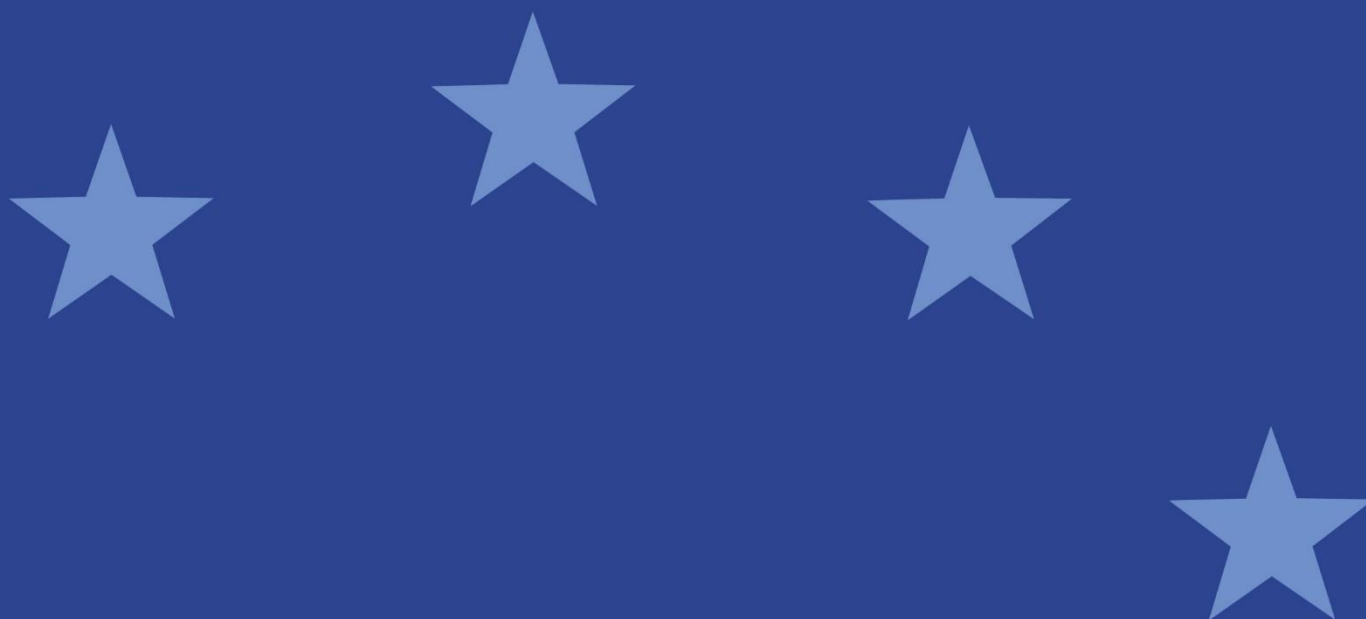


Consultation Paper

Draft technical advice 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:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all responses received by 28 September 2017.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the form “Response form_Consultation Paper on format and content”, 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’).
- 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.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_FAC_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_FAC_ABCD_RESPONSEFORM.
- 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 confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.



Data protection

Information on data protection can be found at www.esma.europa.eu 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.

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Acronyms and Definitions

Accounting Directive	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
Audit Directive	Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC
Audit Regulation	Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC
Bank Recovery and Resolution Directive / BRRD	Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council
CESR	Committee of European Securities Regulators
Commission	European Commission
Commission Regulation	Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements

CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
Equivalent third country markets	Markets which have been deemed equivalent by the European Commission in accordance with the requirements set out in Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
International Financial Reporting standards / IFRS	International Financial Reporting Standards (IFRS) as adopted in the EU pursuant to Regulation (EC) No 1606/2002 on the application of international accounting standards
IPO	Initial Public Offer
ISIN	International Securities Identification Number
LEI	Legal Entity Identifier
Market Abuse Regulation / MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFID II delegated regulation	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions

	for investment firms and defined terms for the purposes of that Directive
M&A	Memorandum and Articles of Association
NCA	National Competent Authority
Omnibus II Directive	Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)
PRIIPs Regulation	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)
Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC
RTS	Regulatory Technical Standards
Second Commission Delegated Regulation	Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004
SMEs	Small and Medium-sized Enterprises
Takeover Bids Directive	Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
Transparency Directive / TD	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation

to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013)

URD

Universal Registration Document

1. Executive summary

Reasons for publication

The Prospectus Regulation was published in the Official Journal of the European Union on 30 June 2017 and will enter into force 20 days after its publication. The Regulation requires the European Commission to adopt delegated acts in a number of areas within 18 months of its entry into force.

On 28 February 2017, ESMA received a request for technical advice from the European Commission, including in relation to the format and content of the prospectus, base prospectus and final terms. The request for technical advice also includes the minimum information required for the universal registration document and the reduced information requirements for secondary issuances.

Content

This Consultation Paper presents a draft version of ESMA's technical advice.

Section 2 addresses the background and mandate for ESMA's work. The section explains that the mandate is divided into two distinct phases and goes on to describe the part of the mandate addressed in this Consultation Paper. The section furthermore indicates the principles which the European Commission has invited ESMA to take into account when developing the technical advice and the means by which the advice should be given.

Section 3 addresses the format of the prospectus, base prospectus and final terms, including the various schedules that make up the prospectus. According to the Prospectus Regulation, the prospectus should continue to be made up of a registration document, a securities note and a summary (where applicable) and the Regulation also addresses the base prospectus and final terms. As Level 1 retains the existing structure of the prospectus, the starting point of the consideration of the prospectus, and its component elements in Section 3 is the existing schedules under Commission Regulation (EC) No 809/2004.

Furthermore, Section 3 discusses the order of items in the prospectus and, in order to acknowledge market practice, consideration is given to the cover page and its contents. Additionally, the format of the new universal registration document is addressed in Section 3.

ESMA's draft technical advice is presented in Section 3.8 and is followed by questions for the consideration of stakeholders.

Section 4 covers the detailed content of the prospectus and highlights proposed changes to the schedules included in Commission Regulation (EC) No 809/2004 as well as to their content. Where possible, ESMA proposes alleviations to the existing disclosure requirements, particularly for secondary issuances. For each schedule, key differences as compared to the existing disclosure requirements are highlighted and questions are included for the consideration of stakeholders.

Section 5 sets out ESMA's proposal for the content of the new universal registration document. The universal registration document is intended to be used by frequent issuers in order to

provide a 'one-stop shop' for publication of annual and half-yearly financial reports under Directive 2004/109/EC and publication of a registration document within the prospectus regime. As Level 1 requires the universal registration document to be fit for both equity and non-equity issuance, ESMA considers the requirements that such a registration document would need and proposes that it should consist of the share registration document disclosure with additional disclosure relating to the publication of annual and half-yearly financial reports. Questions for stakeholders are presented at the end of Section 5.

Section 6 contains ESMA's proposal for the secondary issuance regime. Consideration is given to the information required for the summary, for the registration document and for the securities note. In its mandate, the European Commission requests ESMA to advise on alleviated disclosure for secondary issuances. On this basis, ESMA develops an alleviated registration document whereas no dedicated securities note for secondary issuances is presented as ESMA is of the view that no meaningful alleviation can be made in this area. Questions for stakeholders on ESMA's proposals are presented at the end of Section 6.

Finally, the annexes set out the full text of the European Commission's request for ESMA to provide it with technical advice (Annex I), a table of differences between the existing schedules of Commission Regulation (EC) No 809/2004 and ESMA's proposals for new schedules (Annex II) and questions for stakeholder consideration presented throughout the Consultation Paper (Annex III).

Next steps

When finalising its technical advice to the European Commission, ESMA will consider all feedback received in relation to this Consultation Paper by 28 September 2017. A Final Report containing a summary of all consultation responses and a final version of ESMA's technical advice will be published on ESMA's website in Q1 of 2018.

2. Introduction

2.1. Background

1. Regulation (EU) 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ('the Prospectus Regulation') was published in the Official Journal of the European Union on 30 June 2017.
2. As set out in the Prospectus Regulation, the European Commission ('the Commission') is obliged to adopt delegated acts 18 months after the date of entry into force of the regulation. The Commission has requested ESMA to deliver its technical advice by 31 March 2017 (Part I) and 31 August 2018 (Part II).

2.2. Mandate

3. On 28 February 2017 ESMA received a formal request from the Commission to provide technical advice to the Commission on possible delegated acts concerning the Prospectus Regulation (the 'mandate'¹, full text presented in Annex I).
4. The mandate received was structured in two parts, with part I (the focus of this and related consultation papers) focusing on the format and content of prospectuses, including the EU Growth prospectus, together with the criteria for scrutiny and review of prospectuses and the procedures for their approval. Part II of the mandate, which has an extended deadline for delivery, focuses on documents containing minimum information describing a takeover by way of an exchange offer, a merger or a division together with a request for advice regarding the general equivalence criteria that should be applied in respect of the information requirements imposed by third countries.
5. For the purposes of this consultation, and specifically Part I of the mandate, ESMA is requested to provide technical advice for the following delegated acts:
 - a) The measures specifying the criteria for the scrutiny of the universal registration document ('the URD') and its amendments, and the procedures for the approval, filing and review of those documents as well as the conditions where the status of frequent issuer is lost (Article 9(14) of the Prospectus Regulation);
 - b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Prospectus Regulation);

¹ [Commission mandate to ESMA for technical advice](#)

- c) The measures setting out the schedule defining the minimum information contained in the URD (Article 13(2) of the Prospectus Regulation);
 - d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime referred to in Article 14(1) for secondary issuances (Article 14(3) of the Prospectus Regulation);
 - e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus referred to in Article 15(1), as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Prospectus Regulation);
 - f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Prospectus Regulation).
6. This Consultation Paper focuses on the advice requested in paragraphs 5(b), 5(c) and 5(d). Parallel Consultation Papers, covering the same consultation period, have been published in respect of the advice sought under the remaining subsections of paragraph 5².
7. The mandate also sets out a number of principles which ESMA is invited to take account of when developing its advice. ESMA has been asked to provide advice that takes into account the Lamfalussy principles and the need to ensure the proper functioning of the internal market and improve the conditions of its functioning, particularly as regards the financial markets and a high level of investor protection. The Commission also asks that the advice be clear, coherent, comprehensive and proportional. The technical advice should furthermore be justified by evidence, including a cost-benefit analysis where a range of technical options are available.

3. Draft technical advice on the format of the prospectus, the base prospectus and the final terms

3.1. Scope and focus

8. Section 3.1. of the Commission mandate invites ESMA to provide advice on the format of the prospectus and the schedules defining the specific information which must be disclosed in a prospectus. Furthermore, according to the mandate, ESMA is invited to follow the “building block approach” established by the Commission Regulation, distinguishing between the schedules for registration documents and those for securities notes, as well as any other appropriate building blocks.

² Please refer to ESMA31-62-649 and ESMA31-62-650, both available on ESMA's website.

9. The mandate requires that, when establishing the disclosure requirements for the various schedules, account should be taken of the different information requirements of investors in equity securities as compared to investors in non-equity securities; the types and characteristics of offers and admission to trading on a regulated market of non-equity securities; the format and information required in base prospectuses; the public nature of the issuer and the activities of the issuer.
10. ESMA considers that the basic format of the prospectus – registration document, securities note and summary – is already established at Level 1. Furthermore, in order to make the process of advising on the contents of schedules for the new regime more efficient, ESMA has used the existing schedules of the Commission Regulation as the starting point for its work.
11. ESMA is of the view that the review of the prospectus regime is an opportunity to examine the existing schedules, both in terms of number and content, in order to simplify the process of constructing a prospectus for issuers, thereby reducing the administrative burden in line with the objectives of the revision of the Prospectus Directive and the broader Capital Markets Union Action Plan³. ESMA has therefore carried out a review of the necessity of all existing schedules as well as a review of the content of each. ESMA considers that, particularly in light of a revised approach to SMEs, secondary issuance and the summary, there is scope for a reduction in the number of annexes and for a streamlining of the combinations of such required to assemble a prospectus without any diminution of investor protection.
12. In addition to the mechanics involved in combining schedules or building blocks to form the complete set of disclosure requirements for a particular type of issuance, the revision of the current Commission Regulation also provides the opportunity to address the format of the prospectus document itself and the order in which the disclosure requirements appear therein.

3.2. General considerations

13. Articles 24 to 26 of the existing Commission Regulation set out the provisions regarding the format and content of the prospectus, base prospectus and final terms. Having reviewed the contents of this Regulation against the new Prospectus Regulation, ESMA is of the view that some of the existing requirements will have to be carried over to Level 2 in the new regime. However, it is necessary to revisit the existing provisions regarding the order of information in a prospectus to determine whether they are still fit for purpose and to what extent they could be improved.
14. Article 7 of the new Prospectus Regulation sets out detailed requirements for the new prospectus summary which will supersede existing Article 24 and the detailed provisions on summary content set out in Annex XXII of the Commission Regulation. ESMA therefore considers that there is no need to address this issue in further detail at Level 2, with the exception of an elaboration through regulatory technical standards ('RTS') of

³ http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf

the historical key financial information and a small number of provisions that in ESMA's view need to be carried over from the Commission Regulation (please see the proposed Article 11 below). The specific summary for use with the EU Growth prospectus is discussed in a separate Consultation Paper (ESMA31-62-649).

3.3. Constructing the prospectus

The registration document

15. In order to reduce the level of duplication that exists across the existing annexes in the Commission Regulation, and in light of the new regimes for secondary issuance and the EU Growth prospectus, ESMA is of the view that it would be both possible and beneficial to reduce the number of disclosure annexes. ESMA proposes, however, that the general method of constructing prospectuses should largely remain the same from a preparer's point of view.
16. For equity securities, ESMA's starting point for the construction of the annexes is the disclosure that is required for a full issuance or IPO. The disclosure requirements established for this schedule will then form the basis for disclosure requirements for depositary receipt issuance⁴, closed-end funds and secondary equity issuance. These requirements also form the basis for the URD schedule.
17. For non-equity securities, while there will be different annexes for retail and wholesale securities / qualified investor issuance (hereinafter referred to as wholesale), vanilla debt will be the focus of the core disclosure.

The securities note

18. A registration document annex will be combined with an annex covering securities note requirements, which should be broadly similar for both primary and secondary issuance. Where identical requirements are contained in the registration document and securities note schedules for a particular issuance, and the prospectus is prepared as a single document, ESMA suggests that the requirements should be combined into a single section.

Incorporation by reference

19. ESMA welcomes the new provisions contained in the Prospectus Regulation as regards incorporation by reference and specifically the expansion of the type of information that can be incorporated beyond information that has been previously approved. ESMA considers it helpful that there is now clarity on the ability of first-time, and non-listed, issuers to incorporate information by reference. This should assist in reducing the cost of prospectus production for issuers and their advisors while at the same time ensuring that investors' needs are catered for through the provision of sufficient information for their investment decision. Although Level 1 provides ESMA with the possibility of drafting

⁴ While Recital 12 of the current Prospectus Directive states that depositary receipts fall within the definition of non-equity securities, for the purpose of disclosure requirements, ESMA has continued to model these on the requirements for equity.

RTS to expand the list of documents which can be incorporated by reference according to the Prospectus Regulation, ESMA considers that at present the list of documents is sufficient. However, the possibility to update this list going forward provides an opportunity to adapt the legislation to any change that may arise in the coming years.

3.4. Order of information in the prospectus

20. The format of the prospectus is important not only from the issuer's point of view but also from that of the investor. It is therefore also important to consider what improvements could be made to the format of the prospectus, and particularly the base prospectus, in order to make the document more comprehensible and accessible (for further discussion of the comprehensibility of the prospectus, please see the separate consultation paper on this issue; ESMA31-62-650).
21. The provisions set out below relating to the order of the information in a prospectus do not apply to the EU Growth prospectus for which there is a specific standardised regime, further details of which are set out in a separate consultation paper (ESMA31-62-649).

Cover note

22. Looking at the order of information in the existing regime, the current provisions neglect the fact that a prospectus will almost invariably include an introductory cover note, often several pages long, with some high level information (name of the issuer, amount of the offer etc.). At present, guidance as to the possibility to include such a cover page is provided at Level 3 in the form of a Q&A⁵. ESMA is of the view that the format requirements under the new Prospectus Regulation should reflect the fact that it is standard practice to include a cover note and that prospectuses do not start with a table of contents. ESMA therefore proposes that a cover note should be mandatory and that a formal acknowledgement of this be made at Level 2. This acknowledgement, however, should not be interpreted as an endorsement of the contents of such a note.
23. Without setting precise rules regarding the content of the cover note, ESMA proposes that the cover note should be written in plain language and avoid the use of legal disclaimers. In addition, ESMA believes that the cover note should clearly set out which actions national competent authorities ('NCAs') have taken in terms of their scrutiny of the prospectus; a new disclosure requirement is proposed below in this regard. In the case of URDs, it should also be made clear in the cover note whether or not such documents have been approved prior to publication. Lastly, ESMA considers that the cover note should be limited to three pages as this strikes a balance between the needs of issuers and investors.

Risk factors

24. While acknowledging the importance of risk factor disclosure in terms of investor protection, ESMA is of the view that it is important to consider whether the risks associated with the issuer/the securities are best disclosed to potential investors before

⁵ Q&A 9, [ESMA/2016/1674](#)

they have had the opportunity to read details of the issuer or the offer. If the investor does not possess knowledge of the issuer or the offer, risk factors may not be as pertinent or comprehensible as they could have been following the acquisition of knowledge regarding the issuer/offer. Conversely, placing risk factors at the end of the prospectus, or forcing issuers to split related information, may lead to a situation where the risks are not read by prospective investors or where the prospectus becomes less readable. This could for example be the case where information related to an overview of the issuer's business is separated from information related to the issuer's organisational structure. Lastly, the placement of risk factors must also be considered in light of whether there is a requirement for a summary.

25. Based on these considerations, ESMA proposes that risk factor disclosure be made after the summary or, in case of a base prospectus, after the general description of the programme. The required contents of the risk factors section will be further elaborated through ESMA guidelines.

Use of proceeds (prospectus/base prospectus/securities note)

26. ESMA considers that clarity as to the use of proceeds from any particular issuance is of paramount importance to investors and therefore should have a dedicated section of a prospectus. This section of the prospectus should be given increased prominence and should provide clear information on the issuer's spending intent to prospective investors; to this end, issuers should endeavour to give a precise breakdown of how funds will be employed.

Other information included in the schedules and building blocks according to which the prospectus is drawn up

27. The current regime permits issuers to disclose information required by the schedules in an order that suits them, with an option for NCAs to require a cross reference list where the order of the information contained in the prospectus does not align with the order of disclosure items contained in the schedule/building block. This discretion allows issuers the possibility of disclosing information in an order and format that can be adapted depending on the type of issuer and securities and for the most part works well. While some level of comparability may be lost, ESMA considers that this is outweighed by the enhanced flexibility and readability that can come with the issuer having the freedom to structure its 'story'. ESMA considers that, with the exception of broad parameters for the order of information further set out above, the status quo, including the ability of NCAs to require a cross reference list, should be maintained and provisions equivalent to Articles 25(3) and (4) be included at Level 2.

3.5. Base prospectus and final terms

Base prospectus

28. In terms of the format of the base prospectus, it is worth noting that with the new option to construct a base prospectus in a tripartite format, incorporation by reference of a previously existing registration document is no longer mandatory. However, use of the information contained in that registration document is mandatory when a base prospectus is drawn up regardless of whether the base prospectus is being drawn up as

a single document or separate documents (cf. Art. 8(6), second para of the Prospectus Regulation).

29. In order to leverage the flexibility offered by the base prospectus regime and at the same time ensure that investor protection and investor understanding of products are clear, ESMA is of the view that signposting and segregation of information are essential. In the case of programmes, the amount of information to be included in a base prospectus can present a problem in terms of comprehensibility, particularly as the new regime no longer requires a specific base prospectus summary. ESMA considers that, as set out in Article 8(7) of the Level 1 text, the principle of segregation in the case of multi-product base prospectuses should continue but that there should be greater signposting and more obvious segregation in the document itself such that the terms and conditions of each security type are more easily identifiable. In cases where the base prospectus is constructed in the tripartite format, signposting and segregation should form part of the securities note (see below – ‘How to use the base prospectus’).

How to use the base prospectus

30. For base prospectuses that offer non-equity securities to retail investors, ESMA considers that, immediately following the cover note and table of contents, the document should include a section which clearly sets out how the base prospectus is to be used.
31. This would consist of a section (comprising no more than two pages) giving an overview of the contents of the document and which information is contained in the various sections. Where, for example, a base prospectus is drafted to facilitate the issuance of notes and warrants, potential investors should be clear as to which parts of the prospectus they need to read in order to have the information necessary to make an investment decision on for example the notes. In case of a tripartite base prospectus, ESMA considers that the explanatory section is best placed in the securities note.

Final terms

32. ESMA considers that the form of final terms (Article 26(5) of the current Commission Regulation) is well established and that, given market familiarisation with the current form, any changes thereto should be limited. That is not, however, to say that no changes should be made.
33. ESMA considers that where items contained in the form of final terms in the base prospectus are not applicable in the case of a particular issuance, there is no advantage to issuers or investors to require that the issue specific final terms still include that item with a reference to it being not applicable. ESMA therefore proposes removing this requirement in order to make final terms shorter and more comprehensible.
34. ESMA clarifies that replication of Category A and Category B information is permissible where options are included in the base prospectus. In addition, ESMA considers that it might be beneficial to provide greater flexibility with regard to the type of additional information that is permitted in the final terms. As final terms are not, however, subject to approval, the additional information to be included, or at least a placeholder for such additional information, should be set out in the form of final terms to allow for its scrutiny by NCAs. Placeholders should be per piece of specified additional information rather than a single section where any such information would be placed. ESMA therefore

considers that an expanded list of what additional information may be included in final terms should be included as a new annex in the forthcoming Level 2. By way of example, where issuers use a PRIIPs Key Information Document ('KID') as a constituent part of the summary, any additional information contained in the KID, and which is not included in the base prospectus, should be included in the final terms. Reference to such type of information would need to be included in the new annex.

35. As when the categorisation was initially established in 2010, ESMA has based the categorisation of information items on whether the information should be subject to NCA scrutiny, rather than on whether the information is known when the base prospectus is approved. While further detail on exact categorisation is contained below, the categorisation of items is largely the same but with some small movement between categories, notably in the case of asset-backed securities. In a slight change to the existing regime, rather than setting out the A/B/C categories of securities note information in a separate annex, ESMA proposes to include the categorisation of each disclosure item in a separate column in the relevant securities note schedule.
36. In order to carry over the categorisation of information in final terms, ESMA is of the view that the delegated regulation to be adopted by the Commission should carry over the wording laid down in Articles 2a and 22(4) of the Commission Regulation.

3.6. Universal Registration Document

37. In ESMA's view, the URD should be a stand-alone document, capable of allowing an issuer to issue securities of any type (through the addition of the relevant securities note) while at the same time meeting the issuer's publication requirements under Articles 4 and 5 of the Transparency Directive ('the TD').
38. The format of the URD should generally follow the format set out for the share registration document, while at the same time capturing the additional disclosures required for issuers choosing to adopt this option of publishing an omnibus type document. However, rather than simply appending an issuer's TD disclosures at the end of a standard share registration document, ESMA suggests that the disclosures should be dispersed throughout the document, as appropriate. Constructing the document in this way should ensure that it is more readable and in a format that investors are more accustomed to.
39. ESMA has considered whether a template for a cross reference list with the items required to be disclosed in the annual/half-yearly financial report referred to in TD Articles 4 and 5 should be included in the URD annex. However, in order to avoid duplication of information and the fact that TD requirements can change, ESMA decided against proposing such a requirement, instead opting for the URD annex to refer to the obligation in Article 9(12)(a) of the new Prospectus Regulation. Should there be a need for further clarification, ESMA might develop a template for a cross reference list at Level 3 to provide guidance to issuers.

3.7. Additional provisions

40. While not specifically requested in the mandate received from the Commission, ESMA is of the view that in conjunction with the schedules setting out the minimum contents of a prospectus, it will be necessary for the Commission to also develop operative provisions for any delegated act making it clear which schedules are applicable in relation to which types of security and how the schedules would need to be assembled. The operative provisions of any new Level 2 regulation to be adopted should include articles similar to Articles 4 to 20 of the Commission Regulation, setting out the schedules to be used for different types of securities, together with an article similar to Article 21 of that Regulation regarding the mandatory combination of schedules and building blocks. As regards prospectuses for securities not envisaged by any proposal for a table of combinations, ESMA considers that further combinations should be available and that the combination of schedules and building blocks should be adapted accordingly.
41. Similarly, and while not related to format per se, ESMA is also asked to carry forward the principles regarding the information that can be provided by issuers and that can be requested by NCAs (Articles 3 and 22(1), second subparagraph of the Commission Regulation). As regards the carry-over of these principles, ESMA considers that they strike an important balance between the ability of issuers to provide additional information as they see fit while limiting the ability of competent authorities to require information not requested in the schedules. This, however, cannot be considered in isolation and needs to be tempered by the ability of NCAs to require adapted information in the case of certain categories of issuer (so-called specialist issuers).
42. In addition to the above, and again though not expressly mentioned in the mandate, ESMA is of the view that, particularly in order to provide issuers with clarity and ensure that NCAs have the same understanding of similar provisions, it is important that the relevant definitions contained in the Commission Regulation are carried over to the new regime.
43. Finally, ESMA considers that it is also important that the provisions concerning complex financial history (Article 4a of the Commission Regulation) are carried over to the new regime. While consideration was given to including this as a disclosure item in a number of annexes, ESMA considers that it is in fact best placed in an article, as is the case in the existing regime. As part of this carry-over, and in the interest of investor protection, ESMA considers it important that NCAs be permitted to request any information on the relevant entity rather than simply financial information, and it is suggested that the relevant article be amended accordingly. As Regulation 211/2007/EC only allows the NCA to request financial information on the other entity (Article 4a.1 and 4a.2), ESMA's proposal would widen the scope to any other information required by the registration document and securities note schedules. ESMA therefore considers that the Level 2 measures would benefit from a recital setting out this change.

3.8. Draft technical advice

44. On the basis of the considerations presented above, ESMA proposes the following technical advice in relation to the format of the prospectus, the base prospectus and the final terms:

Article A: Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those laid down in Regulation (EU) 2017/1129:

- (a) 'asset backed securities' means securities which:
 - a. represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable there under; or
 - b. are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets;
- (b) 'building block' means a list of additional information requirements, not included in one of the schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is drawn up;
- (c) 'complex financial history' means a situation where:
 - a. the issuer's entire business undertaking at the time of the prospectus is not accurately represented in the disclosure relating to the issuer required under the relevant Annexes under which the prospectus has been drawn up;
 - b. that inaccuracy will affect the ability of an investor to make an informed assessment as mentioned in Article 6(1) or Article 14(2) of Regulation (EU) 2017/1129; and,
 - c. information relating to the business undertaking that is necessary for an investor to make such an assessment is included in information, including financial information, relating to another entity as well as information relating to the issuer;
- (d) 'debt securities' means securities where the issuer has an obligation arising on issue to pay the investor 100% of the nominal value in addition to which there may also be an interest payment;

- (e) 'profit estimate' means a profit forecast for a financial period which has expired and for which results have not yet been published;
- (f) 'profit forecast' means a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word 'profit' is not used;
- (g) 'property collective investment undertaking' means a collective investment undertaking whose investment objective is holding of property or the participation in the holding of property;
- (h) 'public international body' means a legal entity of public nature established by an international treaty between sovereign States and of which one or more Member States are members;
- (i) 'schedule' means a list of minimum information requirements adapted to the particular nature of the different types of issuers and/or the different securities involved;
- (j) 'significant financial commitment' means a binding⁶ agreement to undertake a transaction which, on completion, is likely to give rise to a significant gross change;
- (k) 'significant gross change' means a variation of more than 25%, relative to one or more indicators of the size of the issuer's business, in the situation of the issuer;
- (l) 'special purpose vehicle' means an issuer whose objects and purposes are primarily the issue of securities;
- (m) 'umbrella collective investment undertaking' means a collective investment undertaking that consists of several investment compartments, keeping separate accounts, with each compartment corresponding to a distinct part of the assets and liabilities.

⁶ In this context, the fact that an agreement makes completion of the transaction subject to conditions, including approval by a regulatory authority, should not prevent that agreement from being treated as binding if it is reasonably certain that those conditions will be fulfilled. In particular, an agreement should be treated as binding where it makes the completion of the transaction conditional on the outcome of the offer of the securities that are the subject matter of the prospectus or, in the case of a proposed takeover, if the offer of securities that are the subject matter of the prospectus has the objective of funding that takeover.

45. **The Commission should introduce operative provisions, similar to Articles 4 to 20 of the Commission Regulation, in order to facilitate use of the schedules to be set out in delegated acts in the following form:**

Article [B]: [Share registration document] schedule

For the [share registration document] information shall be given in accordance with the schedule given in Annex 1.

46. **In terms of further operative provisions regarding the construction of a prospectus and the order of information to be contained therein, ESMA proposes the following:**

Article C: Combination of schedules and building blocks

1. A prospectus shall be drawn up by using a combination of schedules, and building blocks if applicable, set out in this regulation.
2. The use of the combinations provided for in [the table set out in Annex [XXX]] shall be mandatory when drawing up prospectuses for the types of securities to which those combinations correspond according to this table.

However, for securities not covered by those combinations further combinations may be used.

3. The most comprehensive and stringent registration document schedule, i.e. the most demanding schedule in term of number of information items and the extent of the information included in them, may always be used to issue securities for which a less comprehensive and stringent registration document schedule is provided for, according to the following ranking of schedules:
 - (a) Share registration document schedule;
 - (b) Retail debt and derivatives registration document schedule;
 - (c) Wholesale debt and derivatives registration document schedule.

Article D: Format of the prospectus

1. Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to Article 6(3) of Regulation (EU) 2017/1129, to draw up a prospectus or base prospectus as a single document, the prospectus or base prospectus shall be composed of the following parts in the following order:

- (a) Cover note (not to exceed three pages in length);
- (b) Table of contents;
- (c) How to use this prospectus (not to exceed two pages in length);
- (d) Summary;
- (e) General description of the programme;
- (f) Risk factors;
- (g) Use of proceeds;
- (h) Other information items included in the schedules and building blocks according to which the prospectus was drawn up.

Letter (c) of the first subparagraph shall only apply in case of a base prospectus which is drawn up in accordance with Annexes [retail debt and derivatives registration document and securities note] of this Regulation.

Letter (d) of the first subparagraph shall not apply in case of a prospectus which is drawn up in accordance with Annexes [wholesale debt and derivatives registration document and securities note] of this Regulation or in the case of a base prospectus.

Letter (e) of the first subparagraph shall only apply in case of a base prospectus.

2. Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to Article 6(3) of Regulation (EU) 2017/1129, to draw up a prospectus or base prospectus as separate documents, the universal registration document, registration document or securities note shall be composed of the following parts in the following order:

- (a) Cover note (not to exceed three pages in length);
- (b) Table of contents;
- (c) How to use this prospectus (not to exceed two pages in length);
- (d) General description of the programme;
- (e) Risk factors;
- (f) Use of proceeds;
- (g) Other information items included in the schedules and building blocks according to which the universal registration document, registration document or securities note was drawn up.

Letter (c) of the first subparagraph shall only apply in case of a securities note which is drawn up in accordance with Annexes [retail debt and derivatives registration document and securities note] of this Regulation and which is being used as part of a tripartite base prospectus..

Letter (d) of the first subparagraph shall only apply in case of a securities note which is being used as part of a tripartite base prospectus.

Letter (f) of the first subparagraph shall only apply to the securities note.

3. Within the order laid down in paragraphs 1 and 2, the issuer, the offeror or the person asking for admission to trading on a regulated market shall be free to define the order of the required information items included in the schedules and building blocks according to which the prospectus is drawn up.
4. Where the order of the items does not coincide with the order of the information provided for in the schedules and building blocks according to which the prospectus is drawn up, the competent authority of the home Member State may ask the issuer, the offeror or the person asking for the admission to trading on a regulated market to provide a cross reference list for the purpose of checking the prospectus before its approval. Such list shall identify the pages where each item can be found in the prospectus.

Article E: Minimum information to be included in a prospectus

1. A prospectus shall contain the information items required in Annexes [1 to XXX] depending on the type of issuer or issues and securities involved. Without prejudice to Article J, a competent authority shall not require that a prospectus contains information items which are not included in Annexes [1 to XXX] or in Article 7 of Regulation (EU) 2017/1129.
2. In order to ensure conformity with the obligation referred to in Article 6(1), or in the case of a simplified prospectus Article 14(2), of Regulation (EU) 2017/1129, the competent authority of the home Member State, when approving a prospectus in accordance with Article 20 of that Regulation, may, on a case-by-case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed, for each of the information items.
3. Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a prospectus, in accordance with Article 7 of Regulation (EU) 2017/1129, the competent authority of the home Member State, when approving the prospectus in accordance with Article 20 of that Regulation, may, on a case-by-case basis, require certain information provided in the prospectus, to be included in the summary to ensure conformity with Article 7 of Regulation (EU) 2017/1129.

Article F: Minimum information to be included in the base prospectus

1. A base prospectus shall be drawn up by using one or a combination of schedules and building blocks provided for in Articles [2 to x] according to the combinations for various types of securities set out in [Annex X].
2. A base prospectus shall contain the information items required in Annexes [2 to x] depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles [2 to x]. A competent authority shall not request that a base prospectus contains information items which are not included in Annexes [2 to x].
3. The issuer, the offeror or the person asking for admission to trading on a regulated market may omit information items which are not known when the base prospectus is approved and which can only be determined at the time of the individual issue. These information items should then be included in the final terms.
4. The use of the combinations provided for in the table in [Annex XVIII] shall be mandatory when drawing up base prospectuses for the types of securities to which those combinations correspond according to this table. However, for securities not covered by those combinations further combinations may be used.
5. Issuers, offerors or persons asking for admission to trading on a regulated market may compile in one single document two or more different base prospectuses.

Article G: Adaptations to the minimum information given in prospectuses and base prospectuses

1. Notwithstanding Articles 6 second paragraph and 22(1) second subparagraph, where the issuer's activities fall under one of the categories included in [list of specialist issuers annex], the competent authority of the home Member State, taking into consideration the specific nature of the activities involved, may ask for adapted information, in addition to the information items included in the schedules and building blocks set out in Articles [x to y] in order to comply with the obligation referred to in Article 6(1), or in the case of a simplified prospectus Article 14(2), of Regulation (EU) 2017/1129.
2. By way of derogation from Articles [x to y], where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a security which is not the same but comparable to the various types of securities mentioned in the table of combinations set out in Annex [XXX], the issuer, the offeror or the person asking for admission to trading on a regulated market shall add the relevant information items from another securities note schedule or another building block provided for in Articles [x to y] to the main securities note schedule chosen. This addition shall be done in accordance with the main characteristics of the securities being offered to the public or admitted to trading on a regulated market.

3. By way of derogation from Articles [x to y], where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a new type of security, the issuer, the offeror or the person asking for admission to trading on a regulated market shall notify a draft prospectus or base prospectus to the competent authority of the home Member State.

The competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be included in the prospectus or base prospectus in order to comply with the obligation referred to in Article 6(1) of Regulation (EU) 2017/1129.

The derogation referred to in the first subparagraph shall only apply in case of a new type of security which has features completely different from the various types of securities mentioned in [Annex XXX], if the characteristics of this new security are such that a combination of the different information items referred to in the schedules and building blocks provided for in Articles [x to y] is not pertinent.

4. By way of derogation from Articles [x to y], in the cases where one of the information items required in one of the schedules or building blocks referred to in [x to y] or equivalent information is not pertinent to the issuer, to the offer or to the securities to which the prospectus relates, that information may be omitted.

Article H: Categories of information in the base prospectus and the final terms

1. The categories set out in Annexes [X to XXX] shall determine the degree of flexibility by which the information can be given in the base prospectus or the final terms. The categories shall be defined as follows:
 - (a) 'Category A' means the relevant information which shall be included in the base prospectus. This information cannot be left in blank for later insertion in the final terms;
 - (b) 'Category B' means that the base prospectus shall include all the general principles related to the information required, and only the details which are unknown at the time of the approval of the base prospectus can be left in blank for later insertion in the final terms;
 - (c) 'Category C' means that the base prospectus may contain a reserved space for later insertion for the information which was not known at the time of the approval of the base prospectus. Such information shall be inserted in the final terms.

Article I: Final Terms

1. The items of the relevant securities note schedule and building blocks, which are included in the base prospectus, shall not be reproduced in the final terms, except

where the base prospectus contains options with regard to the information required by the relevant securities note schedule.

2. The form of final terms to be attached to a base prospectus shall only contain the following:
 - (a) The information items categorised as Category B or C within the various securities notes schedules according to which the base prospectus is drawn up;
 - (b) On a voluntary basis, any 'additional information items' set out in Annex [XXI], and for which specific placeholders have been included in form of final terms contained in the base prospectus to which the final terms are attached;
 - (c) Any replication of, or reference to, options already provided for in the base prospectus which are applicable to the individual issue.
3. The final terms shall not amend or replace any information in the base prospectus. Accordingly, final terms shall not include any new description of any new payment conditions which was not included in the base prospectus.

Article J: Share registration document schedule in cases of complex financial history or significant financial commitment

1. Where the issuer of a security covered by [Article – equity securities] has a complex financial history, or has made a significant financial commitment, and in consequence the inclusion in the registration document or securities note of items of information, including financial information, relating to an entity other than the issuer is necessary in order to satisfy the obligation laid down in Article 6(1) or Article 14(2) of Regulation (EU) 2017/1129, those items of information shall be deemed to relate to the issuer. The competent authority of the home Member State shall in such cases request that the issuer, the offeror or the person asking for admission to trading to include those items of information in the registration document drawn up under Annexes 1, 15, 17, 18, or [EU Growth prospectus registration document] or, as applicable, a securities note drawn up under Annexes 2, 19, or [EU Growth prospectus securities note].

Those items of information may include pro forma information prepared in accordance with Annex 12. In this context, where the issuer has made a significant financial commitment any such pro forma information shall illustrate the anticipated effects of the transaction that the issuer has agreed to undertake, and references in Annex 12 to 'the transaction' shall be read accordingly.

2. The competent authority shall base any request pursuant to the first subparagraph of paragraph (1) on the requirements set out in the Annexes which would apply to the relevant other entity if it were the issuer who is the subject matter of the prospectus, including as regards the content of financial information and the

applicable accounting and auditing principles, subject to any modification which is appropriate in view of any of the following factors:

- (a) The nature of the securities;
- (b) The nature and range of information already included in the prospectus, and the existence of financial information relating to an entity other than the issuer in a form that might be included in a prospectus without modification;
- (c) The facts of the case, including the economic substance of the transactions by which the issuer has acquired or disposed of its business undertaking or any part of it, and the specific nature of that undertaking;
- (d) The ability of the issuer to obtain financial or other information relating to another entity with reasonable effort.

Where, in the individual case, the obligation laid down in Article 6(1) or Article 14(2) of Regulation (EU) 2017/1129 may be satisfied in more than one way, preference shall be given to the way that is the least costly or onerous.

3. Paragraph (1) is without prejudice to the responsibility under national law of any other person, including the persons referred to in Article 11(1) of Regulation (EU) 2017/1129, for the information contained in the prospectus. In particular, those persons shall be responsible for the inclusion in the registration document or securities note of any items of information requested by the competent authority pursuant to paragraph (1).

Article K: Use of the Summary

1. Where an issuer is not under an obligation to include a summary in a prospectus pursuant to Article 7 of Regulation (EU) 2017/1129, but produces an overview section in the prospectus, this section shall not be entitled 'Summary' unless the issuer complies with all disclosure requirements for summaries laid down in Article 7 of Regulation (EU) 2017/1129.
2. Where the summary of a prospectus must be supplemented according to Article 23 of Regulation (EU) 2017/1129, the issuer, the offeror or the person asking for admission to trading on a regulated market shall decide on a case-by-case basis whether to integrate the new information in the original summary by producing a new summary, or to produce a supplement to the summary.

If the new information is integrated in the original summary, the issuer, the offeror or the person asking for admission to trading on a regulated market shall ensure that investors can easily identify the changes, in particular by way of footnotes.

QUESTIONS FOR THE CONSULTATION

- Question 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?
- Question 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.
- Question 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?
- Question 4: Should the URD benefit from a more flexible order of information than a prospectus?
- Question 5: Would a standalone and prominent use of proceeds section be welcome for investors?
- Question 6: Is the list of “additional information” in Annex XXI of the Commission Regulation fit for purpose? What other types of additional information should be included in a replacement annex?
- Question 7: Are the definitions proposed to be carried over to the new regime, and new definitions proposed adequate? Should any additional definitions be added?
- Question 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).

4. Draft technical advice on the content of the prospectus, the base prospectus and the final terms

4.1. Scope and focus

47. In the mandate received from the Commission, ESMA is asked to advise on the schedules defining the specific information to be included in a prospectus, the minimum information to be included in the URD and the reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances. ESMA understands the scope of these three mandates to be similar in nature, such that the proposed technical advice in each case will take the form of schedules setting out the content requirements of the constituent parts of a prospectus, taking into account the different types of security that may be involved.

4.2. General considerations

48. As mentioned above, the purpose of the mandate is to specify the information items that should be included in the various schedules that can be combined in order to form a prospectus.
49. As regards the items relevant to the core disclosure for equity and non-equity, ESMA has undertaken a comparison with the relevant IOSCO⁷ disclosure standards for each type of security. Although some discrepancies were identified in the detail of the disclosure (e.g. responsibility statements, profit forecasts and pro forma), overall the existing Commission Regulation requirements are broadly in line with those of IOSCO.
50. A consideration of whether each disclosure item of the Commission Regulation still meets the needs of investors and issuers was subsequently undertaken as was a consideration of technology, now in common use, which has developed since the IOSCO standards were published. Where applicable, such technology requirements were included in the core disclosure items.
51. In each of the tables set out below, ESMA's proposal has been marked against the current Commission Regulation requirements (including the numbering thereof). Proposed deletions are shown as strikethrough while proposed additions are underlined.

4.3. Content of the share registration document

52. As mentioned in paragraph 16, one set of disclosure standards is intended to form the basis of disclosure for share registration documents, for the URD and for depositary receipts and secondary equity issuance registration documents. This core set of disclosure standards is based on the disclosure requirements in Annex I of the current Commission Regulation.
53. During ESMA's review of Annex I, many disclosure items were considered to provide valuable information for investors and have therefore been retained in their existing form. For disclosure items which have not changed, other than in relation to cross references, no commentary has been included in the following sections. Other disclosure items have been redrafted and streamlined, grouped with other items to form a more logical flow or have been further clarified where necessary; details of these changes are set out below.

Persons responsible, third party information, experts' reports and competent authority approval

54. ESMA considers that from an investor point of view, it is of paramount importance to be able to identify which parties are responsible for the prospectus or constituent parts thereof. In the existing regime, disclosure requirements as regards responsible parties are split across a number of sections and generally appear in separate parts of the

⁷ International Organisation of Securities Commissions 'International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers' September 1998.

prospectus. ESMA considers that there are merits in bringing these similar disclosures together.

55. Furthermore, ESMA proposes adding a requirement to state which NCA has approved the prospectus to both the registration document and the securities note annexes. While this is current market practice and not burdensome for issuers, it provides clarity for investors in identifying where the prospectus has been approved. As such a statement is also required to be included in the summary according to Article 7 of the Prospectus Regulation, requiring this as an information item in the schedule furthermore follows the general principle that the summary should summarise information contained elsewhere in the prospectus.
56. ESMA is of the view that the statement on the approving NCA should be provided in the cover note. Furthermore, and in order not to confuse investors as to the reliance to be placed on the approval, this statement should be accompanied by an explanation of the role of the NCA, i.e. that it has scrutinised the prospectus for compliance with the Prospectus Regulation but that the approval of the prospectus should not be interpreted as an endorsement of the quality of the issuer, the securities being offered or the admission to trading. The exact content of the statement will ultimately be dependent on whether the document is a prospectus (including base prospectuses), registration document (including the URD) or securities note. In order to ensure harmonisation across jurisdictions, and to facilitate the drafting of the prospectus, ESMA proposes the following template wording to be included in documents submitted to NCAs for approval:

“This [prospectus – amend as appropriate to the type of document] has been approved by the [insert name of NCA] as competent authority under [insert name of new Prospectus Regulation]. The [name of NCA] only approves this [prospectus – amend as appropriate to type of document] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129. Such approval should not be considered as an endorsement of [the issuer or of the quality of the securities – amend as appropriate to the type of document] that are the subject of this [prospectus – amend as appropriate to the type of document]. Investors should make their own assessment as to the suitability of investing in the securities.”

57. While not extending the liability provisions that apply to further parties, ESMA is of the view that the disclosure relating to consent statements by experts and Third Party Information would be more logically placed in the same section as the declaration by the persons responsible for the prospectus as they relate to similar declarations. ESMA’s proposal is not to include the actual statements or reports at the beginning of the prospectus but to have a single section of the schedule dealing with responsibility and transparency (a cross reference to the report can always be included). In order to achieve this, the Persons Responsible section has been expanded by the inclusion of the Statements by Experts and the Third Party Information sections, thereby creating a single section in the prospectus dealing with responsibility and transparency.

Selected financial information

58. Selected financial information makes up Item 3 of the Commission Regulation Annex I. ESMA has considered whether there is a need for selected financial information, the selected historical key financial information to be presented in the summary, operating

and financial review ('OFR') and the audited accounts to be included in a prospectus. As it is arguably unnecessary to include all four, and in order to relieve the administrative burden for issuers and lower the cost of producing a prospectus, ESMA suggests the removal of the selected financial information for equity (as well as for retail non-equity). The reason for this is that the full financial information is given under item 20 of the annex and also that the OFR provides a description of the issuer's financial position and highlights any changes to the financial condition and results of operations. Furthermore, equity and retail non-equity prospectuses will always have a summary and that summary will have to contain a selection of historical key financial information. Therefore, ESMA considers that there is no detriment to the protection of investors.

59. ESMA does not believe that the deletion of selected financial information conflicts with the provisions of Annex I to the new Prospectus Regulation, upon which the Commission is obliged to base its delegated acts. ESMA considers that "selected financial data", as referred to in this annex, is not a defined term and its inclusion in a prospectus can be achieved through the requirement to disclose a selection of historical key financial information in the summary.

Risk factors

60. The risk factors section is intended to draw investors' attention to the material risks an issuer faces which may affect its share price. ESMA is aware that this section of the prospectus tends to become very long and to include all types of risks. In an effort to combat this, Article 16 of the new Prospectus Regulation requires risk factors to be both material and specific in order to be included in the prospectus. The article furthermore describes factors to be taken into account by issuers when determining the materiality of each risk factor (Article 16(1)). While ESMA will draw up separate guidelines at Level 3 to assist NCAs in this area, ESMA is of the opinion that, in order to prevent excessively long and unfocussed risk factor sections, the requirements of Article 16 should also be reflected in the Level 2 disclosure requirements for risk factors. ESMA therefore proposes amending the wording of current Item 4 of Annex I by removing the reference to the issuer's industry and by reflecting the categorisation of risk factors required by Level 1.

Information about the issuer

61. The IOSCO disclosure standards date from 1998 and in some respects need to be updated, particularly as concerns the use of technology. Currently, the disclosure item regarding issuer information requires that the issuer includes contact details in the form of address and telephone number of its registered office or principal place of business, if different. As companies now have websites which contain contact information, ESMA proposes to add the requirement to include a web address for the issuer in this disclosure item. This would be accompanied by a warning/disclaimer that the website itself does not form a part of the prospectus. The disclosure requirement has also been amended to include LEI, a requirement which is now mandated in the Level 1 text. ESMA proposes to move disclosure required in relation to investments to the business overview.

Business overview

62. ESMA is of the opinion that disclosure in relation to an issuer's principal activities is important information and as such proposes that the existing requirements remain unchanged. However, ESMA also considers that information regarding the issuer's strategy and objectives is important, particularly in the case of IPOs, and is key information used by investors and analysts when making an investment decision. While this information is regularly provided by issuers, ESMA considers that it would be helpful, not only to investors but also to those preparing the prospectus, to include a specific requirement relating to strategy and objectives. New wording to this effect has therefore been included in the section on business overview. This replaces the requirement to disclose where key factors relating to the issuer's operations and principal activities have been influenced by exceptional factors. The new requirement is broader than the old, which is limited to exceptional factors, however, ESMA considers that the new requirement is justified due to its relevance for making an investment decision.
63. ESMA proposes to move disclosure relating to holdings (existing Item 25) to the section on investments as this is a more natural grouping for this disclosure. In addition, a description of any environmental issues information as regards the issuer's utilisation of tangible fixed assets has been moved to this section.

Organisational structure

64. The existing disclosure for group structures requires a narrative description, however, ESMA is of the view that this could be enhanced or replaced with the use of a structure diagram if this helps clarify the text. A graphical representation may be more accessible to investors, particularly where the structure of the group is complex. As this is only an option being made available to issuers, ESMA sees no negative implications from a cost perspective.

Property, plant and equipment

65. As disclosure regarding tangible fixed assets will be made in the financial statements, ESMA has considered whether there needs to be a disclosure requirement in the schedule and has come to the view that such is redundant. In addition, from 1 January 2019, in accordance with IFRS all leases will be included in the balance sheet and therefore separate disclosure requirements here appear unnecessary. As noted above, disclosure regarding utilisation of tangible fixed assets is now included in the section on business overview.

OFR

66. ESMA proposes amending the disclosure requirement relating to the OFR to bring it into line with the management report requirements in Article 19 (and Article 29) of the Accounting Directive in order that issuers can utilise their management report to fulfil their disclosure requirements under the Prospectus Regulation. However, while the management report can be used to satisfy the disclosure requirements of this item, the requirements of the management report contained in Article 19 have not been reproduced verbatim in order to take into account existing disclosures under the prospectus regime. By way of example, the description of the principal risks required by Article 19(1), first subparagraph, have not been reproduced as risk factors have a

dedicated section in the prospectus and should be addressed there. Similarly, the third subparagraph of Article 19(1) requires information relating to environmental and employee matters which are required by other items in the prospectus regime. Other changes are more minor such as changing the reference to 'undertaking' in the Accounting Directive to 'issuer' in the prospectus requirements.

67. Disclosure relating to research and development is now covered by the alignment of the requirement for an Operating and Financial Review with requirements contained in the Accounting Directive for a management report rather than being a stand-alone section.
68. Facilitating the use of the management report in the prospectus, rather than having a similar yet different requirement, should significantly alleviate costs for issuers while not impacting on the information that investors receive. As per Article 18 of the Prospectus Regulation, the management report will be eligible to be incorporated by reference.

Regulatory environment

69. As regards the item relating to governmental, economic and political information, ESMA considers this to be more appropriate as a stand-alone item as it is not directly linked to the operating results of the issuer where it is currently positioned. A new section has therefore been formed dealing with the regulatory environment, however, there is no change to the substance of the requirement.

Trend information

70. The disclosure requiring a statement of any significant change in the issuer's financial or trading position (Item 20.9, Annex I, Commission Regulation) addresses two disclosure requirements, one relating to the issuer's financial position and one relating to the issuer's trading position. ESMA therefore proposes separating the requirement into two. As a result, the trading position information has been moved to and merged with disclosure relating to trend information and the 'significant change statement' now relates to the financial position of the issuer. Given market uncertainty as to the meaning of trading position, references to such have now been replaced with references to financial performance. Both statements require a negative statement where applicable.

Profit forecasts and profit estimates

71. Where profit forecasts or profit estimates have been included in a prospectus, there is currently a requirement to include a report by an independent accountant or auditor certifying that these profit forecasts or profit estimates have been compiled on the basis of the assumptions set out and that the accounting policies used are consistent with the accounting policies used by the issuer to draw up its financial statements. The Commission has specifically asked for ESMA to consider the effects of repealing the requirement for the report prepared by independent accountants or auditors by assessing whether the benefits to investors of such a report outweighs the cost to issuers of producing it.
72. ESMA considers that a distinction can be drawn between profit forecasts, which are forward-looking statements, and profit estimates, which relate to a financial period which has passed but for which audited results have not yet been published. Profit estimates are based on the issuer's most recent financial period and will shortly be published as

part of the issuer's annual report and accounts. As such, ESMA considers the requirement for a report prepared by independent accountants or auditors on profit estimates to be unnecessarily onerous and costly. ESMA therefore proposes that the requirement for a report prepared by independent accountants or auditors on profit estimates be removed.

73. In the case of profit forecasts, there are varying opinions on the usefulness of the report prepared by independent accountants or auditors. The auditor provides a report that the assumptions used by the issuer to produce the forecast are not unreasonable⁸, that the forecast has been properly compiled on the basis stated and that the forecast has been compiled using the accounting policies of the issuer. Given the range of information on which the auditor is reporting, the report is often seen as being of limited value, except perhaps where it relates to short term forecasts. In this case, the auditor's report gives assurance to investors that the forecasts have been prepared on the basis stated in the report. However, in the case of longer term forecasts, auditors often feel that it is not possible to provide an opinion. This creates a dilemma for the issuer who may have an outstanding profit forecast which is required to be reproduced in the prospectus with the addition of an auditor's report. In effect, the refusal of the auditor to provide a report may prevent the issuer from producing a prospectus due to their inability to comply with the prospectus regime. On top of this, reports prepared by independent accountants or auditors on profit forecasts also increase the cost of producing a prospectus.
74. Paragraph 44 of the ESMA Update of the CESR Recommendations⁹ provides that there is a presumption that any outstanding profit forecast made outside of a prospectus is material in the case of shares. ESMA considers that, given the revision of the prospectus regime, it is opportune to consider whether this requirement should be enshrined in legislation rather than at Level 3.
75. Based on the above, ESMA has considered the following possibilities in relation to whether it should be obligatory to include an outstanding profit forecast in the prospectus and to whether a profit forecast should be accompanied by a report prepared by independent accountants or auditors. ESMA seeks the views of market participants on these alternatives (please refer to the questions set out further below):
 - i. Require inclusion of any outstanding profit forecasts for equity issuance but remove the requirement for a report prepared by independent accountants or auditors. Instead, 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.
 - ii. Apply the proposal contained in (i) above to both equity and non-equity issuances.

⁸ See International Standards on Assurance Engagement 3400

⁹ [ESMA/2013/319](#)

- iii. Maintain the status quo, but with the presumption of materiality for profit forecasts in the case of equity elevated to a legislative requirement. This would mean that 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).

76. ESMA considers that option (ii) is a compromise between the status quo and completely stripping the prospectus of any information regarding profit forecasts. The absence of the report prepared by independent accountants or auditors, the cost of which in many instances deters issuers from including a profit forecast in the prospectus, means that issuers will be more likely to include this information in the prospectus.

Administrative, management and supervisory bodies and senior management.

77. Some NCAs have experienced that issuers sometimes do not publish the anticipated changes in the composition of their board and/or committees due to the dilutive effect of the issuance in their prospectuses, even though this information is material for investors. ESMA therefore proposes to include a new requirement in this section relating to when the corporate governance changes have already been decided by the board and the shareholders meeting. While not wanting to increase disclosures, ESMA considers that this requirement is not burdensome since the issuer already has the information.

Board practices

78. ESMA proposes a small amendment to the statement regarding compliance with corporate governance regimes. The revised requirement refers to corporate governance regime(s) applicable to the issuer rather than the corporate governance regime of the issuer's country of incorporation. The revised requirement is considered to be more meaningful for investors, especially given the cross border nature of many issuers' businesses, while at the same time imposing little, if any, additional burden on issuers.

Major shareholders

79. As regards the disclosure requirement relating to major shareholders, ESMA proposes a slight amendment. The name(s) of notifiable shareholders and the amount of their interest should now be presented as at the date of the registration document. The existing requirement does not include a reference date which ESMA considers to be an omission.

Historical financial information

80. ESMA proposes redrafting and reordering some of the requirements in this section for clarity. In order to bring the terminology relating to historical financial information up to date, ESMA suggests bringing it in line with the wording of the Transparency, Accounting and Audit Directives as well as the Audit Regulation and IAS Regulation where possible. On this basis, historical financial information would for example be referred to as annual financial statements. Where reference is made solely to "financial statements", this should be considered a reference to both annual financial statements and interim financial statements.

81. The Commission Regulation states that *'the last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements'*. This has led to some confusion with certain issuers restating their financial statements when changes have been made to an IFRS requirement. ESMA is of the view that this was not the intention of the rule, which was rather meant to capture situations where the issuer changed its entire accounting framework (e.g. moving from national GAAP to IFRS). ESMA does not believe the rule was intended to capture changes in the standard already in use by the issuer (e.g. a new IFRS disclosure requirement becoming effective in the new financial period). The item has therefore been reworded to clarify that the requirement for having two years' financial information which is consistent with the next financial statements only applies to where the issuer has changed their accounting framework.
82. In an effort to provide greater clarity as regards restatement, ESMA considers that having one full set of financial statements (within the meaning of IAS 1, paragraph 10), which is consistent with the next financial statements would be sufficient, taking into account that such financial statement would also have the comparative figures for the previous second year. This is compliant with IFRS 1. Requiring the last two annual financial statements to be restated could be interpreted as requiring production of complete IFRS figures for three annual periods. ESMA therefore proposes to align this requirement with IFRS 1 .
83. In order to align the new Prospectus Regulation with the TD, ESMA proposes extending the age of the latest financial information that can be included in a prospectus, where the issuer has included unaudited financial statements in the registration document, from 15 to 16 months (Item 20.1).
84. ESMA proposes to group the requirements relating to audit and proposes to make it clear that audit reports included in the prospectus should meet the requirements contained in Article 28 of the Audit Directive. For issuers not subject to the Audit Directive or Audit Regulation, the requirement remains largely unchanged with the exception of explicit references to "emphasis of matter" and "modifications of opinion" which should be reproduced together with the reasons therefore .

Memorandum and Articles of Association

85. As the Memorandum and Articles of Association ('M&A') are included among the documents available, and as these are now to be available by electronic means (please see below), it seems unnecessary to include a large scale duplication of the M&A in the prospectus itself. For equity issuances, however, particularly in the case of a new issuance where neither the NCA or prospectus investors would have the same level of familiarity with the issuer, ESMA is of the view that at least a brief description of the issuer's principal objects and purposes and where they can be found in the M&A should be disclosed in the prospectus. ESMA also proposes to maintain the disclosure regarding change of control provisions as these can be material in the context of the investment decision. A hyperlink to the full contents of the M&A will be provided through the documents on display for those seeking fuller information. While not lessening the information available to investors, ESMA considers that the deletion of the requirement to reproduce a significant number of the provisions of the issuer's M&A should ease administrative burden.

86. Some NCAs have experienced that the Articles of Association which are put on display are often out of date, not having been amended since the passing of resolutions. ESMA therefore proposes to update the disclosure item to make it clear that the most up-to-date articles must be put on display.

Documents available

87. The current Commission Regulation requires that some information or documents included in the prospectus (e.g. two years of historical financial information of the issuer) are on display for the life of the registration document along with an indication of where the documents may be inspected. Given that the registration document itself contains historical financial information (either directly or through incorporation by reference), requiring that it be made available seems unnecessary and so ESMA proposes to remove this requirement. For other documents that the Commission Regulation requires be made available, ESMA considers that it is no longer necessary to make the documents available physically as issuers have the means to include these documents on a website (either their own or that of their parent). The requirement has therefore been changed so that the documents should be made available electronically. This should also significantly ease access to documents by investors who have often experienced difficulties in accessing documents where they were only put on display physically. ESMA considers that the disclosure provided should be relatively precise and not simply the home page of the issuer or third party website.

Key changes

88. The key changes to the share registration document compared to Annex I of the current Commission Regulation can be summarised as follows:
- Removal of the requirement to disclose selected financial information;
 - Requirement for issuers to indicate their website address and LEI in the prospectus and to make documents on display electronically available;
 - References to 'trading position' replaced by references to 'financial performance';
 - Alignment of the OFR to bring it into line with management reports required by the Accounting Directive;
 - Deletion of the requirement to include a report from an independent accountant or auditor for profit forecasts and estimates;
 - Alignment of the restatement requirement with IFRS 1;
 - Clarification of the requirements for historical financial information;
 - Reduced replication of the provisions of an issuer's M&A.

89. On the basis of these considerations, ESMA proposes to deliver the following Annex 1 as part of its technical advice:

ITEM	ANNEX 1: SHARE REGISTRATION DOCUMENT
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>
1.1	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
[1.3] Moved from 23.1	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's: • Name; • Business address; • Qualifications; • Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus</u>.
[1.4] Moved from 23.2	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced

	information inaccurate or misleading. In addition, identify the source(s) of the information.
[1.5] New	A statement that: - the (universal) registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129; - the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129; - such approval should not be considered as an endorsement of the issuer that is the subject of this registration document.
2	STATUTORY AUDITORS
2.1	Names and addresses of the issuer's auditors for the period covered by the historical <u>annual</u> financial statements <u>information</u> (together with their membership in a professional body).
2.2	If auditors have resigned, been removed or not been re-appointed during the period covered by the historical <u>annual</u> financial statements <u>information</u> , indicate details if material.
3	SELECTED FINANCIAL INFORMATION
3.1	Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.
3.2	If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.
4	RISK FACTORS
	Prominent disclosure of <u>A description of the material risks factors that are specific to the issuer, in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a</u>

	<u>regulated market, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the registration document.</u>
5	INFORMATION ABOUT THE ISSUER
5.1	History and development of the issuer
5.1.1	The legal and commercial name of the issuer.
5.1.2	The place of registration of the issuer, and its registration number <u>and Legal Entity Identifier.</u>
5.1.3	The date of incorporation and the length of life of the issuer, except where indefinite.
5.1.4	The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address, telephone number of its registered office (or principal place of business if different from its registered office) <u>and website with a disclaimer that the information on the website does not form part of the prospectus.</u>
5.1.5 (Moved to [6.3])	The important events in the development of the issuer's business.
Moved to 6	Investments
5.2.1	A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the registration document
5.2.2	A description of the issuer's principal investments that are in progress including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).
5.2.3	Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.
6	BUSINESS OVERVIEW
6.1	Principal activities
6.1.1	A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each

	financial year for the period covered by the historical <u>annual</u> financial <u>statements</u> information ; and
6.1.2	An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.
6.2	Principal markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by <u>operating segment</u> category of activity and geographic market for each financial year for the period covered by the historical <u>annual</u> financial <u>statements</u> information .
[6.3] Moved from 5.1.5	The important events in the development of the issuer's business.
6.3	Where the information given pursuant to items 6.1 and 6.2 has been influenced by exceptional factors, mention that fact.
<u>New</u>	<u>Strategy and objectives</u> <u>A description of the issuer's business strategy and objectives (both financial and non-financial (if any)). This description shall take into account the issuer's future challenges and prospects.</u>
6.4	If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes.
6.5	The basis for any statements made by the issuer regarding its competitive position.
5.2	Investments
[6.6.1] Moved from 5.2.1	A description, (including the amount) of the issuer's principal <u>material</u> investments for each financial year for the period covered by the historical financial information up to the date of the registration document.
[6.6.2] Moved from 5.2.2, merged with item 5.2.3	A description of the issuer's principal <u>any material</u> investments <u>of the issuer</u> that are in progress <u>or for which firm commitments have already been made</u> , including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).
[6.6.3] Moved from 25	Information relating to the undertakings <u>joint ventures and undertakings</u> in which the issuer holds a proportion of the capital

	likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.
[6.6.4] Moved from 8.2	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.
7	ORGANISATIONAL STRUCTURE
7.1	If the issuer is part of a group, a brief description of the group and the issuer's position within the group. <u>This may be in the form of, or accompanied by, a diagram of the organisational structure if this helps to clarify the structure.</u>
7.2	A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.
8	PROPERTY, PLANT AND EQUIPMENT
8.1	Information regarding material tangible fixed assets either existing or planned, including leased properties, and any major encumbrances thereon.
8.2. Moved to [6.6.4]	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.
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. <u>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.</u> <u>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.</u> <u>To the extent necessary for an understanding of the issuer's development, performance or position, the analysis shall include</u>

	<u>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.</u>
	<u>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 :</u> a) <u>the issuer's likely future development;</u> b) <u>activities in the field of research and development.</u> <u>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.</u>
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 <u>annual</u> financial <u>statements</u> information disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
9.2.3 Moved to [11.1]	Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10	CAPITAL RESOURCES
10.1	Information concerning the issuer's capital resources (both short and long term).
10.2	An explanation of the sources and amounts of and a narrative description of the issuer's cash flows.
10.3	Information on the borrowing requirements and funding structure of the issuer.
10.4	Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10.5	Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items [5.2.3. and 8.1 6.6.2.]

11	RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES REGULATORY ENVIRONMENT
Moved from 9.2.3	A description of the regulatory environment that the issuer operates in and that may materially affect its business, together with information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations. Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.
12	TREND INFORMATION
12.1 (second bullet moved from 20.9)	A description of: - The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document; <u>Any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document, or provide an appropriate negative statement.</u>
12.2	Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
13	PROFIT FORECASTS OR ESTIMATES
13.1	If Where an issuer chooses to include has published a profit forecast or a profit estimate (which is still outstanding and valid), that forecast or estimate shall be included in the registration document / must contain the information set out in items 13.1 and 13.2. <u>If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then provide a statement to that effect and an explanation of why such forecast or estimate is no longer valid. Such an invalid forecast or estimate is not subject to the requirements in items [13.2 to 13.4].</u>
	<u>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</u>

	<u>clear and unambiguous and contain a statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.</u> <u>The forecast or estimate shall comply with the following principles:</u> - 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 <u>reasonable</u>, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast; and - <u>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.</u>
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements: (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information; (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements; (c) this financial information has not been audited.
13.3	The <u>prospectus shall include a statement that the profit forecast or estimate must be has been compiled on the basis stated and prepared on a basis i) comparable with the historical annual</u>

	financial <u>statements information</u> and ii) <u>consistent with the issuer's accounting policies.</u>
13.4	If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not the forecast is still correct at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.
14	ADMINISTRATIVE, MANAGEMENT AND SUPERVISORY BODIES AND SENIOR MANAGEMENT
14.1	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) Members of the administrative, management or supervisory bodies; b) Partners with unlimited liability, in the case of a limited partnership with a share capital; c) Founders, if the issuer has been established for fewer than five years; and d) Any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. The nature of any family relationship between any of those persons. In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information: a) The names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies; b) Any convictions in relation to fraudulent offences for at least the previous five years;

	c) Details of any bankruptcies, receiverships, liquidations <u>or companies put into administration</u> with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years; d) Details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years. If there is no such information to be disclosed, a statement to that effect is to be made.
14.2	Administrative, management and supervisory bodies and senior management conflicts of interests Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item A1.14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management. Details of any restrictions agreed by the persons referred to in item A1.4.1 on the disposal within a certain period of time of their holdings in the issuer's securities.
15	REMUNERATION AND BENEFITS
	In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1:
15.1	The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.
15.2	The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.

16	BOARD PRACTICES
	In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1:
16.1	Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.
16.2	Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement
16.3	Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
16.4	A statement as to whether or not the issuer complies with its country's of incorporation <u>the corporate governance regime(s) applicable to the issuer</u> . In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.
<u>[16.5] New</u>	<u>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)</u>
17	EMPLOYEES
17.1	Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical <u>annual financial statements</u> information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.
17.2	Shareholdings and stock options With respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.

17.3	Description of any arrangements for involving the employees in the capital of the issuer.
18	MAJOR SHAREHOLDERS
18.1	In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest, <u>as at the date of the registration document</u> or, if there are no such persons, an appropriate negative statement.
18.2	Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
18.3	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
18.4	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
19	RELATED PARTY TRANSACTIONS
	Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical <u>annual</u> financial statements <u>information</u> and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable. If such standards do not apply to the issuer the following information must be disclosed: a) The nature and extent of any transactions which are — as a single transaction or in their entirety — material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arm's length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding; b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.

20	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES
20.1	<u>Historical financial information</u> Annual financial statements
	Audited historical financial information <u>statements</u> covering the latest 3 three financial years (or such shorter period as the issuer has been in operation) and the audit report in respect of each year.
	<u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which historical <u>annual</u> financial information <u>statements</u> is <u>are</u> required, the audited historical <u>annual</u> information <u>statements</u> shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is shorter.
	<u>Accounting standards</u> The Such financial information <u>statements</u> must be prepared according to <u>International Financial Reporting Standards (IFRS)</u> as endorsed in the EU based on Regulation (EC) No 1606/2002. the standards adopted in accordance with Regulation (EC) No 1606/2002 or If <u>IFRS</u> is not applicable <u>the financial statements must be prepared according to:</u> (a) to a Member State's national accounting standards for issuers from the Community <u>EEA, as required by the Accounting Directive</u>; or (b) For third country issuers, such financial statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards <u>IFRS for third country issuers. If such third country's national accounting standards are financial information i not equivalent to IFRS these standards, it must be presented in the form of restated the financial statements shall be restated in IFRS.</u>
	<u>Change of accounting framework</u> The last two years audited historical <u>annual</u> financial information <u>statements</u>, <u>containing comparative information for the previous year</u>, must be presented and prepared in a form consistent with <u>the accounting standards framework</u> that which will be adopted in the issuer's next published annual financial statements having

	regard to accounting standards and policies and legislation applicable to such annual financial statements. <u>Changes within the accounting framework applicable to an issuer do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements, (as defined by IAS 1), including comparatives, must be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.</u>
	If the issuer has been operating in its current sphere of economic activity for less than one year, the audited financial statements covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the EEA. For third country issuer, the annual financial statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. These annual financial statements must be audited.
	If <u>Where the audited financial information statements is</u> are prepared according to national accounting standards, they financial information required under this heading must include at least <u>the following</u>: a) <u>The balance sheet;</u> b) <u>The income statement;</u> c) <u>a statement showing either all changes in equity or changes in equity other than those arising from capital transaction with owners and distributions to owners;</u> d) <u>The cash flow statement;</u> e) <u>The accounting policies and explanatory notes.</u>
	<u>Audit report</u> The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standards.

(Moved from 20.3)	<u>Consolidated financial statements</u> If the issuer prepares both own-stand-alone and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.
(Moved from 20.5)	<u>Age of Financial Information</u> The <u>balance sheet date of the</u> last year of audited financial information statements may not be older than one of the following: a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; b) 15 <u>16</u> months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.
(Moved from 20.6)	Interim and other financial information If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been <u>audited or reviewed</u> or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact. If the registration document is dated more than nine months after the end date of the last audited financial <u>statements year</u>, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. <u>Interim financial information should be prepared in accordance with the requirements of the Accounting Directive or IFRS as the case may be.</u> <u>For issuers not subject to either the Accounting Directive or IFRS, the interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year's end balance <u>sheet in accordance with the applicable financial reporting framework.</u></u>
(Moved from 20.4)	Auditing of annual financial statements
	The historical annual financial <u>statements information</u> must be independently audited. <u>The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation.</u> <u>Where the Audit Directive and Audit Regulation do not apply;</u>

	- the historical annual financial <u>statements</u> information must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. a statement that the historical financial information has been audited. If audit reports on the <u>annual historical financial information statements</u> have been refused by the statutory auditors or if they contain qualifications, modifications of opinion, or disclaimers or an emphasis of matter, such refusals or such qualifications, or modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.
	Indication of other information in the registration document which has been audited by the auditors.
	Where financial <u>information</u> data in the registration document is not extracted from the issuer's audited financial statements state the source of the <u>information</u> and state that the <u>information</u> is unaudited.
(Moved from 20.2)	Pro forma financial information In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information. This pro forma financial information is to be presented as set out in Annex <u>12</u> and must include the information indicated therein. Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.
(Moved from 20.7)	Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.
	The amount of the dividend per share for each financial year for the period covered by the historical <u>annual</u> financial <u>statements</u> information adjusted, where the number of shares in the issuer has changed, to make it comparable.
(Moved from 20.8)	Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the

	previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
(Moved from 20.9)	Significant change in the issuer's financial position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.
21	ADDITIONAL INFORMATION
21.1	Share capital The following information as of the date of the most recent balance sheet included in the historical <u>annual</u> financial <u>statements</u> information :
21.1.1	The amount of issued capital, and for each class of share capital: - The total number of shares of <u>the issuer's</u> authorised <u>share capital</u>; - The number of shares issued and fully paid and issued but not fully paid; - The par value per share, or that the shares have no par value; and - A reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical <u>annual</u> financial <u>statements</u> information , state that fact.
21.1.2	If there are shares not representing capital, state the number and main characteristics of such shares.
21.1.3	The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
21.1.4	The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.

21.1.5	Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
21.1.6	Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.
21.1.7	A history of share capital, highlighting information about any changes, for the period covered by the historical <u>annual</u> financial statements information .
21.2	Memorandum and Articles of Association
21.2.1	The register and the entry number therein, if applicable, and a <u>brief</u> description of the issuer's objects and purposes and where they can be found in the <u>up to date</u> memorandum and articles of association.
21.2.2.	A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies. which materially deviate from local company law.
21.2.3.	Where there is more than one class of existing shares, a description of the rights, preferences and restrictions attaching to each class of existing shares.
21.2.4.	A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.
21.2.5.	A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.
21.2.6.	A 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.
21.2.7.	An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.
21.2.8.	A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.

22	MATERIAL CONTRACTS
	A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.
23 (Moved to 1)	THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
24	DOCUMENTS ON DISPLAY AVAILABLE
	A statement that for the life of the registration document the following documents (or copies thereof), where applicable, can be inspected: a) The <u>up to date</u> memorandum and articles of association of the issuer; b) All reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. (c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. An indication <u>of the website on which</u> where the documents on display may be inspected, by physical or electronic means.
25 (Moved to 6)	INFORMATION ON HOLDINGS
25.1	Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses

QUESTIONS FOR CONSULTATION

Question 9: Do you agree that the scope of NCA approval should be included in the cover note? If not, please provide your reasoning.

- Question 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?
- Question 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?
- Question 12: Do you consider that a description of material past investments is necessary information for the purpose of the prospectus?
- Question 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?
- Question 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?
- Question 15: Do you agree with the proposal to explain any 'emphasis of matter' identified in the audit report?
- Question 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?
- Question 17: Do you consider that the new requirement to disclose potential material impacts on the corporate governance would provide valuable information to investors?
- Question 18: Do you agree with the proposal to clarify the requirement for restated financial information?
- Question 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?
- Question 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.
- Question 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).

4.4. Content of the share securities note

90. ESMA has reviewed the existing equity securities note disclosure requirements in Annex III of the Commission Regulation, including against the relevant IOSCO disclosure standards and existing ESMA guidance, in order to establish the appropriate disclosure requirements for equity securities. Whilst of the view that most of the requirements in the existing equity securities note are fit for purpose, ESMA proposes the following amendments.

Persons responsible, third party information, experts' reports and competent authority approval

91. In order to be consistent with the additions to the responsibility section in the share registration document, the share securities note should also include the experts' report information in the section on persons responsible.
92. As set out in paragraph 56 above, ESMA proposes including a requirement to state which NCA approved the securities note. As this is market practice, it would not impose any additional burden on issuers. The text of the statement differs from that used for the registration document to take account of the different information included in the document. Where a prospectus is prepared on a standalone basis, ESMA is of the view that the NCA approval statement should refer to the prospectus and combine the disclosure requirement under the share registration document and share securities note schedules.

Risk factors

93. ESMA proposes bringing the risk factors section into line with the requirements of Article 16 of the Prospectus Regulation and disclosure Item 4 in the share registration document. Furthermore ESMA considers that risk factors must be supported by disclosure given elsewhere in the prospectus.

Information about the issuer

94. As any applicable summary would also require details of an offeror, this item has also been included here for completeness.

Capitalisation and indebtedness

95. NCAs have identified a discrepancy between the wording of the Commission Regulation (Annex III, Item 3.2) and paragraph 127 of the ESMA Update of the CESR Recommendations which relates to capitalisation and indebtedness statements.
96. The discrepancy concerns the age of the information to be included in the capitalisation and indebtedness table. The Commission Regulation states that the statement should be made "as of a date no earlier than 90 days prior to the date of the document" whereas the Recommendations include a sentence stating "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."
97. This has led to differing practices being adopted by different NCAs, some strictly following the Commission Regulation and others the Recommendations. In order to

harmonise the disclosure of the capitalisation and indebtedness table, ESMA proposes to follow the Commission Regulation requirement 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. ESMA considers that it should be permitted to make such an update of the statement by way of a narrative rather than an update of the entire table.

Takeovers

98. In practice, disclosures relating to takeovers given to meet the requirements of the Commission Regulation tend to be long and descriptive. They often cite national legal provisions on takeovers which might not provide the investor with clear and easily comprehensible information on the possibility of a change of control in the issuer or of any measures to protect the interests of the investor. ESMA therefore proposes redrafting the provision in such a way as to avoid the existing practice and to present investors with the information they actually need.
99. The proposed new provision only requires an issuer to stipulate its national legislation and to give a brief overview of the legal status of the shareholder in the offeree company in case of a takeover. The wording also requires the issuer to highlight if there is any possibility of frustrating measures against the bid for example due to the Member State opting out of Article 9(2) of the Takeover Bids Directive.

Information on taxation

100. Recital 47 of the Prospectus Regulation states that disclosure on taxation made under the Commission Regulation is, by its nature, too generic, adding little value for investors. This type of disclosure has been largely boilerplate covering multiple jurisdictions and therefore not specific to individual investors. In many cases, preparation of tax information is also very costly, particularly where the tax regime of each country into which the prospectus is passported is described. Nevertheless, where the investment attracts a specific, favourable, tax treatment, it is important that information on the taxation is disclosed. ESMA proposes that the existing Item 4.11 be modified accordingly.

Admission to trading and dealing arrangements

101. ESMA suggests the introduction of a requirement to disclose the issue price where there is an application for admission to trading, as currently this information is only disclosed where the admission is accompanied by a public offer. While this is an additional disclosure requirement, ESMA considers it to be material information and believes it should not impose any additional costs.
102. ESMA has taken the provisions of Commission Delegated Regulation (EU) 2016/1052 supplementing the Market Abuse Regulation ('MAR') into consideration in assessing the disclosure requirements necessary for stabilisation. Article 6(1) of MAR requires certain disclosures with regard to the conditions applicable to buy-back programmes and stabilisation measures, before the start of the initial or secondary offer of the securities. The requirements set out in Annex III of the Commission Regulation have similar requirements with the exception of the following:

- a) the fact that stabilisation transactions aim at supporting the market price of the securities during the stabilisation period;
- b) the place where the stabilisation may be undertaken including, where relevant, the name of the trading venue(s).

103. ESMA is of the opinion that it is important that the requirements set out in (a) and (b) above are included in the equity securities note annex as this disclosure is relevant to investors and in order to make the prospectus requirements consistent with those of MAR.

104. In addition, ESMA proposes moving the information in the existing Item 5.2.5 on over-allotment and green-shoe to the section on disclosure of stabilisation measures as, logically, they are more closely connected to stabilisation than to pre-allotment.

Dilution

105. According to Annex III, Items 9.1 and 9.2 of the Commission Regulation, a prospectus has to indicate the amount and percentage of the immediate dilution resulting from an offer and, in the case of a subscription offer to existing equity holders, the amount and percentage of the immediate dilution if they do not subscribe to the new offer.

106. Dilution can, however, be interpreted in a number of different ways. Firstly, the reduction in the value per share when further securities are issued, for example, via a rights issue. Secondly, the reduction of voting power for existing shareholders if further shares are issued to new shareholders. In either case, the real dilution depends on the number of shares finally subscribed by existing shareholders and new investors as well as the final offering price and the amount of capital raised.

107. According to the IOSCO standard, the immediate dilution of the offer has to be '*computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date*'. That gives rise to different interpretations and ways of fulfilling the standard, making dilution information less comparable across prospectuses as well as less comprehensible to investors and possibly also leaving doubt as to the completeness of the information provided in this regard.

108. On this basis, ESMA proposes the following disclosure item relating to dilution:

- i. A comparison of participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for new shares; and,
- ii. A comparison of the net asset value per share, as of the date of the latest balance sheet before the public offer (selling offer and / or capital increase) and the offer price per share within that public offer.

109. In addition, ESMA believes that it is important to capture situations where existing shareholders will be diluted regardless of whether they subscribe for their entitlement,

because a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders). In these cases an indication of the dilution that existing shareholders will experience should also be presented on the basis that they do take up their entitlement (in addition to the situation where they do not).

Credit institutions

110. Recital 29 of the Prospectus Regulation emphasises the importance of presenting risks, especially for retail investors, in the case of securities issued by credit institutions that are subject to bail-in under the Bank Recovery and Resolution Directive ('BRRD'). Point IV.C of Annex III of the Prospectus Regulation mentions that information on the level of subordination of the securities and the potential impact on the investment in the event of resolution under the BRRD is essential information about the securities. According to Article 47 of the BRRD, shares might also be negatively affected through bail-in or write-down or conversion of capital instruments. ESMA therefore proposes including a new disclosure item on the potential impact on the investment in the event of resolution under the BRRD.

Key changes

111. The key changes to the equity securities note compared to the existing Annex III of the Commission Regulation can be summarised as follows:
- Addition of NCA approval statement;
 - A requirement to update the capitalisation and indebtedness table with any material changes within the 90 day period;
 - Reduced disclosure requirements on taxation;
 - More specific disclosure requirements on dilution.
112. **On the basis of the above considerations, ESMA proposes the following Annex 2 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 2: SHARE SECURITIES NOTE
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>
1.1	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts

	and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
[1.3] Moved from 10.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide: - Such person's name; - Business address; - Qualifications; - Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.
[1.4] Moved from 10.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
[1.5] New	<u>A statement that:</u> <u>this [securities note / prospectus] has been approved by the name of competent authority], as competent authority under Regulation (EU) 2017/1129.</u> <u>the [name of competent authority] only approves this [securities note / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129.</u> <u>such approval should not be considered as an endorsement of [the quality of the securities that are the subject of this [securities note / prospectus] and</u> <u>investors should make their own assessment as to the suitability of investing in the securities.</u>
2	RISK FACTORS
	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities <u>A description of the material risks that are specific to the securities being offered and/or admitted to trading in a limited number of categories</u>, in a section headed 'Risk Factors'.

	<u>In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the securities and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the securities note.</u>
3	ESSENTIAL INFORMATION
3.1	Working capital statement Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.
3.2	Capitalisation and indebtedness A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness debt, collateralised and non-collateralised loans) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness. <u>In the case of material changes in the capitalisation and indebtedness position of the issuer within the 90 day period, additional information shall be given through the presentation of a narrative description of such changes or through the updating of those figures.</u>
3.3	Interest of natural and legal persons involved in the issue/offer A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.
3.4	Reasons for the offer and use of proceeds Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.
4	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING
4.1	A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.
4.2	Legislation under which the securities have been created.

4.3	An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
4.4	Currency of the securities issue.
4.5	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights: a) Dividend rights: 1) Fixed date(s) on which the entitlement arises; 2) Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; 3) Dividend restrictions and procedures for non-resident holders; 4) Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. b) Voting rights; c) Pre-emption rights in offers for subscription of securities of the same class; d) Right to share in the issuer's profits; e) Rights to share in any surplus in the event of liquidation; f) Redemption provisions; g) Conversion provisions.
4.6	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
4.7	In the case of new issues, the expected issue date of the securities.
4.8	A description of any restrictions on the free transferability of the securities.
4.9	<u>Statement on the existence of any national legislation on takeovers applicable to the issuer and the possibility for frustrating measures if any.</u> <u>An indication of the existence of any A brief description of the shareholders' rights and obligations in case of mandatory takeover bids and/or squeeze-out or sell-out rules in relation to the securities.</u>
4.10	An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.

4.11	<u>A warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities.</u> <u>Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.</u> In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: — information on taxes on the income from the securities withheld at source, — indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
[4.12] New	<u>Where applicable, the potential impact on the investment in the event of resolution under Directive 2014/59/EU.</u>
[4.13] New	<u>If different from the issuer, the identity and contact details of the offeror , of the securities and/or the person asking for admission to trading, including LEI where the offeror has legal personality.</u>
5	<u>TERMS AND CONDITIONS OF THE OFFER OF SECURITIES TO THE PUBLIC</u>
5.1	Conditions, offer statistics, expected timetable and action required to apply for the offer
5.1.1	Conditions to which the offer is subject.
5.1.2	Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, <u>an indication of the maximum amount of securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer.</u> Where the maximum amount of securities cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.
5.1.3	The time period, including any possible amendments, during which the offer will be open and description of the application process.
5.1.4	An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.
5.1.5	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.

5.1.6	Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).
5.1.7	An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.
5.1.8	Method and time limits for paying up the securities and for delivery of the securities.
5.1.9	A full description of the manner and date in which results of the offer are to be made public.
5.1.10	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
5.2	Plan of distribution and allotment
5.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
5.2.2	To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.
5.2.3	Pre-allotment Disclosure: a) The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches; b) The conditions under which the claw- back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches; c) The allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches; d) A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups. e) Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by; f) A target minimum individual allotment if any within the retail tranche;

	g) The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest; h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.
5.2.4	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
5.2.5 (Moved to 6)	Over-allotment and 'green shoe': (a) the existence and size of any over-allotment facility and/or 'green shoe'. (b) the existence period of the over-allotment facility and/or 'green shoe'. (c) any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.
5.3	Pricing
5.3.1	An indication of the price at which the securities will be offered <u>and the amount of any expenses and taxes charged to the subscriber or purchaser.</u> If the price is not known, or if there is no established and/or liquid market for the securities, indicate: the method for determining the offer price, including a statement as to who has set the criteria or is formally responsible for the determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser. a) <u>The maximum price as far as it is available; or</u> b) <u>The valuation methods and criteria, and/or conditions, in accordance with which the final offer price has been or will be determined and an explanation of any valuation methods used.</u> <u>Where neither (a) nor (b) can be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price of securities to be offered to the public has been filed.</u>
5.3.2	Process for the disclosure of the offer price.
5.3.3	If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal.
5.3.4	Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution

	in the proposed public offer and the effective cash contributions of such persons.
5.4	Placing and underwriting
5.4.1	Name and address of the coordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.
5.4.2	Name and address of any paying agents and depository agents in each country.
5.4.3	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.
5.4.4	When the underwriting agreement has been or will be reached.
6	ADMISSION TO TRADING AND DEALING ARRANGEMENTS
6.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent <u>third country markets, SME Growth Market or MTF</u> with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.
6.2	All the regulated markets, or equivalent <u>third country markets, SME Growth Market or MTFs</u> on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
6.3	If simultaneously or almost simultaneously with the creation <u>application for the admission</u> of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number, and characteristics <u>and price</u> of the securities to which they relate.
6.4	<u>In case of an admission to trading on a regulated market</u> , details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.

6.5	Stabilisation: <u>in case of an admission to trading on a regulated market</u> , where an issuer or a selling shareholder has granted an over- allotment option or it is otherwise proposed that price stabilising activities may be entered into in connection with an offer:
6.5.1	The fact that stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time.
[6.5.1.1] New	<u>The fact that stabilisation transactions aim at supporting the market price of the securities during the stabilisation period.</u>
6.5.2	The beginning and the end of the period during which stabilisation may occur,
6.5.3	The identity of the stabilisation manager for each relevant jurisdiction unless this is not known at the time of publication,
6.5.4	The fact that stabilisation transactions may result in a market price that is higher than would otherwise prevail.
[6.5.5] New	<u>The place where the stabilisation may be undertaken including, where relevant, the name of the trading venue(s).</u>
[6.6] (Moved from 5.2.5)	Over-allotment and 'green shoe': <u>In case of an admission to trading on a regulated market:</u> a) The existence and size of any over- allotment facility and/or 'green shoe'; b) The existence period of the over- allotment facility and/or 'green shoe'; c) Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.
7	SELLING SECURITIES HOLDERS
7.1	Name and business address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.
7.2	The number and class of securities being offered by each of the selling security holders.
7.3	Lock-up agreements The parties involved. Content and exceptions of the agreement. Indication of the period of the lock up.

8	EXPENSE OF THE ISSUE/OFFER
8.1	The total net proceeds and an estimate of the total expenses of the issue/offer.
9	DILUTION
9.1	The amount and percentage of immediate dilution resulting from the offer. <u>A comparison of:</u> a) <u>Participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares; and</u> b) <u>The net asset value per share as of the date of the latest balance sheet before the public offer (selling offer and / or capital increase) and the offering price per share within that public offer.</u>
9.2	In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer. <u>Where existing shareholders will be diluted regardless of whether they subscribe for their entitlement, because a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders), 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).</u>
10	ADDITIONAL INFORMATION
10.1	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.
10.2	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.
10.3 (Moved to 1)	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.

10.4 (Moved to 1)	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
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QUESTIONS FOR CONSULTATION

Question 22: Do you consider that the requirement for a working capital statement should be different in the case of credit institutions and insurance companies?

Question 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.

Question 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?

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

Question 265: 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.

Question 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).

4.5 Content of the retail debt and derivatives registration document

113. ESMA has reviewed the existing Annexes IV and IX of the Commission Regulation – including against the IOSCO international disclosure principles for cross-border offerings and listings of debt securities by foreign issuers¹⁰ in line with Article 13(2) of the Prospectus Regulation – in order to establish the appropriate disclosure requirements for issuers of non-equity securities. ESMA has also reviewed Annex XI (banks registration document) but, considering the minor differences between the requirements for credit institutions and other debt issuers, is of the view that there is little value added in the production of a separate annex for such issuers. Proposals for retail and wholesale

¹⁰ Final Report, IOSCO, March 2007.

registration documents should therefore apply mutatis mutandis to credit institutions issuing non-equity securities.

114. While acknowledging the different information requirements for both equity and non-equity securities, there are equally disclosure items that are relevant for both types of issuance. Where requirements that have been identified as being part of the core disclosure for equity are also relevant for non-equity, these have also been included for the core disclosure for non-equity (both retail and wholesale). Due to the differing nature of the securities, however, some slight wording differences or alleviated requirements have been maintained. In order to avoid repetition, with the exception of the items referred to in this section, the rationale for the inclusion or deletion of disclosure items is the same as that for equity securities.

Selected financial information

115. For the reasons set out in para 58 ESMA proposes to delete this requirement and has therefore not included it in the proposed new registration document for retail debt and derivatives.

Risk factors

116. Due to the differing considerations on the part of investors when investing in equity and non-equity, ESMA proposes maintaining the existing wording for risk factors in relation to the ability of an issuer of non-equity securities to fulfil its obligations under the securities. This wording acknowledges the clear difference in terms of repayment of both principal and interest. ESMA furthermore suggests amending the disclosure item to take into account the wording of Article 16 of the Prospectus Regulation.

Information about the issuer

117. As with the share registration document, ESMA proposes to require the inclusion of a website and of the issuer's LEI, the latter being a requirement mandated at Level 1. Additionally, ESMA proposes that credit ratings assigned to an issuer should also be disclosed in the registration document.
118. ESMA also proposes to delete the requirement for issuers of debt securities to provide information on recent and future principal investments on which firm commitments have been made, together with the anticipated source of funds for such investment. It is proposed that instead issuers be required to provide disclosure on their borrowing requirements and funding structure. While this information was not previously required for credit institutions, ESMA is of the view that this information is particularly important for investors in non-equity securities and significantly more important than a description of simply the issuer's investments.

Trend information

119. As regards trend information, ESMA considers that the existing requirements should be maintained in the context of the new regime as they ensure that adverse changes since the financial statements are brought up to the date of the prospectus, thereby providing useful information for investors. The text of the new requirement mirrors the corresponding item in the share registration document, including the amalgamation of

the provision with the requirement regarding significant change in the issuer's financial performance.

Profit forecasts and estimates

120. Traditionally, issuers have had the choice as to whether to include an outstanding profit forecast in a prospectus in the case of retail debt securities, with no presumption as in the case of equity that such is always material. However, where the issuer does decide to include a profit forecast, it has to be accompanied by an accountant's or auditor's report. Due to the burden of providing such a report, NCAs have observed that issuers are not including outstanding profit forecasts where they have the option not to, thereby lowering their costs and allowing quicker market access. ESMA has proposed the mandatory inclusion of published profit forecasts for equity at the same time as removing the requirement for an accountant's or auditor's report (please see Section 4.3). Given the reduction in cost, ESMA sees merit in levelling the disclosure for equity and retail debt as regards the disclosure of outstanding forecasts and therefore proposes to replicate the equity requirement for retail debt.
121. As regards profit estimates, ESMA proposes to remove the requirement for an accountant's or auditor's report for retail non-equity securities in line with the proposal for equity securities. Published profit estimates relating to periods for which financial statements have not yet been published should, however, be included in the registration document.

Board practices

122. Whilst a statement regarding compliance with relevant corporate governance regime(s) and details of audit committee members may be of significance to equity investors, arguably they do not have the same importance to debt investors. For this reason, and in order to reduce administrative burden, ESMA proposes to delete the board practices requirement for retail non-equity disclosure.

Documents on display

123. As with the proposal for the share registration document, and given the ease of access to documents placed on the internet, ESMA proposes to amend the requirement, such that it will be mandatory to make the mentioned documents electronically available.

Key changes

124. The key changes to the registration document for issuers of retail debt and derivatives can be summarised as follows:
- Deletion of the requirement to disclose selected financial information;
 - Requirement for issuers to include their website address, LEI and credit rating;
 - "Investments" replaced by "information on the issuer's borrowing requirements and funding structure";
 - Deletion of the disclosure requirement relating to board practices;

- Mandatory inclusion of outstanding and valid published profit forecasts and estimates in the prospectus;
- Deletion of the requirement to include an independent accountant's or auditor's report for profit forecasts and estimates;
- Documents on display must be electronically available.

125. On the basis of the above considerations, ESMA proposes the following Annex 3 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 3: RETAIL DEBT AND DERIVATIVES REGISTRATION DOCUMENT
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>
1.1	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
[1.3] Moved from item 16.1.	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide: a) Such person's name; b) Business address; c) Qualifications; d) Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus</u>.

[1.4] Moved from item 16.2.	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
[1.5] New	<u>A statement that:</u> - <u>the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129;</u> - <u>the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129;</u> - <u>such approval should not be considered as an endorsement of the issuer that it the subject of this registration document.</u>
2	STATUTORY AUDITORS
2.1	Names and addresses of the issuer's auditors for the period covered by the historical <u>annual</u> financial statements <u>information</u> (together with their membership in a professional body).
2.2	If auditors have resigned, been removed or not been re-appointed during the period covered by the historical <u>annual</u> financial statements <u>information</u> , indicate details if material.
3.	SELECTED FINANCIAL INFORMATION
3.1	Selected historical financial information regarding the issuer, presented, for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide key figures that summarise the financial condition of the issuer.
3.2	If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information.
4	RISK FACTORS
4.1	Prominent disclosure of <u>A description of the material risks factors that are specific to the issuer and</u> that may affect the issuer's ability to fulfil

	its obligations under the securities, <u>in a limited number of categories</u>, in a section headed 'Risk Factors'. <u>In each category the most material risk factors, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risk factors shall be corroborated by the content of the registration document.</u>
5	INFORMATION ABOUT THE ISSUER
5.1	History and development of the issuer
5.1.1	The legal and commercial name of the issuer
5.1.2	The place of registration of the issuer, and its registration number <u>and Legal Entity Identifier</u> .
5.1.3	The date of incorporation and the length of life of the issuer, except where indefinite.
5.1.4	The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address, telephone number of its registered office (or principal place of business if different from its registered office) <u>and website with a disclaimer that the information on the website does not form part of the prospectus.</u>
5.1.5	Any recent events particular to the issuer and which are to a material extent relevant to an evaluation of the issuer's solvency.
[5.1.6] Moved from securities note annex	<u>Credit ratings assigned to an issuer at the request or with the cooperation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.</u>
<u>[5.1.7] New</u>	<u>Information on: (a) the changes in the issuer's borrowing and funding structure during the last financial year; and (b) description of the expected financing of its activities</u>
5.2	Investments
5.2.1	A description of the principal investments made since the date of the last published financial statements.
5.2.3	Information concerning the issuer's principal future investments, on which its management bodies have already made firm commitments
5.2.3	Information regarding the anticipated sources of fud needed to fulfil commitments referred to in item 5.2.2.

6	BUSINESS OVERVIEW
6.1	Principal activities
6.1.1 (Merged with 6.1.2. and 6.2)	A description of the issuer's principal activities, <u>including</u>: a) Stating the main categories of products sold and/or services performed; b) an indication of any significant new products or activities; and c) the principle markets in which the issuer competes.
6.1.2. (Merged into 6.1.1)	An indication of any significant products and/or activities
6.2. (Merged into 6.1.1)	A brief description of the principal markets in which the issuer competes.
6.3	The basis for any statements made by the issuer regarding its competitive position.
7	ORGANISATIONAL STRUCTURE
7.1	If the issuer is part of a group, a brief description of the group and the issuer's position within the group. <u>This may be in the form of, or accompanied by, a diagram of the organisational structure if this helps to clarify the structure.</u>
7.2	If the issuer is dependent upon other entities within the group, this must be clearly stated together with an explanation of this dependence.
8	TREND INFORMATION
8.1 (Merged with 13.7)	<u>A description of:</u> a) Include a statement that there has been no <u>any</u> material adverse change in the prospects of the issuer since the date of its last published audited financial statements; <u>and</u> In the event that the issuer is unable to make such a statement, provide details of this material adverse change. b) <u>any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document.</u> <u>If neither of the above are applicable then the issuer should include (an) appropriate negative statement(s).</u>

8.2	Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
9	PROFIT FORECASTS OR ESTIMATES
9.1	If Where an issuer chooses to include <u>has published</u> a profit forecast) or a profit estimate (which is still outstanding and valid) <u>that forecast or estimate shall be included in the registration document must contain the information set out in items 9.1 and 9.2. If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then provide a statement to that effect and an explanation of why such profit forecast or estimate is no longer valid. Such an invalid forecast or estimate is not subject to the requirements in items 9.2 to 9.3.</u>
	<u>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 9.1, 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.</u> <u>The forecast or estimate shall comply with the following principles:</u> - 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 <u>reasonable</u>, readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast; and - <u>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.</u>
9.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be

	required provided that the prospectus includes all of the following statements: (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information; (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements; (a) — (c) this financial information has not been audited..
9.3	The prospectus shall include a statement that the profit forecast or estimate must be <u>has been compiled on the basis stated and prepared on a basis i) comparable with the <u>annual financial statements</u> historical financial information and ii) consistent with the issuer's accounting policies.</u>
10	ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES
10.1	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) Members of the administrative, management or supervisory bodies; b) Partners with unlimited liability, in the case of a limited partnership with a share capital.
10.2	Administrative, management, and supervisory bodies' conflicts of interests Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 9.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.
11	<u>BOARD PRACTICES</u>
11.1	Details relating to the issuer's audit committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
11.2	A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.

12	MAJOR SHAREHOLDERS
12.1	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
12.2	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
13	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES
13.1	<u>Historical financial information-Annual financial statements</u> Audited historical financial information statements covering the latest 2 two financial years (or such shorter period as the issuer has been in operation) and the audit report in respect of each year.
	<u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which historical annual financial information statements <u>is-are</u> required, the audited historical information-annual statements shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is shorter.
	<u>Accounting Standards</u> The Such financial information statements must be prepared according to the International Financial Reporting Standards as adopted by the EU. Regulation (EC) No 1606/2002 or, if If IFRS is not applicable, the financial statements must be prepared according to: (a) a Member State's national accounting standards for issuers from the Community-EEA; (b) For third country issuers, such financial statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards IFRS for third country issuers. If such third country's national accounting standards are financial information not equivalent to IFRS these standards, it must be presented in the form of restated the financial statements shall be restated in IFRS.

	<u>Change of accounting framework</u> The most recent year's last audited historical <u>annual</u> financial information statements, containing comparative information for the previous year, must be presented and prepared in a form consistent with the <u>accounting standards framework</u> that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements. <u>Changes within the issuer's existing accounting framework do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, the latest year of financial statements must be prepared and audited in line with the new framework.</u>
	If the issuer has been operating in its current sphere of economic activity for less than one year, the audited financial statements covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the EEA. For third country issuer, the annual financial statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. These annual financial statements must be audited
	If <u>Where</u> the audited financial information statements <u>is</u> is prepared according to national accounting standards, they <u>financial information</u> required under this heading must include at least <u>the following</u>: (a) <u>The balance sheet</u>; (b) <u>The income statement</u>; (c) <u>The cash flow statement</u>; (d) <u>The accounting policies and explanatory notes.</u>
(Moved to 13.3.1)	<u>Audit report</u> The historical annual financial information must have been be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard.
(Moved from 13.2)	<u>Consolidated financial statements</u> If the issuer prepares both own stand-alone and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.

(Moved from 13.4)	<u>Age of Financial Information</u> The <u>balance sheet date of the last year of audited financial information statements</u> may not be older than 18 months from the date of the registration document.
(Moved from 13.5)	Interim and other financial information
	If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact. If the registration document is dated more than nine months after the <u>end date</u> of the last audited financial <u>statements year</u>, it must contain interim financial information, <u>which may be unaudited (in which case that fact must be stated)</u> covering at least the first six months of the financial year. If the interim financial information is un-audited state that fact. <u>Interim financial information should be prepared in accordance with the requirements of the Accounting Directive or IFRS as the case may be.</u> <u>For issuers not subject to either the Accounting Directive or IFRS the interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year's end balance sheet.</u>
13.3	<u>Auditing of historical annual financial information statements</u>
13.3.1	The historical annual financial <u>statements information</u> must be independently audited. <u>The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation.</u> <u>Where the Audit Directive and Audit Regulation do not apply;</u> - the historical annual financial <u>statements information</u> must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. a statement that the historical financial information have been audited. If audit reports on the <u>annual historical financial information statements</u> have been refused by the statutory auditors or if they contain qualifications, modifications of opinion, or disclaimers or an emphasis of matter, such refusals or such qualifications, or modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.

13.3.2	Indication of other information in the registration document which has been audited by the auditors.
13.3.3	Where financial information in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.
13.4 (Moved to 13.1)	Age of latest financial information The last year of audited financial statements may not be older than 18 months from the date of the registration document.
13.5 (Moved to 13.2)	Interim and other financial information
	If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.
13.6	Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
13.7	Significant change in the issuer's financial or trading position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.

14	ADDITIONAL INFORMATION
14.1	Share capital The amount of the issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics, the part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.
14.2	Memorandum and Articles of Association The register and the entry number therein, if applicable, and a description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.
15	MATERIAL CONTRACTS
	A brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligations to security holders in respect of the securities being issued.
16	THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
16.1	Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the registration document.
16.2	Where information has been sourced from a third party, provide a confirmation that his information has been accurately reproduced and that as far as the issuer is ware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.
17	DOCUMENTS ON-DISPLAY AVAILABLE
	A statement that for the life of the registration document the following documents (or copies thereof), where applicable, can be inspected: (a) The <u>up to date</u> memorandum and articles of association of the issuer;

	(b) All reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. (c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. An indication <u>of the website on which</u> where the documents on display may be inspected, by physical or electronic means.
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QUESTIONS FOR CONSULTATION

- Question 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?
- Question 29: Do you agree that an issuer of retail non-equity should be required to include a previously provided credit rating assigned to it in the prospectus?
- Question 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?
- Question 31: Do you agree with the proposal that outstanding profit forecasts and estimates should be included in the registration document?
- Question 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?
- Question 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.
- Question 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).

4.6 Content of the wholesale (qualified) debt and derivatives registration document

126. ESMA considers that the existing regime for wholesale debt issuance largely works well and therefore, and so as not to unnecessarily disrupt the market, does not propose to make significant changes to the existing disclosure.
127. However, ESMA proposes to delete the requirement to restate the financial statements for wholesale issuance as it is of the view that wholesale investors are able to sufficiently understand and analyse the financial statements without such a restatement. The removal of the requirement to restate will reduce the administrative burden on issuers and reduce the cost of preparing the prospectus.
128. The changes which ESMA proposes to make to Annex IX of the Commission Regulation are set out in the table below and follow the amendments made for retail debt and derivatives.

Key changes

129. The key changes to the registration document for wholesale debt and derivative issuers can be summarised as follows:
- Requirement for issuers to include their website address, LEI and credit rating;
 - Requirement to restate financial statements has been removed;
 - Alignment of the disclosure item relating to profit forecasts and estimates with the wording contained in the retail debt annex but with the inclusion of any such forecast still left to the discretion of the issuer;
 - Requirement to make documents on display electronically available.
130. **On the basis of the above considerations, ESMA proposes the following Annex 4 for inclusion in its technical advice to the Commission.**

ITEM	ANNEX 4: WHOLESALE DEBT AND DERIVATIVES REGISTRATION DOCUMENT
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>
1.1	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information

	contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
[1.3] Moved from 13.1	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide: a) Such person's name; b) Business address; c) Qualifications; d) Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus</u>.
[1.4] Moved from 13.2	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
[1.5] New	<u>A statement that:</u> - <u>the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129;</u> - <u>the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129;</u> - <u>such approval should not be considered as an endorsement of the issuer that it the subject of this registration document;</u>
2	STATUTORY AUDITORS
2.1	Names and addresses of the issuer's auditors for the period covered by the historical <u>annual</u> financial <u>statements</u> information (together with their membership in a professional body).

2.2	If auditors have resigned, been removed or not been re-appointed during the period covered by the historical <u>annual</u> financial <u>statements</u> information , indicate details if material.
3	RISK FACTORS
	Prominent disclosure of <u>A description of the material risks factors that are specific to the issuer and that may affect the issuer's ability to fulfil its obligations under the securities, in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>In each category the most material risk factors, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risk factors shall be corroborated by the content of the registration document.</u>
4	INFORMATION ABOUT THE ISSUER
4.1	History and development of the Issuer
4.1.1	The legal and commercial name of the issuer
4.1.2	The place of registration of the issuer, and its registration number <u>and Legal Entity Identifier.</u>
4.1.3	The date of incorporation and the length of life of the issuer, except where indefinite
4.1.4	The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address, telephone number of its registered office (or principal place of business if different from its registered office) <u>and website with a disclaimer that the information on the website does not form part of the prospectus.</u>
4.1.5	Any recent events particular to the issuer and which are to a material extent relevant to an evaluation of the issuer's solvency.
[4.1.6] Moved from securities note	<u>Credit ratings assigned to the issuer at the request or with the cooperation of the issuer in the rating process.</u>
5	BUSINESS OVERVIEW
5.1	Principal activities

5.1.1	A brief description of the issuer's principal activities stating the main categories of products sold and/or services performed.
5.1.2	The basis for any statements made by the issuer regarding its competitive position.
6	ORGANISATIONAL STRUCTURE
6.1	If the issuer is part of a group, a brief description of the group and the issuer's position within the group. <u>This may be in the form of, or accompanied by, a diagram of the organisational structure if this helps to clarify the structure.</u>
6.2	If the issuer is dependent upon other entities within the group, this must be clearly stated together with an explanation of this dependence.
7	TREND INFORMATION
7.1 (Merged with 11.6)	<u>A description of:</u> a) Include a statement that there has been no <u>Any</u> material adverse change in the prospects of the issuer since the date of its last published audited financial statements; <u>and</u> In the event that the issuer is unable to make such a statement, provide details of this material adverse change. b) <u>Any significant change in the trading position financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document.</u> <u>If neither of the above are applicable then the issuer should include (an) appropriate negative statement(s).</u>
8	PROFIT FORECASTS OR ESTIMATES
	If an issuer chooses to include a profit forecast or a profit estimate, <u>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.</u>
8.1	<u>The forecast or estimate shall comply with the following principles:</u> - 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; <u>and</u> - the assumptions must be <u>reasonable</u>, readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.

	- <u>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.</u>
8.2	Any profit forecast set out in the registration document must be accompanied by a statement confirming that the said forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the issuer.
	The <u>prospectus shall include a statement that the profit forecast must be or estimate has been compiled on the basis stated and prepared on a basis i) comparable with the annual financial statements historical financial information and ii) consistent with the issuer's accounting policies..</u>
9	ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES
9.1	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) Members of the administrative, management or supervisory bodies; b) Partners with unlimited liability, in the case of a limited partnership with a share capital.
9.2	Administrative, management, and supervisory bodies conflicts of interests Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 9.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.
10	MAJOR SHAREHOLDERS
10.1	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
10.2	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
11	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES
11.1.	Historical financial information Annual financial statements <u>Audited historical Financial information statements</u> covering the latest 2 two financial years (at least 24 months) (or such shorter period as the issuer has been in operation) and the audit report in respect of each year.

	<u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which historical financial information statements is <u>are</u> required, the audited historical annual information statements shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is shorter.
	<u>Accounting standards</u> The Such financial information statements must be prepared according to International Financial Reporting Standards (IFRS) as adopted by the EU. Regulation (EC) No 1606/2002, or If <u>IFRS</u> is not applicable <u>the financial statements must be prepared according to:</u> (a) to a Member State's national accounting standards for issuers from the Community EEA; (b) For third country issuers, such financial statements must can be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards IFRS for third country issuers. Otherwise the following information must be included in the registration document: (a) A prominent statement that the financial <u>statements</u> information included in the registration document has <u>have not</u> been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 IFRS as adopted by the EU and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 IFRS been applied to the historical <u>annual</u> financial information statements; (b) Immediately following the historical <u>annual</u> financial <u>statements</u> information a narrative description of the differences between the international accounting standards IFRS as adopted by the EU and the accounting principles adopted by the issuer in preparing its annual financial statements.
	<u>Change of accounting framework</u> The most recent year's historical financial information, must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.
	If <u>Where</u> the audited financial information statements is <u>are</u> prepared according to national accounting standards, they financial information required under this heading must include at least the following:

	(a) The balance sheet; (b) The income statement; (c) The accounting policies and explanatory notes.
(Moved to 11.3.1)	<u>Audit report</u> The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it give a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standards. Otherwise, the following information must be included in the registration document: • a prominent statement disclosing which auditing standards have been applied; • an explanation of any significant departures from International Standards on Auditing.
(Moved from 11.2)	<u>Consolidated financial statements</u> If the issuer prepares both own <u>stand-alone</u> and consolidated financial statements, include at least the consolidated financial statements in the registration document.
(Moved from 11.4.1)	<u>Age of financial information</u> The balance sheet date of the last year of audited financial information statements may not be older than 18 months from the date of the registration document
11.2 (Moved to 11.1)	Financial statements If the issuer prepares both own and consolidated financial statements, include at least the consolidated financial statements in the registration document..
11.3	Auditing of historical annual financial information statements
11.3.1	The historical annual financial statements information must be independently audited. <u>The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation.</u> <u>Where the Audit Directive and Audit Regulation do not apply;</u> - the historical annual financial statements information must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the registration document: - a prominent statement disclosing which auditing standards have been applied;

	- an explanation of any significant departures from International Standards on Auditing. a statement that the historical financial information have been audited. If audit reports on the <u>annual historical financial information statements</u> have been refused by the statutory auditors or if they contain qualifications, <u>modifications of opinion</u>, or disclaimers <u>or an emphasis of matter</u>, such refusals or such qualifications, or modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.
11.3.2	Indication of other information in the registration document which has been audited by the auditors.
11.3.3	Where financial <u>information data</u> in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.
11.4 (Moved to 11.1)	Age of latest financial information The last year of audited financial information may not be older than 18 months from the date of the registration document.
11.5	Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
11.6	Significant change in the issuer's financial or trading position A description of any significant change in the financial and trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.
12	MATERIAL CONTRACTS
	A brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligations to security holders in respect of the securities being issued.
13	THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
Moved to 1	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide: e) Such person's name;

	f) Business address; g) Qualifications; h) Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document for the purpose of the prospectus.
Moved to 1	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
14	<u>DOCUMENTS ON DISPLAY AVAILABLE</u>
	A statement that for the life of the registration document the following documents (or copies thereof), where applicable, can be inspected: (a) The <u>up to date</u> memorandum and articles of association of the issuer; (b) All reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. (c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. An indication of the website on which where the documents on display may be inspected, by physical or electronic means.

QUESTIONS FOR CONSULTATION

- Question 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?
- Question 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.
- Question 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).

4.7 Content of the retail debt and derivatives securities note

131. ESMA has reviewed the existing Annex V in order to establish the appropriate disclosure requirements for issuers of retail non-equity securities. In order to avoid repetition, with the exception of the items referred to in this section, the rationale for the inclusion, deletion or amendment of disclosure items is the same as that for equity securities. Items have also been amended to reflect disclosures required by Article 7 of the Prospectus Regulation as regards the summary.
132. ESMA has included an additional column in the table to indicate whether each disclosure item qualifies as category A, B or C and so whether the information must be included in the base prospectus (where this structure is being used) or whether it may be included only in the final terms. By indicating whether an item qualifies as A, B or C directly in each relevant annex, ESMA considers that it is not necessary to carry over the current Annex XX of the Commission Regulation. This contributes to reducing the number of annexes and also makes the scrutiny process easier for NCA prospectus readers since they no longer have to consult an additional annex.

Taxation

133. ESMA proposes amending the disclosure relating to taxation included in Item 4.14 in order to align it with Recital 47 of the Prospectus Regulation. The amended disclosure only requires a warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities. Furthermore, appropriate information relating to a specific tax regime is also required if the securities benefit from a favourable tax treatment.

Past and future performance of the underlying

134. In cases of floating rate securities, issues were encountered in the past where the issuer only wanted to make information on the past and future performance of the underlying available by phone or by physical means at its registered office. ESMA considers that such information should be available via electronic means and is furthermore of the view that investors should not have to pay to access information on the underlying. ESMA therefore suggests amending the disclosure schedule accordingly.

Issue price

135. Issue price may constitute useful information for investors in case of an admission to trading (in the context of secondary trading), as it allows investors to see the evolution of the price of the security. Currently, the Commission Regulation only requires the offer price of the debt securities (Item 5.3.1, Annex V) in case of an offer to the public. ESMA therefore proposes an amendment to this item.

Representation of security holders

136. For ease of access, ESMA proposes that investors should be provided with electronic access to this information.

Inclusion of PRIIPs KID as part of the summary

137. In order to align with the general requirement that all information included in the summary is contained in the prospectus itself, ESMA proposes to include a disclosure requirement making it clear that where a PRIIPs KID is used as part of a summary, the information contained in that KID (e.g. a summary risk indicator) must also be included in the body of the prospectus. In cases where the prospectus has been drawn up as a base prospectus, the information contained in the KID, which is not included in the base prospectus, should be included in the related final terms.

Key changes

138. The key changes to the securities note for issuers of retail debt and derivatives can be summarised as follows:

- Re-categorisation of type of securities being offered from B to A;
- Re-categorisation of type of investors to whom the securities are being offered from A to C;
- Reduction of tax disclosure in line with Level 1;
- Requirement for the issue price of the securities to be disclosed in the prospectus in case of admission to trading;
- Requirement to make details relating to the representation of security holders available electronically and free of charge;
- Obligation to include rating information on the securities where these are rated.

139. **On the basis of the above considerations, ESMA proposes the following Annex 5 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 5: RETAIL DEBT AND DERIVATIVES SECURITIES NOTE	CAT.
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>	
1.1	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	A
1.2	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the	A

	case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	
Moved from 7.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide: a) Such person's name; b) Business address; c) Qualifications; d) Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the securities note <u>for the purpose of the prospectus</u>.	A
Moved from 7.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	C
<u>New</u>	<u>A statement that:</u> - <u>this [securities note / prospectus] has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129.</u> - <u>the [name of competent authority] only approves this [securities note / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129.</u> - <u>such approval should not be considered as an endorsement of [the quality of the securities that are the subject of this [securities note / prospectus] and</u>	A

	- <u>investors should make their own assessment as to the suitability of investing in the securities.</u>	
2	RISK FACTORS	
2.1	Prominent disclosure of <u>A description of the material risks factors that are <u>material specific</u> to the securities being offered and/or admitted to trading <u>in a limited number of categories</u>, in a section headed 'Risk Factors'.</u> <u>Risks to be disclosed shall include:</u> a) <u>those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities under bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with Directive 2014/59/EU (BRRD); and</u> b) <u>in cases where the securities are guaranteed, the specific and material risks related to the guarantor to the extent they are relevant to its ability to fulfil its commitment under the guarantee.</u> <u>In each category the most material risks, , in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the securities and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the securities note.</u>	A
3	ESSENTIAL-INFORMATION	
3.1	Interest of natural and legal persons involved in the issue/offer	
	A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest.	C
3.2	Reasons for the offer and use of proceeds	
	Reasons for the offer <u>to the public or for the admission to trading</u> if different from making profit and/or hedging certain risks. Where applicable, disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented by order of priority of such uses. If the issuer is	C

	aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.	
4	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED <u>TO THE PUBLIC</u>/ADMITTED TO TRADING	
4.1	A description of the type and the class of the securities being offered <u>to the public</u> and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.	BA C
4.2	Legislation under which the securities have been created.	A
4.3	An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.	A C
Moved from 5.1.2	<u>Total amount of the securities offered to the public/admitted to trading. If the amount is not fixed, an indication of the maximum amount of the securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer.</u> <u>Where the maximum amount of securities to be offered cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.</u>	C
4.4	Currency of the securities issue.	C
4.5	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer. <u>The relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under Directive 2014/59/EU.</u>	A

4.6	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.	B
4.7	The nominal interest rate. Provisions relating to interest payable The date from which interest becomes payable and The due dates for interest. The time limit on the validity of claims to interest and repayment of principal Where the rate is not fixed, a) A statement setting out the type of underlying; b) A description of the underlying on which it is based; c) And of the method used to relate the two; d) An indication where information about the past and the future performance of the underlying and its volatility can be obtained <u>by electronic means</u>; e) A description of any market disruption or settlement disruption events that affect the underlying; f) Adjustment rules with relation to events concerning the underlying; g) Name of the calculation agent; h) If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident.	C B C C B A C B C B C B
4.8	Maturity date. And Arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder,	C B

	it shall be described, stipulating amortisation terms and conditions.	
4.9	An indication of yield. Describe the method whereby that yield is calculated in summary form	C B
4.10	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of <u>the website</u> where the public may have <u>free</u> access to the contracts relating to these forms of representation.	B
4.11	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	C
4.12	<u>The issue date or</u> in the case of new issues, the expected issue date of the securities.	C
4.13	A description of any restrictions on the free transferability of the securities.	A
4.14	In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: — information on taxes on the income from the securities withheld at source, — indication as to whether the issuer assumes responsibility for the withholding of taxes at the source. <u>A warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities save where the investment entails a specific tax regime where a summarized description of such regime shall be included.</u>	A
<u>New</u>	<u>If different from the issuer, the identity and contact details of the offeror, of the securities and/or the person asking for admission to trading, including LEI where the offeror has legal personality.</u>	C

5	TERMS AND CONDITIONS OF THE OFFER <u>OF SECURITIES TO THE PUBLIC</u>	
5.1	Conditions, offer statistics, expected timetable and action required to apply for the offer	
5.1.1	Conditions to which the offer is subject.	C
5.1.2 (Moved after 4.3)	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.	CAT C
5.1.3	The time period, including any possible amendments, during which the offer will be open . A description of the application process.	C
5.1.4	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	C
5.1.5	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).	C
5.1.6	Method and time limits for paying up the securities and for delivery of the securities.	C
5.1.7	A full description of the manner and date in which results of the offer are to be made public.	C
5.1.8	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	C
5.2	Plan of distribution and allotment	
5.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	AC C
5.2.2	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	C

5.3.	Pricing	
5.3.1	An indication of the expected price at which the securities will be offered; or <u>A description of the method of determining the price, pursuant to Article 17 of Regulation (EU) 2017/1129, and the process for its disclosure.</u> Indicate the amount of any expenses, <u>including those contained in the price</u>, and taxes specifically charged to the subscriber or purchaser.	C B C
5.4	Placing and Underwriting	
5.4.1	Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.	C
5.4.2	Name and address of any paying agents and depository agents in each country.	C
5.4.3	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	C
5.4.4	When the underwriting agreement has been or will be reached.	C
6	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
6.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent <u>third country</u> markets, <u>SME Growth Market or MTF</u> with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved.	B C

	If known, give the earliest dates on which the securities will be admitted to trading.	
6.2	All the regulated markets or equivalent <u>third country</u> markets, <u>SME Growth Market or MTFs</u> on which, to the knowledge of the issuer, securities of the same class of the securities to be offered <u>to the public</u> or admitted to trading are already admitted to trading.	C
6.3	<u>In the case of admission to trading on a regulated market, the name</u> and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	C
<u>New</u>	<u>The issue price of the securities.</u>	C
7	ADDITIONAL INFORMATION	
7.1	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	C
7.2	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	A
7.3	C Credit ratings assigned to an issuer or its <u>the debt</u> securities at the request or with the co-operation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.	C
<u>New</u>	<u>Where the summary is substituted in part with the information set out in Article 8, paragraph 3, points (c) to (i) of Regulation (EU) n. 1286/2014, all such information to the extent it is not already disclosed elsewhere in the securities note.</u>	<u>C</u>

QUESTIONS FOR CONSULTATION

Question 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?

- Question 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.
- Question 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)?
- Question 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?
- Question 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.
- Question 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).

4.8 Content of the wholesale debt and derivatives securities note

140. ESMA proposes to make only minor changes to Annex XIII of the Commission Regulation, the rationale for which has been set out in the narrative concerning the securities note for retail debt and derivatives.

Key changes

141. The key changes to the securities note for issuers of wholesale debt and derivative can be summarised as follows:
- Use of proceeds requirement has been added where the reason for the issuance is different from making a profit or hedging risks;
 - Re-categorisation of type of securities being offered from B to A;
 - Requirement to make details relating to the representation of security holders available electronically and free of charge.

142. On the basis of the above considerations, ESMA proposes the following Annex 6 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 6: WHOLESALE DEBT AND DERIVATIVES SECURITIES NOTE	CAT.
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>	
1.1	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	A
1.2	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	A
Moved from 7.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.	A
Moved from 7.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	C

New	<u>A statement that:</u> - <u>this [securities note/prospectus] has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129.</u> - <u>the [name of competent authority] only approves this [securities note / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129.</u> - <u>such approval should not be considered as an endorsement of [the quality of the securities that are the subject of this [securities note / prospectus] and</u> - <u>investors should make their own assessment as to the suitability of investing in the securities</u>	A
2	RISK FACTORS	
2.1	Prominent disclosure of <u>A description of the material risks factors that, are <u>material specific</u> to the securities being offered and/or admitted to trading in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>Risks to be disclosed shall include:</u> a) <u>those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities under bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with Directive 2014/59/EU (BRRD); and</u> b) <u>in cases where the securities are guaranteed, the specific and material risks related to the guarantor to the extent they are relevant to its ability to fulfil its commitment under the guarantee.</u> <u>In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market,, taking into account their impact on the issuer and the securities and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the securities note.</u>	A
3	ESSENTIAL INFORMATION	
[3.1]	Interest of natural and legal persons involved in the issue.	C

	A description of any interest, including conflicting ones, that is material to the issue, detailing the persons involved and the nature of the interest.	
[3.2] NEW	<u>Use of proceeds</u> <u>Reasons for the issuance if different from making profit and/or hedging certain risks.</u>	
4	INFORMATION CONCERNING THE SECURITIES TO BE ADMITTED TO TRADING	
4.1	Total amount of securities being admitted to trading.	C
4.2	A description of the type and the class of the securities being admitted to trading, including the ISIN (international security identification number) or other such security identification code.	B-A C
4.3	Legislation under which the securities have been created.	A
4.4	An indication of whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.	A C
4.5	Currency of the securities issue.	C
4.6	Ranking of the securities being admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer. <u>The relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under Directive 2014/59/EU.</u>	A
4.7	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.	B
4.8	The nominal interest rate. Provisions relating to interest payable.	C B

	The date from which interest becomes payable.	C
	The due dates for interest.	C
	The time limit on the validity of claims to interest and repayment of principal.	B
	Where the <u>rate is not fixed</u> ,	
	a) A statement setting out the type of underlying;	A
	b) A description of the underlying on which it is based;	C
	c) And of the method used to relate the two;	B
	d) A description of any market disruption or settlement disruption events that affect the underlying;	B
	e) Adjustment rules with relation to events concerning the underlying;	C
	f) The name of the calculation agent.	C
4.9	Maturity date.	C
	Arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions.	B
4.10	An indication of yield.	C
4.11	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of <u>the website</u> where investors may have <u>free</u> access to the contracts relating to these forms of representation.	B
4.12	A statement of the resolutions, authorisations and approvals by virtue of which the securities have been created and/or issued.	C
4.13	The issue date of the securities.	C
4.14	A description of any restrictions on the free transferability of the securities.	A
<u>New</u>	<u>If different from the issuer, the identity and contact details of the offeror of the securities and/or the person asking for</u>	C

	<u>admission to trading, including LEI where the offeror has legal personality.</u>	
5	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
5.1	Indication of the regulated market, or other equivalent third <u>country</u> market, SME Growth Market or MTF where the securities will be traded and for which prospectus has been published. If known, give the earliest dates on which the securities will be admitted to trading.	B C
5.2	Name and address of any paying agents and depository agents in each country.	C
6	EXPENSE OF THE ADMISSION TO TRADING	
	An estimate of the total expenses related to the admission to trading.	C
7	ADDITIONAL INFORMATION	
7.1.	If advisors are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	C
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	A
7.5.	Credit ratings-assigned to an issuer or its <u>the debt</u> securities at the request or with the co-operation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.	C

QUESTIONS FOR CONSULTATION

Question 44: Do you consider it useful that use of proceeds of issuance under this annex should be disclosed when different from making a profit or hedging risk?

Question 45: 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.

Question 46: 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).

4.9 Content of the derivative securities building block

143. Given the degree of overlap between debt and derivative securities disclosures, rather than having two separate schedules, ESMA proposes to have a building block for derivative securities that can be added to the securities note disclosure for retail and wholesale debt, secondary issuance and to the EU Growth prospectus. The below table is an amended version of Annex XII of the Commission Regulation and contains the disclosure requirements to be added to the these securities notes in case of derivative securities.

Return on derivative securities

144. ESMA proposes to move Item 4.1.13 from Category B to Category A as this item requires a more general description on the return and should be known at the time of the approval of the base prospectus.

Information on the underlying security

145. ESMA considers that investors should have the same level of information when investing in substantially similar products and therefore proposes to align the disclosure applicable to reference entities in the case of credit linked notes with those for obligors in the case of asset-backed securities. There should not be substantially different treatment depending on whether the investor is exposed to the price of the security as a market measure or through a credit default swap. Ultimately, the investor needs to make an assessment on the underlying market measure.
146. In case of securities which are not admitted to trading on a regulated market, equivalent third country market or SME Growth Market, ESMA considers that name and ISIN provide very little information and investor protection. As such, ESMA proposes to require the additional information for all reference obligations, including securities, where the principal is at risk.

Benchmarks regulation

147. A disclosure requirement has been added to reflect the requirement contained in Regulation 2016/1011 (the 'Benchmarks Regulation') stating whether any benchmark referenced is provided by an administrator included in the register referred to in Article 36 of that regulation.

Key changes

148. The key changes to derivatives disclosure can be summarised as follows:
- Re-categorisation from B to A in the case of how any return on the securities takes place;

- Amended requirements for more detailed disclosure on underlying securities and reference obligations by bringing the disclosure in line with the disclosure requirements for similar investments, especially in cases where investors could lose some or all of their investment;
- Re-categorisation from A to B in the case of the description of an index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer;
- Requirement to provide disclosure in line with the Benchmarks Regulation.

149. On the basis of these considerations, ESMA proposes the following Annex 7 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 7: DERIVATIVE SECURITIES BUILDING BLOCK	CAT.
1	PERSONS RESPONSIBLE	
1.1	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	A
1.2	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	A
2	RISK FACTORS	
	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed 'risk factors'. This must include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the	A

	circumstances in which such additional liability arises and the likely financial effect. <u>If investors may lose the value of their entire investment or part of it, then the prospectus shall include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect.</u>	
3	KEY INFORMATION	
3.1	Interest of natural and legal persons involved in the issuer/offer A description of any interest, including conflicting ones that is material to the issuer/offer, detailing the persons involved and the nature of the interest.	C
3.2	Reasons for the offer and use of proceeds when different from making profit and/or hedging certain risks If reasons for the offer and use of proceeds are disclosed provide the total net proceeds and an estimate of the total expenses of the issue/offer.	C
4	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING	
4.1	Information concerning the securities	
4.1.1	A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International security identification number) or other such security identification code.	B
4.1.2	A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 100 000, or can only be acquired for at least EUR 100 000 per security <u>or are to be traded on a regulated market or a specific segment of a regulated market to which only qualified investors can have access.</u>	B
4.1.3	Legislation under which the securities have been created.	A

4.1.4	An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form.	A
4.1.5	Currency of the securities issue.	C
4.1.6	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.	A
4.1.7	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.	B
4.1.8	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	C
4.1.9	The issue date of the securities.	C
4.1.10	A description of any restrictions on the free transferability of the securities.	A
4.1.11	The expiration or maturity date of the derivative securities. The exercise date or final reference date.	C
4.1.12	A description of the settlement procedure of the derivative securities.	B
4.1.13	A description of: (a) How any return on derivative securities takes place; (b) The payment or delivery date; (c) And the way it is calculated.	B-A C B
4.1.14	In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: (a) information on taxes on the income from the securities withheld at source; (b) indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.	A

	<u>INFORMATION CONCERNING THE UNDERLYING</u>	
4.2.1	The exercise price or the final reference price of the underlying.	C
4.2.2	A statement setting out the type of the underlying. and details of where information on the underlying can be obtained <u>Details of where information on the underlying can be obtained including an indication of where information about the past and the future performance of the underlying and its volatility can be obtained by electronic means</u> <u>Where the underlying is a security or reference obligation (or in the case of a pool of underlyings, where a single security or reference obligation represents 20% or more of the pool):</u> <u>Either:</u> <u>(i) where the investor may not lose the value of its entire investment or part of it:</u> a) <u>the name of the issuer of the security or reference obligation; and</u> b) <u>the ISIN (International Security Identification Number) or other such security identification code;</u> <u>Or</u> <u>(ii) where the investor may lose the value of its investment or part of it as a result of the derivative element:</u> a) <u>the ISIN (International Security Identification Number);</u> b) <u>a brief description of the security or reference obligation; and</u> c) <u>so far as the issuer is aware and/or able to ascertain from information published by the issuer of the security or reference obligation, information relating to the issuer of the security or reference obligation as if it were the issuer (in accordance with the wholesale debt and derivatives registration document schedule);</u> <u>or</u> d) <u>so far as the issuer is aware and/or able to ascertain from information published by the issuer of the security or reference obligation, if the issuer of the underlying security or reference obligation has securities already admitted to trading on a regulated market, equivalent third country market, SME Growth</u>	A C C C C C C A C

	<u>Market, its name, address, country of incorporation, significant business activities/ investment policy and the name of the market in which its securities are admitted.</u>	
	<u>In case of a pool of underlyings, where a single security or reference obligation represents less than 20% of the pool:</u>	
	a) <u>the names of the issuers of the security or reference obligation;</u>	C
	b) <u>the ISIN (International Security Identification Number), and</u>	C
	c) <u>if there is principal at risk for the security for which the prospectus is drafted, a brief description of the security or reference obligations</u>	B
	Where the underlying is an index,	
	the name of the index;	C
	a) a description of the index if it is composed by the issuer or by any legal entity belonging to the same group;	A
	b) a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements: The complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website; and the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.	A-B
	c) If the index is not composed by the issuer, an indication of where information about the index can be obtained.	C
	Where the underlying is an interest rate, a description of the interest rate.	C
	Others	

	Where the underlying does not fall within the categories specified above, the securities note shall contain equivalent information.	C
	Where the underlying is a basket of underlyings, <u>disclosure for each underlying as described above and</u> disclosure of the relevant weightings of each underlying in the basket.	C
	<u>Where the securities reference a benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark is provided by an administrator included in the register referred to in Article 36 of Regulation (EU) 2016/1011.</u>	<u>C</u>
4.2.3	A description of any market disruption or settlement disruption or <u>credit events</u> that affect the underlying.	B
4.2.4	Adjustment rules with relation to events concerning the underlying.	B
5	TERMS AND CONDITIONS OF THE OFFER	
5.1	Conditions, offer statistics, expected timetable and action required to apply for the offer	
5.1.1	Conditions to which the offer is subject.	C
5.1.2	Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the amount of the offer.	C
5.1.3	The period of time , including any possible amendments, during which the offer will be open and description of the application process.	C
5.1.4	Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).	C
5.1.5	Method and time limits for paying up the securities and for delivery of the securities.	C
5.1.6	A full description of the manner and date in which results of the offer are to be made public.	C
5.2	Plan of distribution and allotment	
5.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	A

5.2.2	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	€
5.3	Pricing	€
5.3.1	Indication of the expected price at which the securities will be offered or	€
	the method of determining the price and the process for its disclosure.	B
	Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.	€
5.4	Placing and underwriting	
5.4.1	Name and address of the coordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.	€
5.4.2	Name and address of any paying agents and <i>depository</i> agents in each country.	€
5.4.3	Entities agreeing to underwrite the issue on a firm commitment basis, and entities agreeing to place the issue without a firm commitment or under «best efforts» arrangements. Where not all of the issue is underwritten, a statement of the portion not covered.	€
5.4.4	When the underwriting agreement has been or will be reached.	€
5.4.5	Name and address of a calculation agent.	€
6	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
6.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance shall be mentioned, without creating the impression that the admission to trading necessarily will be approved.	B
	If known, the earliest dates on which the securities will be admitted to trading shall be given.	€
6.2	All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of	€

	the securities to be offered or admitted to trading are already admitted to trading.	
6.3	Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	C
7	ADDITIONAL INFORMATION	
7.1	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	C
7.2	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	A
7.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest, if any, in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.	A
7.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.	C
7.5	An indication in the prospectus whether or not the issuer intends to provide post issuance information. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported and where such information can be obtained.	C

QUESTIONS FOR CONSULTATION

Question 44: Do you agree with the proposal to make derivate disclosures a building block?

- Question 47: Do you agree with the proposal to reclassify how the return on derivatives take place from B to A? If not, please explain why.
- Question 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?
- Question 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?
- Question 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.
- Question 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).

4.10 Content of the building block on the underlying share

150. ESMA proposes adjusting Annex XIV of the Commission Regulation in order to bring it in line with the proposal for an share securities note (see Section 4.4 above). The most important proposed change is to Item 2 which has been amended to allow issuers to make use of the simplified disclosure regime for secondary issuances or the proportionate regime for EU Growth prospectuses. The rationale for this change is that the information on the underlying entity in the prospectus should be the same as if the underlying entity would directly offer its shares, including use of the proportionate schedules, if applicable.
151. Additionally, ESMA suggests amending Item 1.9 of Annex XIV in line with the approach taken for the equity securities note in relation to the disclosure relating to takeovers. Item 1.11 has also been amended to reflect the approach taken for the equity securities note in relation to dilution, but also includes additional amendments to reflect the fact that the dilution is resulting from the exercise of rights and not an offering of shares.
152. Categorisation of disclosure items in the table below is for non-equity issuance only.

Key changes

153. The key changes to the disclosure on the underlying share can be summarised as follows:
- Schedule amended in line with share registration document and to reference the simplified prospectus regime and EU Growth prospectus regime.

154. Based on the above, ESMA proposes the following Annex 8 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 8: BUILDING BLOCK ON THE UNDERLYING SHARE	CAT.
1	DESCRIPTION OF THE UNDERLYING SHARE	
1.1	Describe the type and the class of the shares	A
1.2	Legislation under which the shares have been or will be created	A
1.3	Indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records	A C
1.4	Indication of the currency of the shares issue	A
1.5	A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of those rights: a) Dividend rights: 1) Fixed date(s) on which the entitlement arises; 2) Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; 3) Dividend restrictions and procedures for non-resident holders; 4) Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. b) Voting rights; c) Pre-emption rights in offers for subscription of securities of the same class; d) Right to share in the issuer's profits; e) Rights to share in any surplus in the event of liquidation; f) Redemption provisions; g) Conversion provisions.	A
1.6	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the shares	C

	have been or will be created and/or issued and indication of the issue date.	
1.7	Where and when the shares will be or have been admitted to trading.	C
1.8	Description of any restrictions on the free transferability of the shares.	A
1.9	Indication of the existence of any mandatory takeover bids / or squeeze-out and sell-out rules in relation to the shares. <u>Statement on the existence of any national legislation on takeovers applicable to the issuer and the possibility for frustrating measures if any. Brief description of the shareholders' rights and obligations in case of mandatory takeover bid, squeeze-out or sell-out).</u>	A
1.10	Indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.	A
1.11	<u>A comparison of:</u> a) <u>Participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares; and</u> b) <u>The net asset value per share as of the date of the latest balance before the public offer (selling offer and / or capital increase) and the offering price per share within that public offer</u>	C
2	<u>INFORMATION TO BE PROVIDED WHERE THE ISSUER OF THE UNDERLYING IS AN ENTITY BELONGING TO THE SAME GROUP</u>	
	When the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the one required by the share Registration Document schedule or, if applicable, the respective share schedule of the <u>Registration Document schedule for secondary issuances or EU growth Registration Document schedule.</u>	A

QUESTIONS FOR CONSULTATION

- Question 52: Do you agree with the proposed amendments to the annex relating to the underlying share?
- Question 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).

4.11 Content of the registration document for securities issued by third countries and their regional and local authorities

155. The disclosure requirements for the registration document for securities issued by third countries and their regional and local authorities has attracted no adverse comment and is therefore considered to be fit for purpose. However, on the basis that, in accordance with Article 1(2) of the Prospectus Regulation, the Prospectus Regulation does not apply to Member States and their regional and local authorities, and under Article 4 they cannot opt in, references to such have been removed. The wording of Annex XVI of the Commission Regulation has been brought into line with the revised wording of the new registration document annexes but the substance of this annex remains unchanged with the exception of the requirement to disclose any rating that the issuer may have..
156. **ESMA proposes the following Annex 9 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 9:THIRD COUNTRIES AND THEIR REGIONAL AND LOCAL AUTHORITIES REGISTRATION DOCUMENT
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>
1.1	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

	As the case may be, a declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
[1.3] Moved from Item 7	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide: a) Such person's name; b) Business address; c) Qualifications. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that the person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus</u>. To the extent known to the issuer, provide information in respect of any interest relating to such expert which may have an effect on the independence of the expert in the preparation of the report.
[1.4] <u>New</u>	<u>A statement that:</u> - <u>the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129;</u> - <u>the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129;</u> - <u>such approval should not be considered as an endorsement of the issuer that it the subject of this registration document;</u>
2	RISK FACTORS
	Prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations under the securities to investors in a section headed risk factors. <u>A description of the material risks that are specific to the issuer in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>In each category the most material risk factors, , in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market,, taking into account their impact on the issuer and the probability of their occurrence, shall receive the highest prominence.</u> <u>The risk factors shall be corroborated by the content of the registration document.</u>

3	INFORMATION ABOUT THE ISSUER
3.1	<u>History and development of the issuer</u> The legal name of the issuer and a brief description of the issuer's position within the national governmental framework.
3.2	The domicile or geographical location and legal form of the issuer and its contact address, telephone number <u>and website with a disclaimer that the information on the website does not form part of the prospectus.</u>
3.3	Any recent events relevant to the evaluation of the issuer's solvency.
3.4	A description of the issuer's economy including: a) The structure of the economy with details of the main sectors of the economy; b) Gross domestic product with a breakdown by the issuer's economic sectors for the previous two fiscal years.
3.5	A general description of the issuer's political system and government including details of the governing body of the issuer.
[3.6] New	<u>Credit ratings assigned to the issuer at the request or with the cooperation of the issuer in the rating process.</u>
4	PUBLIC FINANCE AND TRADE
	Information on the following for the two fiscal years prior to the date of the registration document: a) The tax and budgetary systems; b) Gross public debt including a summary of the debt, the maturity structure of outstanding debt (particularly noting debt with a residual maturity of less than one year) and debt payment record, and of the parts of debt denominated in the domestic currency of the issuer and in foreign currencies; c) Foreign trade and balance of payment figures; d) Foreign exchange reserves including any potential encumbrances to such foreign exchange reserves as forward contracts or derivatives; e) Financial position and resources including liquid deposits available in domestic currency; f) Income and expenditure figures. Description of any auditing or independent review procedures on the accounts of the issuer.

5	SIGNIFICANT CHANGE
5.1	Details of any significant changes to the information provided pursuant to item 4 which have occurred since the end of the last fiscal year, or an appropriate negative statement.
6	LEGAL AND ARTIBRATION PROCEEDINGS
6.1	Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer's financial position, or provide an appropriate negative statement.
6.2	Information on any immunity the issuer may have from legal proceedings.
7	STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
Moved to 1	Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's name, business address and qualifications. If the report has been produced at the issuer's request a statement to that effect, that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorised the contents of that part of the registration document. To the extent known to the issuer, provide information in respect of any interest relating to such expert which may have an effect on the independence of the expert in the preparation of the report.
8	DOCUMENTS ON DISPLAY<u>AVAILABLE</u>
	A statement that for the life of the registration document the following documents, (or copies thereof), where applicable, can be inspected: a) Financial and audit reports for the issuer covering the last two fiscal years and the budget for the current fiscal year; b) All reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. An indication of where the documents are displayed <u>where the website on which the documents on display</u> may be inspected, by physical or electronic means.

QUESTIONS FOR CONSULTATION

Question 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)?

4.13 Content of the asset-backed securities registration document

154. ESMA considers that the existing asset-backed securities registration document schedule in Annex VII of the Commission Regulation works well and therefore does not propose to make significant changes to the existing disclosure. The changes largely reflect the changes made to other annexes and aligns the disclosure with them.

Key changes

155. The key changes to the asset-backed securities registration document schedule can be summarised as follows:

- Requirement for issuers to indicate their website address and LEI;
- Requirement for documents on display to be made electronically available;
- Restatement requirement for financial statements has been deleted in line with wholesale debt;
- Information on the parties of the securitisation program (existing Item 5.2, Annex VII) has been removed and integrated in Annex VIII (new Item 3.2.).

157. **Based on the above, ESMA proposes the following Annex 10 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 10: ASSET-BACKED SECURITIES REGISTRATION DOCUMENT
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>
1.1	All persons responsible for the information given in the registration document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information given in the registration document is, to the best of their knowledge, in accordance with the facts and does not omit anything likely to affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import

[1.3] Moved from Item 9.1	Where a statement or report attributed to a person as an expert is included in the registration document, provide: a) Such person's name; b) Business address; c) Qualifications; d) Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that <u>the</u> person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus</u>.
[1.4] Moved from Item 9.2	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.
<u>[1.5] New</u>	<u>A statement that:</u> - <u>the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129;</u> - <u>the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129;</u> - <u>such approval should not be considered as an endorsement of the issuer that it the subject of this registration document;</u>
2	STATUTORY AUDITORS
2.1	Names and addresses of the issuer's auditors for the period covered by the historical <u>annual</u> financial <u>statements</u> information (together with any membership of any relevant professional body).
3	RISK FACTORS
3.1	The document must prominently disclose risk factors in a section headed "Risk Factors" that are specific to the issuer and its industry. <u>A description of the material risks that are specific to the issuer and in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>In each category the most material risk factors, , in the assessment of the issuer, offer or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the probability</u>

	<u>of their occurrence, shall receive the highest prominence. The risk factors shall be corroborated by the content of the registration document.</u>
4	INFORMATION ABOUT THE ISSUER
4.1	A statement whether the issuer has been established as a special purpose vehicle or entity for the purpose of issuing asset backed securities.
4.2	The legal and commercial name of the issuer. <u>Legal Entity Identifier if any.</u>
4.3	The place of registration of the issuer and its registration number;
4.4	The date of incorporation and the length of life of the issuer, except where indefinite;
4.5	The domicile and legal form of the issuer, the legislation under which the issuer operates its country of incorporation and the address and telephone number of its registered office (or principal place of business if different from its registered office) <u>and website (on which information on the ABS is made available to investors) with a disclaimer that the information on the website does not form part of the prospectus.</u>
4.6	Description of the amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the securities of which it is composed.
5	BUSINESS OVERVIEW
5.1	A brief description of the issuer's principal activities.
5.2 (Moved to item 3.2 ABS securities note building block)	A global overview of the parties to the securitisation program including information on the direct or indirect ownership or control between those parties.
6	ADMINISTRATIVE, MANAGEMENT AND SUPERVISORY BODIES
6.1.	Names, business addresses and functions in the issuer of the following persons, and an indication of the principal activities performed by them outside the issuer where these are significant with respect to that issuer: a) Members of the administrative, management or supervisory bodies; b) Partners with unlimited liability, in the case of a limited partnership with a share capital.

7	MAJOR SHAREHOLDERS
7.1.	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom, and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
8	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION, AND PROFITS AND LOSSES
8.1.	Where, since the date of incorporation or establishment, an issuer has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect shall be provided in the registration document.
8.2.	Historical Financial Information <u>Audited financial statements</u> Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information statements covering the latest 2 <u>two</u> financial years (<u>at least 24 months</u>) (or <u>such</u> shorter period that the issuer has been in operation) and the audit report in respect of each year. <u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which historical annual financial statements information <u>is</u> <u>are</u> required, the audited historical annual statements information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <u>Accounting standards</u> The Such financial information statements must be prepared according to Regulation (EC) No 1606/2002 International Financial Reporting Standards (IFRS) as adopted by the EU. , or if <u>If IFRS is not applicable the financial statements must be prepared according to:</u> (a) a Member's State's national accounting standards for issuers from the Community <u>EEA</u>. (b) For third country issuers, such financial information statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards-IFRS for third country issuers. <u>If such third country's national accounting standards are financial information not equivalent to IFRS these</u>

standards, it must be presented in the form of restated the financial statements shall be restated in IFRS.

Change of accounting framework

~~The most recent last year's historical financial information audited annual financial statements, containing comparative information for the previous year, must be presented and prepared in a form consistent with the accounting standards framework that which will be adopted in the issuer's next annual published financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.~~

Changes within the issuer's existing accounting framework do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements, (as defined by IAS 1), including comparatives, must be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.

~~If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information statements covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards where the issuer is from the Community an issuer from the EEA.~~

~~For third country issuers, the historical financial information annual financial statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information These annual financial statements must be audited.~~

~~If Where the audited financial information is statements are prepared according to national accounting standards, they financial information required under this heading must include at least the following:~~

- a) The balance sheet;
- b) The income statement;
- c) The accounting policies and explanatory notes.

Audit report

~~The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration~~

	document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard.
8.2.a	<i>This paragraph may be used only for issues of asset backed securities having a denomination per unit of at least EUR 100 000 or which are to be traded only on a regulated market, and/or a specific section thereof, to which only qualified investors have access for the purpose of trading in the securities.</i> <u>Audited financial statements</u> Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information statements covering the latest 2 <u>two</u> financial years <u>(at least 24 months)</u> (or <u>such</u> shorter period that the issuer has been in operation) and the audit report in respect of each year. <u>Accounting standards</u> The Such financial information statements must be prepared according to Regulation (EC) No 1606/2002 <u>International Financial Reporting Standards (IFRS) as adopted by the EU.</u> , or if <u>If IFRS is not applicable the financial statements must be prepared according to:</u> a) a Member's State's national accounting standards for issuers from the Community <u>EEA</u>. (b) For third country issuers, such financial information statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. <u>IFRS for third country issuers.</u> Otherwise the following information must be included in the registration document: (i) A prominent statement that the financial statements <u>information</u> included in the registration document has <u>have</u> not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 <u>IFRS as adopted by the EU</u> and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 <u>IFRS</u> been applied to the historical annual financial information statements. (ii) Immediately following the historical annual financial statements <u>information</u> a narrative description of the differences between the international accounting standards <u>IFRS as adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 by the EU</u> and the accounting principles adopted by the issuer in preparing its annual financial statements.

Moved from 8.2 and 8.2a	The most recent year's historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next annual published financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements. If Where the audited financial information is <u>statements are</u> prepared according to national accounting standards, they financial information required under this heading must include at least the following: - The balance sheet; - The income statement; - The accounting policies and explanatory notes. <u>Audit report</u> The historical annual financial statements information must be independently audited. <u>The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation.</u> <u>Where the Audit Directive and Audit Regulation do not apply;</u> - the historical annual financial statements information must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the registration document: - a prominent statement disclosing which auditing standards have been applied; - an explanation of any significant departures from International Standards on Auditing. - a statement that the historical annual financial statements information have been audited. If audit reports on the annual historical financial information statements have been refused by the statutory auditors or if they contain qualifications, modifications of opinion, or disclaimers or an emphasis of matter, such refusals or such qualifications, or modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.
8.3	Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the company is aware), during a period covering at least the previous 12 months, which may have, or have had in the recent past, significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement

8.4	Material adverse change in the issuer's financial position Where an issuer has prepared financial statements, include a statement that there has been no material adverse change in the financial position or prospects of the issuer since the date of its last published audited financial statements. Where a material adverse change has occurred, this must be disclosed in the registration document.
9	THIRD PARTY INFORMATION STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
9.1 (Moved to 1)	Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the registration document.
9.2 (Moved to 1)	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.
10	DOCUMENTS ON DISPLAY AVAILABLE
10.1	A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected: a) The memorandum and <u>up to date</u> articles of association of the issuer; b) All reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document; c) The historical financial information of the issuer or, in the case of a group, the historical financial information of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. An indication of where <u>the website on which</u> the documents on display may be inspected by physical or electronic means.

QUESTIONS FOR CONSULTATION

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

Question 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).

4.13 Content of the additional building block for asset-backed securities

Securitisation Regulation

158. In order to align the prospectus with the forthcoming Securitisation Regulation, ESMA proposes two new requirements for asset-backed securities which have been attested simple, transparent and standardised (STS) securitisations (draft Securitisation Regulation, Article 711). The first new requirement is to state whether an STS notification has been communicated to ESMA and to provide a brief explanation of the meaning of the STS attestation. ESMA is of the view that it should be clear to investors that the STS label does not provide any indication as to the level of risk of the investment and particularly that the investment is not risk free. It is important that investors are aware that it is up to them to perform their due diligence to assess the risk of the instrument and even to determine for themselves whether the instrument is STS. Therefore, no impression should be given that the NCA, as part of its scrutiny of the prospectus, has verified that the transaction is in fact STS compliant.
159. Secondly, ESMA proposes that investors should be alerted to the fact that the STS label is not a point-in-time label as it has to be maintained throughout the life of the transaction (it may become non-STS for various reasons in the future). As the Securitisation Regulation requires an STS register on ESMA's website which will provide updated information for each transaction status throughout its life, investors should be encouraged to verify the current status of the transaction on the ESMA's STS website.
160. ESMA also proposes to include disclosure of the material net economic interest retained by the originator, the sponsor or the original lender to bring it into line with Article 4 of the draft Securitisation Regulation which requires risk retention for all securitisation transactions falling within its scope. In addition, ESMA proposes to include a structure diagram of the transaction in each case bringing this item in line with the securitisation regulation.

¹¹ COM(2015) 472 final - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015PC0472&from=en>

Overlapping requirements

161. ESMA proposes to streamline certain disclosures that seem to overlap. For example, the condition that “*an obligor accounts for a material portion of the assets*” seems to be covered by the condition that “*an obligor accounts for 20 % or more of the assets*”. Therefore, ESMA proposes to delete the former requirement.
162. ESMA is of the view that an explicit reference should be made to the guarantor in the item relating to disclosure by the obligor as if it were the issuer of the securities (2.2.11). The obligor is the issuer of the underlying assets and the guarantor guarantees the payments under the underlying assets. Reference has also been added to a regulated market to which only qualified investors can have access for consistency purposes with Article 13(1)(2) of the new Prospectus Regulation.

Details of the underlying securities and reference entities

163. ESMA suggests inserting a new requirement for details of the underlying where it is a security traded on a regulated market. The purpose is to provide brief information on the securities and a link to where documentation on the securities can be found.
164. ESMA has also added a new requirement to provide information where the underlying is a collective investment undertaking. This requirement is to provide information in accordance with the schedule for closed end funds so that investors can make a more informed opinion about whether to invest.
165. The current regime requires issuers to provide disclosure on a reference entity, reference obligation or reference pool where the return on and/or repayment of the security is linked to the performance or credit of other assets which are not assets of the issuer. Information on the reference security is required as if it were the underlying asset itself. ESMA proposes to continue to require such disclosure (which allows the investor to be able to assess the credit risk related to such a reference security and as a result to its investment) save where the investor’s principal is not at risk as a result, in which case more limited disclosure on the reference entity can be given. Where the reference entity is an index, compliance with items 2 and 4 of the derivatives building block is required in order for the investor to be able to fully assess credit risk related to such reference security and as a result to its investment.

Re-categorisations

166. ESMA also proposes the re-categorisation of a small number of disclosure items for consistency but also for investor protection and to ensure proper NCA oversight. By way of example, investors are reliant on the experience and expertise of the collateral manager and therefore disclosure on this entity should be in the base prospectus. In addition, it is essential for investors to know how information on how cash flows will meet the issuer’s obligations and payments is collected in respect of the assets in order to be able to assess ring-fencing and security. For this reason, it is proposed that these items should be re-categorised as such information should be known at the time of the approval of the base prospectus as it would apply to the programme as a whole.
167. Furthermore, as regards other arrangements upon which payment of principal and interest are dependent ESMA, proposes to re-categorise this item from A to B. While the

description of the arrangements referred to in this item must be included in the base prospectus, there might be cases where it would be beneficial to complete the information with percentages, figures, rates, names, etc., which are only relevant for the particular issue (e.g. an interest rate swap which is described in the base prospectus but the applicable interest rate which is relevant for that swap contract is only known at the time of the particular issue). Therefore, ESMA considers it advantageous to allow the inclusion of such information in the final terms.

Post-issuance reporting

168. ESMA proposes to amend this requirement to clarify that post issuance reporting is no longer optional for securitisation.

Key changes

169. The key changes to the additional building block for asset-backed securities can be summarised as follows:
- Issuers should indicate whether a communication regarding STS attestation has been communicated to ESMA and explain the meaning of such. Investors should also be alerted to the fact that STS is not a static designation;
 - Re-categorisation of the general description of the obligors in Item 2.2.2, in the case of a small number of obligors. from Category A to Category C in order to be consistent with the categorisation in Item 2.2.11(b);
 - Re-categorisation of the legal nature of the assets from category C to A. This information should be known at the time of the approval of the base prospectus and is important information for investors and NCAs to be able to assess the assets and further disclosure requirements on;
 - Re-categorisation of the loan to value of level of collateralisation from C to B;
 - Inclusion of details of the guarantor as if it were the issuer;
 - Inclusion of brief details and an electronic link to further information where the underlying securities are non-equity securities traded on a regulated market, equivalent third country market¹² or SME Growth Market;
 - Addition of a requirement to provide disclosure where the underlying is a collective investment undertaking which is not admitted to trading;
 - Re-categorisation from A to B of other arrangements upon which principal and interest payments are dependent;
 - Re-categorisation from B to A of the identity and expertise of the collateral manager;

¹² Article 25(4) MiFID II.

- Re-categorisation of how payments are collected in respect of the assets from B to A, with the financial service table as C;
- Requirement for the description of the structure of the transaction to contain an overview of the transaction and the cash flows, including, if necessary, a structure diagram;
- Alignment of post-issuance reporting with the draft Securitisation Regulation.

170. On the basis of the above considerations, ESMA proposes the following Annex 11 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 11: ASSET-BACKED SECURITIES ADDITIONAL BUILDING BLOCK	CAT.
1	THE SECURITIES	
New	<u>Where applicable, a statement of whether a notification has been, or is intended to be, communicated to ESMA, as regards STS compliance. This should be accompanied by an explanation of the meaning of such notification together with a reference or hyperlink to ESMA's data base indicating that the STS-notification is available for download there if deemed necessary.</u>	A
New	<u>Where the prospectus includes a statement that the transaction is STS compliant, a warning that the STS status of a transaction is not static and that investors should verify the current status of the transaction on ESMA's website..</u>	
1.1	The minimum denomination of an issue.	C
1.2	Where information is disclosed about an undertaking/obligor which is not involved in the issue, provide a confirmation that the information relating to the undertaking/obligor has been accurately reproduced from information published by the undertaking/obligor. So far as the issuer is aware and is able to ascertain from information published by the undertaking/obligor no facts have been omitted which would render the reproduced information misleading. In addition, identify the source(s) of information in the Securities Note that has been reproduced from information published by an undertaking/obligor.	C
2	THE UNDERLYING ASSETS	
2.1	Confirmation <u>A statement confirming</u> that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities.	A

2.2	In respect of a pool of discrete assets backing the issue:	
2.2.1	The legal jurisdiction by which the pool of assets is governed	C
2.2.2	In the case of a small number of easily identifiable obligors a general description of each obligor. In all other cases, a description of: the general characteristics of the obligors; and the economic environment, as well as global statistical data referred to the securitised assets.	<u>AC</u> B C
2.2.3	the legal nature of the assets;	<u>CA</u>
2.2.4	the expiry or maturity date(s) of the assets;	C
2.2.5	the amount of the assets;	C
2.2.6	loan to value ratio or level of collateralisation;	<u>CB</u>
2.2.7	the method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria and any rights or obligations to make further advances;	B
2.2.8	an indication of significant representations and collateral given to the issuer relating to the assets;	C
2.2.9	any rights to substitute the assets and a description of the manner in which and the type of assets which may be so substituted; if there is any capacity to substitute assets with a different class or quality of assets a statement to that effect together with a description of the impact of such substitution;	B
2.2.10	a description of any relevant insurance policies relating to the assets. Any concentration with one insurer must be disclosed if it is material to the transaction.	B
2.2.11	Where the assets comprise obligations of 5 or fewer obligors which are legal persons or <u>are guaranteed by 5 or fewer legal persons</u> or where an obligor or <u>entity guaranteeing the obligations</u> accounts for 20 % or more of the assets, <u>or where 20% or more of the assets are guaranteed by a single guarantor</u> or where an obligor accounts for a material portion of the assets , so far as the issuer is aware and/or is able to ascertain from information published by the obligor(s) <u>or guarantor(s)</u> indicate either of the following: (a) information relating to each obligor <u>or guarantor</u> as if it were an issuer drafting a registration document for debt and derivative	

	securities with an individual denomination of at least EUR 100 000 <u>and/or that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in such securities;</u> b) if an obligor or guarantor has securities already admitted to trading on a regulated or equivalent <u>third country market or SME Growth Market</u> or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the its name, address, country of incorporation, nature of business <u>significant business activities / investment policy</u> and the name of the market in which its securities are admitted.	A
2.2.12	If a relationship exists that is material to the issue, between the issuer, guarantor and obligor, details of the principal terms of that relationship.	C
<u>New</u>	<u>Where the assets comprise obligations that are traded on regulated or equivalent third country market or SME Growth Market, a brief description of the securities, the market and an electronic link where the documentation of the obligations can be found on the regulated or equivalent market.</u>	C
2.2.13	Where the assets comprise <u>obligations</u> non-equity securities that are not traded on a regulated or equivalent <u>third country market or SME Growth Market</u> , a description of the principal terms and conditions of the obligations.	B
2.2.14	Where the assets comprise equity securities that are admitted to trading on a regulated or equivalent market <u>or SME Growth Market</u> indicate the following: (a) a description of the securities; (b) a description of the market on which they are traded including its date of establishment, how price information is published, an indication of daily trading volumes, information as to the standing of the market in the country, the name of the market's regulatory authority <u>and an electronic link where the documentation of the securities can be found on the regulated or equivalent market or SME Growth Market;</u> (c) the frequency with which prices of the relevant securities, are published.	C
2.2.15	Where more than ten (10) <u>10</u> per cent of the assets comprise equity securities that are not traded on a regulated or equivalent market <u>or SME Growth Market</u> , a description of those equity securities and equivalent information to that contained in the schedule for share registration document <u>or where applicable, the schedule for the registration document for securities issued by</u>	A

	<u>collective investment undertakings</u> in respect of each issuer of those securities.	
2.2.16	Where a material portion of the assets are secured on or backed by real property, a valuation report relating to the property setting out both the valuation of the property and cash flow/income streams. Compliance with this disclosure is not required if the issue is of securities backed by mortgage loans with property as security, where there has been no revaluation of the properties for the purpose of the issue, and it is clearly stated that the valuations quoted are as at the date of the original initial mortgage loan origination.	A
2.3	In respect of an actively managed pool of assets backing the issue:	
2.3.1	equivalent information to that contained in items 2.1 and 2.2 to allow an assessment of the type, quality, sufficiency and liquidity of the asset types in the portfolio which will secure the issue;	See items 2.1 and 2.2
2.3.2	the parameters within which investments can be made, the name and description of the entity responsible for such management including a description of that entity's expertise and experience, a summary of the provisions relating to the termination of the appointment of such entity and the appointment of an alternative management entity, and a description of that entity's relationship with any other parties to the issue.	BA
2.4	Where an issuer proposes to issue further securities backed by the same assets, a prominent statement to that effect and unless those further securities are fungible with or are subordinated to those classes of existing debt, a description of how the holders of that class will be informed.	C
3	STRUCTURE AND CASH FLOW	
3.1	Description of the structure of the transaction <u>containing an overview of the transaction and the cash flows</u> , including, if necessary, a structure diagram.	A
3.2 (Merged with former Item 5.2 from Annex VII)	Description of the entities participating in the issue and description of the functions to be performed by them <u>and information on the direct and indirect ownership or control between those entities</u> .	A

3.3	Description of the method and date of the sale, transfer, novation or assignment of the assets or of any rights and/or obligations in the assets to the issuer or, where applicable, the manner and time period in which the proceeds from the issue will be fully invested by the issuer.	B
3.4	An explanation of the flow of funds including:	
3.4.1	how the cash flow from the assets will meet the issuer's obligations to holders of the securities, including, if necessary, a financial service table and a description of the assumptions used in developing the table;	B <u>A</u> <u>C</u>
3.4.2	information on any credit enhancements, an indication of where material potential liquidity shortfalls may occur and the availability of any liquidity supports and indication of provisions designed to cover interest/principal shortfall risks;	B
<u>New</u>	<u>Where applicable, the risk retention requirement applicable to the transaction together with the material net economic interest retained by the originator, the sponsor or the original lender.</u> ¹³	A C
3.4.3	Without prejudice to item 3.4.2, details of any subordinated debt finance;	C
3.4.4	an indication of any investment parameters for the investment of temporary liquidity surpluses and description of the parties responsible for such investment;	B
3.4.5	how payments are collected in respect of the assets;	B <u>A</u>
3.4.6	the order of priority of payments made by the issuer to the holders of the class of securities in question;	A
3.4.7	details of any other arrangements upon which payments of interest and principal to investors are dependent;	<u>A</u> <u>B</u>
3.5	the name, address and significant business activities of the originators of the securitised assets.	C
3.6	Where the return on, and/or repayment of the security is linked to the performance or credit of other assets or underlyings which are	See derivatives

¹³ This may change depending on the final securitisation regulation requirements.

	not assets of the issuer, <u>for each such reference asset or underlying one of the following:</u> - <u>disclosure in accordance with items 2.2 and 2.3 are necessary; or</u> - <u>where the principal is not at risk, the name of the issuer of the reference asset, the ISIN, and an indication where information about the past and the current performance of the reference asset can be obtained; or</u> - <u>where the reference asset is an index, items 2 and 4. of [Annex 7 - the derivatives building block].</u>	building block
3.7	The name, address and significant business activities of the administrator, calculation agent or equivalent, together with a summary of the administrator's/calculation agents responsibilities, their relationship with the originator or the creator of the assets and a summary of the provisions relating to the termination of the appointment of the administrator/calculation agent and the appointment of an alternative administrator/calculation agent;	C
3.8	The names and addresses and brief description of: (a) any swap counterparties and any providers of other material forms of credit/liquidity enhancement; (b) the banks with which the main accounts relating to the transaction are held.	A C
4	POST ISSUANCE REPORTING	
4.1	Indication in the prospectus whether or not it <u>of where the issuer intends to provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. Where the issuer has indicated that it intends to report such information, specify in the prospectus. The issuer shall indicate</u> what information will be reported, where such information can be obtained, and the frequency with which such information will be reported.	C

QUESTIONS FOR CONSULTATION

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

Question 58: Do you agree with the proposal to allow reduced disclosure where the securities comprising the assets are listed on an SME Growth Market?

Question 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).

4.14 Content of the building block for pro forma financial information

171. ESMA is not aware of a need to make major changes to Annex II of the Commission Regulation and has therefore used this annex as the starting point for its proposed technical advice on a new building block for pro forma financial information.
172. The new Prospectus Regulation only mentions pro forma financial information on two occasions, namely in connection with the summary requirements in Article 7 and in connection with the requirements for the simplified disclosure regime for secondary issuances in Article 14. Neither of the articles specifies the content requirements of the pro forma financial information in any way.
173. In its proposal for a pro forma financial information building block, ESMA has taken into account that some parts of the current Annex II are somewhat unclear – this is for example illustrated by the fact that ESMA has issued a Q&A¹⁴ to clarify certain terms used in Annex II. To address this lack of clarity, ESMA proposes some reorganising and regrouping in order to make the requirements clearer and easier to understand, however, no major changes to substance are suggested. The proposed building block also contains some new wording in order to clarify the current market practice.
174. **On this basis, ESMA proposes the following Annex 12 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 12: PRO FORMA INFORMATION BUILDING BLOCK
<u>New</u>	<u>CONTENTS OF PRO FORMA FINANCIAL INFORMATION</u>
1	The pro forma information must include a description of the transaction, the businesses or entities involved and the period to which it refers, and must clearly state the following: <u>Pro forma financial information shall consist of</u> (a) <u>an introduction setting out:</u> 1. the purpose to which it <u>the pro forma financial information</u> has been prepared, <u>including a description of the transaction or significant commitment and businesses or entities involved,</u>

¹⁴ [ESMA/2016/1674](#), Q&A 50

2. 3. Moved from 4	2. <u>the period and/or date covered by the pro forma financial information and</u> - the fact that it has been prepared for illustrative purposes only; - The fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results. 3. <u>an explanation that it illustrates the impact of the transaction as if the transaction had been undertaken at an earlier date selected for purposes of the illustration, and that this hypothetical compilation may differ from the entity's actual financial position or results</u> (b) In order to present pro forma financial information, a balance sheet, and a profit and loss account, a balance sheet or both, depending on the circumstances, and accompanying explanatory notes, depending on the circumstances may be included. Pro forma financial information must normally be presented in a columnar format composed of: 1. The historical unadjusted information 2. <u>accounting policies adjustments, if necessary</u> 3. the pro forma adjustments and 4. The resulting pro forma financial information in the final column (c) <u>accompanying notes explaining</u> 1. <u>the sources from which the unadjusted financial information has been extracted and whether or not an audit or review report on the source has been published</u> The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included in the prospectus. 2. the basis upon which <u>the pro forma financial information</u> is prepared 3. <u>significant assumptions used in developing the pro forma adjustments</u> 4. the source of <u>and explanation for</u> each item of information and adjustment <u>and</u>
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	5. <u>whether each adjustment in respect of a pro forma profit and loss statement is expected to have a continuing impact on the issuer or not.</u>
	<u>PRINCIPLES IN PREPARING AND PRESENTING PRO FORMA FINANCIAL INFORMATION</u>
4.	<u>Pro forma financial information shall be labelled as such to distinguish it from historical financial information.</u> The pro forma financial information must be prepared in a manner consistent with the <u>applicable financial reporting framework and</u> accounting policies adopted by the issuer in its last or next financial statements and shall identify the following:
5.	Pro forma information may only be published in respect of: (d) the current financial period; (a) the most recently <u>last completed financial period year</u> and/or (b) the most recent interim period for which relevant unadjusted information has been published or will be published or is being published <u>are included</u> in the same document <u>registration document/prospectus</u>.
6.	Pro forma adjustments related to the pro forma financial information must be: (a) <u>be</u> clearly shown and explained; (b) <u>present all significant effects</u> (c) directly attributable to the transaction; and (d) be factually supportable. In addition, in respect of a pro forma profit and loss or cash flow statement, they must be clearly identified as to those expected to have a continuing impact on the issuer and those which are not.
	<u>REQUIREMENTS FOR ADDITIONAL INFORMATION</u>
7.	<u>If applicable, the financial statements and interim financial statements of the (to be) acquired businesses or entities must be included in the prospectus.</u> The <u>prospectus shall include a report</u> prepared by the independent accountants or auditors must state <u>stating</u> that in their opinion: - the pro forma financial information has been properly compiled on the basis stated and - that basis is consistent with the accounting policies of the issuer.

QUESTIONS FOR CONSULTATION

Question 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.

4.15 Content of the additional building block for guarantees

175. In order to develop a proposal for an additional building block for guarantees, ESMA has used Annex VI of the Commission Regulation as a starting point.
176. ESMA is of the view that the new Prospectus Regulation to a certain extent endorses the existing disclosure requirements in Annex VI. In particular, Article 6 of the Prospectus Regulation requires that *"the prospectus shall contain the necessary information which is material to an investor for making an informed assessment of: (a) the assets and liabilities, profits and losses, financial position and prospects of the issuer and of any guarantor [...]"* whereas Article 7(1) lays down that *"the prospectus shall include a summary that provides the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities [...]"*. Furthermore, Article 7(7)(c) sets out a list of information requirements when there is a guarantee attached to the securities, as follows:
- i) a brief description of the nature and scope of the guarantee;
 - ii) a brief description of the guarantor, including its LEI;
 - iii) the relevant key financial information for the purpose of assessing the guarantor's ability to fulfil its commitments under the guarantee; and
 - iv) a brief description of the most material risk factors pertaining to the guarantor included in the prospectus in accordance with Article 16(1b) [...].
177. Finally, Annex V to the Prospectus Regulation under the name 'Securities note for the EU growth prospectus' explicitly requires a disclosure item providing information on the guarantor.
178. On this basis, ESMA is of the view that the existing Annex VI does not need to undergo any substantial change. ESMA has considered whether the annex should be amended in order to incorporate the guidance set out at Level 3¹⁵ but has concluded that there is no such need. With the aim of further clarifying the meaning of specific disclosure requirements or aligning the wording of this building block with the wording of other building blocks, ESMA proposes a few very minor drafting changes. Firstly, in the second

¹⁵ [ESMA/2016/1674](#), Q&A 48 and Q&A 70

paragraph of Item 1.1, ESMA suggests the inclusion of new wording in relation to commitments so that it also covers such arrangements where firm commitments have not yet been made and information should be given on the conditions which have to be fulfilled in order for the arrangement to enter into force. Secondly, ESMA suggests aligning the wording in Item 4 with the similar wording in other building blocks of the new Prospectus Regulation to account for the fact that access to documents on display is now possible via electronic means.

179. On the basis of the above considerations, ESMA proposes the following Annex 13 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 13: GUARANTEES BUILDING BLOCK
1	NATURE OF THE GUARANTEE
	A description of any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, Keep well Agreement, Mono-line Insurance policy or other equivalent commitment (hereafter referred to generically as “guarantees” and their provider as “guarantor” for convenience). Without prejudice to the generality of the foregoing, such arrangements encompass commitments, <u>including those under conditions</u>, to ensure obligations to repay debt securities and/or the payment of interest and the description shall set out how the arrangement is intended to ensure that the guaranteed payments will be duly serviced.
2	SCOPE OF THE GUARANTEE
	Details shall be disclosed about the terms and conditions and scope of the guarantee. Without prejudice to the generality of the foregoing, these details should cover any conditionality on the application of the guarantee in the event of any default under the terms of the security and the material terms of any Mono-line Insurance or Keep well Agreement between the issuer and the guarantor. Details must also be disclosed of any guarantor’s power of veto in relation to changes to the security holder’s rights, such as is often found in Mono-line Insurance.
3	INFORMATION TO BE DISCLOSED ABOUT THE GUARANTOR
	The guarantor must disclose information about itself as if it were the issuer of that same type of security that is the subject of the guarantee.
4	DOCUMENTS ON-DISPLAY AVAILABLE
	Indication of the places <u>website</u> where the public may have access to the material contracts and other documents relating to the guarantee.

QUESTIONS FOR CONSULTATION

Question 61: Do you agree that the additional building block for guarantees does not need to change other than the minor amendments proposed by ESMA?

4.16 Content of the schedule on depository receipts issued over shares

Structure of depository receipts disclosure

180. The requirements for depository receipts are, on the whole, seen to be fit for purpose and as a result, ESMA proposes to base the disclosure requirements for depository receipts (and their underlying securities) on Annex X of the Commission Regulation.

Content of depository receipts disclosure

181. Under the Prospectus Directive (Recital 12) depository receipts were categorised as non-equity securities. Recital 12 of the Prospectus Directive has not been carried over to the Prospectus Regulation, which is now silent as regards the qualification of depository receipts. ESMA notes however that the majority of the disclosure requirements relating to depository receipts and underlying securities derive from Annexes I and III (share registration document and share securities note) as and that depository receipts are economically more similar to equity securities than non-equity securities. ESMA therefore proposes to require the working capital and capitalisation and indebtedness statements to be included for the underlying securities.
182. Furthermore, a depository receipt can often represent more than one share. ESMA therefore proposes to include a new requirement to state the number of underlying shares that are represented by each depository receipt in order to provide investors with certainty regarding the ratio of depository receipt to shares.
183. ESMA considers that disclosure in relation to depository receipts should be able to be used in the case of secondary issuances. The annex has therefore been amended by adding two columns, one for the offers or admission to trading on a regulated market and one for secondary issuances. The purpose of the columns is to indicate, by means of a tick (✓), which of the requirements are required in each case.
184. The disclosure requirements have been aligned with the wording of the share registration document and equity securities note where the requirements have changed.

Key changes

185. The key changes to the annex for depository receipts issued over shares can be summarised as follows:
- Requirement to include working capital and capitalisation and indebtedness statements on the underlying securities;

- Requirement to state the number of underlying securities represented by the depository receipt;
- Addition of columns for each disclosure item to indicate whether it is required for secondary issuance or the full prospectus.

186. On the basis of the above considerations, ESMA proposes the following Annex 14 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 14: DEPOSITORY RECEIPTS ISSUED OVER SHARES	P ¹⁶	SI
	<u>INFORMATION ABOUT THE ISSUER OF THE UNDERLYING SHARES</u>		
1	<u>PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL</u>		
1.1	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons, including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	√	√
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	√	√
[1.3] Moved from 23.1	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's: • Name; • Business address;	√	√

¹⁶ P refers to Primary Issuance; SI to Secondary issuances.

	• Qualifications; • Material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus</u>.		
[1.4] Moved from 23.2	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	√	√
[1.5] New	<u>A statement that:</u> - <u>the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129;</u> - <u>the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129;</u> - <u>such approval should not be considered as an endorsement of the issuer that it the subject of this registration document;</u>	√	√
2	STATUTORY AUDITORS		
2.1	Names and addresses of the issuer's auditors for the period covered by the historical <u>annual</u> financial <u>statements</u> information (together with their membership in a professional body).	√	√
2.2	If auditors have resigned, been removed or not been re-appointed during the period covered by the historical <u>annual</u> financial <u>statements</u> information , indicate details if material.	√	
3	SELECTED FINANCIAL INFORMATION		
3.1	Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.		

	The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.		
3.2	If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.		
4	RISK FACTORS		
	Prominent disclosure of <u>A description of the material risks factors that are specific to the issuer or its industry, in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the registration document.</u>	√	√
5	INFORMATION ABOUT THE ISSUER		
5.1	History and development of the issuer	√	√
5.1.1	The legal and commercial name of the issuer.	√	√
5.1.2	The place of registration of the issuer, and its registration number <u>and Legal Entity Identifier.</u>	√	√
5.1.3	The date of incorporation and the length of life of the issuer, except where indefinite.	√	
5.1.4	The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address, and telephone number of its registered office (or principal place of business if different from its registered office) <u>and website with a disclaimer that the information on the website does not form part of the prospectus.</u>	√	√
5.1.5	The important events in the development of the issuer's business.	√	
5.2 (Moved to 6)	Investments		
5.2.1	A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the		

	historical financial information up to the date of the registration document		
5.2.2	A description of the issuer's principal investments that are in progress including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).		
5.2.3	Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.		
6	BUSINESS OVERVIEW		
6.1	Principal activities	√	√
6.1.1	A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the <u>annual financial statements</u> historical financial information; and	√	
6.1.2	An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.	√	
<u>[6.1.3]</u> <u>New</u>	<u>A brief description of:</u> <u>the key principal activities of the issuer</u> <u>of any significant changes impacting the issuer's operations and principal activities since the end of the period covered by the latest published audited financial statements</u> <u>an indication of any significant new products and services that have been introduced</u> <u>to the extent the development of new products or services have been disclosed, the status of development</u> <u>any material changes in the issuer's regulatory environment since the end of the period covered by the latest published audited financial statements.</u>		√
6.2	Principal markets A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the <u>annual financial statements</u> historical financial information.	√	

6.3	Where the information given pursuant to items 6.1 and 6.2 has been influenced by exceptional factors, mention that fact.		
<u>New</u>	<u>Strategy and objectives</u> A description of the issuer's business strategy and financial and non-financial (if any) objectives. This description shall take into account the issuer's future challenges and prospects.	√	
6.4	If material to the issuer's business or profitability, disclose summary information regarding the extent to which the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes.	√	
6.5	The basis for any statements made by the issuer regarding its competitive position.	√	
	Investments		
[6.6] Moved from 5.2.1	A description, (including the amount) of the issuer's principal material investments for each financial year for the period covered by the <u>annual financial statements</u> historical financial information up to the date of the registration document	√	
[6.7]	A description of the issuer's material investments made since the date of the last published financial statements and which are in progress and / or for which firm commitments have already been made, together with the anticipated source of funds.		√
[6.8] Moved from 5.2.2, merged with 5.2.3	A description of the issuer's principal <u>any material</u> investments of the issuer that are currently in progress and / or for which <u>firm commitments have already been made</u> , including the <u>geographic</u> distribution of these investments geographically (home and abroad) and the method of financing (internal or external). Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	√	
[6.9] Moved from 25	Information relating to the undertakings <u>joint ventures and undertakings</u> in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.	√	
[6.10] Moved from 8.2	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.	√	

7	ORGANISATIONAL STRUCTURE		
7.1	If the issuer is part of a group, a brief description of the group and the issuer's position within the group. <u>This may be in the form of, or accompanied by, a diagram of the organisational structure if this helps to clarify the structure.</u>	√	
7.2	A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.	√	
8	PROPERTY, PLANTS AND EQUIPMENT		
8.1	Information regarding material tangible fixed assets either existing or planned, including leased properties, and any major encumbrances thereon.		
8.2 Moved to 6	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.		
9	OPERATING AND FINANCIAL REVIEW		
9.1	Financial condition To the extent not covered elsewhere in the registration document prospectus 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. <u>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.</u> <u>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.</u> <u>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</u>	√	

	<u>additional explanations of, amounts reported in the annual financial statements.</u>		
	<u>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 :</u> <u>a) the issuer's likely future development;</u> <u>b) activities in the field of research and development.</u>	√	
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 financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes	√	
9.2.3 (Moved to 11)	Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.		
10	CAPITAL RESOURCES		
10.1	Information concerning the issuer's capital resources (both short and long term).	√	
10.2	An explanation of the sources and amounts of and a narrative description of the issuer's cash flows.	√	
10.3	Information on the borrowing requirements and funding structure of the issuer.	√	
10.4	Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.	√	
10.5	Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items [5.2.3. and 8.1.]	√	

11	RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES		
Moved from 9.2.3	<u>A description of the regulatory environment that the issuer operates in and that may materially affect its business, together with information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.</u> Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.	√	
12	TREND INFORMATION		
12.1 (Merged with part of 20.8)	<u>A description of :</u> - the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the <u>registration document</u> prospectus, - any significant change in the trading position <u>financial performance</u> of the group since the end of the last financial period for which financial information has been published to the date of the registration document, or provide an appropriate negative statement.	√	√
12.2	Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.	√	√
13	PROFIT FORECASTS OR ESTIMATES		
	If <u>Where</u> an issuer chooses to include has published a profit forecast (which is still outstanding and valid) or a profit estimate, that forecast or estimate shall be included in the registration document / prospectus must contain the information set out in items 13.1 and 13.2. If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then provide a statement to that effect and an explanation of why such forecast or profit estimate is no longer valid. Such an invalid forecast or estimate is not subject to the requirements in items 13.2 to 13.4.	√	√
13.1	<u>Where an issuer chooses to include a new profit forecast or a new profit estimate, or where the issuer includes a previously</u>	√	√

	<u>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.</u> <u>The forecast or estimate shall comply with the following principles:</u> - 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 <u>reasonable</u>, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast; and - <u>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.</u>		
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements: (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information; (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements; (c) this financial information has not been audited.		
13.3	The <u>prospectus shall include a statement that the profit forecast or estimate must be has been compiled on the basis stated and</u>	√	√

	prepared on a basis <u>i) comparable with the annual financial statements historical financial information.</u> and ii) <u>consistent with the issuer's accounting policies.</u>		
13.4	If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not the forecast is still correct at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.		
14	ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT		
14.1	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) members of the administrative, management or supervisory bodies; b) partners with unlimited liability, in the case of a limited partnership with a share capital; c) founders, if the issuer has been established for fewer than five years; and d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. The nature of any family relationship between any of those persons. In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information: (a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies; (b) any convictions in relation to fraudulent offences for at least the previous five years; (c) details of any bankruptcies, receiverships, liquidations <u>or companies put into administration</u> with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a)	√	

	and(d) of the first subparagraph was associated for at least the previous five years; (d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years. If there is no such information to be disclosed, a statement to that effect is to be made.		
For second ary issuanc es	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) members of the administrative, management or supervisory bodies and b) partners with unlimited liability, in the case of a limited partnership with a share capital. c) founders, if the issuer has been established for fewer than five years; and d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. The nature of any family relationship between any of those persons. To the extent not already disclosed, and in the case of new members of the administrative, management or supervisory bodies of the issuer (since the date of the latest audited historical financial information) and of each person mentioned in points (b) and (d) of the first subparagraph the following information: a) The names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies; b) any convictions in relation to fraudulent offences for at least the previous five years; c) details of any bankruptcies, receiverships, liquidations or companies put into administration with which a person described in (a) and (d) of the first subparagraph who was		√

	acting in the capacity of any of the positions set out in (a) and(d) of the first subparagraph was associated for at least the previous five years; d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years. If there is no such information to be disclosed, a statement to that effect is to be made.		
14.2	Administrative, management, and supervisory bodies and senior management conflicts of interests Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect <u>must be made</u>. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in the first subparagraph of item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.	√	√
15	REMUNERATION AND BENEFITS		
	In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.	√	
15.1	The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted, to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.	√	
15.2	The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.	√	
16	BOARD PRACTICES		
	In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1:	√	

16.1	Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.	√	
16.2	Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement	√	
16.3	Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.	√	
16.4	A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s) applicable to the issuer. In the event that the issuer does not comply with such a regime, a statement to that effect <u>must be included</u> together with an explanation regarding why the issuer does not comply with such regime.	√	
New	<u>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 shareholders meeting)</u>	√	√
17	EMPLOYEES		
17.1	Either the number of employees at the end of the period or the average for each financial year for the period covered by the <u>annual financial statements</u> historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.	√	
17.2	Shareholdings and stock options With respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.	√	
17.3	Description of any arrangements for involving the employees in the capital of the issuer.	√	

18	MAJOR SHAREHOLDERS		
18.1	In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest <u>in the issuer's capital or voting rights which is</u> notifiable under the issuer's national law, in the issuer's capital or voting rights together with the amount of each such person's interest, <u>to the date of the registration document</u> or, if there are no such persons, an appropriate negative statement.	√	
	<u>In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest, to the date of the last audited financial statement or in the case of a material change since the last audited financial statements to the date of the registration document or, if there are no such persons, an appropriate negative statement.</u>		√
18.2	Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.	√	√
18.3	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.	√	
18.4	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.	√	
19	RELATED PARTY TRANSACTIONS		
	Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the <u>annual financial statements</u> historical financial information and up to the date of the prospectus <u>registration document</u> , must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable. If such standards do not apply to the issuer the following information must be disclosed: a) The nature and extent of any transactions which are — as a single transaction or in their entirety — material to the issuer. Where such related party transactions are not concluded at	√	

	arm's length provide an explanation of why these transactions were not concluded at arm's length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.		
	Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into since the date of the last financial statements, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable. If such standards do not apply to the issuer the following information must be disclosed: a) The nature and extent of any transactions which are — as a single transaction or in their entirety — material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arm's length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.		√
20	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES		
20.1	Historical financial information Annual financial statements	√	
	Audited historical financial information <u>financial information statements</u> covering the latest 3 three financial years (or such shorter period as the issuer has been in operation) and the audit report in respect of each year. <u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which historical financial information is annual <u>financial statements</u> are required, the audited historical information annual <u>financial statements</u> shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is shorter. <u>Accounting standards</u> The Such financial information statements must be prepared according to Regulation (EC) No 1606/2002 International Financial Reporting Standards (IFRS) as adopted by the EU.	√ √ √	

~~the standards adopted in accordance with Regulation (EC) No 1606/2002 or~~

If IFRS is not applicable the financial statements must be prepared according to:

- (a) ~~to a Member State's national accounting standards for issuers from the Community EEA; or~~
- (b) ~~For third country issuers, such financial statements must can be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standard IFRS for third country issuers. If such third country's national accounting standards are financial information not equivalent to IFRS these standards, it must be presented in the form of restated the financial statements shall be restated in IFRS.~~

Change of accounting framework

~~The last two years audited historical annual financial information statements, containing comparative information for the previous year, must be presented and prepared in a form consistent with the accounting standards framework that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.~~

Changes within the issuer's existing accounting framework do not require the audited financial statements to be restated. However, if the issuer intends to adopt a new accounting standards framework in its next published financial statements, at least one complete set of financial statements, (as defined by IAS 1), including comparatives, must be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements, having regard to accounting standards and policies and legislation applicable to such annual financial statements.

~~If the issuer has been operating in its current sphere of economic activity for less than one year, the audited financial statements covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the EEA. For third country issuer, the annual financial statements must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards~~

	equivalent to these standards. These annual financial statements must be audited. If <u>Where the audited annual financial information statements</u> is are prepared according to national accounting standards, they financial information required under this heading must include at least the following: a) The balance sheet; b) The income statement; c) a statement showing either all changes in equity or changes in equity other than those arising from capital transaction with owners and distributions to owners; d) The cash flow statement; e) The accounting policies and explanatory notes. <u>Audit report</u> The historical annual financial information statements must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it they gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard.	√	
20.1a	This paragraph may be used only for issues of depository receipts having a denomination per unit of at least EUR 100 000 <u>or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access (item 20.1 of this schedule does not apply to these depository receipts)</u> <u>Annual financial statements</u> Audited historical financial <u>information statements</u> covering the latest 3-three financial years (or such shorter period as the issuer has been in operation) and the audit report in respect of each year. <u>Change of accounting reference date</u> If the issuer has changed its accounting reference date during the period for which historical financial information is annual <u>financial statements</u> are required, the audited historical information annual financial <u>statements</u> shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is shorter. <u>Accounting standards</u> The <u>Such</u> financial <u>information statements</u> must be prepared according to Regulation (EC) No 1606/2002 International Financial Reporting Standards (IFRS) as adopted by the EU.		

~~the standards adopted in accordance with Regulation (EC) No 1606/2002 or~~

If IFRS is not applicable the financial statements must be prepared according to:

~~to a Member State's national accounting standards for issuers from the Community EEA; or~~

~~For third country issuers, such financial statements must can be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standard IFRS for third country issuers.~~

Otherwise the following information must be included in the prospectus registration document:

(a) a prominent statement that the financial information included in the registration document has not been prepared in accordance with IFRS ~~the international accounting standards adopted in the EU pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002~~ and that there may be material differences in the financial information had ~~Regulation (EC) No 1606/2002~~ IFRS been applied to the annual financial statements ~~historical financial information~~

(b) immediately following the annual financial statements ~~historical financial information~~ a narrative description of the differences between IFRS ~~the international accounting standards adopted in the EU pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002~~ and the accounting principles adopted by the issuer in preparing its annual financial statements.

~~If~~ Where the audited ~~annual~~ financial information is statements ~~are~~ prepared according to national accounting standards, they ~~financial information required under this heading must include~~ at least the following:

- a) The balance sheet;
- b) The income statement;
- c) a statement showing either all changes in equity or changes in equity other than those arising from capital transaction with owners and distributions to owners;
- d) The cash flow statement;
- e) The accounting policies and explanatory notes.

Audit report

~~The historical annual financial information statements must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it they gives a true and fair view~~

	in accordance with auditing standards applicable in a Member State or an equivalent standards. Otherwise, the following information must be included in the registration document: a) a prominent statement disclosing which auditing standards have been applied; b) an explanation of any significant departures from International Standards on Auditing.		
Moved from 20.2	<u>Consolidated financial statements</u> If the issuer prepares both own stand-alone and consolidated annual financial statements, include at least the consolidated financial statements in the <u>prospectus registration document</u>.	✓	
Moved below	<u>Auditing of historical annual financial information</u> A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given. Indication of other information in the prospectus which has been audited by the auditors. Where financial data in the prospectus is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.	✓ ✓ ✓ ✓	✓ ✓ ✓
Moved from 20.4	<u>Age of latest Financial Information</u> The <u>balance sheet date of the</u> last year of audited financial information statements may not be older than <u>one of the following</u>: (a) 18 months from the date of the <u>prospectus registration document</u> if the issuer includes audited interim financial statements in the <u>prospectus registration document</u>; (b) 15—16 months from the date of the <u>prospectus registration document</u> if the issuer includes unaudited interim financial statements in the <u>prospectus registration document</u>.	✓ ✓ ✓	
Moved from 20.5	<u>Interim and other financial information</u> If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the <u>prospectus registration document</u>. If the quarterly or half yearly financial	✓ ✓	

	information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed, state that fact. If the <u>prospectus-registration document</u> is dated more than nine months after the <u>end date</u> of the last audited financial <u>statements year</u>, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. <u>Interim financial information should be prepared in accordance with the requirements of the Accounting Directive or IFRS as the case may be.</u> <u>For issuers not subject to either the Accounting Directive or IFRS</u> the interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.		
Move d from 20.4	Auditing of historical annual financial information Auditing of annual financial statements <u>Audit report</u> The historical annual financial <u>statements information</u> must be independently audited. <u>The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation.</u> <u>Where the Audit Directive and Audit Regulation do not apply;</u> - the historical annual financial <u>statements information</u> must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the registration document: - a prominent statement disclosing which auditing standards have been applied; - an explanation of any significant departures from International Standards on Auditing. - a statement that the historical <u>annual</u> financial <u>statements information</u> have been audited. If audit reports on the historical <u>annual</u> financial <u>statements information</u> have been refused by the statutory auditors or if they contain qualifications, modifications of opinion, or disclaimers or an emphasis of matter, such refusals or such qualifications, or modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.	√	√

	Indication of other information in the prospectus <u>registration document</u> which has been audited by the auditors. Where financial <u>information data</u> in the prospectus <u>registration document</u> is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.	√	√
Moved from 20.6	Dividend Policy A description of the issuer's policy on dividend distributions and any restrictions thereon. The amount of the dividend per share for each financial year for the period covered by the historical <u>annual financial statements information</u> adjusted, where the number of shares in the issuer has changed, to make it comparable. The amount of dividend per share for the last financial year adjusted, where the number of shares in the issuer has changed, to make it comparable.	√	√
Moved from 20.7	Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.	√	√
Moved from 20.8 (trading position now under Trends)	Significant change in the issuer's financial position A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.	√	√
21	ADDITIONAL INFORMATION		
21.1	Share Capital The following information as of the date of the most recent balance sheet included in the historical financial information <u>annual financial statements</u>:	√	√
21.1.1	The amount of issued capital, and for each class of share capital:	√	

	(a) the <u>total number of shares of the issuer's authorised share capital</u>; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the <u>annual financial statements</u>, state that fact.		
21.1.2	If there are shares not representing capital, state the number and main characteristics of such shares.	√	
21.1.3	The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.	√	
21.1.4	The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.	√	√
21.1.5	Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.	√	√
21.1.6	Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.	√	
21.1.7	A history of share capital, highlighting information about any changes, for the period covered by the historical financial information <u>annual financial statements</u>	√	
21.2	Memorandum and Articles of Association		
21.2.1	<u>The register and the entry number therein, if applicable, and a brief description of the issuer's objects and purposes and where they can be found in the up to date memorandum and articles of association.</u>	√	
21.2.2	A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.		

21.2.3	Where there is more than once class of existing shares, a description of the rights, preferences and restrictions attaching to each class of existing shares.	√	
21.3.4	A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.		
21.3.5	A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.		
21.2.6	A 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.	√	√
21.2.7	An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.		
21.2.8	A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.		
22	MATERIAL CONTRACTS		
	A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the <u>prospectus registration document</u>. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the <u>prospectus registration document</u>. Where not previously disclosed elsewhere, a brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business.	√	√

23 (Moved to Item 1)	THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST		
23.1	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's: • name, • business address, • qualifications • material interest if any in the issuer If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document <u>for the purpose of the prospectus.</u>		
23.2	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.		
24	DOCUMENTS ON-DISPLAY AVAILABLE		
	A statement that for the life of the prospectus registration document the following documents (or copies thereof), where applicable, can be inspected: (a) the <u>up to date</u> memorandum and articles of association of the issuer; (b) all reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document. (c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document. An indication of <u>the website on which</u> where the documents on display may be inspected, by physical or electronic means.	√	√

25 Moved to 7	INFORMATION ON HOLDINGS		
25.1	Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses		
New	<u>REGULATORY DISCLOSURES</u>		
	<u>A summary of the information disclosed under Regulation (EU) No 596/2014 over the last 12 months which remains relevant as at the date of the prospectus. The summary shall be presented in an easily analysable, concise and comprehensible form and shall not be a replication of information already published under Regulation...</u> <u>The summary shall be presented in a limited number of categories depending on their topics.</u>		√
26	INFORMATION ABOUT THE ISSUER OF THE DEPOSITORY RECEIPTS	√	√
26.1	Name, registered office, <u>Legal Entity Identifier</u> and principal administrative establishment if different from the registered office.	√	√
26.2	Date of incorporation and length of life of the issuer, except where indefinite.	√	√
26.3	Legislation under which the issuer operates and legal form which it has adopted under that legislation.	√	√
27	INFORMATION ABOUT THE UNDERLYING SHARES ESSENTIAL INFORMATION		
New	<u>Working Capital Statement</u> <u>Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.</u>	√	√
New	<u>Capitalisation and indebtedness</u> <u>A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, debt, collateralised and non-collateralised loans) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.</u>	√	√

	<u>In the case of material changes in the capitalisation and indebtedness position of the issuer within the 90 day period additional information shall be given through the presentation of a narrative description of such changes or through the updating of those figures.</u>		
27.1	A description of the type and the class of the underlying shares including the ISIN (International Security Identification Number) or other such security identification code.	√	√
27.2	Legislation under which the securities have been created.	√	√
27.3	An indication whether the underlying shares are in registered form or bearer form and whether the underlying shares are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.	√	√
27.4	Currency of the underlying shares.	√	√
27.5	A description of the rights, including any limitations of these, attached to the underlying shares and procedure for the exercise of those said rights.	√	√
27.6	Dividend rights: a) Fixed date(s) on which the entitlement arises, b) Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates, c) Dividend restrictions and procedures for non-resident holders, d) Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.	√	√
27.7	Voting rights. Pre-emption rights in offers for subscription of securities of the same class. Right to share in the issuer's profits. Rights to share in any surplus in the event of liquidation. Redemption provisions. Conversion provisions.	√	√
27.8	The issue date of the underlying shares if new underlying shares are being created for the issue of depository receipts and they are not in existence at the time of issue of the depository receipts.	√	√

27.9	If new underlying shares are being created for the issue of the depository receipts, state the resolutions, authorisations and approvals by virtue of which the new underlying shares have been or will be created or issued.	√	√
27.10	A description of any restrictions on the free transferability of the underlying shares.	√	√
27.11	<u>A warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities.</u> <u>Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.</u> In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: — information on taxes on the income from the securities withheld at source, — indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.	√	√
27.12	<u>Statement on the existence of any national legislation on takeovers applicable to the issuer and the possibility for frustrating measures if any.</u> An indication of the existence of any <u>A brief description of the shareholders' rights and obligations in case of mandatory takeover bids and/or squeeze-out or sell-out rules in relation to the securities.</u>	√	
	<u>Statement on the existence of national legislation on takeovers applicable to the issuer and the possibility for frustrating measures if any.</u>		√
27.13.	An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.	√	√
New	<u>Where applicable, the potential impact on the investment in the event of resolution under the BRRD.</u>	√	
27.14	Lock-up agreements The parties involved.	√	√

	Content and exceptions of the agreement. Indication of the period of the lock up.		
27.15	<u>Information about selling shareholders if any</u>	√	√
25.15.1	Name and business address of the person or entity offering to sell the underlying shares, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.	√	√
27.16	<u>Dilution</u>		
27.16.1	The amount and percentage of immediate dilution resulting from the offer. <u>A comparison of</u> - <u>participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the assumption that existing shareholders do not subscribe for the new shares; and,</u> - <u>the net asset value per share as of the date of the latest balance sheet before the public offer (selling offer and / or capital increase) and the offering price per share within that public offer</u>	√	√
27.16.2	In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer. <u>Where existing shareholders will be diluted regardless of whether they subscribe for their entitlement, because a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders), 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 27.16.1 where they do not).</u>	√	√
27.17	Additional information where there is a simultaneous or almost simultaneous offer or admission to trading of the same class of underlying shares as those underlying shares over which the depository receipts are being issued.	√	√
27.17.1	If simultaneously or almost simultaneously with the creation of the depository receipts for which admission to a regulated market is being sought underlying shares of the same class as those over which the depository receipts are being issued are	√	√

	subscribed for or placed privately, details are to be given of the nature of such operations and of the number and characteristics of the underlying shares to which they relate.		
27.17.2	Disclose all regulated markets or equivalent markets on which, to the knowledge of the issuer of the depository receipts, underlying shares of the same class of <u>as</u> those over which the depository receipts are being issued are offered or admitted to trading.	√	√
27.17.3	To the extent known to the issuer of the depository receipts, indicate whether major shareholders, members of the administrative, management or supervisory bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.	√	√
28	INFORMATION REGARDING <u>ABOUT</u> THE DEPOSITORY RECEIPTS		
<u>New</u>	<u>Indicate the number of shares represented by each depository receipts</u>	√	√
28.1	A description of the type and class of depository receipts being offered and / or admitted to trading	√	√
28.2	Legislation under which the depository receipts have been created.	√	√
28.3	An indication whether the depository receipts are in registered or bearer form and whether the depository receipts are in certificated or book-entry form. In the latter case, include the name and address of the entity in charge of keeping the records.	√	√
28.4	Currency of the depository receipts	√	√
28.5	Describe the rights attaching to the depository receipts, including any limitations of these attached to the depository receipts and the procedure if any for the exercise of these rights.	√	√
28.6	If the dividend rights attaching to depository receipts are different from the dividend rights disclosed in relation to the underlying, disclose the following about dividend rights : (a) Fixed date(s) on which the entitlement arises, (b) Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates, (c) Dividend restrictions and procedures for non-resident holders,	√	√

	(d) Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.		
28.7	If the voting rights attaching to the depository receipts are different from the voting rights disclosed in relation to the underlying shares disclose the following about those rights: a) Voting rights b) Pre-emption rights in offers for subscription of securities of the same class. c) Right to share in the issuer's profits. d) Rights to share in any surplus in the event of liquidation. e) Redemption provisions. f) Conversion provisions.	√	√
28.8	Describe the exercise of and benefit from rights attaching to the underlying shares, in particular voting rights, the conditions on which the issuer of the depository receipts may exercise such rights, and measures envisaged to obtain the instructions of the depository receipt holders – and the right to share in profits and any liquidation surplus which are not passed on to the holder of the depository receipt.	√	√
28.9	The expected issue date of the depository receipts.	√	√
28.10	A description of any restrictions on the free transferability of the depository receipts.	√	√
28.11	<u>A warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the depository receipts.</u> <u>Information on the taxation treatment of the depository receipts where the proposed investment attracts a tax regime specific to that type of investment.</u> In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: — information on taxes on the income from the securities withheld at source, — indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.	√	√
28.12	Bank or other guarantees attached to the depository receipts and intended to underwrite the issuer's obligations.	√	√

28.13	Possibility of obtaining the delivery of the depository receipts into original shares and procedure for such delivery.	√	√
29	INFORMATION ABOUT THE TERMS AND CONDITIONS OF THE OFFER OF THE DEPOSITORY RECEIPTS		
29.1	Conditions, offer statistics, expected timetable and action required to apply for the offer		
29.1.1	Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, <u>an indication of the maximum amount of securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer.</u> <u>Where the maximum amount of securities to be offered cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.</u>	√	√
29.1.2	The time period, including any possible amendments, during which the offer will be open and description of the application process.	√	√
29.1.3	An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	√	√
29.1.4	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	√	√
29.1.5	Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).	√	√
29.1.6	An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	√	√
29.1.7	Method and time limits for paying up the securities and for delivery of the securities.	√	√
29.1.8	A full description of the manner and date in which results of the offer are to be made public.	√	√
29.1.9	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	√	√

29.2	Plan of distribution and allotment		
29.2.1	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	<u>√</u>	√
29.2.3	To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.	<u>√</u>	√
29.2.3 29.2.3.1 29.2.3.2 29.2.3.3 29.2.3.4 29.2.3.5 29.2.3.6 29.2.3.7 29.2.3.8	Pre-allotment disclosure: a) The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches; b) The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches; c) The allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches; d) A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups. e) Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by; f) A target minimum individual allotment if any within the retail tranche; g) The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest; h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.	<u>√</u>	√
29.2.3.9	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	<u>√</u>	√
29.2.4.1	Over-allotment and 'green shoe':		

Moved 29.2.4. 2 29.2.4. 3	(a) the existence and size of any over-allotment facility and/or 'green shoe'. (b) the existence period of the over-allotment facility and/or 'green shoe'. (c) any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.		
29.3	Pricing		
29.3.1	An indication of the price at which the securities will be offered <u>and the amount of any expenses and taxes charged to the subscriber or purchaser.</u> When If the price is not known, or when if there is not an established and/or liquid market for the securities, <u>indicate</u>; indicate the method for determination of the offer price, including who has set the criteria or is formally responsible for its determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser. - <u>the maximum price of the securities, as far as they are available, or</u> - <u>the valuation methods and criteria, and/or conditions, in accordance with which the final offer price has been or will be determined and an explanation of any valuation methods used.</u> <u>Where neither (a) nor (b) can be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price of securities to be offered to the public has been filed.</u>	√	√
29.3.2	Process for the disclosure of the offer price.	√	√
29.3.3	Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.	√	√
29.4	Placing and Underwriting		
29.4.1	Name and address of the coordinator(s) of the global offer and of single parts of the offer and, to the <u>extent</u> known known to the issuer <u>or to the offeror</u> , of the placers in the various countries where the offer takes place.	√	√

29.4.2	Name and address of any paying agents and depository agents in each country.	√	√
29.4.3	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	√	√
29.4.4	When the underwriting agreement has been or will be reached.	√	√
30	ADMISSION TO TRADING AND DEALING ARRANGEMENTS IN THE DEPOSITORY RECEIPTS		
30.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or equivalent <u>third country</u> market, <u>SME Growth Market</u> or <u>MTF</u> with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading <u>will</u> necessarily will be approved. If known, the earliest dates on which the securities will be admitted to trading must be given .	√	√
30.2	All the regulated markets or equivalent <u>third country</u> markets, <u>SME Growth Market</u> or <u>MTFs</u> on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading must be given .	√	√
30.3	If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, <u>give</u> details must be given of the nature of such operations and of the number and characteristics of the securities to which they relate.	√	√
	<u>In case of an admission to trading on a regulated market, details</u> Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	√	√
<u>New</u>	<u>The issue price of the securities</u>	√	√
	Stabilisation: where an issuer or a selling shareholder has granted an over- allotment option or it is otherwise proposed	√	√

	that price stabilizing activities may be entered into in connection with an offer: The fact that stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time.	√	
New	<u>The fact that stabilisation transactions aim at supporting the market price of the securities during the stabilisation period.</u> The beginning and the end of the period during which stabilisation may occur, The identity of the stabilisation manager for each relevant jurisdiction unless this is not known at the time of publication, The fact that stabilisation transactions may result in a market price that is higher than would otherwise prevail.	√ √ √ √	
New	<u>The place where the stabilisation may be undertaken including, where relevant, the name of the trading venue(s).</u> Over-allotment and 'green shoe': <u>In case of an admission to trading on a regulated market:</u> a) The existence and size of any over- allotment facility and/or 'green shoe'. b) The existence period of the over- allotment facility and/or 'green shoe'. c) Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.	√ √	√
31	<u>KEYESSENTIAL</u> INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS		
	Reasons for the offer and use of proceeds Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.	√	√
31.2	Interest of natural and legal persons involved in the issuer/offer		

31.2.1	A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest	√	√
31.3	Risk Factors		
31.3.1	Prominent disclosure of risk factors that are material to the securities being offered and / or admitted to trading in order to assess the market risk associated with these securities in a section headed 'Risk Factors'. <u>A description of the material risks that are specific to the securities being offered and/or admitted to trading in a limited number of categories, in a section headed 'Risk Factors'.</u> <u>In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the securities and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the securities note.</u>	√	√
32	EXPENSE OF THE ISSUE/OFFER OF THE DEPOSITORY RECEIPTS	√	
32.1.	The total net proceeds and an estimate of the total expenses of the issue/offer	√	√

QUESTIONS FOR CONSULTATION

Question 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.

Question 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).

4.17 Content of the registration document for securities issued by collective investment undertakings of the closed-end type

187. ESMA considers that the existing regime for closed-end collective investment undertakings largely works well and therefore does not propose to make significant changes to the existing disclosure.
188. Proposed changes to Annex XV of the Commission Regulation are set out in the table below. In addition to the changes explained in the following paragraphs, certain changes have been made to reflect the changes in Annex 1 (share registration document) where Annex I to the Commission Regulation is currently referred to in Annex XV. ESMA has also endeavoured to align the wording of the disclosure requirements with the disclosure required under Article 23 of AIFMD in order to reduce duplication and administrative burden.

Investment objective and policy

189. ESMA proposes to align the disclosure requirement here with that contained in Article 23(1)(a) and (b) of AIFMD in order to streamline the disclosure required for issuers who are subject to both pieces of legislation.

Secondary issuances

190. Issuers who meet the requirements of Article 14(1) of the Prospectus Regulation for drawing up a simplified prospectus under the simplified disclosure regime for secondary issuances should be able to provide appropriate disclosure under Annex [secondary issuance annex] ([]), rather than under the share registration document annex (Annex 1). This is addressed in the changes to the opening section of Annex XV.

Investment restrictions

191. Items 2.2 and 2.3 relate to the percentage of gross assets that the collective investment undertaking can invest. ESMA considers that Item 2.3 is an extension of Item 2.2, not a rule that applies to the exclusion of Item 2.2. As a result, ESMA proposes amending the opening paragraph of Item 2.2 so this is clear.
192. ESMA also proposes adding the ability for reduced disclosure under Items 2.2(ii) and 2.5(b) if the securities in which the collective investment undertaking seeks to invest are issued by an underlying issuer/collective investment undertaking/counterparty that is already admitted to trading on an SME Growth market, given the recognition of the disclosure requirements for such markets in Article 14 of the Prospectus Regulation.
193. If the 20% or 40% of gross assets investment limit in Items 2.2 or 2.5 is met and the investment is not in securities issued by an entity admitted to trading on a regulated market, equivalent third country market or SME Growth Market, the prospectus must include certain minimum disclosure on the investment. As Items 2.2 and 2.5 do not allow for reduced disclosure if an issuer cannot gain access to the information of an issuer/collective investment undertaking/counterparty, it is possible that some issuers are unable to comply with this requirement, for example in hostile situations. ESMA

therefore suggests adding the ability to agree to a reduced level of disclosure in limited circumstances.

194. The new requirement includes a test requiring the issuer to demonstrate that it cannot reasonably access the information. If the issuer is unable to demonstrate this, then it must disclose all information required by Item 2.2 or 2.5 as applicable. ESMA notes that if both the issuer and the relevant underlying investee entity are involved in an offer, admission or related transaction, it is unlikely that an issuer will be able to demonstrate this.

Key changes

195. The key changes to the registration document for collective investment undertakings of the closed-end type can be summarised as follows:

- Aligning the disclosure required in terms of the investment objectives and policy with disclosure required under AIFMD;
- Allowing issuers who meet the requirements under Article 14(1) of the Prospectus Regulation for drawing up a simplified prospectus under the simplified disclosure regime for secondary issuances to make use of that regime;
- Extending the ability of issuers to include reduced disclosure in a prospectus on significant underlying investments where the relevant underlying entity is admitted to an SME Growth Market;
- Introducing the ability for reduced disclosure on significant underlying investments in limited circumstances where an issuer can reasonably demonstrate that it cannot access the relevant information.

196. **On the basis of the above considerations, ESMA proposes the following Annex 15 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 15: COLLECTIVE INVESTMENT UNDERTAKINGS OF THE CLOSED-END TYPE REGISTRATION DOCUMENT
	In addition to the information required in this schedule, the collective investment undertaking must provide the following information as required under paragraphs and items 1, 2, 3, 4, 5.1, 7, 9.1, 9.2.1, 9.2.3, 10.4, <u>11.1 (although the description of the regulatory environment that the issuer operates in need only relate to the regulatory environment relevant to issuer's investments)</u>, 13, 14, 15, 16, 17.2, 18, 19, 20, 21, 22, 23, 24, 25 in Annex 1 (minimum disclosure requirements for the share registration document schedule) , <u>or, if the collective investment undertaking meets the requirements of Article 14(1) of the Prospectus Regulation for drawing up a simplified prospectus under the simplified disclosure regime for secondary issuances, the following information as required under paragraphs and items 1, 2, 3, 4.1, 7, 8, 9, 10, 11, 12, 13, 14 in Annex 18 (secondary issuance registration document).</u>

	<u>Where units are issued by a collective investment undertaking which is constituted as a common fund managed by a fund manager, the above-mentioned information items 7, 14, 15, 16, 17.2, 18 and 22, of Annex 1 shall be disclosed in relation to the fund manager, while the information items 2, 5.1 and 20, of Annex 1 shall be disclosed in relation to both the fund and the fund manager.</u>
1	INVESTMENT OBJECTIVE AND POLICY
1.1	A detailed - <u>description of the investment policy, objective and policy which strategy and objectives of the collective investment undertaking will pursue and a description of how that investment objectives and policy may be varied including any circumstances in which such variation requires the approval of investors. A description of any techniques and instruments that may be used in the management of the collective investment undertaking;</u> - <u>information on where the underlying collective investment undertaking(s) is/are established if the collective investment undertaking is a fund of funds;</u> - <u>a description of the types of assets in which the collective investment undertaking may invest;</u> - <u>the techniques it may employ and all associated risks, the circumstances in which the collective investment undertaking may use leverage;</u> - <u>the types and sources of leverage permitted and the associated risks;</u> - <u>any restrictions on the use of leverage and any collateral and asset reuse arrangements; and</u> - <u>the maximum level of leverage which may be employed on behalf of the collective investment undertaking.</u>
<u>New</u>	<u>A description of the procedures by which the collective investment undertaking may change its investment strategy or investment policy, or both.</u>
1.2	The borrowing and/or leverage limits of the collective investment undertaking. If there are no such limits, include a statement to that effect.
1.3	The regulatory status of the collective investment undertaking together with the name of any regulator in its country of incorporation.
1.4	The profile of a typical investor for whom the collective investment undertaking is designed.

New	<u>A statement that:</u> - <u>the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129;</u> - <u>the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129;</u> - <u>such approval should not be considered as an endorsement of the issuer that it the subject of this registration document.</u>
2	INVESTMENT RESTRICTIONS
2.1	A statement of the investment restrictions which apply to the collective investment undertaking, if any, and an indication of how the holders of securities will be informed of the actions that the investment manager will take in the event of a breach.
2.2	Where more than 20% of the gross assets of any collective investment undertaking (except where the Registration Document is being prepared for an entity as a result of the application of item 2.3 or 2.5) may be: (a) invested in, either directly or indirectly, or lent to any single underlying issuer (including the underlying issuer's subsidiaries or affiliates); or (b) invested in one or more collective investment undertakings which may invest in excess of 20% of its gross assets in other collective investment undertakings (open-end and/or closed-end type); or (c) exposed to the creditworthiness or solvency of any one counterparty (including its subsidiaries or affiliates); the following information must be disclosed: (i) where the underlying securities are not admitted to trading on a regulated or equivalent <u>third country market or an SME Growth Market</u>, information relating to each underlying issuer/collective investment undertaking/counterparty as if it were an issuer for the purposes of the minimum disclosure requirements for the share <u>Share</u> Registration Document schedule (in the case of (a)) or minimum disclosure requirements for the [registration document schedule for securities issued by collective investment undertakings of the closed-end type] (in the case of (b)) or the minimum disclosure requirements for the <u>wholesale (qualified) debt and derivatives securities with an individual denomination per unit of at least EUR 100 000</u> registration document schedule (in the case of (c)); or (ii) if the securities issued by the underlying issuer/collective investment undertaking/counterparty have already been admitted to trading on a regulated or equivalent <u>third country market or an SME Growth Market</u>, or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market <u>or an SME Growth Market</u>, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.

	This requirement shall not apply where the 20% is exceeded due to appreciations or depreciations, changes in exchange rates, or by reason of the receipt of rights, bonuses, benefits in the nature of capital or by reason of any other action affecting every holder of that investment, provided the investment manager has regard to the threshold when considering changes in the investment portfolio. <u>Where the collective investment undertaking can reasonably demonstrate to the NCA that it is unable to access some or all of the information required by (i), the collective investment undertaking must disclose all information that it is able to access, is aware of, and/or is able to ascertain from information published by the underlying issuer/collective investment undertaking/counterparty in order to satisfy as far as is practicable the requirements of (i). In this case, the prospectus must include a prominent warning that the collective investment undertaking has been unable to access specified items of information that would otherwise be required to be included in the prospectus and therefore a reduced level of disclosure has been provided in relation to a specified underlying issuer, collective investment undertaking or counterparty.</u>
2.3	Where a collective investment undertaking may invest in excess of 20% of its gross assets in other collective investment undertakings (open ended and/or closed ended), a description of if and how risk is spread in relation to those investments. In addition, item 2.2 shall apply, in aggregate, to its <u>all underlying investments of the collective investment undertaking</u> as if those investments had been made directly.
2.4	With reference to point (c) of item 2.2 , if collateral is advanced to cover that portion of the exposure to any one counterparty in excess of 20% of the gross assets of the collective investment undertaking, details of such collateral arrangements.
2.5	Where a collective investment undertaking may invest in excess of 40% of its gross assets in another collective investment undertaking either of the following must be disclosed: (a) information relating to each underlying collective investment undertaking as if it were an issuer under minimum disclosure requirements for the [registration document schedule for securities issued by collective investment undertakings of the closed-end type]; (b) if securities issued by an underlying collective investment undertaking have already been admitted to trading on a regulated or equivalent <u>third country market or an SME Growth Market</u>, or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market <u>or an SME Growth Market</u>, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted. <u>Where the collective investment undertaking can reasonably demonstrate to the NCA that it is unable to access some or all of the information required by (i), the collective investment undertaking must disclose all information that it is able to access, is aware of, and/or is able to ascertain from information published by the underlying issuer/collective investment undertaking/counterparty in order to satisfy as far as is practicable the</u>

	<u>requirements of (a). In this case, the prospectus must include a prominent warning that the collective investment undertaking has been unable to access specified items of information that would otherwise be required to be included in the prospectus and therefore a reduced level of disclosure has been provided in relation to a specified underlying issuer, collective investment undertaking or counterparty.</u>
2.6	Physical commodities Where a collective investment undertaking invests directly in physical commodities a disclosure of that fact and the percentage that will be so invested.
2.7	Property collective investment undertakings Where a collective investment undertaking is a property collective investment undertaking, disclosure of that fact, the percentage of the portfolio that is to be invested in the property, as well as a description of the property and any material costs relating to the acquisition and holding of such property. In addition, a valuation report relating to the properties must be included. Disclosure of item 4.1. applies to: (a) the valuation entity; (b) any other entity responsible for the administration of the property.
2.8	Derivatives financial instruments/money market instruments/currencies Where a collective investment undertaking invests in derivatives, financial instruments, money market instruments or currencies other than for the purposes of efficient portfolio management (i.e. solely for the purpose of reducing, transferring or eliminating investment risk in the underlying investments of a collective investment undertaking, including any technique or instrument used to provide protection against exchange and credit risks), a statement whether those investments are used for hedging or for investment purposes, and a description of if and how risk is spread in relation to those investments.
2.9	Item 2.2 does not apply to investment in securities issued or guaranteed by a government, government agency or instrumentality of any Member State, its regional or local authorities, or OECD Member State.
2.10	Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognised published index. A statement setting out details of where information about the index can be obtained shall be included.
3	THE APPLICANT'S SERVICE PROVIDERS
3.1	The actual or estimated maximum amount of all material fees payable directly or indirectly by the collective investment undertaking for any services under

	arrangements entered into on or prior to the date of the registration document and a description of how these fees are calculated.
3.2	A description of any fee payable directly or indirectly by the collective investment undertaking which cannot be quantified under item 3.1 and which is or may be material.
3.3	If any service provider to the collective investment undertaking is in receipt of any benefits from third parties (other than the collective investment undertaking) by virtue of providing any services to the collective investment undertaking, and those benefits may not accrue to the collective investment undertaking, a statement of that fact, the name of that third party, if available, and a description of the nature of the benefits
3.4	The name of the service provider which is responsible for the determination and calculation of the net asset value of the collective investment undertaking.
3.5	A description of any material potential conflicts of interest which any of the service providers to the collective investment undertaking may have as between their duty to the collective investment undertaking and duties owed by them to third parties and their other interests. A description of any arrangements which are in place to address such potential conflicts.
4	INVESTMENT MANAGER/ADVISERS
4.1	In respect of any Investment Manager such information as is required to be disclosed under items 5.1.1 to 5.1.4 and, if material, under item [6.x] of Annex 1 together with a description of its regulatory status and experience.
4.2	In respect of any entity providing investment advice in relation to the assets of the collective investment undertaking, the name and a brief description of such entity.
5	CUSTODY
5.1	A full description of how the assets of the collective investment undertaking will be held and by whom and any fiduciary or similar relationship between the collective investment undertaking and any third party in relation to custody: Where a custodian <u>depository</u>, trustee, or other fiduciary is appointed (a) such information as is required to be disclosed under items 5.1.1 to 5.1.4 and, if material, under item [6.x] of Annex <u>1</u> 4; (b) a description of the obligations of such party under the custody or similar agreement; (c) any delegated custody arrangements; (d) the regulatory status of such party and delegates.

5.2	Where any entity other than those entities mentioned in item 5.1, holds any assets of the collective investment undertaking, a description of how these assets are held together with a description of any additional risks.
6	VALUATION
6.1	A description of how often, and the valuation principles and the method by which, the net asset value of the collective investment undertaking will be determined, distinguishing between categories of investments and a statement of how such net asset value will be communicated to investors.
6.2	Details of all circumstances in which valuations may be suspended and a statement of how such suspension will be communicated or made available to investors.
7	CROSS LIABILITIES
7.1	In the case of an umbrella collective investment undertaking, a statement of any cross liability that may occur between classes or investments in other collective investment undertakings and any action taken to limit such liability.
8	FINANCIAL INFORMATION
8.1	Where, since the date of incorporation or establishment, a collective investment undertaking has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect. Where a collective investment undertaking has commenced operations, the provisions of item 20 of Annex 1 to the Minimum Disclosure Requirements for the share registration document <u>or item 11 of Annex 18</u> apply <u>as relevant</u>.
8.2	A comprehensive and meaningful analysis of the collective investment undertaking's portfolio (if un-audited, clearly marked as such).
8.3	An indication of the most recent <u>latest</u> net asset value <u>of the collective investment undertaking</u> <u>or the latest market price of the unit or share of the collective investment undertaking per security</u> must be included in the securities note schedule (and, if un-audited, clearly marked as such).

QUESTIONS FOR CONSULTATION

Question 64: Do you agree with the changes proposed by ESMA for collective investment undertakings?

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

Question 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?

Question 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).

4.18 Requirements for convertible and exchangeable debt securities

197. In December 2012, in response to a mandate from the Commission, ESMA provided technical advice as regards clarifying the applicable schedules and disclosure items that should apply in the case of convertible and exchangeable securities. The advice was subsequently taken on board in the form of Commission Delegated Regulation 759/2013.
198. The advice provided clarified that the applicable requirements should depend on whether the underlying shares were admitted to trading on a regulated market or not. ESMA took the view that, provided that the underlying shares were not admitted to trading on a regulated market and the debt securities fell under the definition of equity securities set out in Article 2(1)(b) of the Prospectus Directive, issuers should be obliged to include a working capital statement and a statement as regards capitalisation and indebtedness in addition to Annex XIV disclosure on the underlying share. Where the underlying shares are already admitted to trading on a regulated market, information to be included in the prospectus should be limited to that provided by Item 4.2.2 of Annex XII of the Commission Regulation.
199. ESMA considers that the advice provided in 2012 is still valid and that the changes made to Articles 6, 8, 15, 16 and 17 of the Commission Regulation should be carried over and reflected in any Level 2 measures to be adopted by the Commission.
200. **On the basis of the above considerations, ESMA proposes that the articles, and any table of combinations, to be included in the delegated regulation that the Commission is empowered to adopt, be drafted in such a way as to make clear the disclosure requirements to be applied in the case of convertible and exchangeable securities.**

QUESTIONS FOR CONSULTATION

Question 68: Do you consider that any changes are required to the existing regime for convertible and exchangeable securities? If so, please specify.

4.19 List of specialist issuers

201. In relation to specialist issuers, ESMA has taken as a starting point the current rules whereby a list of specialist issuers is set out at Level 2 (currently Annex XIX of the Commission Regulation) while guidance as to which kind of additional information these issuers would be expected to include in a prospectus is provided at Level 3.

Level 2 vs. Level 3

202. ESMA has considered whether to maintain this structure or to move some disclosure requirements from Level 3 to Level 2. While the second approach would likely provide for slightly more harmonisation, ESMA proposes to keep the current structure as having the disclosure requirements for specialist issuers at Level 3 provides for more flexibility and allows relatively quick updates to the requirements in order to reflect e.g. changed industry standards.
203. On this basis, ESMA proposes that only the list of specialist issuers should be set out at Level 2 while content requirements should remain at Level 3. ESMA's technical advice in this area will therefore only contain the list of specialist issuers to be included in the new Level 2 legislation.

The list

204. ESMA is of the view that the six current categories of specialist issuers set out in Annex XIX of the Commission Regulation – property companies, mineral companies, investment companies, scientific research based companies, start-up companies and shipping companies – should be maintained.
205. In relation to start up companies, ESMA has removed the reference to “less than three years of experience” as it was understood in different ways. ESMA also considered that there was a potential divergence between the regulation and paragraph 136 of the ESMA update of the CESR the Recommendations as to what constitutes a start up. For these reasons, and, in order to allow greater flexibility and to make changes in the future, ESMA considers that elaboration is best left to level 3 as is the situation with the other categories of specialist issuer.
206. **On this basis, ESMA proposes the following Annex 16 for its technical advice to the Commission:**

ANNEX 16: LIST OF SPECIALIST ISSUERS

- Property companies
- Mineral companies
- Investment companies
- Scientific research based companies
- ~~Companies with less than three years of existence~~ (Start-up companies)
- Shipping companies

QUESTIONS FOR CONSULTATION

Question 69: Do you consider that any other types of specialist issuers which should be added? If so, please specify.

4.20 Registration document for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD

207. The registration document for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD has only been used on rare occasions, and in light of the desire to lower the number of schedules, ESMA proposes not replacing this annex. The exclusion of securities unconditionally and irrevocably guaranteed by a Member State or one of a Member State's regional or local authorities from the scope of the new Prospectus Regulation (Article 1(2)) also lessens the need for a replacement schedule. In any event, and in accordance with ESMA's proposed Article G, disclosure requirements can be adapted where the issuance of securities not covered by an annex is proposed.

QUESTIONS FOR CONSULTATION

Question 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?

5. Draft technical advice on the content of the URD

5.1 Scope and focus

208. According to Article 13(2) of the new Prospectus Regulation:

"The Commission shall, by 21 January 2019, adopt delegated acts in accordance with Article 44 to supplement this Regulation by setting out the schedule defining the minimum information to be included in the universal registration document. Such a schedule shall ensure that the universal registration document contains all the necessary information on the issuer so that the same universal registration can be used equally for the subsequent offer to the public or admission to trading of equity or non-equity securities. With regard to the financial information, the operating and financial review and prospects and the corporate governance, such information shall be aligned as much as possible with the information required to be disclosed in the annual and half-

yearly financial reports referred to under Article 4 and 5 of Directive 2004/109/EC, including the management report and the corporate governance statement.”

209. With regard to the purpose of the URD, Recital 45 states the following:

“Provided that the issuer complies with the procedures for the filing, dissemination and storage of regulated information and with the deadlines set out in Article 4 and 5 of Directive 2004/109/EC of the European Parliament and of the Council, it should be allowed to publish the annual and half-year financial reports required by Directive 2004/109/EC as part of the universal registration document, unless the home Member States of the issuer are different for the purpose of this Regulation and Directive 2004/109/EC and unless the language of the universal registration does not fulfil the conditions of Article 20 of Directive 2004/109/EC. This should alleviate administrative burden linked to multiple filings, without affecting the information available to the public or the supervision of these reports under Directive 2004/109/EC.”

5.2 Content of the URD

210. With regard to the content of the URD, Recital 39 of the Prospectus Regulation states that *“[t]he universal registration document should be multi-purpose in so far as its content should be the same irrespective of whether the issuer subsequently uses it for an offer or admission to trading of equity or non-equity securities. Therefore, the disclosure standards for the universal registration document should be based on those for equity securities”*.

211. As Level 1 calls for the URD disclosure requirements to be based on those for equity securities, ESMA has based its proposal for the URD on the contents of the share registration document (see Section 4.3). ESMA therefore suggests that the URD disclosure requirements should be those for the share registration document plus additional items relating to TD disclosure not replicated in the Prospectus Regulation.

NCA approval / filing

212. As the URD regime introduces a new system whereby issuers which have had a URD approved in two consecutive financial years may file and publish their subsequent URDs without prior approval, ESMA is of the opinion that it is important for investors that the URD clarifies whether it was approved before its publication or just filed.

213. In the case of a URD published after approval by the NCA, ESMA proposes that the approval statement required under Annex 1 (see Section 4.3) be required to contain additional wording to the effect that the URD may be used for the purposes of an offer to the public of securities or admission of securities to trading on a regulated market if completed by amendments, if applicable, and a securities note and summary approved in accordance with the Prospectus Regulation.

214. In the case of a URD filed without prior approval, ESMA proposes that the approval statement contained in Annex 1 be replaced by a statement that the URD has been filed with the NCA and that it may be used for the purpose of an offer or admission only when

approved and completed by amendments, if applicable, and a securities note and summary.

215. Furthermore, in relation to the cover note, ESMA suggests that in case the URD is also used to comply with the requirements of the TD in accordance with Article 9(12) of the Prospectus Regulation, this should also be indicated in the cover note.

TD requirements

216. Article 9(12) of the Prospectus Regulation gives the issuer the possibility to use the URD to fulfil its obligation under the TD to publish the annual and/or half-yearly financial report.
217. In addition to information required by the share registration document schedule, and notwithstanding timing, language and home Member State requirements, to fulfil the issuer's obligations under the TD, the URD must include:
- the information required to be disclosed in the annual or half-yearly financial report referred to in Articles 4 and 5 of the TD;
 - a cross reference list identifying where each item in the annual and half-yearly financial report required by the TD can be found in the URD;
 - a responsibility statement in the terms required under Article 4(2)(c) and 5(2)(c) of the TD.
218. ESMA has considered how the information required to be included in the annual and half-yearly financial report under the TD can be aligned with the financial information, the OFR and the prospects to be disclosed under the Prospectus Regulation. It is important to note that most items required by Article 4 and 5 of the TD are covered by Prospectus Regulation requirements. Where the same information is required to be disclosed under the TD and the Prospectus Regulation, ESMA is of the view that such information should be included in the URD only once.

Financial statements

219. ESMA has considered to what extent the audited financial statements required under the TD and the Prospectus Regulation are aligned. The information required under Item 20 of Annex 1 (financial information concerning the issuer's assets and liabilities, financial position and profits, and losses) can be fulfilled by including the annual accounts and the related notes. In accordance with Article 4(3) of the TD, the audited financial statements have to comprise consolidated accounts drawn up in accordance with Regulation (EC) No. 1606/2002 and the annual accounts of the parent company drawn up in accordance with the national law of the Member State in which the parent company is incorporated. Where the issuer is not required to prepare consolidated accounts, the audited financial statements must comprise the accounts prepared in accordance with the national law of the Member State in which the company is incorporated.
220. When an issuer applies the option provided by Article 9(12) of the Prospectus Regulation in relation to publishing its annual financial report, Item 20 of the URD can be used to

fulfil the issuer's obligation to publish its audited financial statements under TD Article 4(2)(a) and its obligation to publish the condensed set of financial statements under TD Article 5(2)(a).

221. The information relating to the financial statements in the TD financial report can be merged with the items of the share registration document without any change to the disclosure item in the share registration document.
222. An issuer should insert a cross reference list including all the items required by the TD annual financial report. This cross reference list refers to the financial information in the annual report and not to the Prospectus Regulation requirements. As such the cross reference list only refers to the last financial year and not to the last three financial years. However, the URD must include the last three financial years (Item 20.1. of Annex 1). The cross reference list should be as precise and detailed as possible.

Management report

223. As already discussed in Section 4.3, ESMA proposes amending Item 9 of the share registration document so that it more closely reflects the requirements for the TD management report set out in Article 19 of the Accounting Directive, thereby aligning the disclosure for the TD and the Prospectus Regulation.
224. The information related to the management report in the TD financial report can be addressed using disclosure items in the share registration document as set out in the below table:

Management report in the annual report	Items of the proposed Prospectus Regulation Level 2 share registration document (Annex 1)
The management report shall include a fair review of the development and performance of the undertaking's business and of its position	Item 9.1 To the extent not covered elsewhere in the registration document <u>and to the extent necessary for an understanding of the issuer's business as a whole</u> , 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.
A description of the principal risk and uncertainties that it faces	Item 4
where appropriate, non-financial key performance indicators relevant to the particular business	Item 9.1
The management report shall also give an indication of:	Item 9.2

(a) the undertaking's likely future development;	
Activities in the field of research and development	Item 9.1
The information concerning acquisitions of own shares prescribed by Article 24(2) of Directive 2012/30/EU	Item 22.1.3
The existence of branches of the undertaking	Item 6
In relation to the undertaking's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss: (i) the undertaking's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used; and (ii) the undertaking's exposure to price risk, credit risk, liquidity risk and cash flow risk.	Item 4
interim management in case of the inclusion of half yearly report (see article 5 TD)	Item 9
a description of the principal risks and uncertainties for the remaining six months of the financial year in case of the inclusion of half yearly report (see article 5 TD)	Item 12

225. In summary, with the exception of the responsibility statements required by Articles 4(2)(c) and 5(2)(c) of the TD, ESMA considers the requirements set out in Annex 1 above are in line with the requirements for the annual and half-yearly financial reports under the TD. For this reason, with the exception of the inclusion of these statements, the cross reference list referred to above and an amended approval statement, ESMA considers that the URD disclosure requirements are identical to those required by the share registration document.

226. On the basis of the considerations above, ESMA proposes the following Annex 17 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 17: UNIVERSAL REGISTRATION DOCUMENT
1	INFORMATION TO BE DISCLOSED ABOUT THE ISSUER
1.1	The issuer shall disclose information in accordance with the disclosure requirements for “Share Registration Document”.
1.2	When the Universal Registration Document is approved, Item [] of Annex 1 shall be supplemented with a statement that: - the universal registration document may be used for the purposes of an offer to the public of securities or admission of securities to trading on a regulated market if completed by amendments, if applicable, and a securities note and summary approved in accordance with Regulation (EU) 2017/1129. When the Universal Registration Document is filed and published without prior approval, Item [] of Annex 1 shall be replaced with a statement that: - the universal registration document has been filed with the [name of the competent authority] as competent authority under Regulation (EU) 2017/1129 without prior approval pursuant to Article 9 of Regulation (EU) 2017/1129; - the universal registration document may be used for the purposes of an offer to the public of securities or admission of securities to trading on a regulated market if approved by the [insert name of competent authority] and completed by amendments, if applicable, and a securities note and summary approved in accordance with Regulation (EU) 2017/1129.
2	ADDITIONAL INFORMATION RELATING TO PUBLICATION OF THE ANNUAL OR HALF-YEARLY FINANCIAL REPORT AS REQUIRED BY DIRECTIVE 2004/109/EC
2.1	To fulfil its obligation to publish the annual financial report or the half-yearly financial report in accordance with Article 9(12) of Regulation (EU) 2017/1129 the issuer shall: - add the responsibility statement referred to in subparagraph (c) of Article 9(12) of Regulation (EU) 2017/1129. - include the cross reference list referred to in subparagraph (a) of Article 9(12) of Regulation (EU) 2017/1129. so as to enable investors to find the information contained in the TD financial report(s).

QUESTIONS FOR CONSULTATION

- Question 71: Do you agree that the URD disclosure requirements should be based on the share registration document plus additional disclosure items?
- Question 72: Should the URD schedule contain any further disclosure requirements?
- Question 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).

6. Draft technical advice on the content of the secondary issuance regime

6.1 Scope and focus

227. Article 14 of the Prospectus Regulation establishes the simplified disclosure regime for secondary issuances, setting out who can avail of such regime and the broad parameters as regards the content of the alleviated prospectus. The article makes it clear that, in terms of a derogation from the necessary information test included in Article 6(1), the prospectus shall only contain the relevant reduced information which is necessary to enable investors to understand:

- (a) the prospects of the issuer and the significant changes in the business and the financial position of the issuer and the guarantor that have occurred since the end of the last financial year, if any;
- (b) the rights attaching to the securities; and
- (c) the reasons for the issuance and its impact on the issuer, including on its overall capital structure, and the use of the proceeds.

228. According to Article 14(3) of the new Prospectus Regulation:

“The Commission shall, by 21 January 2019, adopt delegated acts in accordance with Article 44 to supplement this Regulation by setting out the schedules specifying the reduced information to be included under the simplified disclosure regime referred to in paragraph 1.

The schedules shall include in particular:

- (a) *the annual and half-yearly financial information published over the 12 months prior to the approval of the prospectus;*
- (b) *where applicable, profit forecasts and estimates;*

- (c) *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;*
- (d) *risk factors;*
- (e) *for equity securities, the working capital statement, the statement of capitalisation and indebtedness, a disclosure of relevant conflicts of interest and related-party transactions, major shareholders and, where applicable, pro forma financial information.*

When specifying the reduced information to be included under the simplified disclosure regime, the Commission shall take into account the need to facilitate fundraising on capital markets and the importance of reducing the cost of capital. In order to avoid imposing unnecessary burdens on issuers, when specifying the reduced information, the Commission shall also take into account the information which an issuer is already required to disclose under Directive 2004/109/EC, where applicable, and Regulation (EU) No 596/2014. The Commission shall also calibrate the reduced information so that it focusses on the information that is relevant for secondary issuances and is proportionate.”

229. In terms of who is eligible to use the simplified prospectus, Recital 49 provides that:

“The simplified disclosure regime for secondary issuances should be available for offers to the public by issuers whose securities are traded on SME growth markets, as their operators are required under Directive 2014/65/EU of the European Parliament and of the Council to establish and apply rules ensuring appropriate ongoing disclosure.”

230. In order for an issuer to make use of the regime, a period of 18 months must have elapsed since the initial admission to trading on a regulated market or an SME Growth Market of a class of securities of an issuer (cf. Recital 50).

231. In the mandate received from the Commission, ESMA has been requested to provide technical advice on the content of the schedules applicable under the simplified prospectus regime for secondary issuances. In accordance with this request, ESMA has drawn up a proposal for a registration document and a securities note which can be used for issuance of both equity and non-equity securities. The registration document and securities note are proposed for issuers regardless of whether they are listed on a regulated market or an SME Growth Market.

232. Since there is no specific annex in the new Prospectus Regulation regarding the secondary issuance registration document and securities note, ESMA has considered which information should be included in this simplified prospectus and proposes that the simplified prospectus should consist of:

- a) The list of disclosure requirements mentioned in Article 14(3);
- b) Information required by the necessary information test under Article 14(2); and,
- c) The minimum information mentioned in Article 7.

6.2 General considerations

233. ESMA has used the disclosure for equity securities as a starting point in terms of meeting the disclosure required and has added alternative requirements to facilitate the issuance of debt securities, both retail and wholesale. The requirements have been designed to take into account disclosures that are made by issuers under the TD, or under the rules of the SME Growth Market operator, and under MAR. For issuers seeking to issue derivatives under the secondary issuance regime, the securities note should be combined with the building block for derivative securities set out in Section 4.9.
234. Regarding the relationship between the secondary issuance regime and the TD, ESMA notes that while SME Growth Market issuers do not have to comply with the TD, pursuant to Article 2 of the Accounting Directive, some of them – notably public-interest entities – are required to draw up a management report in accordance with Article 19 of the Directive – the same document which is required under the TD. For others, pursuant to Article 78(2)(g) of the MiFID II delegated regulation, SME Growth Market issuers are required to publish annual and interim financial reports. While there are a number of differences when comparing the information disclosed as part of such issuers' continuing obligations (e.g. the content of the reports is not harmonised, the time permitted for publication is longer than under the TD, the liability regimes are not harmonised), for the purposes of the secondary issuance regime, ESMA considers the disclosures under the MiFID II delegated regulation to be equivalent to those made under the TD.
235. To ensure that the issuer complies with the TD and MAR, ESMA is of the opinion that the issuer should make a statement of compliance with its TD and MAR publication obligations to the NCA as part of the approval process and that such a statement should be valid at the time the prospectus is approved by the NCA. ESMA addresses this statement in more detail in the Consultation Paper relating to scrutiny and approval of prospectuses¹⁷.

6.3. Content of secondary issuance regime

6.3.1. Summary

236. Article 14(1) of the Prospectus Regulation states that *“The simplified prospectus (...) shall consist of a summary in accordance with Article 7, a specific registration document (...) and a specific securities note”*. From this wording, ESMA understands that the standard summary under Article 7 is applicable to a prospectus drawn up under the secondary issuance regime. As a consequence, ESMA is of the view that the minimum information required by Article 7 needs to be included in the registration document and the securities note of the secondary issuance prospectus as the summary *“shall be read as an introduction of the prospectus and shall be consistent with the other parts of the prospectus”*. On this basis, ESMA has incorporated the information required by Article 7

¹⁷ ESMA31-62-650, available on ESMA's website.

into the proposed annexes for the secondary issuance registration document and securities note.

6.3.2. Registration document

Maintained disclosure items

237. As required by Article 14(3) of the Prospectus Regulation, ESMA has maintained the following information:

- The annual and half-yearly financial information published over the 12 months prior to the approval of the prospectus;
- Where applicable, profit forecasts and estimates;
- A concise summary of the relevant information disclosed under MAR over the 12 months prior to the approval of the prospectus;
- Risk factors;
- Relevant conflicts of interest and related-party transactions, major shareholders and, where applicable, pro-forma financial information.

238. ESMA has also analysed the content of the registration document for the purposes of the materiality test established in Article 14(2) of the Prospectus Regulation, especially with regard to the need for investors to understand *“prospects of the issuer and the significant changes in the business and the financial position of the issuer and the guarantor that have occurred since the end of the last financial year.”*

Deleted disclosure items

239. Being mindful of the general objective that the secondary issuance prospectus be an alleviated one, and taking into account the information that has already been published under the TD and MAR, ESMA proposes the deletion of the following items from the full share registration document, as presented in Section 4.3:

- 7. “Organisational structure”;
- 9. “Operating and Financial Review”
- 9.3. “Environmental matters”;
- 10. “Capital resources”;
- 15. “Remuneration and benefits”;
- 16. “Board practices”;
- 17. “Employees”;
- 22. “Additional information”, except the information regarding the dilution on the existing shares (Items 22.1.4 and 22.1.5), the rights attached to the existing shares

(Item 22.2.3) and the poison pill (Item 22.2.6) which is considered central also in the case of a secondary issuance.

240. Specifically in relation to the Operating and Financial Review, while this information is considered useful for investors to assess the evolution of the issuer's performance, ESMA proposes its deletion since Level 1 requires that account be taken of information already published under the TD and MAR. ESMA also notes that, given the redrafting of this item in the share registration document, this information could be considered equivalent to the information provided by the management report under the TD.

Amended disclosure items

241. In addition to proposing that the above items be removed, ESMA has redrafted the following items in order to maintain only relevant information:

- 2. "Statutory auditors";
- 5. "Information about the issuer";
- 6. "Business overview";
- 11. "Regulatory environment" (which has been included in Item 6);
- 20.1 "Annual financial statements";
- 20.2 "Interim and other financial information"; and
- 23. "Material contracts".

242. Regarding risk factors, ESMA has considered the possibility of reducing the disclosure requirements since having the same requirement as the core disclosure for equity will not produce the significant reduction in cost envisaged by Level 1. However, as Article 14 connects the risk factors required in the secondary issuance prospectus to risk factors as defined under Article 16, ESMA understands that there is no scope to provide for an alleviation in this area.

243. In relation to capital resources, ESMA notes that this information is required neither by Level 1 nor by the rights issues schedule in the current Commission Regulation. As such, ESMA does not propose to mandate its disclosure as part of the secondary issuance regime.

244. In terms of material contracts, in the case of a secondary equity issuance to fund a large acquisition, the issuer will often have entered into a number of material contracts just before the time of the issuance, including an acquisition agreement and agreements relating to bank debt funding. It may be that these contracts would be disclosed elsewhere (e.g. the acquisition or funding agreement might contain a condition precedent, which could give rise to the risk that the acquisition might not proceed, and this would likely be disclosed in the risk factors section; the entry into of the acquisition agreement would likely constitute inside information which would be disclosed under MAR and summarised in the prospectus; and significant financial commitment information will have to be provided). However, in the event that this information is not

disclosed elsewhere, ESMA considers that the secondary issuance registration document should require issuers to provide this disclosure.

245. Regarding the concise summary of the relevant information disclosed under MAR required by Article 14(3), ESMA believes that this requirement will benefit from elaboration at Level 2. For the purpose of the disclosure item to be contained in the new annex, ESMA proposes the following drafting:

“The summary of the relevant information disclosed under Regulation (EU) No 596/2014 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.”

246. In terms of the reduced requirement for non-equity securities, ESMA proposes the deletion of the following requirements in comparison to the full regime:

- “Organisational Structure”;
- “Board Practices”;
- “Major Shareholders”; and
- “Additional Information”

247. In addition to proposing that the above items be removed, ESMA has redrafted the following items for non-equity securities in order to maintain only relevant information:

- “Statutory Auditors”;
- “Information about the issuer”;
- “Business Overview”;
- “Annual financial statements”; and
- “Interim and other financial information”.

248. The table below setting out the proposed technical advice has not been marked against any of the existing annexes to the Commission Regulation. The schedule covers equity, retail debt and wholesale debt. Where requirements only apply to a subset of these

issuers, this is highlighted in the first column and in the subsections of the relevant requirement.

249. On the basis of the above considerations, ESMA proposes the below Annex 18 for inclusion in its technical advice to the Commission:

ITEM	ANNEX 18: REGISTRATION DOCUMENT FOR SECONDARY ISSUANCES
1	PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL
1.1	All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
1.2	A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
1.3	Where a statement or report attributed to a person as an expert is included in the Registration Document, provide: • such person's name, • business address, • qualifications • material interest if any in the issuer If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the registration document for the purpose of the prospectus.
1.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would

	render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.
1.5	A statement that: - the registration document has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129; - the [name of competent authority] only approves this registration document as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129; - such approval shall not be considered as an endorsement of the issuer that it the subject of this registration document;
2	STATUTORY AUDITORS
2.1	Names of the issuer's auditors for the period covered by the historical <u>annual</u> financial <u>statements</u> information (together with their membership in a professional body).
3	RISK FACTORS
	EQUITY SECURITIES
3.1 (equity securities)	A description of the material risks that are specific to the issuer, in a limited number of categories, in a section headed 'Risk Factors'. In each category the most material risk factors , in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market,, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risk factors shall be corroborated by the content of the registration document.
	NON-EQUITY SECURITIES
3.2 (non-equity securities)	A description of the material risks that, are specific to the issuer and that may affect the issuer's ability to fulfil its obligations under the securities, in a limited number of categories, in a section headed 'Risk Factors'. In each category the most material risk factors, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the probability of their occurrence, shall be mentioned first. The risk factors shall be corroborated by the content of the registration document.
4	INFORMATION ABOUT THE ISSUER
4.1	The legal and commercial name of the issuer

4.1	The domicile and legal form of the issuer, Legal Entity Identifier, the legislation under which the issuer operates, its country of incorporation, and the address, telephone number of its registered office (or principal place of business if different from its registered office) and website with a disclaimer that the information on the website does not form part of the prospectus.
5	BUSINESS OVERVIEW
5.1	A brief description of: - the key principal activities of the issuer; - of any significant changes impacting the issuer's operations and principal activities since the end of the period covered by the latest published audited financial statements, including - an indication of any significant new products and services that have been introduced and, - to the extent the development of new products or services has been publicly disclosed, the status of development, and, - any material changes in the issuer's regulatory environment since the period covered by the latest published audited financial statements.
5.2	Investments
5.2.1 (equity securities)	A description of the issuer's material investments made since the date of the last published financial statements and which are in progress and / or for which firm commitments have already been made, together with the anticipated source of funds.
6	TREND INFORMATION
	EQUITY SECURITIES
6.1 (equity securities)	A description of : - the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document, - any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document, or provide an appropriate negative statement. - Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year

	NON-EQUITY SECURITIES
6.2 (non-equity securities)	<u>A description of:</u> a) <u>any</u> material adverse change in the prospects of the issuer since the date of its last published audited financial statements; <u>and</u> b) <u>any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document.</u> <u>If neither of the above are applicable then the issuer should include (an) appropriate negative statement(s).</u>
6.4 (retail non-equity securities)	Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
7	PROFIT FORECASTS OR ESTIMATES
7.1	Where an issuer has published a profit forecast or a profit estimate (which is still outstanding and valid), that forecast or estimate shall be included in the registration document. If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then provide a statement to that effect and an explanation of why such forecast or estimate is no longer valid. Such an invalid forecast or estimate is not subject to the requirements in items [7.2 to 7.3]. In the case of wholesale non-equity issuance, inclusion of the profit forecast or estimate shall be at the discretion of the issuer. Where such is included, the registration document shall contain the information set out in items 7.2. and 7.3.
7.2	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.
7.3	The prospectus shall include a statement that the profit forecast or estimate has been compiled on the basis stated and prepared on a basis i) comparable with the <u>annual financial statements</u> and ii) consistent with the issuer's accounting policies.
8	ADMINISTRATIVE, MANAGEMENT AND SUPERVISORY BODIES AND SENIOR MANAGEMENT
	EQUITY SECURITIES
8.1 (equity securities)	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) members of the administrative, management or supervisory bodies and b) partners with unlimited liability, in the case of a limited partnership with a share capital. c) founders, if the issuer has been established for fewer than five years; and d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business. The nature of any family relationship between any of those persons. To the extent not already disclosed, and in the case of new members of the administrative, management or supervisory bodies of the issuer (since the date of the latest audited annual financial statements) and of each person mentioned in points (b) and (d) of the first subparagraph the following information: a) The names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies; b) any convictions in relation to fraudulent offences for at least the previous five years; c) details of any bankruptcies, receiverships, liquidations or companies put into administration with which a person described in (a) and (d) of the first subparagraph who was acting in the

	capacity of any of the positions set out in (a) and(d) of the first subparagraph was associated for at least the previous five years; d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years. If there is no such information to be disclosed, a statement to that effect is to be made.
8.2 (equity securities)	Potential conflicts of interest between any duties to the issuer, of the persons referred to in item 9.1 and their private interests or other duties must be clearly stated. In the event that there are no such conflicts a statement to that effect must be made. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 9.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management. Details of any restrictions agreed by the persons referred to in item 9.1 on the disposal within a certain period of time of their holdings in the issuer's securities.
8.3. (equity securities)	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 shareholders meeting)
	NON EQUITY SECURITIES
8.4 (non-equity securities)	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: a) members of the administrative, management or supervisory bodies and b) partners with unlimited liability, in the case of a limited partnership with a share capital.
8.5. (non-equity securities)	Potential conflicts of interest between any duties to the issuer, of the persons referred to in item 9.1 and their private interests or other duties must be clearly stated. In the event that there are no such conflicts a statement to that effect must be made.
9 (equity securities)	MAJOR SHAREHOLDERS
9.1	In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights

	which is notifiable under the issuer's national law, together with the amount of each such person's interest, as of the date of the registration document or, if there are no such persons, an appropriate negative statement.
9.2	Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
9.3	To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
9.4	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
10 (equity securities)	RELATED PARTY TRANSACTIONS
	Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into since the date of the last financial statements, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable. If such standards do not apply to the issuer the following information must be disclosed: a) The nature and extent of any transactions which are — as a single transaction or in their entirety — material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arm's length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding. b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.
11	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS, AND LOSSES
11.1	Financial statements Financial statements (annual and half-yearly) published over the 12 months prior to the approval of the prospectus. Where both annual and half-yearly financial statements have been published, only the annual statements shall be required where they postdate the half-yearly financial statements.

11.2	Auditing of annual financial information
11.2.1	<u>Audit report</u> The annual financial statements must be independently audited. The audit report shall be prepared in accordance with the Audit Directive and Audit Regulation. Where the Audit Directive and Audit Regulation do not apply; - the annual financial statements must be audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the registration document: - a prominent statement disclosing which auditing standards have been applied; - an explanation of any significant departures from International Standards on Auditing. - If audit reports on the annual financial statements contain qualifications, modifications of opinion, or disclaimers or an emphasis of matter, such qualifications, modifications, disclaimers or emphasis of matter must be reproduced in full and the reasons given.
11.2.2	Indication of other information in the registration document which has been audited by the auditors.
11.2.3	Where financial information in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.
11.3.	Legal and arbitration proceedings Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
11.4.	Significant change in the issuer's financial position A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.

	EQUITY SECURITIES
11.5. (equity securities)	Pro forma financial information In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information. This pro forma financial information is to be presented as set out in Annex 12 and must include the information indicated therein. Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.
11.6. (equity securities)	Dividend policy A description of the issuer's policy on dividend distributions and any restrictions thereon.
11.6.1.	The amount of the dividend per share for the last financial year adjusted, where the number of shares in the issuer has changed, to make it comparable.
12 (equity securities)	ADDITIONAL INFORMATION
12.1	Share capital The following information as of the date of the most recent balance sheet included in the annual financial statements
12.1.2	The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
12.1.3	Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
13	REGULATORY DISCLOSURES
13.1	A summary of the information disclosed under Regulation (EU) No 596/2014 over the last 12 months which remains relevant as at the date of the prospectus. The summary shall be presented in an easily analysable, concise and comprehensible form and shall not be a replication of information already published under Regulation (EU) No 596/2014. The summary shall be presented in a limited number of categories depending on their topics.

14	MATERIAL CONTRACTS
14.1	Where not previously disclosed elsewhere, a brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business.
15	DOCUMENTS AVAILABLE
15.1	A statement that for the life of the registration document the following documents, where applicable, may be inspected on the website of the issuer: (a) the up to date memorandum and articles of association of the issuer; (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;

QUESTIONS FOR CONSULTATION

- Question 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.
- Question 75: Should secondary disclosure differ depending on whether the issuer is listed on a regulated market or on an SME Growth Market?
- Question 76: Do you consider that item 8.3 (information on corporate governance) is necessary?
- Question 77: Do you consider that information on material contracts is necessary for secondary issuance?
- Question 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).

6.3.3. Securities note

250. Where disclosure items for equity securities from the full regime were not included in Commission Regulation Annex XXIV (Proportionate Schedule for Minimum Disclosure Requirements for the Share Securities Note for Rights Issues), ESMA does not propose reintroducing them here, with the exception of Items 4.7 and 4.8. The items which were not considered to be relevant for rights issues under Annex XXIV include the various categories of potential investor, pre-allotment disclosure, over-allotment and 'green-

shoe', any disparity between the public offer price and the effective cash cost to members of the board, stabilisation and details of selling shareholders.

251. In addition, although Level 1 requires a specific securities note, ESMA is of the opinion that alleviating the registration document goes a long way in answering the general objective to facilitate fund raising on capital markets and to reduce the cost of capital. However, in terms of an alleviated securities note for secondary issuance, ESMA has identified some further items that can be helpfully removed from the full regime.

252. The alleviations over and above those given in Annex XXIV of the Commission Regulation are:

- The deletion of the requirement to include the legislation under which the securities have been created as this will be identical to the securities' primary issuance;
- The deletion of the statement as to whether the securities are in registered or bearer form, again as this will be the same as for the existing securities;
- In addition there is no intention to include the new requirement in the equity securities note relating to the impact on an investment in the event of a resolution under the BRRD as this should have been disclosed with the primary issuance of the securities.

253. **On the basis of the above considerations, ESMA proposes the following Annex 19 for inclusion in its technical advice to the Commission:**

ITEM	ANNEX 19: SECONDARY ISSUANCE SECURITIES NOTE	CAT.
1	PERSONS RESPONSIBLE, THIRD PARTY INFORMATION, EXPERTS' REPORTS AND COMPETENT AUTHORITY APPROVAL	
1.1.	All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.	A
1.2.	A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	A

	As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	
1.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.	A
1.4	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.	C
1.5	A statement that: - this [securities note / prospectus] has been approved by the [name of competent authority], as competent authority under Regulation (EU) 2017/1129; - the [name of competent authority] only approves this [securities note / prospectus] as meeting the standards of completeness, comprehensibility and consistency imposed by Regulation (EU) 2017/1129; - such approval should not be considered as an endorsement of the quality of the securities that are the subject of this [securities note / prospectus]; - investors should make their own assessment as to the suitability of investing in the securities; and - that the [securities note / prospectus] has been drawn up as a simplified prospectus in accordance with Article 14 of Regulation (EU) 2017/1129.	A

2	RISK FACTORS	
	A description of the material risks that are specific to the securities being offered and/or admitted to trading, in a limited number of categories, in a section headed 'Risk Factors'. Risks to be disclosed shall include: - those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities under bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with Directive 2014/59/EU (BRRD); and - in cases where the securities are guaranteed, the specific and material risks related to the guarantor to the extent they are relevant to its ability to fulfil its commitment under the guarantee. In each category the most material risks, in the assessment of the issuer, offeror or person asking for admission to trading on a regulated market, taking into account their impact on the issuer and the securities and the probability of their occurrence, shall be mentioned first. The risks shall be corroborated by the content of the securities note.	A
3	ESSENTIAL INFORMATION	
3.1	Interest of natural and legal persons involved in the issue/offer A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.	C
	EQUITY SECURITIES	
3.2. (equity securities)	Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of	

	business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.	
3.3. (equity securities)	Working capital statement Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.	
3.4. (equity securities)	Capitalisation and indebtedness A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness. In the case of material changes in the capitalisation and indebtedness position of the issuer within the 90 day period additional information shall be given through the presentation of a narrative description of such changes or through the updating of those figures.	
	NON- EQUITY SECURITIES	
3.5. (retail non-equity securities)	Reasons for the offer to the public or for the admission to trading if different from making profit and/or hedging certain risks. In case of an offer to the public, disclosure of the estimated total expenses of the issue / offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.	C
3.6 (wholesale non-equity securities)	Reasons for the issuance if different from making profit and/or hedging certain risks	C
4	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING	
4.1	A description of the type, class and amount of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number).	A C
4.2	Currency of the securities issue.	C

4.3	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	C
4.4	A description of any restrictions on the free transferability of the securities	B
4.5	A warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities. Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.	A
<u>New</u>	If different from the issuer, the identity and contact details of the offeror, of the securities and/or the person asking for admission to trading, including LEI where the offeror has legal personality.	C
	EQUITY SECURITIES	
4.6 (equity securities)	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights. Dividend rights : – Fixed date(s) on which the entitlement arises, – Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates, – Dividend restrictions and procedures for non-resident holders, – Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. Voting rights. Pre-emption rights in offers for subscription of securities of the same class. Right to share in the issuer's profits. Rights to share in any surplus in the event of liquidation. Redemption provisions. Conversion provisions.	

4.7 (equity securities)	Statement on the existence of national legislation on takeovers applicable to the issuer and the possibility for frustrating measures if any.	
4.8 (equity securities)	An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.	
	NON EQUITY SECURITIES	
4.9 (non-equity securities)	The relative seniority of the securities in the issuer's capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under Directive 2014/59/EU.	A
4.10 (non-equity securities)	A description of the rights attached to the securities, including any limitations of those rights.	B
4.11 (non-equity securities)	- The nominal interest rate, and - provisions relating to interest payable: - The date from which interest becomes payable and the due dates for interest. - The time limit on the validity of claims to interest and repayment of principal Where the rate is not fixed - Description of the underlying on which it is based and of the method used to relate the two - Indication where information about the past and the further performance of the underlying and its volatility can be obtained. - A description of any market disruption or settlement disruption events that affect the underlying - Adjustment rules with relation to events concerning the underlying - Name of the calculation agent.	C B C B C B B C

4.12 (non-equity securities)	Maturity date and arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions.	C B
4.13 (non-equity securities)	An indication of yield. Describe the method whereby that yield is calculated in summary form.	C B
4.14 (non-equity securities)	Representation of debt securities holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of the website where the public may have free access to the contracts relating to these forms of representation.	B
4.15 (non-equity securities)	Where there is no offer, the issue date of the securities.	C
5	TERMS AND CONDITIONS OF THE OFFER	
5.1	Conditions, offer statistics, expected timetable and action required to apply for the offer	
5.1.1	Conditions to which the offer is subject.	C
5.1.2	The time period, including any possible amendments, during which the offer will be open and a description of the application process together with the issue date of new securities.	C
5.1.3.	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	C
5.1.4.	Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).	C
5.1.5.	Method and time limits for paying up the securities and for delivery of the securities.	C
5.1.6.	A full description of the manner and date in which results of the offer are to be made public.	C

5.1.7.	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	C
	EQUITY SECURITIES	
5.1.8 (equity securities)	Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, an indication of the amount of securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer. Where the maximum amount of securities to be offered cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase of subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.	
5.1.9. (equity securities)	An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.	
5.1.10 (equity securities)	An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	
	NON-EQUITY SECURITIES	
5.1.11. (non-equity securities)	Total amount of the issue/offer; if the amount is not fixed, an indication of the amount of securities to be offered (if available) and a description of the arrangements and time for announcing to the public the definitive amount of the offer. Where the maximum amount of securities to be offered cannot be provided in the prospectus, the prospectus shall specify that acceptances of the purchase of subscription of securities may be withdrawn for not less than two working days after the amount of securities to be offered to the public has been filed.	C
5.2	Plan of distribution and allotment	
5.2.1.	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	C

	EQUITY SECURITIES	
5.2.3. (equity securities)	To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.	
5.3	Pricing	
	EQUITY SECURITIES	
5.3.1. (equity securities)	An indication of the price at which the securities will be offered and the amount of any expenses and taxes charged to the subscriber or purchaser. If the price is not known, or if there is no established and/or liquid market for the securities, indicate: - the maximum price of securities, as far as they are available, or - the valuation methods and criteria, and/or conditions, in accordance with which the final offer price is to be determined and an explanation of any valuation methods used. Where neither (a) nor (b) can be provided in the prospectus, the prospectus shall specify that acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price of securities to be offered to the public has been filed.	
5.3.2. (equity securities)	Process for the disclosure of the offer price.	
5.3.3. (equity securities)	If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal.	
	NON-EQUITY SECURITIES	
5.3.5. (non-equity)	An indication of the price at which the securities will be offered or a description of the method for determining the price and the process for its disclosure. Indicate the amount of	A B

	any expenses and taxes charged to the subscriber or purchaser.	
5.4.	Placing and underwriting	
5.4.1	Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place	C
5.4.2	Name and address of any paying agents and depository agents in each country.	C
5.4.3.	Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission	C
5.4.4.	When the underwriting agreement has been or will be reached.	C
6	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
6.1	An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market, other equivalent third country markets or an SME Growth Market with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.	B
	EQUITY SECURITIES	
6.2 (equity securities)	All the regulated markets equivalent third country markets or SME Growth Markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.	
6.3 (equity securities)	If simultaneously or almost simultaneously with the application for admission of the securities to a regulated market, securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the	

	nature of such operations and of the number, characteristics and price of the securities to which they relate.	
6.4 (equity securities)	Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.	
	RETAIL NON-EQUITY SECURITIES	
6.5 (non-equity securities)	All the regulated markets, equivalent third country markets or SME Growth Markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.	C
6.6 (non-equity securities)	The issue price of the securities.	C
6.7 (non-equity securities)	An estimate of the total expenses related to the admission to trading.	C
	WHOLESALE NON-EQUITY SECURITIES	
6.9 (non-equity securities)	Name and address of any paying agents and depositary agents in each country.	C
7 (equity securities)	SELLING SECURITIES HOLDERS	
7.1	Lock-up agreements The parties involved. Content and exceptions of the agreement. Indication of the period of the lock up.	
8 (equity securities)	EXPENSE OF THE ISSUE/OFFER	
8.1	The total net proceeds and an estimate of the total expenses of the issue/offer.	
9 (equity)	DILUTION	
9.1	A comparison of - participation in share capital and voting rights for existing shareholders before and after the capital increase resulting from the public offer, with the	

	assumption that existing shareholders do not subscribe for the new shares; and, - the net asset value per share as of the date of the latest balance sheet before the public offer (selling offer and / or capital increase) and the offering price per share within that public offer	
9.2	Where existing shareholders will be diluted regardless of whether they subscribe for their entitlement, because a part of the relevant share issue is reserved only for certain investors (e.g. an institutional placing coupled with an offer to shareholders), an indication of the dilution existing shareholders will experience should also be presented on the basis that they do take up their entitlement (in addition to the situation where they do not).	
10	ADDITIONAL INFORMATION	
10.1.	If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.	C
10.2.	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.	A
	RETAIL NON-EQUITY SECURITIES	
10.3 (non-equity securities)	Credit ratings assigned to the securities at the request or with the co-operation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.	C
	WHOLESALE NON-EQUITY SECURITIES	
10.4 (non-equity securities)	An estimate of the total expenses related to the admission to trading.	C
10.5 (non-equity securities)	Credit ratings assigned to the securities at the request or with the co-operation of the issuer in the rating process.	A

QUESTIONS FOR CONSULTATION

Question 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.

Question 80: Is a single securities note, separated by security type, clear or would it be preferable to have multiple securities note schedules?

Question 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).

Annex I: Mandate to deliver technical advice to the European Commission

DRAFT

REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS
CONCERNING THE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE
OFFERED TO THE PUBLIC OR ADMITTED TO TRADING ON A REGULATED
MARKET

(UPDATED 01.06.2017)

With this mandate to ESMA, the Commission seeks ESMA's technical advice on possible delegated acts to supplement certain elements of the Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Regulation**")¹⁸. These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final policy decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**")¹⁹, the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**")²⁰, and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**")²¹.

This request for technical advice will be made available on DG FISMA's website once it has been sent to ESMA.

The formal mandate consists of two parts.

Part I

The technical advice for the following delegated acts should be received by the Commission within 13 months following the receipt of this mandate:

a) The measures specifying the criteria for the scrutiny and review of the universal registration document and any amendments thereto, and the procedures for the approval and filing of those documents as well as the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation);

¹⁸ Reference is made to the text approved by the European Parliament on 5 April 2017 and adopted by the Council on 16 May 2017 (<http://data.consilium.europa.eu/doc/document/PE-63-2016-INIT/en/pdf>).

¹⁹ Communication of 9.12.2009. COM (2009) 673 final.

²⁰ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. OJ L331/84, 15.12.2010, p.84.

²¹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L123/1, 12.05.2016, p.1.

b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Regulation);

c) The measures setting out the schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation);

d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation);

e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus, as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Regulation);

f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Regulation).

Part II

The technical advice for the following delegated acts should be received by the Commission within 18 months following the receipt of this mandate:

g) The measures setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1 (documents containing minimum information describing a takeover by way of exchange offer, a merger or a division) (Article 1(7) of the Regulation);

h) The measures establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 8 and 13 (equivalence of information requirements imposed by third countries) (Article 29(3) of the Regulation).

The European Parliament and the Council have been duly informed about this mandate.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

1. CONTEXT

1.1 Scope

On 30 November 2015, the Commission published its proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading. On 7 December 2016 the European Parliament and the Council reached political agreement on a compromise text of the Regulation. This compromise text was endorsed by the COREPER on 20 December 2016 and approved by the ECON Committee of the European Parliament on 25 January 2017.

The main objectives of the Regulation are to reduce the administrative burden for issuers when drawing up a prospectus, in particular for SMEs, frequent issuers of securities and secondary issuances; to make the prospectus a more relevant disclosure tool for potential investors, especially when investing in SMEs; and to avoid overlaps between the EU prospectus and other EU disclosure rules.

Certain elements of the Regulation need to be further specified in delegated acts to be adopted by the Commission no later than 18 months after the entry into force of the Regulation.

The Regulation emphasizes a number of high level principles and objectives the Commission should take into account when exercising its delegated powers, in particular as regards investor protection, transparency in financial markets, proportionality, innovation in financial markets, reduction of administrative burden and cost and easier access to capital markets for issuers, including SMEs²².

1.2 Principles that ESMA should take into account

In developing its technical advice, ESMA should take account of the following principles:

- **Lamfalussy:** The principles set out in the de Larosière Report and the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- **Internal Market:** The need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to the financial markets, and a high level of investor protection.
- **Proportionality:** The technical advice should not go beyond what is necessary to achieve the objectives of the Regulation. It should be simple and avoid creating divergent practices by national competent authorities in the application of the Regulation.
- **Comprehensive:** ESMA should provide comprehensive advice on all subject matters covered by the mandate regarding the delegated powers included in the Regulation.
- **Coherent:** While preparing its advice, ESMA should ensure coherence within the wider regulatory framework of the Union.

²² See Recital 83.

- **Autonomy in working methods:** ESMA will determine its own working methods, including the roles of ESMA staff or internal committees. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different strands of work being carried out by ESMA.
- **Consultation:** ESMA is invited to consult market participants (practitioners, consumers and end-users) in an open and transparent manner. ESMA should provide advice which takes account of different opinions expressed by the market participants during their consultation. ESMA should provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation.
- **Evidenced and justified:**

ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to assist the Commission in preparing its delegated acts. Where administrative burdens and compliance costs on the side of the industry could be significant, ESMA should where possible quantify these costs.

ESMA should provide sufficient factual data backing the analyses and gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by ESMA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.

ESMA should provide comprehensive technical analysis on the subject matters described below, covered by the delegated powers included in the relevant provisions of the Regulation, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.
- **Clarity:** The technical advice carried out should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level.
- **Advice, not legislation:** ESMA should provide the Commission with a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology used in the field of securities markets in the Union.
- **Responsive:** ESMA should address to the Commission any question it might have concerning the clarification on the text of the Regulation, which it should consider of relevance to the preparation of its technical advice.

2. PROCEDURE

The Commission requests the technical advice of ESMA for the purpose of the preparation of the delegated acts to be adopted pursuant to the legislative act and described in section 3 of this mandate.

The Commission reserves the right to revise and/or supplement this mandate if needed. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"), the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**"), and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**").

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advice by ESMA, in accordance with the Annex to the Interinstitutional Agreement, signed on 13 April 2016, the Commission will continue to consult experts designated by the Member States in the preparation of draft delegated acts.

In accordance with the Annex to the Interinstitutional Agreement, the Commission services will state the conclusions they have drawn from the discussions of any meeting with Member States' experts on draft delegated acts, including how they will take the experts' views into consideration and how they intend to proceed. When they consider this necessary, the European Parliament and the Council may each send experts to these meetings.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

When preparing and drawing up the delegated act, the Commission will ensure a timely and simultaneous transmission of all documents, including the draft acts, to the European Parliament and the Council at the same time as Member States' experts.

As soon as the Commission adopts delegated acts, it will simultaneously notify to the European Parliament and the Council.

3. ISSUES ON WHICH ESMA IS INVITED TO PROVIDE TECHNICAL ADVICE

3.1 The format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus (Article 13(1) of the Regulation)

Since Directive 2003/71/EC (the Prospectus Directive) will be repealed when the Prospectus Regulation comes into application, so will Regulation (EU) No 809/2004 and all the schedules and building blocks it contains. It is therefore necessary to establish a new and complete set of disclosure schedules for different types of securities and issuers.

ESMA is invited to reassess whether the information items currently required in the existing schedules and building blocks are still fit for purpose, provide benefits to investors that are commensurate with their associated cost, or whether they should be deleted. ESMA should also

reassess the general order of presentation of the information items, based on the experience gained by competent authorities.

- ESMA is invited to provide technical advice on the format of the prospectus and the schedules defining the specific information which must be disclosed in a prospectus.
- ESMA should follow the "building block approach" established by Regulation (EU) No 809/2004, distinguishing between the schedules for registration documents and those for securities notes, as well as any other appropriate building blocks.
- Specific schedules should be established for different types of securities (shares, non-equity securities with a denomination per unit above or below 100 000 EUR, asset-backed securities, depositary receipts on shares, units or shares of closed-ended collective investment undertakings). In a spirit of simplification, ESMA could explore ways to streamline these schedules in order to reduce the overall number of annexes compared to those currently included in Regulation (EU) No 809/2004.
- ESMA should evaluate whether specific schedules should be established for certain types of issuers such as issuers with a complex financial history, issuers which have made a significant financial commitment, or so-called "specialist issuers". If ESMA concludes that specific schedules are needed for some or all of such types of issuer, it should provide technical advice accordingly.
- ESMA is invited to carry forward the disclosure items currently required by Regulation (EU) No 809/2004 into the new schedules only once it has verified that they represent an appropriate balance between investor protection and cost to the issuers. For example, when disclosed in a prospectus, profit forecasts or estimates (Items 13.2 of Annexes I and X, 9.2 of Annex IV, and 8.2 of Annex XI of Regulation (EU) No 809/2004) must currently be accompanied by a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. ESMA is invited to consider the effects of repealing such requirement by assessing the benefits of such report to investors against the cost this entails for issuers to have them produced.
- When drafting the required minimum information items of the prospectus schedules, ESMA should ensure consistency and adequate alignment with the disclosure requirements of other pieces of EU legislation, like Directive 2004/109/EC (TD) and Directive 2013/34/EU²³, so that issuers may easily incorporate by reference in their

²³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

prospectus all or parts of the content of documents required under those acts (e.g. management reports, corporate governance statements, remuneration reports). In this respect, ESMA is asked to revisit the drafting of the section on the operating and financial review to ensure that the corresponding contents of the issuer's management report drawn up under Directive 2004/109/EC can easily be incorporated by reference in that section of the prospectus.

- ESMA is also invited to provide technical advice on the format of the base prospectus and the final terms. In that context, ESMA should preserve the flexibility of the base prospectus regime and aim to considerably decrease compliance costs for issuers using base prospectuses.
- To ensure a consistent application of the Regulation across the Union, ESMA is asked to carry forward in its advice the principles currently laid out in Regulation (EU) No 809/2004 whereby issuers are entitled to include additional information going beyond the information items of the schedules and building blocks, while competent authorities may not require that a prospectus contain information items which are not included in such schedules and building blocks.

3.2 The schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation)

The universal registration document (URD) is designed as an optional shelf registration for companies that expect to frequently issue securities ("frequent issuers"). It is based on the premise that an issuer that draws up, every year, a complete registration document in the form of a URD should benefit from a fast-track approval (5 working days, instead of 10) when the competent authority approves a prospectus consisting of separate documents.

The logic behind the URD is to grant procedural alleviations to those issuers that intend to have frequent recourse to capital markets and choose to commit to draw up a URD every year. In exchange, those issuers will be able to swiftly seize market opportunities.

A URD functions as a registration document that can be used by issuers to offer securities, irrespective of their type (shares, debt, derivatives) or of the nature of the issuer (large company or SME). It follows that the content of a URD must be aligned with the disclosure standard for a share registration document and should be similar, in terms of the range of information covered, to what would be required in the context of an initial public offering on a regulated market.

A URD should be a comprehensive source of reference for investors, consolidating in one single document all information investors may need to know about a particular issuer, and avoiding duplicative disclosures by issuers. The Regulation allows frequent issuers to use the URD as a medium to publish the periodic information required by Directive 2004/109/EC (Transparency Directive).

- ESMA is invited to provide technical advice on the schedule defining the minimum information to be contained in the URD, taking into account recitals 39 to 45 of the Regulation. ESMA should base its work on the disclosure standard appropriate for a share registration document.
- When establishing the schedule defining the content of the URD, ESMA is asked to ensure that the information items that correspond to the content of the annual financial report and half-yearly financial report required under the Transparency Directive (historical financial information, operating and financial review, corporate governance) are drafted in a way that is aligned as much as possible with the relevant parts of Directive 2004/109/EC and Directive 2013/34/EU, enabling frequent issuers to incorporate such information by reference or to disclose them directly in the URD according to the arrangements set out in Article 9(12) and (13) of the Regulation.

3.3 The reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation)

A new alleviated prospectus regime will apply for issuers which have had securities admitted to trading on a regulated market or an SME growth market continuously for at least 18 months. When proceeding with a secondary issuance, such issuers will have the option to draw up a simplified prospectus taking into account the information they have already disclosed to the market on an ongoing basis under Regulation (EU) No 596/2014 (MAR)²⁴, and where applicable, under Directive 2004/109/EC (TD) or the market rules of the SME growth market.

Issuers who opt to draw up this simplified prospectus are subject to a distinct "disclosure test", set out in Article 14(2) of the Regulation. This article defines the reduced information they are expected to disclose and clarifies that the simplified prospectus should be an autonomous document enabling investors to make an informed investment decision based on a more limited and focused set of relevant information. Recital 48 highlights that the rationale for simplifying the content of the prospectus: information already made available to investors by the issuer under its ongoing disclosure obligations (MAR and TD) need not be repeated in the prospectus.

²⁴ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance

ESMA is invited to provide technical advice on the schedules applicable under the simplified disclosure regime for secondary issuances, taking into account recitals 48 to 50 of the Regulation. ESMA should develop specific draft schedules for both registration documents and securities notes, at least for shares and debt securities. When defining the information items of these schedules, ESMA shall take into account ongoing disclosure requirements of TD and MAR that would enable investors to have access to such items elsewhere than in a prospectus.

ESMA is invited to clarify what form the concise summary of the relevant information disclosed under Regulation (EU) No 596/2014 (MAR) over the past 12 months²⁵ should take in order for issuers to adequately inform their potential investors in a relevant and cost-efficient way, without merely repeating the contents of previous disclosures made under MAR.

3.4 The content, format and sequence of the EU Growth prospectus including its specific summary (Article 15(2) of the Regulation)

The EU growth prospectus is designed for offers of securities by three types of issuers: SMEs, companies traded on SME growth markets as long as their market capitalization does not exceed 500M€ and unlisted companies with less than 499 employees that raise below 20M€²⁶ (jointly referred to as "SMEs and midcaps"). The EU growth prospectus is optional and cannot be used for an admission to trading on a regulated market.

The EU growth prospectus aims at facilitating access to financing on capital markets and reducing the administrative costs of raising capital for SMEs and midcaps. Its information content should be reduced compared to the prospectus used by issuers admitted to regulated markets, without compromising investor protection.

- ESMA is invited to identify the minimum disclosure requirements of the EU growth prospectus and to define the order of presentation of such disclosures (referred to as "sequence" in Article 15(2)).
- ESMA should adopt a "bottom-up approach" and avoid taking the existing Annexes of Regulation (EC) No 809/2004 as a starting point. This means that the exercise should not consist in identifying information which could be omitted from a full prospectus. Instead, ESMA should devise a new, substantially alleviated standard of disclosure from scratch without being guided by the content and format of the prospectus which applies to issuers on regulated markets. In particular, ESMA should take as a benchmark the content of admission documents required by markets where the prospectus obligation does not apply, e.g. the rules of MTFs that cater for SMEs and midcaps.
- When calibrating the content of the EU growth prospectus, ESMA should aim to ensure that SMEs and midcaps are obliged to disclose sufficient information on their strategy

²⁵ Referred to in letter (c) of the second subparagraph of Article 14(3) of the Regulation

²⁶ As defined in Regulation (EU) 2015/1017 on the European Fund for Strategic Investments.

and prospects to allow investors to take an investment decision. ESMA should not propose information items which would imply high costs for SMEs with only a low corresponding added value for investors (e.g. items involving statements by independent accountants or auditors).

- There should be a tangible difference between the reduced content of the EU growth prospectus and the content of the prospectus which applies to issuers on regulated markets.
- ESMA should develop specific draft schedules for both registration documents and securities notes, based on the high-level outlines featured in Annexes IV and V of the Regulation. Schedules should be developed at least for shares, debt and derivatives.
- ESMA should develop the minimum disclosure requirements for the EU Growth prospectus, following a standardized sequence.
- To make it easy for SMEs and midcaps to draw up an EU growth prospectus, ESMA should aim to create schedules and headings that allow SMEs to prepare their prospectus with no or little external advice, if they wish to do so.
- ESMA is also invited to advise the Commission on the content and standardized format applying to the specific summary of an EU growth prospectus. Such content should be a considerably shorter version of the summary set out in Article 7, and should not include the key information corresponding to disclosure items which are not required in the EU growth prospectus.

3.5 The criteria for the scrutiny of prospectuses and URDs and the procedures for their approval (Articles 9(14) and 20(11) of the Regulation)

The decision of the competent authority to approve a prospectus involves analysis of, and changes to, the draft prospectus on the part of the issuer to ensure that the prospectus meets the requirement of completeness, consistency and comprehensibility.

The reform of the EU prospectus regime aims to create a single rulebook that ensures a coherent implementation throughout the EU. The practices of competent authorities concerning scrutiny and approval should be aligned so as to avoid supervisory forum shopping.

A swift and efficient scrutiny of prospectuses is conducive to facilitating fundraising on capital markets, allowing issuers to seize market windows speedily.

- ESMA is invited to provide technical advice on the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus.

- ESMA's technical advice is expected to accommodate a proportionate approach by competent authorities in the scrutiny of prospectuses based on the specific circumstances of the issuer and the issuance.
- Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 specifies the requirements regarding the procedures for approval of prospectuses. Since that Regulation will cease to apply when the new Prospectus Regulation comes into application, ESMA is invited to incorporate the content of that Regulation, bearing in mind that some of the requirements of that Regulation have already been introduced in the Prospectus Regulation.
- With respect to scrutiny and approval, ESMA is invited to provide technical advice that is the same for both URDs and prospectuses. This is without prejudice to ESMA's technical advice on the procedures for the filing and (ex-post) review of URDs and on the conditions where the status of frequent issuer is lost.

3.6 The procedures for the filing of the URD, the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation)

After a frequent issuer has had a URD approved by a competent authority for two consecutive financial years, subsequent URDs may be filed with the competent authority without prior approval. Following such filing, the competent authority may, at any time, review the contents of a filed URD and of any amendments thereto. The Regulation acknowledges that it is up to competent authorities to decide if and when such ex-post review should be carried out. As indicated in Recital 40, each competent authority may decide the frequency of such review taking into account its assessment of the risks of the issuer, the quality of its past disclosures, or the length of time elapsed since a filed URD has been last reviewed.

In essence, the scrutiny and the review of a URD should involve the same kind of work from a competent authority (checking the completeness, the consistency and the comprehensibility of the information given in the universal registration document and amendments thereto), the only difference being that scrutiny occurs ex ante, before the approval of a URD, whilst a review occurs ex post, following the filing of a URD and subject to a decision of the competent authority to conduct such a review.

The status of frequent issuer is gained from the moment an issuer submits its first URD for approval to the competent authority. Yet, due to the conditions set out in Article 9(11) of the Regulation, such status may be challenged at various points in time thereafter. Indeed, upon each filing or submission for approval of a URD, and every time an application for approval of a prospectus consisting of separate documents (including a URD) is made, the provision of certain statements and, where applicable, amendments to the URD will be required for such a frequent issuer to keep its status and benefit from the fast-track approval.

- ESMA is invited to provide technical advice on the procedures for the filing and the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost.
- In doing so, ESMA should take into account the fact that the objectives and criteria of the ex-post review of URD are aligned with those of an ex-ante scrutiny and relate to the completeness, the consistency and the comprehensibility of the information provided by the issuer.

3.7 The minimum information content of documents describing a merger or a takeover by way of exchange offer (Article 1(7) of the Regulation)

Points (f) and (g) of Article 1(4) and points (e) and (f) of the first subparagraph of Article 1(5) of the Regulation grant a prospectus exemption where the following securities are either offered to the public or admitted to trading on a regulated market (or both):

- securities offered in connection with a **takeover** by means of an exchange offer,
- securities offered, allotted or to be allotted in connection with a **merger or division**.

Such an exemption is conditional on a document being made available to the public containing information "*describing the transaction and its impact on the issuer*".

This represents an alleviation compared to the corresponding exemptions of Directive 2003/71/EC – set out in points (b) and (c) of Article 4(1) and points (c) and (d) of Article 4(2) of that Directive – where the precondition to be fulfilled was that a document be available containing information "*which is regarded by the competent authority as being equivalent to that of a prospectus*".

The Commission notes that the information provided to the public in the context of takeovers and mergers, as well as the way such information is controlled by competent authorities, is prescribed in national corporate laws, including laws implementing Directive 2004/25/EC on takeover bids²⁷. The implementing measures to be taken by the Commission in that field under the empowerment of Article 1(7) are therefore not intended to interfere with these laws, and their focus should be limited to ensuring a minimum harmonisation of these documents for the purpose of applying the exemption granted in points (f) & (g) of Article 1(4) and points (e) & (f) of the first subparagraph of Article 1(5) of the Regulation, without prejudice to the ability of national laws to require more information from issuers involved in takeovers and mergers for other purposes (including supplying adequate information to existing shareholders in the context of a vote in an annual general meeting).

²⁷ Article 6(2) of that Directive requires the initiator of a bid to submit to its competent authority "*an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid*", before making such offer document public. Such an offer document may be subject to the prior approval of the competent authority. Article 6(3) of that Directive prescribes a minimum content for such offer document.

- ESMA is invited to provide technical advice on the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1, taking into account recital 16 of the Regulation. In particular, ESMA is invited to define how the impact of the transaction on the issuer should be presented in such documents.

3.8 General equivalence criteria for prospectuses drawn up under the laws of third countries (Article 29(3) of the Regulation)

Issuers domiciled in a third country may only carry out an offer of securities to the public or an admission to trading on a regulated market in the EU using a prospectus drawn up under the laws of that third country provided that the Commission has taken a decision stating that the information requirements contained in the laws of such third country are equivalent to the information requirements of the Prospectus Regulation (an "equivalence decision").

Such issuers can then elect a home Member State, among those allowed under Article 2 (m) (ii) and (iii) of the Regulation. Provided it has concluded cooperation arrangements with the relevant supervisory authorities of the third country, the competent authority of this home Member State can then approve the prospectus drawn up under the laws of that third country. Such a prospectus is subject to the language rules of the Regulation and can benefit from the EU passport.

An equivalence decision by the Commission must rely on general equivalence criteria based on the requirements of the Regulation applying to the general disclosure test (Article 6), the summary (Article 7), the base prospectus (Article 8) and the minimum information and format of registration documents and securities notes (Article 13).

- ESMA is invited to provide technical advice on general equivalence criteria to guide future assessments of national laws of third countries in relation to disclosures when securities are either offered to the public or when an admission to trading on a regulated market is sought. These criteria should reflect the requirements laid down in Articles 6, 7, 8 and 13 of the Prospectus Regulation.
- As regards the general equivalence criteria reflecting Article 13 of the Regulation, the Commission does not expect ESMA to proceed schedule by schedule. Instead, ESMA should focus on the minimum content and format of prospectuses for equity securities and for non-equity securities (potentially distinguishing between debt and derivatives).

4. INDICATIVE TIMETABLE

This mandate takes into consideration the expected date of application of the Regulation, that ESMA needs enough time to prepare its technical advice, and that the Commission needs to

adopt the delegated acts in accordance with Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Article 44 of the Regulation.

The delegated acts provided for by the Regulation and addressed under **points 3.1 to 3.6** of this mandate should be adopted no later than 18 months following the entry into force of the Regulation. Therefore the deadline set to ESMA to deliver the technical advice is **thirteen (13) months** after the date of receipt of this mandate, i.e. 31 March 2018.

The Regulation does not envisage any deadline for the adoption of the delegated acts addressed under **points 3.7 and 3.8** of this mandate. Therefore, the Commission asks ESMA to deliver its technical advice on these two items **eighteen (18) months** after the date of receipt of this mandate.

Indicative timetable for the delegated acts referred to in points 3.1 to 3.6

Deadline	Action
Entry into force of Prospectus Regulation [June 2017, (expected)]	Date of entry into force of the Regulation (twentieth day following that of its publication in the Official Journal of the European Union)
March 2018 (13 months after date of receipt of the request)	ESMA provides its technical advice on points 3.1 to 3.6 .
Until June 2018	Preparation of the draft delegated acts by Commission services on the basis of the technical advice by ESMA. The Commission will consult with experts appointed by the Member States within the Expert Group of the European Securities Committee (EG ESC) on the draft delegated acts.
Until October 2018	Translation and adoption procedure of draft delegated acts.
Until April 2019	Objection period for the European Parliament and the Council (three months which can be extended by another three months)
June 2019 (24 months after entry into force)	Date of application of the Prospectus Regulation and delegated acts.

Annex II: Changes to annexes of the existing Commission Regulation

Existing Annex		New Annex (if any)
I	Share registration document	1
II	Pro forma financial information	12
III	Share Securities Note	2
IV	Debt and Derivatives Securities Registration Document (<100 000)	3
V	Debt securities note (<EUR 100 000)	5
VI	Guarantees	13
VII	Asset backed securities Registration Document	10
VIII	Asset backed securities additional building block	11
IX	Debt and Derivative Securities Registration Document (>100 000)	4
X	Depository Receipts	14
XI	Banks Registration Document	Not replaced.
XII	Derivatives securities note	7 (now building block)
XIII	Debt securities securities note (>EUR 100 000)	6
XIV	Additional building block on the underlying share	8
XV	Collective investment undertakings of the closed-end type registration document	15
XVI	Registration document for securities issued by Member States, third countries and their regional and local authorities	9 (Member states no longer in scope)

XVII	Registration document for securities issued by Public international bodies and for debt securities guaranteed by a Member State of the OECD	Not replaced.
XVIII	Table of combinations	To be replaced in final technical advice
XIX	List of specialist issuers	16
XX	List of securities note schedules and building block(s)	Not replaced.
XXI	List of additional information in final terms	To be replaced.
XXII	Disclosure requirements in summaries	Not replaced.
XXIII	Proportionate schedule for Share registration document for rights issue	18 (secondary issuance)
XXIV	Proportionate schedule for Share securities note for rights issue	19 (secondary issuance)
XXV	Proportionate schedule for Share registration document for SMEs and companies with reduced market capitalisation	EU Growth prospectus registration document
XXVI	Proportionate schedule for Debt and derivative securities <100 000 EUR registration document for SMEs and companies with reduced market capitalisation	EU Growth prospectus securities note
XXVII	Proportionate schedule for Debt and derivatives securities note ≥ 100 000 EUR registration document for SMEs and companies with reduced market capitalisation	Not replaced.
XXVIII	Proportionate schedule for Depositary receipts issued over shares for SMEs and companies with reduced market capitalisation	Not replaced.

XXIX	Proportionate schedule for issues by credit institutions	Not replaced.
XXX	Additional information regarding consent as referred to in Article 20 (a) (additional building block)	Not replaced.

Annex III: List of questions for consultation

Format

- Question 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?
- Question 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.
- Question 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?
- Question 4: Should the URD benefit from a more flexible order of information than a prospectus?
- Question 5: Would a standalone and prominent use of proceeds section be welcome for investors?
- Question 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?
- Question 7: Are the definitions proposed to be carried over to the new regime, and new definitions proposed adequate? Should any additional definitions be added?
- Question 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).

Share registration document

- Question 9: Do you agree that the scope of NCA approval should be included in the cover note? If not, please provide your reasoning.
- Question 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?
- Question 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?

- Question 12: Do you consider that a description of material past investments is necessary information for the purpose of the prospectus?
- Question 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?
- Question 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?
- Question 15: Do you agree with the proposal to explain any 'emphasis of matter' identified in the audit report?
- Question 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?
- Question 17: Do you consider that the new requirement to disclose potential material impacts on the corporate governance would provide valuable information to investors?
- Question 18: Do you agree with the proposal to clarify the requirement for restated financial information?
- Question 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?
- Question 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.
- Question 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).

Share securities note

- Question 22: Do you consider that the requirement for a working capital statement should be different in the case of credit institutions and insurance companies?
- Question 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.
- Question 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?
- Question 25: Do you agree that the information solicited by item 9.2 is important for investors?
- Question 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.
- Question 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).

Retail debt and derivatives registration document

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

Question 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.

Question 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).

Wholesale (qualified) debt and derivatives registration document

Question 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?

Question 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.

Question 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).

Retail debt and derivatives securities note

Question 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?

Question 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.

Question 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)?

Question 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?

Question 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.

Question 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).

Wholesale debt and derivative securities note

Question 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.

Question 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).

Derivative securities building block

Question 46: Do you agree with the proposal to make derivative disclosures a building block?

Question 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.

Question 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?

Question 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?

Question 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.

Question 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).

Building block on the underlying share

Question 52: Do you agree with the proposed amendments to the annex relating to the underlying share?

Question 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).

Registration document for securities issued by third countries and their regional and local authorities

Question 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)?

Asset-backed securities registration document

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

Question 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).

Additional building block for asset-backed securities

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

Question 58: Do you agree with the proposal to allow reduced disclosure where the securities comprising the assets are listed on an SME Growth Market?

Question 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).

Building block for pro forma financial information

Question 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.

Additional building block for guarantees

Question 61: Do you agree that the additional building block for guarantees does not need to change other than the minor amendments proposed by ESMA?

Schedule on depository receipts issued over shares

Question 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.

Question 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).

Registration document for securities issued by collective investment undertakings of the closed-end type

- Question 64: Do you agree with the changes proposed by ESMA for collective investment undertakings?
- Question 65: Is greater alignment with the requirements of AIFMD necessary? If so, where?
- Question 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?
- Question 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).

Convertible and exchangeable debt securities

- Question 68: Do you consider that any changes are required to the existing regime for convertible and exchangeable securities? If so, please specify.

List of specialist issuers

- Question 69: Do you consider that any other types of specialist issuers which should be added? If so, please specify.

Registration document for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD

- Question 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?

Universal Registration Document

- Question 71: Do you agree that the URD disclosure requirements should be based on the share registration document plus additional disclosure items?
- Question 72: Should the URD schedule contain any further disclosure requirements?
- Question 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).

Secondary issuance registration document

- Question 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.
- Question 75: Should secondary disclosure differ depending on whether the issuer is listed on a regulated market or on an SME Growth Market?
- Question 76: Do you consider that item 9.3 (information on corporate governance) is necessary?
- Question 77: Do you consider that information on material contracts is necessary for secondary issuance?
- Question 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).

Secondary issuance securities note

- Question 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.
- Question 80: Is a single securities note, separated by security type, clear or would it be preferable to have multiple securities note schedules?
- Question 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).