

European Securities and Market Authority
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28 June 2013

Dear Sirs,

ESMA Consultation Paper – Draft Regulatory Technical Standards on specific situations that require the publication of a supplement to the prospectus

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Legal Expert Group has examined your proposals and advised on this response. A list of members of the expert group is at Appendix A.

Response

Overview

We welcome the opportunity to comment on ESMA's consultation paper dated 15 March 2013 which contains proposals for an RTS to provide market participants with more legal certainty to determine whether a particular new factor, mistake or inaccuracy qualifies as a trigger for the production of a supplement to a prospectus.

We support the intentions of ESMA to provide more certainty and is generally in agreement with the concept that certain circumstances and events should mandatorily trigger the publication of a supplementary prospectus. We are also of the view that the ten circumstances proposed generally reflect existing best practice in the London market. We do however have concerns on the more detailed aspects of one or two of the detailed proposals where we believe further clarification would avoid confusion or unintended impact and cost.

We also welcome ESMA's reiteration of the importance of the general duty of disclosure in Article 5(1) of the Prospectus Directive and agree that the assessment of "materiality" and "significance" must be made by reference to the same qualitative and/or quantitative tests as used to assess whether information should be included in the original prospectus.

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Specific Concerns

We specifically comment in relation to the obligation on issuers in relation to changes of control and takeover situations and the information required to be disclosed in such circumstances. We note the following:

- Paragraph 26 – the trigger for the obligation to publish a supplementary prospectus would be where any of the listed events "arise or are noted" [our emphasis] between the time the prospectus is approved and the final closing of the offer/trading begins;
- Paragraph 30 – the obligation for the supplement to contain "any information necessary for investors to understand the new factor and therefore make an informed assessment according to article 5(1) of the PD" and for the supplement to "contain as a minimum the information concerning the triggering event";
- Paragraph 31 – the requirement that the published supplement "describe the arrangements in relation to such a change of control"; and
- Paragraph 62 – the statement that "Investors need to know the identity of the controlling entity behind the issuer".

Responses to Questions

We have only responded to the consultation questions that we have specific concerns with and believe that could affect small and mid-size quoted companies' ability to raise finance.

Q1: Do you agree that a supplement should include the disclosure requirement of the Prospectus Regulation relating to the triggering event and also any other objective consequences deriving from such an event which are capable of affecting the assessment of the relevant securities?

We agree with the disclosure requirements in relation to any triggering event being aligned with those of the Prospectus Regulation.

However we are concerned that the trigger in paragraph 26 can be interpreted too broadly. We suggest that the reference to "noted" (which we take to relate to the noting of material mistakes or inaccuracies) should be changed to "identified".

Also, as the issuer may not be in a position to ensure compliance with an obligation to disclose all "objective consequences" where the event relates to a change of control in the securities of the issuer or a takeover situation, it is suggested that the issuer's obligation in relation to such events be limited to providing all information actually known and all objective consequences reasonably identifiable from such information.

Q15: Do you agree that there should be a systematic requirement to produce a supplement in case of a change in control of the issuer? If not, please state your reasons.

In light of the difficulties in an issuer being able to definitively identify the ultimate controller of securities as a result of holdings being in depositary systems and the complexity of indirect investment structures, it is

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considered that an issuer should only be obliged to produce a supplement in circumstances where the issuer becomes actually aware of the change of control and the information should only extend to providing the information disclosed to the issuer pursuant to the Disclosure and Transparency Rules.

Q18: Do you agree that there should be a systematic requirement to produce a supplement in case of a public takeover bid? If not, please state your reasons.

In relation to takeover situations, it is suggested that clarity is provided that the issuer is not required to replicate information already in the hands of the issuer's shareholders or otherwise available in the public domain through compliance with the Takeover Directive and/ or other legal and regulatory obligations imposed on the parties, including pursuant to the Disclosure and Transparency Rules and national regimes.

Q24: Do you agree that a supplement should always be required where an issuer is seeking admission to trading on (an) additional EU regulated market(s) or intending to make an offer to the public in (an) additional EU Member State(s) than the one(s) foreseen in the prospectus? If not, please state your reasons.

It is suggested that clarity is introduced confirming that no supplement would be required where the admission to trading/offer to the public in an additional EU Member States falls within an exemption so that no prospectus is required to be published in that Member State.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'T. Ward', with a stylized flourish at the end.

Tim Ward
Chief Executive

Quoted Companies Alliance Legal Expert Group

Tom Shaw (Chairman)	Speechly Bircham LLP
Gary Thorpe (Deputy Chairman)	Clyde & Co LLP
Chris Barrett	Bird & Bird LLP
Richard Beavan	Boodle Hatfield LLP
Ian Binnie	Nabarro LLP
Ross Bryson	Mishcon De Reya
Simon Cox/Julie Keefe	Norton Rose Fulbright LLP
David Davies	Bates Wells & Braithwaite LLP
Mebs Dossa	McguireWoods
Stephen Hamilton	Mills & Reeve LLP
Susan Hollingdale/Hilary Owens	Practical Law Company Limited
Martin Kay	Blake Laphorn
Philip Lamb	Lewis Silkin
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