|  |
| --- |
| 6 July 2017 |

|  |
| --- |
| Response form for the Consultation Paper on format and content of the prospectus  |
|   |

|  |
| --- |
| 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 | Ernst & Young LLP, United Kingdom |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |[ ]
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_FAC\_1>

Consultation on the form and content of the prospectus

We welcome the opportunity to comment on ESMA’s *Consultation on the form and content*  of the prospectus.

We support ESMA’s initiative to simplify where appropriate the content requirements of the prospectus, recognising that there is a balance to be struck between providing investors with information they wish to receive and the burden imposed on the issuer in providing that information. We have gained extensive experience of assisting clients to meet their obligations under the existing prospectus regulation and as a result have made a number of practical suggestions regarding the content of the prospectus.

We hope your will find our input helpful. Should you wish to discuss any points in more detail or would find it helpful to receive any additional information, please do not hesitate to contact:

Sean Callaghan (scallaghan@uk.ey.com)

Ernst & Young LLP

1 More London Place

London

SE1 2AF

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_3>

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

<ESMA\_QUESTION\_FAC\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_4>

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

<ESMA\_QUESTION\_FAC\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_5>

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

<ESMA\_QUESTION\_FAC\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_6>

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

<ESMA\_QUESTION\_FAC\_7>

Complex Financial History

A “look through” concept has been introduced whereby the National Competent Authority (“NCA”) can request any information that would appear in a prospectus as if it were to be issued by the target company. The revised Article J now provides a wide range of information that an NCA can request on the target but very limited guidance as to what information should be requested by the NCA in different circumstances. As a consequence of the uncertainly this introduces, NCAs may be very conservative and request extensive disclosure which could place a significant burden on issuers. Consideration should be given to providing NCAs with clearer guidance or parameters, which in turn will give issuers greater clarity and certainty on what target information they may be requested to provide in the prospectus.

Additionally the definition of what constitutes a complex financial history is not particularly clear which leads to the risk of inconsistent application. Whilst Article J makes reference to significant financial commitment (which is defined as a 25% change in a size indicator) after the end of the period covered by the financial statements it does not make a similar explicit link to a significant gross change within the period covered by the financial statements. This could be resolved by explicitly referring to the same numerical measures.

Profit Estimate

We would draw a distinction between two different situations, both of which appear to be caught under the consultation paper’s draft definition of a profit estimate. We would highlight that there is a difference between (i) public disclosure of a ‘true estimate’ made two to three months before the corresponding financial statements are finalised and audited; and (ii) an announcement, such as a preliminary announcement in the UK, that may be made after the financial statements are finalised and audited, or the audit is substantively completed, but before the annual report and accounts have been published. The consultation at paragraph 72 appears to conflate (i) and (ii) and assume that any statement of results made after the year end is similar in nature which, as explained above, is not the case. We would propose that the definition of a profit estimate is revised to include situations that would fall under (i) above, but to exclude situations such as preliminary announcements that would fall under (ii) above. With respect to ‘true’ profit estimates that fall under (i) above we would propose to retain profit estimate reports, as is explained further in our response to question 14.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_9>

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

<ESMA\_QUESTION\_FAC\_10>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_12>

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

<ESMA\_QUESTION\_FAC\_13>

We agree with the general move to align similar disclosure requirements between different directives/regulations. However we would expect that this will only result in reduced costs for a relatively narrow band of issuers. Our experience is that issuers commonly incorporate by reference similar disclosure from their annual report and accounts, hence the OFR requirement tends not to lead to incremental cost for these issuers currently; and for new issuers who have not previously published information that would fulfil their OFR requirement, the difference between the existing OFR requirement in the Commission Regulation and the new requirement in the consultation paper, aligned to the Accounting Directive, isn’t likely to be materially different from a cost perspective.

<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>

‘Profit estimates are based on the issuer’s most recent financial period and will shortly be published as part of the issuer’s annual report and accounts.’

As is explained in our response to question 7 above, we consider that this is an over-generalisation. As set out in that response, in our experience there can be considerable difference between situations such as a one-off statement made immediately after year end through a non-routine process before the year end close process has taken place or the audit commenced (“(i)” in our response to question 7) and situations such as a preliminary announcement of results where the financial statements have been finalised and when the audit is either completed or substantively completed prior to the announcement (“(ii)” in our response to question 7).

We consider that from an investor’s perspective, there is significantly more uncertainty, and therefore risk, attached to those situations that fall under (i) compared to those that fall under (ii). Accordingly we believe that the requirement for profit estimate reports, where the estimate falls under (i) is of value to investors to address the higher risk profile. We believe that this would be most easily achieved by revising the definition of a profit estimate (as we explain in our response to question 7) and then to retain reporting requirement as set out in Commission Regulation Annex I, item 13.2.

We disagree with the assertion set out in paragraph 73 that auditors produce a report saying that the assumptions are not unreasonable for the following reasons: (a) whilst ISAE 3400 deals with this point, it is not universal that profit estimate/forecast reporting is conducted in accordance with this standard - the applicable standard in the UK (SIR 3000) does not require an opinion on the reasonableness of assumptions; and (b) the actual requirement set out in ISAE 3400 requires the reporting accountant to state whether anything has come to their attention to cause them to believe that the assumptions do not provide a reasonable basis for the forecast. This is negative assurance which provides a lower level of assurance than that suggested by the consultation paper. We highlight this as it may influence thinking on the need for public reports on profit estimates/forecasts.

The consultation paper suggests that because “long term” forecasts are not capable of being reported on, presumably because they are not prepared to the requisite standard, then “short-term” forecasts similarly should not be reported on. We are of the view that if long term forecasts are not capable of meeting the preparation and presentation standards required by the current Commission Regulation, but ESMA wants to encourage issuers to make more such disclosures to assist investors, that removing the need for reports on short term forecasts may not be the optimum route - rather ESMA should consider whether different standards should apply to those longer term forecasts to reflect the additional degree of uncertainty. In our experience such longer term forecasts are frequently more of the nature of projections illustrating a possible outcome rather than representing management’s best estimate of the likely outcome because of the additional uncertainty involved in forecasting for a longer period. However, with sufficient disclosure of the risk and uncertainty of such longer term forecasts, they could provide useful extra information to investors.

Paragraph 73 also suggests that profit forecast reports are seen as having limited value. This seems rather surprising as the current financial period (i.e. the period after the last balance sheet date presented under item 20.1) is often seen as being the most important to investors so it would appear logical that where an issuer makes a forecast for this period, that a public report from an independent reporting accountant covering the whole of that period (and not just the prospective element) that provides additional assurance concerning that financial information would be of significant benefit to investors.

For the reasons stated above we believe that the requirement to report on profit forecasts should be retained save in certain circumstances relating to prospectuses under Annex 18 – please see comments below in response to question 74.

<ESMA\_QUESTION\_FAC\_14>

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

<ESMA\_QUESTION\_FAC\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_15>

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

<ESMA\_QUESTION\_FAC\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_16>

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

<ESMA\_QUESTION\_FAC\_17>

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>

1. Where an issuer is changing its accounting framework (and therefore required to adopt its new accounting framework in the prospectus) it is not clear whether it is intended to require the adoption of new standards before they are required to be adopted by that accounting framework – the wording in the draft item 20.1 “consistent with that which will be adopted in the issuer’s next published annual financial statements” suggests that it is, but from paragraph 81, we presume that this is not the intention. As paragraph 81 notes, similar wording in the Commission Regulation lead to confusion over its application and the opportunity to make this clearer should be taken.
2. We recommend that the period to be covered by financial statements where a company is in its first year of trading is clarified – in particular what is meant by “such shorter period”. Taken literally it would require financial information to the date of the prospectus which is clearly impractical. We would propose that it is explicitly set out that the latest audited financial statements should be drawn up to a date no more than, say, 4 months prior to the date of the prospectus.
3. The definition of “IFRS” in the third paragraph of item 20.1 is unclear due to the location of the “(IFRS)” bracket before the reference to EU adoption. This, to an accountant leads to confusion as to whether “IFRS” refer to EU IFRS or IASB IFRS. Is it intended that third country issuer use IASB IFRS or EU IFRS?
4. In item 20.1, accounting standards, the wording should be clarified so that it is clear that EU IFRS may not be applicable to third country issuers and if so then the options set out in (a) and (b) in this section apply. As currently drafted, there appears to be some confusion - it is inconsistent to say that IFRS must be used and then say “if IFRS is not applicable”

It does not make sense to say “….in a form consistent with the accounting standards framework …………having regard to accounting standards and policies….” Because it then goes on to say that the application of consistency does not apply in respect of changes in policies within a framework.

<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>

Item 1.3

1. We would recommend that clarification is given as to whether an auditor is an ‘expert’ as historically this seems to be approached inconsistently between member states. Given that auditors are dealt with under item 2.1, our expectation would be that an auditor is not an expert.
2. We further recommend that the use of the term ‘authorised’ is either clarified or removed as we are unclear as to its meaning or relevance. This is a carry-over from the Commission Regulation and has been unclear historically. How does ‘authorising’ a report differ from consenting to its inclusion in a registration document? Our view is that this ‘authorisation’ is superfluous and could be deleted.
3. In the context of a tripartite prospectus particularly, if the reference to ‘authorising’ is retained it is not clear what is intended by the additional wording ‘…..*for the purpose of the prospectus’* particularly if the prospectus does not (and may never) exist and its precise purpose and the circumstances surrounding it may not be known at the time that the registration document is published.

This point applies to other annexes with similar requirements.

Item 6

It is unclear what is meant by ‘investments’ – further clarification would beneficial.

Item 12.1/20.9

Consideration could be given to moving the significant change statements from the registration document to the securities note as they are more relevant to investors at that time. Alternatively, consideration should be given as to whether to update the significant change requirement(s) in the securities note.

Item 13.1

If an issuer determines that a profit forecast is not valid, we are of the view that the profit forecast should still be included in the prospectus so that users may understand what is being claimed as invalid. Additionally guidance should be given to promote consistency amongst NCAs in determining what makes a forecast “invalid”, though this may be achieved through Level 3 guidance.

Due to the nature of a profit estimate (compared to a profit forecast) in practice they are very rarely subject to assumptions so it should be made clear that disclosure of assumptions in the case of a profit estimate is likely to be an exceptional situation.

13.1 requires setting out the “principal assumptions upon which the issuer has based its forecast or estimate” and “in the case of a forecast, the assumptions shall draw the investor’s attention to those factors that could materially change the outcome of the forecast. Whilst the principal assumptions may not be material to the forecast, material assumptions should be principal assumptions. We consider it would be better to have a single requirement to disclose those assumptions that are material to the forecast.

13.1 requires ‘in the case of a forecast, the assumptions shall draw the investor’s attention to those uncertain factors which could materially change the outcome of the forecast.’ We don’t understand why this requirement is only applied to forecasts and not to estimates (in the context of assuming estimates are subject to assumptions – see our related comment above).

The assumptions are required to be “reasonable” - what does that mean in this context? How will investors understand management’s view of what is reasonable? This reference should be deleted. It would be more helpful to both management and investors to say that the forecast should represent management’s “best estimate” of the likely outcome. Taken together with the requirement to draw attention to uncertain factors which could materially change the outcome of the forecast this will provide investors with a better understanding of the forecast than a statement that the assumptions are “reasonable”.

Item 13.3

The use of both ‘prepared’ and ‘compiled’ appears to be duplicative and potentially confusing – we recommend that only one of these terms should be used or the difference explained.

The forecast is required to include a statement that says it is (i) comparable to the annual financial statements and (ii) consistent with the issuer’s accounting policies. What is the difference between these two statements? It is difficult to see how a forecast can be said to be comparable to the financial statements if different accounting policies have been used so we recommend that the second limb (ii) is removed from the requirement.

In the context of upcoming material changes to certain IFRS accounting standards (IFRS 9, 15, and 16) we recommend that you consider how issuers should approach the situation when their accounting policies are expected to change between their last and next audited financial statements. We presume that the key factor is that the forecast can be compared in due course to the financial statements for the period for which the forecast relates. However, if such a forecast was based on “next year’s accounting policies” investors would also need to know if the accounting policies used in preparation of the forecast are different from those used in preparing the latest financial statements included in the prospectus.

‘……..drawing the investor’s attention to those uncertain factors which could materially change the outcome of the forecast’ does not inform investors what assumptions have been made regarding those uncertainties or how those uncertainties may impact the forecast. Where assumptions relate to significant uncertainties there should be a requirement to explain the sensitivity of the forecast to those assumptions and the factors which may cause those assumptions to be incorrect and the impact thereof. As is suggested above, it should be required that the forecast is readily understandable by investors.

This point applies to other annexes with similar requirements.

Item 19

We would question why there is a requirement to include related party disclosures for 3 years when this disclosure is already contained in the annual financial statements. We recommend that a sentence could be added that states that this requirement can be fulfilled through disclosure in the issuer’s annual financial statements prepared under IFRS (or for a third country issuer not using IFRS, an equivalent accounting framework) included in the prospectus.

It is very rarely possible to include such information to the date of the registration document so the requirement should be amended to refer to the latest practicable date, which should be stated as this is typically what we see happening in practice

As drafted (and as was the case historically under the Commission Regulation) EU IFRS is used as the basis to define who is a related party for the purposes of this rule, regardless of the accounting framework applied by the issuer. In particular for third country issuers using either national accounting standards, or equivalent accounting frameworks, this can lead to issuers having to undertake an exercise to ensure that the definition of a related party under EU IFRS and their reporting framework are the same, or whether they need further disclosure to comply with the IFRS requirements.

Where IFRS is not used by the issuer, we recommend that ‘related party’ should be defined for the purposes of this rule in the context of their accounting framework.

Age of Financial Information

We cannot see a particular logic in having an 18 month maximum period for the age of the annual financial statements where audited interims are included in the prospectus – we are of the view that this should be reduced to 16 months. Given that a company that has its shares admitted to trading on a regulated market (and therefore falls under the Transparency Directive) would have to publish audited financial statements with 4 months of its year end it is difficult to see why the 18 month period should not also be changed to 16 months (12 months for the subsequent financial year and then 4 months to report).

It also appears inconsistent that if a company’s annual audited financial statements become ‘stale’ after 9 months that its audited interim financial statements do not become ‘stale’ for 12 months.

This point applies to other annexes with similar requirements.

Auditing of Financial Statements

It is unclear what is intended by ‘Where the Audit Directive and Audit Regulation do not apply’. Often they will not apply before a company is admitted to trading on a regulated market, but for some companies, for example a private insurance company that meets the definition of an EU Public Interest Entity, they may do. We are unclear for the need to draw this distinction; does this mean that an equivalent report such as an accountant’s report, which is commonly used on IPOs in the UK market, cannot be used in a prospectus of an insurance company but could be for, for example, be used if the issuer is a retail company? We recommend that this should be clarified to avoid confusion and uncertainty in this area.

There is a specific requirement to reproduce a modified audit report but the report would have to be included as part of the annual financial statements so this appears to be unnecessary duplication that could be eliminated

Interim and other financial information

We recommend that in the third paragraph the reference to ‘as the case may be’ would be better worded as ‘as applicable’.

<ESMA\_QUESTION\_FAC\_20>

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

<ESMA\_QUESTION\_FAC\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_21>

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

<ESMA\_QUESTION\_FAC\_22>

The concept of a working capital statement, which is confirmation that a company has access to adequate financial resources for a given period, is of limited relevance in the context of banks and similar credit institutions because they will be dependent on short term deposits as well as accessing the financial markets to secure required funding. Therefore there is no concept of committed borrowing facilities which is a key consideration for a trading company’s working capital statement. It is the liquidity and capital position of bank that determines its continuing viability, and these are the metrics that are monitored by the regulators to determine whether or not to allow a bank to continue operating. It would therefore be more relevant to have a “Liquidity and Capital statement” for such financial institutions which explains the liquidity and capital regulations that the banks are subject to and confirms compliance with those requirements.

A working capital statement for an insurance company is meaningful to investors. A key consideration in making the working capital statement is the company’s regulatory solvency position. Level 3 guidance should be considered to emphasise that regulatory solvency, including appropriate sensitivity analysis, should be taken into account in making the working capital statement.

<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>

The reference to ‘indirect and contingent indebtedness’ has historically caused confusion, even after the CESR/ESMA Q&A on this matter was issued. Consideration should be given to clarifying these terms so that issuers and their advisers more readily understood what disclosure is required.

<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>

Item 4.11

The issuer may not be incorporated in a member state so this should be a reference to “…the issuer’s place of incorporation”.

<ESMA\_QUESTION\_FAC\_26>

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

<ESMA\_QUESTION\_FAC\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_27>

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

<ESMA\_QUESTION\_FAC\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_28>

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

<ESMA\_QUESTION\_FAC\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_29>

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

<ESMA\_QUESTION\_FAC\_30>

See response 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_32>

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

<ESMA\_QUESTION\_FAC\_33>

Item 8.1

Why is a material adverse change statement required to by refer to the latest audited financial statements and not the latest published financial statements, consistent with the significant change statement?

Item 13.1

It is not clear why annual financial statements prepared to national accounting standards should be required to include a statement of changes in equity, consistent with the requirements in Annex 1.

<ESMA\_QUESTION\_FAC\_33>

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

<ESMA\_QUESTION\_FAC\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_34>

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

<ESMA\_QUESTION\_FAC\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_35>

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

<ESMA\_QUESTION\_FAC\_36>

Item 11.1

It is not clear why annual financial statements prepared to national accounting standards should not be required to include a cash flow statement and a statement of changes in equity, consistent with the requirements in Annex 1.

This point applies to Annex 8 which contains similar requirements.

Item 11.4

Age of financial information – please refer to our answer to question 20 above and our view that this period should be shortened to 16 months for the reasons given therein.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_40>

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

<ESMA\_QUESTION\_FAC\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_41>

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

<ESMA\_QUESTION\_FAC\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_42>

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

<ESMA\_QUESTION\_FAC\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_43>

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

<ESMA\_QUESTION\_FAC\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_44>

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

<ESMA\_QUESTION\_FAC\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_45>

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

<ESMA\_QUESTION\_FAC\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_46>

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

<ESMA\_QUESTION\_FAC\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_47>

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

<ESMA\_QUESTION\_FAC\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_48>

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

<ESMA\_QUESTION\_FAC\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_49>

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

<ESMA\_QUESTION\_FAC\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_50>

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

<ESMA\_QUESTION\_FAC\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_51>

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

<ESMA\_QUESTION\_FAC\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_52>

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

<ESMA\_QUESTION\_FAC\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_53>

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

<ESMA\_QUESTION\_FAC\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_54>

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

<ESMA\_QUESTION\_FAC\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_55>

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

<ESMA\_QUESTION\_FAC\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_56>

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

<ESMA\_QUESTION\_FAC\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_57>

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

<ESMA\_QUESTION\_FAC\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_58>

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

<ESMA\_QUESTION\_FAC\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FAC\_59>

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

<ESMA\_QUESTION\_FAC\_60>

 Item 1

Point (b) appears to only permit one pro forma income statement to be presented – we recommend that the plural “income statements” is used for consistency with item 5 in this annex which allows presentation of income statements for the last full year and interim period for the current year.

Point (3) requires the disclosure of assumptions used in developing adjustments. There may be inconsistency between the need to disclose assumptions but for the adjustments to be factually supportable; why would assumptions be relevant if the pro forma adjustments have to be factually supportable?

Item 4

Why refer to accounting framework **and** policies? Accounting frameworks do not deal with pro forma information and what is important is that the pro forma is consistent with the accounting policies used by the issuer. It is therefore recommended that reference to the accounting framework is removed.

Item 6

This now requires the pro forma to “present all significant effects” but it does not say of what. It is presumed that this is referring to the transactions that the pro forma is illustrating. However, there may be conflicts between this requirement and the requirement that all adjustments are factually supportable. How should the situation be dealt with where a significant effect of a transaction is not factually supportable? Consideration could be given to requiring a clear explanation of the effect of a potential adjustment that is required but which cannot be made because it is not factually supportable.

<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>

We note that the proposed disclosure requirements for depositary receipts in Annex 14 more closely align with Annexes 1 and 2, for equity, than was is the case currently under the Commission Regulation. However, it is not clear to us why the requirements of Annex 1 in respect of pro forma information would not also be applicable to a prospectus for depositary receipts. An investor in equity or a depositary receipt have similar information requirements, so we do not see the reason to omit the requirement for pro forma financial information for depositary receipts. Similarly the provisions in Article J relating to complex financial histories would appear to be applicable to depositary receipts.

Alternatively, consider whether, in a similar way that Annex 14 20.1a provides alternative disclosure for wholesale depositary receipts, pro forma financial information and the provisions relating to complex financial histories could be made a requirement for ‘retail’ depositary receipts.

Item 20.1

Point (b) refers to ‘…equivalent to these standard IFRS for third country issuers’ which does not make sense. Should it say “‘…equivalent to IFRS as adopted by the EU’?

Item 20.4

If the audit report is required to be included in the prospectus, a statement saying that the financial statements have been audited is superfluous. We note that this disclosure requirement is different to Annex 1 and these should be conformed.

<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>

Item 2.2

The word “reasonably” should be deleted as it could create unnecessary uncertainty for issuers.

<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>

TYPE YOUR TEXT HERE

<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>

As outlined in our response to question 14 above, we are of the view that the requirement for a profit forecast to be publically reported on should be retained. However, we are aware that there is a balance to be maintained between the cost to issuers of doing so and the assurance it gives to potential investors. We would draw a distinction between profit forecasts that are made by companies specifically in connection with an IPO or subsequent fund raising and those made by issuers that have securities admitted to a regulated market/SME growth market and issue profit forecasts as part of their normal corporate activity or to comply with ongoing regulatory requirements. We consider that the former category potentially presents a higher risk to investors than the latter category and that a proportionate response would be that a profit forecast report should not be required when an issuer, who is issuing a prospectus under Annex 18, has previously made a profit forecast in the ordinary course of business in which case that forecast, if it remains valid, should be repeated in the prospectus. The basis of the forecast (including accounting policies) should be identified but the other provisions relating to profit forecasts should not apply.

New issuers cannot take advantage of Annex 18, hence this naturally restricts this relaxation of the profit forecast report requirement to those companies that have securities traded on a regulated market/SME growth market for a minimum of 18 months. If a company was to fail the “ordinary course of business” requirement then the profit forecast report requirement would apply to a one-off forecast they make or have made that is still outstanding.

<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>