

**EUROPEANISSUERS’ PROPOSALS ON THE LEVEL II DISCLOSURE REQUIREMENTS**

**FOR PROSPECTUSES**

**16 January 2017**

**Introduction**

EuropeanIssuers, representing the interests of companies quoted on the stock exchanges in Europe, is strongly supportive of the Capital Markets Union and particularly welcomes the revision of the EU Prospectus rules. We commend the efforts by policymakers to increase and facilitate access to funding across Europe.

Over the past months we have worked closely with the EU institutions on the level I measures of the Prospectus Regulation to provide technical input and to ensure that the views of quoted companies across Europe are taken into account during the drafting process.

Following the recent agreement on level I measures on the Prospectus Regulation and ahead of the Commission’s and ESMA’s work on level II measures, this note addresses the level II disclosure requirements for prospectuses.

We have put together our proposal for the minimum disclosure requirements which we believe would optimise the fundraising and access to finance for secondary issuances and Growth companies.

1. **Disclosure regime for secondary issuances – Article 14**

Article 14 of the Prospectus Regulation addresses the possibility for certain issuers to “*draw up a simplified prospectus under the simplified disclosure regime for secondary issuances, in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market*”. We believe that this document should make reference to the key aspects of the offer and new information only. Additionally, incorporation by reference of information that has already been made public should be encouraged.

It should be noted that the disclosure requirements outlined below are considered minimum requirements – issuers will be free to include additional information.

1. Persons responsible: Identification and details of persons responsible for prospectus and responsibility statement

2. Essential information: working capital statement, interests of persons involved in the issue/offer (including conflicts) and reasons for the offer and use of proceeds

3. Risk factors: Risk factors specific to issuer or industry and to the securities offered (which can be simplified)

4. Information concerning the securities to be offered/ admitted to trading:

a. type and class of securities including ISIN

b. legislation under which securities created

c. currency of the securities issue

d. expected issue date

e. restrictions on free transferability

5. Terms and conditions of the offer:

a. offer conditions

b. offer period and description of application process

c. circumstances and time period in which the offer may be revoked or suspended

d. description of scale back process

e. minimum and maximum amount of application

f. period during which an application may be withdrawn (if applicable)

g. method and time limits for payment and delivery

h. manner and date of publication of offer results

i. procedure for pre-emption right exercise, the negotiability of subscription rights and the treatment of unexercised subscription rights

6. Pricing: offer price (or method of calculation) and process for the disclosure of the offer price

7. Plan of distribution and allotment: indication of whether major shareholders, management and directors intend to subscribe and if any person intends to subscribe over 5% (to the extent known) and of various categories of potential investors to which the securities are offered.

8. Placing and underwriting: details of the offer co-ordinators and where the offer is to be conducted, details of underwriters and material features of relevant agreements, commissions, etc, and date of the underwriting agreement

9. Admission to trading and dealing arrangements: statement regarding proposed admission(s) and earliest admission date

10. Significant change in the issuer’s financial or trading position: significant changes since the end of last financial period (or negative statement). [We would recommend that the disclosures to fulfil this requirement can be made using incorporation by reference.]

11. Share capital information as of the most recent date possible (to the extent necessary to understand dilution from the offer)

12. Dilution: amount and percentage of immediate dilution from the offer, amount and percentage of immediate dilution for non-subscribers resulting from a subscription offer to existing equity holders

13. Expense of the issue/offer: total net proceeds and estimate of the expenses of the issue/offer

14. Additional information: Optional or other further relevant information which has not yet been released to the market - third party information (if there is an experts report), profit forecast (if there is one), material contracts, governmental/legal/arbitration proceedings, pro forma net asset statement/income statement (mandatory only when there has been a significant gross change or if required to be included to satisfy the necessary information test; if included, pro forma information should be accompanied by a report by independent accountants or auditors) and auditing of historical annual financial information

1. **Disclosure regime for EU Growth Prospectus – Article 15**

As defined by article 15 of the Prospectus Regulation the newly established EU Growth Prospectus has a proportionate disclosure regime. We believe that content of the proportionate disclosure regime should rely on the material information that the investors need. It should be noted that these are minimum requirements. Issuers will be free to include additional information.

1. Persons responsible: Identification and details of persons responsible for prospectus and responsibility statement

2. Essential information: working capital statement, interests of persons involved in the issue/offer (including conflicts) and reasons for the offer and use of proceeds

3. Risk factors: Risk factors specific to issuer or industry

4. History: Legal and commercial name, registration place and number, domicile, legal form, legislation, country of incorporation, contact details for registered office (or principal place of business)

5. Information concerning the securities to be offered/admitted to trading:

a. type and class of securities including ISIN

b. legislation under which securities created

c. confirmation if registered or bearer form and if certificated or dematerialised and details

d. currency of the securities issue

e. description of the rights attached to the securities

f. expected issue date

g. restrictions on free transferability

h. mandatory takeover bids, squeeze-out and sell-out rules

i. details of at source withholding tax in relevant countries

6. Terms and conditions of the offer:

a. offer conditions

b. offer period and description of application process

c. circumstances and time period in which the offer may be revoked or suspended

d. description of scale back process

e. minimum and maximum amount of application

f. period during which an application may be withdrawn (if applicable)

g. method and time limits for payment and delivery

h. manner and date of publication of offer results

i. procedure for pre-emption right exercise, the negotiability of subscription rights and the treatment of unexercised subscription rights

7. Pricing: offer price (or method of calculation) and statement of responsibility and process for the disclosure of the offer price

8. Placing and underwriting: details of the offer co-ordinators and where the offer is to be conducted; paying and depository agents’ details; details of underwriters and material features of relevant agreements, commissions, etc; and date of the underwriting agreement

9. Principal activities: description of and key factors related to operations and principal activities including main products sold and/or services performed; significant new products and/or services

10. Principal markets: principal markets (including revenue breakdown), exceptional factors influencing principal activities and markets; dependence on patents, licences, industrial, commercial or financial contracts or new manufacturing processes (if material); basis for any statements regarding competitive position

11. Admission to trading and dealing arrangements: statement regarding proposed admission(s) and earliest admission date; details of existing admissions

12. Selling securities holders: name and address of seller of securities including positions held at the issuer and other material relationships; number and class of securities being offered by selling holders; and details of lock-up agreements

13. Expense of the issue/offer: total net proceeds and estimate of the expenses of the issue/offer

14. Organisational structure: description of the group and the issuer’s position in it, details of significant subsidiaries

15. Property, plants and equipment: environmental issues that may affect utilisation of tangible fixed assets

16. Trend information: Significant recent trends and known future trends, uncertainties, demands, commitments or events likely to have a material effect on issuer (forward looking statement, contingency in the horizon)

17. Profit forecasts (if any): Principal assumptions on which forecast or estimate is based; report of independent accountants or auditors; comparable basis of preparation; and confirmation on whether forecast is still correct (and if not, why not)

18. Administrative, management and supervisory bodies and senior management: details of board, management, founders and certain partners, including any family relationships, relevant expertise other appointments, bankruptcies, convictions and sanctions; and potential conflicts of interest (or negative statement) and lock-ins

19. Remuneration and benefits: remuneration and benefits for the last full year (on an individual basis unless home country does not require and the issuer does not otherwise publicly disclose the information) and amounts set aside or accrued for pensions, retirement or similar benefits

20. Board practices: in respect of the members of the administrative, management or supervisory bodies:

a. date of expiry of term of office and length of service

b. service contracts providing termination benefits (or negative confirmation)

c. country of incorporation corporate governance regime compliance

21. Employees: shareholdings and options of members of administrative, management and supervisory bodies or key senior managers; arrangements for employee involvement in capital

22. Major shareholders: major shareholders (or negative statement), major shareholder voting rights if different (or negative statement), control of issuer and protection measures, any arrangements potentially resulting in a change of control

23. Related party transactions: details of any relevant related party transactions

24. Significant change in the issuer’s financial or trading position: significant changes since the end of last financial period (or negative statement). [We would recommend that the disclosures to fulfil this requirement can be made using incorporation by reference.]

25. Dividend policy: description of the issuer’s policy and any restrictions; dividends per share for historical financial information period

26. Governmental, legal and arbitration proceedings: Governmental, legal and arbitration proceedings during at least the previous 12 months (or negative statement)

27. Additional information: Share capital information as of the date of the most recent balance sheet in the historical financials:

a. issued and authorised share capital details

b. details of shares not representing capital

c. details of shares in issuer held by or on behalf of the issuer or its subsidiaries

d. convertible or exchangeable securities or securities with warrants

e. acquisition rights or obligations over capital

f. capital of any group member under option or agreed to be put under option

28. Material contracts: summaries of non-ordinary course material contracts entered into in the two preceding years and any other contract providing for a material obligation or entitlement on or for the group

29. Third party information/statement by experts/declarations of interest: details of experts, sources and consents and confirmation regarding any third party information

30. Additional information: Optional or other further relevant information which has not yet been released to the market - third party information (if there is an experts report), governmental/legal/arbitration proceedings, pro forma net asset statement/income statement (mandatory only when there has been a significant gross change or if required to be included to satisfy the necessary information test; if included, pro forma information should be accompanied by a report by independent accountants or auditors) and auditing of historical annual financial information

***EuropeanIssuers*** *is a pan-European organisation representing the interests of publicly quoted companies across Europe to the EU Institutions. As at 31 December 2014, there were 13 225 such companies on both the main regulated markets and the alternative exchange-regulated markets. Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth € 7.6 trillion market capitalisation with approximately 8000 companies.*

*We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.*

*For more information, please visit www.europeanissuers.eu*