



Quoted Companies Alliance

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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 scrutiny and approval of the prospectus

We welcome the opportunity to respond to the draft technical advice on scrutiny and approval of the prospectus. 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. Scrutiny of the prospectus and scrutiny and review of the URD

Q1 Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?

We do not agree that Article A(1) contains sufficient criteria for determining whether a prospectus is complete. As well as the Schedules of Building Blocks that will be contained in the delegated act, the Prospectus Regulation itself contains specific informational requirements contained in Articles 6 to 19, but no reference is made to these items within Article A(1).

Q2 Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.

Overall, we agree that Article A(2) contains appropriate criteria for determining the comprehensibility of a prospectus with one caveat.

However, item (d) regarding the use of technical language does not address the fact that there are some business sectors and business models currently in use that are highly technical and complex by their nature. The avoidance of technical language when describing or explaining such businesses may result in an oversimplification of such explanations. This may also result in the full impact of the risks associated with these businesses not being adequately addressed.

Technical businesses are often categorised as “industries of the future”, as they are well-placed to take advantage of sophisticated and complex technologies of scientific research. In the UK there is an overriding

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

investor protection requirement to warn potential investors on the cover of any prospectus to seek professional advice before making an investment decision. There is no equivalent provision in the Prospectus Regulation itself or the proposed delegated act. Such a warning would have the benefit of allowing retail investment into such businesses whilst ensuring that appropriate levels of investor protection are maintained. For instance, the interaction with the suitability requirements under the revised Markets in Financial Instruments Directive II (MiFID II) would ensure that a professional financial adviser would need to consider whether or not such an investment was suitable for his client.

Q3 Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?

We agree that Article A(3) contains sufficient criteria for determining the consistency of information within a prospectus.

Q4 In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?

We do not consider that any further adjustments are required to the generally applicable scrutiny criteria to accommodate the distinctive features of the URD.

Q5 Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?

We agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice.

Q6 In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?

We agree that NCAs should only be required to scrutinise information which has not already been scrutinised, reviewed or approved.

Q7 Do you believe that application of the proposed criteria will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

We consider that the proposed criteria are unlikely to impose additional costs in the UK as they are broadly consistent with the approach used by the NCA in the UK.

Q8 Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

We consider the technical advice to be sufficient and comprehensive.

II. Approval of the prospectus and approval and filing of the URD

Q9 Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?

We believe that ESMA has identified all the adjustments to the existing procedures for approval of the prospectus and in the case of Article C 2(g), one that is not necessary.

Article 14(1) of the Prospectus Regulation entitles issuers to use simplified prospectus provided that they have met the minimum 18 month admission criteria. Accordingly, the request for confirmation of compliance is not necessary for the issuer to demonstrate compliance with the legal requirement and should be deleted.

Q10 Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

We agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e).

Q11 Do you agree with the procedures for approval of the URD?

We agree with the procedures for approval of the URD.

Q12 Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?

As the URD is a live document, acknowledgement of receipt of filing of a URD that does not require approval should take place by the end of the first business day following receipt by the NCA. Two business days should only be acceptable for draft prospectuses or URDs, which have yet to be approved and so are not live documents.

Q13 Do you believe that any of the proposed procedures for approval and filing will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

We do not believe that any likely material extra costs for issuers relating to the procedures for approval and filing based on current experience in the UK.

III. Conditions for losing status of frequent issuer

Q14 Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.

We agree that the relevant conditions are adequately covered in Articles 9 and 26 of the Prospectus Regulation.

Q15 Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?

We do not have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper.

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 'TW', is positioned above the typed name.

Tim Ward

Chief Executive

Quoted Companies Alliance Legal Expert Group

Gary Thorpe (Chair)	Clyde & Co LLP
Maegen Morrison (Deputy Chair)	Hogan Lovells International LLP
David Davies	Bates Wells & Braithwaite LLP
Martin Kay	Blake Morgan
Paul Arathoon	Charles Russell Speechlys LLP
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Stephen Hamilton	Mills & Reeve LLP
Nicholas McVeigh	Mishcon De Reya
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Julie Keefe	
Ashmi Bhagani	Pillsbury Winthrop Shaw Pittman LLP
Sarah Hassan	Practical Law Company Limited
Kieran Rayani	Stifel
Catherine Moss	Winckworth Sherwood LLP

Quoted Companies Alliance Primary Markets Expert Group

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Nick Naylor David Worlidge	Allenby Capital Ltd
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
Bidhi Bhoma	Shore Capital Group Ltd
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