|  |
| --- |
| 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:

* 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 | DLA Piper Studio Legale Tributario Associato |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |  |
| Country/Region | Italy |

# 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>

If the EU Growth Prospectus is drawn up as separate documents, we consider that each of the sections is necessary and serves a particular purpose. However, if there were one section that would serve the least purpose and could potentially be removed with some re-working of the contents, it would be the "Cover Note" since the information contained in the Cover Note can also be found in other sections.

<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 agree with the proposal to allow issuers to define the order of the information within each section. This is because if a potential investor is looking at several issuers, the comparability of such information would be significantly affected. In addition, we believe that this will also be extremely time-consuming for the NCA in the scrutiny of prospectuses, due to the wide variety of ways in which prospectuses will be presented. The increase of time spent analysing each prospectus could therefore lead to a delay in the turnaround time for the approval of the prospectuses.

<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>

Considering the type of investor at which the EU Growth Prospectus is aimed, the idea of locating the section "Risk Factors" too near to the beginning could lead to a significant disincentive for investors. We would suggest placing such section right after the section "Details of the offer / admission" but before the section "Terms and Conditions of the Securities".

With this approach, we believe that the investor will be more informed about the overall terms of the offer and therefore will be more aware while reading the risk factors if they come further down the list of contents. The investor will then be able to give a better assessment of each risk factor.

<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>

We agree that there should be a limit on the number of pages in the Cover Note, but we consider that it should be further limited to a maximum of 2 pages. Considering that in the Consultation Paper Draft Technical Advice on Format and Content of the Prospectus, Article D, the Authority already proposed a Cover Note of 3 pages for the "regular" prospectus, it would be advisable to have a shorter Cover Note for the EU Growth Prospectus as well.

<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>

We agree with the Authority’s draft of the EU Growth registration document. In relation to the information to be disclosed, we do not envisage large differences between EU Growth registration document and the registration document scheme proposed in the Consultation Paper “Draft Technical Advice on Format and Content of the Prospectus”. Considering the importance of the information to be included in the registration document and the information asymmetry of the potential investors, there is a need to ensure that this document is as complete as possible.

<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>

We agree with the proposal to introduce a registration document applicable for both equity and non-equity issuances considering that the registration document especially contains information relating to the issuer and its business. We agree with the Authority approach to use separate specific sections in the case of non- equity security and in the case of equity securities.

<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>

In relation to non-equity securities, we believe that this information would not be meaningful for an investor in debt securities, who, basically, is not interested in the profit forecasts of the issuer (unless the forecast is so outstanding that it will impact an issuer's ability to make payments on the bonds and thus affects the credit risk).

In particular, with regards to non-equity securities, it should be noted that such information is generally not disclosed in the financial statements and is not submitted to audit report either. This proposal of the Authority could thus trigger a discrepancy between information included in the prospectus and information included in the financial statement and, consequently, could lead to misunderstandings for potential investors.

Moreover, we do not agree with the proposal to introduce in the EU Growth prospectus the section of the profit forecasts in the lack of the same obligation for independent accountants or auditors, because this could lead to an increase of liability for the issuers.

<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>

TYPE YOUR TEXT HERE

<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>

We agree with the Authority’s choice to include information relating to the issuer’s major shareholders, distinguishing the type of information to be provided for equity securities from the information to be provided for non-equity securities. In order to assure a reasonable assessment by investors, the ownership structure of the issuer can be very useful.

<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>

The possibility to include in the EU Growth prospectus financial statements drafted in accordance with national accounting standards could be very useful for SMEs to reduce the costs. However, by including financial statements prepared under national accounting standards only, foreign potential investors could be disincentivised to invest.

Moreover, we suggest to add an appropriate disclaimer when financial statements are prepared under national accounting standards.

<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 content of the EU Growth Registration Document is very similar to the content of the registration document for equity and retail debt issuers. Considering the importance of this document in the assessment of an issuer by potential investors, we believe that no deletions should be made. At the same time, we agree with all the deletions the Authority made in respect of the registration document scheme in order to not burden the issuer with the duty to disclose information which would imply high costs.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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 agree with the simplified scheme of the EU Growth Securities Note proposed by the Authority in the technical advice compared to the schemes set out in Consultation Paper “Draft technical advice on format and content of the prospectus”.

<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>

We agree with the proposal of the Authority to introduce a single securities note that is applicable in the case of equity and non-equity issuances because this will lead to a significant reduction of the costs for the SMEs in preparing the prospectus.

<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>

The disclosure items are clear enough to be understood by issuers. However we suggest reproducing the definition of categories A, B and C of the information also in this consultation paper.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Considering that the summary note set out in Article 7 must be no longer than 7 pages, the length of the summary of the EU Growth Prospectus could be reduced to a maximum of 5 pages. This could be done by condensing the information relating to the issuers which has already been included in the registration document and in the securities note.

<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 agree with the Authority’s proposal to reduce the number of risk factors considering that the issuers to which the EU Growth Prospectus is applicable have a less complex business and, therefore, potential investors could focus only on the risks which are material for the issuer.

<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>

TYPE YOUR TEXT HERE

<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>

Please refer to Question 21

<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>

Pro forma financial information is already disclosed in the registration document and, considering the maximum length of the summary and that this information refers only to equity issuance, we agree with the Authority’s choice to condense pro financial information in the summary without introducing a specific section.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EUG\_28>