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

|  |
| --- |
| Response form for the Consultation Paper on  EU Growth 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 EU Growth 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\_EUG\_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\_EUG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_EUG\_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 | CNMV's Advisory Committee |
| Activity | Government, Regulatory and Enforcement |
| Are you representing an association? |  |
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ EUG\_1>

**The CNMV's Advisory Committee has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.**

<ESMA\_COMMENT\_ EUG\_1>

1. : Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.

<ESMA\_QUESTION\_EUG\_1>

We fundamentally agree that the EU Growth Prospectus and its sections should be specifically calibrated to facilitate access to equity finance and growth to small and mid-size companies.

Broadly, we have no particular concerns over the proposed sections to be inserted in an EU Growth Prospectus. However, we believe that the specific sections proposed could follow a different order:

- the corporate governance section could follow the section on strategy, performance and business environment;

- details of the offer/admission and terms and conditions of the securities would be better set out ahead of the risk factors and working capital statement;

- the working capital statement and statement of capitalisation and indebtedness would be better set out together with the financial statements and KPIs; and

- the risk factors should be included at the end of the document.

Presenting the specific sections in this order would allow smaller issuers to better explain their reasoning and specificities in a logical and more fluid way.

<ESMA\_QUESTION\_EUG\_1>

1. : Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?

<ESMA\_QUESTION\_EUG\_2>

Yes, we do agree. The information items would be easier to compare if they followed a pre-established order. In particular, this measure would be useful for the smallest investors.

<ESMA\_QUESTION\_EUG\_2>

1. : Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU growth prospectus? If not please explain and provide alternative suggestions.

<ESMA\_QUESTION\_EUG\_3>

We believe that there is merit in placing the risk factors between the description of the issuer's strategy, performance and business environment and details of the offer. However, we believe that the section on risk factors should be located at the end of the document. By locating risk factors at the end of the document, issuers would be allowed to better explain them while being able to flag them in contents and relevant statements throughout the document.

<ESMA\_QUESTION\_EUG\_3>

1. : Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would 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\_EUG\_4>

This proposal seems reasonable, as it refers to the cover of the prospectus. It would be positive to eliminate the disclaimers. Nevertheless, the issuer might be able to adopt a different criterion for justified reasons, which should be notified to and accepted by the relevant authority

<ESMA\_QUESTION\_EUG\_4>

1. : Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.

<ESMA\_QUESTION\_EUG\_5>

Yes, we do agree. In our opinion, it covers all the important issues.

<ESMA\_QUESTION\_EUG\_5>

1. : Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.

<ESMA\_QUESTION\_EUG\_6>

In our view, it would be less confusing, and clearer, if the Level 2 measures for registration documents for equity and non-equity issues were mandated separately. We believe that it does not fit for the case in which only debt is issued (in such case, a company would not use this single registration, but the particular means for issuing debts, which are less complicated). This would allow for an easier drafting by the issuers and a potentially faster review by the NCA.

<ESMA\_QUESTION\_EUG\_6>

1. : Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.

<ESMA\_QUESTION\_EUG\_7>

Yes, we do agree.

<ESMA\_QUESTION\_EUG\_7>

1. : Do you consider that the requirement to provide information on the issuer’s borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.

<ESMA\_QUESTION\_EUG\_8>

We do not agree. It is very detailed and likely not clear for the investor. It would be enough with the general information. In fact, this measure might not make sense for non-equities’ issuers.

<ESMA\_QUESTION\_EUG\_8>

1. : Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples,. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.

<ESMA\_QUESTION\_EUG\_9>

Yes, we think that the information in relation to major shareholders is fit for purpose.

<ESMA\_QUESTION\_EUG\_9>

1. : Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.

<ESMA\_QUESTION\_EUG\_10>

Yes, we do agree.

<ESMA\_QUESTION\_EUG\_10>

1. : Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.

<ESMA\_QUESTION\_EUG\_11>

We question some of the specific requirements. For example: deletions:

• the need for a history of share capital;

• disclosure of the resolutions under which securities are created;

• objects and purpose clause in Memorandum and Articles of Association. [further elaborate on this]

<ESMA\_QUESTION\_EUG\_11>

1. : Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA\_QUESTION\_EUG\_12>

Yes, we consider that the disclosure items are clear enough. However, there are a few areas where guidance would be needed for issuers:

• the new non-financial objective requirement;

• risk factors (and how they should be ‘corroborated’ with the rest of the prospectus);

• liability; and

• what qualifies as ‘profit forecast’.

<ESMA\_QUESTION\_EUG\_12>

1. : Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA\_QUESTION\_EUG\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EUG\_13>

1. : Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.

<ESMA\_QUESTION\_EUG\_14>

Yes, we think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs. It could not be more reduced than a securities’ note.

<ESMA\_QUESTION\_EUG\_14>

1. : Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.

<ESMA\_QUESTION\_EUG\_15>

In our point of view, it would be clearer if the Level 2 measures for securities notes for equity and non-equity issues were mandated separately. This would allow issuers to look at one set of requirements for each type of issue rather than reviewing a composite set of requirements and eliminating those that are not applicable. We also suggest that this would allow for an easier drafting by the issuers and a potentially faster review by the NCA.

<ESMA\_QUESTION\_EUG\_15>

1. : Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA\_QUESTION\_EUG\_16>

As most of the disclosure items are based on the information required by the Prospectus Regulation (EU No 809/2004), we believe that they should be familiar to issuers.

<ESMA\_QUESTION\_EUG\_16>

1. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosure items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.

<ESMA\_QUESTION\_EUG\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EUG\_17>

1. : Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.

<ESMA\_QUESTION\_EUG\_18>

No benefit would be estimated in the case of equity and non-equity being amalgamated. Please see our response to Q15.

<ESMA\_QUESTION\_EUG\_18>

1. : Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA\_QUESTION\_EUG\_19>

We do not have any further comments.

<ESMA\_QUESTION\_EUG\_19>

1. : Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.

<ESMA\_QUESTION\_EUG\_20>

Yes, we think that in principle, the presentation of the disclosure items in para 112 is fit for purpose for SMEs.

<ESMA\_QUESTION\_EUG\_20>

1. : Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.

<ESMA\_QUESTION\_EUG\_21>

We consider the proposal to introduce a six-page limit for the summary would de facto make the EU Growth Prospectus and its summary shorter. Nevertheless, the issuer might be able to draft a longer summary for justified reasons, which should be notified to and accepted by the relevant authority.

<ESMA\_QUESTION\_EUG\_21>

1. : Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.

<ESMA\_QUESTION\_EUG\_22>

We do not agree. In our opinion, it would be not convenient to limit the number of risk factors, as some sectors have specific risks that should be covered and not limited.

<ESMA\_QUESTION\_EUG\_22>

1. : Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?

<ESMA\_QUESTION\_EUG\_23>

Yes, we do agree. In practice, it is less common for offers by SME issuers to be underwritten. For economic reasons, given their stage of development, SME's are less likely to engage the services of large financial institutions which have the balance sheet capability to underwrite SME offers.

<ESMA\_QUESTION\_EUG\_23>

1. : Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.

<ESMA\_QUESTION\_EUG\_24>

We mainly agree with ESMA’s proposal. However, we should bear in mind that the definition of line items should include different measures according to the different issuers’ activities. Moreover, they should easily adapted to the local accounting standards.

<ESMA\_QUESTION\_EUG\_24>

1. : Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure.

<ESMA\_QUESTION\_EUG\_25>

Yes, we think that pro forma financial information should be disclosed in the summary. At least, it should not be a problem to include the main information.

<ESMA\_QUESTION\_EUG\_25>

1. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.

<ESMA\_QUESTION\_EUG\_26>

We consider that the document is adequate.

<ESMA\_QUESTION\_EUG\_26>

1. : Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

<ESMA\_QUESTION\_EUG\_27>

Whereas we consider that the disclosure items proposed by ESMA are clear enough to be understood by Issuers as explained in our response to Q20, we would take a different approach that would be more beneficial to them.

<ESMA\_QUESTION\_EUG\_27>

1. : Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.

<ESMA\_QUESTION\_EUG\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_EUG\_28>