**Response form to Consultation Paper**

**Draft Guidelines on disclosure requirements under the Prospectus Regulation**

**Responding to this paper**

ESMA invites responses to the questions set out throughout its Consultation Paper on Draft Guidelines on disclosure requirements under the Prospectus Regulation (ESMA31-62-1239). 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 **4 October 2019.**

**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\_CPG\_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\_CPG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_CPG\_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 Draft Guidelines on disclosure requirements 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 for 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 the Consultation Paper**

The 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 | BETTER FINANCE – European Federation of Investors and Financial Services Users |
| Activity | Non-financial counterparty |
| Are you representing an association? |[x]
| Country / region | EU |

**Introduction**

***Please make your introductory comments below, if any:***

<ESMA\_COMMENT\_CPG\_1>

BETTER FINANCE welcomes the work of ESMA to transpose and improve the predecessor’s recommendations into Guidelines as per Article 16 of the ESMA Regulation since it attaches enforceability and ensures harmonised application across the Single Market for Financial Services.

Moreover, BETTER FINANCE welcomes the timely update and the enhancement of the recommendations in terms of content simplification and readability, taking into account the improvements on disclosure for Prospectuses brought by the recently adopted Regulation.

Criteria for Prospectus issuance must be clear and fit for purpose if the CMU project is to enable more businesses to list on regulated markets and aid investors, in particular the non-specialist retail savers, to understand and analyse this important piece of information on transparency and disclosure.

In addition, as noted in the subsequent questions, adapting the Prospectus requirements in light of the sustainable finance policy orientation is timely and welcomed, but BETTER FINANCE notes that there are still aspects that need to be improved in order to give meaningful information on Economic, Social, and Governance (ESG) factors.

<ESMA\_COMMENT\_CPG\_1>

**Questions**

**Operating and financial review**

1. Do you agree with the choice to largely carry over the CESR recommendations on OFR? If not, could you please indicate what further guidance should be provided and the legal basis for such?

<ESMA\_QUESTION\_CPG\_1>

BETTER FINANCE largely agrees with the transposition of the CESR recommendations on OFR aspects and very much welcomes the new requirements that emphasise the importance of long-termism (paragraph 23) and sustainable finance (paragraph 26).

However, ESMA should have been more ambitious in defining these areas as to ensure that performance can be assessed in light of the long-term horizons (if any). Moreover, we believe that non-financial information relating to sustainable targets, such as Economic, Social, and Governance (ESG) factors **must** be disclosed without a caveat of “relevance” to the issuer.

Given the importance of capital markets for sustainability and observance of ESG factors, this key non-financial information is always relevant for the investor, which should be clearly able to distinguish whether and when an issuer takes into account any of these aspects in its activity. Moreover, in order not to overburden issuers and respect the principle of simple and concise information, the descriptions thereof should be concise and use standardised formats, which can be further detailed in the Non-financial information section.

Also, the wording of this guidelines “necessary for investors to understand the company’s development, performance and conditions” narrows the level 1 text as this states “necessary for an understanding of the issuer’s development, performance or position”. Therefore the guideline should be adapted accordingly by replacing “and” by “or”.

<ESMA\_QUESTION\_CPG\_1>

1. Do you agree with the introduction of draft guideline 4 in order to provide further guidance on the use of the management report? Do you believe the inclusion of any separate non-financial report (when applicable) could materially increase the length of equity prospectuses? If so, please provide your reasoning and an alternative proposal.

<ESMA\_QUESTION\_CPG\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_2>

1. Do you believe the application of draft guidelines 1, 2, 3 and 4 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_3>

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<ESMA\_QUESTION\_CPG\_3>

**Capital resources**

1. Do you agree with the choice to largely carry over the CESR recommendations on capital resources? If not, could you please indicate what further guidance should be provided and the legal basis for such?

<ESMA\_QUESTION\_CPG\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_4>

1. Do you consider that the clarifications in these draft guidelines on how text provided elsewhere should be cross-referred to are useful?

<ESMA\_QUESTION\_CPG\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_5>

1. Do you believe the application of draft guidelines 5, 6, 7 and 8 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_6>

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<ESMA\_QUESTION\_CPG\_6>

**Profit forecasts and estimates**

1. Do you agree with the choice to largely carry over the CESR recommendation on profit forecasts and estimates? If not, could you please indicate what further guidance should be provided and the legal basis for such?

<ESMA\_QUESTION\_CPG\_7>

BETTER FINANCE largely agrees with the draft Guidelines and acknowledged the need to remove certain selected financial information in order to reduce the compliance and issuance costs of issuers and make the Prospectus more straightforward. In addition, the wording of paragraph 44 and Guidelines 9 should be strengthened as to avoid misinterpretations and clarify that the purpose is ensuring that due diligence is observed and accountability is incurred for the accuracy and reliability of information provided therein.

In relation to Guideline 10, BETTER FINANCE notes that it would be helpful if ESMA narrowed down the scope of the *comparability* aspect and clearly stated to which other information it should be useful for comparing the OFR with. This is meant to allow investors to attempt in mirroring (to the extent possible) and harmonising the methods and narratives used to present such information.

In relation to Guideline 11, BETTER FINANCE draws from its experience in investment fund research, as well PRIIPs and PEPP to suggest to ESMA that profit forecasts and estimates should be based on a common, harmonised methodology. Although ESMA makes a clear difference that forecasts are more subjective and tailor-made to each issuer in particular, whereas estimates are more theoretical in nature, we would like to highlight that these differences are not that visible in practice, difficult to understand for the majority of investors, and may lead to confusions, misunderstandings and create an uneven playing field between issuers.

Without a proper and prominent framing of these projections, clearly distinguishing and highlighting one from another, issuers may overstate forecasts based on subjective criteria – most of the time difficult to assess – and mislead potential investors. For these reasons, as well as for considerations anchored in objectivity and independence, ESMA should at least: 1) include additional wording and specifications that would clarify the distinction between the two; or either 2) impose harmonised methodologies for both projections. Last, BETTER FINANCE very much welcomes the clarifications in Guideline 11 on the “clear statement”

<ESMA\_QUESTION\_CPG\_7>

1. Do you believe the application of draft guidelines 9, 10, 11 and 12 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_8>

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<ESMA\_QUESTION\_CPG\_8>

**Historical financial information**

1. In relation to draft guideline 14, do you consider that it is beneficial to clarify the application of the bridge approach for prospectuses that include less than three years of financial information? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_9>

<ESMA\_QUESTION\_CPG\_9>

1. Do you agree with the guidance set out in draft guidelines 13, 14, 15, 16 and 17? If not, please explain your reasons and provide alternative suggestions.

<ESMA\_QUESTION\_CPG\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_10>

1. Do you consider that additional guidance is necessary as regards the restatement of historical financial information in the case of prospectuses that include less than three years of financial information? If so, please explain your view.

<ESMA\_QUESTION\_CPG\_11>

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<ESMA\_QUESTION\_CPG\_11>

1. Do you believe the application of any of the draft guidelines 13, 14, 15, 16 and 17 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_12>

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<ESMA\_QUESTION\_CPG\_12>

**Pro forma information**

1. Should draft guideline 18 include any other standard indicators of size? Have you ever used other indicators because the three indicators included in draft guideline 18 would produce anomalous results?

<ESMA\_QUESTION\_CPG\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_13>

1. In draft guideline 18, do you agree that when an issuer is involved in several transactions which individually do not, but which collectively do, constitute a 25% variation to the issuer’s size, pro forma information should be required unless it is disproportionately burdensome to produce it?

<ESMA\_QUESTION\_CPG\_14>

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<ESMA\_QUESTION\_CPG\_14>

1. In draft guideline 18, do you agree that when an issuer is involved in several transactions of which only one constitutes a 25% variation to the issuer’s size, pro forma information should be required for all the transactions unless it is disproportionately burdensome to produce it?

<ESMA\_QUESTION\_CPG\_15>

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<ESMA\_QUESTION\_CPG\_15>

1. In draft guideline 25, do you agree that the accountant / auditor report should not be permitted to include an emphasis of matter?

<ESMA\_QUESTION\_CPG\_16>

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<ESMA\_QUESTION\_CPG\_16>

1. In relation to draft guidelines 19, 20, 21, 22, 23, 24 and 26 which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.

<ESMA\_QUESTION\_CPG\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_17>

1. Do you believe the application of any of the draft guidelines 18, 19, 20, 21, 22, 23, 24, 25 and 26 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_18>

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<ESMA\_QUESTION\_CPG\_18>

**Interim financial information**

1. Do you agree with the proposal to carry over only part of the CESR recommendations on interim financial information since some of the contents appear to be obsolete under the current legislative framework? If not, could you please indicate which CESR recommendations should have been retained and the legal basis for including them in these draft guidelines?

<ESMA\_QUESTION\_CPG\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_19>

1. Do you believe the application of draft guidelines 27 and 28 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_20>

**Working capital statements**

1. Do you agree with the rules for calculation of working capital in draft guideline 31? If you do not agree, please explain why and propose an alternative approach.

<ESMA\_QUESTION\_CPG\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_21>

1. Do you agree with the rules for calculation of present requirements in draft guideline 32? If you do not agree, please explain why and propose an alternative approach.

<ESMA\_QUESTION\_CPG\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_22>

1. Do you agree that it is useful to require credit institutions to take their liquidity risk into account when they determine their working capital? Do you agree with the requirements of draft guideline 34?

<ESMA\_QUESTION\_CPG\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_23>

1. Do you agree that it is useful to require (re)insurance undertakings to take their liquidity metrics and their regulatory capital requirements into account when they determine their working capital? Do you agree with the requirements of draft guideline 35?

<ESMA\_QUESTION\_CPG\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_24>

1. In relation to draft guidelines 29, 30, 33, 36 and 37, which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.

<ESMA\_QUESTION\_CPG\_25>

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<ESMA\_QUESTION\_CPG\_25>

1. Do you believe the application of any of the draft guidelines 29, 30, 31, 32, 33, 34, 35, 36, and 37 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_26>

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<ESMA\_QUESTION\_CPG\_26>

**Capitalisation and indebtedness statements**

1. Would you like more specific guidance on what to disclose concerning the type of guarantee according to draft guideline 38? If so, please explain which type of further guidance would be helpful.

<ESMA\_QUESTION\_CPG\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_27>

1. Would you like more specific guidance on how credit institutions and (re)insurance undertakings should adapt the capitalisation statement according to draft guideline 38? If so, please explain which type of further guidance would be helpful.

<ESMA\_QUESTION\_CPG\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_28>

1. Do you agree that trade receivables and trade payables should be included in the indebtedness statement, as proposed in draft guideline 39?

<ESMA\_QUESTION\_CPG\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_29>

1. In the indebtedness statement, do you agree that financial liabilities from leases should be included under financial debt and described further in a paragraph after the statement of indebtedness?

<ESMA\_QUESTION\_CPG\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_30>

1. Do you consider that any line items in either the capitalisation or the indebtedness statement are not useful to investors? Please explain your answer.

<ESMA\_QUESTION\_CPG\_31>

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<ESMA\_QUESTION\_CPG\_31>

1. Do you have any other comments on draft guidelines 38 and 39?

<ESMA\_QUESTION\_CPG\_32>

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<ESMA\_QUESTION\_CPG\_32>

1. Do you believe the application of draft guidelines 38 and 39 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_33>

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<ESMA\_QUESTION\_CPG\_33>

**Remuneration**

1. Do you agree with the approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_34>

1. Do you believe the application of draft guideline 40 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_35>

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<ESMA\_QUESTION\_CPG\_35>

**Related party transactions**

1. Do you agree with the content of this draft guideline? Do you think it provides further clarity to the market? If not, please explain.

<ESMA\_QUESTION\_CPG\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_36>

1. Do you believe that the application of draft guideline 41 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_37>

**Acquisition rights and undertakings to increase capital**

1. Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_38>

1. Do you believe the application of draft guideline 42 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_39>

**Options agreements**

1. Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_40>

1. Do you agree with the introduction of a specific disclosure point on the potential dilution effects connected to the exercise of option agreements?

<ESMA\_QUESTION\_CPG\_41>

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<ESMA\_QUESTION\_CPG\_41>

1. Do you believe the application of draft guideline 43 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_42>

**History of share capital**

1. Do you agree with the guidance set out in draft guideline 44 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_43>

1. Do you believe the application of draft guideline 44 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_44>

**Description of the rights attaching to shares of the issuer**

1. Do you agree with the guidance set out in draft guideline 45 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_45>

1. Do you believe the application of draft guideline 45 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_46>

**Statements by experts**

1. Do you agree with the guidance set out in draft guideline 46 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_47>

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<ESMA\_QUESTION\_CPG\_47>

1. Do you believe the application of draft guideline 46 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_48>

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<ESMA\_QUESTION\_CPG\_48>

**Information on holdings**

1. Do you agree with the proposal to carry over only part of the CESR recommendations on information on holdings? If not, please indicate what further CESR recommendations should be retained and the legal basis for their inclusion in these draft guidelines.

<ESMA\_QUESTION\_CPG\_49>

BETTER FINANCE agrees in principle with carrying over the CESR recommendations as proposed by ESMA but highlights the needs to make this Guideline consistent with the Guidelines on OFR and the new sustainability and ESG disclosure requirements. In particular, ESMA should have included and elaborated that information on holdings must contain either a sustainability or an ESG assessment of the issuer in order to enable investors understand the flow of revenues or liabilities that impact sustainability or ESG considerations.

In particular in the context of the ecolabel, sustainable finance and the need to avoid “green washing”, issuers of securities must be prevented from framing themselves as “green”, “sustainable” or “ESG compliant”, while cashflows can be redirected to “brown” activities. BETTER FINANCE firmly suggests to ESMA to clarify this obligation for issuers as a necessary step in order to create a truthful ESG-environment and regain the trust of investors.

Lastly, BETTER FINANCE highlights that such an obligation is an absolute must in order to observe the main principle behind sustainable and ESG-factored investments, that being of *exemplary compliance with investor protection rules*, materliased in these hypotheses by full transparency and disclosure.

In order to achieve such purpose and not impose unnecessary or to streinous requirements to issuers, ESMA **must** work further on these new criteria in order to ensure that a simple and concise assessment can be made without disregarding the necessity to ensure a level playing field.

<ESMA\_QUESTION\_CPG\_49>

1. Do you consider the clarification on the general principle whereby this draft guideline does not apply when the required information is provided in the issuer’s consolidated / separate financial statements prepared in accordance with IFRS to be useful?

<ESMA\_QUESTION\_CPG\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_50>

1. Do you believe the application of draft guideline 47 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_51>

**Interests of natural and legal persons involved in the issue / offer**

1. Do you agree with the guidance set out in draft guideline 48 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_52>

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<ESMA\_QUESTION\_CPG\_52>

1. Do you believe the application of draft guideline 48 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_53>

**Collective investment undertakings**

1. Do you agree with the guidance set out in the draft guidelines which have been subject only to minor revision, i.e. draft guidelines 49, 50, 52, 53, 54, 55 and 57? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA\_QUESTION\_CPG\_54>

BETTER FINANCE believes that the existing Guidelines on collective investment undertakings (CIU), other than UCITS and AIFs, should nevertheless be as similar as possible to Prospectuses as required by the AIF Regulation and UCITS Directive in order to ensure consistency, comparability between these documents and a level playing field among asset managers.

Moreover, BETTER FINANCE once more insists on the necessity to add clarifications and standardisations of terminology for the investment objectives and policy of the CIU, for two reasons: first, BETTER FINANCE has observed through its research that many asset managers profit of the regulatory loophole in order to create very generalised (or meaningless) descriptions of the investment objectives that do not send a clear message for the investor.

Therefore, ESMA should first provide standardised definitions of “active” and “passive” investment objectives. Particular attention should be paid for “active” objectives and whether the asset manager wishes to pursue such management style with or without a reference to market index benchmark. In this relation, ESMA should clarify that management objectives in relation to a benchmark should be clearly delineated between “fund benchmarks”, which should be further explained by the Prospectus (e.g. High-Water Mark, Absolute Return, Peer Group etc.) or “market index benchmark”, which reflects the market in which the fund invests.

In relation to the “passive” methods and objectives, ESMA should clarify whether “passive” includes index-tracking objectives or not.

This is a necessity since the Prospectus for other types of closed- or open-ended collective investment schemes, such as the aforementioned UCITS and AIFs, now contain an obligation (at least for the KIID, which should reflect information in the Prospectus) in relation to benchmarks, which should be mirrored in the CIU Prospectus as well.

In addition, as highlighted in Question 49 above, ESMA must also impose the obligation for CIUs to disclose whether the assets in which the capital is invested consider sustainability aspects of ESG-factors, especially since these investment vehicles are more marketed to retail investors that simple securities – the rationale stays the same as for the other comments.

<ESMA\_QUESTION\_CPG\_54>

1. Do you agree with the inclusion of new draft guideline 51? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.

<ESMA\_QUESTION\_CPG\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CPG\_55>

1. Do you agree with the inclusion of new draft guideline 56? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.

<ESMA\_QUESTION\_CPG\_56>

BETTER FINANCE believes that, in relation to Guidelines 56, an additional requirement should be added in order to clarify (and make compliant) these requirements with the MiFID II rules on independent and non-independent investment advice, inducements and disclosure. In particular, ESMA should either cross-reference or simply add the requirement that the Prospectus should describe whether the entity providing investment advice is related to the asset manager (“in-house”), a tied-agent (or similar), and what types of monetary and non-monetary remuneration agreements the provider has or intends to put in place with the entity providing advice.

<ESMA\_QUESTION\_CPG\_56>

1. Do you believe the application of any of the draft guidelines 49, 50, 51, 52, 53, 54, 55, 56 and 57 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA\_QUESTION\_CPG\_57>

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<ESMA\_QUESTION\_CPG\_57>