



European Securities and Markets
Authority
11-13 avenue de Friedland
75008 Paris

Contribution submitted online via ESMA's
website

25 February 2011

Ref.: CMA/PRJ/LFU-SKU/IDS

Dear Sir or Madam,

Re: FEE Response to ESMA Call for evidence on the EC request for technical advice on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU

- (1) FEE (the Federation of European Accountants) is pleased to provide you below with its comments on the ESMA Call for evidence on the EC request for technical advice on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU (the "Advice").

General comments

- (2) We welcome the call for evidence issued by ESMA to submit views on aspects or areas ESMA should consider in its advice to the European Commission. We present below our detailed comments on certain issues which we would like to highlight. We have decided not to respond to all the sections of the Advice.
- (3) In general, we agree that to the extent possible (unintended) differences between the Prospectus Directive, MiFID and the Transparency Directive should be avoided. The requirements of those Directives should be assessed together in order to assess how the administrative burdens (for example the cummulation of the required disclosures) can be reduced.

Proportionate Disclosure Regime (Section 3.3 of the Advice)

- (4) In our view, the advice regarding the introduction of a proportionate disclosure regime should clearly distinguish the requirements in the case of an initial public offering (IPO) from the disclosures for further issues.
- (5) In the case of an IPO, it is important that the quality of the EU regulated markets is not affected by reduced disclosures. Since one of the objectives of the Prospectus Directive is investors' protection, there should not be less information required when a small company initially offers equity to the public, since investors' protection could be affected when the amount of information is reduced.

- (6) However, we agree that it could be examined to what extent disclosures for further issues could be less demanding than for an initial offering. For further issues, we note that the proportionate disclosure regime has been restricted to those issues where pre-emption rights have not been waived and we support this proposal.
- (7) Furthermore, in the context of aiming to reduce the administrative costs, we suggest that the proportionate disclosure regime in the case of SMEs be available for all further issues.
- (8) In essence, we support the application of a single proportionate disclosure regime for the set of annexes in the prospectus as follows:

	Full disclosure regime	Proportionate disclosure regime
Initial Public Offering (IPO)	Large + SMEs	
Further issue - pre-emption waived	Large	SMEs
Further issue - pre-emption applied		Large + SMEs

Review of the provisions of the Prospectus Regulation (Section 4 of the Advice)

Profit forecasts or estimates

- (9) With respect to profit estimates we would recommend to clarify the requirements in the following sense. If an entity announces the profit for the past business year prior to publishing the financial statements for that year, this does not constitute a profit estimate within the meaning of the Regulation on Prospectuses. Hence, a profit estimate can only be prepared and respectively published in accordance with the Regulation on Prospectuses if, after the end of a business year, the results for that fiscal year have not already been published in the financial statements or already made public by other means.

Audited historical financial information

- (10) For the coverage of the audited historical financial information, we agree that in case of an IPO, the requirement of the latest three financial years should be kept, whereas in case of further issues such requirement may be reduced to the latest two financial years. This will achieve two objectives: investors' protection and avoid any unnecessary burden for the issuers (on the premise that this or equivalent disclosures are required to be made by companies traded on EU regulated markets under the Transparency Directive obligations and would therefore already have been made available to shareholders).

Comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive (Section 5 of the Advice)

- (11) We support the initiative to prepare a comparative table of the liabilities regimes applied by the Members States in relation to the Prospectus Directive, including information comparing the civil, administrative and government liability, criminal liability and sanctions applied in each Member State. We agree that given the divergences among the liability regimes, it would prove useful to identify and monitor the different arrangements in the Member States.

For further information on this letter, please contact Leyre Fuertes, Project Manager from the FEE Secretariat on +32 (0) 2 285 40 76 or via email at leyre.fuertes@fee.be.

Yours sincerely,

A handwritten signature in grey ink, appearing to read 'Philip Johnson', with a long horizontal stroke extending to the right.

Philip Johnson
President