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

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_FAC\_1>

Please note that the considerations included in this document take into account, *inter alia*, a debt capital markets perspective.

On a preliminary basis, we would like to underline that many proposals in the consultation paper seem to be tailor-made for standalone prospectuses, however, such proposals do not perfectly fit with the base prospectuses scenarios.

In particular, we refer to the disclosure requirements of the issuer set out under items 4.1.13 and 4.2.2 (please see pages 116 - 117 of the consultation paper) regarding the re-categorisation and/or classification of information.

In addition, we believe that some proposals should distinguish the applicable rules on the basis of:

(i) the nature of the issuer (e.g. to this end please see, *inter alia*, Question 11); and

(ii) the nature of the financial instruments to be issued (e.g. to this end please see, *inter alia*, Question 14).

Finally, considering that the prospectuses will also be used for international offerings, particularly in the U.S., proposing length limits will lead to differential disclosure between US and EU and lead to a reluctance to issue US securities in the EU as a result of legal risks (e.g. to this end please see, *inter alia*, Question 1).

<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 believe that the contents of this section are rather generic and, therefore, it is currently quite difficult to determine whether the proposal to draft the cover note within the 3-pages limit is viable.

In the light of the above, we suggest to provide a clear-cut indication of which information should be specifically included in the cover note.

However, we could agree with this proposal of the Authority only if and to the extent that such section

(i) will not be reduced to a summary of information already included in other parts of the prospectus; and

(ii) will be used, *inter alia*, by issuers to set forth a slight and rather introductory background to the reader about the document.

Please see also Introduction and Question 9.

<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>

A short section on “how to use the prospectus” could make the base prospectus more accessible to retail investors, but there are some concrete issues that should be taken into consideration.

In particular, we refer to the following two points:

(i) the issuer might draft such new section just as a more detailed table of contents.

This approach could represent a duplication of information and would also be contrary to the "less is more" principle, common to several EU laws and regulations; and

(ii) it would be burdensome for issuers to strike a balance between the information that should be included in this section, considering, *inter alia*, the two pages length limit.

Considering all of the above, we believe that the new section would not be particularly useful for the investors.

<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>

We believe that setting out the location of risk factors in a prospectus by means of a legislative action could render prospectuses and base prospectuses more uniform and comparable.

Indeed, in order to obtain a clear framework of which risks are materially relevant for investors, the issuer could insert risk factors immediately after the general description of the programme (in the case of base prospectuses) or the summary (in the case of standalone prospectuses).

<ESMA\_QUESTION\_FAC\_3>

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

<ESMA\_QUESTION\_FAC\_4>

We do not see any specific benefit on a discrepancy between the universal registration document ("**URD**") and the prospectus.

Indeed, we believe that setting out through a legislative action the order of information to be presented into an URD would lead to a higher degree of comparability of different URDs.

<ESMA\_QUESTION\_FAC\_4>

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

<ESMA\_QUESTION\_FAC\_5>

We believe that, in particular on the financial issuers’ (e.g. banks) perspective, this section would not stand as a meaningful source of information for investors.

Considering that the main banks’ activities are quite standardised, the descriptions of the relevant use of proceeds would also be general and standardised (i.e. for instance, for funding or hedging purposes in respect of non-equity securities issuers).

However, if the Authority decides to keep its approach, we believe that such disclosure should be required for financial issuers only when they do not use such proceeds for their standardised purposes.

As a consequence, the use of proceeds should be disclosed only when they have been allotted for specific purposes (as in the case, for instance, of green/social/sustainability bonds).

<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>

We suggest to introduce new information requirements under Annex XXI, which should encompass, *inter alia*:

(i) details of the consent to use the base prospectus (which, for instance, might be useful for the purposes of a retail cascade);

(ii) information on green/social/sustainability bonds (as anticipated in Question 5 above);

(iii) disclosure required under different laws / regulation (such as, for instance, Regulation (EU) No. 1286/2014 (the "**PRIIPs Regulation**"), etc.); and

(iv) any other significant/operational information that may be required by market participants.

<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>

We suggest to include the following new definitions:

(i) "*securitised derivatives*" or "*derivatives*", in order to clearly specify which securities are subject to the "new" Annex V and the building block "replacing" Annex XII; and

(ii) "*wholesale debt*", in order to take into consideration article 6, paragraph 1, letter (d) of Regulation (EU) 2017/1129 (the "**New Prospectus Regulation**"). The benefit of this definition would be to highlight at least the following two key features:

(a) a minimum denomination per unit of at least EUR 100,000 (or equivalent in a different currency); and

(b) the admission to trading only on a regulated market (or a specific segment thereof) to which only qualified investors can have access for the purposes of trading in the securities.

Finally, we suggest amending the definition of "*debt securities*" provided by the Authority[[1]](#footnote-2) in order to embrace some specific types of debt securities that currently do not fall within such definition.

To this purpose, we suggest to amend the definition provided for as follows (the proposed amendments are highlighted in red):

*"****debt securities****" means securities where the issuer has an obligation arising on issue to pay the investor at least 100% of the nominal value in addition to which there may also be an interest payment"*

<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>

Please refer to introduction.

<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 agree with such proposal in order to inform the investors about the criteria used by the national competent authority ("**NCA**") to approve the prospectus (*i.e.* completeness, comprehensibility and consistency).

This would also avoid an overreliance of the investors on the extent of the relevant prospectus approval.

However, we also note that the proposal to introduce a disclaimer regarding the NCA approval in the cover note[[2]](#footnote-3) seems inconsistent with the approach of the Authority to remove the legal disclaimers from such section.

<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 with this proposal in order to remove administrative burdens for issuers and lower the cost of producing a prospectus.

The removal of such requirement would not be detrimental for investors' protection either, as the full financial information would be reported in the registration document and in the URD.

<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 agree with these proposals of the Authority, since they would make it easier for investors to contact the relevant issuer and/or to have access to the relevant documentation. Indeed such approach is already considered as a standard practice in several EU jurisdictions.

Furthermore, we believe that these proposals would also imply a significant reduction of costs for issuers.

However, we suggest to introduce an exception for those issuers that do not have a website (such as, for instance, NewCo/SPV issuers).

<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 believe that issuers would already be required to disclose such information where relevant to satisfy the "necessary information test" under article 6 of the New Prospectus Regulation[[3]](#footnote-4) and if not relevant for that purpose it would not be helpful disclosure.

Nonetheless, if the Authority decides to maintain its approach, we believe that such description should be shaped on the basis of the nature of the issuer.

Indeed, such description would probably be more effective in the case of corporate issuers, that could be largely dependent on the outcomes of past investments; whereby the same information might be less helpful with regards to financial issuers.

In the case of financial issuers, if such information is meaningful for the investors, they will be disclosed in the financial statement and this should be satisfactory in our opinion.

<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>

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<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>

We believe that this information would not be particularly helpful for an investor in non-equity securities, who basically is not interested in the profit forecasts of the issuer.

Thus, such disclosure should be provided only when the forecasts may impact an issuer's ability to make payments under the securities.

Furthermore, in respect of non-equity securities, it should be noted that generally such information is not disclosed in the financial statements and is not submitted to audit report either.

This proposal of the Authority could thus trigger a discrepancy between information included in the prospectus and information included in the financial statements. This could create misunderstandings for potential investors.

We believe that this proposal would instead be advisable for an investor in equity securities, whose potential returns mainly depend on the potential profits generated by the issuer.

Finally, as regards the proposal of the Authority to remove the requirement of an accountant's or an auditor's report on profit forecasts to be disclosed for equity and retail non-equity securities, we believe that this would create an excessive burden for the relevant issuer.

Indeed, an auditor's/accountant's report on profit forecasts would reduce the liability of the issuer and would grant a reliable information to the investors at the same time.

To summarize, we believe that:

(i) profit forecasts should not be mandatory for non-equity prospectuses; and

(ii) if the issuer includes such forecasts into the prospectus, an audit report should be required if such forecasts are financial in nature.

<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>

We do not agree with the proposal of the Authority. Indeed, it is incumbent on auditors to make the emphasis of matter clear - it is also an auditor's view and issuers should not be trying to reinterpret nor explain that - investors should thus rely on the auditors' statement.

<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>

We believe that such requirements should be shaped on the basis of the nature of the securities to be issued.

In the case of non-equity securities, this kind of information:

(i) would not necessarily imply beneficial consequences to potential investors; and

(ii) should be disclosed to the extent that the selling down of a major shareholder has an impact on the economic and financial position of the issuer.

On the other hand, such disclosure requirement might be advisable in the case of equity securities, where the composition of the shareholders class may have an impact on the investment decisions of potential investors.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_17>

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

<ESMA\_QUESTION\_FAC\_18>

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<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>

TYPE YOUR TEXT HERE

<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>

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<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>

Please refer to introduction.

<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>

TYPE YOUR TEXT HERE

<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>

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>

TYPE YOUR TEXT HERE

<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>

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>

We believe that such proposal would not fit in some cases regarding base prospectuses. In particular, in the case of multi-issuers programmes, such requirement would not be meaningful for potential investors and could be rather confusing indeed.

<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>

Please refer 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>

Please refer to Question 14.

<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 with the deletion of the disclosure requirement related to board practices since this item does not add value, *inter alia,* in the case of debt issuances and in particular with regards to debt issuances carried out by financial issuers (*e.g.* banks).

<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>

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>

Please refer to introduction.

<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>

TYPE YOUR TEXT HERE

<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>

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<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 agree with such proposal as it would reduce administrative burdens for issuers and lower the cost of producing a prospectus, without being detrimental for investors.

However, it should be noted that issuers or investors may be incorporated in a Third Country.

As consequence, it is essential to amend the reference to the "*Member State of incorporation*" and require the indication of the "*country of incorporation*" instead.

<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>

TYPE YOUR TEXT HERE

<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>

We agree with such proposal since we believe that the disclosure of this information would not be burdensome for issuers and would be beneficial to potential investors at the same time.

Furthermore, this description is already adopted in some countries as a standard practice.

<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>

Please refer to Question 40

<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>

Since there are no specific questions on the re-categorisation from B to A of the information regarding the "*description of the type and the class of the securities being offered to the public and/or admitted to trading*" (i.e. item 4.1), we would stress hereunder - as already anticipated in the introduction - that such re-categorisation could entail a restriction to the use of multi-product programmes.

This approach does not seem in line with the purposes of the New Prospectus Regulation.

Please refer also to Question 47.

<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>

We do not see any specific benefit in the re-categorisation from B to A of the information regarding the "*description of the type and the class of the securities being admitted to trading*" (i.e. item 4.2).

Indeed, such re-categorisation could entail a restriction to the use of multi-product programmes, and this does not seem in line with the purposes of the New Prospectus Regulation.

Please refer to Question 43 above and Question 47.

<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>

We do not agree with this proposal of the Authority.

First and foremost, we are firmly convinced that such disclosure regime could be effective only for standalone prospectuses which describe a specific financial product.

Indeed, such proposal seems inconsistent with base prospectuses relating to multi-products programmes.

In these cases, it would be impossible to specify exclusively in the prospectus (i.e. A-category information) the structure of the financial instrument to be issued.

Therefore, we suggest to maintain the current classification (i.e. B-category information), which requires to:

(i) include all the different financial structures in the base prospectus; and

(ii) specify the relevant financial structure relating to each single issue in the relevant final terms.

<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 agree with the proposal of the Authority. Indeed, we consider the insertion of new let. c)[[4]](#footnote-5) too disruptive for issuers.

In particular, the required disclosure regime (that largely depends on the classification of such information as an A-category) would better fit in standalone prospectuses.

In respect of base prospectuses, generally such information is not available on the approval date; thus we believe that this data should be disclosed from time to time in the relevant final terms relating to each single issue.

It should be also noted that, the requirement for the issuer of securities to indicate in the prospectus the information relating to the issuer of the underlying would introduce a burdensome regime of liabilities.

Indeed, the issuer of the securities would be liable for information whose accuracy and reliability depends on other/different entities (i.e. the issuers of the underlying).

However, in case the Authority decides to maintain its approach, we suggest to require an intervention of the relevant NCA in order to set out in details:

(i) how such information should be obtained; and

(ii) how the liability regime should be set between the issuer of the security and the issuer of the relevant underlying.

In addition, with the aim of better clarifying the information included in item 4.2.2.(ii)(d), we suggest to amend it as follows (the proposed amendments are highlighted in red):

"*so far as the issuer is aware and/or able to ascertain from information published by the issuer of the security or reference obligation, if the issuer of the underlying security or reference obligation has securities already admitted to trading on a regulated, regularly operating, recognized open market and/or any other trading venue (including, without limitation, MTF, OTF and/or systematic internaliser), equivalent third country market, SME Growth Market, its name, address, country of incorporation, significant business activities/ investment policy and the name of the market in which its securities are admitted*".

Finally, also in respect of this item, we point out that such disclosure requirements would significantly increase issuer's liabilities as regards data and information that are dependent on different issuers, as already anticipated above.

This would also lead to a meaningful risk of rendering base prospectuses less accessible for issuers.

<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>

In the light of the above, we suggest to consider the following changes:

* delete new let. c) in paragraph 4.2.2 of Annex 7, as specified in Question 48 above;
* better clarify in the Annexes the information which needs to be inserted in Base Prospectus relating to Programme and the information which needs to be inserted in standalone Prospectuses;
* amend item 4.1.11 in order to delete the "*final reference date*". Indeed, the item should refer only to the "*maturity date*" (in respect of the notes) and the "*exercise date*" / "*expiration date*" (in respect of the warrants/investments certificates/other exercisable securities).
* review the re-categorization regime stated in item 4.1.13(a) (please see Question 47 above); and
* extend the scope stated in item 4.2.2.(ii)(d) in order to include any security admitted to trading on any trading venue (please see Question 48 above).

<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>

Please refer to Introduction and Question 48.

<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 believe that building the URD on the schemes of the share registration document without making it more flexible in the case of non-equity securities would disincentivise the usage of the URD by non-equity securities issuers.

<ESMA\_QUESTION\_FAC\_71>

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

<ESMA\_QUESTION\_FAC\_72>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_75>

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

<ESMA\_QUESTION\_FAC\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_76>

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

<ESMA\_QUESTION\_FAC\_77>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

1. "*securities where the issuer has an obligation arising on issue to pay the investor 100% of the nominal value in addition to which there may also be an interest payment"* [↑](#footnote-ref-2)
2. *“This [prospectus – amend as appropriate to the type of document] has been approved by the [insert name of NCA] as competent authority under [insert name of new Prospectus Regulation]. The [name of NCA] only approves this [prospectus – amend as appropriate to type of document] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129. Such approval should not be considered as an endorsement of [the issuer or of the quality of the securities – amend as appropriate to the type of document] that are the subject of this [prospectus – amend as appropriate to the type of document]. Investors should make their own assessment as to the suitability of investing in the securities.”* [↑](#footnote-ref-3)
3. "*1. Without prejudice to Article 14(2) and Article 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:*

   *(a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor;*

   *(b)the rights attaching to the securities; and (*

   *c) the reasons for the issuance and its impact on the issuer.*

   *That information may vary depending on any of the following:*

   *(a) the nature of the issuer;*

   *(b) the type of securities;*

   *(c) the circumstances of the issuer;*

   *(d) where relevant, whether or not the non-equity securities have a denomination per unit of at least EUR 100 000 or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities.*

   *2. The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form, taking into account the factors set out in the second subparagraph of paragraph 1.*

   *3. The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or as separate documents.*

   *Without prejudice to Article 8(8) and the second subparagraph of Article 7(1), a prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market."* [↑](#footnote-ref-4)
4. “*so far as the issuer is aware and/or able to ascertain from information published by the issuer of the security or reference obligation, information relating to the issuer of the security or reference obligation as if it were the issuer (in accordance with the wholesale debt and derivatives registration document schedule)*” [↑](#footnote-ref-5)