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| 13 July 2018 |

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| Response form for the Consultation Paper on Guidelines on risk factors under the Prospectus Regulation  |
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| Date: 13 July 2018 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on Guidelines on risk factors under the Prospectus Regulation. 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 05 October 2018.

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 present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_GRF\_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\_GRF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_GRF\_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 Guidelines on risk factors under the 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 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 the 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 | FRENCH BANKING FEDERATION |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_GRF\_1>

The FBF welcomes the opportunity to share its comments on the ESMA’s consultative document on the guidelines on risk factors under the Prospectus Regulation.

The FBF reiterates its support to a stable and resilient global financial system, while facilitating economic growth. To this end, our answers to this consultation aim at developing financial markets in the European Union while keeping in mind investors’ needs.

<ESMA\_COMMENT\_GRF\_1>

*Specificity*

1. : Do you agree with the suggested draft guidelines on specificity? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_1>

In our opinion some risk factors are not completely specific to the issuer or security but are nevertheless important. For example: currency risk and insolvency risk are not specific, but are important.

We recommend an industry (i.e. economic sector) specific approach, because there are many common risks in a given industry. For example, risk factors could be specific to the banking industry.

We also recommend removing the reference to boiler-plate disclosures in the guidelines.

<ESMA\_QUESTION\_GRF\_1>

*Materiality*

1. : Do you agree with the suggested draft guideline 3? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_2>

We do not support the proposal in paragraph 27 to refer to the IFRS definition of materiality, which may introduce unwanted constraints. Accountants may have a different assessment of materiality and a different mind-set than issuers and investors. The definition and assessment of materiality should be left to the issuers. It may not be in the best interest of the national competent authorities to be too closely tied to accounting standards.

<ESMA\_QUESTION\_GRF\_2>

1. : Do you agree with the suggested draft guideline 4 on quantitative information? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_3>

The draft guidelines introduce a hierarchy between quantitative and qualitative information on the potential negative impact: issuers must provide quantitative information if it is available, and may only provide qualitative information if no quantitative information is available. The level 1 text does not introduce such hierarchy. Furthermore, quantitative information is not common today and can sometimes be difficult to provide. We do not support such hierarchy and would recommend maintaining the flexibility to choose between quantitative and qualitative information.

<ESMA\_QUESTION\_GRF\_3>

1. : Do you agree with the suggested draft guideline 5 on mitigating language? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_4>

In our opinion, mitigating language is important, even though we acknowledge that issuers should not make an exaggerated use of them. We do not agree with the example provided in the draft guidelines: it can be important (and sometimes required) to specify to potential investors that the issuing bank has a risk management department and risk management procedures to prevent or monitor specific risks. Description of the measures and procedures in place to prevent and/or manage specific risks should not be considered mitigating language.

<ESMA\_QUESTION\_GRF\_4>

*Corroboration*

1. : Do you agree with the suggested draft guideline 6 on corroboration of specificity and materiality? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_5>

This guideline raises the issue of how issuers shall maintain the consistency of the base prospectus and the French *Document de Référence*/Universal Registration Document, as the base prospectus often incorporates by reference all or some parts of their *Document de Référence*. By maintaining this consistency which may be affected by the time, we lose all the benefit of the URD (i.e. an approval for one year) For issuers already incorporating by reference their *Document de Référence* in their Base Prospectus, it would be too burdensome/time-consuming to update their *Document de Référence* more often that what they are currently doing, hence it can occur that the risk factors of the security are based on more recent events than the URD/*Document de Référence*.

The *Document de Référence*/URD can pertain to a larger perimeter than debt securities, which can lead to a difference in risk factors, in their categorization/materiality and hence can create difficulties for their incorporation by reference. Furthermore, French banks underline that it would not be possible to continuously update the *Document de Référence*/URD.

Also, some risk factors are related to specific products and hence are only included in the base prospectus.

The guideline should clarify that corroboration does not require the risk factors to be mentioned elsewhere in the base prospectus but that the materiality and specificity of risk factors is identifiable by reference to the overall picture of the issuer/guarantor and the securities presented in the prospectus. Otherwise, competent authorities may have diverging practices.

<ESMA\_QUESTION\_GRF\_5>

*Presentation of risk factors across categories*

1. : Do you agree with the suggested draft guidelines on Presentation of risk factors across categories? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_6>

We agree with the suggested guidelines. Categories themselves do not need to be hierarchized.

ESMA should not establish a mandatory list of categories but leave flexibility to each issuer to determine its own categories. There should not be any ranking of the risk factors whether most material or not: the most material risk factor must be presented first in each category according to article 16 of the Prospectus Regulation but other risk factors must not be ranked in order of their materiality within each category.

The consultation specifies that a risk factor should only appear once, in the most appropriate category. This raises an issue when a risk factor relates to multiple categories. For example, a bail-in clause is an issuer risk but also a security risk. We also see a risk that the issuer is held liable if an investor considers that the risk factor was placed in the wrong category? Could it be envisaged to include cross references to risk factors of other categories?

<ESMA\_QUESTION\_GRF\_6>

1. : Do you agree with that the number of categories to be included in a risk factor section, should not usually exceed 10? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_7>

The Prospectus Regulation does not impose a limit in the number of categories. We would like to stress the importance of keeping the flexibility to have more than 10 categories for complex issuances/group structures with multiple issuers/guarantors and multiple underlying exposures.

<ESMA\_QUESTION\_GRF\_7>

*Focused/concise risk factors*

1. : Do you agree with the suggested draft guidelines on focused/concise risk factors? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_8>

In some cases, too much concision could make the risk factors difficult to understand. We suggest that the guidelines aim at maintaining a good balance between concision and comprehensibility.

<ESMA\_QUESTION\_GRF\_8>

*Summary*

1. : Do you agree with the suggested draft guideline on risk factors in the summary? If not, please provide your reasoning.

<ESMA\_QUESTION\_GRF\_9>

It can happen that the order of risk factors changes between the base prospectus and the issue specific summary for specific issuances or that some categories are removed in the issue specific summary. We recommend no to be too stringent on this guideline.

<ESMA\_QUESTION\_GRF\_9>

*General*

1. : Do you agree with the proposed draft guidelines? Have you any further suggestions with regard to draft guidelines addressing a particular section or the guidelines in general?

<ESMA\_QUESTION\_GRF\_10>

We would like to emphasize the importance of grandfathering and the transition to the new Prospectus Regulation. French Banks already have an existing URD, the so called *Document de Référence*, which is updated a few times each year. It would be difficult for banks to update the URD on a continuous basis. When the Prospectus Regulation applies in July 2019, it would be extremely difficult for banks to change their URD immediately at that date. Therefore it is important to have a flexible transition period until at least March 2020.

After having reviewed the entire prospectus, competent authorities are sole responsible for deciding whether the prospectus should be approved or not. We consider thus that it is inappropriate, in a “level 3 measure”, to recommend to competent authorities to refuse the approval of a prospectus. Therefore, and regarding more specifically draft guidelines 2, 3, 6 and 7, we consider that the sentence starting with « The competent authority should not approve a prospectus where…» should be deleted.

Certain guidelines specify that the competent authority should not approve a prospectus where the risk factors do not meet certain criteria. Nevertheless, it is the issuers who are responsible to the investors of the information provided and especially information regarding risks. Allowing NCAs to prevent an issuer to include a risk factor because it is deemed not material can be problematic in terms of responsibility: will the NCA take responsibility to the investors?

When an issuer submits a prospectus for approval to an authority in a country outside the European Union, the national authorities there may have a different vision than ESMA and may ask for detailed explanations, for example on European regulations. European issuers cannot adapt the wording of their risk factors to each national authority.

<ESMA\_QUESTION\_GRF\_10>

1. : Do you believe that market participants will bear any additional cost as an indirect effect of the suggested draft guidelines? If yes, please indicate the nature of such costs and provide an estimation.

<ESMA\_QUESTION\_GRF\_11>

A potential continuous update of the Universal Registration Document would be very costly and time-consuming.

Issuers will incur additional costs due to the work devoted to entirely reviewing risk factors and there categorisation, and to classify them according to their relevance and importance. This implies extensive internal work (several departments would be involved: Legal, Communication, Finance and Risk) and also the hiring of external counsels. These costs will increase even more if ESMA and NCA adopt a stringent approach, especially regarding materiality and if the quantitative versus qualitative approach is maintained.

<ESMA\_QUESTION\_GRF\_11>