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BY ELECTRONIC MAIL

Brussels, 15 July 2011

Dear Sirs,

This paper constitutes the response by eusipa to ESMA's Consultation Paper of 15 June 2011 on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU.

The EUROPEAN STRUCTURED INVESTMENT PRODUCTS ASSOCIATION (eusipa) is the voice of the structured investment products industry in Europe. eusipa today represents the major financial institutions active in the sector across Europe organised through its national member or affiliated organisations in Austria, France, Germany, Italy, Sweden, Switzerland and the UK. Members of eusipa have a close interest that the revised Prospectus Directive, together with all relevant implementing measures, achieves its core objectives of ensuring investor protection and market efficiency in the public offer and listing of securities in the EU.

Members rely on the proper functioning of the Directive for the issuance of retail structured products on a pan-European basis. In particular, they make strong use of the base prospectus regime, which allows them to adapt to the continuously evolving market conditions.

Yours sincerely

Dr. Nikolaus Dominik Neundörfer
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Response

to ESMA's Consultation Paper of 15 June 2011 on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU (Ref: ESMA/2011/141)

15 July 2011

Contents

Executive Summary 2
A. Final Terms 4
I. General Comments 4
1. Determination of those information items within the applicable Prospectus Regulation schedules which can be included only in the final terms (N. 25): 4
2. Explicit prohibition of the well-established practice to include the integrated form of the terms and conditions of the securities in the final terms ("integrated conditions" style of final terms) (N. 30): 5
3. Explicit exclusion of all changes of pay out formulas (N. 51) and of risk factors from the final terms (N. 52), as well as the prohibition of describing proprietary indexes "composed by the issuer" in final terms (N. 53): 6
II. Answers to Q1 – Q5 7
Q1 and 2: 7
Q 3: 7
Q4: 8
Q5: 8
B. Summary 8
Q6 and 7: 8
Q8 - 10: 8
Q11a: 9
Q11b: 9
Q11c: 9
Q12a: 9
Q12b: 10
Q14: 10
Q15: 10
TABLE: 11

EXECUTIVE SUMMARY

Given the importance of the base prospectus regime for the industry represented by eusipa, its members have a strong interest in the provision of legal certainty on a pan-European basis. However, the proposals made in the Consultation Paper raise the concern that future level 2 legislation might use a too formalistic approach that could substantially devalue base prospectuses as a tool enabling issuers to react to the continuously changing market conditions for which they have been introduced. Whilst we agree that it makes sense to provide clarity on what constitutes "final terms", as opposed to information requiring a supplement, we would like to stress the importance of preserving the advantages of the base prospectus regime:

- Our main concern is that the purely formalistic differentiation between category A, B, and C items – which is not compatible with the substantive decision criterion provided for by the Prospectus Directive and Regulation – will take away a lot of flexibility without providing any additional benefit for investors. The requirement to include certain issue specific information as, e.g., the formula for redemptions in the base prospectus or a supplement thereto will even result in prospectuses becoming less analysable and is thus contrary to Article 5 of the Prospectus Directive and in blatant contradiction to the views expressed by ESMA in N.33. Further, the proposed differentiation between category A, B, and C items seems quite arbitrary. We think that there is hardly any information item proposed to be classified as type A where a deviation not yet explicitly foreseen by the base prospectus through preformulated alternatives could not be justified by the circumstances of the individual issuance. The proposed differentiation between category B and C items, which would both generally qualify as potential genuine final terms content, is highly artificial, and would not take account of the sole relevant substantive decision criterion, namely if the information at hand could only be determined at the time of issuance. Please find attached hereto a **Table** that proposes a revised categorisation for certain items of Annexes V and XII of the Prospectus Regulation in order to deal with the main incompatibilities of the proposed regime with Article 5 of the Prospectus Directive, i.e., with the requirement to provide information in an easily analysable form.

- The proposed explicit prohibition of the well-established practice to include the integrated form of the terms and conditions of the securities in the final terms ("integrated conditions" style of final terms) (N. 30) is also a major setback for the analysability of the prospectus from a retail investor point of view. Schedule type format of final terms (as proposed in *ICMA*'s ICMA Primary Markets Handbook for straight debt products) may, in certain circumstances (e.g. where a base prospectus contains different complex products), be difficult to read and understand (and thus be questionable under transparency aspects) for retail investors. It is not without reason that established practice in mature markets as, e.g., Germany envisages the use of *schedule type final terms* for institutional and wholesale issues only, whereas *integrated conditions* are envisaged for retail issues. It is of utmost importance that retail investors get hold of a consistent, uniform document that contains the information that is necessary to understand the specific security, and must not endeavour to collect such information from (i) the base prospectus, (ii) any supplements thereto (if one were to require that underlyings and relevant risk factors not known at the time of drawing up the prospectus, and thus not included therein, be introduced by way of a supplement instead of by way of the final terms, as it is currently provided for in the Consultation Paper) and (iii) the pricing/election schedule type format of final terms. The issue-specific summary

provided for by the Consultation Paper will not really help on this as the proposed rigid requirements for content and order would not really allow tailoring the summary to the specific character of the individual securities, for which information could be relevant which is not included in the general template, or for which a different order could make the summary easier to understand for investors.

- The approach taken with regard to the summary would make the summary too long and difficult to analyse and impede conformity with the future Key Investor Information Document under the PRIPs initiative ("**KIID**"). This might even be qualified as a "form over substance approach" where uniformity is so much overweightet that information content and easy analysabilty are not guaranteed any more.

- It is not really clear whether the specific mechanism and procedure for combining the summary with the relevant parts of the final terms so as to provide an issue-specific summary means that the final terms will have to be translated. Such requirement would not be compatible with the base prospectus regime as provided for by the Prospectus Directive and would take away even more flexibility because of the time expenditure. Anyway, it is our understanding that the requirement to provide a translation of the issue-specific summary (as proposed in N. 69 (i) of the Consultation Paper) would also not be compatible with the existing base prospectus regime as the issue-specific summary is an integral part of the final terms.

A. Final Terms

I. General Comments

Before explicitly addressing the specific questions raised by ESMA we would like to stress that we are seriously concerned about, and do not agree with, the general approach proposed in the Consultation Paper regarding Final Terms. Judged against the perceived excesses in the use of Final Terms, the rules proposed by ESMA would, put colloquially, *throw the baby out with the bathwater*. They would not only seriously impair both understandability for (retail) investors and flexibility for issuers (as the *raison d'être* of the rules on Final Terms). In our view, the proposed rules would also clearly be excessive, in that they would put up formal requirements disproportional to the objective of preventing misuse, and materially limit the possible content of final terms to a degree not covered any more by the legislative intention behind the rules: to allow issuers to swiftly react to the continuously changing market conditions – notably investor demand.

At the same time, the rules would force changes to the documentation format of virtually all debt and derivative securities issued on the European markets, and thereby result in substantial cost to market participants.

In our view, excesses in the use of final terms should be dealt with by firstly concretising the interpretation of the substantive legal basis for the use of final terms, and then dealing with any abuse by way of strengthened practical supervision.
In particular, we would like to raise the following points:

1. Determination of those information items within the applicable Prospectus Regulation schedules which can be included only in the final terms (N. 25):

The production of a fixed list of items which can appear within final terms would put form over substance. According to Prospectus Directive and Prospectus Regulation, the feasible content has to be determined based on the question if information can only be determined at the time of issuance of the individual securities. Accordingly, this decision has to be based on the circumstances underlying the respective issuance, and cannot be made on an abstract basis for individual information items generally. In addition, no reasoning is given for the proposed qualification of the different items.

In our view, there is hardly any information item proposed to be classified as type A where a deviation not foreseen by the base prospectus could not be justified by the circumstances of the individual issuance, for example by extending or shortening the time limit on the validity of claims to interest and repayment of principal (Annex V 4.7 (v)).

In addition, the proposed differentiation between category B and C items, which would both generally qualify as potential genuine final terms content, is artificial, and would not take account of the sole relevant substantive decision criterion, namely if the information at hand could only be determined at the time of issuance. Again just by way of example, there is no reason why the description of market disruption events (Annex V 4.7 (x)) should be a category B item rather than a category C item. It seems obvious that unforeseen developments in the markets can trigger the need for additional market disruption events which are consequently "*terms not known at the time of drawing up the prospectus" within the ambit of* Recital 17 of the Amended Prospectus Directive.

The formalistic approach chosen by ESMA is simply not compatible with the substance-driven approach followed by the Prospectus Directive and Regulation. It seems to us that the whole proposal is meant to allow authorities to easily scrutinise base prospectuses and final terms based on the proposed categorisation. The consequence of this approach would be that the substantive decision criterion which the Prospectus Directive and Regulation provide for would be turned into a purely formalistic assessment, and it seems practically certain that substantive arguments would, on this basis, not be made or accepted by authorities any more.

Against this background, we would like to reiterate the view expressed in our response to the Call for Evidence from earlier this year that the level 2 rules should materially concretise the decisive question which information can only be determined at the time of issuance. This may be regarded as a cumbersome exercise by authorities, but is in our opinion the only way to harmonise the practice regarding final terms by way of level 2 rules which is in compliance with the underlying level1 provisions on base prospectuses.

2. Explicit prohibition of the well-established practice to include the integrated form of the terms and conditions of the securities in the final terms ("integrated conditions" style of final terms) (N. 30):

Banning this practice, which in some European markets (such as Germany) is a well-established market practice for securities offered to retail investors, would not only evidently contradict the Amendment Directive's intention to further increase the transparency and comprehen-sibility of securities prospectuses but is also justified with an interpretation of the Prospectus Regulation which is manifestly incorrect:

The draft paper refers to Art. 26 (5) of the Regulation and argues that this provision allows the replication of some, but not all of the information which has been included in the base prospectus according to the relevant securities note schedule. However, the mentioned provision, according to its clear wording ("In the case that the final terms are included in a separate document …"), only applies in the first of the two alternatives mentioned in the previous sentence of Art. 26 (5) ("The final terms … shall be presented in the form of a separate document containing only the final terms …"), whereas the second alternative specified there allows the final terms to be fully included into the base prospectus.

As regards the further reference to the amended Prospectus Directive itself, Recital 17 must be read together with Art. 5(4) 3rd subparagraph of the Directive and clearly only pertains to the delimitation with regard to information that requires a supplement to the Base Prospectus. An interpretation to the effect that the word "only" would prohibit the reproduction of the relevant parts of the Base Prospectus is not covered by the context.

Even apart from such legal errors, in terms of substance, the claim that the "integrated conditions" style of final terms would be rendered unnecessary by the summary as the latter would give "a full picture to investors" is not convincing. The summary focuses on key information (Recital 15 and Art. 5(2) of the Amended Prospectus Directive). If the summary were to provide "a full picture" there would be no reason for explicitly excluding that the summary as such triggers prospectus liability (Recital 16 of the Amended Prospectus Directive). Therefore, the retail investor is legally expected to read a Base Prospectus of several hundred pages plus the relevant supplements thereto so as to get a full picture of a derivative product he

is interested to acquire with the help of "election sheet" style final terms, i.e., do the work that is currently done for him by the issuer.

Once again, it seems to us that this proposal is primarily meant to allow authorities to easily scrutinise base prospectuses and final terms and prevent misuse, which again in our view is not the right starting point for drafting level 2 provisions.
Accordingly, the proposed prohibition of the integrated conditions style of final terms should, in our view, not be upheld.

3. Explicit exclusion of all changes of pay out formulas (N. 51) and of risk factors from the final terms (N. 52), as well as the prohibition of describing proprietary indexes "composed by the issuer" in final terms (N. 53):

These proposals would substantially devalue the possibility of issuers to adapt to market demand, and would therefore not be in line any more with the intention behind the rules on final terms in the Prospectus Directive.

Payout formulas: As set out above, the feasible content of final terms can only be determined based on the question if the information could only be determined at the time of issuance. Accordingly, the reference in the Consultation Paper to the obligation of authorities "to review algebraic formulas along with … related definitions and descriptions as regards … completeness, comprehensibility and consistency" (N. 49, repeated under N. 51) is not covered by the legal basis for the use of final terms, in so far as it seems to express the understanding that such information, by its very nature, does not qualify as possible final terms content, even if it could only be determined at the time of issuance. The Consultation Paper (under N. 51) further refers to the fact that a new pay out can be interpreted as a new product, and for this reason has to be disclosed in the base prospectus. However, whilst the point could be made that information about a separate (new) kind of product can always be given before the time of issuance of the respective securities, the rules proposed by the Consultation Paper would also exclude simple variations of products described in the base prospectus, for example by adding a minimum payout amount at the request of potential investors. Such kinds of market demands can not always be predicted at the time when the base prospectus is drafted. This is exactly the kind of flexibility which the introduction of a base prospectus has been meant to provide.
Accordingly, the proposed rules should be amended so as to explicitly allow amendments to payout formulas as long as they only modify the product described in the base prospectus, and do not turn the security into a different product.

Risk factors: The necessity to include risk factors in final terms in addition to those in the Base Prospectus can already follow from the specific nature of a certain kind of underlying which the Base Prospectus generally specifies for inclusion in the final terms (for example a market index replicat-ing the performance of a market with particular investment risks). A general prohibition of risk factors in the final terms would accordingly practically ban issuers from choosing certain kinds of underlying within final terms.

Proprietary indices: It is unclear why an issuer should be prohibited to include the description of an index composed by the issuer itself where, on the other hand, the description of indices can be included if composed by third-party service providers; the more so as these indices can often also easily be substituted by baskets.

If, however, the proposed prohibitions should be upheld, it would be absolutely necessary to at least clearly state that new risk factors and any new kind of underlyings (including proprietary indices composed by the issuer) may be filed in a supplement to the Base Prospectus. Currently, some authorities do not allow for this, to the effect that a new (base or stand-alone) prospectus would be required with the consequence of lengthy approval procedures.
In the light of the foregoing we answer the questions raised by ESMA as follows:

II. Answers to Q1 – Q5

Q1 and 2:

Based on the general approach proposed in the Consultation Paper, at least the following information would need to be added as "Additional Information":

- Country specific information: In some cases, additional information is provided in the Final Terms regarding information relevant to the offer of the particular securities in a specific country. One example is information on the tax situation of the investor beyond the general tax situation required within the relevant annexes to the Prospectus Regulation (FAQ 45). Given the variety of possible information, this should be classified as "CAT C". Further, FAQ 45 should be implemented in the Prospectus Regulation so as to eliminate the current discrepancy between the Prospectus Regulation and the FAQ and thereby enhance legal certainty and clarity for issuers.

- Inducements: In some countries, many issuers disclose the inducements paid to distributors, to further enhance transparency for investors. This information would have to be classified as "CAT C".

- Product specific risk factors (as under the current administrative practice of certain authorities). It might for instance happen that changes in the market environment impact on the underlying of a structured product (e.g., a share). Given the variety of possible information, this should be classified as "CAT C". A supplement to the base prospectus would simply not be the right place for such issue specific information. Alternatively one could provide for a specific item "Product specific risk factors" which would be a category C item.

- Any other product specific information that may impact on the assessment of the securities from an investor perspective.

Q 3:

From our perspective, instead of the enumerative list of items eligible for inclusion in the final terms proposed under N. 44, permission should be given to add any kind of specific detailed information which is neither a abstract rule nor a formula. Otherwise, there would be high risk to exclude information which – also from the authorities' point of view – only fills out the general information contained in the base prospectus. Just one example for such detailed information not covered by the proposal in the Consultation Paper is alternative assets – for example certain shares - sometimes specified for the determination of the payout or delivery amount in case of a market disruption.

In addition, we do not agree with the categorisation of some of the items in Annex A to the Consultation Paper, based on the proposed general approach. If the general approach should be maintained, a number of changes should be made to the categorisation. This is set out in more detail in the **table** attached hereto.

Q4:

Given that in many cases information currently included in final terms (as, e.g., modifications of the payout formala or information relating to proprietary indexes) would require a supplement (or even a new stand alone or base prospectus if certain authorities were to continue their current administrative practice) the number of additional supplements might reach tens of thousands, as between 5% and 15% of what is currently dealt with in final terms might henceforth require a supplement.

Q5:

The increase in costs concerns administrative fees for additional supplements (see Q4), translation costs for issue specific summaries and possibly also final terms (see Q6 and 7), legal costs and internal costs (to which the vastly increased number of templates will heavily contribute).

B. Summary

Q6 and 7:

We are concerned about the potential consequences for the language regime. It is not really clear whether the proposed mechanism means that the final terms will have to be translated. Such requirement would not be compatible with the base prospectus regime as provided for by the Prospectus Directive (as this does not provide for a requirement to translate final terms) and would take away even more flexibility because of the time expenditure.

A requirement to also translate the final terms would trigger a substantial increase in costs.

Q8 - 10:

No, we do not agree with your proposals and even think that they are somewhat confusing. The idea of a "letter" (N. 101) is not really compatible with the highly detailed rules for the content of the summary. The requirement of a "fresh assessment" and the ban on copying out text that appears in the main body of the prospectus may lead to inconsistencies and disorient investors.

In our view, it would be preferable not to base the required content of summaries on the information items within the different annexes to the Prospectus Regulation. Such “bottom up” approach not only entails a high risk of both making the summary too long, as a result of basing this on the single information items within the annexes, and of forcing an order and form for the summary which impairs its understandability for investors. The proposed rigid requirements for content and order also would not allow tailoring the summary to the specific character of the

individual securities, for which information could be relevant which is not included in the general template, or for which a different order could make the summary easier to understand for investors.

Thus, it would be preferable to select the required summary content "top down": The required content points should be determined abstractly, and this should be done independently of the security classification system underlying the annexes to the Regulation. They should also just take account of the items defined as key information by the amended Prospectus Directive, but not just mirror these points.

The development of the summary template(s) could be modelled on the creation of the Key Investor Information document introduced by the UCITS IV Directive, which also functions as a summary to a full (fund) prospectus. This would, at the same time, also ensure a close alignment with the likely content of a future Key Investor Information Document for securities.
At the very least, there should not be a strict order of the suggested points within the proposed sections. Whilst aiming to ensure maximum comparability between different securities, such order would on the contrary severely impair the summary's readability, as it would prevent to place the information where it makes most sense for the security in question. For the UCITS KIID, the aim of ensuring comparability has not prevented providing freedom for the drafting of this document on the level of the individual information items (which are of rather high level nature).

Q11a:

We appreciate that the word count limit will be abolished as this highly formal approach is particularly inappropriate for multi-jurisdictional issuances where the summary is to be prepared in several languages. We do not agree with the statement that the proposed approach adequately limits the length of summaries. On the contrary, we see a substantial risk that summaries would in many cases be too long, given the proposed rigid content requirements which would not allow taking a holistic approach in the drafting of the summary. This may result in limits being imposed by competent authorities of the member states when reviewing the form of summary in base prospectuses. Hence, we would prefer a clear statement from ESMA relating to the length of the summary.

Q11b:

In our view, the question if a summary is "short" always depends on the circumstances of the individual prospectus. Accordingly, there should not be a numeric limit to the length of summaries.

Q11c:

At least in some cases, a limit would force issuers to leave information out of the summary which they regard as substantial to investors, and therefore both impair both compliance wit the general objective behind the summary, and create legal risk. A numeric limit would also not be congruent with the proposed detailed rules for the content of the summary.

Q12a:

We do not agree with the proposal that no additional information may be given in addition to the items contained in the proposed sections A to E. For the summary, principally the same considerations apply regarding additional information not foreseen in the applicable Annexes to the Prospectus Regulation as in respect of the final terms section of the full prospectus, provided such additional information also passes the specific materiality test applicable for the summary. For example, additional provisions relating to the underlying may constitute relevant information for the summary as well. An issue-specific summary must be materially issue-specific so as not to be a mere formality.

Q12b:

In case the proposed general approach regarding summaries should be upheld, we have the following comments on the proposed detailed content requirements:

- Point B.15: There should not be a requirement to disclose the issuer's competitive position. This would go above the requirements for the full prospectus, as the relevant annexes only require the "basis for any statements in the registration document made by the issuer regarding its competitive position".

- Points C.5, C.6, C.9, C.10, C.11, C.12, C.16 to C.21: For debt and derivative securities, these points constitute the core part of the description which payout or other entitlements investors have under the respective securities. For this information, to require a strict predetermined order of information would particularly impair the summary's readability. For example, in many cases it will make sense to combine the required "brief description of how the value of the investment is affected by the value of the underlying instrument(s)…"(C.16) with the overall description "of the rights attached to the securities" (C.5), and to have the information described under C.16 to C.21 together with the order detailed payout information required under C.9 to C.11 and not only after the aforementioned description. Accordingly, at least for the mentioned items there should be no predefined order but just bullet points leaving the exact position of this information to the issuer.

Q14:

Not with regard to issue-specific summaries as this would basically imply that final terms (of which the issue-specific summary is an integral part) would require approval of the competent authority.

Q15:

In our view the additional costs arising from the proposals in the CP with regard to summaries will be substantial. The workload for the documentation of each single issue will increase. In this respect one has also to bear in mind that each issue-specific summary annexed to the final terms is potentially subject to the same translation requirements as the summary of the relevant base prospectus under article 19 of the Prospectus Directive. Translating each individual summary will increase the cost of issuance significantly.

TABLE:

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
	Annex V/XII			
2	Risk factors	CAT.A	CAT.C	An underlying may have specific risks not covered by the base prospectus. It might for instance happen that changes in the market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) impact on the underlying of a structured product (e.g., a share). Such product-specific risk factors should be provided in the final terms (as under the current administrative practice of certain authorities). A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment.
	Annex V			
4.6.	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.	CAT.B	CAT.C	Specific payout and price-determination information is to be dealt with in the context of this section. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus (as, e.g., price determination based on the average intraday rate rather than on the closing rate). It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information therefore should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment. The differentiation between

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
				category B and category C seems particularly arbitrary in the context if this item.
4.7.	(ii) Provisions relating to interest payable	CAT.B	CAT.C	It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus (e.g., with regard to interest adjustment clauses). It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
	(v) The time limit on the validity of claims to interest and repayment of principal	CAT.A	CAT.C	It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment.
	Where the rate is not fixed,			

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
	(vi) statement setting out the type of underlying	CAT.A	CAT.C	Whether category A is appropriate depends on how "type" is interpreted by the competent authorities: If "type" is understood as an umbrella term (only referring to broad categories as "share" or "index") category A might be a workable solution. If "type" requires more specific information (to the effect that there is an overlap with the *description* of the underlying (4.7.(vii)) this item should be categorised as C (as the *description* of the underlying (4.7.(vii)). Making a difference between the treatment of the *type* and the *description* of the underlying would then seem arbitrary. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment.
	(viii) and of the method used to relate the two	CAT.B	CAT.C	This practically overlaps with the *description* of the underlying (4.7.(vii) and should therefore be in the same category. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not known at the time of drawing up the prospectus, and thus not included therein. It is basically impossible (and would make the base

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
				prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment. The differentiation between category B and category C seems particularly arbitrary in the context of this item. We do not subscribe to ESMA's view that the authorities would have "to review algebraic formulas along with … related definitions and descriptions as regards … completeness, comprehensibility and consistency" (N. 49, repeated under N. 51) which is not covered by the legal basis for the use of final terms, in so far as it seems to express the understanding that certain information, by its very nature, does not qualify as possible final terms content, even if it could only be determined at the time of issuance.
	(x) Description of any market disruption or settlement disruption events that affect the underlying	CAT.B	CAT.C	It seems obvious that unforeseen developments in the markets (not known at the time of drawing up the prospectus, and thus not provided for therein, as, e.g., due to the traffic restrictions caused by the Icelandic ash cloud in 2010) can trigger the need for additional market disruption or settlement disruption events which are consequently "*terms not known at the time of drawing up the prospectus" within the ambit of* Recital 17 of the Amended Prospectus Directive. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
	(xi) Adjustment rules with relation to events	CAT.B	CAT.C	It seems obvious that unforeseen developments in the markets (not known at

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
	concerning the underlying			the time of drawing up the prospectus, and thus not provided for therein) can trigger the need for additional rules which are consequently "*terms not known at the time of drawing up the prospectus" within the ambit of* Recital 17 of the Amended Prospectus Directive. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
	(xiii) If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident.	CAT.B	CAT.C	This practically overlaps with 4.7.(vii) and should therefore be in the same category. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
4.10	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation	CAT.A	CAT.C	There is no reason to require determination of the person of the bondholder trustee. This would be in contradiction to legislation of certain member states (as, e.g., Germany) pertaining to the nomination of bondholder trustees. It is also inconsistent with 4.7.(xii) where the calculation (determination) agent is categorised as C. Approval of the person of the bondholder trustee does not fall within the competences of the prospectus authorities.

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
4.14	In respect of the […] country(ies) where admission to trading is being sought	CAT.A	CAT.C	In which countries particular securities issued under a base prospectus are offered or admitted to trading is one of the key factors decided by market conditions at the time of issuance (not known at the time of drawing up the prospectus, and thus not provided for therein). Each notification of a base prospectus would then require a supplement. In our view, it would be excessive to require the base prospectus to contain information on the taxation at source for all potential offering or listing countries. Providing for a large number of eligible alternatives would not be a reasonable solution.
5.2.1	(i) The various categories of potential investors to which the securities are offered	CAT.A	CAT.C	There is no reason why this should not be determined in the final terms. The alternative – i.e., providing for all conceivable alternatives to be chosen from – would be merely formalistic.
5.3.1	(ii) the method of determining the price and the process for its disclosure	CAT.B	CAT.C	There may be a need to determine the method for certain securities immediately preceding the issuance in a quickly changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) in particular when products have a long subscription period. Price determination might require recourse to market parameters not known at the time of drawing up the prospectus and thus not included therein. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
				information and would not allow for a sufficiently quick reaction to the changing market environment. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
	Annex XII			
4.1.2	A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 50 000 or can only be acquired for at least EUR 50 000 per security.	CAT.B	CAT.C	This is the consequence of the proposed re-categorisation of 4.1.7 as C.
4.1.7 / 4.1.13 (i), (iii)	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of said rights.	CAT.B	CAT.C	Specific payout and price-determination information is to be dealt with in the context of this section. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not known at the time of drawing up the prospectus, and thus not included therein. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
				market environment. The differentiation between category B and category C seems particularly arbitrary in the context of this item. We do not subscribe to ESMA's view that the authorities would have "to review algebraic formulas along with … related definitions and descriptions as regards … completeness, comprehensibility and consistency" (N. 49, repeated under N. 51) which is not covered by the legal basis for the use of final terms, in so far as it seems to express the understanding that certain information, by its very nature, does not qualify as possible final terms content, even if it could only be determined at the time of issuance.
4.1.14	In respect of the […] country(ies) where admission to trading is being sought	CAT.A	CAT.C	In which countries particular securities issued under a base prospectus are offered or admitted to trading is one of the key factors decided by market conditions at the time of issuance (not known at the time of drawing up the prospectus, and thus not provided for therein). Each notification of a base prospectus would then require a supplement. In our view, it would be excessive to require the base prospectus to contain information on the taxation at source for all potential offering or listing countries. Providing for a large number of eligible alternatives would not be a reasonable solution.
4.2.2	A statement setting out the type of the underlying	CAT.A	CAT.C	Whether category A is appropriate depends on how "type" is interpreted by the competent authorities: If "type" is understood as an umbrella term (only referring to broad categories as "share" or "index") category A might be a workable solution. If "type" requires more specific information (to the effect that there is an overlap with

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
				the *description* of the underlying (4.2.2(ii),(iii)) this item should be categorised as C (as the *description* of the underlying (4.2.2(ii),(iii)). Making a difference between the treatment of the *type* and the *description* of the underlying would then seem arbitrary. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to the changing market environment.
	(ii) a description of the index if it is composed by the issuer	CAT.A	CAT.C	There is no reason why indexes composed by the issuer should be treated differently from indexes composed by external service providers. This would lead to the bizarre consequence that all market participants except for the owner of the index could use an index as the underlying for structured products. Example: Goldman Sachs entities would have faced restrictions when using the well-established GSCI index family as the underlying (before selling this business), whereas all other market participants would have been totally free to use.
4.2.3	Description of any market disruption or settlement disruption events that affect the underlying	CAT.B	CAT.C	It seems obvious that unforeseen developments in the markets (not known at the time of drawing up the prospectus, and thus not provided for therein, as, e.g., due to the traffic restrictions caused by the Icelandic ash cloud in 2010) can trigger the need for additional market disruption or settlement disruption events which are

		ESMA's pro-posed category	eusipa's pro-posed category	eusipa's comments
				consequently "*terms not known at the time of drawing up the prospectus" within the ambit of* Recital 17 of the Amended Prospectus Directive. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
4.2.4	Adjustment rules with relation to events concerning the underlying	CAT.B	CAT.C	It seems obvious that unforeseen developments in the markets (not known at the time of drawing up the prospectus, and thus not provided for therein) can trigger the need for additional rules which are consequently "*terms not known at the time of drawing up the prospectus" within the ambit of* Recital 17 of the Amended Prospectus Directive. The differentiation between category B and category C seems particularly arbitrary in the context if this item.
5.2.1	(i) The various categories of potential investors to which the securities are offered	CAT.A	CAT.C	There is no reason why this should not be determined in the final terms. The alternative – i.e., providing for all conceivable alternatives to be chosen from – would be merely formalistic.
	Additional Information			
	Country(ies) where the offer(s) to the public takes place / Country(ies) where admission to trading on the regulated market(s) is being sought	CAT.A	CAT.C	In which countries particular securities issued under a base prospectus are offered or admitted to trading is one of the key factors decided by market conditions at the time of issuance (not known at the time of drawing up the prospectus, and thus not provided for therein). Each notification of a base prospectus would then require a supplement. For this reason, it should not be necessary to list all potential countries in the base prospectus itself (with the result that all base prospectuses would on a standard basis refer to all EEA countries).