|  |
| --- |
| 6 July 2017 |

|  |
| --- |
| Response form for the Consultation Paper on  EU Growth prospectus |
|  |

|  |
| --- |
| Date: 6 July 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

1. respond to the question stated;
2. contain a clear rationale; and
3. describe any alternatives ESMA should consider.

ESMA will consider all responses received by 28 September 2017.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper on EU Growth prospectus”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) 🡪 ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).
2. Please do not remove tags of the type <ESMA\_QUESTION\_EUG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_EUG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_EUG\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ 🡪 ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Data protection’.

Who should read this Consultation Paper

This Consultation Paper may be of particular interest to investors, issuers, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | AMAFI – Association française des marchés financiers |
| Activity | Investment Services |
| Are you representing an association? | YES |
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ EUG\_1>

*Association française des marchés financiers* (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI’s members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

For over two years, AMAFI has been paying close attention to progress in the Capital Markets Union (CMU) initiative and, within such initiative, to the proposals which aimed at revising the Prospectus Directive with a view to making it easier and cheaper for companies, and in particular smaller companies, to access capital and improve prospectus accessibility for investors.

Having contributed to the 2015 EC consultation on the review for the Prospectus Directive (*AMAFI / 15-27*), AMAFI is now keen, after the publication of the Prospectus Regulation, to contribute to the three consultations launched by ESMA on 6 July 2017 - until 28 September 2017- on the draft technical advice that it proposes to give to the EC in relation to each one of these consultations. Below is AMAFI’s response to ESMA’s consultation on Content and format of the EU Growth Prospectus*(ESMA31-62-649*).

<ESMA\_COMMENT\_ EUG\_1>

1. : Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.

<ESMA\_QUESTION\_EUG\_1>

AMAFI considers that some information that it is proposed not to require in the registration document and/or the securities note could be particularly important for certain issuers, if only to make their offer attractive to investors: for instance, information concerning research and development, patents and licenses, joint ventures and undertakings and real estate, can be particularly of value in certain cases. It should be left to issuers to decide whether to include such information with a recommendation to disclose the type of information which is particularly important given the activity of the issuer.

<ESMA\_QUESTION\_EUG\_1>

1. : Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?

<ESMA\_QUESTION\_EUG\_2>

AMAFI is not opposed to limiting the flexibility in that respect and having a standardized format which, in the end, may be easier to use for the issuers and may be more attractive for investors.

<ESMA\_QUESTION\_EUG\_2>

1. : Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU growth prospectus? If not please explain and provide alternative suggestions.

<ESMA\_QUESTION\_EUG\_3>

AMAFI agrees with the proposal. It is important for SMEs and midcaps to be able to put forward their strategy, performance and business environment before describing the risk factors which, in any case, will already appear, for most of them, in the summary.

<ESMA\_QUESTION\_EUG\_3>

1. : Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?

<ESMA\_QUESTION\_EUG\_4>

No, AMAFI disagrees with that proposal (please see also AMAFI’s response to Question 1 of the first consultation *on the format of the Prospectus, the Base Prospectus and the Final Terms*), for several reasons: the purpose of such cover notes is not clear; the principle of such notes is not provided by level 1 legislation and there is not ground for adding such a requirement at level 2; finally, it could duplicate the information contained in the summary and raise liability issues.

Therefore cover notes should not be mandatory. The possibility of having cover notes should simply remain a possibility as provided in ESMA’s Q&A §9 (*ESMA/2016/1674*).

<ESMA\_QUESTION\_EUG\_4>

1. : Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.

<ESMA\_QUESTION\_EUG\_5>

Yes, AMAFI agrees with that presentation and considers that it is fit for purpose for SMEs.

<ESMA\_QUESTION\_EUG\_5>

1. : Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.

<ESMA\_QUESTION\_EUG\_6>

Yes, AMAFI agrees with the proposal to have a single registration document applicable to both equity and non-equity issuances.

<ESMA\_QUESTION\_EUG\_6>

1. : Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.

<ESMA\_QUESTION\_EUG\_7>

It is particularly important that SMEs and midcaps publish profit forecasts if they want to attract investors. This question however raises a sort of conflict between the issuers’ need to alleviate the cost of producing a prospectus and the investors’ need to have reliable information on an issuer before considering making an investment. The proposal to include, in the EU Growth prospectus, any published forecasts without an obligation for an auditor’s report would certainly have a significant and positive impact on the cost of producing such a prospectus. However, the possible risk is that it may not give the potential investors the comfort they need in order to make an investment decision. On the other hand, if an auditor’s report were to be required, it is likely that some issuers would not publish any forecasts at all, which would be an even less satisfactory situation.

In the end, all things considered, AMAFI would agree with ESMA’s proposal on the basis that it is in the issuers’ interest to provide valuable and reliable information even in the absence of an auditor’s report.

<ESMA\_QUESTION\_EUG\_7>

1. : Do you consider that the requirement to provide information on the issuer’s borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.

<ESMA\_QUESTION\_EUG\_8>

Yes.

<ESMA\_QUESTION\_EUG\_8>

1. : Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples,. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.

<ESMA\_QUESTION\_EUG\_9>

Yes, AMAFI considers that the information required in relation to major shareholders is fit for purpose.

<ESMA\_QUESTION\_EUG\_9>

1. : Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.

<ESMA\_QUESTION\_EUG\_10>

AMAFI agrees that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards. However, it should not be an obligation. To reflect the fact that this should be left to the issuer’s decision, AMAFI considers that the wording of the second sentence of § 6.1.3 should be modified as follows:

“If IFRS is not applicable, the financial statements ~~must~~ **may** be prepared according to:

1. […..]
2. [….]”

<ESMA\_QUESTION\_EUG\_10>

1. : Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.

<ESMA\_QUESTION\_EUG\_11>

No.

<ESMA\_QUESTION\_EUG\_11>

1. : Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA\_QUESTION\_EUG\_12>

AMAFI considers that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers.

<ESMA\_QUESTION\_EUG\_12>

1. : Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA\_QUESTION\_EUG\_13>

As a professional organisation, AMAFI is unable to respond to this question.

<ESMA\_QUESTION\_EUG\_13>

1. : Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.

<ESMA\_QUESTION\_EUG\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EUG\_14>

1. : Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.

<ESMA\_QUESTION\_EUG\_15>

AMAFI agrees with this proposal to have a single securities note applicable both to equity and non-equity issuances.

<ESMA\_QUESTION\_EUG\_15>

1. : Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA\_QUESTION\_EUG\_16>

AMAFI considers that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers.

<ESMA\_QUESTION\_EUG\_16>

1. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosure items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.

<ESMA\_QUESTION\_EUG\_17>

No.

<ESMA\_QUESTION\_EUG\_17>

1. : Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.

<ESMA\_QUESTION\_EUG\_18>

As a professional organisation, AMAFI is unable to respond to this question.

<ESMA\_QUESTION\_EUG\_18>

1. : Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA\_QUESTION\_EUG\_19>

A further reduction or simplification of the disclosure requirements would necessarily have an impact on the cost of drawing up a prospectus. And the more significant the reduction or simplification, the more significant would be the impact on the price. But this should not be the sole concern. The major concern should be how to produce, at the best possible cost, a prospectus that will contain sufficient reliable information to make it attractive for investors to invest in the issuer. AMAFI considers that to achieve that dual objective, the proposed scheme appears to be satisfactory.

<ESMA\_QUESTION\_EUG\_19>

1. : Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.

<ESMA\_QUESTION\_EUG\_20>

Yes, it is.

<ESMA\_QUESTION\_EUG\_20>

1. : Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.

<ESMA\_QUESTION\_EUG\_21>

Limiting the length of the summary may constitute an additional constraint. AMAFI wonders whether this really constitutes an improvement for the issuers and investors concerned. If indeed, the particulars of an issuer are less “consistent”, the summary is likely to shorter. But this may not necessarily be the case. And therefore, is it really worth reducing by one page the maximum length of the summary of the EU Growth prospectus? AMAFI is not convinced of that.

<ESMA\_QUESTION\_EUG\_21>

1. : Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.

<ESMA\_QUESTION\_EUG\_22>

AMAFI considers that imposing a maximum of 10 risk factors instead of 15 may constitute an additional constraint in certain cases and therefore, such mandatory reduction does not constitute an improvement and is not likely to be beneficial to either the issuer or the investors. In practice, and in certain cases, there may be more risks involved in investing in a smaller company than in a larger company. Therefore limiting the number of risk factors in the resume, which is more likely to be the main (or even sole) document on which most investors will rely, seems inappropriate and counterproductive.

<ESMA\_QUESTION\_EUG\_22>

1. : Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?

<ESMA\_QUESTION\_EUG\_23>

Yes, SMEs are less likely to have their securities underwritten. On the other hand, they are more likely to be the subject of subscription commitments/undertakings by historical shareholders or by new investors. It such commitments exist, AMAFI considers that it is important to disclose them as they may have a significant impact on the future success of the offer.

<ESMA\_QUESTION\_EUG\_23>

1. : Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.

<ESMA\_QUESTION\_EUG\_24>

AMAFI agrees with the proposed content of the key financial information set out in the summary of the EU Growth prospectus.

<ESMA\_QUESTION\_EUG\_24>

1. : Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure.

<ESMA\_QUESTION\_EUG\_25>

Yes.

<ESMA\_QUESTION\_EUG\_25>

1. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.

<ESMA\_QUESTION\_EUG\_26>

No.

<ESMA\_QUESTION\_EUG\_26>

1. : Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA\_QUESTION\_EUG\_27>

Yes.

<ESMA\_QUESTION\_EUG\_27>

1. : Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA\_QUESTION\_EUG\_28>

As a professional organisation, AMAFI is unable to respond to this question.

<ESMA\_QUESTION\_EUG\_28>