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| 6 July 2017 |

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| Response form for the Consultation Paper on scrutiny and approval  |
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| Date: 6 July 2017 |

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

* 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 scrutiny and approval”, 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\_SAC\_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\_SAC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SAC\_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

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| Name of the company / organisation | Italian Banking Association |
| Activity | Banking sector  |
| Are you representing an association? |[ ]
| Country/Region | Italy |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_SAC\_1>

The following comments have been written from the point of view of banks acting in different roles (issuers and intermediaries) both on debt and equity capital markets.

Please also bear in mind that we have a theoretical knowledge of URD only, having had limited practical experience.

As regards the request for cost estimates ensuing from implementation of the proposals, we are not in a position to give firm figures in terms of impact on issuers/intermediaries/investors.

<ESMA\_COMMENT\_SAC\_1>

1. : Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?

<ESMA\_QUESTION\_SAC\_1>

We agree with the criteria for determining whether a prospectus is complete. We do not consider that additional completeness criteria are necessary.

<ESMA\_QUESTION\_SAC\_1>

1. : Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.

<ESMA\_QUESTION\_SAC\_2>

We agree that NCA should apply different criteria when assessing the comprehensibility of retail and wholesale prospectus. We also agree with the criteria proposed in Article A.2. on this item, even though we would like to point out that the comprehensibility of the prospectus is also attendant on the complexity of the product In addition, we suggest applying different criteria in the case of prospectuses for retail investors (in particular prospectuses of non-equity securities). The retail prospectuses could cover a wide range of products with different complexity levels (from plain vanilla bonds to complex structured products).Given that said complexity levels may differ, the level of comprehensibility and disclosure of a prospectus could depend on the specific complexity of the products set out in the prospectus. For instance, the level of disclosure required for a prospectus of plain vanilla bonds should be less stringent than the disclosure level for a prospectus of structured products.

<ESMA\_QUESTION\_SAC\_2>

1. : Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?

<ESMA\_QUESTION\_SAC\_3>

We agree with the criteria for assessing the consistency of the prospectus, even though some items (under c) and d) letter), regarding the use of proceeds and the description of the issuer in the operating and financial review, are overly binding and not meaningful for bank issuers. We do not consider them to be necessary as additional criteria.

<ESMA\_QUESTION\_SAC\_3>

1. : In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?

<ESMA\_QUESTION\_SAC\_4>

We support the ESMA proposals to introduce only minimal changes to general criteria in the scrutiny and review of the URD. Please bear in mind, though, that we only have a theoretical knowledge in this area, as mentioned in the introduction.

<ESMA\_QUESTION\_SAC\_4>

1. : Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?

<ESMA\_QUESTION\_SAC\_5>

Yes we agree. Please bear in mind, though, that we only have a theoretical knowledge in the area, as previously mentioned.

<ESMA\_QUESTION\_SAC\_5>

1. : In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?

<ESMA\_QUESTION\_SAC\_6>

We agree that it is important to scrutinise only information that has not already been scrutinised /reviewed /approved.

<ESMA\_QUESTION\_SAC\_6>

1. : Do you believe that application of the proposed criteria will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA\_QUESTION\_SAC\_7>

Please refer to introduction.

<ESMA\_QUESTION\_SAC\_7>

1. : Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

<ESMA\_QUESTION\_SAC\_8>

In order to achieve greater efficiency and harmonization, we suggest that, wherever the NCA chooses not to avail itself of the proportionate approach according to proposed article B paragraph 6 of draft technical advice, the relevant reasons should be provided in writing to the issuer, offeror or person asking for admission to trading on a regulated market.

<ESMA\_QUESTION\_SAC\_8>

1. : Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?

<ESMA\_QUESTION\_SAC\_9>

We suggest extending the exception provided for in Article C, paragraph 2 letter f) to any document already filed with the same authority in accordance any applicable regulations (e.g. Annual Financial Statements or Articles of Association already filed with the NCA at the time of submission of the prospectus.

<ESMA\_QUESTION\_SAC\_9>

1. : Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

<ESMA\_QUESTION\_SAC\_10>

We agree with the provision for providing an appendix on the issuer’s key information to the registration document/URD when the issuers intend to submit a draft registration for the approval as a standalone basis document and intend to request notification of this registration document to an NCA different from that of Home Member State

Paragraph 101 states that, by including an appendix on the issuer’s key information with the registration document/URD, the URD will be passported.

As a consequence, as specified by ESMA, the accompanying securities note and summary note shall be approved by a different NCA than that which approved the URD. This provision seems to apply only in the case of a stand-alone prospectus.

We suggest inserting a provision describing what happens in the case of notification of a URD relating to a base prospectus. Indeed, for such prospectuses summaries are required on an issue-by-issue basis for retail issuance only.

<ESMA\_QUESTION\_SAC\_10>

1. : Do you agree with the procedures for approval of the URD?

<ESMA\_QUESTION\_SAC\_11>

We agree with the procedures for approval of the URD. However, as pointed out in the introduction, we only have theoretical knowledge of this item.

<ESMA\_QUESTION\_SAC\_11>

1. : Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?

<ESMA\_QUESTION\_SAC\_12>

We agree with the procedures for filing of the URD. However, as previously mentioned, please bear in mind that we only have theoretical knowledge in this area.

<ESMA\_QUESTION\_SAC\_12>

1. : Do you believe that any of the proposed procedures for approval and filing will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA\_QUESTION\_SAC\_13>

Please refer to introduction.

<ESMA\_QUESTION\_SAC\_13>

1. : Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.

<ESMA\_QUESTION\_SAC\_14>

We agree that it is not necessary to further specify the conditions for losing the status of frequent issuer at level 2.

<ESMA\_QUESTION\_SAC\_14>

1. : Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?

<ESMA\_QUESTION\_SAC\_15>

We suggest reformulating any titles regarding technical advice wherever the title only makes reference to base prospectus procedures, whilst the body of the technical advice also sets out procedures regarding the universal registration document (i.e. Article E).

<ESMA\_QUESTION\_SAC\_15>