



European Securities and
Markets Authority

Response form for the Consultation Paper on EU Growth prospectus



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:

4. 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 → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
5. 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.
6. 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.
7. 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.
8. Upload the form containing your responses, in Word format, to ESMA’s website (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 confi-



dential 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 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	NASDAQ
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_EUG_1>

As a general comment, in order for this review of the Prospectus Regulation to have the intended effect of further enabling better developed capital markets and providing better access to capital especially for SMEs, it is crucial that the regulatory framework allows producing prospectuses which are as accessible and digestible as possible for the investor. If the prospectus is too long and difficult to read, understand and analyse, it will simply not be a useful document.

When considering the content of the Growth Prospectus, it is useful to remember that the market operator may always consider adding requirements for issuers as part of the listing rules for a market. Although many requirements are naturally and still should be harmonised across the EU, there may well be practices which have developed in a local ecosystem and which motivate certain requirements. Especially smaller companies in earlier stages of growth are more dependent on local investors for financing, and thus the room for local adaptation of rules becomes especially important.

On Nasdaq's markets for growth companies, operated as MTFs under the trademark First North in all Nordic and Baltic countries, a practice of "Company Description" has worked very well. They are appropriately short, concise and informative documents, not too costly for the issuer to produce and relatively easily to understand for investors. These documents have become well trusted in the market and has contributed to record number of IPOs especially at First North Stockholm during the last years.

The requirements for the Company Description are included in the First North listing rules and Nasdaq may – and indeed does – require additional information when appropriate. One feature in this system is that the issuers are supported by a so called Certified Adviser when producing the Company Description. The document is approved by the market operator in accordance with well organised procedures, including managing of internal conflicts of interests. The National Competent Authority is not involved in the direct approval of each such Company Description, but supervises the procedure indirectly in its normal supervision of Nasdaq as a market operator.

It is our conviction the Company Description and the procedure of its production and approval is a very useful model and we encourage ESMA to reuse its features as much as possible.

<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>

Article A letter H: We do not agree that the requirement that a *working capital statement and statement of capitalization and indebtedness* shall only cover equity issuance by companies with market capitalization above EUR 200 million. On Nasdaq's First North markets it is not unusual that the issuers are unprofitable and do not expect to be profitable within the near future. This is because many companies on First North are relatively small and still in a growth stage. In such situations it is crucial that investors can make an assessment on when the issuer will be short of working capital and that they can make an appropriate risk assessment. We understand that this is a requirement under Annex IV of the Prospectus Regulation. However, we believe a working capital statement should be included in the prospectuses/company descriptions irrespective of market cap.

<ESMA_QUESTION_EUG_1>

- 2. : 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>

Yes. We wish to again remind that the market operator may always consider including additional requirements, including on the order of information items, if it deems it appropriate on its market or for a specific offer. Also, the Level 2 rules could include a clarifying comment on the fact that the issuers themselves are always free to include additional information in the prospectuses, should they deem it necessary for the possibility for investors to make a correct and well-founded investment decision. Such additional information may differ from case to case, depending on the specificities of the issuer as well as the offer.

<ESMA_QUESTION_EUG_2>

- 3. : 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>

The risk factor section is one of the most important pieces of information in the prospectus and it is necessary to maintain the investor protection. Therefore the section should be placed in a more predominant place in the prospectus, preferably before the section "Strategy performance and business environment".

<ESMA_QUESTION_EUG_3>

- 4. : 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_EUG_4>

- 5. : 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>

Section – Shareholder and security holder information: Consider adjusting the heading. The heading does not fully describe the information contained in the section, meaning that it can be difficult for investors to find desired information. For instance in Sweden it is, under the current regime, common to have one section called “Shares and share capital” and another section called “Legal considerations”. One suggestion is to either separate the heading into two, as described, or to call the heading e.g. “Shareholder, security holder information and legal information”.

<ESMA_QUESTION_EUG_5>

- 6. : 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_EUG_6>

- 7. : 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>
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<ESMA_QUESTION_EUG_7>

- 8. : 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>

- 9. : 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, we do not see any major changes compared to previous regulation. The 5% threshold is the current threshold for notification meaning that the amended wording will, according to our view, not imply any actual change.

<ESMA_QUESTION_EUG_9>

10. : 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. We strongly believe companies outside regulated markets should not be required to use IFRS. Many of the companies who will be able to use the Growth Prospectus may be small and in a growth phase where they are still very dependent on local investors for financing. Adding a requirement to use IFRS would serve as a clear disincentive to use the Growth Prospectus exactly for a large part of the companies which it was intended for.

<ESMA_QUESTION_EUG_10>

11. : 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>

Para 45: We are of the opinion that an EU Growth Prospectus, in the beginning, should display a “warning”, explicitly mentioning that the prospectus is prepared under the proportionate regime specific to SMEs and midcaps and as such is lighter compared to a full prospect. It is important when making an investment decision on the basis of the prospectus that the investor is informed that the information included is a “light version” compared to ordinary prospectuses. Only adding a reference to Article 15 of the Prospectus Regulation would generally not add much value for retail investors.

Section – Financial Statements and key performance indicators (KPIs): In connection with disclosing financial information about the company we consider it to be crucial that the issuers, in accordance with the current prospectus rules, also discloses causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer’s business as a whole. In Sweden this is information that is usually covered by the OFR.

Material contracts: We consider that the information requirement should align with the Prospectus Regulation. It should not imply any major costs for issuers to include information for the last two years instead of one year and to include a summary of any contract which contains any provisions under which any member of the group has any obligation or entitlement which is material to the group. Such information could be material information for investors to be notified about.

Statutory auditors: We are of the opinion that information about statutory auditors should be included in the prospectus in accordance with what applies for ordinary prospectuses. Such requirement should not imply any major costs for the issuers and based on the principle of proportionate information about the auditors should not be excluded.



Capital resources: We do not consider it appropriate to limit such information only to include information on the borrowing requirements and funding structure of the issuer. On Nasdaq's First North markets it is not unusual that the companies are unprofitable and do not expect to be profitable within the near future. In such situations it is crucial that investors receive sufficient information regarding capital resources in order to be able to make an appropriate risk assessment.

Conflicts of interests: We consider that the same disclosures should be required for EU Growth prospectuses as for ordinary prospectuses. It could be even more important to include information about conflicts of interests, and related-party transactions, for smaller/First North companies, as we often experience more issues in these respects.

Cash flow statement: In cases where the prospectus will not include any working capital statement, the cash flow statement would, in particular, be important as basis for investors' risk assessments. In cases where the prospectus has a working capital statement, it should be more room for excluding a cash flow statement.

Interim and other financial information: In the EU Growth prospectus requirements, it is proposed that the following requirement should be excluded. "If the registration document is dated more than nine months after the date of the last audited financial statements, it must contain interim financial information, which may be unaudited (in which case such fact must be stated) covering at least the first six months of the financial year".

We are of the opinion that, from both an investor and issuer perspective, it would be beneficial to include such interim information. If a long time since the last financial year has lapsed substantial events may have occurred in the issuers, meaning that the financial information covering the last financial year could to some extent be obsolete.

<ESMA_QUESTION_EUG_11>

12. : 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.

<ESMA_QUESTION_EUG_12>

13. : 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>

14. : 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>



Yes.

<ESMA_QUESTION_EUG_14>

15. : 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_EUG_15>

16. : 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>

17. : 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>

A requirement to disclose all subscription commitments should be added.

Based on our previous comment on the registration document, we agree with extending to all companies the requirement to include disclosure on capitalization and indebtedness.

<ESMA_QUESTION_EUG_17>

18. : 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>

19. : 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>

20. : 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.

<ESMA_QUESTION_EUG_20>

21. : 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 are of the opinion that the summary of the EU Growth prospectus should not be shorter than for ordinary prospectuses. This is usually the first – sometimes the only – section that investors read. The summary must therefore be comprehensive enough. Furthermore, issuers applying the EU Growth prospectuses could potentially also be complex. A summary shorter than six pages would be inappropriate. We also believe a limitation of the summary to six A4 pages can be too short for certain issuers.

<ESMA_QUESTION_EUG_21>

22. : 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>

The risk factors include the most important data in the prospectus and it is necessary to maintain the investor protection. We do not agree with having any limitations on the number of risk factors in the prospectuses at all. The relevant number could differ for each company. What is crucial is that the most important risk factors for each individual company are included. There should be no limit on the number of risks factors, so that those that are material to an issuer and its securities can be identified in the summary.

<ESMA_QUESTION_EUG_22>

23. : 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>



24. : 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.

<ESMA_QUESTION_EUG_24>

25. : 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, pro forma is crucial information and it could be misleading not to include it in the summary. We agree that an explanation of what the pro forma illustrates and the material adjustments done as well as a brief description of any qualifications in the audits reports should be included.

<ESMA_QUESTION_EUG_25>

26. : 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>

27. : 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>

28. : 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>

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<ESMA_QUESTION_EUG_28>

