|  |
| --- |
| 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:

* respond to the question stated;
* contain a clear rationale; and
* 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:

* 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’).
* 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.
* 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.
* When you have drafted your response, name your response form according to the following convention: ESMA\_FAC\_name of respondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_FAC\_ABCD\_RESPONSEFORM.
* 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 | Joint Working Party of the Law Society and the City of London Law Society |
| Activity | Audit/Legal/Individual |
| Are you representing an association? | ☐ |
| Country/Region | London |

The views set out in this paper have been prepared by a Joint Working Party of the Company

Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and

Wales (the **Law Society**).

The CLLS represents approximately 17,000 City lawyers through individual and corporate

membership, including some of the largest international law firms in the world. These law firms

advise a variety of clients from multinational companies and financial institutions to Government

departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to

a variety of consultations on issues of importance to its members through its 19 specialist

committees.

The Law Society is the professional body for solicitors in England and Wales, representing over

170,000 registered legal practitioners. It represents the profession to Parliament, Government

and regulatory bodies in both the domestic and European arena and has a public interest in the

reform of the law.

The Joint Working Party is made up of senior and specialist corporate lawyers from both the

CLLS and the Law Society who have a particular focus on issues relating to capital markets.

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_FAC\_1>

We welcome the fact that ESMA has given significant thought to this Consultation. While the new regime will bring in numerous changes to the prospectus format and content, the majority of these changes are incremental improvements (as a matter of law).

We have restricted comments about the Consultation solely to matters affecting equity and depositary

Receipts. The following themes are noted in addition to our responses to specific questions.

(1) **Prospectus disclosure**

It would be most helpful if there were a clear statement in the level 2 text that the general position is that specific prospectus contents requirements, including for simplified prospectuses under Article 14 of level 1, represent a floor or minimum level of content rather than a maximum level of content. Issuers should be required to meet the minimum level of content (subject to derogations granted by national competent authorities (NCAs)) but have the unfettered right to insert additional content (subject to the requirement that the prospectus as a whole meets the “easily analysable, concise and comprehensible” requirement).

(2) **Universal Registration Document or URD**

Aside from markets like France where there is already a tradition of making annual disclosures, we consider that it may be unlikely that the new URD regime will trigger a change in approach across all of the EEA, as a result of the following factors:

* Issuers rarely require a prospectus every year in the case of equity issuance and therefore the production of an annual URD, as required by the Level 1 Regulation, may prove inefficient.
* Even where an issuer has prepared a URD, in order to publish a prospectus it will be necessary to publish a securities note and, in most cases, a summary, and these will have to be approved by the relevant NCA.

(3) **ESMA guidance on Prospectuses**

The extensive ESMA Q&A and ESMA’s update of CESR’s Recommendations (ESMA/2013/319) issued as level 3 guidance under the existing Prospectus Directive regime contain a significant amount of useful guidance. Our view is that it would be helpful if these were updated and carried forward under the new regime.

(4) **ESMA’s “scrutiny and approval” paper (ESMA 31/62/650)**

We understand that:

* ESMA’s list of criteria for scrutiny of comprehensibility is a checklist for NCAs only and not an additional set of content requirements and;
* as the level of liability attached to disclosures under the Market Abuse Regulation (MAR) and Transparency Directive (TD) is significantly different from that attached to prospectuses (the latter being more strict), the written statement contemplated by para 106 should make it clear that the statement will not increase an issuer’s liability.

<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 disagree with the proposal in principle. There is no requirement at Level 1 for a cover note and this should not now be mandated through delegated acts or guidance.

We consider there is no evidence that either issuers or investors consider the current way that cover notes are documented to cause problems. For ESMA to regulate in this area would therefore be without evidence and disproportionate (and therefore out-of-line with the specific principles ESMA should take into account, as set out within its mandate from the Commission).

We also disagree with the specific suggestion that “cover notes” should be limited to three pages.

Assuming the “cover note” is a reference to the introductory pages to the prospectus, we have a preference for maintaining the status quo, as the introductory pages tend to follow an established approach, in practice, in equity capital markets transactions. This section would typically include a statement that the prospectus has the status of a Prospectus Directive prospectus, a skeleton summary of information about the deal and its key features, a list of banks and their roles together with rubrics and disclaimers.

We also consider that the regime will be clearer if the content requirements for cover notes for prospectuses for equity and non-equity securities are dealt with separately.

Any cover note should be capable of including the important disclaimers necessary to deal with the

admission and liability regimes of the relevant markets and jurisdictions. We therefore disagree with the Consultation’s suggestion that so-called “disclaimers” should not appear in the front “cover note” segment of the prospectus. There are valid reasons why an issuer (and underwriters) would want to give prominence to certain information in a prospectus and, in particular, the disclaimers confirming that no one other than the issuer has verified prospectus content. Certain cases which support the effectiveness of disclaimers have referenced the need for them to be “clear” and “prominent”. In light of this, there is unlikely to be appetite in practice for moving them from the front of the prospectus.

In certain markets like France, it is already customary to include prescribed wording to disclose the role of the competent authority in the prospectus approval process, in the introductory pages.

Subject to the above, as investors are required to read the whole prospectus before making an investment decision, there is no reason why introductory pages should be limited in length and “excess” information provided in a separate section, as a matter of law.

<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>

We consider that such signposting is unnecessary.

If a prospectus is drafted in an easily analysable, concise and comprehensible form, as required by the level 1 text, signposting should be unnecessary. An issuer seeking to target an exclusively retail audience should be free, however, to add such a section but requiring one would be superfluous.

Currently, issuers may use the advertisements regime to generate useful guides for shareholders with respect to secondary equity capital raising. This helpful practice is likely to continue under the new regime.

<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

Given that a number of investors tend to read soft copies of prospectuses and find the information most relevant to them via search functions, regulating the order of information is somewhat outdated.

Risk factor location should not be a concern for investor protection if they are clearly highlighted in the contents and referred to, as appropriate, throughout the prospectus. Subject to the above, we have no objection to the location proposed in the Consultation.

<ESMA\_QUESTION\_FAC\_3>

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

<ESMA\_QUESTION\_FAC\_4>

Until URD utilisation has increased across Europe, we are uncertain if promoting flexibility is the right next step. It may encourage use of the URD if issuers can be confident that NCAs will take a consistent approach to approval. Anything that detracts from uniformity in NCAs' practices in this regard is undesirable.

<ESMA\_QUESTION\_FAC\_4>

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

<ESMA\_QUESTION\_FAC\_5>

We have no issue with ESMA’s suggestion that the use of proceeds section be given greater prominence. Even so, we would not favour an overly precise requirement to delineate proceeds in all situations (i.e. general corporate purposes can be a legitimate use).

<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>

Our view is that the list of items of additional information could usefully be expanded. Examples of useful additions to the list are bespoke selling restrictions relevant to the particular transaction and a catch-all provision permitting the inclusion of other operational information about the issuer 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>

**The definition of “advertisement**”:

As we expect the topic of advertisements is to be included in the second mandate from the Commission to ESMA and it will not be addressed in the Consultation, we restrict our comments at this stage to noting that the change in the definition of “advertisement” to capture a “communication” rather than an “announcement” means that it risks capturing bilateral communications (written or oral). We consider that the impact of this would be disproportionate and have queried the impact on effectiveness of the market soundings regime under MAR, which provides a regulatory framework for private bilateral communications. At level 2, we would propose that advertisements be interpreted as only communications that are publicly or otherwise widely disseminated.

There is variance regarding the levels of current involvement by NCAs in advertisements e.g. issuers in Belgium submit their advertising materials along with their prospectus for the NCA’s approval. We understand that there is no expectation that ESMA will seek to enforce harmonised practices on the NCAs to this extent. The home Member State should be the one to communicate with an issuer regarding advertisements and that an issuer should not have to deal with NCAs from home and host Member States.

**The definition of “offer of securities to the public”**

We note the change to the introduction to Article 23(2) of the Prospectus Regulation which provides that withdrawal rights arise “where the prospectus relates to an offer of securities to the public”.

We consider that withdrawal rights should not apply in the context of admission-only prospectus

supplements. It would be illogical for investors to have walkaway rights after the publication of a supplement when no prospectus was required purely in relation to a public offer. We would be grateful if ESMA would confirm that it agrees with this interpretation.

<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>

We note that changes to changes to the Annexes for equity issuance which require additional or different disclosure are likely to create additional costs in the short term as market participants and NCAs adjust to them.

The costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction, if NCAs take differing approaches to interpretation of new provisions.

Issuers will require guidance; one example is with respect to the proposed need for disclosure of financial and non-financial objectives and what test would need to be met to require their inclusion in the prospectus, in particular, where these objectives may not be formal or specific or where objectives may be commercially sensitive.

Regarding specific additions to disclosure requirements, if the issuer would be required to provide an item of information to satisfy the necessary information test under Article 6 of level 1, we do not consider that a specific requirement is necessary.]

<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 recognise that, in France, the AMF has its own form of such cover page wording. Subject to allowing any such established market practice to continue, in the relevant jurisdiction, the singling out of this requirement for inclusion in the cover note (when the issuer is not permitted to include disclaimers of liability), seems unwarranted. Subject to that point, we have no objection to the inclusion of wording confirming the scope of NCA approval to be included in the prospectus.

It should be apparent on the face of each prospectus that the document has the status of a prospectus (in contrast to, for example, an AIM Admission Document).

<ESMA\_QUESTION\_FAC\_9>

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

<ESMA\_QUESTION\_FAC\_10>

Yes. We support the removal of elements of duplication, like this.

<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 recommend that ESMA’s suggestion of including a website address for the issuer in the prospectus, with a disclaimer that the website does not form part of the prospectus, should be fleshed out further to require the website address wording to be placed next to the company’s registered office information and to require insertion of wording making it clear that the information in the website is not incorporated by reference (ESMA’s stated intention).

We question to what extent will a disclaimer regarding a website be effective in all relevant jurisdictions if the issuer may be considered, as a result of the inclusion of the website reference, to have directed investors to the website and arguably to its wider content.

The proposal gives rise to an enhanced risk that investors may seek to claim that they have relied on additional information available on the website despite the existence of disclaimers in the prospectus. This raises potential liability concerns as information on the website will not have been prepared to prospectus standard.

It is also possible that experts will be reluctant to supply reports or advice to issuers if they must now be made available electronically, to all investors. Making a report available in hard copy for inspection is a very different matter from permitting all investors to access, print off and keep copies of a report, any part of which is included in the prospectus.

We support the suggestion that documents on display should be made available electronically if it is restricted to documents which must be made available in this way and not to those documents voluntarily made available by an issuer.

<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>

For those issuers who are subject to the Accounting Directive, we support the proposal to bring the disclosure requirements for the OFR in line with the management report requirements in the Accounting Directive (2013/34/EU). This is likely to facilitate incorporation by reference of the management report from the issuer’s annual report and accounts in lieu of preparing a full OFR for a prospectus in some situations.

An important practical implication is that time may be saved by not having to prepare the OFR so that resources (including those of the auditors) may be dedicated to drafting other sections of the prospectus.

A further implication is that an issuer takes on prospectus liability for such information incorporated by reference, including statements that would not normally make their way into a registration document containing an OFR. Generally, guidance would be helpful to the extent practicable on the application of liability regimes to the disclosure requirements. For example, the level of liability attached to annual reports in a number of jurisdictions is significantly different from that attached to prospectuses (the latter being more strict), which will have implications where there is convergence through the OFR disclosures.

<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?

<We agree that a report by independent accountants should not be a mandatory requirement when

including a profit forecast or profit estimate and that the directors of issuers (in conjunction with their advisers) should be free to choose the level of external comfort they seek for the content of the prospectus for which they are taking responsibility. This should not be a matter for regulation. Instead it should be a matter for commercial negotiation between the parties as it will depend on the specific circumstances of the particular transaction and the nature of the profit forecast.

In addition, we consider that it would be helpful for ESMA to provide detailed guidance on what is and is not a “profit forecast” to assist issuers and their advisers in applying the relevant disclosure standards, particularly the proposed disclosures concerning previous “profit forecasts”.

ESMA\_QUESTION\_FAC\_14><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>

We would suggest that the requirements to disclose interests in the issuer’s capital or voting rights which are notifiable under national law could be made clearer and easier to apply if it is clarified they are aligned with the notification requirements under Articles 9, 10 and 13 of the TD and its associated terminology and are not intended to capture interests which are notifiable under other regimes. <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>

Yes. As the draft amendments to the rules in respect of the historical financial information would make it clear that where changes have been made to an IFRS requirement, this does not require an issuer to restate its last two financial statements even though the next financial statements may be presented differently on account of the change.

<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>

We support the proposal that the disclosure of the issuer’s memorandum and articles of association should be streamlined and that a hyperlink to the constitutional documents should be electronically included in the prospectus, subject to a requirement that the summaries and link must be to the up-to-date versions of these documents. These changes will not have a material impact on investor protection.

<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>

As to the inclusion of a reference date for major shareholders information, we suggest considering an alternative formulation, such as “other most recent practicable date”, to account for information derived from significant shareholding notification requirements under applicable law, whose reference date depends on the holding reaching, crossing or exceeding shareholding disclosure thresholds.

<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>

Provided NCAs and the relevant banking regulators (if different) have a common understanding of capital targets, then there is no need to alter the existing language.

<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>

If the draft amendments to the rules proposed by ESMA in respect of the capitalisation and indebtedness statement make it clear that the statement may be made within the 90-day period and that a narrative update for the stub period is sufficient, these change would clarify the existing disclosure requirement that has historically caused some confusion.

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>

Yes. The change would mean that the disclosure of the impact of dilution on existing holders is described in terms of a comparison of participation in share capital and voting rights before and after the capital increase and a comparison of the net asset value per share at the latest balance sheet before the public offer and the offer price per share. Our view is that this change to the dilution disclosure requirement will make it more meaningful to investors.

<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>

Please see answer to question 74 for our specific suggestions.

<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>

We recommend that any new disclosure requirement in this context be limited to significant or material changes which are recognised as helpful for investors. There is a risk that this requirement gives rise to generic disclosure which is unhelpful to investors.

<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>

<ESMA\_QUESTION\_FAC\_30>

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

<ESMA\_QUESTION\_FAC\_31>

<ESMA\_QUESTION\_FAC\_31>

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

<ESMA\_QUESTION\_FAC\_32>

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>

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>

<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>

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>

Yes, as issuers no longer need to include information on taxation unless the investment attracts a specific, favourable tax treatment.

<ESMA\_QUESTION\_FAC\_38>

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

<ESMA\_QUESTION\_FAC\_39>

We welcome the suggestion that documents on display be no longer made available physically and instead be put on the website of the issuer. We do not consider that this approach will generate significant additional costs.

<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>]

If there is a demutualisation with no book-building, there is no ex ante way to know the price.

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>

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>

<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>

<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>

**Working capital statement**:

On the larger emerging market GDR transactions, our view is that currently issuers and banks will on occasion look both to the size and profile of the transaction and the risks and will consider voluntarily including a working capital statement, even though, under the reduced disclosure requirements for a GDR (compared to a share), no such statement is currently required.

The rationale for the market practice approach of including a working capital statement in Rule 144A GDR prospectuses is driven by the US requirement for disclosure in the case of IPOs that are marketed in the United States.

We would support ESMA’s proposal for the inclusion of a working capital statement for these reasons

<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>

No. We recognise that a balance is necessary between investor protection and the need for companies to be able to offer securities and raise capital easily. However, the prospectus is only one of a number of means of protecting investors, including regulation under the Alternative

Investment Fund Managers Directive, the TD and the MAR, as well as the specific laws and regulations of individual member states.

These may be a more effective way of ensuring investor protection, particularly for retail investors, than the prospectus regime.

<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>

Yes.

<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>

**Proportionate disclosure regime: general** –

ESMA’s proposed Annexes 18 and 19 do not sufficiently reduce the substantive mandatory prospectus disclosure requirements as against a full Prospectus as might have been possible, and so may not meet the objectives of the Level 1 measures to reduce the costs of producing a Prospectus under Article 14 to make a compelling case for companies to seek to make use of it.

As ESMA notes, the Prospectus will have to meet the overall “necessary information” test set out in Article 6, and so the prescribed disclosure items should set out minimum disclosures which will apply to all companies, accepting that companies and their businesses will vary widely and there should be sufficient flexibility as to the information to include and not to include to allow them to produce comprehensible documents for investors to be able to understand their particular circumstances. Further, issuers should not be required to include non-material information that would not be used to form an investment decision.

**Proportionate disclosure regime: risk factors** - ESMA’s assumption that that an alleviated risk factors regime is not permissible is incorrect.

**Regulatory disclosures – paragraph 13.1**

[Regarding the summary of disclosures made under MAR which is required to satisfy Article 14(3) of the level 1 text, we would expect that, in most cases, the information contained in MAR disclosures that is material to a particular offer would have already been disclosed in the main body of the prospectus (e.g. in the current business section or trends). Therefore, to ensure that this requirement does not lead to superfluous disclosure or a “check the box” type exercise, we would suggest that ESMA make the amendments set out below to the proposed Level 2 requirement set out in paragraph 245 of the Consultation Paper.

“The summary of the relevant information disclosed under Regulation (EU) 596/2014 featured in a simplified prospectus shall be presented in an easily analysable, concise and comprehensible form. It shall not replicate information already published under Regulation 596/2014 and shall be an intelligible summary of the last relevant information”.

We would also recommend that ESMA:

* Include a provision in Level 2 that, without prejudice to the concise summary of an issuer’s MAR and TD disclosures included in the prospectus, an Issuer’s MAR and TD disclosures (whether or not summarised) do not form part of an issuer’s prospectus unless expressly incorporated by reference.
* Require an issuer to include specific wording in a prospectus stating that its MAR and TD disclosures do not form part of an issuer’s prospectus.

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>

Disclosure only needs to be made where there has been a material change after the period covered by the latest published audited information and that disclosure should be dictated by the regulatory

environment of the particular market (which will differ between a Regulated Market and an SME Growth Market).

<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>

We agree with ESMA’s suggestion that only previously undisclosed material contracts need to be included in a prospectus for secondary issuance.

<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>

Yes. Please see answer to question 74.

<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>

We support maintaining the status quo.

<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>