

European Securities and Markets Authority
103 rue de Grenelle
75007 Paris
France
(Submitted online at www.esma.europa.eu)

19 December 2014

Dear Sirs,

Consultation Paper – Draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive (ESMA/2014/1186)

The International Capital Market Association (ICMA) is responding to the above.

Setting standards internationally, ICMA is a unique organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years. See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Committee¹, which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA's Legal and Documentation Committee², which gathers the heads and senior members of the legal transaction management teams of 18 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

We set out our response in the Annex to this letter and would be pleased to discuss it with you at your convenience.

The Joint Associations Committee on Retail Structured Products is responding separately, with ICMA's support, from the (non-syndicated) retail structured products perspective.

Yours faithfully,

A handwritten signature in black ink, appearing to read "C. Bellamy".

Charlotte Bellamy
Director - Primary Markets
Charlotte.Bellamy@icmagroup.org
+44 20 7213 0340

¹<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

²<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

ANNEX

GENERAL REMARKS

1. We welcome the opportunity to engage with ESMA on the proposed RTS and welcome the nearly 3-month consultation period.
2. While we appreciate ESMA is mandated to prepare these RTS, there is in fact very little market uncertainty in the areas that the RTS cover and practice in those areas is already relatively consistent. It is therefore not clear that RTS in these areas is strictly required. Unnecessary legislation, even if it is straightforward and workable in practice (which in some cases the RTS is not), should be avoided as it represents an unnecessary cost to market participants (for example in legal fees in interpreting new rules, staff training and implementing any internal processes required to comply) with little or no benefit to market users. It is also inconsistent with the objective of the PD Amending Directive to reduce administrative burdens on companies (see Recitals 1 – 3 of the PD Amending Directive). For this reason, we welcome ESMA's decision not to draw up RTS regarding the conditions in accordance with which time limits may be adjusted and consider that ESMA could similarly decide not to submit RTS regarding the other aspects of the PD that are covered by the current proposals.
3. Moreover, some aspects of the RTS appear to us to make radical and fundamental changes to provisions of the Prospectus Regulation currently in force, rather than simply amplifying and reinforcing them with detail. While we appreciate ESMA has been given a mandate to prepare the RTS under a Level 1 Directive (Omnibus II), the mandate relates to ensuring "consistent harmonisation", not radical change. We also wonder whether this approach is consistent with Article 10 of Regulation No 1095/2010, which states that RTS "shall not imply strategic decisions or policy choices". This is particularly so when the RTS contradict fundamental principles of the Level 1 regime (e.g. the RTS on incorporation by reference).
4. The RTS generally make no distinction between prospectuses for securities that will be offered to institutional investors and prospectuses for securities that will be offered to retail investors. Aside from the fact that this approach is not in line with PD Recital 16, it is undesirable because it does not take into account the differences in the needs of these two types of investors. Where the RTS indirectly make a distinction between offers of securities with a high denomination and a low denomination (i.e. the RTS on incorporation by reference), they place more onerous obligations on issuers of debt securities with a minimum denomination of €100,000, which is the opposite to what might be expected. We discuss this further below.
5. Some serious practical concerns arise from the proposed RTS on incorporation by reference and the RTS on publication. Those concerns strengthen the argument for a centralised, pan-EU filing system (a "European EDGAR") for all securities subject to the PD, TD and MAR, which would alleviate many of the issues that arise (including under this consultation) from the currently fragmented approach.³
6. We have sought to answer the specific questions posed by ESMA in the CP, but have also included additional points of which we think ESMA should be aware.

DRAFT RTS ON APPROVAL

Question 1: Is there any information that should be added or removed from the list in the proposed Article 2(2)?

7. We do not think any information needs to be added or removed from the list in proposed RTS Article 2.2. However, we note several additional points.
8. ESMA's mandate is to develop draft RTS to specify the procedures for approval of prospectuses, which would appear to call for harmonisation of NCA's approval practices, rather than requiring

³ Please see ICMA's [response](#) to the 2010 CESR Consultation on Pan-European Access to Financial Information.

additional obligations to be placed on issuers. As noted above, new obligations, however straightforward, represent a cost to issuers and should be avoided if they are unnecessary.

9. More specifically, the RTS does not distinguish between draft prospectuses and prospectuses. This would be helpful in order to ensure certainty. For example, paragraph 40 of the Consultation Paper notes that the final version of the prospectus should not contain margin annotations but that is unclear from the current drafting of RTS Article 2.3. It would be helpful if the RTS could refer to draft prospectuses or prospectuses (as appropriate) throughout in order to avoid confusion.
10. The flexibility envisaged in paragraphs 43 and 44 of the Consultation Paper and reflected in the words “where appropriate, during the prospectus review process” must be ensured in practice (e.g. in particular for requests to passport, information incorporated by reference and waiver letters). This should also be reflected by changing the last paragraph of RTS Article 2.7 which states “Where information submitted *along with the initial draft of the prospectus* has not changed” to “Where information submitted *previously* has not changed” (emphasis added) if that provision is retained in the final RTS (see paragraph 19 below).
11. Regarding the reference in the last sentence of paragraph 32 of the Consultation Paper to supplements being approved in the same way as prospectuses, we assume that ESMA is not intending to suggest that NCAs should apply the RTS to supplement approval to the extent possible, but rather merely noting that a supplement must be approved by an NCA under PD Article 16. Efficient approval of supplements is particularly important in ensuring issuers are able to update their base prospectuses in time to access the debt capital markets during very tight issuance windows.

Question 2: Do you believe that the requirement to submit all versions of the prospectus at a minimum in searchable electronic format will impose costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

12. This specific requirement will not impose additional costs as most issuers already do this. However, we note the following general points related to the proposed RTS Article 2.
13. The words “at a minimum” in RTS Article 2.1, 2.2 and 2.7 are unhelpful because it is not clear whether alternative formats (such as hard copy documents) are “above” or “below” the “minimum” and what the “maximum” is. The purpose of those words is also unclear and so they should be removed from the RTS.
14. The requirement in RTS Article 2.4 to submit a draft marked up to show changes to the preceding unmarked draft of the prospectus (a “**blackline**”) and an unmarked draft of the prospectus is generally fine. However, in some cases towards the end of the prospectus review process where the comments are of a minor nature and/or where timing is of importance, it is easier for both issuers and NCAs if there is flexibility to submit blacklined “page pulls” of the prospectus only. It would be helpful if Article 2.4 of the RTS were to be amended to add that flexibility.
15. The requirement in RTS Article 2.4 to prepare a written statement confirming that all changes to the preceding draft are identified is a disproportionate, unduly burdensome obligation for issuers (see further paragraph 16). It also doesn’t seem to be addressing an area where there are currently problems in practice (although if there are specific problems then it would be helpful if ESMA were to communicate those). It is implicit in the submission of a blackline by an issuer or its advisers that it shows the changes to the previous version of the document. The wording of the obligation to submit a blackline in RTS Article 2.4 (“marked up to show changes to the preceding unmarked draft of the prospectus as submitted to the competent authority”) codifies that implicit understanding that exists in practice. It is therefore unnecessary to add an extra obligation that would appear to serve only as an issuer confirming in writing that it has complied with its obligation under the RTS.
16. In addition, the precise form that the confirmation should take is not clear, meaning NCAs will have discretion to require the confirmation in whatever format they wish. This could impose

additional burdens if, for example, an NCA requires a signed letter from the issuer. In many cases, an issuer's lawyers will be in a better position than the issuer to provide information relating to a blackline of the prospectus, as they will often draft the prospectus and prepare any blacklines of it. However, even a person who has prepared a blackline for submission to the NCA may not be able to give the precise confirmation contemplated by the draft RTS. Blacklines are prepared using computer software, which is a more efficient and cost-effective alternative than lawyers checking each draft of a prospectus line by line. Blacklines generated by computer software are generally expected to show all material changes between two versions of a document, but might not show certain non-significant changes (such as formatting changes). In order to feel comfortable that it can give the confirmation contemplated by the RTS, the person giving it is likely to need to check manually that every single change to the prospectus has been reflected. This would add a considerable amount of time and cost to a transaction. This obligation is therefore an unnecessary and disproportionate burden to place on issuers and should be deleted from the RTS.

17. If the provision were to be retained (which we do not believe is necessary), it should be reworded to require a written statement from the issuer or its advisers that the relevant versions of the prospectus have been compared using document comparison software.
18. Cross-reference lists required under RTS Article 2.2(1) should not need to be updated and re-submitted with the final prospectus under RTS Article 2.7. Cross-reference lists assist an NCA's initial review of the prospectus in checking the relevant PR requirements have been met, but are not necessary after that point (because subsequent changes will relate to specific NCA comments) and so should not be required for subsequent prospectus submissions or final prospectus approval. The RTS should be amended accordingly.
19. The last paragraph of RTS Article 2.7 obliges the issuer to confirm in writing that information contained in prior submissions is still correct if information submitted along with the initial draft of the prospectus has not changed and is not resubmitted. Similar concerns apply to this obligation as those expressed above in relation to RTS Article 2.4. The obligation in the first paragraph of RTS Article 2.7, together with the issuer's responsibility for the prospectus under PD Article 6, is enough to ensure that issuers re-submit any information that has changed since a previous submission before approval. In addition, it is unclear how an issuer would be able to confirm that historical information (such as financial statements) that has previously been submitted is "still correct". Financial statements are correct as of the date to which they are prepared, and do not remain "correct" after that point. If ESMA has included this provision because it is concerned that an issuer might not re-submit accounts that are corrected and re-published during the approval process, then this provision in the RTS is not necessary to address that concern because issuers would already be obliged to do this under PD Article 5.1. If ESMA is concerned to ensure that information submitted in any derogation request submitted under RTS Article 2.2(3) remains correct, then RTS Article 2.7 should be narrowed accordingly, as well as amended to address the point in paragraph 10. However, this additional confirmation that an issuer has complied with its regulatory obligations is not necessary at all.

Question 3: Do you consider that there are any other aspects of the approval process that should be dealt with by the RTS?

20. No, however we note the following general points on RTS Article 3.
21. Under RTS Article 3.3, the latest time that NCAs can inform issuers that the prospectus has been approved is close of business on the working day following the decision to approve. This is unworkable for issuers and lead managers because other aspects of a transaction are dependent on the date of approval of the prospectus (e.g. the signing of contractual documents). The decision to approve must therefore be confirmed to the issuer on the day the decision is taken. This is in line with current practice and so should not be problematic for NCAs. RTS Article 3.3 should be amended accordingly.
22. The power for NCAs to withhold approval of a prospectus was never in doubt and is already clear from PD Article 13. The purpose of RTS Article 3.4 is therefore uncertain. Furthermore RTS Article 3.4 is currently drafted to give a high degree of discretion to NCAs and it is not known how

that will be exercised and what the implications are for issuers. For example, if an issuer has simply misunderstood an NCA comment when they first receive it, it might take a few turns of the prospectus to satisfy the comment, but that doesn't mean the issuer is unable or unwilling to satisfy the PD requirements. The consequences of the termination of the review process in terms of the NCA's and issuer's future dealings with each other are also not specified. If there are no consequences stemming from the termination of the review process in terms of those future dealings, the purpose of this provision is even more unclear. If an NCA believes it will be unable to approve a prospectus, then informal discussions between the NCA and the issuer (which is the approach currently taken in practice) should be a sufficient means of communicating that position. This does not need to be prescribed in legislation. RTS Article 3.4 should therefore be deleted.

23. Finally, we welcome the statement in paragraph 48 of the Consultation Paper that NCAs should raise comments at the earliest possible opportunity.

DRAFT RTS ON INCORPORATION BY REFERENCE

Question 4: Do you agree that the three abovementioned documents constitute the documents which comply with the requirement of being approved or filed in accordance with the Prospectus Directive and from which information can be incorporated by reference? If not, please provide your reasoning.

INTRODUCTORY REMARKS

24. The proposal for incorporation by reference is based on a very restrictive interpretation of PD Article 11, which might result in less information being made available to investors. This is particularly the case for information that is made available pursuant to local securities laws in the issuer's home jurisdiction and which, although not required to be included in the prospectus, may still be helpful to investors. This cuts across the TD principle that all investors across the EEA should have access to the same information. It would be sensible to apply the same principle under the PD. However, where the information does not have to be included in the prospectus and cannot be incorporated by reference, there is a risk that it will no longer be drawn to the attention of readers of the prospectus. The RTS also cut across other principles of the Level 1 regime (discussed below). A purposive interpretation of PD Article 11, as suggested in our response to Q6 below, would ensure that fundamental principles of the Level 1 regime are upheld.
25. The two most significant issues with the regime are:
- i. **Third country and domestic filings** - the proposed regime does not allow filings made under TD Article 23.3 or filings made in accordance with a Member States' domestic law to be incorporated by reference (unless such filings were also required to be made under a TD or MAD provision specified in the RTS); and
 - ii. **High denomination issues** - the proposed regime would require issuers who issue only debt securities with high denominations to set out their financial statements in the prospectus, whereas issuers of securities with low denominations would be able to incorporate them by reference. Placing higher burdens on issuers of securities with high denominations that are sold to institutional investors is an odd result that is not in line with the general principles of the PD regime.

We discuss these points in more detail in our answer to Question 6.

26. It is worth considering how the RTS will interact with other potential developments in the regulatory landscape for disclosure documents. For example, securitisation disclosure documents are the subject of an EBA consultation on simple, standard and transparent securitisations. In light of the open questions around how disclosure documents for securitisation might change as a result of that consultation, there is more reason for ESMA to take a purposive interpretation of PD Article 11 and submit RTS with an indicative list of documents that may be

incorporated by reference. This more flexible approach might also allow investor expectations in relation to whether certain information is incorporated by reference, or set out in full, to be met.

SPECIFIC CONCERNS WITH THE INTERPRETATION OF THE PD

27. **The proposed regime will not necessarily result in prospectuses that are more easily analysable and comprehensible by investors.** Investor protection is built into PD Level 1, as issuers are required to comply with the overriding “easily analysable and comprehensible” obligation in PD Article 5.1 and Prospectus Regulation Article 28(5). The assessment of what is “easily analysable and comprehensible” should be judged by the relevant NCA and issuer in the light of the particular circumstances of each prospectus. In some cases, incorporation of documents by reference is preferable from an investors’ perspective. Institutional investors might have already analysed the issuer’s most recent financial statements and so do not need the information set out in the prospectus itself, adding to its length. In addition, in some cases, investors will not only be interested in extracts of information inserted into a prospectus in a way that satisfies the prospectus regime requirements, they will wish to see the information set out in the original document itself. This might be the case for a covered bond investor report or an issuer’s articles of association, for example. In relation to an issuer’s financial statements, incorporation by reference allows institutional investors to make use of XBRL technology (which allows specific figures to be easily exported and compared), which might be lost if the information is copied into a prospectus.
28. **The proposed regime would place significant burdens on issuers.** By requiring information to be set out in a prospectus rather than incorporated by reference, there is greater scope for information being presented inaccurately because mistakes could be made when information is copied into the prospectus. In order to mitigate this (and in light of the issuer’s potential liability for a mistake in the prospectus), issuers and their advisers will need to spend significant amounts of time and money on manually checking and double-checking that the information included in the prospectus has been included accurately. As such, the current proposals will impose significant costs on issuers (see Q5 and Q7 below for more detail). The RTS therefore imposes a disproportionate burden on issuers and does not give effect to the intention of the Level 1 regime as described in PD Recital 29 or the intention of the PD Amending Directive to reduce administrative burdens, as described in PD Amending Directive Recitals 1 - 3.
29. **The proposed regime might impact on deal timing and even appetite for raising capital in Europe.** The approach currently proposed could result in an issuer being forced to delay a transaction because it is unable to complete its prospectus in time. Any such delays would not only be costly, they would damage confidence in the European capital market and likely the issuer as well. The RTS might also mean that issuers choose to raise capital outside of Europe in order to avoid the administrative costs associated with needing to set out all financial information in full in their prospectus or a supplement.
30. **Further concerns with the proposed regime related to the TD, together with a suggestion of how the proposal should be amended to take a purposive interpretation of PD Article 11, are set out in Q6 below.**

<p>Question 5: Do you believe that specifying the documents which are considered approved or filed in accordance with the Prospectus Directive as proposed in paragraph 87 will impose costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.</p>
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31. Restricting the ability of issuers to incorporate documents by reference due to ESMA’s interpretation of the PD will impose significant costs on issuers in terms of legal fees, auditors’ fees and printers’ fees.
32. As mentioned in paragraph 28, due to the liability attaching to the prospectus, a team of lawyers will be required to proofread the information included in the prospectus to ensure it matches exactly the original source. By way of example, a French issuer that is no longer able to incorporate its registration document (*document de référence*) filed in accordance with Article 212-13 of the general regulations of the French Financial Markets Authority, and needs to set this

out in the prospectus, might incur additional legal costs of €20,000 to €40,000, plus taxes, each time it prepares a prospectus and an additional €3,000 to €15,000, plus taxes, each time it is required to prepare a supplement to update the prospectus. Those figures could of course increase depending on the amount of information that is to be included in the prospectus, rather than incorporated by reference.

33. The managers might also incur increased legal costs if their legal advisers are involved in ensuring the information is presented properly in the prospectus.
34. There might also be additional auditors' fees, as auditors would be requested to check that any financial information set out in a prospectus rather than incorporated by reference has been included accurately.
35. In addition, if an issuer uses a professional printing company for its prospectus, that company would charge additional fees for preparing a longer and more complex prospectus.
36. The total additional costs of ESMA's approach could therefore be very significant both at the time a prospectus is prepared and at the time any supplement is prepared.

Question 6: Do you agree that the abovementioned information constitutes the information which complies with the requirement of being filed in accordance with the TD? If not, please provide your reasoning.

37. We do not agree. The restrictive interpretation of "filed in accordance with the TD" results in a position that is inconsistent with fundamental Level 1 principles.
38. Our two main concerns with the proposed RTS in relation to the TD are third country and domestic filings and high denomination issues.
39. **Third country and domestic filings** - The currently proposed exhaustive list approach in RTS Article 4 will impact in particular on prospectuses for securities issued by the following types of issuers:
 - (i) non-EEA issuers who wish to incorporate by reference regulatory filings they make in their jurisdiction (e.g. US SEC filings); and
 - (ii) EEA issuers who wish to incorporate by reference filings with an NCA in accordance with the legislation in their Member State (such as the registration document (*document de référence*) filed in accordance with Article 212-13 of the general regulations of the French Financial Markets Authority or financial statements required to be filed under the UK's Listing Rules),

to the extent that they are not obliged to file that information under those parts of the TD and MAD referenced in proposed RTS Article 4.
40. In relation to paragraph 39(i), this is another example of how the proposed approach would result in an outcome that cuts across Level 1 principles. Recital 27 of the Transparency Directive states that it should be "ensured that any additional relevant information about Community issuers or third country issuers, disclosure of which is required in a third country but not in a Member State, is made available to the public in the Community". That principle is reflected in TD Article 23.3, which obliges NCAs to ensure that information disclosed in a third country which may be of importance for the public in the Community is disclosed in accordance with the TD, even if such information is not regulated information within the meaning of the TD. This is to ensure there is a level playing field for investors in the EU with those outside the EU. Disclosures made under TD Article 23.3 should, therefore, also be information which may be incorporated by reference.
41. The same principle of ensuring a level playing field for investors applies within the EEA also. As such, filings noted in paragraph 39(ii) above (i.e. made by EEA issuers in accordance with legislation in their Member State) should also be information which may be incorporated by reference.

42. **High denomination issues** - ESMA's starting point for the RTS appears to be that restricting the information that can be incorporated by reference will achieve a higher level of investor "protection", perhaps because investors are not able to find documents incorporated by reference as easily as if the information is set out in the prospectus. As noted in our answer to Q4 above, we disagree with this and believe that it should be for the individual NCA and issuer to determine what is appropriate in light of all the circumstances of the deal. However, leaving aside our disagreement with the proposed position, ESMA's interpretation of the TD leads to a strange result where institutional investors in debt securities of at least €100,000, who can be expected to be able to find information more easily than retail investors, are afforded that "higher" level of "protection" (by having financials set out in the prospectus itself rather than incorporated by reference) than investors in debt securities of less than €100,000, who may be retail investors. Once again, this result would appear to be contrary to the general intention and principles of the Level 1 regime, in particular PD Recital 16.
43. We also draw to ESMA's attention:
- (i) **The burden on issuers is particularly onerous if they are unable to incorporate financial statements by reference.** As noted in paragraph 28, needing to set out documents in full in a prospectus has significant implications for issuers. This is particularly the case for financial statements. For example, issuers that only issue debt securities with a denomination of €100,000 who offer securities to qualified institutional buyers in the US would be required to set out three years of financial statements in their prospectuses in full. For a multi-issuer programme, this could amount to several hundred pages of financial statements, all of which would need to be proof-read and checked by auditors and lawyers (see more information on costs in our response to Question 7 below).
 - (ii) **An issuer should not face additional burdens under the PD regime because it benefits from an exemption under the TD regime.** While an issuer might not be required to make certain filings under the TD because it benefits from an exemption, it might still choose to do so. It should be possible for issuers to incorporate by reference this type of voluntary filing. Otherwise, an issuer will face additional burdens under the PD regime, simply because it benefitted from an exemption under the TD regime.
44. By taking a restrictive, rather than purposive, interpretation of PD Article 11, ESMA has prepared RTS that run counter to a number of significant Level 1 principles. This could imply a policy choice by ESMA, which would not be permitted under Article 10 of Regulation No 1095/2010, which states RTS "shall not imply strategic decisions or policy choices".
45. **In light of the above, and in order to ensure an effective prospectus regime for both investors and issuers, it is suggested that the list of documents in the RTS be amended to (i) clarify⁴ it is an indicative, rather than exhaustive, list of documents that can be incorporated by reference; and (ii) include any and all regulatory filings made, voluntarily or otherwise, in accordance with the PD or the TD (and Member States' relevant implementing measures). This purposive interpretation of PD Article 11 would result in RTS that are consistent with the principles and intention of the Level 1 regime, and not imply a policy choice by ESMA.**

Question 7: Do you believe that specifying the information which is considered filed in accordance with the TD as proposed in paragraph 92 will impose costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

46. Yes. For an issuer that only issues debt securities with a denomination of €100,000 that is currently able to incorporate its financial statements by reference into its prospectus and going forward would need to set those out in the prospectus in full, there are likely to be significant additional costs. While the types of costs incurred will be similar to those set out in our response to Question 5 (i.e. lawyers, auditors and printers fees), the costs could easily be higher,

⁴ The fact that the list is exhaustive is not clear from the drafting of RTS Article 4 itself (although it is referenced in the Consultation Paper).

depending on the amount of additional information that needs to be set out in full in a prospectus or supplement. It is difficult to quantify these costs because it will depend on the amount of information that is required to be set out in full in the prospectus.

Question 8: Do you consider that there are any other documents that could meet the criteria of being “simultaneously published” from which information could be incorporated by reference?

47. We think the term “simultaneously published” should be interpreted in line with its natural meaning i.e. it should mean that an issuer cannot incorporate by reference a document that is published subsequent to the date that the base prospectus is published. We do not think that there is a need to restrict the meaning of this term in the way ESMA proposes.
48. For example, in the UK, the UKLA offers a “Same Day Service” for approval of certain types of supplements. Those supplements might incorporate by reference financial information that is published on the same day as the supplement, and this is sensible because it means that relevant updated financial information can be made available to investors and included in the prospectus as quickly as possible. There is no reason why this approach should not also apply to inclusion of financial information in the prospectus itself.
49. We also note the reference in paragraph 99 of the Consultation Paper that NCAs may reject the incorporation by reference of any information when such information is, *inter alia*, not presented in an easily analysable and comprehensible form. It is worth noting that the way accounts are presented cannot be retroactively changed. So incorporating accounts by reference or setting them out in full in the prospectus will not affect how “easily analysable and comprehensible” they are. Further, if information has been filed with a third country regulator (such as the US SEC), issuers may not be able to make changes to that information if to do so would make the filings inaccurate or misleading and/or result in them having to amend their filings with the third country regulator. This might also lead to a disparity in information provided to investors in a third country issuer’s country and in the EU and, in the worst case scenario, different disclosures in different EU member states where their securities are listed (if they have different home Member States for different securities). Such an outcome is not in line with Recital 27 of the Transparency Directive (see paragraph 40). We would be grateful if ESMA could clarify in its publication of the final RTS that NCAs are not able to require amendments to financial statements or other filings made with any financial markets authority or official public dissemination and/or storage mechanism.

DRAFT RTS ON PUBLICATION

Question 9: Do you agree that it is sufficiently clear from PD Article 14 that the issuer, offeror or person asking for admission to trading can delegate the task of publication but not the responsibility? If not, please state your reasoning.

50. We agree that the issuer can delegate the task of publication under PD Article 14(2)(c), but would still be responsible for ensuring the prospectus is published if they did so.

Question 10: Do you agree that the obligation to publish the prospectus electronically should also apply to the publication of final terms? If not, please provide your reasoning.

51. This requirement is workable and electronic publication of final terms is usually already done in practice.
52. More generally in relation to the publication of prospectuses and regulated information under the PD, TD and MAR, there is a strong argument for a centralised, pan-EU filing system (a “European EDGAR”) for all securities subject to the PD, TD and MAR, which would alleviate most of the issues that arise (including under this consultation) from the currently fragmented approach.⁵

⁵ Please see ICMA’s [response](#) to the 2010 CESR Consultation on Pan-European Access to Financial Information.

Question 11: Do you agree that the method for publishing final terms should be the same as the method used for publication of the base prospectus? If not, please state your reasoning.

53. The RTS takes the opposite approach on this point to the existing PR Article 33. ESMA's mandate is to develop RTS "in order to ensure consistent harmonisation" relating to publication. It is worth considering whether reversing existing legislation in this area can be said to be "ensuring consistent harmonisation". It might also imply a policy choice by ESMA, which would not be permitted under the Meroni doctrine and Article 10 of Regulation No 1095/2010.
54. Setting aside that fundamental point, it is unclear whether RTS Article 10 requires final terms to be published using at least one of the same PD Article 14(2) methods that was used for the related base prospectus publication, or whether it requires exactly the same method (e.g. precisely the same website) to be used. The former approach would be workable. However, if the latter approach is envisaged, then this is likely to be problematic in some circumstances. It will mean that an issuer is not able to use the option under PD Article 14.2(c) to publish its base prospectus on the website of the financial intermediaries placing or selling the securities, because the financial intermediaries placing or selling the securities will not necessarily be the same for every issue of securities issued under the base prospectus. Issuers select managers for each issue of securities individually based on the circumstances and the characteristics of the transaction.
55. It is also unlikely to make sense when a base prospectus is approved in one Member State and then passported into various host Member States, and final terms are then prepared for offers in specific jurisdictions. For example, if a base prospectus is approved in the UK for a UK issuer and published on the website of the London Stock Exchange, but is then used for an issue of securities which is offered to the public in Germany and listed on a German stock exchange, it would not make sense for the final terms for that issue of securities to be published on the website of the London Stock Exchange, because that specific issue of securities has no relevant connection with the London Stock Exchange. In addition, the final terms for an issue will specify where the base prospectus has been published, meaning investors are able to find the base prospectus easily without the two documents needing to be published on the same website.
56. In light of the above, the last sentence of Article 10.1 of the RTS should be deleted. Or, if it is retained, it should be amended to say that the publication method for final terms shall be "the same as at least one of the methods **set out in PD Article 14(2) that was** used for publication of the related base prospectus".
57. Separately, we do not agree with the suggestions in the Consultation Paper that the final terms form part of the prospectus. This is implied by the last two sentences of paragraph 106 and the first sentence of paragraph 114 and is stated in paragraph 116 of the Consultation Paper. It is clear from the operation of the Prospectus Directive that the base prospectus itself constitutes the prospectus. The final terms complete the base prospectus, but do not form part of it. While this might sound like a fine distinction, it is an important one because if the final terms constitute a part of the prospectus, then they would need to be approved under Article 13. It would be helpful if ESMA could ensure this distinction is clarified in the paper it publishes when the final RTS are published.

Question 12: Would the issuer, offeror or person asking for admission to trading incur costs if the abovementioned provisions were to be adopted? If so, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

58. There are likely to be only minimal additional costs incurred in relation to the requirement to publish the final terms electronically and using at least one of the methods set out in PD Article 14(2) that was used for publication of the related base prospectus.

Question 13: Do you consider there are any other impediments to a prospectus being considered available to the public?

59. No.

Question 14: Do you agree that the obligation to make the prospectus available to the public free of charge also applies to prospectuses that are published electronically? If not, please provide your reasoning.

60. While it is not expressly contemplated in Level 1 that prospectuses published electronically should be made available free of charge, this approach is envisaged in the CJEU's judgement in Case C-359/12 (the "**Timmel judgement**") and, while that decision does not need to be codified, the requirement is fine in principle.

Question 15: Would the issuer, offeror or person asking for admission to trading incur costs if the abovementioned provision was to be adopted? If so, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

61. If the relevant RM or NCA website are an available option for publication and allow people to access prospectuses for free, then the new obligation to make electronically published prospectuses available for free should not cause any additional costs for issuers. However, if the relevant RM or NCA website charges, or starts to charge, for access to prospectuses published on its website, then issuers will need to use an alternative route for publication. The only available option might be publication on the issuer's own website, which might not be available (e.g. if the issuer is an SPV) or, if the issuer does have a website, it is likely to need to develop a particular area of its website for the purpose of publishing the prospectus. It is difficult to quantify the up-front and ongoing costs associated with this, but they could be significant.

Question 16: Do you believe the proposed measures will enhance the accessibility of electronically published prospectuses? If not, please provide reasoning and/or alternative measures.

62. While we have no particular thoughts on whether the proposed measures regarding websites used for the purpose of electronic publication will enhance accessibility of electronically published prospectuses, we note the following concerns with the current proposals.
63. Generally, the proposed RTS and Consultation Paper appear to have been prepared from the starting point that issuers are somehow seeking to minimise the ways in which they publish their prospectuses and related documents. This is not the case. The prospectus for a non-exempt offer is, by its nature, a document that issuers want the relevant investors to see (not least for liability reasons). It is not something issuers want to hide. As such, many of the obligations in the RTS seem to be unnecessarily detailed and complicated given the fundamental fact that an issuer will want to make its prospectus as easily available as possible to the relevant investors.
64. **Hyperlinks** – While the prohibition on the use of hyperlinks in proposed RTS Article 5.1(3) reflects the provision currently contained in PR 29.1(3), it would be preferable for this provision to be deleted from the RTS. This is because there are a number of different occasions on which an issuer might need to refer to a website in its prospectus. First, some NCAs require a prospectus to include a hyperlink to the list of registered and certified CRAs available on the ESMA website in relation to the disclosure required in prospectuses under the CRA Regulation. Secondly, PR Annex XXX 2A.2 requires the issuer to disclose how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus is to be published and "where it can be found". That place is likely to be a website. Thirdly, some issuers such as tech or online companies will need to refer to websites in order to properly describe their business in the prospectus. In addition, Adobe Acrobat (computer software commonly used by market participants for creating searchable pdf files) automatically changes any URL references in a document to a hyperlink, and there is currently no obvious way of disabling this function. So market participants may need to find and invest in new computer software or use a professional printing company to prepare the prospectus, possibly at great expense, if they need to include a URL in their prospectus but are not able to include a hyperlink. It would therefore be sensible if Article 5.1(3) were to be deleted.
65. **Disclaimers** - It is unclear how (i) the mention of the use of disclaimers in proposed RTS Article 5.2 and (ii) the requirement that access to a prospectus shall not be contingent on acceptance of a disclaimer in RTS Article 5.3, interact. We do not believe these two provisions are intended to work in a contradictory manner. It would therefore seem that the word "disclaimer" in these two

Articles must be being used in two different ways. The intention of RTS Article 5.2 appears to be to increase investor protection by ensuring only those investors to whom an offer can be targeted under relevant securities regulations (European or otherwise) are able to access the prospectus. This will often involve the use of a notice relating to such securities regulation, which an investor is required to acknowledge before it accesses the prospectus. As noted in RTS Article 5.2, this serves an important investor protection purpose. It also allows issuers to comply with relevant securities laws. On the other hand, the intention of RTS Article 5.3 appears to be to ensure easy access to a prospectus. The reference to “disclaimer” in RTS Article 5.3 would therefore appear to be referring to a notice through which an investor is required to accept a disclaimer of liability from the issuer in relation to facts that do not pertain to the investor’s status under relevant securities laws, or the issuer’s compliance with such. In light of this, it would be sensible if the provisions were clarified to the extent they are both retained in the final RTS (see paragraph 66). This could be achieved by amending Article 5.2 to read: “... such as the insertion of a notice that requires acceptance as to who the addressees of the offer are” and amending RTS Article 5.3(2) to read “acceptance of a disclaimer of liability that does not pertain to a legal restriction on who may access the prospectus” (or similar wording to that effect).

66. **Codification of the Timmel judgement** - It appears that ESMA has attempted to codify the Timmel judgement in RTS Article 5.3. Not only is this unnecessary (as case law stands on its own without needing to be codified), but it has also been done in an inconsistent manner with the original judgement. The Timmel judgment held that a document is not “easily accessible” where there “is an obligation to register on that website, entailing acceptance of a disclaimer **and** the obligation to provide an email address, where a charge is made for that electronic access or where consultation of parts of the prospectus free of charge is restricted to two documents per month” (emphasis added). RTS Article 5(3) is not consistent with this as it would prohibit **each of** completion of a registration process, acceptance of a disclaimer and payment of a fee. RTS Article 5.3 should therefore be deleted, rather than applying as a separate, different standard to the Timmel judgement.
67. **Use of issuer’s group website** – It would be helpful if ESMA could give some clarification as to whether the ability of an issuer to publish its prospectus on the website of its group in RTS Article 5.5 extends to the website of an originator or seller in an ABS transaction where the issuer is an orphan SPV. In such cases, the orphan SPV issuer is not technically part of the same group as the originator/seller, but the website of the originator/seller is the most logical place for the prospectus to be published and the most likely place that investors will look for it.
68. **Notice of use of group website** - The requirement for an issuer to inform investors of the use of the website of the group for the purpose of prospectus publication under RTS Article 5.5 is unclear both in terms of its practical application and its purpose. It is not clear how and when issuers are expected to “inform investors”. Logically, it must involve the publication of a notice. As noted above, the purpose of publishing a prospectus is to ensure that it can be easily accessed by as many relevant investors as possible. If there is a place that investors will be looking for notices such as the one envisaged in RTS Article 5.5, then the issuer is likely to want to make the prospectus itself available in that place, rather than just a notice relating to how the prospectus has been published. It is also unclear why publication of the prospectus on the group website of the issuer is subject to different treatment than any other form of electronic publication under PD Article 14. The last sentence of RTS Article 5.5 should therefore be deleted.

<p>Question 17: Would the issuer, offeror or person asking for admission to trading incur costs if the abovementioned provision was to be adopted? If so, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.</p>
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69. The issuer is likely to incur additional costs in having to inform investors when it uses the website of the group (as envisaged in RTS Article 5.5). As mentioned in paragraph 68, it is not clear precisely how that obligation can be fulfilled, and so the precise costs will depend on how the issuer approaches this.

Question 18: Do you agree that the issuer, offeror or person asking for admission to trading should be required to ensure that the hyperlink is active for a minimum period of 12 months?

70. **RTS Article 9 generally** - The obligation in PD Article 14.4 is a “housekeeping” obligation (presumably consequential to PD Article 9) on NCAs to publish over a 12 month period a list of the prospectuses they approved. It seems highly unlikely that it was the intent of the co-legislators that this Article would be used to impose additional burdens on issuers at Level 2 in the way ESMA proposes in RTS Article 9. It is also worth considering whether the proposals are outside the scope of ESMA’s mandate to “ensure consistent harmonisation” in relation to PD Article 14. For these reasons, RTS Article 9 should be deleted.
71. **12 month active hyperlink** – Aside from our general objection to RTS Article 9, we disagree that the issuer, offeror or person asking for admission to trading should be required to ensure that the hyperlink is active for a minimum period of 12 months. The obligation to publish a prospectus is a one-off obligation to put the prospectus in the public domain and make it available to investors for the purposes of the relevant offer period. This is the case whether a prospectus is published in hard copy or electronically. An issuer then has an ongoing obligation to deliver a paper copy prospectus free of charge upon an investor request under PD Article 14.7. That ongoing obligation to deliver a paper copy is of a different nature to an ongoing obligation to keep the hyperlink to the prospectus active. Requiring the hyperlink to be maintained at all times is likely to result in investors being misled if they access the prospectus at a later date and (quite reasonably) believe that the issuer, by keeping the hyperlink to the prospectus active, has also kept the prospectus updated. That may well not be the case: while a prospectus can (if it is updated) be valid for use⁶ for up to 12 months after its approval under PD Article 9, that does not mean that an issuer is required to (or indeed does), keep its prospectuses updated during that period.
72. While the drafting of RTS Article 9.2 does not make it explicitly clear who is responsible for ensuring the hyperlink remains active, it is envisaged by paragraph 139 of the Consultation Paper that issuers could be compelled to do so by an NCA. This is an unsatisfactory position because if the prospectus is published on the website of the regulated market, the issuer will have no control over whether the hyperlink remains active or not. This means that if an issuer wishes to be certain that the hyperlink remains active, it will have no choice but to publish the prospectus on its own website, thereby rendering the availability of alternative publication options under PD Article 14.2 meaningless and the position for issuers who do not have their own website (e.g. SPVs) very difficult (if not impossible). We do not believe this could have been the intent of the co-legislators in drafting PD Article 14.2.
73. **Direct hyperlinks** - The requirement to link directly to the prospectus in the proposed RTS Article 9.3 is unhelpful because it may restrict the use of the type of notice (or “disclaimer”) envisaged in RTS Article 5.2. As noted in paragraph 65, such notices serve as an important investor protection tool. We therefore suggest that the first sentence of RTS Article 9.3 is deleted. However, we re-iterate that RTS Article 9 should be deleted altogether (see paragraph 70).

Question 19: Would the issuer, offeror or person asking for admission to trading incur costs if the abovementioned provision was to be adopted? If so, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

74. Issuers are likely to incur costs if they need to publish prospectuses on their website in order to be able to ensure the hyperlink remains active under proposed RTS Article 9.2. Publication on the issuer’s website might not be available at all (e.g. if the issuer is an SPV and doesn’t have its own website) or, if the issuer does have a website but currently uses an alternative method of electronic publication, it is likely to wish to develop a particular area of its website for the purpose of publishing the prospectus. It is difficult to quantify the up-front and ongoing costs associated with this, but they could be significant.

⁶ In relation to a non-exempt public offers and/or admission to trading on a regulated market

Question 20: Do you agree that all information incorporated by reference in a prospectus should be electronically published? If not, please state your reasoning.

75. This seems acceptable and is already an approach taken by many issuers.

Question 21: Would issuers, offerors or persons asking for admission to trading incur costs if required to publish all information incorporated by reference electronically? If so, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

76. Given this is the approach already taken by many issuers, there will be limited additional costs imposed.

DRAFT RTS ON ADVERTISEMENTS

Question 22: Do you consider that there are additional means of dissemination of advertisements not covered by the four categories above? If yes, please specify.

77. No. However, it is unclear why the categories of advertisement need to be set out in the RTS at all. It doesn't appear that any consequences flow from categorising an advertisement under one category or another, so the purpose of this provision is unclear. It would therefore be better not to include this provision in the RTS. This would also allow for technological developments.

78. Separately, we note that RTS Article 12.3 will replicate the last paragraph of current PR Article 34 (which will be deleted). This provision relates to advertisements where no prospectus is required under the PD, and so imposes an obligation that is outside the scope of the PD prospectus obligations. It was introduced to the PR at a very late stage in the last PD review and with no official explanation. It is therefore unclear what this provision is trying to achieve and what investor protection purpose it is serving. This provision should therefore be removed or, if it is retained, it would be helpful if ESMA clarified what this provision is intended to mean and what its purpose is.

Question 23: Do you agree that advertisements which contain inaccurate or misleading information should be amended in the manner proposed? If not, please provide your reasoning.

79. We agree that advertisements that are inaccurate or misleading at the date they are published should be amended. However, this is something that issuers are already required to do under PD Level 1, MiFID and/or the market abuse regime, and so prescriptive rules such as those proposed in the RTS are not required.

80. Moreover, the RTS takes a broader approach than this because it requires advertisements that become inaccurate or misleading due to a change in circumstances after the time the advertisement is published to be amended, as well as those that are inaccurate or misleading at the date they are published. This places an unnecessarily heavy administrative burden on issuers and gives the wrong impression to investors as to the nature and purpose of an advertisement.

81. Advertisements are intended to make investors aware of the new issue, but not to give them the information they need for an investment decision. That is the purpose of the prospectus. The proposed regime for amending advertisements does not reflect this. We suggest the following:

- (i) An advertisement that is correct at the time of publication but later becomes incorrect due to the passage of time (because, for example, there is a significant time gap between the date of the advertisement and the date of the prospectus and new financial disclosure is made available) should not need to be amended in the manner proposed if it is clear that the advertisement speaks as of a certain date. This is the approach taken in the UK financial

promotion regime⁷ (and this common sense principle stretches beyond advertisements in financial markets).

- (ii) The RTS should specify the time period during which the obligation to amend the advertisement pertains. A sensible approach would be to relate this to the offer period to which the advertisement relates and align the end point with the time period during which the prospectus must be updated under PD Article 16, i.e. up to the final closing of the offer to the public. Otherwise, an issuer might be under an obligation to update an advertisement but not the prospectus, which is an illogical position.
- (iii) There should be a materiality threshold which needs to be met before an advertisement needs to be amended in the manner proposed. This would be similar to Article 16 of the Prospectus Directive relating to updating prospectuses. This could be achieved by inserting the word “materially” before “inaccurate or misleading information” in RTS Article 12.2.

Question 24: Will the suggested rule impose costs on the issuer, offeror or person asking for admission to trading? If yes, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

- 82. It is very difficult to quantify the costs associated with the proposal due to the range of manners by which an advertisement might be disseminated. However, the proposal could double or triple the cost of an issuer’s advertising spend if it needs to amend its advertisement(s) one or two times under the new regime. To publish one advertisement in the Financial Times can cost anywhere between €300 up to tens of thousands of euro.

Question 25: Do you agree with the requirements suggested for Article 13(1) of the RTS? If not, please provide your reasoning.

- 83. The requirements in RTS Article 13.1 seem to be an unnecessary amplification of the underlying principle in PD Article 15 that an advertisement must not be misleading. It is not clear what purpose this additional amplification serves. In addition to the requirements in PD Article 15, there are also provisions in MAD which restrict selective disclosure of inside information and the MiFID regime requires all information, including market communications, to be fair, clear and not misleading. We are not aware of any issues in practice in relation to the way the current regime works. RTS Article 13.1 could be deleted in its entirety, and ESMA would still have fulfilled its mandate.
- 84. It is also worth considering whether RTS Article 13.1 extends beyond the scope of ESMA’s mandate by relating to information disclosed “whether for advertisement *or other purposes*” (emphasis added). ESMA’s mandate is to ensure consistent harmonisation in relation to PD Article 15 on advertisements, and doesn’t appear to include information disclosed for other purposes.
- 85. RTS Article 13.1(3), stating that an advertisement must not “omit information contained in the prospectus, if such omission could cause the information disclosed about the offer to the public or admission to trading to be misleading” is particularly concerning and, we think, both dangerous and unnecessary. The danger lies in the fact that advertisements, by their nature, are designed merely to encourage others to consider the full information relating to the offer (the prospectus). Therefore information, including important material, may well be omitted. An issuer may, for example, be described as a major oil company in an advertisement but the advertisement may not say that it is subject to scrutiny by competition authorities that may jeopardise its market position. Does an advertisement need to describe all this? Surely not, given that whatever belief an investor may have after reading the advertisement will be corrected by his reading of the prospectus. No damage can result from the incomplete information in the advertisement, because the investment decision should be based on the complete information in the prospectus.

⁷ See [COBS 4.10.9\(G\)](#): “A financial promotion which is clearly only relevant at a particular date will not cease to comply with the financial promotion rules merely because the passage of time has rendered it out-of-date; an example would be a dated analyst’s report.”

86. There is, of course, a need to prohibit the issue of advertisements that are misleading in the sense of being wrong - that is, the information is incorrect - when the advertisement is communicated. However, such advertisements are already subject to sanctions under EU law (for example, the market abuse regime) and national law (for example, provisions to be found in most legal systems dealing with misrepresentation and fraud).
87. Finally, the proposals seem to imply that an advertisement is more than an invitation to investigate further by considering the prospectus, but is rather something on which a potential investor should be able to rely as part of the investment decision process. We believe this approach, if intended, is wrong; and it is doubly wrong if a sanction is to apply if the requirement is breached. An advertisement with such a purpose is similar to the prospectus summary. There is no liability for a misleading summary unless it is misleading when read with the whole prospectus. Under the proposed advertisement regime, there would be liability even though the advertisement is not misleading when read with the prospectus. So there would be an incoherent logic and conflict between the two regimes.
88. As stated in paragraph 83, RTS Article 13.1 is unnecessary and could be deleted in its entirety. However, if it is retained, at least Article 13.1(3) should be deleted.

Question 26: Do you believe that the inclusion of numerical performance measures in information disclosed about the offer or admission to trading, which are not contained in the prospectus, should be prohibited?

89. This provision appears to stem from a concern that issuers will include something in an advertisement that an investor might use to make an investment decision, but then not include that information in the prospectus. That concern is unfounded, because the issuer is obliged under PD Article 5 to include “all information which ... is necessary to enable investors to make an informed assessment ...”. So this RTS requirement is unnecessary.
90. Moreover, it is not clear why “numerical performance measures” are treated differently to other information that might be included in an advertisement. ESMA states that this is because numerical performance measures constitute a “powerful means of creating a given impression of an investment”, but if information has been included in an advertisement for this purpose, then it is all the more likely to be information that issuers will be required to include in the prospectus under PD Article 5 in any event.
91. This requirement could also cause practical difficulties for issuers where there is a significant time gap between the date of the advertisement and the date of the prospectus. If, for example, an advertisement contains a “numerical performance measure”, which is later superseded by more relevant information, then the issuer will be bound to include the less relevant “numerical performance measure” in the prospectus, and is likely to also wish to qualify and/or add to it. This is not in the interests of investors as it will result in prospectuses that are cluttered with information that is unnecessary for their investment decision and could potentially be confusing.

Question 27: Do you agree that the issuer, offeror or person asking for admission to trading should be obliged to provide the investor with the information disclosed in durable format, free of charge, upon his request? If not, please provide your reasoning.

92. We disagree with this proposal because it encourages a misconception of what an advertisement is. An advertisement is not something on which investors should rely in order to make their investment decision. That is the purpose of the prospectus. ESMA states in paragraph 188 of the Consultation Paper that issuers maintaining information disclosed will allow investors to verify the “consistency of the information” disclosed. This is not something that happens in practice, and we doubt that investors will have any desire to do this. Moreover, by allowing (and potentially encouraging) investors to request a copy of an advertisement after the fact, it is misplacing emphasis on the advertisement that should be placed on the prospectus instead.
93. If this provision was included in the RTS to allow investors to bring mis-selling claims more easily, then it is unnecessary because investors would have access to any relevant materials (including advertisements) under litigation disclosure requirements.

94. Aside from our concerns with the principle behind the requirements, the drafting of Article 13(3) is unclear in relation to information disclosed in oral form. This could be amended by adding a reference to Article 13(3) in Article 13(5). If Article 13(3) were to be maintained, a more proportionate approach would be to limit the time period during which issuers are required to maintain a copy of the information and investors have the right to request a copy of it to the period up to the time that the public offer ends.

Question 28: Will the proposed provision impose costs on the issuer, offeror or person asking for admission to trading? If yes, please specify the nature of such costs, including whether they are one-off or on-going, and quantify them.

95. There will be costs for issuers associated with the administration of such new requirements. Such costs might be significant, particularly if the issuer feels that it is necessary to outsource the retention of the information and processing of investor requests, as envisaged in paragraph 189 of the Consultation Paper. In addition, this will represent a shift in the existing administrative burden from lead managers to issuers because lead managers will usually prepare (and therefore maintain) advertisement materials.