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European Securities and Markets Authority (ESMA)  
CS 60747 – 103 rue de Grenelle  
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28 September 2017

Dear Sirs,

**Draft technical advice on content and format of the EU Growth prospectus**

We welcome the opportunity to respond to ESMA's draft technical advice on an EU Growth prospectus's content and format. The Quoted Companies Alliance Legal and Primary Markets Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

We have responded below in more detail to the specific questions from the point of view of our members, small and mid-size quoted companies.

***Responses to specific questions***

**I. Format of the EU Growth prospectus**

**Q1 Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.**

We agree that the EU Growth prospectus and its sections should be specifically calibrated to facilitate access to equity finance and growth to small and mid-size companies.

Broadly, we have no particular concerns over the proposed sections to be inserted in an EU Growth Prospectus. However, we believe that the specific sections proposed could follow a different order:

- the corporate governance section could follow the section on strategy, performance and business environment;
- details of the offer/admission and terms and conditions of the securities would be better set out ahead of the risk factors and working capital statement;
- the working capital statement and statement of capitalisation and indebtedness would be better set out together with the financial statements and KPIs; and
- the risk factors should be included at the end of the document.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

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Presenting the specific sections in this order would allow smaller issuers to better explain their reasoning and specificities in a logical and more comprehensible way from an investor's point of view.

Furthermore, as explained below, we are concerned about restricting the inclusion of working capital statements to offers by issuers with a market capitalisation of €200m or more.

As explained in our response to Q4, we do not support any mandatory requirement for a cover note or for its contents. We would also take a different approach to the contents of the summary (particularly where the issuer draws up an EU Growth prospectus as a single document).

We recommend that the requirements for equity and non-equity issuances should be separated in order for them to be clearly and swiftly understood by issuers and their advisers, making the process more cost-effective. Please see our response to Q6.

**Q2 Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?**

We support the proposal that issuers should be free to define the order of the information items within each section. Ultimately, a prospectus should be recognised as a selling or offering document. Issuers should be free to disclose certain information in a manner which serves their interests best and which they consider to be the most material. The document should be comprehensible and specific to the issuer. Imposing a rigid format would detract from this purpose. We do not consider that allowing the issuers to freely determine the order of information items would have any detrimental effect on investor protection.

In addition, we believe that allowing flexibility in the disclosure of information would not undermine investors' ability to make a comparability assessment.

**Q3 Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU Growth prospectus? If not please explain and provide alternative suggestions.**

We suggest that there is merit in placing the risk factors between the description of the issuer's strategy, performance and business environment and details of the offer, which would seem to benefit investor protection. However, we believe that, from the perspective of the issuer, the section on risk factors should be located at the end of the document. By locating risk factors at the end of the document, issuers would be allowed to better explain them while being able to flag them in contents and relevant statements throughout the document.

As explained in our response to Q20, we disagree with the approach taken by ESMA in relation to the summary. In our view, we believe that it could be potentially detrimental for both issuers and investors, particularly in a single unified prospectus, for an arbitrary number of risk factors to be summarised in the summary and also to be fragmented in the manner suggested by ESMA.

To include some risk factors in the summary, with a mathematical cut off at 10, could lead to the potential risk that a retail investor may not give sufficient weight to the other risk factors contained in the risk factors section. This could misrepresent the issuer and mislead the investor.

A better approach would be to include an explanation in the summary stating that there are a number of risk factors that affect the issuer and its securities and which impact on the potential value of an investment, which should be read carefully.

**Q4 Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?**

Given that the EU Growth prospectus should be a simplified document, adequate to the needs of smaller issuers, we do not agree that the inclusion, format or content of a cover note should be mandated. This is not required under Level 1 and would increase costs to issuers, and reduce flexibility and the ability to produce more comprehensible documents.

Furthermore, it is difficult to assess whether it is appropriate for the suggested cover note to be limited to three pages without ESMA giving further indications as to what it expects to be contained within the cover note. We would not support any mandatory requirements. If the concept of a cover note is simply the name of the issuer and a broad outline of the offer (as it is "standard practice", as mentioned by ESMA) as well as the suggested statement that the EU Growth prospectus has been drawn up in accordance with Article 15 of the Prospectus Regulation, it is difficult to see that such a cover note would ever extend beyond three pages. In these circumstances, we question whether there is merit in mandating that it should be no more than three pages as, in practice, it never will be that length.

## **II. Content of the EU Growth registration document**

**Q5 Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.**

Annex V of the Prospectus Regulation states in paragraph II that "Working capital statement and statement of capitalisation and indebtedness (only for equity securities issued by companies with a market capitalisation above EUR 200,000,000)". ESMA has interpreted the language in parenthesis as qualifying both the need for a working capital statement, and the need for a statement of capitalisation and indebtedness.

This means that there is no requirement for a working capital statement in an EU Growth prospectus where a company has a market capitalisation of €200m or less.

ESMA notes that a working capital statement is required for admission to an SME Growth Market. Therefore this interpretation means that a working capital statement will not be needed for non-SME Growth Market offers. Although there is a cost implication attached to the working capital exercise, this is an important disclosure underpinning a proposed investment in an SME.

We recommend that other disclosure requirements should be more generally considered by ESMA to be left out of the EU Growth prospectus. Omitting the requirement for a working capital statement fails to provide the kind of substantive alleviation smaller issuers would have hoped for.

There are other disclosure requirements that we believe could be removed in this regard without detriment to investor protection:

- history of share capital and share capital reconciliation;
- resolutions under which the securities are created; and
- objects and purpose under memorandum and articles of association.

**Q6 Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

In our view, it would be clearer if the Level 2 measures for registration documents for equity and non-equity issues were mandated separately. This would allow issuers to look at one set of requirements for each type of issue rather than reviewing a composite set of requirements and eliminating those that are not applicable. We also suggest that this would allow for an easier drafting by the issuers and a potentially faster review by the NCA.

**Q7 Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.**

We agree with the requirement to include any published profit forecasts without an obligation for a report by independent accountants or auditors in the EU Growth prospectus.

ESMA proposes that profit forecasts are no longer required to be reported on, which is intended to be a cost saving measure. Our view is that, although not critical from an investor's perspective, in practice, if a profit forecast/estimate is included in the document, as part of the due diligence and verification process, there is likely to be a high level of "private" comfort work involved.

It is also interesting to contrast the intended approach for the disclosure of pro forma information in a prospectus (which approach will also be adopted for SME Growth prospectuses) where an accountants' report will be needed.

We point out that ESMA is seeking to reduce the regulatory burden for profit forecasts (which we support) by eliminating the requirement for an accountant's report whilst maintaining a similar requirement for pro forma financial information. We recommend that, on this basis and for consistency, the requirement for an accountants' report on pro forma information should also be eliminated.

In terms of costs, the majority of the cost goes on the diligence report, the extra cost of the public opinion is smaller in comparison – it is principally a risk premium.

**Q8 Do you consider that the requirement to provide information on the issuer's borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.**

We consider that information on changes in the issuer's borrowing and funding structure, a description of the expected financing of its activities and a summary of the limitations on an issuer's methods of financing are also relevant to non-equity issues and should be described in an EU Growth prospectus for non-equity issues.

**Q9 Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.**

We note that the threshold for disclosure of major shareholders on SME growth markets is not covered by the Transparency Directive (EU 2004/109/EC (as amended by Directive 2013/50/EU)). Some markets have adopted similar rules. However, we would recommend that a definition of major shareholders is provided and caters for those EU member states or EU Growth Markets which have a lower threshold for determining major shareholders.

Furthermore, we believe that the reference to "direct or indirect interests in the issuer's capital or voting rights", rather than notifiable voting rights is not clear. The notification requirements of the Transparency Directive and its associated terminology may provide a basis upon which to provide clarification.

The requirement proposed by ESMA could cause confusion and would need detailed guidance on its application in practice. Moreover, we believe that including this additional information requirement in a prospectus is disproportionate to the resulting additional complexity and associated time and costs for issuers.

We believe that these provisions should clarify that they do not extend to any rights which would not be notifiable if under the Transparency Directive if it were to apply to the relevant issuer (e.g. under other notification regimes not derived from the Transparency Directive). ESMA should also allow for the use of lower thresholds imposed by individual EU member states or EU Growth Markets.

We suggest that, in addition to disclosing the holdings of major shareholders at the date of the registration statement, such information is also given, so far as is known (and on the basis of assumptions regarding the size of the issue), at the date of admission to the relevant EU Growth Market or the closure of the offer. This could be given in an EU Growth prospectus drawn up as a single document or in the securities note.

**Q10 Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.**

We support the proposal that IFRS is not made mandatory and that national accounting standards should be permitted. There is undoubtedly a cost issue associated with the work stream of converting an issuer's national accounting standards to IFRS. That said, in certain EU member states, national accounting standards are increasingly being harmonised with IFRS meaning that, in those EU member states, the costs

associated with IFRS conversion are diminishing. Whilst adopting different accounting standards on EU Growth Markets may make comparisons more difficult this would be outweighed by the ability for issuers to adopt a flexible yet informative approach when raising finance.

**Q11 Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.**

We question some of the specific requirements. For example:

- the need for a history of share capital;
- disclosure of the resolutions under which securities are created;
- objects and purpose clause in Memorandum and Articles of Association.

**Q12 Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

As most of the disclosure items are based on the information required by the Prospectus Regulation (EU No 809/2004), we believe that they should be familiar to issuers. However, there are a few areas where we believe guidance would be needed for issuers:

- the new non-financial objective requirement;
- risk factors (and how they should be ‘corroborated’ with the rest of the prospectus);
- liability; and
- what qualifies as “profit forecast”.

**Q13 Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

Please see our response to Q11.

In relation to Key Performance Indicators (KPIs), ESMA mentions, in paragraph 75, the “inclusion of at least one KPI based on liquidity such as current ratio, acid-test ratio, cash ratio, quick ratio, cash conversion cycle and at least one based on indebtedness such as debt to total assets ratio, debt to equity ratio or other measures of liquidity and indebtedness that are appropriate for the issuer and/or its industry”.

We believe that ESMA should not mandate that companies should calculate KPIs – many small and mid-size companies do not routinely measure KPIs and instead just focus on the financials themselves (e.g. balance sheet).

As we indicate in our response to Q24, companies should be given free rein to report whatever KPIs (if any) they consider appropriate.

**III. Content of the EU Growth securities note**

**Q14 Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

Please see our response to Q15.

**Q15 Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

In line with what we had explained above in our response to Q6, it would be clearer if the Level 2 measures for securities notes for equity and non-equity issues were mandated separately. This would allow issuers to look at one set of requirements for each type of issue rather than reviewing a composite set of requirements and eliminating those that are not applicable. This would allow for an easier drafting by the issuers and a potentially faster review by the NCA.

**Q16 Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

As most of the disclosure items are based on the information required by the Prospectus Regulation (EU No 809/2004), we believe that they should be familiar to issuers.

**Q17 Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosures items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.**

Please see our responses to Q5 and Q11.

**Q18 Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.**

No benefit would be estimated in the case of equity and non-equity being amalgamated. Please see our response to Q15.

**Q19 Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

We do not have any further comments.

#### IV. Summary of the EU Growth prospectus

**Q20 Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

The proposed summary for the EU Growth prospectus does not achieve the purpose that has been set out by the European Commission to have a shorter summary that is specific for smaller issuers. ESMA has the opportunity to propose a simpler, more pragmatic and cost effective approach to the contents of the summary of an EU Growth prospectus. The European Commission's mandate allows ESMA to take such an approach while adapting Article 7 to the needs of SMEs.

However, ESMA has closely followed the four section format in Article 7 of the Prospectus Regulation and has proposed other mandatory measures such as reducing the number of risk factors from 15 to 10 and the maximum number of pages from seven to six.

A reduction from seven pages to six pages is an arbitrary approach and is unhelpful, as is the reduction in the number of risk factors. We question whether these would be effective measures. Reducing the page length or the allowed number of risk factors instead of actually cutting down on items to be included could be seen as a 'quick-fix' solution by ESMA to meet the European Commission's mandate for a shorter summary, without addressing the root of the problem or providing any effective benefit for issuers or investors.

Much of the information in the summary will repeat information which will be given shortly after in the main body of the SME Growth prospectus. This seems an unnecessarily costly exercise with limited purpose. This will particularly be the case where the SME Growth prospectus is drawn up as a single document rather than a tri-partite document. Such duplication will have a cost element, as will the professional analysis required to condense and "corroborate" the information in the main body of the SME Growth prospectus.

Furthermore, it would be a time consuming and potentially misleading exercise to try to artificially fit both risk factors and financial information into a prescribed smaller space (e.g. where risk factor 11 is as important as risk factor 10) and less comprehensible for investors (e.g. trying to force financials into the summary format). In this regard, the summary could just explain where this information can be found so that investors can be aware of the risks and can review the financials.

Given that one of the objectives of the SME Growth prospectus is to make it more user-friendly for retail investors, we suggest that it would make more sense to make the summary into a "reader's guide" to the prospectus, which gives an overview of the issuer and the offer. There is no need for a substantial repetition of risk factors and financial information. Condensing and omitting this information may have a damaging effect.

We question the wisdom of identifying a summary with a PRIIP and allowing it to be a free-standing document. A retail investor should not be encouraged to focus and rely solely on the summary. The investment decision should be based on a proper consultation of the whole of the EU Growth prospectus, which has been specifically shortened, by definition, to aid comprehensibility.



**Q21 Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.**

As mentioned above in our response to Q20, we consider the proposal to introduce a six page limit for the summary of the EU Growth prospectus as an arbitrary measure which would essentially make the EU Growth Prospectus and its summary shorter, yet would not in practice meet the European Commission's mandate to create a shorter summary that is specific for smaller issuers.

As an alternative to limiting the number of pages, we propose restructuring the summary into a reader's guide to the prospectus, simply giving an overview of the issuer and the offer (while taking into consideration the European Commission's mandate).

**Q22 Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.**

As mentioned above in our response to Q20, we consider the proposal to reduce the number of risk factors as an arbitrary measure which would essentially make the EU Growth prospectus and its summary shorter, yet would not in practice meet the European Commission's mandate to create a shorter summary that is specific for smaller issuers.

While taking into consideration the European Commission's mandate, we propose restructuring the summary as a readers guide to the prospectus, simply giving an overview of the issuer and the offer, and not including in it any risk factors.

**Q23 Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?**

In practice, it is less common for offers by SME issuers to be underwritten. For economic reasons, given their stage of development, SMEs are less likely to engage the services of large financial institutions which have the balance sheet capability to underwrite SME offers.

Moreover, the size of most SME offers does not warrant underwriting. However, we agree that if there was an underwriting the disclosure of the underwriting arrangements would be expected – for example, regarding the certainty of funds and the commission and underwriting fees involved. The so-called 'soft underwriting' is not uncommon for SME issuers, which should in that case be disclosed.

**Q24 Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.**

We do not think that ESMA should be prescriptive on the line items that should be included, since different measures are important for different industries. By specifying certain measures there is the danger that issuers will default to just producing those, without addressing what might be appropriate for their particular industry.

For example, revenue and revenue growth may be of little relevance to an early stage natural resource developer. Furthermore, because use of local accounting standards is permitted, by specifying certain line items issuers will need to spend time trying to identify appropriate equivalent line items in their local accounting standards, rather than considering what might be appropriate measures.

Furthermore, the use of KPIs should not be mandated – they should be an optional way of summarising the issuer's liquidity, indebtedness and profitability.

**Q25 Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure**

We suggest that there is no advantage gained from disclosing condensed pro forma information in the summary of the EU Growth prospectus. Given that the pro forma information will be included later on, the additional costs of summarising it for the summary will not be significant; however, this would add to the length of the summary unnecessarily. Instead, there should be a reference in the summary to where the pro forma information can be found.

**Q26 Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.**

We do not have any further comments.

**Q27 Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

We consider that the disclosure items proposed by ESMA are clear enough to be understood by issuers.

**Q28 Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

Please see our response to Q20. In terms of cost alleviation, the simplifications that we have proposed would significantly reduce time for preparing, drafting, editing and revising the prospectus, which in effect translates into reduced adviser and management fees and thus money saved by issuers.

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

Yours faithfully,



Tim Ward  
Chief Executive

**Quoted Companies Alliance Legal Expert Group**

<b>Gary Thorpe (Chair)</b>	<b>Clyde &amp; Co LLP</b>
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Martin Kay	Blake Morgan
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**Quoted Companies Alliance Primary Markets Expert Group**

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David Worlidge	
Chris Hardie	Arden Partners PLC
Gavin Burnell	Beaufort Securities Ltd
Andrew Buchanan	Canaccord Genuity Ltd
David Foreman	Cantor Fitzgerald Europe
Stephen Keys	Cenkos Securities PLC
Peter Stewart	Deloitte
Stuart Andrews	finnCap
Samantha Harrison	Grant Thornton
Niall Pearson	Hybridan LLP
Richard Crawley	Liberum Capital Ltd
Tom Price	Northland Capital Partners Limited
Peter Whelan	PricewaterhouseCoopers LLP
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Azhic Basirov	Smith & Williamson LLP
Stewart Wallace	Stifel
Andy Crossley	Stockdale Securities Limited
James Spinney	Strand Hanson Limited
Paul Shackleton	WH Ireland
Nicholas How	Zeus Capital