.	<p>A statement setting out the type of the underlying</p> <p>an indication where information about the past and the further performance of the underlying and its volatility can be obtained</p> <p>(i) where the underlying is a security</p> <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 <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 issuer⁶. ○ If the index is not composed by the issuer, where information about the index can be obtained <p>(iii) where the underlying is an interest rate</p> <ul style="list-style-type: none"> ○ a description of the interest rate <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. <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 	<p>CAT. A</p> <p>CAT. C</p> <p>CAT. C</p> <p>CAT. C</p> <p>CAT. C</p> <p>CAT. A</p> <p>CAT. C</p> <p>CAT. C</p> <p>CAT. C</p> <p>CAT. C</p>
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

⁶ If in the future, it will be decided to only indicate where information about the index composed by the issuer can be obtained, such item shall be reclassified as a “CAT.C” item.

5.1.3.	(i) The time period, including any possible amendments, during which the offer will be open (ii) description of the application process.	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. (ii) In the latter case, name and address of the entity in charge of keeping the records.	CAT. A 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. B
	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	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
4.10.	(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. B
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.	CAT. B
	(ii) If known, give the earliest dates on which the securities will be admitted to trading.	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
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. B 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	CAT. C

	of the market's regulatory authority	
	(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	CAT. B

	used in developing the table	
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: <ul style="list-style-type: none"> – Dividend rights: <ul style="list-style-type: none"> – 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	
	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.	CAT. B
3.	Information to be disclosed about the guarantor	
	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.	CAT. A
4.	Documents on display	
	Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.	CAT. A



V. Feedback Statement on summaries

164. This Section V discusses, on a thematic basis, how ESMA has responded to the responses to the consultation.
165. The overall flavour of the responses was that the proposals for summaries set out in the Consultation Paper (“**CP**”) were too prescriptive, lacked flexibility for issuers and would lead to summaries that are too long and which investors will not readily understand.
166. ESMA welcomes these observations and has sought to amend the proposals to address these concerns and meet the requirements of the Amending Directive (“**AD**”) and the mandate from the Commission.

Summaries

167. Recital 15 of the AD states that the summary should be a self-contained part of the prospectus that focuses on the key information that investors need in order to be able to decide which offers and admissions of securities to consider further. The AD adds a definition of “*key information*” in Article 2.1 under (s) of the Prospectus Directive (“**PD**”). Recital 15 goes on to say that the format of a summary should be determined in a way that allows comparison with the summaries of similar products by ensuring that equivalent information always appears in the same position in the summary.
168. Following amendment, Art 5.2 PD states:

“ [The prospectus] shall also include a summary that, in a concise manner and in non-technical language, provides key information in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities

The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its contents should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities.”

Annexes to the Prospectus Regulation (PR)

169. In the CP ESMA set out a modular approach to summaries. The mandatory disclosure requirements for summaries were set out in five Tables, A, B, C, D and E, (the “**Tables**”). These were based on an assessment by ESMA of what the key information disclosure requirements are for each of the annexes to the Prospectus Regulation.
170. Some respondents have commented that the contents requirements for summaries should not be based on the individual annexes. The argument is made that this “*bottom up*” approach would lead to summaries being too long. Instead a “*top down*” approach should be adopted that provides a more abstract basis for the contents of summaries. Other respondents commented that the modular approach has the advantage of allowing issuers to construct summaries according to the annexes addressed in the main body of the prospectus and that this combines the advantages of comparability and flexibility.
171. ESMA’s response to the feedback is that it will keep to the modular approach proposed in the CP. The thinking is as follows:
- a. The advantage of the modular approach is that it accommodates all possible prospectuses.
 - b. The disclosure obligations for prospectuses, under the PD regime, are already based on the “*necessary information test*” in Art 5.1 PD⁷ and on the mandatory disclosure requirements in Annexes I to XVII of the PR. Basing the Tables’ mandatory disclosure requirements for summaries on the component annexes from which individual prospectuses are constructed ensures the maximum correlation between a summary and the main body of its prospectus.
 - c. It is not ESMA’s intention that the only information which may appear in summaries is drawn from the disclosure requirements in the Tables. Just as there is a necessary information test under Art 5.1 PD, issuers should be considering Art 5.2 PD to ensure that summaries are drawn up so that their contents convey the key information of the securities, the issuer and the guarantor (if any) concerned in order to aid investors when considering whether to invest in the securities offered. This “*top down*” abstract approach is not intended to be excluded by the “*bottom up*” concrete disclosure requirements in the Tables.
 - d. In response to comments that summaries could be too long, ESMA has re-assessed the “*Elements*”⁸ set out in the Tables. This is described below.

Flexibility

172. A common concern of respondents was that the approach in the CP was too rigid.

⁷ “... 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.”

⁸ In the CP the disclosure requirements set out in the Tables were initially referred to as “Points”. This has been changed to “Elements” to better reflect the change from a hard format regime to a softer one and to mimic the ‘*essential elements*’ wording used in Article 5.2 PD.

173. On page 34 of the CP the “*Guide to using the tables*” states: “3. For each point the summary should disclose: the point number; the disclosure requirement; and the disclosure. Points should appear in the summary in their numeric order.”
174. ESMA’s response to the feedback has been to re-examine the format of summaries that was set out in the CP. The revised position is as follows:
- a. ESMA has kept the five Sections in the Tables (A, B, C, D and E). These Sections must appear in a summary in that order.
 - b. Within each of the Sections the Elements may be disclosed either in the order in which they appear in the Tables or in another order. If another order is chosen the issuer will need to supply the competent authority of the Home Member State with a cross reference list.
 - c. The disclosure Element’s number and its disclosure requirement will not have to be reproduced in the summary.
175. The explanation for the revised position is as follows:
- a. The mandate, in accordance with the AD, invites ESMA to 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 ESMA’s original position, in the CP, ESMA sought to ensure that every mandatory disclosure Element for a summary would appear in a prescribed order to ensure comparability for investors. As the contents of the Tables were derived by reviewing the disclosure requirements in the Annexes to the Prospectus Regulation, the order in the Tables heavily follows the order used in the Annexes.
 - b. In the light of the feedback, ESMA has reassessed this approach and modified it to allow greater flexibility for issuers in preparing summaries. This approach is similar to that in Articles 25 & 26 PR which requires prospectuses to be made up of four parts in a specified order but leaves the ordering within each part to the issuer’s discretion. In particular, the new approach follows that in: Article 25.3 PR – that issuers are free to define the order of the required information items; and Article 25.4 PR – that competent authorities may request a list for the purpose of checking the disclosure before approving a prospectus.
 - c. The Tables should form a new annex to the PR⁹. An amendment to the PR will need to be made so that provisions akin to those in Articles 25.3 and 25.4 PR would apply to summaries to allow this free ordering of material in each section.
 - d. Although this new approach will mean that each Element will not be partitioned into a uniquely identifiable position within a summary, the information to be disclosed will be set within the five Sections. This achieves comparability, and balances that with the need for readability and for summaries to be readily understood by investors.

⁹ Mandate; para 3.2; first para in textbox

176. ESMA maintains its position that summaries should only have the five Sections A, B, C, D and E that are set out in the Tables. ESMA is not persuaded that there is a need for a sixth Section to accommodate “*other information*”. This is because, first, the disclosure requirements in the Tables seek to identify the key information to be in summaries. It is highly probable that they catch all possible key information – whether under issuer, securities, risks, or offer. Should the individual elements not catch some particular matter, under exceptional circumstances, it can still be accommodated in the summary – but it will have to be put into one of the five Sections. For example, specialist issuers producing property reports, mineral reports etc will be able to include information about these matters in the summary.
177. The proposal was made in the responses that the overriding test for whether information is disclosed in the summary in relation to each of the Elements is whether that information is key information in the context of Art 5.2 PD so allowing an issuer to omit information required by the Tables even if it appears in the main body of the prospectus.
178. ESMA has considered this suggestion but has not adopted it. The reasons are as follows:
- a. ESMA’s position is that the Tables set out the mandatory key information to be in summaries. Issuers are able to add information to the summary to ensure that the summary is complete in the context of Art 5.2 PD.
 - b. The disclosure requirements in the Tables have been reached after ESMA has reflected on the detailed and exhaustive description of the essential and appropriately structured key information to be provided to investors, as required by the mandate¹⁰. This establishes the mandatory key information to be in summaries. Combined with the structure of having five Sections in a summary, it allows comparison of summaries of similar products by ensuring that equivalent information always appears in the same position in the summary¹¹.
 - c. The disclosure requirements in the Tables are the mandatory disclosure requirements for summaries so long as that information appears in the main body of the prospectus. If there is no information in the prospectus about a matter that is required to be disclosed in the Tables it is not possible for it to appear in the summary. The disclosure in the summary will therefore automatically follow the treatment for the overall prospectus in terms of what is “*not applicable*” or where a waiver from disclosure has been granted.

Role for competent authorities in scrutinising prospectuses

179. In Question 14 in the CP ESMA asked for feedback on the proposal for amending Article 3, 3rd paragraph PR. This would extend the role for Member States’ competent authorities in the prospectus scrutinising process to ensure that the correct balance is maintained between ensuring 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.

¹⁰ Mandate; paragraph 3.2; second para in textbox

¹¹ Recital 15, AD

180. Good numbers of respondents were both for and against this proposal with more against. Of those against some argued that this would somehow result in final terms being approved by competent authorities; but this is neither the intention nor the case.
181. ESMA remains of the view that Article 3 PR should be extended so that it also applies to summaries.

Mandatory key information

182. Respondents expressed the view that there were too many individual disclosure requirements in the Tables.
183. In the light of these comments ESMA has reassessed the lists of Elements in the Tables and has removed or amended some. The changes are:
- a. In all the Elements ESMA deleted the wording '*brief*'. Instead, a general remark in the "Guide to using the Tables" was added that to the extent required by an element, descriptions should be brief.
 - b. Elements A.1 and A.2 were removed as ESMA considered this information not 'key' information.
 - c. Element B.4 was split into B.4a and B.4b to follow the different wordings on trend information for equity and non-equity offerings more closely.
 - d. Element B.6 was amended by inserting '*if any*' at the end of the second paragraph. This was done to clarify that a negative statement is not required in cases where there are not different voting rights. Furthermore, a reference to item 17.2 of Annex 1 was added in the Sources column to clarify that '*any person*' also includes the persons referred to in that item.
 - e. In Element B.7 the wording '*of key performance indicators and*' was deleted. The deletion was made because in the relevant items (items 3.1, 3.2, 9 and 20.9) of Annex 1 this information is not required.
 - f. In Element B.8 the wording '*A brief summary of any pro forma financial information*' was amended to '*Selected key pro forma financial information*'. This amended wording is intended to match the type of information that is required under Element B.7.
 - g. In Element B.8 the statement of Annex 2, item 1 (c) was added as a requirement. Due to the nature of pro forma financial information ESMA deemed it important to include this statement regarding the nature of selected key pro forma financial information.
 - h. Element B.10 was amended by adding the wording '*audit report on the*' to clarify that it only applies to any qualifications in *audit reports*.
 - i. Element B.11, was rewritten to reflect that only in those cases where the issuer's working capital is not sufficient should an explanation be included in the summary.
 - j. In Element B.14 the typo 'a', in the wording '*If the issuer is a dependent*', was removed.

- k. In Element B.15 the wording '*stating the main categories of products sold and/or services performed, including its competitive position*' was removed. ESMA agreed with some respondents that for non equity prospectuses it would suffice to only disclose the issuer's principal activities.
- l. Element B.17 was reworded to reflect that it would suffice to only include the credit rating in the summary and not the description of the credit rating.
- m. In Element B.18 the wording '*including its terms and condition*' was removed. ESMA considered that a brief description of the nature and scope of the guarantee would also cover the material terms and conditions.
- n. Element B. 25 was reworded to '*A description of any material adverse change in the prospects of the issuer since the date of its last published audited financial statements*'. This is to clarify that a negative statement is not requested.
- o. Element B.29 was inserted into Element B.26. ESMA considered it more practical to group related Elements.
- p. Elements B.27, B.28 and B.30 were removed as ESMA considered that these Elements were already sufficiently covered by Element B.26 under '*a description of the underlying assets*'.
- q. Element B.36 was merged with Element B.34 as ESMA considered it more practical to group related Elements.
- r. Element B.44 was merged with Element B.40 to include investments restrictions. ESMA considered it more practical to group related Elements.
- s. Element B.44 was removed since it was merged with Element B.40.
- t. In Element C.1 the reference to the ISIN code was replaced by the wording '*any security identification number*'. This was done to clarify that any identification code should be given in the summary.
- u. Element C.3 was deleted because ESMA considered this Element not to be key information.
- v. Element C.8 was amended by deleting in the requirement to provide the past amounts of dividend per share in the summary. ESMA considered it sufficient to only disclose on the dividend policy.
- w. Element D.1. was amended to follow the wording of item 4 of Annex 1 more closely.
- x. For Element D.2 the reference to Annex 1 was removed due to the amendments in Element D.1.
- y. Element E.2 was split into E.2a and E.2b to clarify that for non-equity offerings for other reasons than for making profit and/or hedging certain risks, this should be explained in the summary.

To assist the reader, the same numbering sequence has been used for the Elements in the Technical Advice as was used for the Points in the CP. For example: A.1 and A.2 have been deleted; the CP did not include a Point B.22; and B.4 has been split into B.4a and B.4b. It is thought that this presentation best allows the reader to understand the changes that have been made.

184. As explained above, ESMA has modified the proposals to allow disclosure within a Section of the summary to be either in the order in which they appear in the Tables or in another order. To reflect this change from a hard format regime to a softer one in which the information in a summary's Section can be freely assembled we have renamed "*Points*" to "*Elements*" as this better captures the idea of assembling the key information. It also mimics the "*essential elements*" wording used in Art 5.2 PD.

Profit forecasts

185. In the CP we asked a specific question about profit forecasts. The majority of the respondents were not in favour of augmenting Element 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.
186. ESMA has decided not to augment Element B.9 and to keep the proposed wording. The reason for this is that where profit forecasts or estimates are made ESMA is of the view that an investor would need detailed background information relating to those forecasts or estimates in order to assess and value them correctly. Requiring this detailed information in the summary would render the summary too long as the purpose of the summary is to allow the investor to decide which offers and admissions of securities to consider further. Having the information in the main body of the prospectus properly ensures that investors are able to make informed decisions.

Length of summaries

187. The questions in the CP on the length of summaries were in three parts. Question 11a asked whether the approach in the CP would adequately limit the length of summaries. Responses suggested that there were too many disclosure Elements in the Tables. In response to this we have re-considered the Elements as described in paragraph 183.
188. Question 11b in the CP asked what "*short*" was from the view point of issuers and investors. Generally, the responses were that the appropriate length of a summary depended on the circumstances and the complexity of the issuer, guarantor and the products.
189. In Question 11c ESMA asked for views on what a numeric limit of the length of summaries might be. The responses were: a strict limit was not necessary; the 2,500 word limit in Recital 21 PD should be used; summaries should not be more than 10 pages, or 10-15 pages, and that 2 to 3 pages might be enough for retail investors. Those in favour of a percentage suggested limits of under 10%.
190. ESMA's response to the feedback is that there should be a length limit for summaries. The thinking is as follows:
 - a. Recital 21 of the original PD states that summaries normally should not exceed 2,500 words. The AD has changed the regime for summaries with its Recital 15 and its amendments to Article 5 PD. The PD regime now requires comparability between summaries

based on their format and content and the requirements for key information. As a consequence Recital 21 has to be considered outmoded.

- b. The length of summaries will be a function of the complexity of an issuer and its security. This favours an approach linking the length of summaries to the length of prospectuses. However, a summary is to be read as an introduction to a prospectus¹² and it is appropriate that guidance is provided on what would be a limit for the more complex prospectuses and securities.
- c. ESMA has considered what the limits to summaries' lengths should be and has adopted a generous upper limit.
- d. ESMA therefore proposes that:
 - i. At Level 2, there should be a provision that normally summaries should not exceed 7% of the length of a prospectus or 15 pages, whichever is the shorter.
 - ii. At a further stage ESMA would then be able to require that the summary would be drafted in the '*normal*' layout formatting of the prospectus (rather than in a small print, for example) and that the calculation of percentage should be performed by excluding financial information from the denominator.
 - iii. The summary that appears in a base prospectus can contain options relating to the information disclosure. It is important that the summary which is attached to the final terms meets the requirements on the length of summaries. This will need to be considered when an issuer prepares a summary in a base prospectus that contains options. This could also be expanded on by ESMA at a further stage.

Risks

191. Respondents expressed a concern that a prohibition on including risk factor headings is not appropriate.
192. It is not ESMA's intention to ban issuers from including risk factor headings in the summary and have therefore reassessed the wording in paragraph 105 of the CP.
193. ESMA's intention is that summaries contain the key information on the key risks. In paragraph 105 ESMA stated that: "*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.*" On further consideration ESMA acknowledges that it is possible that a risk heading could contain the key information on a key risk and the General principles have been re-written to accommodate this.
194. Also, ESMA noted that there may be a liability concern if issuers are required to distinguish in the summary which risks are key and which are not and that such a split would have introduced into the summary a disclosure requirement that is not already required in the PR. However, as the PD

¹² Art 5.2(a) PD

has been amended to require the summary to contain the key information and to be brief, this will be the reality for all disclosures in summaries.

195. The revised position therefore is that the summary has to contain the key information on the key risks and issuers are free to include the headings of risks if it achieves this objective of giving key information on key risks.
196. ESMA maintains its position concerning avoiding “*reproducing long tracts from the risk factors section*” as extensive “*boilerplate*” is not appropriate for summaries.

Boilerplate, copying & pasting

197. Respondents were firm in their view that a summary should not be a “*fresh assessment*” by the issuer of the key information in the prospectus¹³. Similarly, the suggestion that summaries should be written as though they formed the “*body of a letter*” from the chair, or managing board of the issuer¹⁴ was unwelcome. The “*fresh assessment*” wording had led commentators to point out that this makes it very difficult to ensure that the summary is always consistent with the rest of the prospectus and is likely to encourage litigation on the basis that the summary is claimed to be misleading or inconsistent with the prospectus. ESMA has removed these two expressions from the General principles in recognition that these expressions were not helpful.
198. ESMA’s intention is not to prohibit wording appearing in the summary that also appears elsewhere in the prospectus. The concern is to avoid lengthy “*boilerplate*” text being reproduced in the summary by the excessive use of “*copy & pasting*”. This is a concern about length and otherwise there is no reason why text from the main body would not be suitable for the summary. Consequently there should not be extensive copying of text from the main body of a prospectus into the summary, though there may be a need to reproduce small pieces of text.

Cross references

199. In the “*Guide to using the tables*” in the CP it stated: “*5. Summaries should not contain cross-references to specific parts of the prospectus.*” Some respondents thought that this was not appropriate as a cross-reference allows the reader to easily move to a part of the prospectus that is of particular interest.
200. ESMA has reconsidered this issue but has not altered its position. The reasons are as follows:
 - a. A summary should be read as an introduction to a prospectus¹⁵ and should be a self-contained part of the prospectus¹⁶. This suggests that cross references are not an expected component of summaries. Added to this, a summary forms the second of the four mandatory sequenced parts of a prospectus¹⁷: contents; summary; risk factors; and then the other information items required by the PR. Summaries are positioned immediately after “*a clear and detailed table of contents*”. This juxtaposition supports the idea that the two should be kept separate – including cross-references in the summary goes against this.

¹³ CP; para 99

¹⁴ CP; para 101

¹⁵ Art 5.2(a) PD

¹⁶ Recital 15 AD

¹⁷ Art 25.1 & 26.1 PR

- b. ESMA's concern is that cross references in summaries carry the risk that summaries are not self-contained. Also, a cross reference might substitute for a concise¹⁸ explanation in the summary. Whilst recognising the value of a system that draws the readers' attention to particular parts of a prospectus, ESMA is of the view that this is best achieved with a clear table of contents. The prohibition on cross references also means that, during the prospectus approval process, issuers and competent authorities will not have to debate whether each cross reference is merely doing the job of the table of contents or is incorporating information by reference from the main body of the prospectus into the summary – which would suggest that the text of the summary would need to be improved.
- c. ESMA acknowledge that Question 13 in the CP had asked whether a summary should have a mandatory reference to the forecast being reported on in the main body of the prospectus. This did not extend to a cross reference, and is dealt with above at paragraphs 185 and 186.

Translation

201. Respondents raised concerns about the costs of translations arising from the proposals relating to summaries attached to final terms.
202. ESMA have addressed this issue in Section III (paragraphs 64-69) which deals with the proposals for final terms.

Costs

203. Question 15 asked respondents to estimate the change on costs arising from the proposals for summaries. A number of respondents thought that the translation requirements for summaries arising from the changes to final terms would be "huge" or "considerable". These issues are addressed in Section III (paragraphs 53-69) which deals with the proposals for final terms.
204. Some responses said that no precise estimate in cost was possible. Other comments were that cost increases would arise from: the need to re-write information for the summary; the removal of the 2,500 word limit; the new modular approach would not adequately limit summary lengths; and because of additional (legal) costs.
205. ESMA has noted these concerns. The various changes that ESMA has described in this feedback statement should reduce the cost impact of the changes made. In particular, changes that would ease the summary production process, and therefore costs, include: (1) creating greater flexibility to allow free-form drafting in each of the five Sections in a summary; (2) a re-assessment of, and reduction in the number of Elements; (3) clarification on the normal maximum length of summaries; (4) clarification of the approach on risks; and (5) clarification on concerns with "boilerplate".

PRIPs KIID

206. A number of respondents commented on PRIPs¹⁹. Comment was made that the changes to the summary regime should be revisited when the work on PRIPs KIID²⁰ is progressed. The concern

¹⁸ Art 5.2 PD

¹⁹ Packaged Retail Investment Products

²⁰ Key Investor Information Document

was raised that the proposed changes to the summary may pre-empt or contradict the outcome of the work on PRIPs KIID.

207. Recital 27 AD speaks of aligning to the greatest extent possible the content and form of the summary for securities with the outcome of the PRIPs KIID and of preventing the duplication of documents and potential confusion for investors as well as minimising the costs. The Mandate requires ESMA to take into account the objective of the work on PRIPs²¹, in particular to avoid any duplication of disclosure requirements and so any costs and liability for PRIPs' offerors.
208. In the CP²² ESMA explained that the work on PRIPs KIID was still at the Level 1 drafting stage. This has meant that there has not been any Level 2 material for ESMA to engage with and consequently it has not been possible to align the requirements for prospectus summaries with that work. The approach that ESMA has taken is to identify the information from the main body of prospectuses that should be in summaries. This unilateral approach arises from the separate timetable for the PRIPs and prospectus work.
209. Some respondents referred to the work on UCITS²³ KIID, which we mentioned in the CP²⁴. However, whilst this is similar to the work that will have to be done on PRIPs it will be necessary to wait for the work on PRIPs to be undertaken to allow alignment with the structures that emerge for PRIPs.
210. ESMA has therefore undertaken this work on a standalone basis. The Commission will need to consider how best prospectus summaries and PRIPs KIID might be aligned and what role the Commission wish ESMA to play in that work.

Templates

211. The CP stated that

“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.”²⁵

This position remains unchanged.

Annex 9 and 13

212. ESMA acknowledge that under Article 5.2 PD issuers are not required to include a summary in the case of an offering of non-equity securities having a denomination of at least EUR 100.000. How-

²¹ Mandate; paragraph 3.2; last para

²² CP; para 85

²³ Undertakings for Collective Investment in Transferable Securities

²⁴ CP; para 86

²⁵ CP; para 76

ever, where a summary is included in a prospectus for admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100.000, whether because this is required by a Member State in accordance with Article 19.4 PD or on a voluntary basis, the disclosure requirements for the summary will be as set out in the Tables.

213. Where an issuer is not under an obligation to include a summary in a prospectus but wishes to produce some overview section in the prospectus, it should ensure that it is not titled “*summary*” if it wishes to avoid having to meet the disclosure requirements for summaries.

VI. Technical Advice on summaries

VI.I. Changes to the Prospectus Regulation

214. The following changes should be made to the Prospectus Regulation:

- a. A new Annex should be introduced as set out in Section VI.III below. This answers the request in the mandate for advice on the possible schedules and building blocks of the summary document.
- b. An amendment should be made to allow issuers to be free to define the order of the required information in summaries and so that competent authorities may request a cross reference list for the purpose of checking the disclosure before approving the prospectus (see paragraph 175.b above).
- c. Article 3 should be amended so that it also applies to summaries (see paragraph 181 above).
- d. Therefore a new 4th paragraph would need to be inserted in Article 3 and is suggested to read as follows:

“Where an issuer, offeror or person asking for the admission to trading on a regulated market, in conformity with its obligation under Article 5(2) of Directive 2003/71/EC, includes a summary in a prospectus, the competent authority of the home Member State, when approving that prospectus in accordance with Article 13 of that Directive, may require that the information provided by the issuer, offeror or person asking for the admission to trading on a regulated market, included elsewhere in the prospectus, also be included in the summary on a case by case basis.”

- e. Also specifically for base prospectuses ESMA recommend that a new 4th paragraph would also be inserted in Article 22(1). The suggested wording for this provision would be:

“Where an issuer, offeror or person asking for the admission to trading on a regulated market, in conformity with its obligation under Article 5(2) of Directive 2003/71/EC, includes a summary in a base prospectus, the competent authority of the home Member State, when approving that base prospectus in accordance with Article 13 of that Directive, may require that the information provided by the issuer, offeror or person asking for the admission to trading on a regulated market, included elsewhere in the base prospectus, also be included in the summary on a case by case basis.”

- i. Relating to the suggested Articles 3, 4th paragraph and 22(1), 4th paragraph, amendments should also be made to article 24 clarifying that although issuers, offerors or person asking for admission to trading on a regulated market may determine on their own the detailed content of the summary, they should take into account the new regime for the contents of summaries. ESMA suggest the following amended wording for Article 24:

“The issuer, offeror or person asking for the admission to trading on a regulated market shall determine the detailed content of the summary to the prospectus or base prospectus referred to in Article 5(2) of Directive 2003/71/EC. A summary shall contain the information items required in Annex [•] depending on the type of issuer and securities involved.”

- f. An amendment should be made to provide that normally summaries should not exceed 7% of the length of a prospectus or 15 pages, whichever is the shorter (see paragraph 190.d. i) above).
- g. Provision should be made to enable ESMA to require that the summary would be in a ‘normal’ layout format of the prospectus, that the calculation of percentages should be performed by excluding financial information from the denominator and related to the length of summaries attached to final terms (see paragraph 190.d. ii & iii) above).

VI.II. General principles

- 215. The Tables set out the mandatory key information to be included in a summary. Issuers may also add information to ensure that the summary is complete in the context of Art 5.2 PD.
- 216. A summary must be made up of the five Sections in the Tables (A, B, C, D & E). These Sections must appear in a summary in that order. No other Section may be added.
- 217. Within each of the Sections the Elements may be disclosed either in the order in which they appear in the Tables’ Sections or in another order. If another order is chosen the issuer will need to supply the competent authority of the Home Member State with a cross reference list.
- 218. Summaries should be read as an introduction to the prospectus. 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.
- 219. 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

- 220. 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”.
- 221. 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

222. 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 [Article 6.2 PD].
223. 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.

Risk factors

224. The summary has to contain the key information on the key risks and issuers are free to include the headings of risks if it achieves this objective of giving key information on key risks.

“Boilerplate”

225. Issuers should avoid lengthy “*boilerplate*” text being reproduced in the summary by excessive “*copy & pasting*”. This is a concern about length and otherwise there is no reason why text from the main body would not be suitable for the summary. Consequently there should not be extensive copying of text from a the main body of a prospectus into the summary, though there may be a need to reproduce small pieces of text

Cross references

226. Summaries should be self contained and may not contain cross references to other parts of the prospectus.

VI.III. Format and contents of summaries for annexes I to XVII of the Prospectus Regulation

A new Annex to 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.
- To assist the reader, the same numbering sequence has been used for the Elements below as was used for the Points in the CP. For example: A.1 and A.2 have been deleted; the CP did not include a Point B.22; and B.4 has been split into B.4a and B.4b. It is thought that this presentation best allows the reader to understand the changes that have been made.

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 Elements for Annexes I and III.
2. Each summary will be made up of five tables as detailed below.
3. The order of the sections A-E is mandatory. However, within each of the sections the elements may be disclosed either in the order they appear in the Tables or in another order. If another order is chosen the issuer will need to supply the competent authority with a cross-reference list.
4. Where an element is not applicable to a prospectus the Element should not appear in the summary. This would ensure that summaries do not contain “*not applicable*” for any element.
5. To the extent required by an element, descriptions should be brief.
6. Summaries should not contain cross-references to specific parts of the prospectus.
7. Summaries for prospectuses using new annexes relating to proportionate disclosure should treat as non-applicable elements correlating to items not required for the proportionate prospectus annex.
8. Where a prospectus discloses information in accordance with either or both of Annexes 9 or 13, either because this is required by a Member State in accordance with Article 19.4 PD, or on a voluntary basis, the disclosure requirements for the summary in relation to Annexes 9 and 13 are as set out in the Tables. Where an issuer is not under an obligation to include a summary in a prospectus but wishes to produce some overview section in the prospectus, it should ensure that it is not titled “*summary*” if it wishes to avoid having to meet the disclosure requirements for summaries.



Section A – Introduction and warnings

Annexes	Element	Disclosure requirement	Source
All	A.3	<p>Warning that:</p> <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> 	<p><i>Art 5.2 PD</i></p> <p><i>Art 6.2 PD</i></p>

Section B– Issuer and any guarantor

Annexes	Element	Disclosure requirement	Source
1, 4, 7, 9, 11	B.1	The legal and commercial name of the issuer.	<p><i>Annex 1, item 5.1.1</i></p> <p><i>Annex 4, item 5.1.1</i></p> <p><i>Annex 7, item 4.2</i></p> <p><i>Annex 9, item 4.1.1</i></p> <p><i>Annex 11, item 4.1.1</i></p>
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.	<p><i>Annex 1, item 5.1.4</i></p> <p><i>Annex 4, item 5.1.4</i></p> <p><i>Annex 7, item 4.5</i></p> <p><i>Annex 9, item 4.1.4</i></p> <p><i>Annex 11, item 4.1.4</i></p>

Annexes	Element	Disclosure requirement	Source
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	B.4a	A description of the most significant recent trends affecting the issuer and the industries in which it operates.	<i>Annex 1, item 12</i>
4, 11	B.4b	A description of any known trends affecting the issuer and the industries in which it operates.	<i>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 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 if any. 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, item 18.1 Annex 1, item 18.2 Annex 1, item 18.3 Annex 1, item 17.2</i>
1	B.7	Selected historical key financial information regarding the issuer, presented for each financial year of the period 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. This should be accompanied by a narrative 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.	<i>Annex 1, items 3.1 & 3.2 Annex 1, item 9 Annex 1, item 20.9</i>
1, 2	B.8	Selected key pro forma financial information, identified as such. The selected key pro forma financial information must clearly state the fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results.	<i>Annex 1, item 20.2 Annex 2, item 1 (c)</i>

Annexes	Element	Disclosure requirement	Source
1, 4, 9, 11	B.9	Where a profit forecast or estimate is made, state the figure.	Annex 1, item 13 Annex 4, item 9 Annex 9, item 8 Annex 11, item 8
1, 4, 9, 11	B.10	A description of the nature of any qualifications in the audit report on the historical financial information.	Annex 1, item 20.1 & 20.4.1 Annex 4, item 13.3.1 Annex 9, item 11.3.1 Annex 11, item 11.3.1
3	B.11	If the issuer's working capital is not sufficient for the issuer's present requirements an explanation should be included.	Annex 3, item 3.1
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 description of any material adverse change. • A description of significant changes in the financial or trading position subsequent to the period covered by the historical financial information. 	Annex 4, item 3 Annex 9, item 11 Annex 11, item 11 Annex 4, item 8.1 Annex 9, item 7.1 Annex 11, item 7.1 Annex 4, item 13.7 Annex 9, item 11.6 Annex 11, item 11.7
4, 9, 11	B.13	A 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 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 description of the issuer's principal activities.	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

Annexes	Element	Disclosure requirement	Source
			<i>Annex 7, item 7.1 Annex 9, item 10.1 Annex 11, item 10.1</i>
5, 13	B.17	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.	<i>Annex 5, item 7.5 Annex 13, item 7.5</i>
6	B.18	A description of the nature and scope of the guarantee.	<i>Annex 6, items 1 & 2</i>
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.	<i>Annex 6, item 3</i>
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.	<i>Annex 7, item 4.1</i>
7	B.21	A 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.	<i>Annex 7, items 5.1 & 5.2</i>
	[B.22]		<i>[B.22 was not included in the CP]</i>
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.	<i>Annex 7, item 8.1</i>
7	B.24	<i>Use only the first paragraph of B.7</i>	<i>Annex 7, item 8.2</i>
7	B.25	A description of any material adverse change in the prospects of the issuer since the date of its last published audited financial statements.	<i>Annex 7, item 8.4</i>
8	B.26	A 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 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 description of the legal nature of the assets • loan to value ratio or level of collateralisation • Where a valuation report relating to real property is included in the prospectus, a description of the valuation. 	<i>Annex 8, item 2 Annex 8, item 2.2.16</i>
8	B.31	In respect of an actively managed pool of assets backing the issue a description of the parameters within which investments can be made, the name and description of the entity responsible for such management including a	<i>Annex 8, item 2.3/2.3.2</i>

Annexes	Element	Disclosure requirement	Source
		b description of that entity's relationship with any other parties to the issue.	
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 description of the structure of the transaction, including, if necessary, a structure diagram.	Annex 8, item 3.1
8	B.34	A description of the flow of funds including information on swap counterparties and any other material forms of credit/liquidity enhancements and the providers thereof.	Annex 8, item 3.4 Annex 8, item 3.8
8	B.35	The name and a description of the originators of the securitised assets.	Annex 8, item 3.5
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 • B.6 • B.7 • B.9 • B.10 • D.4 	Annex 10, items 1 to 25
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.” 	Annex 10, items 26.1 & 26.3
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 	Annex 15, preamble

Annexes	Element	Disclosure requirement	Source
		<ul style="list-style-type: none"> • C.4 • C.8 • D.2 	
15	B.40	A description of the investment objective and policy, including any investment restrictions, 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 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.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 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 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 description of any cross liability that may occur between classes or investment in other collective investment undertaking.	<i>Annex 15, item 7.1</i>

Annexes	Element	Disclosure requirement	Source
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 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 description of the issuer, including: <ul style="list-style-type: none"> • The legal name of the issuer and a description of the issuer’s position within the national government framework. • 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. 	<i>Annex 16, item 3</i>
16	B.55	A description/the key facts of public finance and trade information for the two fiscal years prior to the date of the prospectus. With a 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 description of the issuer, including: <ul style="list-style-type: none"> • The legal name of the issuer and a description of the issuer’s legal status. • The legal form of the issuer. • A 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 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	Element	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 any security identification number.	Annex 3, item 4.1 Annex 5, item 4.1 Annex 12, item 4.1.1 Annex 13, item 4.2
3, 5, 12, 13	C.2	Currency of the securities issue.	Annex 3, item 4.4 Annex 5, item 4.4 Annex, 12, item 4.1.5 Annex 13, item 4.5
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.	Annex 1, items 21.1.1.(b) & (c)
3	C.5	A description of the rights attached to the securities.	Annex 3, item 4.5
3, 5, 12, 13	C.6	A description of any restrictions on the free transferability of the securities.	Annex 3, item 4.8 Annex 5, item 4.13 Annex 12, item 4.1.10 Annex 13, item 4.14
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.	Annex 3, item 6
1	C.8	A description of dividend policy.	Annex 1, item 20.7
5, 12, 13	C.9	<i>C.5 plus:</i> <ul style="list-style-type: none"> “including ranking” “including limitations to those rights” 	Annex 5, item 4.5 Annex 5, item 4.6 Annex 12, item 4.1.6 Annex 12, item 4.1.7 Annex 13, items 4.6 & 4.7
5, 13	C.10	<i>C.9 plus:</i> <ul style="list-style-type: none"> “the nominal interest rate” “the date from which interest becomes payable and the due dates for interest” 	Annex 5, item 4.7 Annex 5, item 4.8 Annex 5, item 4.9 Annex 5, item 4.10

Annexes	Element	Disclosure requirement	Source
		<ul style="list-style-type: none"> “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” 	Annex 13, items 4.8, 4.9, 4.10 & 4.11
5	C.11	<i>C.10 plus:</i> <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” 	Annex 5, item 4.7
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.	Annex 5, item 6.1 Annex 12, item 6
8	C.13	The minimum denomination of an issue.	Annex 8, item 1.1
10	C.14	Information about the underlying shares: <ul style="list-style-type: none"> C.1 C.2 C.3 C.4 C.5 C.6 C.7 C.8 	Annex 10, items 20.6 & 21.1.1 Annex 10, item 27 Annex 10, item 30
10	C.15	Information about the depository receipts: <ul style="list-style-type: none"> C.1 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.” 	Annex 10, item 28 Annex 10, item 28.8 Annex 10, item 28.12

Annexes	Element	Disclosure requirement	Source
		<ul style="list-style-type: none"> “Description of the bank or other guarantee attached to the depository receipt and intended to underwrite the issuer’s obligations.” 	
12	C.16	A 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.	<i>Annex 12, item 4.1.2</i>
12	C.17	The expiration or maturity date of the derivative securities – the exercise date or final reference date.	<i>Annex 12, item 4.1.11</i>
12	C.18	A description of the settlement procedure of the derivative securities.	<i>Annex 12, item 4.1.12</i>
12	C.19	A description of how the return on derivative securities takes place.	<i>Annex 12, item 4.1.13</i>
12	C.20	The exercise price or the final reference price of the underlying.	<i>Annex 12, item 4.2.1</i>
12	C.21	A description of the type of the underlying and where the information on the underlying can be found.	<i>Annex 12, item 4.2.2</i>
13	C.22	Indication of the market where the securities will be traded and for which prospectus has been published.	<i>Annex 13, item 5</i>
14	C.23	Information about the underlying share: <ul style="list-style-type: none"> “A 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.” 	<i>Annex 14, item 1</i> <i>Annex 14, item 1.4</i> <i>Annex 14, item 1.3</i> <i>Annex 14, item 1.5</i> <i>Annex 14, item 1.7</i> <i>Annex 14, item 1.8</i> <i>Annex 14, item 2</i>

Section D – Risks

Annexes	Element	Disclosure requirement	Source
1	D.1	Key information on the key risks that are specific and individual to the issuer or its industry	Annex 1, item 4
4, 7, 9, 11, 16, 17	D.2	Key information on the key risks that are specific and individual to the issuer.	Annex 4, item 4 Annex 7, item 3 Annex 9, item 3 Annex 11, item 3 Annex 16, item 2 Annex 17, item 2
3, 5, 13	D.3	Key information on the key risks that are specific and individual to the securities.	Annex 3, item 2 Annex 5, item 2 Annex 13, item 2
10	D.4	Information about the issuer of the underlying shares: • D.2	Annex 10, item 4
10	D.5	Information about the depository receipts: • D.3	Annex 10, 31.3.1
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.”	Annex 12, item 2

Section E – Offer

Annexes	Element	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, 10	E.2a	Reasons for the offer, use of proceeds, estimated net amount of the proceeds.	<i>Annex 3, item 3.4 Annex 10, item 31.1.1</i>
5, 12	E.2b	Reasons for the offer and use of proceeds when different from making profit and/or hedging certain risks.	<i>Annex 5, item 3.2 Annex 12, item 3.2</i>
3, 5, 10, 12	E.3	A 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 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>



VII. Feedback Statement on the Proportionate Disclosure Regime

General Observations

227. 31 participants out of 55 commented on the proposed proportionate disclosure regime for rights issues, SMEs and Small Caps and credit institutions issuing non-equity securities referred to in article 1(2)(j) of the Prospectus Directive (“PD”).
228. Generally speaking, respondents supported ESMA’s proposals regarding possible omissions for the proportionate regime. However issuers and industry groups representing issuers all asked for a much lighter regime. These comments nevertheless are balanced by the views of many market participants who agree with ESMA’s approach on rights issues as well as SMEs and Small Caps and share ESMA’s concern regarding investor protection. A more detailed analysis of the contributions to the consultation is presented in the next section (Consultation responses) of the feedback statement together with responses to the comments received.
229. In its consultation paper, ESMA asked market professionals to provide data on the costs for producing prospectuses (questions 36 and 40). Several participants did answer the request and provided costs estimates. Some respondents mentioned the study commissioned by DG Internal Market and Services on the impact of the prospectus regime on EU financial markets (June 2008). According to the study, the total cost for producing a prospectus was estimated at an average of €900,000. One respondent in particular estimated, in March 2009, that a prospectus would cost €600,000 for an issuer raising €5 million (over 10 per cent of the amount raised). The same respondent pointed out that *“the biggest cost savings in the proposed proportionate prospectus will come from deleting the requirement for the Operating and Financial Review, the historical financial information, and the indebtedness statements.”* Estimates for these costs are roughly :
- i. Operating and Financial Review : €22,500 to €113,000.
 - ii. Historical Financial Information : €22,500 to €113,000.
 - iii. Indebtedness Statement : €1,000 to €4,000.
230. Another respondent gave an example where the company raised €1.2 million with costs of drawing up the prospectus estimated at between €200,000 and €300,000. Other respondents gave estimates ranging from €500,000 to €2,000,000 including fees paid to law and audit firms and the costs of printing copies of the final document. Some respondents mentioned IFRS and IFRS annexes as the most burdensome requirements to comply with, especially for SMEs, along with data collection and the writing of the risk factors section.
231. Considering the comments received, the following amendments have been made to the proposals presented in ESMA’s consultation paper :
- i. Definition of “near identical” rights
 - ii. OFR in proportionate prospectus for SMEs and Small Caps

Consultation responses

232. Set out below is a summary of the feedback ESMA received to the consultation together with our responses.

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?

233. All respondents agreed with the principle of the proposal and the approach adopted by ESMA, i.e. that near identical rights should benefit from the proportionate regime for rights issues and that there should be a definition of these near identical rights.

234. Participants however raised several issues :

- One participant stressed the fact that the proposal made by ESMA should be dealt with by “*a change in the law rather than the current proposed process*”.
- According to another participant, the proportionate disclosure regime should not be limited to rights issues but should also apply to open offers, where shareholders are entitled to subscribe in proportion of their rights but do not receive compensatory rights.
- A third participant asked for clarification regarding the admission and trading of the rights.

235. Finally several participants suggested amendments to the definition proposed in the consultation paper. One participant also suggested that equal treatment of shareholders should be added to the list of characteristics. Others proposed the following definition for near identical rights :

- “ (a) shareholders are offered entitlements free of charge;*
- (b) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings;*
- (c) if there are holders of other securities, those holders are entitled to take-up new shares in accordance with the terms of those securities;*
- (d) the issuer is able, as regards entitlements under (b) and (c) above, to impose limits or restrictions or exclusions and make arrangements it considers necessary or appropriate to deal with treasury shares, fractional entitlements, record dates and legal, regulatory or practical problems in, or under the laws of, or requirements of any territory or regulatory body ;*
- (e) the minimum period during which shares may be taken up is similar to the period for the take-up of statutory pre-emption rights under the national legislation of the issuer;*
- (f) after expiration of the exercise period, the rights lapse.”*

236. ESMA has reformatted the definition of “*near identical rights*”, that was in paragraph 117 of the Consultation Paper, to take account of the feedback. In particular, ESMA has considered the argument that a proportionate disclosure regime for pre-emptive offers should not exclude open offers. ESMA notes that where foreign shareholders are excluded from a pre-emptive offer their holdings will be diluted and that therefore there is justification in limiting the proportionate disclosure regime to pre-emptive offers where compensation is made available to non-accepting shareholders. This provision has therefore been kept. The new wording, based now on the wording in paragraph 235 above, is as follows:

- “ (a) shareholders are offered entitlements free of charge;*
- (b) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings, or, in the case of other securities giving a right to participate in the share issue, in proportion to their entitlements to the underlying shares;*

(c) the entitlements to subscribe 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 those entitlements;

(d) the issuer is able, as regards entitlements under (b) above, to impose limits or restrictions or exclusions and make arrangements it considers necessary or appropriate to deal with treasury shares, fractional entitlements, and legal or regulatory requirements in, or under the laws of, or requirements of any territory or regulatory body;

(e) the minimum period during which shares may be taken up is similar to the period for the take-up of statutory pre-emption rights under Article 29 of Directive 77/91/EEC;

(f) after expiration of the exercise period, the rights lapse.”

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?

237. Most respondents agree that there should be only one regime applicable to issuers listed on regulated markets and MTFs with appropriate disclosures requirements.
238. The few participants who disagree, argue that the distinction between regulated markets and MTFs should be kept in order to achieve maximum proportionality of the requirements and to allow operators of MTFs to require information they deem necessary.
239. Considering the support received from market professionals and the fact that a single regime will be easier to implement, ESMA will propose only one proportionate schedule for issuers listed on regulated markets and MTFs.

Q18: Do you agree with the proposal to consider that appropriate disclosure 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?

240. As regards question 18, most respondents agreed that appropriate disclosures would, as a minimum, include the disclosures listed above. One participant stated that appropriateness of the disclosures requirements should be decided “*on a market by market basis by looking at those MTFs and determining if their rules are approximately equivalent on these specified points*”.
241. Views were split on question 19, but the majority of respondents proposed a deadline of 4 months (6 respondents were in favour of 4 months and 4 respondents in favour of a shorter deadline – 3 months or 2 months).

242. For a harmonised approach ESMA considers it necessary to define in more detail what minimum disclosure requirements MTFs need to impose on issuers, so that the competent authorities can determine on that basis if the MTF in question has appropriate disclosure requirements and rules on market abuse. Therefore we propose to continue with our proposal and will recommend that appropriate disclosure requirements for MTFs 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 price sensitive information.
243. Regarding the maximum deadline for publishing half-yearly financial statements, respondents did not provide any rationale for their answers. We assume that some of them based their answers on the rules of existing MTFs. ESMA considers a deadline of 4 months as appropriate, in particular taking into account that this would also fit with current market practices of most MTFs.

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?

244. A slim majority is in favour of including information mentioned in question 20: 6 participants consider that information on board practices and remuneration should be included and 5 consider that it is not necessary.
245. One participant insisted on the fact that updated information on the corporate governance structure of the company, its remuneration policy and remuneration structure is essential for analysing the issuer's risk profile. On the contrary, respondents who were not in favour of requiring information on corporate governance and remuneration pointed out that investors will be buying in the market and will base their decision on information already available.
246. As put forward by one participant, board practices and remuneration policy are key issues for many investors and most instrumental in assessing the issuer's risk profile. Moreover our approach in identifying items to be deleted, supported by the majority of respondents, is based on avoiding duplication with mandatory disclosures made pursuant to EU Legislation. This is consistent with the aim of the Prospectus Directive, which is a "maximum harmonization" directive, to harmonize information provided to investors and create a level playing field. The decision to allow certain items to be deleted from the proportionate regime can therefore not be based on national legal provisions, especially when the information is significant for many investors.
247. ESMA will therefore proceed as proposed in its consultation paper and recommend that disclosures on board practices and remuneration be required for issuers listed on MTFs.

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?

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?

248. No respondent identified and proposed any additional requirements for MTFs.
249. Question 22 actually included two questions on the rules of the MTFs regarding prohibition of market abuse. There was a consensus regarding the first question. As a matter of fact, all respondents agree that there should be provisions in order to prevent insider trading and market manipulation. On the second question, only 3 respondents stated they were in favour of full compliance with the provisions of Market Abuse Directive²⁶ in order to ensure a level playing field between regulated and non regulated markets.
250. Finally, all respondents agree that issuers listed on MTFs 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.
251. ESMA considers that issuers listed on MTFs can benefit from the proportionate regime when the rules of the MTFs concerned contain provisions :
- requiring issuers to publish annual financial statements and audit reports within 6 months after the end of each financial year, half-yearly financial statements within 4 months after the end of the first six months of each financial year, and inside information in the meaning of the Market Abuse Directive²⁷
 - requiring issuers to make the reports and information mentioned in the previous paragraph available to the public by posting them on their websites,
 - preventing insider trading and market manipulation.

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

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?

252. There is a broad consensus on the approach proposed by ESMA in order to determine which items to delete from prospectuses. Regarding question 23, one participant mentioned IAS Regulation 1606/2002/EC.

²⁶ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

²⁷ 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.”

253. Answers to the public consultation give us comfort regarding our approach. As regards Regulation 1606/2002/EC, this is implicitly taken into account in our reference to the Transparency Directive and the obligation to publish annual and half-yearly financial reports, since IFRSs are mandatory for issuers listed on regulated markets and establishing consolidated financial statements.

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?

254. The majority of respondents agreed with our analysis presented in paragraph 126 of the consultation paper that rights issues are addressed to shareholders who are already familiar with the language regime of the company. Those respondents therefore consider that the language regime is not a concern.
255. 4 participants consider that the language regime is an issue and that, in order to benefit from the proportionate regime, information made available by the issuer should comply with Article 19 of the Prospectus Directive, i.e. should be at least available in a language customary in the sphere of international finance.
256. Having considered the answers received, ESMA will recommend to the Commission that the proportionate regime for rights issues should not be conditional upon compliance with any language requirements.

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?

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?

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

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

Q33: Do you agree with the proposal to redraft certain items of Annexes I and III of the Prospectus Regulation as proposed in paragraphs 132 to 134? Are there any other items which should be redrafted?

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

257. Only two respondents actually disagree with the omissions proposed in the consultation paper. One respondent insisted on the fact that item 21.1.7 Annex I of the Prospectus Regulation (A history of share capital) “*is an essential information for investors and can therefore not be deleted*”. A second respondent considered that the proposed omissions should not be mandatory and particularly the following items of Annex I of the Prospectus Regulation (“PR”) :

- date of incorporation (item 5.1.3),
- property, plants and equipment (item 8),
- operating and financial review (item 9),
- capital resources (item 10).

This second respondent explained that these elements would be included in presentations to investors during road-shows and, to support equivalence of information, they will therefore have to be disclosed in prospectuses.

258. Except for those two respondents, all the other participants agreed with the deletions proposed but all call for more omissions. These respondents consider, for instance, that no historical financial information (question 32) should be required for issuers listed on regulated markets.

One participant explained “*that there are more items that could be deleted, as shareholders would already be familiar with basic information of the company (e.g. auditors, business overview, history and development, organisational structure etc).*” The same participant stated as a general principle that “*information which, by virtue of European Directives, is required to be, and has been, disclosed in an issuer’s latest report and accounts should not be required to be included*”, and provided a list of additional items that could be deleted, including information on:

- statutory auditors (item 2 Annex I of the PR),
- risk factors (item 4 Annex I PR),
- principal activities and markets (item 6 Annex I PR),
- the issuer’s position within its group (item 7.1 Annex I PR),
- administrative, management and supervisory bodies and senior management (item 14 Annex I PR),
- major shareholders (item 18 Annex I PR),
- capitalisation and indebtedness (item 3.2 Annex III PR)...

259. Two other participants also suggested deleting the capitalisation and indebtedness statement. One of these two participants explained that “*the requirement to disclose capitalisation and indebtedness of an issuer [should] be deleted on the basis that the capitalisation information is derived from the issuer’s previously published information and the indebtedness statement could be misleading without the context of the issuer’s full balance sheet drawn up at that date.*”

Finally, a third participant proposed dropping the obligation to provide a capitalisation and indebtedness statement as of a date no earlier than 90 days prior to the date of the prospectus, this requirement being inconsistent with the reporting cycles of issuers, even those that publish quarterly financial statements. This participant considered that information on capitalisation and indebtedness as of the date of the most recent balance sheet should suffice.

260. However, when looking more specifically at the proposals mentioned in questions 29 and 31 to maintain the obligation to disclose brief and updated information regarding the issuer's activities and markets, answers are split and the picture is not so clear-cut. As a matter of fact, as regards question 29, 7 participants agreed that, to enhance investor protection, information regarding the issuer's activities and markets and historical financial information cannot be omitted, while only 6 participants disagreed.

As for question 31, 6 respondents are in favour and 6 are not in favour of the proposal. Respondents not in favour of requiring information on markets and activities explained that *"issuers are already subject to the requirement to disclose all price-sensitive information on a timely basis, such information will already be in the public domain and can therefore be omitted."*

261. As a conclusion, there was no overall consensus on the schedule proposed in ESMA's consultation paper for rights issues (question 35), either because respondents considered that certain items should be kept or because they wanted more deletions.

262. The questions listed above all relate to the content of the proportionate schedule for rights issues proposed by ESMA. This topic was thoroughly discussed by ESMA and we believe that all possible omissions are presented in the consultation paper. Going a step further would empty prospectuses of their substance and would be contradictory to the objective of enhancing investor protection included in the Commission's mandate. Furthermore, some of the respondents were against particular disclosure requirements of the Prospectus Regulation in general rather than in the context of rights issues (e.g. the obligation to provide a statement of capitalisation and indebtedness as of a date no earlier than 90 days prior to the date of the document). However, ESMA takes the view that the proportionate disclosure regime shall not be used to question the requirements of the Prospectus Regulation in general but determine where information is considered duplicated with information already available in the market, and therefore can be omitted.

263. The rationale for not proposing more omissions is explained in paragraph 130 of the consultation paper :

- 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".
- Pre-emption 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 information²⁸ includes a short description of the characteristics of the issuer and of its financial position.

²⁸ 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;

Therefore 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 use of incorporation can significantly alleviate the size of prospectuses as regards particularly historical financial information.

264. We will therefore continue with our initial proposal and recommend to the Commission deletion of the items presented in the consultation paper as well as the re-drafting of items listed in paragraphs 132, 133 and 134 of the consultation paper.

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?

265. Respondents concur that incorporation by reference is a good way to reduce burden. One participant however answered that they "*would prefer items be removed by exclusion from annex rather than incorporation by reference*".

266. Several respondents suggested that incorporation by reference should be extended to issuers listed on MTFs because the Prospectus Directive (Article 11) allows only documents previously approved by the Competent Authority or filed in accordance with the Transparency Directive²⁹ to be incorporated by reference. One respondent also suggested that hyperlinks should be included in prospectuses to facilitate access to the documents incorporated by reference.

267. ESMA will consider these suggestions and deal with this topic when handling the second part of the mandate.

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 ?

268. One respondent disagreed with this proposal arguing that any investors can buy rights and subscribe to the issue. The large majority however supports the inclusion of a statement drawing investors' attention to the fact that rights issues are addressed to shareholders and that the level of disclosure is therefore proportionate.

269. One participant suggested to specify that rights issues are primarily addressed to shareholders and to add the following mention: "*for further and more detailed information, please check the company's website*". Another participant proposed to amend the wording to refer to all pre-emptive offers.

270. We will maintain our proposal and recommend that the following statement be included in prospectuses established under the proportionate regime for rights issues :

(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;"

²⁹ Directive 2004/109/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.

“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.”

Moreover, ESMA does not support referencing to the issuer’s homepage for further and more detailed information as such reference could result in confusion whether such information is incorporated by reference and thereby part of the prospectus.

Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation (Small Caps).

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 ?

271. Opinions are divided regarding question 37: 9 respondents are in favour of requiring a full prospectus for IPOs and initial admissions on regulated markets and 9 do not support this proposal. On question 38, the majority of participants disagree with our proposal as presented in paragraph 141 of the consultation paper. This might seem contradictory with the split views expressed in question 37 but as a matter of fact, some respondents who answered to question 38 did not address question 37. Moreover, some participants who support our proposal to require a full prospectus for IPO and initial admission on regulated markets consider that a full prospectus should also be required for IPOs on MTFs and therefore disagree with paragraph 141.
272. Respondents in favour of requiring a full prospectus for IPOs and initial admissions on both regulated markets and MTFs explained that :
- for IPOs or initial admissions, the company is unknown to investors and therefore the prospectus is “*a very important reference point*”, whether the market is characterized as regulated, MTF or OTC. The prospectus must therefore be a full version.
 - Requiring the same level of disclosure will ensure a level playing field between regulated markets and MTFs as “*otherwise issuers would have another reason to move from a regulated market to (only) an MTF. This will endanger investor protection.*”

One participant explained that “*making the proportionate disclosure regime applicable to SMEs and issuers with reduced market capitalization will not encourage investors to invest capital in such SMEs or issuers and will even reinforce relative investor confidence in larger companies to the disadvantage of SMEs and issuers with reduced market capitalization. It is all the more important at the time of the IPO for the SMEs to share complete information as the IPO period is a strong confidence builder with potential investors and analysts.*”

Finally another respondent, not in favour of a proportionate disclosure regime for SMEs and Small Caps, noted that the current market structure already allows SMEs to choose between different transparency levels.

273. On the contrary, participants who support a proportionate prospectus for IPOs and initial admissions on regulated markets, argued that :
- There is no such “*difference in principle between regulated markets and MTFs that is implied by the regulators and ESMA in paragraph 141, especially in terms of investor expectations.*”

Companies will always need to disclose all information that is relevant and material to the offer on whatever market is chosen.”

The same participant further explains that the persons responsible for the prospectus must ensure that all material information is disclosed and therefore a shorter list of requirements would not necessarily imply lower investor protection.

- *“A proportionate regime for SMEs and Small Caps, which would concentrate on significant and relevant information, could be suitable, in any case.”*

274. The proposal summarised in paragraph 141 of the consultation paper, i.e requiring a full prospectus for IPOs and initial admissions on regulated markets and a proportionate prospectus for subsequent offers as well as for all offers of issuers not listed on a regulated market, is a compromise resulting from discussions within ESMA. We believe that this regime is a reasonable solution which takes into account the mandate from the Commission, which states that such a regime should aim 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.” In this regard it should be noted that the proportionate regime applies also to SMEs listed at MTFs which have no harmonised transparency requirements, and furthermore, to SMEs which are not even listed at a MTF and therefore under no ongoing transparency requirements at all.

275. As regards IPOs and initial admissions on regulated markets, we agree with the comment that reducing information at such a crucial period will not encourage potential investors to invest in the companies going public and will not help them to build confidence with analysts and the public.

276. We are therefore maintaining our proposal.

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?

277. The large majority of respondents support our proposal to elaborate only one proportionate schedule applicable for all eligible companies (Small caps, listed and unlisted SMEs).

278. ESMA will therefore elaborate only one proportionate schedule for unlisted and listed SMEs and Small Caps.

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?

279. Most respondents agree with our proposal but consider that more disclosures requirements should be deleted. Only one market participant vigorously stated that “*It is not prudent to obligatory minimize investor information for the sake of cost, in a complex transaction or in any case if in today’s adverse market condition, management wants to bolster investor attention and provide more relevant information.*” This respondent concludes that there should be flexibility for issuers to disclose more information and to comply with Annexes I and III of the Prospectus Regulation on a voluntary basis.
280. Respondents claiming more omissions agree that the items mentioned in question 41 could be deleted without lowering investor protection. The Operating and Financial Review (OFR), in particular, is considered the most burdensome requirement to meet.

One participant thus explains that “*the Operating and Financial Review (“OFR”) is one of the most costly aspects of the prospectus for issuers to produce. It not only generates a great deal of monetary costs for the issuer, but also requires a significant amount of time from the CEO and Finance Director of an issuer, which takes them away from their primary role of running the business. In addition, we consider that most of the information which compromises the OFR can be ascertained from elsewhere in the Prospectus, for example in disclosures in relation to trend information (Annex I – 12) and in the historical financial information.*”

Another respondent asks for consistent rules between rights issues and SMEs & Small Caps and suggests requiring, for both regimes, only one year of historical financial information.

Several respondents also provided us with detailed analysis identifying additional items which could be deleted from Annexes I and III of the Prospectus Regulation.

281. Market Participants who disagree with ESMA’s objection to the proportionate disclosure regime for SMEs and Small Caps also put forward the following arguments :
- The definition of SMEs and Small Caps within the meaning of the Prospectus Directive is extremely restrictive.
 - SMEs and Small Caps are considered too risky but shares of companies quoted in SME markets are non-complex instruments and despite a very violent crisis, SMEs have been exceptionally resilient.
 - The process should be about reducing the length of the explanations required and sticking to core information. The materiality test should be taken seriously and far more radically and the Commission should give clear indications to the National regulators as to how to enforce it (e.g. length limit); quality should prevail over quantity.
282. One respondent explained that there was a certain pressure towards the logic of “*always more details*”. This respondent considers that the best way to simplify disclosures is to force every actor to adopt a more concise approach to the information given in prospectuses and that Competent Authorities play an essential role, and asks “*ESMA to redraft as many items of the schema as possible to better show that only significant events and figures must be presented. Even if it may*

appear as useless, it will be as a signal to both issuers and competent authorities toward more concise prospectus, which will benefit also to the readers. With the very limited alleviations it proposed, ESMA will give the opposed signal.”

283. In response to the comments, ESMA would like to emphasize the two following points mentioned in the consultation paper:

- Small Caps undertaking rights issues, as well as SMEs, will benefit from the proportionate prospectus for this type of issue ;
- many disclosures required by the Prospectus Regulation already include a material test and only significant information should be disclosed. In this regard ESMA noted that in practice prospectuses for SMEs and Small Caps are on a regular basis already considerably shorter, given that their scope of activity is more limited and their historical financial information in the majority of cases not complex.

As regards the comment on obligatory minimising valuable information for the investor when the issuer wants to provide more information, ESMA likes to clarify that the issuer or the person responsible for the prospectus is always free to include further information into the prospectus where felt necessary or appropriate.

On the second point, we are aware of a certain pressure towards the logic of always asking for more details. This strong drive may affect an efficient implementation of the prospectus regime and is detrimental to both issuers and investors. This issue cannot however be solved by reducing the level of disclosures. Once more, ESMA recommends to all parties involved in the preparation of prospectuses to avoid boilerplate language and to focus on quality rather than quantity.

284. ESMA considered carefully whether the Operating and Financial Review and the other items of financial information mentioned in Question 41 could be omitted without lowering investor protection. It is noted that the majority of the respondents considered that these information items could be omitted, the arguments supporting this view being that the Operating and Financial Review is one of the most costly and burdensome parts of a prospectus and the information is duplicated elsewhere in the prospectus. As ESMA firmly believes that the OFR is core information in any equity prospectus, it analysed if the information required by the OFR is sufficiently covered by information items required elsewhere in the prospectus. ESMA concluded that this is not the case. However, as a compromise, ESMA decided that so long as the management report (drafted in accordance with Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC) is included in the prospectus, this would provide sufficient investor protection. If this is not the case, full OFR information should be supplied.

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?

285. Most respondents answered no to both questions. One respondent criticized ESMA’s analysis which gives “*more weight to investor protection and not enough recognition [...] to information that is already publicly available.*”

286. See above our response to questions 41 to 43.

Proportionate disclosure regime regarding credit institutions .

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 ?

287. ESMA received 8 answers to this question and all respondents were in favour of the proposal put forward to require only the last financial year. One respondent however insisted on the fact that if no significant alleviation was proposed, it is very unlikely that credit institutions will choose to “opt in”.
288. Considering the answers received, ESMA will continue with its proposal and recommend that historical financial information should be required for only the last financial year.

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?

289. One respondent suggested looking at the disclosure requirements set in the AIM Rules (Alternative Investment Market which is a sub-market of the London Stock Exchange) as a reasonable example of a proportionate disclosure regime. Finally a third one proposed applying the proportionate regime for credit institutions “*only to the issuance of the securities referred to in Article 1(2)(j) and not limited to annual issues of less than 75 millions euros*”.
290. We have looked at all the proposals and analysis sent by participants regarding the proportionate regime. The reasons for us proposing to delete only certain items are detailed in the consultation paper and are repeated in paragraphs 41 and 61 of the feedback statement.
291. As regards the scope of the proportionate regime for credit institutions, the wording of Recital 18 of the Amending Directive clearly states that only credit institutions issuing securities below the limit laid down in that Article which choose to opt into the regime of the Directive should benefit from a proportionate disclosure regime. Also the terms of the European Commission’s mandate leaves no doubt on interpretation of article 7(2)(e) PD and no room for any extension : “*CESR/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).*”.

VIII. Technical advice on the Proportionate Disclosure Regime

VIII.I. 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.”

292. 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 of subscribing to the issue or selling their rights if they do not intend to subscribe: shareholders are not diluted if they decide to exert their pre-emptive rights; they will receive compensation if they decide not to subscribe to the issue and sell their rights.
293. 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.
294. ESMA also acknowledges that in several Member States, rights issues are often made by technically disapplying 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.

295. 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 disappplied the statutory pre-emption rights.”* This article sets out the conditions to be met 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 disappplied 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.

296. 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 the new definition as follows :

“(a) shareholders are offered entitlements free of charge;

(b) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings, or, in the case of other securities giving a right to participate in the share issue, in proportion to their entitlements to the underlying shares;

(c) the entitlements to subscribe 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 those entitlements;

(d) the issuer is able, as regards entitlements under (b) above, to impose limits or restrictions or exclusions and make arrangements it considers necessary or appropriate to deal with treasury shares, fractional entitlements, and legal or regulatory requirements in, or under the laws of, or requirements of any territory or regulatory body;

(e) the minimum period during which shares may be taken up is similar to the period for the take-up of statutory pre-emption rights under Article 29 of Directive 77/91/EEC;

(f) after expiration of the exercise period, the rights lapse.”

297. 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 4 months after the end of the first six months of each financial year, and
- inside information in the meaning of the Market Abuse Directive.

298. 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 therefore have to include information on board practices and remuneration in their prospectuses.

299. As regards the appropriate rules on market abuse, ESMA considers that there should be provisions in order to prevent insider trading and market manipulation. Full compliance of the rules of the MTFs with the provisions of the Market Abuse Directive is however not required.
300. 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*”.
301. 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 Section VIII.IV Appendix 2 for more detailed information):
- the Transparency Directive³⁰ ;
 - the Market Abuse Directive ;
 - the 4th Directive on annual accounts³¹ ;
 - the 7th Directive on consolidated accounts³² ;
 - the takeover bids Directive³³.
302. Most of the information made public by issuers listed on regulated markets, and particularly regulated information within 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.
303. 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 through, bearing in mind the objective of maintaining investor protection. The proportionate disclosure regime shall not empty prospectuses of their substance.
304. 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

³⁰ 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.

³¹ 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).

³² Seventh Council Directive of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (83/349/EEC).

³³ Directive 2004/25/EC of the European parliament and of the Council of 21 April 2004 on takeover bids.

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.

305. 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.
306. 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 :
- Item 3 : Selected financial information.
 - Item 5.1: History and development of the issuer (except 5.1.1).
 - 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 : 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 : History of share capital, highlighting information about any changes, for the period covered by the historical financial information.
 - Item 21.2: Memorandum and Articles of Association
 - 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 310), meaning that the last financial statements will be presented with comparative data as required by IAS 1.

307. 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 appli-

cable and could therefore be deleted from the proportionate prospectus for rights issues (see Section VIII.IV Appendix 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.

308. 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.

309. 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".
- Pre-emption 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 information³⁴ includes a short description of the characteristics of the issuer and of its financial position. Therefore

³⁴ 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 Directive³⁵.

310. 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.

311. 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 statements 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.

³⁵ 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.

312. 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 accordance with the respective standard adopted	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

<p>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>– 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>
--	---

313. 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.

314. In order to ensure that new investors buying pre-emption 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.”

ADVICE

315. **Regarding the scope of the proportionate regime for rights issues, ESMA considers that issues where statutory pre-emption rights are disabled and replaced by similar**

rights should benefit from the proportionate disclosure regime when those rights meet the following characteristics :

- “(a) shareholders are offered entitlements free of charge;**
- (b) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings, or, in the case of other securities giving a right to participate in the share issue, in proportion to their entitlements to the underlying shares;**
- (c) the entitlements to subscribe 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 those entitlements;**
- (d) the issuer is able, as regards entitlements under (b) above, to impose limits or restrictions or exclusions and make arrangements it considers necessary or appropriate to deal with treasury shares, fractional entitlements, and legal or regulatory requirements in, or under the laws of, or requirements of any territory or regulatory body;**
- (e) the minimum period during which shares may be taken up is similar to the period for the take-up of statutory pre-emption rights under Article 29 of Directive 77/91/EEC;**
- (f) after expiration of the exercise period, the rights lapse.**

316. **As regards MTFs with appropriate disclosure rules, ESMA considers that issuers listed on MTFs can benefit from the proportionate regime when the rules of the concerned MTFs contain provisions:**
- requiring issuers to publish annual financial statements and audit reports within 6 months after the end of each financial year, half-yearly financial statements within 4 months after the end of the first six months of each financial year, and inside information in the meaning of the Market Abuse Directive**
 - requiring issuers to make the reports and information mentioned in the previous paragraph available to the public by posting them on their websites,**
 - preventing insider trading and market manipulation.**
317. **Regarding the content of the proportionate prospectus, ESMA considers that historical financial information shall be required only for the last financial year and that items listed in paragraphs 306 and 307 be deleted from the proportionate schedules. Furthermore, the wording of items mentioned in paragraphs 311, 312 and 313 shall be amended as proposed. The proportionate schedule for rights issues elaborated by ESMA is presented in Section VIII.IV.Appendix 1 of this document.**
318. **Finally ESMA considers that the following statement shall be included in all prospectuses drawn up under the proportionate regime:**
“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.”

VIII. II. 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.”

319. 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.
320. 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.

321. 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. ES-

MA 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.

322. 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.
323. 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. This will address the Commission’s mandate to improve the efficiency of the Union’s securities markets and reduce the administrative costs of issuers when raising capital. It will 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.

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

324. 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 encouraging more public offers, but would ensure no further dilution of the regulated market framework.
325. 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.
326. 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 320 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 Mandate³⁶.

327. ESMA proposes to delete the following requirements from the Registration Document for shares (see Section VIII.IV.Appendix 2 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.

328. ESMA also proposes to redraft the following items of the Registration Document for shares (see Section VIII.IV.Appendix 2 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.
9. Operating And Financial Review	9. Operating And Financial Review
9.1. Financial Condition (...)	Where Management Reports, presented and prepared in accordance with Article 46 of Directive

³⁶ 4. Review of the provisions of the Prospectus Regulation

<p>9.2. Operating Results (...)</p>	<p>78/660/EEC and Article 36 of Directive 83/349(EEC) for the periods covered by the historical financial information, are not included in the prospectus, the following information must be disclosed: 9.1. Financial Condition (...) 9.2. Operating Results (...)</p>
<p>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. 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.</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>

329. Since the Mandate refers to other issuers³⁷, ESMA is also proposing amendments to annexes IV, IX and X relating respectively to the registration document for debt and derivative securities with a denomination per unit < 50.000 EUR, the registration document for debt and derivative securities with a denomination per unit ≥ 50.000 EUR and the schedule for depositary receipts issued over shares. The amendments listed in paragraphs 145 and 146 of the consultation paper would also concern, where applicable, annexes IV, IX and X of the Prospectus Regulation (see Section VIII.IV.Appendix 2 for details).

ADVICE

330. **ESMA considers that a full prospectus shall be required for IPOs and initial admissions on regulated markets. The proportionate disclosure regime will only be applicable to subsequent public offerings made by issuers whose shares are already ad-**

³⁷ "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. "

mitted to trading on a regulated market and to public offerings made by issuers whose shares are not admitted on a regulated market, whether those shares are traded on MTFs or OTC.

331. **Regarding the content of the registration document for shares applicable to SMEs and Small Caps, ESMA considers that historical financial information shall be required only for the 2 last financial years and that items listed in paragraph 327 shall be deleted. The wording of items mentioned in paragraph 328 shall also be amended as proposed.**
332. **Finally ESMA considers that the registration document for debt securities and derivatives and depositary receipts shall also be also amended to allow SMEs and Small Caps issuing those type of securities to benefit from a proportionate regime.**
333. **The proportionate schedules for SMEs and Small Caps issuing shares, debt and derivative securities and depositary receipts elaborated by ESMA are presented in Section VIII.IV.Appendix 2 of this document.**

VIII.III. Proportionate disclosure regime regarding credit institutions.

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).”

334. Pursuant to Article 1(2)(j) of the Prospectus Directive as 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.
335. 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.

336. 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.

337. 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>

ADVICE

338. **ESMA consider that credit institutions issuing securities referred to in Article 1(2)(j) shall be required to include in their prospectuses historical financial information for only the last financial year when those issuers decide to opt into the prospectus regime. Item 11.1 of Annex XI of the Prospectus Regulation shall therefore be re-drafted as proposed in paragraph 337.**



VIII.IV. Proportionate schedules (minimum disclosure requirements)

Appendix 1- 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>

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:

- 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.

9.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests

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.

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.

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.

10. REMUNERATION AND BENEFITS

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.

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.

10.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.

11. BOARD PRACTICES

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 infor-

mation 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 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.
16.1.4. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
16.1.5. 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



<p>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.</p> <p>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.</p>
<p>18. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST</p>
<p>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.</p>
<p>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.</p>
<p>19. 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:</p> <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>An indication of where the documents on display may be inspected, by physical or electronic means.</p>
<p>Minimum Disclosure Requirements for the Share Securities Note for rights issues (schedule)</p>
<p>1. PERSONS RESPONSIBLE</p>
<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.</p>
<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: <ul style="list-style-type: none"> – 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.</p>
<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.</p>
<p>4.7 The expected issue date of the securities</p>
<p>4.8 A description of any restrictions on the free transferability of the securities</p>
<p>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,</p>



- 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.



Appendix 2 – Proportionate schedule 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

Where Management Reports, presented and prepared in accordance with Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349(EEC) for the periods covered by the historical financial information, are not included in the prospectus, the following information must be disclosed:
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 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.

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.

13.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests

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.

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.
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.
14. 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 13.1.
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. 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.
14.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.
15. 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 13.1. :
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.
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.
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.
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.
16. EMPLOYEES
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.
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 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

19.1. Historical Financial Information

Audited historical financial information covering the latest two 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.

19.7.1 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.

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.

Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document for SMEs and companies with reduced market capitalisation (schedule) <50.000 EUR³⁸

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. BOARD PRACTICES

³⁸ Sub-items as in Annex IV of PR, except the amendment in item 12 (Financial Information).



11. MAJOR SHAREHOLDERS
12. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES "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. "
13. ADDITIONAL INFORMATION
14. MATERIAL CONTRACTS
15. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
16. DOCUMENTS ON DISPLAY

* * *

Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document for SMEs and companies with reduced market capitalisation (schedule) ≥50.000 EUR³⁹
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

³⁹ Sub-items as in Annex IX of PR, except the amendment in item 11 (Financial Information).

10. MAJOR SHAREHOLDERS

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

“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 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

* * *

Minimum Disclosure Requirements for the Depositary Receipts issued over shares for SMEs and companies with reduced market capitalisation (schedule)⁴⁰

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

⁴⁰ For Items 25-31, Sub-items as in Annex X of PR.

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 prospectus.
4.2.2. A description of the issuer’s principal investments that are currently in progress, including the distribution of these investments geographically (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. "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."

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

Where Management Reports, presented and prepared in accordance with Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349(EEC) for the periods covered by the historical financial information, are not included in the prospectus, the following information must be disclosed:

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 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.
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

<p>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>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 14.1.</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>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.</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>

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.

16. EMPLOYEES

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.

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 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

19.1. Historical Financial Information

“Audited historical financial information covering the latest two 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.

19.1. bis This paragraph may be used only for issues of depository receipts having a denomination per unit of at least EUR 50,000.

“Audited historical financial information covering the latest two 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.” 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:

- a) a prominent statement that the financial information included in the registration 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;
- 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

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

- (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.

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:

- a) a prominent statement disclosing which auditing standards have been applied;
- b) an explanation of any significant departures from International Standards on Auditing

19.2. 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.

19.3 Auditing of historical annual financial information

19.3.1. 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.

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

19.3.3. 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.
19.4. Age of latest financial information
19.4.1. 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.
19.5. Interim and other financial information
19.5.1. 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.
19.5.2. 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.
19.6. Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.
19.7.1 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.
19.7. 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.
19.8. 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.
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.
25. INFORMATION ABOUT THE ISSUER OF THE DEPOSITARY RECEIPTS
26. INFORMATION ABOUT THE UNDERLYING SHARES
27. INFORMATION REGARDING THE DEPOSITARY RECEIPTS
28. INFORMATION ABOUT THE TERMS AND CONDITIONS OF THE OFFER OF THE DEPOSITARY RECEIPTS
29. ADMISSION TO TRADING AND DEALING ARRANGEMENTS IN THE DEPOSITARY RECEIPTS
30. KEY INFORMATION ABOUT THE ISSUE OF THE DEPOSITARY RECEIPTS
31. EXPENSE OF THE ISSUE/OFFER OF THE DEPOSITARY RECEIPTS



ANNEX I

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**"),⁴¹ the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**"),⁴² and the Framework Agreement on Relations between the European Parliament and the European Commission (the "**Framework Agreement**").⁴³

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**").⁴⁴

- 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

⁴¹ Communication of 9.12.2009. COM(2009) 673 final.

⁴² 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.

⁴³ OJ L304/47, 20.11.2010, p.47.

⁴⁴ 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.

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

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.⁴⁵
- 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.

⁴⁵ 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.

- 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.
- 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. More-



over, according to Article 6(1)(gc) of the ESMA Regulation, ESMA shall take over, as appropriate, all existing and ongoing tasks from CESR.⁴⁶

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.

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.**

⁴⁶ Commission Decision 2009/77/EC of 23 January 2009 establishing the Committee of European Securities Regulators, OJ L25, 29.1.2009, p.18.

- 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**").⁴⁷
- 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.⁴⁸ 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).

⁴⁷ Commission Regulation (EC) 809/2004 of 29 April 2004. OJ L215, 16.6.2004, p.3.

⁴⁸ SEC (2009) 1223 of September 23, 2009, p. 4.

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;
- 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,⁴⁹ from Title III of the MiFID,⁵⁰ and from the Transparency Directive,⁵¹ 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 coun-

⁴⁹ 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.

⁵⁰ 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.

⁵¹ 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.

try, 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.

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	<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. The Commission will provide the European Parliament with full information and docu-

	mentation on those meetings. If so requested by Parliament, the Commission may also invite Parliament's experts to attend those meetings.
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).