



European Securities and
Markets Authority

Response form for the Consultation Paper on format and content of the prospectus



Responding to this paper

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

1. respond to the question stated;
2. contain a clear rationale; and
3. 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:

4. 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 → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
5. 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.
6. 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.
7. When you have drafted your response, name your response form according to the following convention: ESMA_FAC_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_FAC_ABCD_RESPONSEFORM.
8. Upload the form containing your responses, in Word format, to ESMA’s website (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 confi-



dential 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 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	Afep
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	France

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_FAC_1>

Since 1982, **Afep** (Association française des entreprises privées) is the association which brings together French large companies and companies operating in France. Based in Paris and Brussels, Afep aims to foster a business-friendly environment and to present its members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation are Afep's core priorities. Afep has around 120 members and is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility.

We welcome ESMA's consultation on the level 2 measures of the new Prospectus Regulation adopted on 30 June 2017 (the **Regulation**). The proposals put forward by ESMA bring some improvements to the existing disclosure requirements. In particular, **we support ESMA's initiative to streamline and reduce the number of schedules and to carry forward some provisions** of Regulation (EC) N°809/2004 to ensure a smooth transition between the existing and the new regime and an efficient regulatory framework : operative provisions similar to articles 4 to 20 of Regulation 809/2004 and the principles regarding the information that can be provided by issuers and requested by National Competent Authorities (NCAs).

However, we are concerned by the following issues which are applicable to different types of securities and schedules and/or are not addressed by a specific question in the consultation paper:

- **Flexibility:** we agree with ESMA's statement that the format of the prospectus is important not only from the issuer's point of view but also from that of the investor. Since the issuer is best placed to determine how to tell its "equity story" and deliver meaningful information, we insist on the need to **leave as much flexibility as possible for issuers**. Issuers should be able to choose the order of the sections including where to place the risk factors. Flexibility is key in avoiding redundancies and will not impaired the comprehensibility of prospectuses as long as a detailed table of content is included. Furthermore issuers make public their prospectuses and registration documents in electronic searchable format (PDF essentially) and some French issuers even publish their registration document in an interactive format offering interactive features and allowing readers to easily and rapidly find any piece of information.
- **Cover note:** we do not support ESMA's proposal to make mandatory a cover note of 3 pages maximum. The introduction of a mandatory cover note is not required by the Regulation (there is no mention of a cover note in the annexes of the Regulation), the information that could be displayed on such a cover note (name of issuer, amount of the offer...) would already be included in the prospectus and the introduction of this new requirement would be **contradictory with the objective to simplify the prospectus regime**. The cover note should remain a practice
- **Risk factors:** ESMA indicates in the consultation paper that "*The required contents of the risk factors section will be further elaborated through ESMA guidelines*". Level 1 (articles 16.4 and 16.5 of the Regulation) mandates ESMA **to develop guidelines to assist authorities** in the review of the specificity and materiality of risk factors and of their presentation across

categories and empowers the Commission to adopt delegated acts to specify the criteria for the assessment of the specificity and materiality and for the presentation of risk factors.

Regarding ESMA's mandate, **we support the objective to harmonise practices and consider that ESMA should focus on convergence** and helping NCAs to improve their practices. We would like to see more supervisory convergence of administrative practices of NCAs when addressing risk factors : whilst some NCAs allow or even encourage issuers to disclose risk mitigating techniques alongside their risk factors, other NCAs prohibit issuers from doing so. This is a key issue in order to avoid diverging approaches on risk factors. The preferred approach regarding in particular the categories of risk factors would be a flexible approach with **a non-exhaustive and non-binding list** that could be adapted where necessary to allow, in particular, an alignment with the risk disclosure requirements in the management report.

As regards the Commission's empowerment to develop delegated acts, we understand that the Commission will not envisage adopting any legislation on risk factors in the short term and we welcome this decision. Issuers already have measures in place to assess and mitigate the risks they face and have developed internal control environment either compliant with national or international frameworks (eg.: COSO) as well as reporting processes. **They don't see the added value any guideline or additional piece of legislation would bring on this matter.**

- **Written confirmation:** ESMA is proposing to require from issuers a written confirmation of compliance with the publication obligations of the Transparency Directive (TD) and Market Abuse Regulation (MAR) in order to benefit from the secondary issuance regime. We strongly oppose the introduction of such a confirmation. The conditions to benefit from the secondary issuance regime are set in article 14 of the Regulation and do not include any such confirmation:
 - a) issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue securities fungible;
 - b) issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities;
 - c) offeror of securities admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months.
- Regarding the provisions concerning **complex financial history**, we do not support the amendment to enable NCAs to request more than just financial information in the case of complex financial history.

<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 do not support ESMA's proposal to make mandatory a cover note of 3 pages maximum. The introduction of a mandatory cover note is **not required by the Regulation**. In particular the annexes of the Regulation do not include a cover note. Furthermore information that could be displayed on such a cover note and mentioned by ESMA in the consultation paper (name of issuer, amount of the offer...) would already be included in the prospectus. In this regard the cover would not bring any added value. The introduction of this new requirement would be **contradictory with the objective to simplify** the prospectus regime and stop building the "layer cake" that is choking companies. There is furthermore no rationale for turning a level 3 guidance into a more stringent obligation. **The cover note should remain a practice.**

<ESMA_QUESTION_FAC_1>

2. : 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>

ESMA is proposing to introduce a new section on "how to use the prospectus" that would not exceed 2 pages and would include :

- An overview of the content of the prospectus;
- Which information is contained in the various sections.

As described, this new section would be **redundant with the summary of the prospectus and with the table of content**, these 2 constituents of the prospectus substantially delivering the same information. Therefore we don't see the added value of this new "how to use the prospectus" section.

We would like to point out that the key issue in terms of investor protection regarding offers of non-equity securities to retail investors is the monitoring of advertisements. From our experience, retail investors base their investment decisions on advertisements which can take many forms including banners on Internet. **The real focus for competent authorities should therefore be on the monitoring of advertisements.** As an illustration, the French competent authority has old-established procedures to review all advertising material made available in the context of a retail offer. **The Regulation increases the powers of Competent Authorities in this regard and we don't see the need for any additional disclosure requirement in the prospectus.**

<ESMA_QUESTION_FAC_2>

3. : 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>

Issuers should be able to choose where to place the risk factors section. In the context of an offer or an admission to trading, investors would first read the summary of the prospectus where the most material risk factors regarding the issuer and the securities will be described in the order prescribed by article 7 of the Regulation, which leaves no flexibility in terms of layout. They would then turn to the prospectus looking for more details on specific topics that they deem essential to take an informed investment decision. Therefore the location of the risk factors section will have no impact on how investors will apprehend prospectuses and issuers should be free to choose the location of this section. **Placing risk factors first could even be counter-productive** since investors could skip this section to look into the details of the offering and/or

admission, the activities of the issuer and its financial condition and prospects and then not come back to the risk factors.

We strongly advocate for maximum flexibility. Flexibility is key in avoiding redundancies and will not impair the comprehensibility of prospectuses as long as a detailed table of content is included. Furthermore issuers make public their prospectuses in electronic searchable format (PDF essentially) allowing readers to easily and rapidly find any piece of information.

<ESMA_QUESTION_FAC_3>

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

<ESMA_QUESTION_FAC_4>

Issuers should be able to choose the order of information when drafting an URD. The URD can include the annual financial report published under the Transparency Directive and even more, in accordance with the principle that issuers can decide to provide additional information: some issuers publish their registration documents in Q1 and would include not only the annual financial report in accordance with TD provisions but also information regarding the annual shareholders' general meeting. Issuers should therefore have the flexibility to organise the order of the disclosures to provide shareholders and investors with the most useful experience possible. In particular, when drafting a registration document or an URD, issuers should be able to **choose the order and start with an overview of their activities before describing the risk factors:**

- When considering investing in a company they're not familiar with, **investors will not go first for risk factors** ; they will rather look at the description of the company's activities, its organisation, the composition of the board and financial KPIs ; placing risk factors first is therefore counter-intuitive.
- When the activities of the issuer are complex (eg.: Fintech and high-tech companies, utilities, pharmaceuticals...) or for certain risks that require a full understanding of the issuer's business, we consider that **it is essential for (retail) investors to first understand the company's business** before dealing with risk factors.
- Furthermore issuers make public their registration documents in **electronic searchable format** (PDF essentially) and some French issuers even publish their registration document in an interactive format offering interactive features and allowing readers to easily and rapidly find any piece of information.
- In annex I (prospectus) and II (registration document) of the Regulation, risk factors don't come first but after key financial information regarding the issuer.

In conclusion **allowing flexibility would enhance the comprehensibility of the URD, would not impair investor protection and would be consistent with the current practice of over 300 issuers** which have been filing a registration document on a regular basis for the last 20 years – without any problems in terms of investor protection or quality of the information – with the French Authority (although 20 years ago the content was different, the mechanism was very similar to the URD).

<ESMA_QUESTION_FAC_4>

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

<ESMA_QUESTION_FAC_5>

We agree that the use of proceeds is important to investors. However, ESMA's intention is not very clear: if the objective is to amend the relevant schedules to include a specific section regarding the reasons for the offer and the use of proceeds – which at the time being is a sub-section of section 3 of the share securities note schedule – we don't see the added value of such an amendment. If ESMA's intention is to require more detailed information including as mentioned in the consultation paper a "precise breakdown of how funds will be employed", we do not support this new requirement. **We consider that the current regime works well and delivers sufficient information to investors and we would not support this overly prescriptive requirement.**

Issuers should not be required to list every line item of proposed use (even if that information is available), but should be able to state general purposes. The correct test to apply for such information is whether it is necessary information which is material to an investor for making an informed assessment; there should be no requirement to include overly granular or immaterial information, even if such information might be

available. Furthermore, In many cases the reasons and use of proceeds would be made public and known by potential investors before the filing of a draft prospectus, in particular when an issuer is refinancing an acquisition (the (re)financing conditions of the acquisition would be made public at the same time then its announcement).<ESMA_QUESTION_FAC_5>

6. : 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>
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<ESMA_QUESTION_FAC_6>

7. : 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>
We don't consider that any additional definitions should be added.
<ESMA_QUESTION_FAC_7>

8. : 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>
Generally speaking, we support ESMA's draft technical advice which reduces the number of provisions and streamlines the current prospectus regime. However we have some concerns regarding the new requirement discussed above. In particular **the cover note, the “how to use” section and less flexibility in the order of presentation will not bring any benefits to investors and will generates additional costs.** Any new disclosure requirement adds to the cost of a prospectus because they will impact the volume of the document, the processes and templates in place and will require additional due diligences from all the parties involved in the drafting. Therefore **we do not support the introduction of these requirements that are not in line with the objectives to simplify the prospectus regime** and alleviate administrative burden.
<ESMA_QUESTION_FAC_8>

9. : 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 consider that **the scope of NCAs' approval is already clearly defined in Level 1:** the approval is defined in article 2 of the Regulation – and also in article 2 of the 2003 directive without raising any particular issue. This definition clearly states that the Competent Authority has performed a scrutiny of the prospectus to ensure that information disclosed in the prospectus are complete, consistent and comprehensible. Therefore we don't see the need for a new statement.
<ESMA_QUESTION_FAC_9>

10. : 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>

We agree with ESMA that selected financial information are mentioned in different sections of the share registration document of Regulation 809/2004 and since article 7.6 (b) of the Regulation requires issuers to include in the summary historical key financial information, this could be considered redundant. However the summary is only required for equity and retail non-equity prospectuses. Therefore when an issuer publishes a registration or universal registration document, there will not necessarily be a summary available and from our experience, investors are keen for key financial information. If the selected financial information disclosure requirement is removed, **French issuers will probably continue to include key information in their registration documents.**

<ESMA_QUESTION_FAC_10>

11. : 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>

Most public companies have a website (such an obligation is required by other pieces of EU legislation). Therefore, including a link to the website and making documents on display electronically available should not raise any issue. However, ESMA should consider the case where **the prospectus is filed by a holding company or a SPV which does not have any securities listed and therefore does not necessarily have a website.** The wording of item 5.1.4 of section 5 of Annex 1 should be amended to allow the issuer, in such a case, to provide the website's address of a third party (a subsidiary of the holding company for instance).

We are also concerned about ESMA's proposal to require a disclaimer that the information on the website does not form part of the prospectus. We don't see the added value of this disclaimer – circumstances under which an investor would consider that all the website is part of the prospectus are not clear – and we consider that it could even be confusing since documents incorporated by reference in the prospectus could be available on the issuer's website. **The proposal to introduce this disclaimer should be removed.**

<ESMA_QUESTION_FAC_11>

12. : Do you consider that a description of material past investments is necessary information for the purpose of the prospectus?

<ESMA_QUESTION_FAC_12>

We consider that it is not necessary to have a specific section in the prospectus regarding the description of material past investments. Such information would be included in the financial statements and in the management report. Therefore **we welcome ESMA's proposal to remove this disclosure requirement.**

<ESMA_QUESTION_FAC_12>

13. : 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>

We agree with the alignment of the OFR with the management report required under the Accounting Directive. This alignment is explicitly mentioned in the Commission's request to ESMA for technical advice. Issuers can already incorporate the management report published under the Accounting Directive (Directive 2013/34/EU) in their prospectuses but the different wording between the Prospectus and Accounting Directives can be confusing and raise questions. Aligning the requirements will constitute a major improvement to the prospectus regime and more generally speaking to the articulation between the various pieces of EU legislation applicable to listed companies that is so far lacking.

However, ESMA is proposing to remove item 9.1 (Financial condition) but not item 9.2 (Operating results) of section 9 of annex 1, so **the OFR would not be 100% aligned** with the management report. ESMA does not give any rationale for maintaining item 9.2:

- Does ESMA consider that there cannot be a full alignment because the standard prospectus can be used by companies that do not fall into the scope of the Accounting Directive ; or
- Does ESMA consider that the disclosures required by item 9.2 are not covered by the management report ?

From our members' perspective and considering that all factors and events, including unusual or infrequent events, materially affecting the issuer's operations as well as all significant changes in the financial statement would be addressed in the management report, **the OFR should be fully aligned with the management report.**

To align the OFR with the Accounting Directive, the new drafting should be:

9 OPERATING AND FINANCIAL REVIEW

9.1 Financial condition

~~To the extent not covered elsewhere in the registration document provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.~~

and to the extent necessary for an understanding of the issuer's business as a whole, a fair review of the development and performance of the issuer's business and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business.

To the extent necessary for an understanding of the issuer's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business. The analysis shall, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

To the extent not covered elsewhere in the registration document and to the extent necessary for an understanding of the issuer's business as a whole, the review shall also give an indication of :

- a) the issuer's likely future development;
- b) activities in the field of research and development.

Item 9.1 may be satisfied through the inclusion of the management report referred to in Articles 19 and 29 of Directive 2013/34/EU.

9.2 Operating results

~~9.2.1 Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.~~

~~9.2.2 Where the historical financial information disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.~~

9.2.3 Moved to [11.11]

<ESMA_QUESTION_FAC_13>

- 14. : 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?

<ESMA_QUESTION_FAC_14>

In the consultation paper, ESMA is putting forward 3 options:

- **Option 1** : Require inclusion of any outstanding profit forecasts for equity issuance but remove the requirement for a report prepared by independent accountants or auditors ; the issuer would be required to provide clear, unambiguous forecasts presented in an explicit manner with full assumptions ; the assumptions should draw investors' attention to those uncertain factors which could materially change the outcome of the profit forecast.
- **Option 2** : Apply option 1 to both equity and non-equity issuances.
- **Option 3** : Maintain the status quo, but with the presumption of materiality for profit forecasts in the case of equity elevated to a legislative requirement i.e. all outstanding profit forecasts for equity issuances would have to be included in the prospectus along with a report prepared by independent accountants or auditors (and the report would also be required for retail debt where the issuer chose to include a profit forecast in the prospectus).

We would welcome the removal of the auditors' report. However we don't see the rationale for extending the scope to non-equity securities (option 2) and option 3 would not be an improvement. We would like to recall that, at the time being, there is no obligation to include outstanding forecasts in prospectuses but a presumption that profit forecasts would be material for equity prospectuses laid down in ESMA's Q&A on prospectus.

Regarding **option 1**, there is a discrepancy between the explanations given by ESMA in the consultation paper and the wording of annex 1 which reads:

*"Where an issuer chooses to include a new profit forecast or a new profit estimate, or where the issuer includes a previously published profit forecast or a previously published profit estimate pursuant to point 13.1, the profit forecast or estimate shall be clear and unambiguous and contain a statement setting out the **principal assumptions** upon which the issuer has based its forecast, or estimate.*

The forecast or estimate shall comply with the following principles:

- *there must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies;*
- *the assumptions must be reasonable, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast; and*
- *in the case of a forecast, the assumptions shall draw the investor's attention to those uncertain factors which could materially change the outcome of the forecast.*"

ESMA explains in the consultation paper that the trade-off is removing the auditors' report against, in particular, the disclosure by the issuer of the full assumptions. Annex 1 however maintains the current wording and refers to the disclosure of the principal assumptions. This discrepancy needs clarification but **if ESMA's objective is to require more detailed disclosures on the assumptions, issuers will not be in favour of option 1 either and would prefer maintaining a real *statu quo*** : maintaining the current disclosure regime in accordance with Regulation 809/2004.

Furthermore by nature profit forecasts are uncertain and their publication usually includes warnings to draw investors' attention on this uncertainty. Therefore **we do not consider that the new requirement proposed by ESMA to draw investors' attention to certain specific factors is appropriate** : the principal assumptions disclosed by the issuer can all have a material impact on the forecasts and it would not be relevant to prioritise these assumptions.

In conclusion we insist on the fact that **putting additional constraints on profit forecasts and estimates will scare away issuers and result in less issuers making public such information.**



<ESMA_QUESTION_FAC_14>

15. : Do you agree with the proposal to explain any ‘emphasis of matter’ identified in the audit report?

<ESMA_QUESTION_FAC_15>

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<ESMA_QUESTION_FAC_15>

16. : 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>

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<ESMA_QUESTION_FAC_16>

17. : 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>

ESMA is proposing to add a new item in annex 1 (16.5) regarding “*Potential material impacts on the corporate governance, including future changes in the board and committees composition (in so far as this has been already decided by the board and/or shareholders meeting)*”. If ESMA’s point is that the composition of the board and committees is essential information for investors to take an informed decision, then this new item 16.5 should be drafted this way : “Future changes in the board and committees composition (in so far as this has been already decided by the board and/or shareholders meeting).”

The fact that this new item mentions potential material impacts including future changes in the composition of the board, **raises questions about the potential other events that could have material impacts**. The current wording calls for clarification. Considering however that where a change in the corporate governance is considered material it would be disclosed anyway, **we don’t see the point of this new requirement and would not be in favour of burdening the schedules with such specific items**.

<ESMA_QUESTION_FAC_17>

18. : Do you agree with the proposal to clarify the requirement for restated financial information?

<ESMA_QUESTION_FAC_18>

We support ESMA’s proposal regarding the requirement for restated financial information. The wording of Regulation (EC) N°809/2004 was discussed in the early 2000s before the IFRS Regulation came into application in 2005. We therefore agree with ESMA’s interpretation that the requirement to have the last 2 years prepared and presented in a form consistent with the next financial statements was meant to cover the situation of issuers changing their accounting framework from national GAAP to IFRS.

<ESMA_QUESTION_FAC_18>

19. : 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>

Yes, we agree with ESMA’s proposal.

<ESMA_QUESTION_FAC_19>

20. : 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>

ESMA should also consider the following changes regarding the content of the share registration document:

- **Disclosure on strategy and objectives** is a new requirement ESMA proposes to introduce in the share registration document on the ground that information on the issuer's strategy and objectives are important – particularly in the case of IPO – and key for investors and analysts. We agree that these are key information for investors but **do not support the inclusion of this new specific item which would already be dealt with in the description of the issuers activities and markets.**
- **Disclosure regarding trend information and significant changes in the issuer's financial position** could be merged in one section and streamlined instead of having 2 separate sections
- **Disclosure regarding the Board and Senior management** could be reduced to [3] years.
- **Disclosure regarding material contract** (contracts not entered in the ordinary course of business) should be redrafted because the current wording is very confusing and give rise to diverging interpretations and implementations. Any contract material to the issuer's operations would be mentioned in other parts of the registration document (business overview, risk factors...).
- **Disclosure regarding the list of significant subsidiaries and information on holdings** could be removed since the information will be included in the notes of the financial statements.

<ESMA_QUESTION_FAC_20>

21. : 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>

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<ESMA_QUESTION_FAC_21>

22. : 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>

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<ESMA_QUESTION_FAC_22>

23. : 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>

ESMA explains that there is a discrepancy regarding the age of the information to be included in the capitalisation and indebtedness table between Regulation (EC) N°809/2004 according to which the statement

should be made “as of a date no earlier than 90 days prior to the date of the document” and ESMA’s recommendations which include a sentence stating that “*If any of the information is more than 90 days and there has been a material change since the last published financial information, the issuer should provide additional information to update those figures.*”

In order to harmonise diverging practices adopted by NCAs and issuers, ESMA proposes to follow the requirement of Regulation (EC) N°809/2004 that a capitalisation and indebtedness statement should be made at a date no earlier than 90 days prior to the date of the prospectus and to include a requirement to update the statement in the case of material changes within the 90 days.

We would like to remind ESMA that the data used in establishing the capitalisation and indebtedness table are derived from the issuer’s financial statements. Where there are significant changes impacting the issuer’s financial condition, these changes and their impacts would fall under the “significant changes in the issuer’s financial position” section. Therefore all information useful to assess the issuer’s capitalisation and indebtedness would be disclosed in the prospectus. **We do not support ESMA’s proposal to require to update the statement in the case of material changes within the 90 days.**

<ESMA_QUESTION_FAC_23>

24. : 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 changes proposed by ESMA correspond to the current practice in France. However, for the sake of clarity we would suggest using the singular form “shareholder” instead of the plural in the new wording of item 9.1 of section 9 of annex 2. As a matter of fact, the objective is to disclose the impact of the issuance for one shareholder holding 1% in the issuer’s equity.

<ESMA_QUESTION_FAC_24>

25. : Do you agree that the information solicited by item 9.2 is important for investors?

<ESMA_QUESTION_FAC_25>

We suggest redrafting the new 9.2 item as follows to clearly define the scope of this disclosure requirement:

“Where a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders) and existing shareholders will be diluted regardless of whether they subscribe for their entitlement, an indication of the dilution existing shareholders will experience shall also be presented on the basis that they do take up their entitlement (in addition to the situation in 9.1 where they do not).”

<ESMA_QUESTION_FAC_25>

26. : 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_26>

27. : 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>

28. : 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 agree with ESMA that a specific disclosure on principal investments would not be useful for investors to allow them to take an informed investment decision. Therefore **we support ESMA’s proposal to remove the disclosure requirement on principal investments but we do not consider that it should be replaced by a new disclosure requirement on the issuer’s funding structure and borrowing requirements**. Information on the funding structure and the borrowing requirements would be included in the financial statements.

<ESMA_QUESTION_FAC_28>

29. : 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>

30. : 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>

Yes, **we support ESMA’s proposal to remove the auditors’ report** on profit forecasts.

<ESMA_QUESTION_FAC_30>

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

<ESMA_QUESTION_FAC_31>

We welcome the proposal to remove the auditors’ report. However if ESMA’s objective is to require more detailed disclosures on the assumptions, issuers will be in favour of maintaining a real *statu quo* : maintaining the current disclosure regime in accordance with Regulation 809/2004 where there is no obligation to include profit forecasts or estimates but a presumption that they would be material in the case of an equity prospectus. **Please refer also to our answer to question 14.**

<ESMA_QUESTION_FAC_31>

32. : 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>

Yes, **we agree** with the deletion of the disclosure requirement related to board practices.

<ESMA_QUESTION_FAC_32>

33. : 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>

ESMA should also consider the following changes regarding the content of the retail debt and derivatives registration document:

- **Disclosure regarding trend information and significant changes in the issuer's financial position** could be merged in one section and streamlined instead of having 2 separate sections.
- **Disclosure regarding material contract** (contracts not entered in the ordinary course of business) should be redrafted because the current wording is very confusing and give rise to diverging interpretations and implementations. Any contract material to the issuer's operations would be mention in other parts of the registration document depending on its nature (business overview, risk factors...).
- Most public companies have a website (such an obligation is required by other pieces of EU legislation). Therefore, including a link to the website and making documents on display electronically available should not raise any issue. However, ESMA should consider the case where **the prospectus is filed by a holding company or a SPV which does not have any securities listed and therefore does not necessarily have a website**. The wording of item 5.1.4 of section 5 of Annex 1 should be amended to allow the issuer, in such a case, to provide the website's address of a third party (a subsidiary of the holding company for instance).
We are also concerned about ESMA's proposal to require a disclaimer that the information on the website does not form part of the prospectus. We don't see the added value of this disclaimer – circumstances under which an investor would consider that all the website is part of the prospectus are not clear – and we consider that it could even be confusing since documents incorporated by reference in the prospectus could be available on the issuer's website. **The proposal to introduce this disclaimer should be removed.**

<ESMA_QUESTION_FAC_33>

34. : 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_34>

35. : 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>

Yes, we agree with ESMA's proposal.

<ESMA_QUESTION_FAC_35>



36. : 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>

Please refer to our answer to question 33.

Regarding profit forecasts and estimates and the new wording of section 8 of annex 4, we also invite ESMA to refer to our answer to question 14.

<ESMA_QUESTION_FAC_36>

37. : 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>

38. : 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>

We support ESMA's proposal to reduce the disclosure requirement on taxation and to require a warning that the tax legislation may have an impact on the income received. But we do not support nor understand why a summary would be required when the investment entails a specific tax regime. This requirement is contradictory with the first objective to reduce disclosures on tax because when issuing securities, the issuer is financing its activities and should not be required to advise investors on tax issues. **The said summary should not be required.**

<ESMA_QUESTION_FAC_38>

39. : 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_39>

40. : 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>

41. : 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_41>

42. : 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>

43. : 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>

44. : 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>
ESMA is proposing to add a new disclosure requirement on the use of proceeds. There is currently no such requirement in Annex XIII of Regulation 809/2004 (Minimum Disclosure Requirements for the Securities Note for debt securities with a denomination per unit of at least EUR 100 000) and ESMA does not provide a clear rationale for this new requirement, although a use of proceeds section is included in annex III (securities note) of the Regulation. Wholesale debt and derivatives securities are placed with institutional investors and **the prospectus is only drafted for the admission** to trading on a regulated market. **Therefore we do not support the introduction of this new requirement.**
<ESMA_QUESTION_FAC_44>

45. : 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>

46. : 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>



47. : 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>

48. : 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>

No, we disagree with ESMA’s proposal to enhance the disclosure in relation to situations where investors may lose all or part of their investment. Article 7(5) of the Regulation introduces a new warning in the summary that “*the investor could lose all or part of the invested capital*” and, where the investor’s liability is not limited to the amount of the investment, another warning that “*the investor could lose more than the invested capital and the extent of such potential loss*”. A summary would always be required except for wholesale non-equity prospectuses. Therefore we consider that retail investors awareness would be sufficiently enhanced in such circumstances and we don’t consider that it is necessary to require an additional warning as proposed by ESMA in the risk factors section.

<ESMA_QUESTION_FAC_48>

49. : 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>

50. : 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>

51. : 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>

52. : 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>

53. : 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>

54. : 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>

55. : Do you agree with the proposal relating to the asset backed securities registration document?

<ESMA_QUESTION_FAC_55>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_55>

56. : 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>

57. : Do you agree with the proposal relating to the asset backed securities building block?

<ESMA_QUESTION_FAC_57>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_57>

58. : 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>

59. : 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>

60. : 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>

61. : 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>

62. : 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_62>

63. : 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>

64. : 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>

65. : Is greater alignment with the requirements of AIFMD necessary? If so, where?

<ESMA_QUESTION_FAC_65>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_65>

66. : 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>

67. : 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>

68. : 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>

69. : 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>

70. : 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>

71. : Do you agree that the URD disclosure requirements should be based on the share registration document plus additional disclosure items?

<ESMA_QUESTION_FAC_71>

We agree that the content of the URD should be based on the share registration document. We also agree with the specific additional disclosure requirements applicable to the URD regarding:

- whether the URD has been approved or just filed with the NCA and ;
- when the issuer decides to include its Annual/Half-yearly Financial Report, the responsibility statement required by TD and a cross-reference list.

<ESMA_QUESTION_FAC_71>

72. : Should the URD schedule contain any further disclosure requirements?

<ESMA_QUESTION_FAC_72>

Please refer to our answers to questions 20 regarding additional alleviations that ESMA could take into consideration when defining the URD schedule. In particular we consider that information required in the OFR would also be included in the management report defined by article 19 and 29 of the Accounting Directive. Therefore we consider that section 9 could be entirely removed from the share registration document and the URD.

<ESMA_QUESTION_FAC_72>

73. : 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>

74. : 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>

ESMA is proposing to require from issuers a **written confirmation of compliance with the publication obligations of the TD and MAR** in order to benefit from the secondary issuance regime. We strongly oppose the introduction of such a confirmation. The conditions to benefit from the secondary issuance regime are set in article 14 of the Regulation and do not include any written confirmation :

- issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue securities fungible;
- issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities;
- offeror of securities admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months.

We consider therefore that there is no legal basis for ESMA to require a written confirmation.

MAR Summary

Article 14.3 (c) of the Regulation requires the issuer to include in the simplified prospectus for secondary issuances “a concise summary of the relevant information disclosed under Regulation (EU) No 596/2014 over the 12 months prior to the approval of the prospectus”.

We agree with ESMA that this provision raises many questions and needs clarification. In this regard, **guidance from ESMA and NCAs in the form of guidelines** could be helpful. However we don't consider that implementing measures laid down at Level 2 would be useful : this is a new requirement and a pragmatic and practical approach will best serve issuers and investors.

Furthermore **Level 1 does not require** information in the summary to be presented in different categories nor does it make any reference to the “evolutions” of facts and figures, which could be interpreted as a new requirement to update the information.

Therefore we would be in favour of redrafting section 13 (Regulatory disclosures) of annex 18 in a more neutral and straightforward way :

~~The~~ **A** summary of the relevant information disclosed under Regulation (EU) No596/2014 featured in a simplified prospectus (the “MAR disclosure summary”) shall be presented in an easily analysable, concise and comprehensible form. It shall not replicate all information already published under Regulation (EU) No 596/2014 and shall be an intelligible summary of the last relevant information.

~~The MAR disclosure summary shall be presented in a limited number of categories depending on their topics.~~

~~The MAR disclosure summary shall provide a clear view of the evolutions and circumstances of facts and figures mentioned by the issuer. The summary shall not consist of simply a list of disclosures or links thereto and only MAR disclosures that are relevant to a particular offer shall be summarised.”~~

Share secondary issuance

We agree with ESMA's proposal to delete, from the share registration document for secondary issuance, disclosure requirements regarding **Organisational structure, the OFR, Environmental matters, Capital resources, Remuneration and benefits, Board practices and Employees**. As for the Additional information Section, ESMA is also proposing to remove this item with the exception of disclosures regarding:

- a) the amount and terms of existing convertible, exchangeable securities and warrants;
- b) the terms of acquisition rights and/or obligations over authorised but unissued capital or an undertaking to increase the capital;
- c) where there is more than one class of existing shares, the description of the rights, preferences and restrictions attaching to each class;
- d) the brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.

We consider that many of these items would also already public : some of these items have to be made public pursuant to the provisions of the Takeover bid Directive (Directive 2004/25/EC). This directive however is only applicable to issuers listed on regulated markets and companies whose securities are traded on SME Growth Markets will not have to comply with the same requirements. However we agree with ESMA's proposal not to remove these items considering that when these items are already public, the issuer will be able to incorporate them by reference as long as they meet the conditions of article 19 of the Regulation.

On the contrary, the **Dividend policy and Legal and arbitration proceedings sections could be removed** from the secondary issuance prospectus since the information required would already be public.

Please, refer also to our answers to the questions pertaining to the content of the share registration document regarding details about the **members of the administrative, management and supervisory bodies and senior management, profit forecasts and estimates**, the date at which information regarding the **major shareholders** has to be provided and **material contracts**.



Non-equity securities secondary issuance

Regarding profit forecasts, we consider that the non-equity regime should not be aligned with the equity regime : for both retail and wholesale debt issuances, there should not be any obligation to include in the prospectus outstanding profit forecasts previously published and still valid. Please refer to our answer to question 14 on this matter.

<ESMA_QUESTION_FAC_74>

75. : 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_75>

76. : Do you consider that item 9.3 (information on corporate governance) is necessary?

<ESMA_QUESTION_FAC_76>

Please refer to our answer to question 17.

<ESMA_QUESTION_FAC_76>

77. : Do you consider that information on material contracts is necessary for secondary issuance?

<ESMA_QUESTION_FAC_77>

We agree with ESMA that in the case of a secondary equity issuance to fund a large acquisition, the issuer could have entered into material contracts, including an acquisition agreement and agreements relating to bank debt funding. A significant acquisition and such agreements would likely be disclosed in the annual financial report, the risk factors section...or could constitute inside information which would be disclosed under MAR and summarised in the prospectus.

Therefore we don't see the point in maintaining a disclosure requirement regarding material contracts (not entered in the ordinary course of the issuer's business) in the secondary issuance prospectus.

<ESMA_QUESTION_FAC_77>

78. : 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>

79. : 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>



Regarding the requirement to update the working capital statement in case of material changes, please refer to our answer to Question 23.

<ESMA_QUESTION_FAC_79>

80. : 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_80>

81. : 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>