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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 | Die Deutsche Kreditwirtschaft |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_FAC\_1>

TYPE YOUR TEXT HERE

<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 support ESMA’s proposal to acknowledge the standard practice of inserting a cover note.

As currently provided in the answer to question 9 of the Q&A’s to the current Prospectus Directive (ESMA/2016/1674), the issuer should be allowed to include in such a cover note general information about the issuer, the issue, the offer and its addressees, but the cover note may not be a substitute for the summary or the disclosure requirements under the Regulation. The approach of this guidance should be elevated to the Delegated Act to the Prospectus Regulation, with the only addition that the cover note may also contain general information about the programme.

Other than these general requirements for the contents of a cover note, there should not be additional restrictions. A restriction to 3 pages seems unnecessary, in some cases even impossible. The proposed general requirements will limit the length of the cover note, so that the cover note will not be extensive. By considering the different length of a prospectus and a base prospectus a limitation to 3 pages seems only proportionate for a stand-alone prospectus, but not for base prospectuses.

Following from the fact that the cover note is no substitute for a summary, there is also no reason for a particular “plain language” requirement applying to this part; accordingly, the same standard of comprehensibility should apply to this part as for the rest of the prospectus. Also, disclaimers should be allowed where they are in line with the general content requirements, as they may contain important warnings to the investors.

<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>

Such a section would not seem necessary, if the prospectus is written and presented in an easily analysable, concise and comprehensible form, as mandated by Art. 6 (2) of the Prospectus Regulation. The overview of the contents and which information is contained in the various sections of the prospectus is already set out in the table of contents. A clearly structured table of contents will also guide investors to the different securities segregated in accordance with Art. 8 (7) of the Prospectus Regulation.

This new prospectus requirement would imply additional cost to issuers, without apparent significant benefit to investors. Ignoring the time spent by the issuer, the implementation could cost about five law firm hours for each base prospectus, plus another hour at each annual update.

<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>

To further the comparability between prospectuses a uniform legislative solution appears preferable. The current positioning of the risk factors sections should be kept, as this generally ensures a higher degree of investors’ attention and consideration than positioning the risk factors at the end of the document. Having said this, it seems appropriate to disclose risks in the base prospectus after the general description of the programme.

<ESMA\_QUESTION\_FAC\_3>

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

<ESMA\_QUESTION\_FAC\_4>

The URD is a form of registration document (Art. 9 (1) Prospectus Regulation), and as such a constituent part of prospectuses as separate documents. There is no discernible reason for treating the order of information differently in a URD than in any other registration documents.

<ESMA\_QUESTION\_FAC\_4>

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

<ESMA\_QUESTION\_FAC\_5>

We are not convinced that the information about the use of proceeds does not currently receive sufficient attention from investors due to its location in prospectuses. Nevertheless, we acknowledge that the issuer’s use of proceeds is potentially relevant in respect of certain products (e.g. for so-called “Green/Social/Sustainability Bonds”, where the issuance proceeds are to be applied for particular projects). However, we are of the view that for all other debt instruments the use of proceeds should only be disclosed if the reasons for the offer to the public or for admission to trading of the debt securities are “different from making profit and/or hedging certain risks (in accordance with 3.2 of Annex 5 (*Retail Debt and Derivatives Securities Note*)” or general funding purposes. Please see also our response to Question 44 regarding the new requirement to include information on the use of proceeds in the wholesale debt securities note annex.

<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>

A closed list of additional information is not necessary at all, Annex XXI would not need to be replaced. Art. 8 (4) subpara. 2 of the Prospectus Regulation already limits the possible content of final terms to information relating to the securities note. Within that universe, all relevant information on the securities, in particular their terms and conditions, is controlled via the categorisation referenced in Art. I (2)(a) of the draft technical advice. What remains as possible additional information is of technical nature, such as the items listed in the current Annex XXI, relating to identification, distribution, and settlement of the specific securities. While this operational information is needed for the processing of the securities, it would not appear to be information crucial for the investment decision or in need of tight regulation. A statement in Art. I (2)(b) of the draft technical advice generally allowing other information relating to the securities note but not covered in the applicable securities note schedules would be sufficient.

A more flexible approach regarding additional information would also foster the market practice of using a prospectus as a main source of information and declaration of (general) consent to use the prospectus, in order to fulfil the obligation of the issuer to consent to the use of its prospectus by a “written agreement” as set out in article 5 EU Prospectus Regulation, e.g. in cases, where securities are opportunistically placed by financial intermediaries without any formal distribution agreement with the issuer.

If a list of additional information items is considered indispensable, it should contain information on additional selling restrictions and information on ECB eligibility to the contents of Annex XXI. As it is difficult to think of all technical information items that might become relevant up front, it would be helpful to also include a point in the list that allows further information items similar in nature to the ones already on the list. Each such further item would in any case need to pass the muster of the competent authority as it approves the base prospectus. It also seems that a list of additional information items may be more suited for a Level 3 measure, to allow for adaptation to new developments between Level 2 cycles

<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>

In principle, the definitions proposed to be carried over to the new regime as well as the newly introduced definitions seem to be comprehensive and complete.

Nevertheless, we suggest that the definition of "profit estimate" be reviewed. According to ESMA´s answer to Question 2 in its Q&A No. 84 (ESMA/2016/1674) *"quarter four reports […] should be considered as interim financial information"* and not as a profit estimate. There are, however, jurisdictions such as Germany, where a quarter 4 report does not exist. It is common practice to present figures for the fourth quarter at the annual press conference together with the figures for the whole year, however, with a focus on the whole year. At this stage, the preparation of the financial statements is already at a very advanced stage, which means that figures are based at this time on the actual annual financial statements and not on assumptions. The annual financial statement should therefore not be treated differently than a quarter 4 report.

It would appear indicated, though, in addition to define “wholesale debt” as used in the title of proposed Annex 4. Such a definition should relate to both options of Art. 13 (1) subpara.3 (a) of the Prospectus Regulation, i.e. to a minimum denomination of EUR 100 000 and to trading on a regulated market to which only qualified investors can have access.

It should be clarified that the definition of 'debt securities' also covers so called Zero Notes (debt issuances, e.g. issued at 80% and paid back at its repayment date at 90%).

Separately, for want of a better place, we note that Art. I (2) of the technical advice references the form of final terms. We believe that this paragraph should instead define the contents of the final terms themselves, i.e. it should talk about the contents of the completed “final terms relating to a base prospectus”, not about the uncompleted “form of final terms to be attached to a base prospectus”

<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>

Where we see an impact on costs for the investor, we have noted it in our answers above.

Generally, new disclosure requirements will imply more work for issuers and underwriters and for their advisors for each new prospectus, resulting in higher cost. The removal of disclosure requirements on the other hand will alleviate the burden on issuers

<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>

Yes.

<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>

Yes, we expressly support ESMA’s approach to reduce redundancies and repetitions, particularly with respect to financial information.

<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>

We question whether the issuer’s website address constitutes appropriate content for the prospectus. The sole purpose of websites is to deliver information. The prospectus, including all information incorporated by reference, should, however, already in itself contain all material information on the issuer. As the proposed disclaimer indicates, adding the issuer’s website address only raises doubts as to whether additional information found on the website inadvertently becomes part of the prospectus.

Yes, ‘documents on display’ should be made electronically available (i.e. on the issuer’s website). This appears to be a common market practice anyway.

We believe the proposed requirements may imply material additional costs to issuers, in particularly to those issuers who do not have a website at all, e.g. Special Purpose Vehicles.

<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 do not believe that a specific requirement to include a description of material past investments is generally necessary. In any case these investments have to be reflected in the historical financial information and described in the operating and financial review section so that a separate section appears redundant.

<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>

In principle, yes. However, the alignment should also work the other way around, i.e. the management report should include the information required for the OFR going forward (so that both documents are aligned as it is the practice in, for example, the U.S.).

<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>

Outstanding profit forecasts should only be included in prospectuses for equity securities. The same does not apply to non-equity securities, given the different applicable materiality standard (see answers to Questions 30 and 31 below). The same applies for profit estimates. Such inclusion in non-equity prospectuses should be optional.

The accountant’s or an auditor’s report as is currently required has been useful, but has turned out to be challenging as recently court decisions have led to liability being imposed upon auditors that went much beyond their usual liability for annual audits. For that reason, profit forecasts have become a stumbling block for securities offerings. If the requirement to include such a report were to be maintained, liability for auditors in that context should be harmonised. Otherwise we would continue to have an “unlevel” playing field among issuers in different member states.

The benefits for the issuers arising from a removal of the requirement of an audit report would not only consist in a reduction of cost, but would also remove a stumbling block for an offering as the negotiations of the requirements for an auditor to be able to issue a report would fall away. The downside is that underwriters will be left alone with the need to assess the quality of a forecast and would be faced with the challenge of having to seek “private” confirmation from the issuer’s auditor. An EU-wide regime of expert liability would therefore be an alternative.

If profit forecasts were still included in a prospectus, the information value for investors would not be affected, provided the issuer can assure the same quality of the information being disclosed. Thus, the auditor’s report has been a useful tool, so that the introduction of a general liability regime appears to be an alternative worth considering.

<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>

Yes, as this information appears likely to be material.

<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>

Yes, that appears a useful disclosure.

No, as calculating the shareholdings should be easy to achieve (at least if the selling shareholder cooperates, which – in the case of a related prospectus requirement – it would have to).

<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>

Yes.

<ESMA\_QUESTION\_FAC\_17>

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

<ESMA\_QUESTION\_FAC\_18>

Yes, we agree and are of the opinion that this clarification is very helpful.

<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.

As it is only proposed that duplicative information should be deleted (especially in light of documents on display and their facilitated availability), we do not believe that the informative value of the prospectus is affected

<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>

Observations relating to Annex 1, p. 40 et seq. of the Consultation Paper – Draft technical advice on format and content of the prospectus – 6 July 2017.

Among the minimum information that is required to be disclosed in a prospectus as set out in this Annex 1, a number of disclosure items appear redundant and/or duplicative. This is particularly the case in light of the regular disclosure made by issuers in their periodic financial reporting, especially under the Transparency Directive and/or IFRS. As long as these disclosure items are publicly available anyway it should be sufficient to incorporate them by reference.

Deleting certain items from the catalogue of minimum information should also be considered, as these do not normally appear relevant for an investment decision

Moreover, there are a number of requirements where the technical detail or level of granularity goes beyond what is required for the regular disclosure under IFRS (which is generally deemed sufficient to inform investors on an ongoing basis). This information often has to be specifically produced by issuers just for the purposes of the prospectus. As it is not required under IFRS and only based on a rudimentary description in the Level 2 Regulation 809/2004 of ESMA guidelines, there is a high level of uncertainty as regards the specific requirements and presentation of such information. This necessarily leads to additional effort being required to produce such information, but at the same time to limited comparability of the information due to a lack of accounting standards or guidance. Therefore, such disclosure is perceived as excessive, particularly as it may not promote relevant disclosure for many issuers. We point out some examples below.

**Annex 1 of the Consultation Paper (ESMA31-62-532)**

* 2.1 [2.1 of Annex I Regulation 809/2004] Names and addresses of the issuer’s auditors for the period covered by the annual financial statements seems redundant given that they are already disclosed in the auditor’s opinion required to be included according to item 20.1. Therefore, it should be deleted.
* 6.6.2 [moved from 5.2.2. and merged with 5.2.3 of Annex I Regulation 809/2004] The description of the geographic distribution and method of financing does not seem to be material information for an informed investment decision. Therefore, this should not constitute minimum information to be provided by all issuers, but rather left to the issuer’s discretion if he reasonably believes that including this information in the prospectus is necessary.
* 10.1 [10.1 of Annex I Regulation 809/2004] Information concerning the issuer’s capital resources which go beyond a balance sheet prepared in accordance with IFRS and the related notes does not appear necessary.
* 10.2 [10.2 of Annex I Regulation 809/2004] An explanation of the sources and amounts of and a narrative description of the issuer's cash flows under item 10.2 in addition to the required cash flow statement as part of IFRS financial statements should not be required.
* 12.1/12.2 [12.1 and 12.2 of Annex I Regulation 809/2004; second bullet of 12.1 moved from 20.9 of Annex I Regulation 809/2004] These two items should be combined and made part of the ‘business overview’ under item 6.
* 15/15.1/15.2 [15/15.1/15.2 of Annex I Regulation 809/2004] The requirement of item 20.1 (Moved from 20.3) of the disclosure for the issuer’s consolidated financial statement is also required under IAS 24.17 and is part of the annual financial statements. This should be sufficient. Hence, the disclosure of remuneration and benefits under item 15 is not required.
* 19 [19 of Annex I Regulation 809/2004] The related party disclosures required under IAS 24 as part of the issuer’s consolidated financial statement and as such to be included in the prospectus according to item 20.1. appear to be sufficient. Therefore, no additional disclosure under item 19 is needed.
* 20.1 [20.4.2 of Annex I Regulation 809/2004]: indication of other information in the registration document which has been audited by the auditors] It is irrelevant for the investment decision whether voluntary information has been audited or not. Also, as a matter of fact, an auditor is unlikely, for liability reasons, to agree to his audit being referred to or his audit opinion being reproduced, unless he is obliged to do so. Hence, this item should be deleted.
* 20.1 [20.4.3 of Annex I Regulation 809/2004]: Where financial information in the registration document is not extracted from the issuer’s audited financial statements state the source of the information and state that the information is unaudited] The source of the information does not seem decision relevant for investors. Also, a reference to information being unaudited seems redundant on the basis of a general presumption that any information has to be deemed unaudited unless expressly declared audited.

20.1 [20.9 of Annex I Regulation 809/2004]: Significant change in the issuer’s financial position] The meaning of this additional disclosure item is unclear as it does not relate to a specific financial disclosure item. Also, it is unclear whether it has any independent meaning beyond what has to be disclosed as “trend information” under item 12. Hence, item 12 should be sufficient (which should become a part of the ”business overview” item, see above under “12.1/12.2”).

<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>

We think preparation time for prospectuses and therefore costs will be slightly reduced, but we do not think that the change will be significant in terms of cost and it will be difficult to quantify. In any case, we believe that the elimination of duplicative disclosure requirements is a step in the right direction.

<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>

Credit institutions are subject to the Capital Requirements Regulation which reflects Basel III rules on capital measurement and capital markets. In particular, they shall ensure liquidity in gravely stressed conditions over a period of thirty days under Art. 412 Regulation 575/2013/EU (CRR). For insurance companies, provisions concerning the liquidity of insurance companies were implemented into national law as a reaction to “Solvency II”. As a general principle, liquidity is required of insurance companies. Working capital is the difference between current assets and current liabilities. A working capital statement is made by the directors of the company in which they confirm that in their opinion the working capital available to the company and its subsidiaries is sufficient or, alternatively, how it is proposed to provide the additional working capital thought to be necessary by the directors. Credit institutions and insurance companies do not explicitly provide such a statement. However, the established EU standards for regulation, supervision and risk management for credit institutions and insurance companies continuously ensure the liquidity of such companies. Therefore, a working capital statement is redundant for credit institutions and insurance companies.

<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>

No.

The existing requirement for a statement of capitalisation and indebtedness to be no older than 90 days has often been criticised by market participants and for good cause. That 90 day period appears arbitrary and is inconsistent with financial reporting requirements for listed issuers. Information on capitalisation and indebtedness is contained in the balance sheet forming part of the issuer’s historical and interim financial information. The requirement that the statement of capitalisation and indebtedness must not be more than 90 days old may require issuers to prepare a separate new balance sheet even if they provide a full quarterly report under IFRS. In doing so, the proposal (like the existing Regulation 809/2004) provides for a much shorter reporting cycle than under the Transparency Directive (Art. 5). There, the EU legislator has recently even abolished the previous, very rudimentary, reporting within the first and second 6 months of a business year and extended the delivery period for half yearly financial reports to 3 months. Hence, the 90 day period is disproportionate and an unnecessary obstacle to capital markets access.

The proposed requirement to update the capitalisation and indebtedness statement within that 90 day period is even less appropriate. To make a reliable assessment as to the exact development of its capitalisation and indebtedness the issuer would always have to prepare an interim balance sheet shortly before the publication of the prospectus. The added value does not seem to be significant.

Rather we believe it is sufficient to require specific disclosure if the user has indications that there was a material change to its capitalisation and indebtedness that may have an impact of the informed assessment of the issuer and its financial instruments to be offered or listed on the basis of the prospectus (Art. 6 para. 1). We do not think this general principle justifies a specific extension of the minimum information set out in the technical advice for a successor regulation to Regulation 809/2004.

<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>

TYPE YOUR TEXT HERE

<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>

In the following, observations relating to Annex 2, p. 63 et seq. of the Consultation Paper – Draft technical advice on format and content of the prospectus – 6 July 2017 will be outlined.

3.2 [3.2 of Annex III Regulation 809/2004 in a modified form] The information on capitalisation and indebtedness for the periods covered by annual financial statements are either contained in the balance sheet being part of such financial information (and thus redundant) or not based on IFRS. In the latter case the preparation of such supplementary information causes unnecessary additional efforts as they cannot directly be derived from IFRS accounting systems. In addition, due to the lack of further standards or guidance they are likely not comparable among issuers.

<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>

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<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>

We agree with the proposed deletion of the disclosure on principal investments. It typically only led to generalised descriptions of investment volume and did not seem to be material for non-equity investors. We also note that, if not deleted, it would constitute a new and additional requirement for bank issuers who currently use Annex XI.

We question, however, whether it is useful to add a new requirement for information on the changes in the issuer’s borrowing and funding structure during the last financial year (new Item 5.1.7 (a)). This information, should it become of interest to a non-equity investor, is anyhow available in the annual financial statements included in the prospectus.

Being forced to disclose information on the expected financing of the issuer’s activities (new Item 5.1.7 (b)) on the other hand appears sensitive and disadvantageous to the conduct of business of the issuer, and also lacks an available format for comparative reporting.

<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>

Including credit ratings assigned to the issuer in a prospectus does not appear recommendable. In any case it should not become mandatory. Information on credit ratings assigned to the debt of an issuer is more valuable to the investors, as it better represents the credit rating applicable to the products they purchase. At times the credit rating assigned to the issuer is higher than the one assigned to certain types of debt of the issuer. This can prove to be misleading for the investor. It is also not that simple to identify any single issuer credit rating with every rating agency.

For these reasons we would support retaining the disclosure of credit ratings in the securities note and leave it up to the issuer which ratings best inform the investors.

<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>

Yes, we do agree with the removal of the requirement to include a report by auditors with profit forecasts and estimates. Given the wide interpretation of what constitutes a profit forecast or estimate, it has proven difficult to make sense of such reports. We believe that without this requirement issuers are more prepared and able to include such information in their prospectuses, which should improve the value of the prospectus to investors. As issuers also have to describe the assumptions upon which the profit forecast or estimate is based, there appears to be only limited risk that investors misunderstand the nature of the disclosure.<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>

For issuers of non-equity securities, it does not appear appropriate to make the inclusion of already published profit forecasts and estimates in the prospectus mandatory. This distinction is also recognised in paragraph 44 of the ESMA update of the CESR recommendations. The question of whether a published profit forecast or estimate is also material for non-equity investors should be left to the issuer. As discussed under Question 30 above, without the requirement for a report by auditors issuers have little incentive not to include a profit forecast or estimate where it provides material information to non-equity investors.

<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>

We agree that the requirement for a description of board practices can be deleted without compromising the informative value of the prospectus for non-equity investors. Should information on board practices or the issuer’s audit committee become material for non-equity investors in a specific case, its inclusion is ensured on the basis of Art. 6 (1) Prospectus Regulation and applicable prospectus liability regimes.

<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 note that the proposed abolition of Annex XI leads to additional disclosure requirements for bank issuers regarding share capital and articles. In general, it is not obvious why this additional information should now become necessary for bank issuers, as their capital and objects continue to be extensively regulated. But we also generally question the need for this disclosure for non-equity investors. To the degree that this could be of interest to investors in the debt of an issuer, the financial statements included in the prospectus and the memorandum and articles of association available electronically already provide all the information needed.

Specifically, we suggest deleting item 10.1 as this kind of information does not seem to be of much relevance for an investor in debt securities. At least it should be sufficient just to name the relevant persons. We query why item 13.7 is still included. According to the wording in brackets in item 8.1, item 13.7, if considered necessary at all, is merged with item 8.1 and therefore redundant. And note that neither the term financial position nor the term financial performance is defined in the Prospectus Regulation, bringing uncertainty to the application of these provisions.

We support the removal of the requirement that issue specific final terms need to repeat all non-applicable items from the form of final terms and designate them as “Not Applicable” (paragraph 33 of the Consultation Paper). Repeating all non-applicable items might in some cases improve comparability and recognition, but does severely compromise comprehensibility in other cases. Retaining the complete list of items from the form of final terms should, therefore, be allowed, but not required.

Regarding item 13.3.3 we refer to our answer to Question 20 (item 20.1/20.4.3).

<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>

The overall impact is that it improves the flexibility of issuers to disclose in prospectuses only what is material to retail non-equity investors. Investors benefit in that the prospectus only contains what is relevant to them for taking an informed investment decision. The new requirements regarding issuer credit ratings, borrowing and funding structure, and, for banks, capital and articles run counter to this positive development. Any new requirement will involve many hours of work for all market participants (issuers, law firms, banks) to implement it.

<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>

Yes, we agree with the removal of the requirement for restatement. Wholesale debt investors are able to evaluate financial statements that are not restated. Where they are not able to do so they will simply shun the investment, eventually forcing the issuer to consider restatement after all.

<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 acknowledge and agree with the approach to make no major changes to the wholesale debt annex.

We query why the remaining item 11.6, if considered necessary at all, was not also merged with item 7.1 (Trend Information). And note that neither the term financial position nor the term financial performance is defined in the Prospectus Regulation, bringing uncertainty to the application of these provisions.

<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>

The approach to retain by and large the current wholesale debt annex softens the impact of the proposed technical advice.

<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>

Yes, we agree. Due to the unavoidably generic nature of all information in prospectuses, it is not possible to provide investors with all material information needed to evaluate their individual tax consequences following from an acquisition of the respective securities. Tax information in prospectuses is therefore always limited to general overviews of the taxation system with regard to the securities. Accordingly, as stated prominently in prospectus tax sections, investors always need the expertise of accountants or tax lawyers to evaluate their specific fiscal situation, anyhow. Therefore, in our view the reduced taxation disclosure would not have negative consequences for investors, while significantly easing the burden on issuers.

<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 agree that such a requirement makes sense.

<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>

No, we do not agree with the proposed requirement. PRIIPs and MiFID rules, coming into force in 2018, already require the disclosure of product cost for securities, including implicit costs. In both cases, the development of the cost disclosure methodology, with the aim of providing investors with meaningful and understandable information, has taken considerable time and effort. The mere presentation of “implicit” cost together with expenses charged to the investor will rather confuse than help investors. In addition, no methodology has been provided for determining implicit cost. We would suggest a requirement for a reference to the cost information to be provided in KIDs and by distributors (under MiFID rules).

<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>

No, we do not agree with the proposal. The issue price – which is only valid for a mere logical second when trading begins - is of no informational value for later investors in the securities.

<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>

We note for item 4.1 that the term “type” of securities is unclear and not defined. Re-categorising this item to Category A would make a clarification of the term more pressing. As defining the term appears difficult, we would recommend retaining the slightly higher flexibility of Category B, i.e. deciding what is meant by “type” in the context of a specific approval procedure.

In the proposed new item after 7. 3. - “NEW”, the following sentence should be added at the end:

“All such information can either be presented within a single block, or be included in the different information items which it refers to.”

Specifically allowing both options would provide the required flexibility for including otherwise missing KID information needed due to the lack of a coherent approach between the information requirements for prospectuses and KIDs. This lack of coherence gets very obvious particularly in the information items newly developed for KID purposes, but not required for prospectuses, such as the SRI, performance scenarios and the RIY. In order to avoid very difficult discussions with authorities in practice about where particular KID points should appear in a prospectus, it should always be possible to present “missing” KID information in a single block.”

<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>

The changes proposed for this Annex compared to the current requirements would result in additional requirements for some items and reduced disclosure obligations for others. Accordingly, the overall impact in terms of cost would be mixed. Where we see a particular impact on cost or the investor, we have noted this in our answers above.

<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>

Other than our proposals set out below (Q 48, 49) we do not see any further changes which should be included. Regarding Question 44 of the Consultation Paper (Do you consider it useful that use of proceeds of issuance under this annex should be disclosed when different from making a profit or hedging risk?): Yes, this information could be useful even for investors in wholesale debt securities, if the use is different from (profit generating) general corporate purposes. In particular, it can be used to identify special purposes such as in green bonds. As the use of proceeds may vary from issue to issue, it is important to place this item in Category C, as is already the case for the corresponding item in the retail debt registration document annex.

<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>

Compared to the rules currently in force, the proposed requirements would result in additional disclosure, without abolishing other disclosure requirements at the same time, and, accordingly, lead to a slight increase in cost. However, there are good substantive reasons in our view for the proposed new requirements

<ESMA\_QUESTION\_FAC\_45>

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

<ESMA\_QUESTION\_FAC\_46>

We don’t agree. In our view, the creation of one “comprehensive” schedule for all types of debt securities would be more transparent and easier to apply. In such schedule, certain items would be marked as applicable according to the particular features of the securities in question, or the kind of offer, so that for example items relating to interest rates or to derivative features would be marked as being applicable only where relevant to the securities.

<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>

No, we don’t agree with the proposal regarding 4.1.13. a). This reclassification prevents the description of instruments with different repayment structures (in cash or in securities) in the same base prospectus. This means that the proposal would result in additional prospectuses and therefore increase costs.

However, in our view, within item 4.2.2, where the underlying is an index, the classification for “B” should be changed to “C”, as providing information in the Base Prospectus as required for Category B would not be possible from a practical perspective for index descriptions.

Furthermore we question the differentiation between underlyings at all, as any other classification than “C” would not be possible from a practical perspective.

<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>

We do not consider ESMA’s proposal to be feasible. We do not see any justification for collecting and presenting all information with respect to the issuer of the underlying as if it were the issuer. This is very difficult and increases highly the burden of liability. Instead ESMA should keep the concept of reference to primary sources, which constitutes the most reliable information and doesn’t add a possible additional source of error. At the very least, a differentiation between wholesale and retail prospectuses is needed, as wholesale investors don’t need this information at all. ESMA’s approach also raises follow-up questions about “Which markets are regulated markets in third countries?” and “Extent of the description of the issuer of the underlying?”. We see a very high risk that this proposal could result in lengthy and additional prospectuses and therefore contradicts the objectives of the Regulation.

Furthermore we are strongly concerned about the classification (“A”) of information regarding the issuer of the underlying and/or referenced obligation. This should be category “C” information instead, in order to allow flexibility for issuers to issue several securities with the only difference being the underlying of each security. This kind of de facto product intervention matches neither with the goals of the prospectus regulation nor the mandate of ESMA regarding Level II.

Hence, we strongly suggest deleting item 4.2.2 (ii) c).

Furthermore, we see the necessity for defining the term "equivalent third country market”.

<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>

We disagree with the proposal to align the information about the reference entities for credit-linked notes to those applying to asset-backed securities. In our view, there are fundamental differences between credit-linked notes and asset-backed securities, in particular since the payments under asset-backed securities are linked to specific assets, whereas payments under credit-linked notes are linked to the (non-) occurrence of credit event(s) in relation to reference entities. Moreover, ABS are usually issued by SPVs (which are in turn funded by the underlying assets) whereas credit-linked notes are issued by banks. Therefore, no differentiation of disclosure requirements is needed.

If ESMA is, nonetheless, of the view that different disclosure obligations are necessary, we recommend preserving the disclosure requirements already in force under Commission Regulation ((EC) No 809/2004, Annex XII, No. 4.2.2) for (derivative) debt securities where the return is linked to the value of a security. In recital 145 (p. 113) ESMA is not providing a substantial argument for the proposed disclosure requirements for all derivative securities.

<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>

We do not see any further changes which should be included.

<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>

Compared to the rules currently in force, the proposed requirements would result in additional disclosure, without abolishing other disclosure requirements at the same time, and accordingly lead to increased cost. For the reasons set out above, we do not think that the main proposed additional obligation – regarding the underlying - can be justified by investor benefits.

<ESMA\_QUESTION\_FAC\_51>

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

<ESMA\_QUESTION\_FAC\_52>

The information proposed in item 1.11 relates to the changes in the share capital resulting from a capital increase, i.e. dilution as a result of the issuance of new shares. However, a prospectus to be published in connection with a capital increase will have to contain the minimum information according to Annexes 1 and 2 (following the new structure as set out in the Consultation Paper). While, admittedly, a capital increase may have a dilutive impact on derivatives relating to the shares of an issuer, the required information cannot be provided in the prospectus for those derivatives since it would depend on the volume of the capital increase, which is usually unknown to the persons responsible for a prospectus prepared for the offering/admission of derivatives relating to the shares of (another) issuer.

<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>

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<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>

Yes, this annex can remain unchanged.

We note that the co-legislators apparently did not read Art. 4 of the Prospectus Regulation in the same way as described in para 155, when they drafted Art. 18 (3) of the Prospectus Regulation, which assumes that issuers of securities guaranteed by a Member State may draw up a voluntary prospectus in accordance with Art. 4 of the Prospectus Regulation.

<ESMA\_QUESTION\_FAC\_54>

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

<ESMA\_QUESTION\_FAC\_55>

Yes. In particular consistency with existing or planned regulation (STS) is welcome. Generally, it must be ensured that synthetic and true sale bank securitisation will continue to be admissible, in particular in relation to consumer and SME loans, where only limited data can be disclosed to investors due to bank secrecy and data protection laws. However, inclusion of details of the guarantor as if it were the issuer should not be required where the guarantor is already subject to disclosure requirements for other reasons such as being an issuer of securities admitted to an official list, etc.

<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>

Compared to the rules currently in force, the proposed requirements would result in additional disclosure, without abolishing other disclosure requirements at the same time, and, accordingly, lead to a slight increase in cost. However, there are good substantive reasons in our view for the proposed new requirements.

<ESMA\_QUESTION\_FAC\_56>

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

<ESMA\_QUESTION\_FAC\_57>

In our view, the creation of one “comprehensive” schedule for all types of debt securities would be more transparent and easier to apply. In such schedule, certain items would be marked as applicable according to the particular features of the securities in question, or the kind of offer, so that for example items relating to asset-backed securities would be marked as only being applicable where relevant to the securities.

<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>

We agree that limited disclosure should be permissible where the reference obligors are unlisted companies or individuals or where the originator / issuer is precluded from further disclosure due to banking secrecy or data protection rules. It must not be that a bank is precluded from seeking balance sheet relief by way of securitisation merely because disclosure obligations conflict with existing (or future) banking secrecy rules or data protection requirements.

<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>

Compared to the rules currently in force, the proposed requirements would result in additional disclosure, without abolishing other disclosure requirements at the same time, and, accordingly, lead to a slight increase in cost. However, there are good substantive reasons in our view for the proposed new requirements.

<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>

Generally, we concur with ESMA’s view that no changes in substance should be made to the building block for pro forma financial information. Market practice has become familiar with these rules, the auditors’ profession has developed related standards and no recent practical issues seem to have arisen therefrom. While we do not object in principle to the proposed adjustments to the wording, we should like to take the opportunity to point out a couple of observations:

Item 6: the insertion “present all significant effects” is phrased in a very general manner and it is not entirely clear what exactly is expected (e.g. it remains uncertain as to which effects of which development (the transaction causing the significant gross change that triggers the pro forma requirement?) are to be described).

Item 7: as regards the financial statements and interim financial statements of the (to be) acquired business, it should be specified which kind of financial statements for which reporting period are meant (we assume these could be those financial statements that are used as a basis for the preparation of the pro-forma financials, but that should be pointed out more clearly.).

<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>

Yes, we agree.

<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>

Yes, as they are economically equivalent in general.

<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>

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<ESMA\_QUESTION\_FAC\_63>

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

<ESMA\_QUESTION\_FAC\_64>

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<ESMA\_QUESTION\_FAC\_64>

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

<ESMA\_QUESTION\_FAC\_65>

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<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>

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<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>

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<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>

Generally, convertible and exchangeable securities are placed privately with institutional investors and listed, if at all, in an unregulated market. Hence, the practical relevance of the related prospectus regime seems limited. That being said, we endorse the approach taken by ESMA and do not think any changes are required.

<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>

No.

<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>

While we agree that this annex has only been used in rare cases, we note that deleting this annex will abolish the privilege of a shortened registration document for debt securities guaranteed by an OECD country. For debt securities guaranteed by other third countries, ESMA Q&A Prospectuses No. 70 demands a full registration document for the guaranteed issuer. Should the retention of this privilege for debt securities guaranteed by an OECD country be considered after all, which we would support given the standing of OECD countries such as Canada, Japan or the United States, the former Annex XVII could easily be integrated into the proposed Annex 9; items 3 and 4 would simply have to be set out with alternative wording for third countries on the one hand (derived from former Annex XVI) and debt securities guaranteed by an OECD country on the other (derived from former Annex XVII).

We note in passing that Art. 18 (3) of the Prospectus Regulation assumes that a voluntary prospectus can be drawn up for securities guaranteed by a Member State, notwithstanding the different conclusion that can be drawn from the wording of Art. 4 of the Prospectus Regulation.

<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>

Yes, that approach appears reasonable. The equity standard should make the URD quite unattractive for issuers of debt, but is indeed mandated by Level 1.

<ESMA\_QUESTION\_FAC\_71>

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

<ESMA\_QUESTION\_FAC\_72>

No additional disclosure requirements appear necessary.

<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>

The impact should be limited, as no issuer is forced to use the URD.

<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>

We would not agree with the conclusion of para 236. While Art.14 (1) of the Prospectus Regulation does reference a summary in accordance with Art. 7, this should be read as a reference to the format of the summary, and not to the contents, which in Art. 7 is obviously geared towards a full prospectus. Otherwise the summary would indeed drive the contents of a secondary issuance prospectus, which contradicts the nature of a summary and would be a case of the tail wagging the dog. The content of the secondary issuance prospectus is yet to be determined by the Commission. We would think that the co-legislators intended to address the minimum contents in Art. 14 (3) of the Prospectus Regulation, while the last subparagraph of Art. 14 (1) of the Prospectus Regulation speaks to the elements of which a secondary issuance prospectus consists; a summary would not necessarily have been one of them. Accordingly, we think that all items that are included in the proposed Annex 18 only for the reason set out in para 236 can and should be deleted.

We also believe that the minimum information requirements for a secondary issuance prospectus should not go beyond what is required for the corresponding full prospectus, except where expressly demanded by Art. 14 (3) of the Prospectus Regulation. This, however, appears for example to be the case for items 5.1. and 11.2.1. Art. 14 (2) of the Prospectus Regulation sets the simplified information test, i.e. a standard for deciding which information an issuer needs to include within the minimum information items, but is not a specification for the items the proposed annex needs to contain as minimum information requirements.

On a formal level, we note that there would not appear to be a need to mention equity / non-equity securities in the body headings of the annex, if this information were provided consistently together with the numbering.

<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 believe that the disclosure should not differ. The Prospectus Regulation governs the information requirements beyond those in existence in the respective secondary markets. It should not try to equalise deliberate disclosure differences between the two markets.

<ESMA\_QUESTION\_FAC\_75>

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

<ESMA\_QUESTION\_FAC\_76>

This minimum information requirement does not appear necessary. Where material information regarding corporate governance is available, it will be included in the prospectus by virtue of Art. 14 (2) of the Prospectus Regulation.

<ESMA\_QUESTION\_FAC\_76>

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

<ESMA\_QUESTION\_FAC\_77>

This minimum information requirement does not appear necessary. Where material information regarding material contracts is available, it will be included in the prospectus by virtue of Art. 14 (2) of the Prospectus Regulation.

<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>

The proposed technical advice could go further in alleviating disclosure requirements that duplicate information already available to investors due to periodic and ongoing disclosure obligations of issuers with securities that are admitted to trading. In doing so, the technical advice causes the costs of providing this duplicate information. This cost includes work hours by issuers, legal advisors and banks, mostly in implementing the information the first time around, but also ongoing cost in the annual updates of base prospectuses. Benefits for investors of this duplication of information are not apparent.

It is difficult to seriously quantify these costs, but it would appear obvious that more disclosure means more work for issuers and advisors alike.

<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>

No, we do not see further scope for alleviated disclosure.

<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>

In our view, the separation by security type is sufficiently clear.

<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>

The alleviations proposed for this Annex would result in slightly lower cost of complying with the securities note related disclosure requirements.

<ESMA\_QUESTION\_FAC\_81>