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| 6 July 2017 |

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| Response form for the Consultation Paper on format and content of the 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 format and content of the 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\_FAC\_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\_FAC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_FAC\_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 | Association Nationale des Sociétés par Actions - ANSA  |
| Activity |  |
| Are you representing an association? | x |
| Country/Region | France  |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_FAC\_1>

ANSA (Association Nationale des Sociétés par Actions) is a **not for profit** membership association**,** which **represents the interests of French quoted and non-quoted joint-stock companies.**

While welcoming the simplification measures proposed by ESMA, we consider that there is additional scope for further alleviation of disclosure requirements. Moreover, we are concerned about the introduction of new requirements, some of which are without legal basis, which run counter to the objective of simplification. Our concerns may be summarized as follows:

Requirements not foreseen in the level 1 text: Issuers are best placed to determine how to tell their “equity story” and deliver meaningful information. While the nature and extent of the information to be disclosed in a prospectus are legitimately set by the EU legislation, issuers should not be subject to excessive constraints regarding how such information is to be presented.

A case in point is ESMA’s proposal to mandate the disclosure of a cover note, a requirement which is not provided for by the Level 1 text and runs counter to the stated aim of simplification. Rather, issuers should be free to include or not a cover note and to choose the order of presentation of the different sections, including where to place the risk factors.

Another example is ESMA’s proposal to require issuers to confirm that they have complied with the Transparency Directive and the Market Abuse Regulation in order to benefit from the alleviated secondary issuance regime (see below answer to question 74).

Risk factors: ESMA indicates in the consultation paper that “*The required contents of the risk factors section will be further elaborated through ESMA guidelines*”.

We support the harmonisation of  practices among NCAs and consider that ESMA should focus on convergence and helping NCAs to improve their practices. We would like to see more supervisory convergence of administrative practices of NCAs when addressing risk factors. Whilst some NCAs allow or even encourage issuers to disclose risk mitigating techniques alongside their risk factors, other NCAs prohibit issuers from doing so. This is a key issue in order to avoid diverging approaches on risk factors. The preferred approach regarding in particular the categories of risk factors should be a flexible approach with a non-exhaustive and non-binding list that could be adapted where necessary to allow an alignment with the risk disclosure requirements under the Accounting Directive. Consequently, risk factors published in the management report mandated by the Accounting Directive could be incorporated in the prospectus, possibly completed by additional risk factors.

Furthermore, on the prioritisation of risk factors, we have concerns regarding the identification of the most important risk factors of each category and the requirement for a supplement when the order of risk factors within one category changes.

As regards the Commission’s empowerment to develop delegated acts, we understood that the Commission will not envisage adopting any legislation on risk factors in the short term. Issuers already have measures in place to assess and mitigate the risks they face and have developed internal control environment either compliant with national or international frameworks (eg.: COSO) as well as reporting processes.

Against this backdrop, we don’t see the added value guidelines or any additional piece of legislation would bring.

Additional scope for prospectus alleviation: In addition to the proposed simplification, there is still a good margin of manoeuvre at Level 2 to concretely alleviate the share registration document both for primary (full alignment of the Operating and Financial Review requirement with the management report required under the Accounting Directive; removal of the Strategy and Objectives disclosure requirement) and secondary offers (e.g. removal of the report of an independent accountant or auditor in case of profit forecast or estimate, as well as the disclosure requirement concerning property, plants and equipment, material contracts, operating and financial review except in case of rescue situations, corporate governance information unless a major material change occurred, i.e. a merger or an acquisition).

<ESMA\_COMMENT\_FAC\_1>

1. : Do you agree with the proposal that cover notes be limited to 3 pages? If not, what do you consider to 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\_FAC\_1>

We oppose the proposal to make it mandatory to publish a three pages cover note. Such a cover note is not required under the Regulation, and its proposed content is already provided for elsewhere under the new regime. Furthermore, adding this new requirement would contradict the stated objective of simplifying the prospectus regime.

<ESMA\_QUESTION\_FAC\_1>

1. : Would a short section on “how to use the prospectus” make the base prospectus more accessible to retail investors? If so, should it be limited to base prospectuses? Would this imply any material cost for issuers? If yes, please provide an estimate of such cost.

<ESMA\_QUESTION\_FAC\_2>

Requiring a new section on how to use the base prospectus for non-equity offers to retail investors would entirely miss the point that, while advised to read the prospectus in full, retail investors base their decision primarily on advertisements. Some NCAs have thus developed the practice to systematically review the advertising material. We therefore don’t see the need for any additional disclosure requirement.

<ESMA\_QUESTION\_FAC\_2>

1. : Should the location of risk factors in a prospectus be prescribed in legislation or should issuers be free to determine this? If it should be set out in legislation, what positioning would make it most meaningful?

<ESMA\_QUESTION\_FAC\_3>

Since issuers are best placed to determine how to tell their “equity story” and deliver meaningful information, we insist on the need to leave them as much flexibility as possible in choosing how best to present themselves to investors and where to position risk factors.

<ESMA\_QUESTION\_FAC\_3>

1. : Should the URD benefit from a more flexible order of information than a prospectus?

<ESMA\_QUESTION\_FAC\_4>

We consider that the order of presentation of information within the registration document should not be prescribed at EU level, and that issuers should have discretion on how best to present themselves to investors

<ESMA\_QUESTION\_FAC\_4>

1. : Would a standalone and prominent use of proceeds section be welcome for investors?

<ESMA\_QUESTION\_FAC\_5>

We agree that, in specific cases, the use of proceeds may be of importance to investors. However, ESMA’s aim is not clearly stated. If it is to include a section on the reasons of the offer and the use of proceeds, we don’t see its value added. If it is to require more detailed information, including as mentioned in the consultation paper a “precise breakdown of how funds will be employed”, we would not support this overly prescriptive requirement. The correct test to apply for such information is whether it is material to an investor for making an informed assessment; there should be no requirement to include overly granular or immaterial information, even if such information is available.

<ESMA\_QUESTION\_FAC\_5>

1. : Is the list of “additional information” in Article XXI of the Commission Regulation fit for purpose? What other types of additional information should be included in a replacement annex?

<ESMA\_QUESTION\_FAC\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_6>

1. : Are the definitions proposed to be carried over to the new regime, and new definitions proposed adequate? Should any additional definitions be added?

<ESMA\_QUESTION\_FAC\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_7>

1. : What is the overall impact of the above technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that the proposed technical advice will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_8>

The above technical advice adds new requirements with no benefits to investors but additional costs to issuers. That is why we oppose it.

<ESMA\_QUESTION\_FAC\_8>

1. : Do you agree that the scope of NCA approval should be included in the cover note? If not, please provide your reasoning.

<ESMA\_QUESTION\_FAC\_9>

We consider that the scope of the scrutiny by the Competent Authority is clearly defined at Level 1. In addition there are new items (eg.: item 1.5 of annex 1 and 7.4 of annexes 5 and 6) which include that information. There is therefore no need for a new statement**.**

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_9>

1. : Do you agree that the requirement for issuers of equity and retail non-equity to include selected financial information in the prospectus can be removed without significantly altering the benefits to investors?

<ESMA\_QUESTION\_FAC\_10>

We agree that the "selected financial information" section is unnecessary and should be removed, as article 7.6(b) of the Prospectus Regulation requires issuers to include historical information in the summary. In addition, as pointed out by ESMA, selected financial information is already mentioned in different sections of the share registration document.

<ESMA\_QUESTION\_FAC\_10>

1. : Do you agree that issuers should be required to include their website address in the prospectus? Do you agree that issuers should be required to make documents on display electronically available? Would these requirements imply any material additional costs to issuers?

<ESMA\_QUESTION\_FAC\_11>

Listed companies are already obliged under other pieces of EU legislation to operate their own web sites. Therefore, including a link to the website and making documents on display electronically available should not raise any issue. However, we are concerned about ESMA’s proposal to require a disclaimer that the information on the website does not form part of the prospectus. We don’t see the added value of such a disclaimer – circumstances under which an investor would consider that all the website is part of the prospectus are not clear – and we consider that it could even be confusingsince documents incorporated by reference in the prospectus could be available on the issuer’s website. The proposal to introduce this disclaimer should be removed.

<ESMA\_QUESTION\_FAC\_11>

1. : Do you consider that a description of material past investments is necessary information for the purpose of the prospectus?

<ESMA\_QUESTION\_FAC\_12>

We consider that description in the schedule of past investment is redundant, as disclosure of tangible fixed assets is already required in the financial statements. More generally, we are of the view that the level 2 should pursue a less prescriptive approach as regards historical financial information.

<ESMA\_QUESTION\_FAC\_12>

1. : Do you agree with the proposal to align the OFR requirement with the management reports required under the Accounting Directive? Would this materially reduce costs for issuers?

<ESMA\_QUESTION\_FAC\_13>

We welcome the proposal to align the Operational and Financial Review (OFR) with the management report required under the Accounting directive. This will ensure that all information relating to strategies, prospects and risks has been included in the OFR and facilitate incorporation by reference of the management report from the issuer’s annual report.

However, ESMA’s concrete proposals fall short of full alignment, with section 9.1 (Financial condition) being aligned with the management report whereas section 9.2 (Operating results) is not. Hence we propose to extend the alignment principle to section 9.2.

<ESMA\_QUESTION\_FAC\_13>

1. : Do you agree with ESMA’s proposal to require outstanding profit forecasts for both equity and non-equity issuance to be included? Do you agree with the deletion of the obligation to include an accountant’s or an auditor’s report for equity and retail non-equity? Please provide an estimate of the benefits for the issuers arising from the abovementioned proposals. Would these requirements significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_14>

First, we consider that profit forecasts should be limited to equity issuances and oppose the proposal to extend this requirement to non-equity issuances.

Second, we have doubt about the deletion of the obligation to produce an auditor's report for outstanding profit forecasts if the other branch of the alternative is a rquirment to provide more detailed information on the underlying assumptions, which may be more burdensome for issuers .

<ESMA\_QUESTION\_FAC\_14>

1. : Do you agree with the proposal to explain any ‘emphasis of matter’ identified in the audit report?

<ESMA\_QUESTION\_FAC\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_15>

1. : Should there be mandatory disclosure of the size of shareholdings pre and post issuance where a major shareholder is selling down? Would this requirement imply any material additional costs to issuers?

<ESMA\_QUESTION\_FAC\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_16>

1. : Do you consider that the new requirement to disclose potential material impacts on the corporate governance would provide valuable information to investors?

<ESMA\_QUESTION\_FAC\_17>

We would not be in favour of adding such a disclosure requirement in so far as the information may be made available elsewhere.

<ESMA\_QUESTION\_FAC\_17>

1. : Do you agree with the proposal to clarify the requirement for restated financial information?

<ESMA\_QUESTION\_FAC\_18>

We agree with the proposed clarification that the requirement for restated financial information should be limited to circumstances where the issuer has changed the accounting framework.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_18>

1. : Do you agree with the lighter requirement in relation to replication of the issuer’s M&A in the prospectus? Would this significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_19>

Yes, we agree with ESMA’s proposal.

<ESMA\_QUESTION\_FAC\_19>

1. : Should any further changes be made to the share registration document? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA\_QUESTION\_FAC\_20>

We propose the following additional simplification measures to the share registration document :

1. Disclosure on strategy and objectives: we are opposed to the introduction of this new requirement in the share registration document, which would also be applicable to EU Growth prospectuses, as the Business overview section already provides for comparable information.

2. Merging of the two following sections into one: Trend information and Significant changes in the issuer’s financial position.

1. Disclosure regarding Board and Senior management: details of each person’s management experience and expertise could be reduced from the five to three previous years.
2. List of significant subsidiaries and information on holdings: the disclosure requirement should be removed as similar information is provided under the notes to financial statements.

<ESMA\_QUESTION\_FAC\_20>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_21>

1. : Do you consider that the requirement for a working capital statement should be different in the case of credit institutions and insurance companies?

<ESMA\_QUESTION\_FAC\_22>

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<ESMA\_QUESTION\_FAC\_22>

1. : Do you agree that issuers should be required to update their capitalisation and indebtedness table if there are material changes within the 90 day period? Would this imply any material additional cost to issuers? If yes, please provide an estimation.

<ESMA\_QUESTION\_FAC\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_23>

1. : Do you consider the changes to dilution requirements would be helpful to investors at the same time as being feasible to provide for issuers?

<ESMA\_QUESTION\_FAC\_24>

In order to  harmonise the disclosure of the capitalisation and indebtedness table, ESMA proposes to follow the Commission Regulation 809/2004 requirement that a capitalisation and indebtedness statement should be made at a date no earlier than 90 days prior to the date of the prospectus..

We do not support ESMA’s proposal to require a statement’s update in the case of material changes within the 90 days. The data used in establishing the capitalisation and indebtedness table are derived from the issuer’s financial statements. Where there are significant changes impacting the issuer’s financial condition, these changes and their impacts would fall under the “significant changes in the issuer’s financial position” section. Therefore all information useful to assess the issuer’s capitalisation and indebtedness would be disclosed in the prospectus.

<ESMA\_QUESTION\_FAC\_24>

1. : Do you agree that the information solicited by item 9.2 is important for investors?

<ESMA\_QUESTION\_FAC\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_25>

1. : Do you consider that any further changes be made to the equity securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA\_QUESTION\_FAC\_26>

We are of the view that a new securities note should not be required when there is a change in the price range of the security to be offered to the public. As the information on tax treatment of investors is often too generic, the relevant section should be deleted, or be better tailored to the issuer's target investors. Institutional investors are deemed to be generally already well-informed of the taxation that applies to them.

<ESMA\_QUESTION\_FAC\_26>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_27>

1. : Do you agree with the proposal to delete disclosure on principal investments and replace this with a requirement to provide details on the issuer’s funding structure and borrowing requirements? Would this significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_28>

1. : Do you agree that an issuer of retail non-equity should be required to include a credit rating previously assigned to it in the prospectus?

<ESMA\_QUESTION\_FAC\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_29>

1. : Do you agree with the proposal to remove the requirement for profit forecasts and estimates to be reported on? Would this significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_30>

No , we disagree for the reasons stated in reponse to question 14.

<ESMA\_QUESTION\_FAC\_30>

1. : Do you agree with the proposal that outstanding profit forecasts and estimates should be included in the registration document?

<ESMA\_QUESTION\_FAC\_31>

<ESMA\_QUESTION\_FAC\_31>

1. : Do you agree with the deletion of the disclosure requirement related to board practices? Would this significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_32>

Yes, we agree with deletion of the disclosure requirement reltated to board practices. TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_32>

1. : Do you consider that any further changes should be made to the retail debt and derivatives registration document? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA\_QUESTION\_FAC\_33>

We propose the following additional simplification measures to the registration document:

* Merging of the two following sections into one: Trend information and Significant changes in the issuer’s financial position.
* Disclosure requirement concerning material contracts should be redrafted as wording is confusing.
* Link to the issuer’s website: making documents on display electronically available should not raise any issue. However, we are concerned about ESMA’s proposal to require a disclaimer that the information on the website does not form part of the prospectus. We don’t see the added value of this disclaimer – circumstances under which an investor would consider that all the website is part of the prospectus are not clear – and we consider that it could even be confusing since documents incorporated by reference in the prospectus could be available on the issuer’s website. The proposal to introduce this disclaimer should be removed.

Moreover, a clearer distinction between the retail and wholesale debt prospectuses should be made. The wholesale debt prospectus should be much simpler and more straightforward than the retail debt prospectus. As regards the disclosure of non-financial information (e.g. ESG items) there should be no requirement to publish such ESG items in the wholesale prospectuses.

Generally, we support a status quo of the minimum information requirements of the existing framework.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_33>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_34>

1. : Do you agree with the removal of the requirement for wholesale non-equity issuers to restate their financial statements? Would this significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_35>

1. : Do you consider that any further changes be made to the wholesale debt and derivatives registration document? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA\_QUESTION\_FAC\_36>

We propose the following additional simplification measures to the registration document:

* Merging of the two following sections into one: Trend information and Significant changes in the issuer’s financial position.
* Disclosure requirement concerning material contracts should be redrafted as wording is confusing.
* Link to the issuer’s website: making documents on display electronically available should not raise any issue. However, we are concerned about ESMA’s proposal to require a disclaimer that the information on the website does not form part of the prospectus. We don’t see the added value of this disclaimer – circumstances under which an investor would consider that all the website is part of the prospectus are not clear – and we consider that it could even be confusing since documents incorporated by reference in the prospectus could be available on the issuer’s website. The proposal to introduce this disclaimer should be removed.

Moreover, a clearer distinction between the retail and wholesale debt prospectuses should be made. The wholesale debt prospectus should be much simpler and more straightforward than the retail debt prospectus. As regards the disclosure of non-financial information (e.g. ESG items) there should be no requirement to publish such ESG items in the wholesale prospectuses.

Generally, we support a status quo of the minimum information requirements of the existing framework.

<ESMA\_QUESTION\_FAC\_36>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_37>

<ESMA\_QUESTION\_FAC\_37>

1. : Do you agree with the way in which disclosure on taxation has been reduced? Would this significantly affect the informative value of the prospectus for investors?

<ESMA\_QUESTION\_FAC\_38>

We support ESMA’s proposal to require a warning that the tax legislation may have an impact on the income received. We do not support, however, the requirement to issue a summary of the tax regime where the investment entails a specific tax regime, which runs counter to the stated objective of alleviating disclosures on tax, since the issuer should not be required to advise investors on tax issues.

<ESMA\_QUESTION\_FAC\_38>

1. : Do you consider there are any negative consequences of the requirement to make details on representation of security holders available electronically and free of charge? Would this imply any material additional costs to issuers? If yes, please provide an estimation.

<ESMA\_QUESTION\_FAC\_39>

We do not consider there would be any negative consequences.

<ESMA\_QUESTION\_FAC\_39>

1. : Do you consider that expenses charged to the purchaser should also include implicit costs i.e. those costs included in the price (item 5.3.1)?

<ESMA\_QUESTION\_FAC\_40>

<ESMA\_QUESTION\_FAC\_40>

1. : Do you agree with the proposal that the issue price of the securities to be included in the prospectus in the case of an admission to trading?

<ESMA\_QUESTION\_FAC\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_41>

1. : Do you consider that any further changes be made to the retail debt and derivatives securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA\_QUESTION\_FAC\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_42>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_43>

1. : Do you consider that any further changes be made to the wholesale debt and derivatives securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA\_QUESTION\_FAC\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_44>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_45>

1. : Do you agree with the proposal to make derivate disclosures a building block?

<ESMA\_QUESTION\_FAC\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_46>

1. : Do you agree with the proposal to reclassify the how the return on derivatives take place from B to A? If not, please explain why.

<ESMA\_QUESTION\_FAC\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_47>

1. : Do you consider agree with ESMA’s proposals to enhance the disclosure in relation to situations where investors may lose all or part of their investment?

<ESMA\_QUESTION\_FAC\_48>

**No, we disagree with ESMA’s proposal to enhance the disclosure in relation to situations where investors may lose all or part of their investment.** Article 7(5) of the Regulation introduces a new warning in the summary that “the investor could lose all or part of the invested capital” and, where the investor’s liability is not limited to the amount of the investment, another warning that “the investor could lose more than the invested capital and the extent of such potential loss”.

A summary would always be required except for wholesale non-equity prospectuses. Therefore we consider that retail investors awareness would be sufficiently enhanced in such circumstances and we don’t consider that it is necessary to require an additional warning as proposed by ESMA in the risk factors section.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_48>

1. : Do you consider that the requirements should be different where the return of the investment is linked to the credit of other assets (i.e. credit linked securities) than where the return is linked to the value of a security?

<ESMA\_QUESTION\_FAC\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_49>

1. : Do you consider that any further changes be made to the derivatives securities building block? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA\_QUESTION\_FAC\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_50>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_51>

1. : Do you agree with the proposed amendments to the annex relating to the underlying share?

<ESMA\_QUESTION\_FAC\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_52>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_53>

1. : Do you agree that the annex for third countries and their regional and local authorities should remain unchanged (with the exception of the reference to Member States)?

<ESMA\_QUESTION\_FAC\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_54>

1. : Do you agree with the proposal relating to the asset backed securities registration document?

<ESMA\_QUESTION\_FAC\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_55>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_56>

1. : Do you agree with the proposal relating to the asset backed securities building block?

<ESMA\_QUESTION\_FAC\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_57>

1. : Do you agree with the proposal to allow reduced disclosure where the securities comprising the assets are listed on an SME Growth Market?

<ESMA\_QUESTION\_FAC\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_58>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_59>

1. : Do you agree with the amendments to the pro forma building block? Should any further amendments be made to this annex? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA\_QUESTION\_FAC\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_60>

1. : Do you agree that the additional building block for guarantees does not need to change other than the minor amendments proposed by ESMA?

<ESMA\_QUESTION\_FAC\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_61>

1. : Do you think that depository receipts are similar enough to equity economically to require the inclusion of a working capital statement and / or a capitalisation and indebtedness statement? Please advise of any costs and benefits that would be incurred as a result of this additional disclosures.

<ESMA\_QUESTION\_FAC\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_62>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_63>

1. : Do you agree with the changes proposed by ESMA for collective investment undertakings?

<ESMA\_QUESTION\_FAC\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_64>

1. : Is greater alignment with the requirements of AIFMD necessary? If so, where?

<ESMA\_QUESTION\_FAC\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_65>

1. : Do you agree with the proposal to allow reduced disclosure where the securities issued by the underlying issuer/collective investment undertaking/counterparty are listed on an SME Growth Market?

<ESMA\_QUESTION\_FAC\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_66>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_67>

1. : Do you consider that any changes are required to the existing regime for convertible and exchangeable securities? If so, please specify.

<ESMA\_QUESTION\_FAC\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_68>

1. : Do you consider that any other types of specialist issuers which should be added? If so, please specify.

<ESMA\_QUESTION\_FAC\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_69>

1. : Do you agree with ESMA’s proposal not to develop a schedule for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD?

<ESMA\_QUESTION\_FAC\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_70>

1. : Do you agree that the URD disclosure requirements should be based on the share registration document plus additional disclosure items?

<ESMA\_QUESTION\_FAC\_71>

We agree that the URD’s content should be based on the share registration document plus the additional disclosure items mentioned in ESMA’s consultation paper: statement whether the URD has been approved and may be used for the purpose of an offer or admission to trading on a regulated market, or has just been filed with the NCA and, when the issuer decides to include its Annual/Half-yearly Financial Report, the responsibility statement required under the Transparency Directive.

<ESMA\_QUESTION\_FAC\_71>

1. : Should the URD schedule contain any further disclosure requirements?

<ESMA\_QUESTION\_FAC\_72>

**Please refer to our answers to question 20** regarding additional alleviations that ESMA could take into consideration when defining the URD schedule. In particular we consider that disclosures required in the OFR are also included in the management report defined by article 19 and 29 of the Accounting Directive. Therefore we consider that section 9 could be entirely removed from the share registration document and the URD and the OFR fully aligned with the management report.

<ESMA\_QUESTION\_FAC\_72>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_73>

1. : Do you consider that the proposed disclosure is sufficiently alleviated compared to the full regime? If not, where do you believe that additional simplification can be made? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA\_QUESTION\_FAC\_74>

**Compliance statement**

ESMA is proposing to require from issuers a compliance statement with the publication obligations of the Transparency Directive and Market Abuse Regulation in order to benefit from the secondary issuance regime. We strongly oppose the introduction of such a statement. The conditions to benefit from the secondary issuance regime are set in article 14 of the Regulation and do not include any statement of compliance. **We consider therefore that there is no legal basis for ESMA to require such a compliance statement.**

**Share secondary issuance**

We agree with ESMA’s proposal to delete, from the share registration document for secondary issuance, disclosure requirements regarding Organisational structure, the OFR, Environmental matters, Capital resources, Remuneration and benefits, Board practices and Employees. As for the Additional information section, ESMA is also proposing to remove this item with the exception of disclosures regarding:

1. the amount and terms of existing convertible, exchangeable securities and warrants;
2. the terms of acquisition rights and/or obligations over authorised but unissued capital or an undertaking to increase the capital;
3. where there is more than one class of existing shares, the description of the rights, preferences and restrictions attaching to each class;
4. the brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.

We consider that many of these items would also already be public : item 3 in the list above, for instance, has to be made public pursuant to the provisions of the Takeover bid Directive (Directive 2004/25/EC). This directive however is only applicable to issuers listed on regulated markets and companies whose securities are traded on SME Growth Markets will not have to comply with the same requirements. However we agree with ESMA’s proposal not to remove these items considering that when these items are already public, the issuer will be able to incorporate them by reference as long as they meet the conditions of article 19 of the Regulation.

**MAR Summary**

Article 14.3 (c) of the Regulation requires the issuer to include in the simplified prospectus for secondary issuances “*a concise summary of the relevant information disclosed under Regulation (EU) No  596/2014 over the 12 months prior to the approval of the prospectus*”.

We agree with ESMA that this provision raises many questions and needs clarification. In this regard, **guidance from ESMA and NCAs in the form of guidelines** could be helpful. However we don’t consider that detailed implementing measures laid down at Level 2 would be useful : this is a new requirement and a pragmatic and practical approach will best serve issuers and investors. Furthermore **Level 1 does not require** **information in the summary to be presented in different categories nor does it make any reference to the “evolutions”** of facts and figures, which could be interpreted as a new requirement to update the information.

Therefore, we would be in favour of redrafting section 13 (Regulatory disclosures) of annex 18 in a more neutral and straightforward way:

 “The summary of the relevant information disclosed under Regulation (EU) No596/2014 featured in a simplified prospectus (the “MAR disclosure summary”) shall be presented in  an easily analysable, concise and comprehensible form. It shall not replicate all information already published under Regulation (EU) No 596/2014 and shall be an intelligible summary of the last relevant information.

~~The MAR disclosure summary shall be presented in a limited number of categories depending on their topics.~~

~~The  MAR  disclosure  summary  shall  provide a clear view of the evolutions and circumstances of facts and figures mentioned by the issuer. The summary shall not consist of simply a list of disclosures or links thereto and only MAR disclosures that are relevant to a particular offer shall be summarised~~.”

**Non-equity securities secondary issuance**

Regarding profit forecasts, although supportive of the removal of the obligation to include a report from the auditors when the issuer chooses to include forecasts in the prospectus, we consider that the non-equity regime should not be aligned with the equity regime : for both retail and wholesale debt issuances, there should not be any obligation to include in the prospectus outstanding profit forecasts previously published and still valid (please refer to our general comments in the introduction).

<ESMA\_QUESTION\_FAC\_74>

1. : Should secondary disclosure differ depending on whether the issuer is listed on a regulated market or on an SME Growth Market?

<ESMA\_QUESTION\_FAC\_75>

We agree with ESMA that the secondary disclosure should differ depending on whether the issuer is listed on a regulated market or on an SME Growth Market, especially if the standard regime is to be in the form suggested so that it would not be attractive to SMEs due to the costs of producing such a prospectus. For the SME Growth Market the regime for secondary issuances should be a proportionate version of the EU Growth Prospectus and not of the full prospectus.

<ESMA\_QUESTION\_FAC\_75>

1. : Do you consider that item 9.3 (information on corporate governance) is necessary?

<ESMA\_QUESTION\_FAC\_76>

Please refer to our answer to question 17.

<ESMA\_QUESTION\_FAC\_76>

1. : Do you consider that information on material contracts is necessary for secondary issuance?

<ESMA\_QUESTION\_FAC\_77>

We agree with ESMA that in the case of a secondary equity issuance to fund a large acquisition, the issuer will often have entered into material contracts, including an acquisition agreement and agreements relating to bank debt funding. A significant acquisition and such agreements would likely be disclosed in the annual financial report, the risk factors section…or could constitute inside information which would be disclosed under MAR and summarised in the prospectus.

**Therefore we don’t see the point in maintaining a disclosure requirement regarding material** contracts (not entered in the ordinary course of the issuer’s business) in the secondary issuance prospectus.

<ESMA\_QUESTION\_FAC\_77>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_78>

We cannot see that the regime is sufficiently alleviated for it to be of material use to issuers, so the additional cost will be in not having an effective proportionate regime and effectively having to comply with the full prospectus regime when issuing additional shares in a secondary issuance.

<ESMA\_QUESTION\_FAC\_78>

1. : Do you consider that there is further scope for alleviated disclosure in the securities note ? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA\_QUESTION\_FAC\_79>

Regarding the requirement to update the capitalisation and indebtedness table in case of material changes, please refer to our answer to Question23.

<ESMA\_QUESTION\_FAC\_79>

1. : Is a single securities note, separated by security type, clear or would it be preferable to have multiple securities note schedules?

<ESMA\_QUESTION\_FAC\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_80>

1. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA\_QUESTION\_FAC\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_81>