



Brussels, 28 September 2017

EACB Response to the ESMA the Consultation Paper on format and content of the prospectus General information about respondent

September 2017

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 210 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 79 million members and 749,000 employees and have a total average market share of about 20%.

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The voice of 4.050 local and retail banks, 79 million members, 210 million customers

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Name of the company / organisation	EACB
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

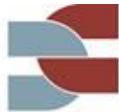
Introduction

Please make your introductory comments below, if any:

The European Association of co-operative Banks (EACB) strongly supports the objectives of improving certain requirements in order to alleviate the burden for companies, which draw up a prospectus (especially SMEs), and to make the prospectus a more valuable information tool for potential investors.

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In this context, we welcome ESMA's endeavours and the we are happy to provide some feedback to certain aspects of the relevant consultations. You will find our responses to some specific aspects below.



Q1 : 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?

No, the EACB members do not agree. In fact, we do support ESMA's proposal to acknowledge the standard practice of inserting a cover note. This is also in line with answer to question 9 of the Q&A's to the current Prospectus Directive (ESMA/2016/1674), according to which the issuer should be allowed to include in such a cover note general information about the issuer, the issue, the offer and its addressees, but the cover note may not be a substitute for the summary or the disclosure requirements under the Regulation. It could be clarified that the cover note may also contain general information about the programme.

However, a restriction to 3 pages seems unnecessary, in some cases even impossible. The proposed general requirements will limit the length of the cover note in a way that it will not be extensive. Considering also the different length of a prospectus and a base prospectus a limitation of 3 pages would only seem proportionate for a stand-alone prospectus, but not for base prospectuses. It would be more appropriate to allow for some flexibility regarding the length of the cover notes and not to impose strict limitations in that regard.

Q2 : 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.

Our thinking is that such a section would not seem necessary, if the prospectus is written and presented in an easily analysable, concise and comprehensible form, as mandated by Art. 6 (2) of the Prospectus Regulation. The overview of the contents and which information is contained in the various sections of the prospectus is already set out in the table of contents. A clearly structured table of contents will also guide investors to the different securities segregated in accordance with Art. 8 (7) of the Prospectus Regulation.

If nonetheless ESMA insisted in introducing such a requirement, this should only be limited to base prospectuses.

Q3 : 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?

The EACB members do not consider that there is a real need to have the location of risk factors in a prospectus prescribed in legislation. Setting out the location in legislation could potentially to a certain extent increase the comparability of different prospectuses. However, we feel that a market practice would evolve also without specific and prescriptive legislation being necessary in that regard.

If it were to be prescribed though, the current positioning of the risk factors sections should be kept, as this generally ensures a higher degree of investors' attention than positioning the risk factors at the end of the document. This said, it would seem appropriate in the base prospectus to disclose risks immediately after the general description of the programme.

Taking this opportunity, we would also like to emphasise that considerable effort should be invested when drafting the related Level 2 and 3 guidelines on the risk factors in order to help the issuers to determine what risks they can exclude from the prospectus. Moreover, the NCA's should be able to instruct the issuers in.

Q4 : Should the URD benefit from a more flexible order of information than a prospectus?

No, we do not consider this necessary. We do not see any obvious reason for treating the order of information differently in a URD than in other registration documents.

Q5 : Would a standalone and prominent use of proceeds section be welcome for investors?



No. In case of issuances by financial issuers (e.g banks) this section does not represent for investors a meaningful source of information as bank's activity is rather similar and standardised. In case of non financial issuers (IPO/right issues) it could in certain case be useful to give more details on the use of proceeds even if equity prospectuses already report a wide information in this paragraph. Where ESMA decides to keep the approach described in the consultation paper, we would suggest to lay out such disclosure requirements for financial issuers (e.g. banks) only when the proceeds are not used for their standardised purposes (i.e. if the reasons for the offer to the public or for admission to trading of the debt securities are "different from making profit and/or hedging certain risks (in accordance with 3.2 of Annex 5 (Retail Debt and Derivatives Securities Note)" or general funding purposes.

Q6 : 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?

We consider that a closed or exhaustive list of additional information is not necessary at all. Art. 8 (4) subpara. 2 of the PR already limits the possible content of final terms to information relating to the securities note. In this context, all relevant information on the securities, in particular their terms and conditions are referenced in Art. I (2)(a) of the draft technical advice. What remains as potential additional information is of technical nature, such as the items included in the current Annex XXI, relating to identification, distribution, and settlement of the specific securities. While this operational information is needed for the processing of the securities, it would not appear to be information crucial for the investment decision or in need of tight regulation. A statement in Art. I (2)(b) of the draft technical advice generally allowing other information relating to the securities note but not covered in the applicable securities note schedules would be sufficient.

A more flexible approach regarding additional information would also foster the market practice to use a prospectus as main source of information and declaration for the (general) consent to use the prospectus in order to fulfil the obligation of the issuer to consent to the use of its prospectus by a "written agreement" as set out in article 5 of the Prospectus Regulation, e.g. in cases, where securities are placed by financial intermediaries opportunistically without any formal distribution agreement with the issuer.

If a list of additional information items is considered indispensable, it should contain information on additional selling restrictions and information on ECB eligibility to the contents of Annex XXI. As it is difficult to think of all technical information items that might become relevant up front, it would be helpful to also include a point in the list that allows further information items similar in nature to the ones already on the list. Each such further item would in any case need to be approved by the competent authority of the base prospectus. It also seems that a list of additional information items may be more suited for a Level 3 measure, to allow for adaptation to new developments in between Level 2 cycles.

Q7 : Are the definitions proposed to be carried over to the new regime, and new definitions proposed adequate? Should any additional definitions be added?

In general we agree but we would have the following comments:

- The EACB considers that the definition of (d) DEBT SECURITIES should be revised in order to consider products like zero bonds etc. paying other redemption prices (e.g. issued at 80% and paid back at its repayment date at 90%).; It would also be better to say "at least the first issue price" or "at least the principal amount".
- We consider that also the definition of "OUTSTANDING PROFIT FORECAST" should be included (see page 36/ number 75).



- Moreover, we would advise to review the definition of "PROFIT ESTIMATE". According to ES-MA's answer to Question 2 in its Q&A No. 84 (ESMA/2016/1674) "quarter four reports [...] should be considered as interim financial information" and not as a profit estimate. There are, however, jurisdictions where a quarter 4 report does not exist. In such jurisdictions we understand that it is common practice to present figures for the fourth quarter on the annual press conference together with the figures for the whole year. We consider that the annual financial statement should therefore not be treated differently to a quarter 4 report.
- In addition, we would propose to define "wholesale debt" as used in the title of proposed Annex 4. Such a definition should relate to both options of Art. 13 (1) subpara. 3 (a) of the Prospectus Regulation, i.e. to a minimum denomination of EUR 100 000 and to trading on a regulated market to which only qualified investors can have access.
- Moreover, we note that Art. I (2) of the technical advice makes reference to the form of final terms. We believe that this paragraph should instead define the contents of the final terms themselves, i.e. it should talk about the contents of the completed "final terms relating to a base prospectus", not about the uncompleted "form of final terms to be attached to a base prospectus". For transparency reasons (retail investors) the form of Final terms shall allow to repeat information of category A..

Q8 : 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).>

Yes, in general, new disclosure requirements will require more work from issuers, underwriters, and their advisors for each new prospectus, resulting in higher cost. The removal of disclosure requirements on the other hand will alleviate (some) the burden of issuers.

Q9 : Do you agree that the scope of NCA approval should be included in the cover note? If not, please provide your reasoning.

Yes, the EACB members consider that in principle this would indeed make sense. However, in certain cases, it could be considered more appropriate to include this in the second page (inside page of the cover) of the share registration document, as the cover page is quite often already full of language critical from the perspective of the emission.

Q10 : 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?

Yes, the EACB members agree, as this information will be reported in the registration document and in the URD, if the latter is made available by the issuer. Indeed, we consider that minimising unnecessary duplication of information benefits also investors.

**Q11 : 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?**

In principle, the EACB does not oppose the requirement to disclose the website but before introducing a strict requirement the following points should be considered:

The purpose of websites is to deliver information. The prospectus, including all information incorporated by reference, should, however, already in itself contain all material information on the issuer. As the proposed



disclaimer indicates, adding the issuer's website address may raise doubts as to whether additional information found on the website inadvertently becomes part of the prospectus.

Indeed, 'documents on display' should be made electronically available (i.e. on the issuer's website). This appears to be an increasingly widespread market practice anyway.

Moreover, in certain cases, requirements may imply material additional costs to issuers, in particularly to those issuers who do not have a website at all, e.g. Special Purpose Vehicles.

Q12 : Do you consider that a description of material past investments is necessary information for the purpose of the prospectus?

No, the EACB does not consider this necessary. The description of material past investments does not seem to be always considerable in case of financial issuers. When this information is considerable, is already disclosed in the financial statement and, if needed, in the supplement of the prospectus. A separate section seems redundant.

Q13 : 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?

In principle, yes. However, the alignment should also work the other way around, i.e. the management report should include the information required for the OFR going forward (so that both documents are aligned as it is the practice in, for example, the U.S.).

Q14 : 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?

The EACB members do not agree with this proposal. In particular, in case of bond base prospectuses this would require daily monitoring and supplements, if changing. Indeed, in case of non equity securities we disagree with ESMA's proposal to require outstanding profit forecasts would be included in the prospectus as this information is not considerable meaningful for an investor in debt instruments who can better support an investment decision with a credit rating instead. Furthermore this information is not disclosed in financial statement and could not be submitted to audit report. Requiring this information risks to introduce a misalignment with the information disclosed in the prospectus/supplement and, consequently, a potential misunderstanding for the investors.

In addition, as we have stated above, it is important to define "Outstanding Profit Forecasts".

We would also like to note that there is an inconsistency within this Consultation Paper relating to the requirement of profit forecast (please check/compare: page 35 (number 71-76); page 46 (13.1.); page 76, first line (Mandatory inclusion); page 80 (9.1.9)). This inconsistency needs to be rectified.

In case of equity issuances we agree with the ESMA proposal to delete the obligation to include an accountant's or an auditor's report.

Q15 : Do you agree with the proposal to explain any 'emphasis of matter' identified in the audit report?

No response for the moment.

Q16 : 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?



Yes, the EACB members consider that it would make sense to mandatorily disclose the size of share-holdings pre and post issuance where a major shareholder is selling down- and normally this will not be difficult to perform.

Q17 : Do you consider that the new requirement to disclose potential material impacts on the corporate governance would provide valuable information to investors?

No response for the moment

Q18 : Do you agree with the proposal to clarify the requirement for restated financial information?

No response for the moment.

Q19 : 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?

No response for the moment.

Q20 : 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.

No response for the moment.

Q21 : 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).

No response for the moment.

Q22 : Do you consider that the requirement for a working capital statement should be different in the case of credit institutions and insurance companies?

No response for the moment.

Q23 : 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.

No response for the moment.

Q24 : Do you consider the changes to dilution requirements would be helpful to investors at the same time as being feasible to provide for issuers?

No response for the moment.

Q25 : Do you agree that the information solicited by item 9.2 is important for investors?

No response for the moment.

Q26 : 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.

No response for the moment.



Q27 : 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).

No response for the moment.

Q28 : 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?

We agree with the proposed deletion of the disclosure on principal investments makes sense. It typically only led to generalised descriptions of investment volume and did not seem to be material for non-equity investors. We also note that, if not deleted, it would constitute a new and additional requirement for bank issuers who currently use Annex XI.

At the same time, we are not convinced that is useful to add a new requirement for information on the changes in the issuer's borrowing and funding structure during the last financial year (new Item 5.1.7 (a)). The requirements in the newly added section 5.1.7 are quite generic and therefore it is hard to assess the impact. In order to give an appropriate answer to this question, the disclosure requirements that the issuer needs to fulfil in that regard need to be further elaborated and enumerated in a more precise way. How-ever, our initial assessment is that his information, should it become of interest to a non-equity investor, is anyhow available in the annual financial statements included in the prospectus. Being obliged to dis-close information on the expected financing of the issuer's activities (new Item 5.1.7 (b)) on the other hand appears to be sensitive and disadvantageous to the conduct of business of the issuer.

Q29 : 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?

There is no general regulatory requirement to obtain or to have a credit rating in place. Especially smaller issuers but also issuers from outside the financial sector do not always have a credit rating in place. Therefore, in any case it should not become mandatory. This could also lead to an unequal treatment of smaller and bigger issuers.

At the same time, as different rating agencies have different rating methodologies and different type of ratings, the comparison of securities based on the rating of the issuer is limited and in certain cases might even be misleading.

Comprehensive and more comparable information can already be found in the description and risk fac-tors of the issuer.

Therefore, we consider that this requirement should be deleted.

Q30 : 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?

Yes, the EAC agrees. Given the wide interpretation of what constitutes a profit forecast or estimate, it has proven difficult to receive such reports. Please see our response to Q 14. In any case, we believe that without the requirement for a report by auditors, issuers have little incentive not to include a profit forecast or estimate where it provides material information to non-equity investors.

Q31 : Do you agree with the proposal that outstanding profit forecasts and estimates should be included in the registration document?

No, the EACB does not agree. Please see our response to Q 30 above.



Q32 : 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?

Yes, the EACB agrees, as this would not significantly affect the informative value of the prospectus for investors. In any case, should information on board practices or the issuer's audit committee become material for non-equity investors in a specific case, its inclusion is ensured on the basis of Art. 6 (1) PR.

Q33 : 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.

No response for the moment.

Q34 : 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).

No response for the moment.

Q35 : 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?

No response for the moment.

Q36 : 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.

No response for the moment.

Q37 : 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).

No response for the moment.

Q38 : 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?

Yes, the EACB members agree. Due to the nature of the information included in prospectuses, it is not possible to provide investors with all material information needed to evaluate their individual tax effects following from an acquisition of the respective securities. As stated prominently in prospectus tax sections, investors always need the expertise of accountants or tax lawyers to evaluate their specific fiscal situation. Therefore, the proposed approach makes sense, does not significantly affect the informative value of the prospectus for investors while significantly eases the burden of issuers.

Q39 : 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.



We understand that this requirement applies exclusively in case a representative of the note holders has been appointed and, therefore, that it has no impact on issuances of securities where a representative has not been appointed. If our understanding is correct, we have no comments to the amendment proposed.

But, we disagree with the requirement to publish such type of contracts on the web site because they are usually included in more general contracts regulating also other activities. We agree to specify that the public may have free access to the contracts (as indicated in the Regulation).

Q40 : 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)?

No. The EACB members do not consider necessary to add implicit costs in the price. This issue is already addressed by MiFID II within the client advice rules and within the PRIIPs Regulation.

Q41 : 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?

Yes, the EACB agrees.

Q42 : 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.

Yes, we would have the following comments:

- Item 4.1 / page 101: the term "type" of securities is unclear and not defined. Re-categorising this item to Category A would make a clarification of the term more pressing. As defining the term appears difficult, we would recommend to retain the slightly higher flexibility of Category B, i.e. to decide what is meant by "type" in the context of a specific approval procedure.

- In the proposed new item after 7. 3. "NEW"/page 106, we would suggest adding the following sentence at the end: "All such information can either be presented within a single block, or be included in the different information items which it refers to." Specifically allowing both options would provide the required flexibility for including otherwise missing KID information needed due to the lack of a coherent approach between the information requirements for prospectuses and KIDs. This lack of coherence gets obvious particularly in the information items newly developed for KID purposes, but not required for prospectuses, such as the SRI, performance scenarios and the RIY. In order to avoid very difficult discussions with authorities in practice about where particular KID points should appear in a prospectus, it should always be possible to present "missing" KID information in a single block."

- Point 4.7. d) in page 102 : The indication of where information about the past and the future performance of the underlying and its volatility can be obtained by electronic means may require a licence and shall be deleted. The same stands true for the proposal 4.2.2./ Index. in page 118.

Q43 : 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).

For an issuer of structured notes, we feel that the biggest issue is that, due to the current requirements for the contents and format of base prospectuses, base prospectuses have become massive and complicated documents and thus, we hoped that the ESMA would have made more comprehensive amendments to the current schedules to fix this problem. Although the ESMA proposes many changes to the current schedules, these changes are likely to have an incremental impact on the readability of prospectuses in the future.



Q44 : 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.

No response for the moment.

Q45 : 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).

No response for the moment.

Q46 : Do you agree with the proposal to make derivative disclosures a building block?

No response for the moment.

Q47 : 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.

No, the EACB does not agree with this proposal. This reclassification hinders to describe instruments with different repayment structures (in cash or in securities) in one base prospectus. Hence, the proposal would result in additional prospectuses and therefore increase costs. The current classification of the how the return on derivatives takes place (Cat B) allows the issuers of structured notes to offer investors structured notes, which are tailored on the basis of the then-relevant market situation. The issuers are able to choose the applicable formulas and components from the base prospectus and complement these with the issue-specific information by way of the final terms. The structuring may also be based on the specific needs of the relevant investor.

If we understand the proposal correctly, the relevant proposed reclassification means in practice that the issuer should disclose the different formulas to calculate the yield and the issue-specific components thereunder in the base prospectus and it would not be possible to use the final terms to complement the information disclosed in the base prospectus.

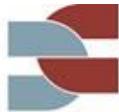
We suggest that this proposal is reconsidered. It would make it very hard for the issuers to offer investors instruments such as structured notes which are tailored for the then-current market situation under base prospectuses and this would likely lead to reduction in product range.

Moreover, regarding item 4.2.2, where the underlying is an index, the classification for "B" should be changed to "C", as providing information in the Base Prospectus as required for Category B would not be possible from a practical perspective for index descriptions.

In addition, the differentiation on the basis of underlying is problematic as any other classification than "C" would not be possible from a practical perspective.

Q48 : 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?

No, we do not consider that this information should be included in the Prospectus. The requirement for the issuer to disclose information on the issuer of the security or reference obligation under 4.2.2. (ii) (c) will require substantial extra work from the issuer. At the same time it would such a requirement would not help provide the potential investor with the most detailed and accurate information about the underlying security. Such information is generally available on the website of the issuer of the underlying security, and this info will also be updated regularly.



EACB members are not aware of any requests by any client to include such detailed information directly in the prospectus. What is frequently requested is where information on the underlying can be obtained and issuers are already required to disclose details about this.

In our opinion it should be in the interest of the investor to provide him/her with the (1) underlying security respective reference obligation, (2) the ISIN, (3) the name of the issuer of the underlying, and (4) the address(es) of the electronic system(s), where information on the underlying as well as business activities/investment policies can be found.

If the proposal is sustained, it should be more clearly specified what information the issuer should disclose on the issuer of the security or reference obligation under 4.2.2. (ii) (c).

This information has also been classified as Cat A information which means that it should be included also in the base prospectus. This requirement reduces the possibilities to issue such notes under base prospectuses. It should be category "C" information instead in order to allow flexibility for issuers to issue several securities with the only difference in regard of the underlying of such security. This kind of de facto product intervention matches neither with the goals of the prospectus regulation nor the mandate of ESMA regarding Level II.

We also consider that it is currently unclear what "able to ascertain" means and what kind of measures it requires from the issuer. We are also concerned about liability issues. Since the issuer is responsible for the information included in the prospectus, it should be clearly stated that the information included in the prospectus has been published by the issuer of the security or reference obligation and the issuer is under no obligation to carry out any independent verification. ESMA's approach also raises follow-up questions about "Which markets are regulated markets in third countries?" and "Extent of the description of the issuer of the underlying?".

Moreover, we see a very high risk this proposal results in lengthy and additional prospectuses and therefore contradicts the objectives of the regulation.

Q49 : 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?

Yes, therefore we disagree with the proposal to align the information about the reference entities for credit-linked notes to those applying for asset-backed securities (ABS). In our view, there are fundamental differences between credit linked notes and asset-backed securities, in particular since the payments under asset-backed securities are linked to specific assets, whereas payments under credit linked notes are linked to the (non-) occurrence of credit event(s) in relation to reference entities. Moreover, ABS are usually issued by SPVs (which are in turn funded by the underlying assets) whereas credit-linked notes are issued by banks.

Q50 : 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.

No response for the moment.



Q51 : 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).

We believe that the new let. c) in paragraph 4.2.2 of Annex 7 should be deleted. Issuer of securities should not assume responsibility for information relating to the issuer of the underlying. Such new information requirement exposes the issuer of securities to a very broad liability risk, which is difficult to forecast. We do not see how this proposed requirement can be justified by investor benefits. Therefore, we believe that the proposed amendment would pose (potential very high) additional legal risks and costs for issuers, relating to such liabilities.

Q52 : Do you agree with the proposed amendments to the annex relating to the underlying share?
No response for the moment.

Q53 : 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).

No response for the moment.

Q54 : 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)?
No response for the moment.

Q55 : Do you agree with the proposal relating to the asset backed securities registration document?
No response for the moment.

Q56 : 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).

No response for the moment.

Q57 : Do you agree with the proposal relating to the asset backed securities building block?
No response for the moment.

Q58 : Do you agree with the proposal to allow reduced disclosure where the securities comprising the assets are listed on an SME Growth Market?
No response for the moment.

Q59 : 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).

No response for the moment.



Q60 : 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.

No response for the moment.

Q61 : Do you agree that the additional building block for guarantees does not need to change other than the minor amendments proposed by ESMA?

No response for the moment.

Q62 : 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.

No response for the moment.

Q63 : 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).

No response for the moment.

Q64 : Do you agree with the changes proposed by ESMA for collective investment undertakings?

No response for the moment.

Q65 : Is greater alignment with the requirements of AIFMD necessary? If so, where?

No response for the moment.

Q66 : 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?

No response for the moment.

Q67 : 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).

No response for the moment.

Q68 : Do you consider that any changes are required to the existing regime for convertible and exchangeable securities? If so, please specify.

No response for the moment.

Q69 : Do you consider that any other types of specialist issuers which should be added? If so, please specify.

No response for the moment.

Q70 : 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?

No response for the moment.



Q71 : Do you agree that the URD disclosure requirements should be based on the share registration document plus additional disclosure items?

No response for the moment.

Q72 : Should the URD schedule contain any further disclosure requirements?

No response for the moment.

Q73 : 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).

No response for the moment.

Q74 : 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.

No response for the moment.

Q75 : Should secondary disclosure differ depending on whether the issuer is listed on a regulated market or on an SME Growth Market?

No response for the moment.

Q76 : Do you consider that item 9.3 (information on corporate governance) is necessary?

No response for the moment.

Q77 : Do you consider that information on material contracts is necessary for secondary issuance?

No response for the moment.

Q78 : 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).

No response for the moment.

Q79 : 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.

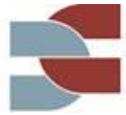
No response for the moment.

Q80 : Is a single securities note, separated by security type, clear or would it be preferable to have multiple securities note schedules?

No response for the moment.

Q81 : 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).

No response for the moment.



Contact:

The EACB trusts that its comments will be taken into account.

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