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15 July 2011

Dear Sirs,

ESMA – Technical advice on possible delegated acts concerning the Prospectus Directive – Consultation Paper

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation working for small and mid-cap 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 fifteen European countries.

Our ID number for the European Commission's register of interest representatives is 45766611524-47.

The QCA Legal Committee has examined your proposals and advised on this response. A list of committee members is at Appendix A.

RESPONSE

We welcome the opportunity to respond to this consultation. Our comments are limited to aspects of Part 4, Part 5.II and Part 5.III of the consultation paper. They follow our earlier submission dated 25 February 2011 (as amended on 13 May 2011) in response to ESMA's call for evidence.

Part 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))

Q8: Do you agree with our modular approach?

We agree with this approach.

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

We agree that it is helpful to specify those points which are considered likely to be 'key'. We do not agree that it is necessary for an issuer to include information on each of these points simply because the underlying prospectus includes such information. It should still be appropriate to conclude that the information in relation to a point is not key information, as this is defined for the purposes of the summary, and therefore should not all be included in the summary. We refer to the test for inclusion of points in paragraph 81 of your Consultation Document:

> "In preparing the requirements for disclosure in summaries, the test for inclusion of "Points" is whether that information is key information in the context of Art 5.2 of the Amended Prospectus Directive – "[a summary's] content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities."

We would suggest that this formulation is included as an overriding test for the inclusion of information under each of the points.

We agree that the five sections are such that information which is likely to be key to investors should be suitable for inclusion under one of the points. However, we cannot foresee what information might be included in future prospectuses and might be relevant for inclusion in the associated summary. We would therefore suggest that the approach taken in excluding 'other information' is wrong. It should certainly be the case that the 'other information' heading should be one that is used infrequently.

Q10: Do you agree that we have provided sufficient flexibility for issuers and their advisers in drafting summaries – whilst ensuring that summaries are brief and provide the reader with the necessary comparability between prospectuses?

We think more flexibility is required, as mentioned in reply to Question 9 above (a) to allow inclusion of other key information and (b) to allow information under any of the Points to be omitted if it is not "key".

We do not believe that, if the summary were produced in accordance with the requirements as drafted, it would be brief. We think, in particular, that it is important to include an overriding test of what is 'key' in relation to each of the points. Please see our reply to Question 9 above.

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

No we do not, because the points which are specified are mandatory. We expect summaries under this regime to be significantly longer, particularly given the absence of a word limit.

Q11b: What is "short" for a summary for: (i) an issuer; & (ii) an investor?

For an issuer who might face liability in relation to a prospectus, a summary will need to be long enough to include all the information that a court might find should have been included. In the absence of a specific limit the summary is therefore likely to be long.

We believe that different investors will have different views on the level of detail they would wish to receive in the summary. We do not believe that even a revised form of summary will significantly increase protection of retail investors, particularly in relation to risky or complex securities, and that this is best achieved through regulation under MiFID rather than under the Prospectus Directive.

For the summary to truly be a 'summary' it should a) focus on key information only (see our response to Question 9 above) and b) be no more than 2500 words (see our response to Question 11c below). This is true from the perspective of both the issuer and the investor.

Q11c: Do you think that there should be a numeric limit on the length of summaries? If so how might that be done?

We do. We believe that Recital 21 to the Prospectus Directive should still be regarded as limiting summaries to 2500 words as it has not been specifically removed by the Amending Directive or its recitals.

We believe that any limit would need to be expressed as a limit on the number of words although there could be flexible application of that by the competent authorities in the case of very complex prospectuses.

Q12a: Do you agree with our proposed content and format for summaries?

No.

Paragraph 99 of the Consultation Paper states that:

> "A summary should be a fresh assessment by the issuer of the key information in the prospectus. It should not simply be a copy-out of text that appears in the main body of the prospectus."

We do not think it is appropriate to require information which is being presented as the key information from a longer document to be re-written, as this will make 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.

We do not think it is appropriate to exclude the use of cross-references. It is always helpful when reading a summary to be able to cross-refer to more information on any point which the reader feels is of interest. As no 'boilerplate' is to be included in summaries it will be essential to be able to refer to such information.

We do not think that preventing the inclusion of risk factor headings is appropriate. We do not see any benefit in summarising risk factors. If risk factors can be written more succinctly they should be so written in the prospectus itself. We believe that the current practice of including the headings in the summary is more than adequate. We think there will be significant work involved in attempting to comply with a further summarising requirement.

Q12b: Are there other pieces of information which should appear in summaries? and are there disclosure requirements in our tables which are not needed for summaries?

See our response to Question 9.

Q13: Is there a need to augment Point B.9 with additional disclosure requirements, such as key assumptions, or to state that the forecast is reported on in the main body of the prospectus?

We believe that a better solution would be to cross-reference the forecast in the main body of the prospectus.

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

Yes.

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

We cannot as all prospectus drafting exercises are different. We believe that the key factors which will increase cost are: the need to re-write information for the summary (paragraph 99 of the Consultation Document) and the removal of the word limit and the fact that the points/ modular system will not adequately limit length (paragraph 96 of the Consultation Document).

Part 5.II – Proportionate disclosure regime regarding rights issues

Q16: Do you agree with the proposal to consider that "near identical rights" should have the same characteristics than pre-emption rights? Do you agree with the definition given in paragraph 117? Are there any other characteristics which should be taken into account?

We suggest that paragraph 117 of the technical advice should be restated as noted below for the reasons given in the explanation that follows the new text. We completely agree with the comments at

paragraph 115 but in our view those comments have not been well reflected in the current paragraph 117 and we believe that the new paragraph below will be considered an improvement.

Revised paragraph 117

117. ESMA considers therefore that Article 7(2)(g) should be implemented in a broad manner in order to allow the technical replacement of statutory pre-emption rights with similar pre-emptive provisions to be treated as though they were statutory pre-emption issues. ESMA also agreed that a precise definition of "near identical rights" should then be established in order to avoid abuses and prevent any such issue to be structured in a way that the obligation to file a prospectus would be circumvented. ESMA proposes therefore to consider that "near identical rights" should have the same characteristics as pre-emption rights, meaning:

(i) shareholders are offered entitlements free of charge;

(ii) shareholders are entitled to take-up new shares in proportion (as nearly as may be practicable) to their existing holdings;

(iii) if there are holders of other securities, those holders are entitled to take-up new shares in accordance with the terms of those securities;

(iv) 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 ;

(v) 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;

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

Explanation

The changes at (b), (c) and (d) above reflect the basis on which shareholders disapply pre-emption rights in relation to pre-emptive offers. All types of pre-emptive offer should benefit from the proportionate disclosure regime as they would all be "offers of shares" falling within article 7(2)(g) of the prospectus directive, which does not restrict the proportionate disclosure regime to offers which include a negotiable instrument and involve the sale of rights for the benefit of shareholders who do not take up their rights. For example, an open offer would be made to shareholders in proportion to their existing holdings. However, shareholders would not be entitled to sell their rights nor to be paid the proceeds of the sale of the rights. The second company law directive does not require a pre-emptive offer to include a renounceable right of allotment nor a requirement for a sale of rights.

The points referred to at paragraph 115 of the consultation should be expressly referred to in the description of "near identical rights". The above drafting seeks to achieve this.

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?

Yes, we agree that there should be one regime.

Q18: Do you agree with the proposal to consider that appropriate disclosures requirements for MTFs would include, as a minimum, obligations to publish:

- **annual financial statements and audit reports within 6 months after the end of each financial year,**
- **half-yearly financial statements within a limited deadline after the end of the first six months of each financial year, and**
- **inside information?**

Yes, we agree.

Q19: What should be the maximum deadline for publishing half-yearly financial statements?

We would not object to having the maximum deadline set at three months.

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?

Yes, we agree.

Q21: Are there any other disclosure requirements not listed above which should be required for MTFs?

No.

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?

Yes, we do agree that there should be provisions in order to prevent insider trading and market manipulation. However, we do not think that every requirement (whether imposed directly or indirectly through the rules of an MTF) of the Market Abuse Directive is appropriate for a proportionate regime for rights issues.

We note that the Market Abuse Directive ('MAD') is currently under review and that the Commission is consulting on extending MAD to MTFs. We believe that, before any extension of MAD, the Directive must be simplified in certain areas so as not to be overly burdensome for growing companies on these markets. In particular, we do not believe that MTFs should have to implement the requirement for insider lists, which are burdensome and time-consuming and do not provide a significant benefit to the market.

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

No.

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?

We agree that periodic and ongoing disclosures should be made readily available by the issuer. Unless there is already a disclosure requirement that for a specific MTF market that covers this issue, issuers should be required to put their disclosures on their websites.

Q25: Do you agree with the approach proposed in order to determine which items to delete from Annexes I and III of the Prospectus Regulation?

We agree with the approach in terms of deleting redundant information that is already available. However, we believe 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).

As a general principle, 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. A list of information falling in this category is set out below, as is the source of the requirement to make disclosure in the report and accounts. In each case there should instead be a requirement to disclose

any significant changes to the information previously disclosed, similar to the concept recognised at paragraph 14 of the Annex. In some cases ongoing disclosure requirements differ for certain types of companies; this is noted below. Where this is the case, it would be appropriate for that particular type of company to include the relevant information in its share registration document.

Paragraph of Annex II	**Reason**
Minimum Disclosure Requirements for the Share Registration Document for rights issues (schedule)	
2 – Statutory Auditors	The auditors' report in the annual report would contain this information. Source: *Section 503(1) Companies Act 2006* *4th and 7th Company Law Directives*
3 - Risk factors Prominent disclosure of risk factors that are specific to the issuer or its industry.	The business review in the annual report and accounts is required to contain a description of the principal risks and uncertainties facing the company. Source: *Section 417(3)(b) Companies Act 2006* *Article 46(1)(a) Directive 78/660/EEC (substituted by Article 1(14)(a) Directive 2003/51/EC)* ***[Note: excludes small companies. These are companies which meet at least two of the following requirements: (i) annual turnover of not more than £6.5m; (ii) balance sheet total of not more than £3.26m; (iii) average number of employees is not more than 50. (Section 382(3) Companies Act 2006 and Articles 11 and 46(3) Directive 78/660/EEC).]*** The management report for companies with securities admitted to trading on an EU regulated market must contain a description of the principal risks and uncertainties facing the issuer. Source: *DTR 4.1.8R(2)* *Article 4(5) Directive 2004/109/EC (the Transparency Directive)* The interim management report for companies with securities admitted to trading on an EU regulated market must contain a description of the principal risks and uncertainties for the remaining six months of the financial year. Source: *DTR 4.2.7R(2)* *Article 5(4) Directive 2004/109/EC (the Transparency Directive)*
5 - Business overview 5.1. Principal Activities A brief description of the issuer's operations and principal activities…	The business review in the annual report and accounts is required to contain a description of operations and principal activities.

5.2. Principal Markets A brief description of the principal markets in which the issuer competes… 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 licences, industrial, commercial or financial contracts or new manufacturing processes. [*Note: Where section 5 requires disclosure of significant changes since the last financial statements, these requirements should remain.*]	Source: *Section 417 Companies Act 2006* *Article 46(1)(a) Directive 78/660/EEC (substituted by Article 1(14)(a) Directive 2003/51/EC)* ***[Note: excludes small companies.]*** The management report in the annual report and accounts for companies with securities admitted to trading on an EU regulated market is required to contain the relevant information. Source: *DTR 4.1.8R -4.1.11R* *Article 4(5) Directive 2004/109/EC (the Transparency Directive)* The interim management report for companies with securities admitted to trading on an EU regulated market is required to contain the relevant information. Source: *DTR 4.2.7R-4.2.8R* *Article 5(4) Directive 2004/109/EC (the Transparency Directive)*
6 - Organisational Structure A brief description of the group and issuer's position within the group.	The name and place of incorporation (if outside the UK) of each related undertaking must be provided in the notes to a company's annual accounts. Financial information relating to each undertaking's capital and reserves and profit and loss may also need to be provided. Source: *Section 409 Companies Act 2006* *Regulation 7 and paragraphs 1 and 5 of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, SI 2008/410* *Article 43.1(2), Directive 78/660/EEC*
9 - Administrative, management and supervisory bodies and senior management 9.1. Names, business addresses and functions of: (a) members of the administrative, management or supervisory bodies; (b) partners with unlimited liability in the case of limited partnerships with a share capital; (c) founders if the issuer has been established less than five years; and (d) certain senior managers. The nature of any family relationship between any of those persons.	<u>Companies with securities traded on an EU regulated market:</u> The corporate governance statement must contain a description of the composition and operation of the issuer's administrative, management and supervisory bodies. Source: *DTR 7.2.7R* *Article 46a(1)(f) Directive 78/660/EEC (inserted by Article 1(7) Directive 2006/46/EC)* <u>AIM companies in the UK:</u> AIM companies must disclose on a website the names of their directors and brief

	biographical details of each. They must also disclose details of responsibilities of the directors and details and responsibilities of board committees. Source: *AIM Rule 26*
12 – Employees 12.1 Directors' shareholdings and stock options 12.2 Employee Share Schemes	These items are disclosed in a company's annual report and accounts, which would be available to the market.
13 – Major shareholders 13.1 List of major shareholders 13.2 Different voting rights 13.3 Control	Major shareholders are required under the Transparency Directive to be disclosed to the market once their holdings reach a certain threshold. Source: *DTR 5.1.2R (UK)* *Article 9-12(1) Directive 2004/109/EC (Transparency Directive)*
16 - Share capital 16.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.	<u>IFRS:</u> Companies with shares admitted to trading on an EU regulated market or AIM in the UK are required to prepare consolidated accounts in accordance with International Financial Reporting Standards. These standards require disclosure of shares reserved for issue under options and contracts for the sale of shares, including terms and amounts. Source: *Articles 3 and 4 Regulation (EC) 1606/2002* *AIM Rule 19* *Paragraph 79(a)(vii), IAS 1* <u>Companies Act individual parent accounts:</u> With respect to any contingent right to the allotment of shares in the company the company must disclose (in the parent company's individual Companies Act accounts): (a) the number, description and amount of the shares in relation to which the right is exercisable; (b) the period during which it is exercisable; and (c) the price to be paid for the shares allotted. (2) In sub-paragraph (1) "contingent right to the allotment of shares" means any option to subscribe for shares and any other right to require the allotment of shares to any person whether arising on the conversion into shares of securities of any other description or otherwise.

	Source: *Regulation 3 and paragraph 49 of Schedule 1 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, SI 2008/410* *Article 43(5) Directive 78/660/EEC ("*(5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;*")*
16.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.	As above.
Minimum Disclosure Requirements for the Share Securities Note for rights issues (schedule)	
3 – Key Information 3.2 Capitalization and indebtedness	The indebtedness statement is a costly aspect of the prospectus for issuers to produce and requires the advice of both accountants and lawyers. In addition, the information provided in the indebtedness statement is already captured in the working capital statement of the prospectus (3.1 Annex III).

In addition, it should not be necessary to include financial information already made available to the market. Thus, disclosure of the information noted at paragraphs 15.1, 15.3, 15.4.1, 15.6 and 15.7.1 should be excluded.

We also believe that the ability to incorporate by reference should be extended to companies on MTFs. Currently, only companies on regulated markets are able to take advantage of this. Please see our response to Question 30 for more.

We would also suggest that ESMA could delegate the authority of approving a proportionate prospectus for pre-emptive offers and also one for SMEs/Small Caps to a body other than the competent authority, such as the respective stock exchange or a person responsible for the offer or listing of a company on a regulated market (e.g. a sponsor in the UK) or multilateral trading facility (e.g. a NOMAD in the case of AIM). This could ensure a quick and efficient approval process, which is key for these offers.

We do not think that removing this information would decrease investor protection, especially since this information is already available in the market. Ultimately, each director must sign a responsibility statement for the prospectus confirming that the document contains all relevant information, which should provide adequate legal assurance that all necessary information to make an informed decision is contained in the prospectus.

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?

Yes, we agree with the proposed items which could be deleted; however, as stated in our response to Q25, we believe that there are more items which could be deleted.

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?

We do not believe that this would be a major concern and agree with ESMA's analysis in paragraph 126 that shareholders should already be familiar with the language regime of the applicable company.

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?

Yes, we agree.

Q29: Considering the objective to enhance investor protection, do you agree that information regarding the issuer's activities and markets and historical financial information cannot be omitted?

No. We believe that all material and price sensitive information would have already been disclosed to the market and as such shareholders would already have access to this information, including recent activities and historical information. Please see our response to Question 25.

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?

Yes. We put this forward in our response to the Call for Evidence in February. Currently, only companies on regulated markets are able to take advantage of incorporating information by reference. We believe it should be extended to companies on MTFs. This would both decrease the administrative burden on the issuer of having to add existing information to a prospectus and also help create a document that is more focused on the relevant information to a subsequent offer to shareholder, thus making it more comprehensible.

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

No. Please see our response to Questions 25 and 29.

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

No, we do not agree because this information is already available to the market. Please see our response to Question 25.

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?

No. We do not believe it necessary to provide additional information in the prospectus as shareholders would already have access to this. Please see our response to Question 25.

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?

Yes, we agree with the proposal.

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

Yes, but as stated and outlined in our response to Question 25, we believe that there is additional content that could be deleted without compromising investor protection.

Q36: What are the costs for drawing up a full prospectus? What are the most burdensome disclosure requirements? Can you provide any data? Can you assess the costs that the proposed proportionate prospectus will allow issuers to save?

We note that in the study commissioned by DG Internal Market and Services on the impact of the prospectus regime on EU financial markets (June 2008) it was estimated that it the total cost for producing a prospectus was €912,000.[1] In March 2009, we estimated that for an issuer raising €5 million the cost of a prospectus would be €600,000, which represents well over 10 per cent of the amount raised. As such, our estimates are similar to that conducted in the Prospectus regime impact assessment study.

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. The costs for these items vary a great deal based on the complexity of the instrument being offered, however we have estimated the following rough ranges:

- Operating and Financial Review: €22,500 - €113,000
- Historical Financial Information: €22,500 - €113,000
- Indebtedness Statement: €1,000 - €4,000

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

Q37: Do you agree that a full prospectus should always be required for an IPO and for initial admission to a regulated market (as described in paragraph 141 above)?

No, we do not agree; we believe that a proportionate regime should be available for an IPO on a regulated market. Furthermore, we believe that ESMA should undertake to provide appropriate and comprehensive technical advice to the Commission on this aspect, as required by the Commission in the mandate for ESMA's Level II work, despite its stated objections to the proportionate disclosure regime for SMEs and Small Caps (paragraph 141 of the consultation paper).

As noted above in our responses to the questions in section 5.II, the directors have the overarching responsibility to ensure that all relevant material information is included in a prospectus. Therefore, we do not believe that having more concise list of requirements would necessarily decrease investor protection, as investors would have the legal assurance of the responsibility statement. Documents do not have to be long to deliver meaningful and relevant information.

In the United Kingdom, companies seeking admission to AIM and PLUS-quoted markets do not have to produce a full prospectus but instead can produce an admission document, if there is no offer to securities of more than 100 people. While the admission document has fewer mandatory information requirements, it still provides investors with sufficient information in order to make an informed investment decision. This is a sensible approach.

We do not see such the 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.

In any event, regulators have already taken different approaches on regulated markets and in many European markets there are varying listing requirements and ongoing disclosure requirements for different types of companies on regulated markets and MTFs; for example, biotechnology companies on the Main List of the London Stock Exchange do not need to have a track record of three years for

[1] Study available at: http://ec.europa.eu/internal_market/securities/docs/prospectus/cses_report_en.pdf

admission and have specific requirements set out in the Listing Rules. These markets already have varying regulated frameworks and investors understand these variations.

We have set out in Appendix B of this paper what we consider appropriate for a proportionate disclosure regime for a SME/Small Cap. We do recognise that an IPO could require more information than a proportionate prospectus for a subsequent offer and this is reflected in our table in Appendix B. Also what we propose for a further offer for an SME/Small Cap in Appendix B reflects our views stated in our response to Question 25 for a proportionate disclosure regime for pre-emptive offers – the same principle should apply that if the information has already been disclosed to the market, then it does not need to be included in a prospectus for a further offer.

Q38: Do you agree with the proposal summarized in the table in paragraph 141?

No, please see our response to Question 37.

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?

Yes, we agree there should only be one schedule for both unlisted and listed SMEs and Small Caps. However, as stated in our response to Question 37, we believe that there should be different disclosure obligations for a proportionate prospectus at IPO stage, where there may not be information already available to the market, and one that was in relation to a subsequent public offer.

We do not believe that ESMA and the Commission should rely on revisions to MiFID in order to implement recent amendments to the amending Directive of the Prospectus Directive. MiFID is currently under review and there is a proposal for a 'specialised SME market'. However, there are no details as yet on how the specialised SME market regime would work.

In the current economic climate where banks have decreased their lending, many listed SMEs and small cap companies need to access finance and want to turn to the equities market to access it. However, currently the process for raising public finance is too costly and overly burdensome for them. We do not consider that waiting for the MiFID review to complete would provide a timely solution to these companies' financing issues.

Q40: Can you provide data on the average costs for SMEs and Small Caps to draw up a prospectus? What are the most burdensome parts of a prospectus to produce?

Please see our response to Question 36, in which we outlined the costs of producing a prospectus and the most burdensome parts of the prospectus, which are relevant for small and mid-cap quoted companies.

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?

Yes, we do believe that these items could be omitted without decreasing investor protection.

As stated in our response to Question 36, 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.

We would consider that this requirement could be removed in a proportionate prospectus for SMEs/Small Caps in the case of both an IPO and a further offer.

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?

Yes, we agree with the items ESMA proposes to delete and redraft in Annex 4 and 5 of this consultation paper. However, we believe that there are further items which could be deleted from a proportionate prospectus for SMEs and Small Caps in the case of an IPO and especially in the case of a subsequent public offering. Please see Appendix B for our outline of what could further be deleted and also our analysis of what information is already in the market (and therefore could be deleted from the proportionate prospectus regime for both pre-emptive offers and SMEs/Small Caps) in our response to Question 25.

As already noted in our response to Questions 25 and 30, we believe that companies on MTFs should also have the ability to incorporate information by reference, which should also be a feature of the proportionate disclosure regime for SMEs/Small Caps. Currently, only companies on regulated markets are able to take advantage of this. We believe it should be extended to companies on MTFs. This would both decrease the administrative burden of having to add existing information to a prospectus for an issuer and also help create a document that was more focused on the relevant information, thus making it more comprehensible.

Furthermore, as outlined in our response to Question 25, we would also suggest that ESMA could delegate the authority of approving a proportionate prospectus for SMEs/Small Caps to a body other than the competent authority, such as the respective stock exchange or a person responsible for the offer or listing of a company on a regulated market (e.g. a sponsor in the UK) or multilateral trading facility (e.g. a NOMAD in the case of AIM). This could ensure a quick and efficient approval process, which is key for these offers.

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.

Yes. We have outlined these in Appendix B and also provided a detailed analysis of many of these items in our response to Question 25.

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?

No. We believe that more requirements could be removed from proportionate disclosure regime for SMEs and Small Caps without compromising investor protection. Please see Appendix B and also our analysis in our response to Question 25 of what information is already available to the market.

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?

No, based on what ESMA has proposed, we do not believe that there would be a significant cost saving for SMEs and Small Caps. As noted in our response to Question 37, we urge ESMA to reconsider what further items could be removed or reduced to decrease the burden on these companies in order to effectively carry out the mandate for technical advice as requested by the European Commission and to implement the amending Directive approved by the European Parliament.

We have outlined what cost savings could result from removing certain requirements from the proportionate prospectus regime in our response to Question 25.

If you would like to discuss any of these issues further, we would be pleased to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

The Quoted Companies Alliance Legal Committee

Tom Shaw (Chairman)	Speechly Bircham LLP
GaryThorpe	Clyde & Co LLP
Jai Bal	Farrer & Co
Chris Barrett	Bird & Bird
Richard Beavan	Boodle Hatfield
Ross Bryson	Mishcon De Reya
Madeleine Cordes	Capita Registrars Ltd
Jonathan Deverill	DMH Stallard
Mebs Dossa	McguireWoods
Rebecca Ferguson/Jeanette Gregson	Davenport Lyons
Stephen Hamilton	Mills & Reeve LLP
Susan Hollingdale	Practical Law Company Limited
Martin Kay	Blake Lapthorn
Julie Keefe	Norton Rose LLP
Philip Lamb	Lewis Silkin
Leon Miller	Nabarro LLP
Maegen Morrison	Hogan Lovells International LLP
Chris Owen	Manches
June Paddock	Fasken Martineau LLP
Donald Stewart	Faegre & Benson LLP
Mark Taylor	Dorsey & Whitney
Kate Jalbert	Quoted Companies Alliance
Tim Ward	Quoted Companies Alliance

APPENDIX B

Quoted Companies Alliance's Proposal for a Proportionate Disclosure Regime for SMEs and Small Caps

Annex I

	Brief description	**Subsequent Offers for SMEs and Small Caps[2]**	**IPOs for SMEs and Small Caps[3]**	**Relative cost**	**Notes**
1	**Persons responsible**	☑	☑	★	
1.1	Persons responsible for information in prospectus	☑	☑		
1.2	Responsibility statement	☑	☑		
2	**Statutory auditors**			★	
2.1	Details of auditors				
2.2	Resignation, removal etc of auditors				
3	**Selected financial information**			★★	
3.1	Selected financial information				
3.2	Interims				
4	**Risk factors**		☑	★★	
5	**Information about the issuer**			★	
5.1	History and development		☑		
5.1.1	Name of issuer	☑	☑		
5.1.2	Registration details	☑	☑		
5.1.3	Date of incorporation				
5.1.4	Issuer's country of incorporation etc		☑		
5.1.5	Events in development of business				
5.2	Investments				
6	**Business overview**		☑	★★★	
6.1	Principal activities		☑		
6.2	Principal markets		☑		
6.3	Exceptional factors		☑		
6.4	Dependency on patents etc		☑		
6.5	Competitive position		☑		
7	**Organisational structure**		☑	★	
7.1	Brief description of group		☑		
7.2	Significant subsidiaries		☑		

[2] For SMEs and Small Caps admitted to trading on a regulated market and/or MTF
[3] For SMEs and Small Caps seeking admission to trading on a regulated market and/or MTF

8	**Property, plant, equipment**		☑	★★	
8.1	Existing or planned material tangible assets				
8.2	Environmental issues		☑		
9	**Operating and financial review**			★★★★	This is a very costly aspect for issuers, especially for the management in terms of time spent producing it. Most of the information here could be ascertained from future trends and/or historical financial information.
9.1	Financial condition				
9.2	Operating results				
10	**Capital resources**			★★	
10.1	Issuer's capital resources				
10.2	Cash flows		☑		
10.3	Borrowing and funding				
10.4	Restrictions on use of capital				
10.5	Sources of funds for future investments				
11	**Research and development etc**			★★	
12	**Trend information**	☑	☑	★★	
12.1	Significant recent trends	☑	☑		
12.2	Material effect on issuer	☑	☑		
13	**Profit forecasts or estimates**			★★★	
13.1	Principal assumptions				
13.2	Accountants' report				
13.3	Comparison with historical				
13.4	Validity of existing forecasts				
14	**Administrative, management bodies etc**			★	
14.1	Senior management		☑		
14.2	Conflicts of interest of management				
15	**Remuneration and benefits**		☑	★	
15.1	Remuneration		☑		
15.2	Pension and retirement benefits		☑		
16	**Board practices**			★	
16.1	Expiration of current term of office				
16.2	Service contracts		☑		
16.3	Audit, remuneration committees				
16.4	Corporate governance		☑		

17	**Employees**		☑	★	
17.1	Number of employees		☑		
17.2	Employee shareholdings, options		☑		
17.3	Employee arrangements re share capital		☑		
18	**Major shareholders**			★	
18.1	Notifiable interests in shares		☑		
18.2	Major shareholder voting rights				
18.3	Control of issuer		☑		
18.4	Arrangements re change of control		☑		
19	**Related party transactions**		☑	★	
20	**Financial information**			★★★★	
20.1	Historical financial information		☑		We agree that historical financial information should only cover 2 years for an IPO. However, it is not necessary for a subsequent offer as it is already disclosed in the market.
20.2	Pro forma financial information		☑		
20.3	Financial statements		☑		
20.4	Auditing of financial information		☑		
20.5	Age of latest financial information		☑		
20.6	Interim and other financial information		☑		
20.7	Dividend policy		☑		
20.8	Legal, arbitration proceedings		☑		
20.9	Significant change statement	☑	☑		
21	**Additional information**			★	
21.1	Share capital	☑	☑		
21.1.1	Share issues, reconciliation				
21.1.2	Shares not representing capital				
21.1.3	Shares held by the issuer in itself				
21.1.4	Convertible securities				
21.1.5	Acquisition rights over unissued shares				
21.1.6	Capital under option	☑	☑		
21.1.7	Share capital history				
21.2	Memorandum, articles of				

	association				
22	**Material contracts**	☑	☑	★	
23	**Third party information**			★	
23.1	Information about experts	☑	☑		
23.2	Requirements for information sourced from third parties	☑	☑		
24	**Documents on display**			★	
25	**Information on holdings**			★	

Annex II

	Pro forma financial information			★	

Annex III

1	**Persons responsible**	☑	☑	★	
1.1	Persons responsible for information in prospectus	☑	☑		
1.2	Responsibility statement	☑	☑		
2	**Risk factors**		☑	★★	
3	**Key information**			★	
3.1	Working capital statement	☑	☑	★★	
3.2	Capitalisation, indebtedness			★★★★	This is a very costly aspect – in addition, most of the information here could be ascertained from the working capital statement, historical financial information, and/or an issuers' annual report and accounts.
3.3	Interests of persons in issuer	☑	☑		
3.4	Reasons for the offer, use of proceeds	☑	☑		
4	**Information concerning securities**			★	
4.1	Type and class of securities	☑	☑		
4.2	Legislation of securities	☑	☑		
4.3	Registered or bearer		☑		
4.4	Currency of securities	☑	☑		
4.5	Rights attached to securities		☑		
4.6	Authorities creating securities				
4.7	Expected issue date	☑	☑		
4.8	Restrictions on transferability		☑		

4.9	Takeover bids, squeeze out rights etc		☑		
4.10	Takeover bids by third parties		☑		
4.11	Withholding tax information		☑		
5	**Terms and conditions of offer**			★	
5.1	Conditions, statistics, timetable etc				
5.2	Distribution, allotment				
5.3	Pricing				
5.4	Placing and underwriting				
6	**Admission and dealing**			★	
6.1	Application for admission				
6.2	Markets where shares traded				
6.3	Any other placings				
6.4	Intermediaries in secondary trading				
6.5	Stabilisation				
7	**Selling securities holders**			★	
7.1	Details of sellers				
7.2	Details of shares being sold				
7.3	Lock ups				
8	**Expenses of the issue**	☑	☑	★	
8.1	Net proceeds, estimated expenses				
9	**Dilution**			★	
9.1	Dilution resulting from offer	☑			
9.2	Dilution of existing shareholders	☑			
10	**Additional information**			★	
10.1	Statement re capacity of advisers				
10.2	Other information audited				
10.3	Information about experts	☑	☑		
10.4	Requirements for information sourced from third parties	☑	☑		

APPENDIX C

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The QCA is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies;
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The QCA is a founder member of European**Issuers**, which represents quoted companies in fourteen European countries.

QCA's Aims and Objectives

The QCA works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
  - corporation tax payable of £560 million per annum
  - income tax paid of £3 billion per annum
  - social security paid (employers' NIC) of £3 billion per annum
  - employees' national insurance contribution paid of £2 billion per annum
  -

The tax figures exclude business rates, VAT and other indirect taxes.

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