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| 6 July 2017 |

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

* respond to the question stated;
* contain a clear rationale; and
* 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:

* 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’).
* 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.
* 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.
* 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.
* 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 | Die Deutsche Kreditwirtschaft |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ EUG\_1>

TYPE YOUR TEXT HERE

<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>

Item 1:

Lit. h): The statement of capitalisation and indebtedness should be removed as such information is contained in the latest balance sheet as part of the annual or interim financial statements to be included in the prospectus. Any material changes have to be disclosed according to the general principles set out in Art. 6 Regulation 2017/1129.

Lit. k) only applies in the case of non-equity securities.

Item 2

Section (ii) lit. f): See above comment re. item 1 re. statement of capitalisation and indebtedness.

Section (ii) lit. i) see above comment re. item 1.

<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>

We do not object to the proposal.

<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>

Based on the order of information set out in the tables in item 81 and 97 we believe the risk factor section should be put at number 2 (rather than 3) as it appears to be the current market practice (see Art. 25 para. 1 Regulation 809/2004).

<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>

Generally, we do not think a limitation of size is necessary, see response to question 1 re. consultation paper on “Draft technical advice on format and content of the prospectus” (ESMA 31-62-532).

<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>

Generally, we agree to the proposed presentation provided that

• as regards the placing of the risk factor section, we refer to our response to question 3.

item 4.2.2 appears redundant as this information can be found in the balance sheet as part of the annual financial statements.

<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, we agree with this approach.

<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>

We do not think it is appropriate to require that profit forecasts should also be included in prospectuses for non-equity securities; see our response to question 31 ESMA 31-62-532.

<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>

We do not think that a separate disclosure item for information on the issuer’s borrowing and funding structure during the last financial year is necessary; see our comment in response to question 31 ESMA 31-62-532.

Being forced to disclose information on the expected financing of the issuer’s activities (new Item 5.1.7 (b)) on the other hand appears sensitive and disadvantageous to the conduct of the issuer’s business, and also lacks an available format for comparative reporting. The same applies to the summary of material limitations (being a disclosure time that does not appear in the “general” list of minimum requirements according to Annex I).-This appears to be relevant for both equity and debt issuers.

In the case of material limitations on access to funding that are so material and exceptional for investors that they need to be specifically disclosed, the general requirement in Art. 6 Regulation 2017/1192 should be sufficient.

<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.

<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>

Yes; even if international investors were reluctant to invest in securities of an issuer only disclosing financial statements under national GAAP this possibility could be a cost efficient option for SMEs who only grant access to a national investor base. That being said, an issuer will always be free to provide IFRS financial statements on a voluntary basis. We cannot estimate the cost for the preparation of additional IFRS financials, which may highly depend on the circumstances, particularly differences from national GAAP and the issuer’s group structure.

<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>

The description of the geographic distribution and method of financing under item 2.4.2 does not seem to be material information for an informed investment decision, cf. our response to question 20, item 6.6.2 ESMA 31-62-532.

The related party disclosures required under IAS 24 as part of the issuer’s consolidated financial statement and as such to be included under item 6.1 appears to be sufficient. Therefore, no additional disclosure under item 5.4 is needed. Also see our response to question 20, item 19 ESMA 31-62-532.

Neither the fact as to whether voluntary information has been audited under item 6.3.2 or not nor the source of the information under item 6.3.3 seems relevant for the investment decision. See our response to question 20, item 20.1 ESMA 31-62-532.

The meaning of the disclosure item under item 6.5 is unclear. We kindly refer you to question 20, item 20.1 EMSA 31-62-532.

<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>

Yes, we believe they are clear enough.

<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>

No.

<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>

We are of the opinion that the statement of capitalisation and indebtedness does not need to be included as such information is already contained in the balance sheet forming part of the issuer’s annual and interim financial statements; see our response to question 23 re. consultation paper on “Draft technical advice on format and content of the prospectus” (ESMA 31-62-532).

<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>

No. This concept does not appear to be consistent with the general approach of facilitating access to capital markets financing for SMEs compared to the general regime. The requirements laid out there for the equity securities note (Annex II ESMA 31-62-532) are already significantly more comprehensive and detailed than for retail debt (Annex V ESMA 31-62-532). Having said that, we acknowledge that there is indeed a difference between the information required for equity and for non-equity and that other information is required for equity only. This is particularly apparent in item 3 (working capital statement; capitalisation and indebtedness), item 5.2.3 (pre-allotment disclosure), item 5.3 (pricing) and items 6, 7, 8, 9. However, it appears preferable for the sake of clarity to have a separate annex detailing the requirements for a non-equity securities note.

<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>

Yes.

<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>

See response to question 14; the preparation of a separate statement of capitalisation and indebtedness appears unnecessary and particularly burdensome and costly if it requires the drawing up of a balance sheet outside the usual reporting cycles. This is particularly burdensome for SMEs where it can be presumed that the accounting department is even more thinly staffed than in bigger companies.

<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>

No.

<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>

See response to question 17; the preparation of a separate statement of capitalisation and indebtedness appears unnecessary and particularly burdensome and costly if it requires the drawing up of a balance sheet outside the usual reporting cycles.

<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>

Item 2.3:

We object to the need to make a selection from the risk factors based on materiality. If the risk described in a risk factor were not material, there would be no need for a risk factor at all. Hence, only disclosing certain of the risk factors might be misleading to investors as those risk factors not selected for the summary may nevertheless be material.

<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>

We do not think it appropriate that the maximum size specified in Art. 7(3) Regulation 2017/1192 should be further reduced, particularly as it cannot be assumed that fewer or less complex risks will be involved in an investment in securities issued by an SME (it could even be the contrary).

<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>

We do not think that reducing the number of risk factors can be justified if the issuer is an SME; see our response to question 21. Nor do we see any benefit therefrom in terms of cost and efficiency.

<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>

We do not think that such a statement can be made in general. Whether and to what extent financial institutions will be prepared to underwrite securities issued by an SME will depend on a case-by-case analysis. We do not think that additional disclosure is required or justifiable.

<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>

Yes, we agree.

<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>

No, as pro forma financial information does not reflect the issuer’s actual economic situation and is largely based on assumptions that should be read together with them. Hence, including them in the summary might create the risk of providing misleading information.

<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>

We assume that the question refers to the summary. On that basis we do not have any further comments. As regards the registration document, we refer you to our response to question 13.

<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, we believe they are clear enough.

<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>

No.

<ESMA\_QUESTION\_EUG\_28>