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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:

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

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| --- | --- |
| Name of the company / organisation | Stichting Obligatiehoudersbelangen |
| Activity | Other Financial service providers |
| Are you representing an association? | ☐ |
| Country/Region | Netherlands |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ EUG\_1>

General

Stichting Obligatiehoudersbelangen (literal translation: "Foundation [for the protection of] bondholders' interests"; "Foundation") is the first and only multi-issuer security trustee focussed on Dutch small and medium-sized enterprises. The Foundation has been incorporated on July 15, 2011. Its purpose is:

* to act as security trustee with respect to bond issuance programs;
* to serve and protect the collective interests of bondholders;
* to exercise any rights associated with the bonds;
* to supervise the compliance by the issuer with the trust deed and offering terms and conditions;
* to set up and administer bondholders' registers;
* to act as a paying agent; and
* to obtain and exercise any rights under any mortgage, lien, security interest and/or guarantee, granted by issuers, their group companies and/or third parties.

Issuers can choose from the above-mentioned list of activities, depending on their needs and own capabilities. When acting as a paying agent, a separate bank account will be opened and maintained. The funds related to a pertinent bond issuance program are segregated from any other funds. The costs of the Foundation's activities are borne by the issuer.

The Foundation does not perform any activity that would be subject to any exemption, licence or other authorisation, required by applicable law.

Independence

The board members are completely independent of any issuer. That means they are not a (management or supervisory) board member, shareholder, bondholder or employee of any issuer and/or any issuer group company.

Code of Conduct

The Foundation has developed a Code of Conduct, containing principles with respect to the relationship between issuers and security trustees.

Further information can be found on the website www.obligatiehoudersbelangen.org

<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>

We are of the opinion that an EU Growth Prospectus should not contain a cover note; see also our answer to Question 4. Although ESMA states in para 44 that the cover note should not be seen as a substitute for the summary, in practice those who read a prospectus that starts with a cover note will consider it a kind of summary. We would also like to propose that items c) and d) are switched: we think that from a reading point of view it makes more sense to have the summary first, followed by the information incorporated by reference. Finally, we would like to propose (a) to also have a separate information item on whether or not a security trustee or similar services provider is used and (b) to expand the information item j) [Guarantor information (if any)] by also making specific reference to any other form of collateral, security interest or credit support.<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>

No. We are of the opinion that having an identical order of information items will allow investors to better compare different offerings.<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>

Yes.

<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 are of the opinion that an EU Growth Prospectus should not contain a cover note. A cover note seems redundant, taking into consideration that an EU Growth Prospectus already contains a summary. Having both a cover note and a summary in the same document creates an additional burden on the issuer in terms of drafting and making sure there are no inconsistencies between these two parts.

<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>

Para 31 states that the aim of the EU Growth Prospectus is to drive down the costs of producing a prospectus for SMEs. ESMA is encouraged to put together the schedules (and headings) of the EU Growth Prospectus in such a way that it should be possible to opt out of the services of professional advisors. Looking at the presentation of the disclosure items in para 81 and their respective level of detail, however, makes us believe that it will not be that easy for SME issuers to draft the prospectus without using professional advisors.

<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.

<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>

Yes.

<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, because it will provide a better understanding of the issuer's ability to pay interest and repay the principal amount.

<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.

<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>

Yes. see our answer to Question 1.

<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>

In general, yes.

<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>

We would like to make the following suggestions for the simplification of the disclosure requirements of the EU Growth Prospectus:

1. Standardized text of the most common risk factors, such as liquidity risk, operational risk and legal risks.
2. Standard format for an abbreviated financial statement, while having the annual account incorporated by reference (or - if applicable - having a standard format for an opening balance sheet in case of a newly incorporated issuer).
3. Standard terms and conditions with respect to the relationship between the issuer and a security trustee (if any) (see also our answer to Question 1). We have developed such standard terms and conditions for the Dutch market, including a credit support document, and we are willing to share them with ESMA.
4. We are of the opinion that the materiality assessment should not only rest with the issuers (see para 39). We believe that ESMA should develop certain (preferably objective) criteria as to what e.g. makes a contract "material" (see disclosure item 5.7). In that respect, one could think of criteria, based on the expected impact on revenue, employees, intellectual property etc. or the very nature of the contract, e.g. a settlement agreement with an important competitor.
5. Delete disclosure item 5.6.2. We believe this does not add any (information) value to potential investors. Besides, in case the articles of association have been incorporated by reference, potential investors would have access to this information.

We cannot quantify the cost alleviation to issuers of the above-mentioned suggestions.

<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>

Yes.

<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>

Yes.

<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>

In general, yes. However, part 4 seems to be too difficult for an issuer to complete without using professional advisors.

<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>

We would like to propose an additional risk factor in disclosure item 3.1 regarding the risk of limited transferability/negotiability of the securities.

<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>

We cannot quantify this.

<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>

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<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>

We think that the warning (disclosure item 1.6) should be taken out of the summary and form a separate part of the EU Growth Prospectus. After all, the summary - by nature - summarizes information that can be found elsewhere in the prospectus. However, this does not apply to the standard warning. We would propose to place the standard warning ahead of the summary.

<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>

Yes.

<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 find that the summary should only contain the 3-5 risk factors that the issuer considers to be the most important/material. We think ten is still too many.

<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, because of the high costs involved.

<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.

<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, provided the pro forma financial information is very limited.

<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>

Yes. We would like to propose that in disclosure item 1.4 also the name of the applicable NCA is mentioned as well as whether or not the prospectus benefits from a EU passport and - if so - the pertinent host member states.

<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>

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<ESMA\_QUESTION\_EUG\_28>