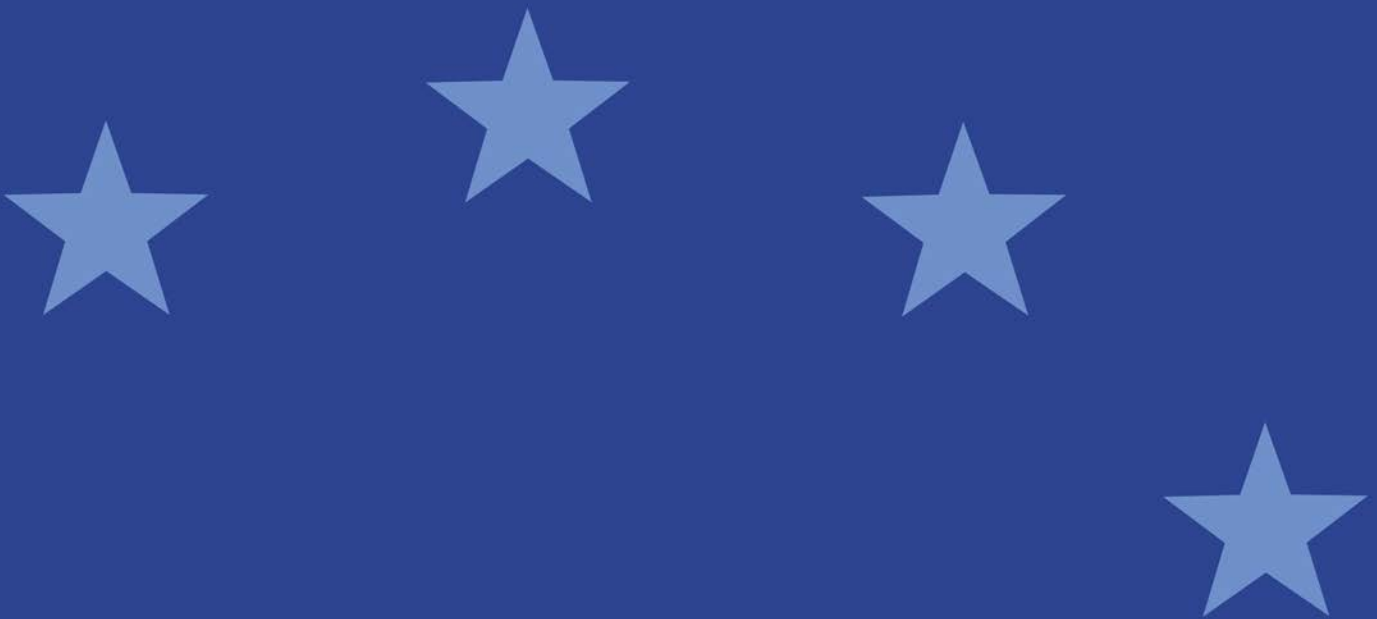




European Securities and
Markets Authority

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



Responding to this paper

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

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

ESMA will consider all responses received by 28 September 2017.

Instructions

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

4. Insert your responses to the questions in the Consultation Paper in the form “Response form_Consultation Paper on format and content of the prospectus”, available on ESMA’s website alongside the present Consultation Paper (www.esma.europa.eu → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
5. Please do not remove tags of the type <ESMA_QUESTION_FAC_1>. Your response to each question has to be framed by the two tags corresponding to the question.
6. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
7. When you have drafted your response, name your response form according to the following convention: ESMA_FAC_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_FAC_ABCD_RESPONSEFORM.
8. Upload the form containing your responses, in Word format, to ESMA’s website (www.esma.europa.eu under the heading ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A 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.



General information about respondent

Name of the company / organisation	International Capital Market Association (ICMA)
Activity	Other Financial service providers
Are you representing an association?	y
Country/Region	International

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_FAC_1>

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years.

See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated, vanilla debt securities issues throughout Europe on behalf of corporate borrowers. This constituency deliberates principally through ICMA's Primary Market Practices Committee, which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA's Legal and Documentation Committee, which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

ICMA is also including in its response comments raised by members in relation to derivative securities and in relation to the broad definition of "asset backed securities".

ICMA has also seen and broadly supports the AFME responses on equity and securitisation.

Preliminary comment

As a preliminary and overarching comment, ICMA welcomes the fact that ESMA has clearly given significant thought to this Consultation Paper and that it reflects feedback given by market participants at the recent European Commission Workshop in Brussels, on 29 March 2017, to retain the structure of the existing disclosure Annexes as far as possible.

We note and welcome, in particular, the stated intention:

- a) to maintain a distinction between the different information requirements for investors in equity securities as compared to investors in non-equity securities (paragraph 9); and
- b) to retain the "status quo" for wholesale debt disclosure (paragraph 126).

Highlights from discussion points in the Q&A

We also note the following:

A). **Simplification and streamlining of disclosure:** In general, the proposed simplification and streamlining of disclosure will be helpful. There are, though, two points which ICMA wishes to emphasise:

Optional additional disclosure: There will be occasions where issuers will want to include additional information or to reflect practices (or ordering of information) in other markets – for example, in the context of the U.S. 144A issuance. It is therefore vital that National Competent Authorities allow issuers to make full use of the ability to provide additional disclosure, where appropriate, or to permit derogations where necessary. (For example, to enable the disclosure of selected financial information in the context of U.S. 144A issuance.)

Profit forecasts: The proposed "simplification" through the removal of the requirement for an audit report for a profit forecast is one of the more controversial areas of this Consultation Paper. We are therefore highlighting views here, as well as in Question 14 below. There are two distinct questions to be addressed: Should inclusion of an outstanding profit forecast be mandatory? Should an audit report be required?

Mandatory inclusion of profit forecast: On the first question, ICMA's view is, very strongly, that the status quo in relation to non-equity securities should be maintained. A profit forecast should not be mandatory for any non-equity securities, irrespective of whether the disclosure is prepared under the retail or wholesale debt Annex. This view seems to be unanimous amongst ICMA members. For non-equity securities, there seems to be no benefit in including a profit forecast – unless the forecast is so extreme that it will impact an issuer's ability to make payments on the bonds. ICMA is also not aware of any pressure from non-equity investors to receive such disclosure and is therefore curious as to the rationale for the proposed change in approach by ESMA.

Auditor's reports: Where a non-equity issuer does choose to include a profit forecast, at its own discretion, the view of ICMA is that the removal of an accompanying requirement for the report might mean that issuers and underwriters will be placed in an awkward situation. The absence of a specific regulatory requirement in the Annex for an audit report to be obtained might result in auditors becoming very reluctant to supply the comfort which an issuer or underwriters would require before proceeding with an issue. Our understanding is that accountants and auditors would also be unlikely to agree to public disclosure of an audit report where it is not a legal or regulatory requirement. ICMA therefore suggests that a requirement for an audit report would be beneficial in the following circumstances: first, where the forecast has been prepared specifically for the prospectus (in which case, it should be included, along with a report) and, secondly, where there are actual figures in a profit forecast taken from (or derived from) the accounts, where such figures would require an audit review and report. In contrast, general statements of the issuer, without figures, would not. (Arguably, such non-numerical forecasts are too vague for auditors to agree to undertake any form of meaningful review, but they might be useful for investors, nonetheless.) This approach would also avoid the risk that different NCAs might interpret such general statements differently in terms of whether or not they judge them to be forecasts.

To summarise: Profit forecasts should not be mandatory for non-equity prospectuses. Where an issuer chooses to include a profit forecast, an audit report should be required only for certain types of forecast.

B). Removal of some Annexes: Streamlining the Regulation and underlying Annexes where possible is a sensible idea. However, where Annexes already exist, it may prove more unwieldy for issuers to devise *ad hoc* disclosure, should the need arise, than to follow the existing Annex. Accordingly, ICMA suggests:

- retaining the Annex for Public International Bodies, even though rarely used; and
- retaining the current special Bank Annex (Annex XI). Although Annex XI is not used extensively by bank issuers in preference to the current retail Annex (Annex IV), retaining the option to continue with existing Bank Annex disclosure would avoid additional costs for those bank issuers who would otherwise have to adapt the prospectus to incorporate additional retail disclosure elements (or, perhaps, decide to opt for a wholesale only prospectus instead);

C). Definitions: "wholesale debt securities and derivative securities", "derivative securities" and "asset backed securities":

Wholesale - ICMA's understanding of Article 6.1(d) of Prospectus Regulation (EU) 2017/1129 is that the "wholesale" disclosure Annexes will apply to debt securities with a minimum denomination of Euro 100,000, as well as to non-equity securities admitted to trading on a qualified investor only segment of a regulated market. This is reflected in paragraph 17 in the Consultation Paper – namely, "*For non-equity securities, while there will be different annexes for retail and wholesale securities / qualified investor issuance (hereinafter referred to as wholesale)*". However, as high-

lighted below in Question 7, there is no formal definition of "wholesale" in the draft Level 2 measures. ICMA suggests that the addition of a definition making it clear that both elements are included would be helpful. It would avoid potential confusion or inconsistency when referring to wholesale debt. By way of example, there is an inconsistency between heading 4.6 in the Consultation Paper (which refers to "wholesale (qualified) debt and derivatives") and heading 4.8 in the Consultation Paper and Annexes 4 and 6 (which all simply refer to "wholesale debt and derivatives"). We would also suggest that any definition should not be exhaustive, to allow for future developments or additions.

Some suggested wording might be:

".... "**Wholesale debt securities and derivatives securities**" means:

- a) debt securities and derivative securities having a minimum denomination of at least EUR 100,000 (or equivalent in a different currency);
- b) debt securities and derivative securities which are only capable of being acquired on issue, for a total consideration of at least EUR 100,000 (or equivalent in a different currency) per investor;
- c) debt securities and derivative securities of any denomination which are admitted to trading only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities; or
- d) any other debt securities and derivative securities so designated from time to time by ESMA".

Derivative securities – See our comments at point G). (*Operative articles and Table of Combinations*), below, and in our response to Question 46.

Asset backed securities (ABS) – ABS is outside the scope of ICMA's core focus. ICMA notes, however, that the proposed definition of "asset backed securities" (carrying over the definition used in Prospectus Directive Regulation (EC) No 809/2004) has a broad scope and extends beyond securitisations. The definition (".."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..") catches "re-packagings", for example. ICMA requests that ESMA is mindful of this broader scope when considering items and obligations under the ABS annex or considers adjusting the definition to exclude certain securities.

D). Referencing issuer websites in prospectuses: ICMA highlights some initial concerns in its response to Question 11 of this Consultation Paper. Facilitating investor access to information is to be applauded, but these proposals raise some preliminary queries. For example: To what extent will a disclaimer regarding a website be effective in all investor jurisdictions if the issuer has in the prospectus effectively directed investors to the website (and, therefore, to all website content)?

E). URD and lighter disclosure for secondary issuance: We note, in passing, the two major innovations in Prospectus Regulation (EU) 2017/1129 - namely, the URD and alleviated disclosure for certain types of secondary issuance. As regards the URD, in a debt context, where issuers have existing debt issuance programmes, we envisage that those issuers will continue to utilise such debt programmes and base prospectuses, at least in the short term and will not adopt the URD format. We comment further on this in Question 71 below. As regards lighter disclosure for secondary issuance, we suggest further amendments at Question 74 below.

Additional comments:

Although not specifically addressed in this Consultation Paper or response form, ICMA would like to take this opportunity to raise a few other pertinent points:

A). **Final Terms:** ICMA notes that there is no question with regard to numbering of Final Terms. ICMA suggests retaining the current practice of keeping all items in Final Terms and stating that some are "not applicable". This was commented on extensively in the context of "PD2", when a similar suggestion was proposed.

Retaining numbering in Final Terms has the benefit of:

- i). generally, aiding consistency and facilitating comparison of Final Terms, plus providing issuance efficiencies in drafting new Final Terms on the basis of suitable existing pro forma or precedent Final Terms;
- ii). for an issuer, in the context of similar, but not identical, repeat issuances under a programme, it can also serve as an invaluable safety mechanism to help to ensure that information not relevant to the existing issue, but relevant to the new issue, is not accidentally omitted from the new FTs (or vice versa); and
- iii). for an investor, it can avert potential confusion as to whether or not a provision is relevant (i.e., by avoiding any doubt that it has been disapplied).

Separately, for the avoidance of doubt, it would be helpful to receive confirmation that Final Terms may include an issuer's signature (as mentioned under Article 26.5 of the current Prospectus Regulation (EC/89/2004)).

B). **Annex XXX and retail cascades:** We note that Annex XXX (which contained consent requirements for use of a prospectus) has been removed (and, equally, we cannot see that Article 20a has been carried forward into the proposals). It is expected that some issuers may continue to want to provide quite detailed disclosure in relation to the written consent that they are granting to financial intermediaries under Article 5 of the Prospectus Regulation, covering details about the financial intermediaries being granted consent, the timing/duration of consent and conditions attached to the granting of consent (including jurisdictions where the prospectus can be used). Of course, it would be possible for an issuer to continue to disclose this information where they deem it necessary under the general duty of disclosure in Article 6, subject to two points: (1) the proposed length limit for the cover note, referenced in Question 1, will make it very challenging for an issuer to provide the necessary information it wishes to disclose under Article 6 in the cover note, and (2) in a programme context, details of the consent for use of the prospectus in respect of a particular issue of notes will need to continue to be given in Final Terms and we therefore suggest that the additional information items in existing Annex XXI (covered in Question 6) be expanded to allow issuers to include these details should they wish. The list of disclosure items included in existing Annex XXX could be moved into the Annex XXI replacement Annex to facilitate disclosure in final terms where it is appropriate. Removing the detailed requirements as ESMA have done provides welcome simplification in terms of issuers who do not require all the disclosure for the consent they are granting, and yet including the details in the optional list of additional final terms items will enable issuers who need to provide the detail to continue to do so.

C). **ESMA Q&A:** Whilst we are conscious that this is a Consultation Paper about Level 2 measures, we would like to pose a question regarding ESMA guidance. The extensive ESMA Q&A published under the existing Prospectus Directive regime contain a wealth of guidance. We encourage ESMA to revise the Q&A and to carry across to the new regime any guidance which might continue to be helpful. ICMA would be happy to work with ESMA, on an informal basis, to assess which of the Q&A should be retained.

D). **Prospectus supplements:** ICMA notes that supplements will be addressed under a separate mandate in due course. We would like to take this opportunity to flag three issues with regard to supplements for ESMA to consider:

- *Grandfathering:* It would be helpful for ESMA to confirm, for the avoidance of doubt, that a supplement post- 21 July 2019 to an existing prospectus approved in the months prior to 21 July 2019 will not trigger a requirement to prepare that supplement (or, indeed, a completely new prospectus) complying with the new requirements. ICMA believes this is im-

explicit in the text of Article 46(3) of Prospectus Regulation (EU) 2017/1129: "*Prospectuses approved in accordance with the national laws transposing Directive 2003/71/EC before 21 July 2019 shall continue to be governed by that national law until the end of their validity, or until twelve months have elapsed after 21 July 2019, whichever occurs first*". Specific clarification (as was given in the case of the "PD2" implementation - see Recital 16 and Article 2 of Regulation 486/2012 amending Regulation 809/2004) would, however, be welcomed (particularly for base prospectuses), to avoid any risk of different interpretations from different NCAs;

- "*offers of securities to the public*": We would also welcome clarification that the investor withdrawal right will not be triggered where a wholesale prospectus is supplemented. This would reflect what we understand to be the intention that investor withdrawal rights should only apply where the prospectus relates to an offer of securities to the public that is not exempt from the obligation to publish a prospectus. Withdrawal rights would not therefore apply when a prospectus is produced solely for the purpose of admission to trading (that is, when there is an exempt ("wholesale") public offer). This was a point raised in previous papers, such as our 27 January 2017 paper of technical points for jurist-linguists. A simple clarification would avoid lengthy debates and the risk that there might be differing interpretations in different jurisdictions, as occurred in the case of the PD2 amendments;
- *Notification*: Article 23(3) (*Supplements to the prospectus*) of Prospectus Regulation (EU) 2017/1129 deals with notification requirements to investors. We would simply note here that, in practice, this requirement may be challenging for underwriters. There may well be cases where they are not necessarily aware in advance that a prospectus supplement will be published by the Issuer.

E). "**Communication / Announcement / Advertisement**": We note that advertisements are not addressed in this Consultation and will be a matter for a future mandate. ICMA has raised its concerns regarding the change of wording from "announcement" to "communication" in previous submissions (such as this comment from its 27 January 2017 "jurist-linguist" suggestions: "*The use of the word "communication" rather than "announcement" could mean that the Prospectus Regulation advertisement regime would capture any written or oral communication, including bilateral emails and telephone conversations. This would not be workable in practice and would be disproportionate. The term 'announcement' is clearer, because it involves the concept of 'making public' or broad dissemination, and is therefore easier to control and police.*") We would request that this suggestion should be considered again as part of ESMA's future mandate looking at advertisements to avoid unnecessary issuer costs (such as, the need for increased legal advice).

F). **Disclosure in compliance with items in debt disclosure Annexes**: Previously - see, for example, ICMA's paper to ESMA dated 16 March 2017 - ICMA had suggested that the disclosure test for debt securities should be adjusted to relate solely to an issuer's/guarantor's ability to fulfil obligations under the securities or guarantee. The suggested ICMA drafting was: "*In relation to non-equity securities, the necessary information under Article 6 [of the Level 1 Regulation] is the information necessary to enable investors to make an informed assessment of the issuer's ability to fulfil its obligations under the securities to investors, any guarantor's ability to fulfil its obligations under its guarantee relating to the securities, and of the rights attaching to the securities*". ICMA notes that this Consultation Paper has not adopted ICMA's suggestion. ICMA would encourage ESMA to consider including this disclosure test for wholesale securities so that wholesale issuers would only need to disclose against items in the Annex to the extent that it is relevant. This would:

- facilitate shorter, tailored disclosure for debt securities, but without affecting investor protection; and,
- acknowledge that the information necessary for an informed investment decision varies depending on various factors, including the type of the securities - as highlighted in paragraph 9 of this Consultation Paper and in Article 6 of Prospectus Regulation (EU) 2017/1129, particularly Article 6.1(d).

As an alternative, if ESMA is reluctant to adopt a specific disclosure test for wholesale debt, it might empower and encourage the NCAs, when scrutinising and approving prospectuses, to permit omission of information from debt prospectuses where a specific item in the relevant disclosure Annex is not relevant either to an issuer's business or to relevant securities. This would be

analogous to the optionality contained on page 27 at article G(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*". A similar paragraph might be adapted for debt securities, along the lines described above.

G). **Operative articles and Table of Combinations:** We note that the Consultation Paper does not include suggested replacement provisions for many of the operative articles of the current Prospectus Regulation and does not include the proposed replacement for the Table of Combinations in current Annex XVIII. ICMA requests that ESMA share the proposed drafting for these as soon as possible and in advance of the final advice.

H). **Omnibus 3:** Finally, ICMA notes that the European Commission's Omnibus Regulation proposal published on 20 September 2017 includes suggested changes to Prospectus Regulation (EU) 2017/1129, as well as to other Regulations. ICMA has not addressed the proposal in this response but would be keen to engage in any discussions or consultations on the suggested changes. For the record, ICMA's preliminary view is to question the proposed changes. The Home Member State definition for third country issuers was debated at length during the Level 1 Consultation and Trilogue and a decision was made to retain the *status quo*. The suggested rationale for centralising approvals does not appear to be borne out by our experience and we query how any appeals process from ESMA might work.

<ESMA_COMMENT_FAC_1>

1. : Do you agree with the proposal that cover notes be limited to 3 pages? If not, what do you consider to be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?

<ESMA_QUESTION_FAC_1>

Length limit for 'cover note': In summary, no. ICMA does not agree with the suggestion that cover notes (as described below) be limited to 3 pages. ICMA recommends that the current *status quo* should be retained. Moreover, as the Level 1 text does not envisage any regulation or limitation on the 'cover note', it seems that ESMA, by seeking to regulate its content and length, is going beyond the formal mandate.

A basic preliminary question is: "**What is meant by a 'cover note' of a prospectus**"? We have assumed that ESMA is referring to the front cover and inside front cover / first few pages of a prospectus. These tend to be fairly standardised in the debt market and would typically include:

- a statement that the prospectus constitutes a prospectus for the purpose of the Prospectus Directive;
- skeleton information about the deal;
- a list of dealers;
- confirmation that no-one other than the issuer is responsible for the content of the prospectus;
- for prospectuses that are used for certain international offerings, particularly those in the Rule 144A market aimed at U.S. qualified institutional purchasers, certain U.S. law-related legends, as required by U.S. regulation and practice; and
- for denominations of less than Euro 100,000, a few pages outlining (in summary form) the terms on which the issuer has consented to the use of the prospectus by dealers. (Incidentally, please see our introductory comments: we note that this text, as set out in Annex XXX under the current regime, is not addressed in this Consultation Paper.)

The imposition of a page limit seems both inappropriate and unnecessary. Such introductory pages not only tend to adopt a fairly uniform approach in the debt markets, but also do not tend to be controversial. Why, then, mandate a change, particularly in a wholesale context? Trying to meet a maximum target length limit (particularly one as short as 3 pages) would, in some cases, mean that such information would need to be curtailed or, possibly, moved elsewhere in the prospectus. Neither seems an appropriate solution. Furthermore, an arbitrary page number limit might necessitate the removal of U.S. law-related legending, thus potentially reducing the ability of EU issuers to access US investors.

Additional comment – disclaimers: The Consultation Paper also suggests that so-called "disclaimers" should not appear in the front 'cover note' segment. ICMA would argue that there are valid legal and practical reasons why an issuer (and underwriters) would want to give prominence to certain information in a prospectus – including the disclaimers confirming that no-one other than the issuer takes responsibility for the contents of the prospectus. English law supports the effectiveness of such disclaimers and indicates the need for them to be "clear" and "prominent". As such, parties might be reluctant to move them from the front of the prospectus. The removal of disclaimers from the cover page would also seem at odds with the proposed statement regarding the scope of NCA approval which is required to be included in the cover note (as set out in paragraph 56 of the Consultation : "*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.*". See also our response to Question 9 and the NCA legend/disclaimer.

<ESMA_QUESTION_FAC_1>

2. : **Would a short section on “how to use the prospectus” make the base prospectus more accessible to retail investors? If so, should it be limited to base prospectuses? Would this imply any material cost for issuers? If yes, please provide an estimate of such cost.**

<ESMA_QUESTION_FAC_2>

"Signposting" / "how to use the prospectus": Whilst ICMA does not believe that such additional information is strictly necessary, it does not object to this proposal for retail base prospectuses. Although such a new requirement is unlikely to result in issuers incurring material costs, any change of this nature will involve initial adjustment costs. More broadly, in terms of signposting, base prospectuses already include clear sections and headings within the conditions identifying those relevant to particular security types.

<ESMA_QUESTION_FAC_2>

3. : **Should the location of risk factors in a prospectus be prescribed in legislation or should issuers be free to determine this? If it should be set out in legislation, what positioning would make it most meaningful?**

<ESMA_QUESTION_FAC_3>

Location of risk factors: Mandating a particular place for risk factors does not seem strictly required – particularly when, in practice, many investors read electronic versions of prospectuses rather than hard copies and can therefore use an electronic search function to find those parts of a prospectus which are most important to them, including risk factors.

Nonetheless, ICMA has no objection to the location proposed in the Consultation Paper.

<ESMA_QUESTION_FAC_3>

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

<ESMA_QUESTION_FAC_4>

URD - order: There seems to be no reason why a distinction should be made for the order of information in a URD. Flexibility should apply both to prospectuses and to URDs.

<ESMA_QUESTION_FAC_4>

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

<ESMA_QUESTION_FAC_5>

Use of proceeds section: Debt prospectuses traditionally already include a separate "Use of proceeds" section and so this reflects current practice. Having said that, unless the use of proceeds would be likely to impact an issuer's ability to make payments on the bonds, the particular intended use does not tend to be significant for debt investors. The statement that proceeds will be used for "general corporate purposes" will typically suffice – although there are a few exceptions where more detail might be required, such as acquisition finance. Use of proceeds will also be significant and relevant to investors in the context of so-called 'Green / Social / Sustainability Bonds' (namely, where proceeds are to be applied for particular environmental, social or sustainability projects). An issuer will be required to specify the use of proceeds in order to comply with the disclosure criteria of "Green Bond Principles" (GBPs) or similar Social or Sustainability criteria and the requirements of investors. We therefore have no objection to the addition of Use of Proceeds in the wholesale debt securities Annex, particularly given that it will enable issuers with wholesale base prospectuses to include specific disclosure on use of proceeds in final terms for an issue of Green / Social / Sustainability Bonds.

Please note that the base prospectus categorisation appears to be missing against this new item in the wholesale debt securities Annex, but ICMA would expect this to be marked Category C, in line with the similar categorisation in the retail debt securities Annex.



A more significant point would be to enable extra disclosure, at the option of the issuer, in Final Terms via the inclusion of an additional specific item in Annex XXI. This would enable issuers to have more flexibility when issuing Green / Social / Sustainability Bonds - a growing market. See Question 6, below.

<ESMA_QUESTION_FAC_5>

6. : Is the list of “additional information” in Article XXI of the Commission Regulation fit for purpose? What other types of additional information should be included in a replacement annex?

<ESMA_QUESTION_FAC_6>

Annex XXI: The information in Annex XXI could usefully be expanded. It would be helpful to have the ability to include in Final Terms:

- additional information on Green/Social/Sustainability Bonds (see our answer to Question 5, above);
- additional selling restrictions relevant to a particular transaction;
- to the extent not permissible in the Annexes, additional information relating to ECB eligibility of securities;
- additional disclosure required to comply with a law or Regulation or change in law or Regulation (such as, the recent examples of the packaged retail and insurance-based investment products (PRIIPs) Regulation, the Benchmark Regulation or MiFID2);
- additional securities identification numbers and clearing system information;
- details of the consent for use of the prospectus in respect of a particular issue of notes, as mentioned in ICMA's introductory comments (the list of disclosure items included in existing Annex XXX could be moved into the Annex XXI replacement Annex), which will enable issuers who wish to continue to provide the detail for consent they are granting for particular issues to do so;
- legending (or similar wording) to comply with regulatory requirements in other jurisdictions, such as where issuers use final terms to issue securities simultaneously into both EEA and non-EEA jurisdictions or as specified by ESMA within any relevant guidance; and
- any other operational information required by market participants.

<ESMA_QUESTION_FAC_6>

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

<ESMA_QUESTION_FAC_7>

Definitions:

a). **wholesale debt securities and derivatives:** Please see ICMA's introductory comments. Although referred to informally in paragraph 17 of the Consultation Paper, there is no definition of "wholesale" in the draft Level 2 measures. ICMA's understanding of Article 6.1(d) of Prospectus Regulation (EU) 2017/1129 means that the "wholesale" disclosure Annexes will apply to debt securities with a minimum denomination of Euro 100,000 as well as to non-equity securities admitted to trading on a qualified investor only market segment. We suggest that the addition of a definition for "wholesale" would be helpful and avoid potential confusion or inconsistency when referring to wholesale debt, avoiding the need to refer additionally to "qualified" debt. By way of example, there is an inconsistency between heading 4.6 in the Consultation Paper (which refers to "wholesale (qualified) debt and derivatives") and heading 4.8 in the Consultation Paper and Annexes 4 and 6 (which all simply refer to "wholesale debt and derivatives"). We would also suggest that any definition should not be exhaustive, to allow for future developments or additions. Some suggested wording might be (as set out in our introductory comments):

"...**"Wholesale debt securities and derivatives securities"** means:

a) debt securities and derivative securities having a minimum denomination of at least EUR 100,000 (or equivalent in a different currency);

b) debt securities and derivative securities which are only capable of being acquired on issue, for a total consideration of at least EUR 100,000 (or equivalent in a different currency) per investor;

- c) *debt securities and derivative securities of any denomination which are admitted to trading only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities; or*
- d) *any other debt securities and derivative securities so designated from time to time by ESMA..”.*

b). **"Debt securities"**: We note that the definition of debt securities (that is, "*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*") is one reflected in the Prospectus Directive regime since 2005 – and therefore one with which the market is familiar. Whilst ICMA does not suggest a change, we wanted to highlight a point in relation to "technical derivatives". By "technical derivatives" ICMA means debt securities where there may be an obligation to pay the investor more than 100% in certain circumstances (such as, zero coupon notes or notes with a "make whole" redemption feature) with the result that they fall outside the definition of "debt securities". Clarification – possibly, in ESMA Q&A guidance – that such securities may be treated as "debt securities" for disclosure purposes would be helpful.

<ESMA_QUESTION_FAC_7>

8. : What is the overall impact of the above technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that the proposed technical advice will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_8>

Overall impact of technical advice: In relation to question 6, above, the expansion of Annex XXI items to enable additional information to be included will reduce costs for issuers. In the absence of the ability for an issuer to add such pertinent information, a supplement or drawdown prospectus would be required – adding extra cost and delay to issuance. We note that any changes to Annexes which require additional or different disclosure (or in the case of programmes require disclosure to be included in the base prospectus rather than the Final Terms) are likely to create additional costs in the short term as the market adjusts to them – these costs may vary from programme to programme.

<ESMA_QUESTION_FAC_8>

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

<ESMA_QUESTION_FAC_9>

NCA approval text: Please see our previous comment on disclaimers in answer to Question 1. There would be no harm in including such wording about the scope of NCA approval at the front of a prospectus (namely, "*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*").

It would, however, be odd to do so in isolation, where other similar "disclaimers" are not permitted. A typical disclaimer might be: "*No person has been authorised to give any information or to make any representation not contained in or not consistent with this Base Prospectus or any other document entered into in relation to the Programme or any information supplied by the Issuer or the Guarantor or such other information as is in the public domain and, if given or made, such information or representation should not be relied upon as having been authorised by the Issuer, the Guarantor or any Dealer. Neither the Dealers nor any of their respective affiliates have authorised the whole or any part of this Base Prospectus and none of them makes any representation or warranty or accepts any responsibility as to the accuracy or completeness of the information contained in this Base Prospectus. Neither the delivery of this Base*

Prospectus or any Final Terms nor the offering, sale or delivery of any Note shall, in any circumstances, create any implication that the information contained in this Base Prospectus is true subsequent to the date hereof or the date upon which this Base Prospectus has been most recently amended or supplemented"). The NCA disclaimer will also use up part of the cover page limit of 3 pages which is currently proposed.

<ESMA_QUESTION_FAC_9>

10. : Do you agree that the requirement for issuers of equity and retail non-equity to include selected financial information in the prospectus can be removed without significantly altering the benefits to investors?

<ESMA_QUESTION_FAC_10>

Removal of requirement to include selected financial information: Yes. ICMA supports this change. See also our introductory comment about optionality to include additional disclosure, at an issuer's discretion.

<ESMA_QUESTION_FAC_10>

11. : Do you agree that issuers should be required to include their website address in the prospectus? Do you agree that issuers should be required to make documents on display electronically available? Would these requirements imply any material additional costs to issuers?

<ESMA_QUESTION_FAC_11>

Making documents electronically available and inclusion of website address: ICMA supports steps towards ease of access to information, however, there are compliance, cost and potential liability issues:

a). **access to documents on display via electronic means:** ICMA notes that the new Annexes require a statement in the prospectus that certain documents, where applicable, may be inspected (those documents being: the memorandum and up to date articles of association of the issuer, as well as all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part which is included or referred to in the registration document). The issuer must also indicate the website where they might be inspected.

There are three points ICMA wishes to highlight:

- i). **redrafting:** The reference to "*and other documents*" has caused some confusion in the past as to what is intended. Moving the words to after "*statements*" would make it clearer that it simply refers to any other documents prepared by an expert. It would therefore read: "*all reports, letters, historical financial information, valuations and statements and other documents prepared by any expert*";
- ii). **issuer's website?:** We note that the website need not necessarily be the issuer's. This is helpful;
- iii). **access:** The access / ring-fencing / click-through arguments, outlined below in relation to websites, would also be relevant for documents made available.

b). **website address:** More generally, the suggestion that an issuer's website address must be included in a prospectus is a cause for considerable concern and there are two points here. First, not all issuers will have a website (particularly SPV issuers). Secondly, and more significantly, whilst ICMA notes that it is suggested that a suitable disclaimer that the website information does not form part of the prospectus would be included, we query whether such a disclaimer would be valid in all jurisdictions. Any such disclaimer should also include a confirmation that no information on the website is incorporated by reference. However, given that the information on the website is stated to not form part of the prospectus and is not incorporated by reference, it is not clear to ICMA why the website address should be specifically disclosed. Aside from the seeming absence of rationale, there is also a risk that, notwithstanding the disclaimer in the prospectus, investors might seek to claim that they have relied on additional information available on the website. This raises liability concerns since other information on an issuer's website will



not have been prepared to a prospectus standard. (Under English law, there is a strict test for prospectus liability compared to the liability for other published information which requires knowledge or recklessness on the part of directors – it is important that this strict test for prospectus liability is not inadvertently applied to other published information by virtue of investors being pointed to it from the prospectus.) It will also potentially impose the need for issuers to vet or "weed" websites on a constant basis or to restrict access to separate segments of a website, accessible only via a "click-through" screen page. These various requirements will have cost implications (administrative costs, IT costs, legal costs, etc).

<ESMA_QUESTION_FAC_11>

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

<ESMA_QUESTION_FAC_12>
TYPE YOUR TEXT HERE <ESMA_QUESTION_FAC_12>

13. : Do you agree with the proposal to align the OFR requirement with the management reports required under the Accounting Directive? Would this materially reduce costs for issuers?

<ESMA_QUESTION_FAC_13>
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<ESMA_QUESTION_FAC_13>

14. : Do you agree with ESMA's proposal to require outstanding profit forecasts for both equity and non-equity issuance to be included? Do you agree with the deletion of the obligation to include an accountant's or an auditor's report for equity and retail non-equity? Please provide an estimate of the benefits for the issuers arising from the abovementioned proposals. Would these requirements significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_14>

Profit forecasts and auditor's reports: See the ICMA response to Question 31. In short, no - ICMA recommends, very strongly, that the *status quo* in relation to non-equity securities should be retained and that inclusion of an outstanding profit forecast should not be mandatory in a non-equity prospectus.

For non-equity securities, there seems to be no benefit in including a profit forecast – unless the forecast is so extreme that it will impact an issuer's ability to make payments on the bonds. ICMA is also not aware of any pressure from non-equity investors to receive such disclosure and is therefore curious as to the rationale for the proposed change in approach by ESMA.

Auditor's reports: Where a non-equity issuer does choose to include a profit forecast, at its own discretion, the view of ICMA is that the removal of an accompanying requirement for the report might mean that issuers and underwriters will be placed in an awkward situation. The absence of a specific regulatory requirement in the Annex for an audit report to be obtained might result in auditors becoming very reluctant to supply the comfort which an issuer or underwriters would require before proceeding with an issue. Our understanding is that accountants and auditors would also be unlikely to agree to public disclosure of an audit report where it is not a legal or regulatory requirement. ICMA therefore suggests that a requirement for audit report would be beneficial in the following circumstances: first, where the forecast has been prepared specifically for the prospectus (in which case, it should be included, along with a report) and, secondly, where there are actual figures in a profit forecast taken from (or derived from) the accounts, where such figures would require an audit review and report. In contrast, general statements of the issuer, without figures, would not. (Arguably, such non-numerical forecasts are too vague for auditors to agree to undertake any form of meaningful review, but they might be useful for investors, nonetheless.)



This approach would also avoid the risk that different NCAs might interpret such general statements differently in terms of whether or not they judge them to be forecasts.

To summarise: Profit forecasts should not be mandatory for non-equity prospectuses. Where an issuer chooses to include a profit forecast, an audit report should be required only for certain types of forecast.
<ESMA_QUESTION_FAC_14>

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

<ESMA_QUESTION_FAC_15>
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<ESMA_QUESTION_FAC_15>

16. : Should there be mandatory disclosure of the size of shareholdings pre and post issuance where a major shareholder is selling down? Would this requirement imply any material additional costs to issuers?

<ESMA_QUESTION_FAC_16>
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17. : Do you consider that the new requirement to disclose potential material impacts on the corporate governance would provide valuable information to investors?

<ESMA_QUESTION_FAC_17>
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18. : Do you agree with the proposal to clarify the requirement for restated financial information?

<ESMA_QUESTION_FAC_18>
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<ESMA_QUESTION_FAC_18>

19. : Do you agree with the lighter requirement in relation to replication of the issuer’s M&A in the prospectus? Would this significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_19>

20. : Should any further changes be made to the share registration document? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA_QUESTION_FAC_20>
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21. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_21>
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<ESMA_QUESTION_FAC_21>

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

<ESMA_QUESTION_FAC_22>
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<ESMA_QUESTION_FAC_22>

23. : Do you agree that issuers should be required to update their capitalisation and indebtedness table if there are material changes within the 90 day period? Would this imply any material additional cost to issuers? If yes, please provide an estimation.

<ESMA_QUESTION_FAC_23>
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24. : Do you consider the changes to dilution requirements would be helpful to investors at the same time as being feasible to provide for issuers?

<ESMA_QUESTION_FAC_24>
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<ESMA_QUESTION_FAC_24>

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

<ESMA_QUESTION_FAC_25>
TYPE YOUR TEXT HERE <ESMA_QUESTION_FAC_25>

26. : Do you consider that any further changes be made to the equity securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA_QUESTION_FAC_26>
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<ESMA_QUESTION_FAC_26>

27. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).



<ESMA_QUESTION_FAC_27>
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28. : Do you agree with the proposal to delete disclosure on principal investments and replace this with a requirement to provide details on the issuer's funding structure and borrowing requirements? Would this significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_28>

Investments/funding: ICMA supports the proposal to delete disclosure on principal investments, but we query the need to replace such disclosure with details of funding and borrowing requirements. As mentioned in our introductory comment, we agree that the focus for debt disclosure should reflect key items which pertain to an issuer's ability to service the debt. The funding structure will not necessarily be relevant. If retained, we would suggest that it should, at the very least, be limited to "significant" or "material" changes.

Expected financing: As regards "expected financing", again, we do not think this is likely to be of interest to a debt investor. Moreover, we envisage that, in most cases, it is likely to prompt statements of a very generic nature and, as such, is unlikely to be helpful for investors.

<ESMA_QUESTION_FAC_28>

29. : Do you agree that an issuer of retail non-equity should be required to include a credit rating previously assigned to it in the prospectus?

<ESMA_QUESTION_FAC_29>

Credit rating: We note that both of the debt securities note Annexes under the current regime already require issuers to disclose the issuer credit rating in a prospectus. However, investors tend to be most concerned with the rating of securities - not of an issuer, itself. Particularly in the case of a base prospectus, the mandatory inclusion of an issuer rating makes less sense. It may be confusing to investors where certain securities to be issued under a programme have a different rating from the rating of the issuer itself – indeed, in a multi-issuer programme, an issuer rating might actually be that of a different issuer. Inclusion of an issuer rating may also give rise to a requirement to publish a supplement should the issuer's own rating change, entailing additional costs for an issuer. ICMA therefore suggests that the requirement to include an issuer credit rating in a debt context should not be mandatory or should be deleted.

<ESMA_QUESTION_FAC_29>

30. : Do you agree with the proposal to remove the requirement for profit forecasts and estimates to be reported on? Would this significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_30>

Profit forecast: See the ICMA response to Question 14 and our introductory comments. Removal of the need for an audit report for a profit forecast could prove problematic for some forms of (numerical) profit forecast from a due diligence perspective if auditors become reluctant to supply the necessary comfort.

<ESMA_QUESTION_FAC_30>

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

<ESMA_QUESTION_FAC_31>

Profit forecasts: See the ICMA response to Question 14. ICMA recommends that the status quo should be retained and that a profit forecast should not be required in a non-equity prospectus.

<ESMA_QUESTION_FAC_31>

32. : Do you agree with the deletion of the disclosure requirement related to board practices? Would this significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_32>

Board practices: Yes, this seems like a sensible simplification and in our view will not significantly affect the informative value of the prospectus.

<ESMA_QUESTION_FAC_32>

33. : Do you consider that any further changes should be made to the retail debt and derivatives registration document? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA_QUESTION_FAC_33>

Further changes which we would suggest are:

a). **Item 10.1** - We welcome the deletion of the disclosure requirement related to board practices. We suggest that the disclosure requirement related to “Administrative, Management and Supervisory Bodies” should also be deleted. This disclosure does not seem to us relevant and takes up valuable issuer time on transactions - time that would be better utilised by an issuer concentrating on important disclosure such as the risk factors. A more appropriate alternative might be to name senior management;

b). **Item 13.7** - This now duplicates item 8.1 and should be deleted; and

c). **Items 14.1 and 14.2** – The disclosure requirements related to the amount of issued share capital and the issuer’s memorandum and articles of association go beyond the general duty of disclosure from the perspective of a debt investor. We would suggest that these items are also deleted.

<ESMA_QUESTION_FAC_33>

34. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_34>

Impact: The main impact we foresee relates the items relating to profit forecasts and auditor's reports, as outlined in Questions 14 and 30.

<ESMA_QUESTION_FAC_34>

35. : Do you agree with the removal of the requirement for wholesale non-equity issuers to restate their financial statements? Would this significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_35>

Wholesale financial information – restatement: Yes, ICMA agrees with and welcomes the proposed removal of this requirement. In our view, this will not significantly affect the informative value of the prospectus.

<ESMA_QUESTION_FAC_35>



36. : Do you consider that any further changes be made to the wholesale debt and derivatives registration document? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA_QUESTION_FAC_36>

Further changes: Further changes which we would suggest are:

a). **Item 9.1** – Administrative, Management and Supervisory Bodies should be deleted. Please see our response to Question 33 above.

<ESMA_QUESTION_FAC_36>

37. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_37>

Overall impact: Please see the ICMA comments in the response to Question 11 in relation to issuer websites and potential cost implications.

<ESMA_QUESTION_FAC_37>

38. : Do you agree with the way in which disclosure on taxation has been reduced? Would this significantly affect the informative value of the prospectus for investors?

<ESMA_QUESTION_FAC_38>

Disclosure on taxation: Yes, we welcome this step. In our view, this will not significantly affect the informative value of the prospectus. Any tax disclosure was, of necessity, generic and investors would, in any event, have been advised to seek their own individual advice.

In addition, issuers or investors may be incorporated in a country that is not a Member State. Please therefore amend the references: *issuer's/investor's "Member State of incorporation"* becomes "country of incorporation".

<ESMA_QUESTION_FAC_38>

39. : Do you consider there are any negative consequences of the requirement to make details on representation of security holders available electronically and free of charge? Would this imply any material additional costs to issuers? If yes, please provide an estimation.

<ESMA_QUESTION_FAC_39>

Electronically available: Issuers and Trustees who do not currently make Trust Deeds available electronically have asked us to raise concerns about confidentiality where information might become widely available electronically, and not just to noteholders. The ability to restrict access to noteholders (such as, via "click-through" screens or passwords) may provide more comfort.

<ESMA_QUESTION_FAC_39>

40. : Do you consider that expenses charged to the purchaser should also include implicit costs i.e. those costs included in the price (item 5.3.1)?

<ESMA_QUESTION_FAC_40>

Expenses charged to purchaser: There are no such costs to an investor imposed by an issuer or underwriters in a debt offering, implicit or otherwise, which would need to be disclosed in a prospectus. (Moreover, any costs charged to an investor by a financial intermediary would be disclosed to the investor by that intermediary and the issuer will not know what those are.)
<ESMA_QUESTION_FAC_40>

41. : Do you agree with the proposal that the issue price of the securities to be included in the prospectus in the case of an admission to trading?

<ESMA_QUESTION_FAC_41>

Issue price: Yes, as "Issue price" is an item typically included already in prospectuses and Final Terms relating to programme issuance for both retail and wholesale debt, as illustrated in the ICMA pro forma Final Terms.

<ESMA_QUESTION_FAC_41>

42. : Do you consider that any further changes be made to the retail debt and derivatives securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA_QUESTION_FAC_42>

Item 2.1 (Risk factors) - The current risk factor requirement (for example, in item 2.1 in current Annex V) makes reference to the ability to assess "market risk". ICMA's view is that it would be helpful to carry across this phrase into the current suggested wording in the first sentence of item 2 in Annex 5, to ensure that the issuer is properly able to disclose the market risks which are specific to an issue of the securities. The suggested drafting would be: "A description of the material risks that are specific to the securities being offered and/or admitted to trading in order to assess the market risk associated with them in a limited number of categories....".

Item 5.4.3 (Placing and Underwriting) - We query why details of the underwriting commission and the placing commission are required by Annex 5 (retail debt and derivatives securities note). They are not required under the wholesale Annex.

PRIIPS KIDS - Inclusion of PRIIPs KID as part of the summary - We disagree with the proposed disclosure requirement, outlined at paragraph 137, that where an issuer chooses to use a PRIIPs KID as part of a summary (in accordance with the second subparagraph in Article 7.7 (*The prospectus summary*) of Prospectus Regulation (EU) 2017/1129)), the information contained in that KID must also be included in the body of the prospectus - or, in the case of a base prospectus, the information contained in the KID, which is not included in the base prospectus, in the related Final Terms. KIDs are intended to be self-standing. Requiring inclusion of items such as a summary risk indicator in the prospectus risks increasing issuer liability and will add to costs and expenses if an issuer needs to update information from the KID during the life of the prospectus via a prospectus supplement.

Benchmark Regulation - A disclosure requirement has been added to the Derivatives Annex to reflect the requirement contained in Regulation 2016/1011 to state whether any benchmark referenced is provided by an administrator included in the register referred to in Article 36 of the Benchmark Regulation. A similar provision should be included in this Annex.

<ESMA_QUESTION_FAC_42>

43. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).



<ESMA_QUESTION_FAC_43>
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44. : Do you consider that any further changes be made to the wholesale debt and derivatives securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA_QUESTION_FAC_44>

Further changes: Further changes which we would request to Annex 6 (*wholesale debt and derivatives securities note*) are:

a). **Item 2 (Risk factors)** - Please see our comment in our response to Question 42. We make the same comment here – namely, the inclusion of the underlined phrase: “A description of the material risks that are specific to the securities being offered and/or admitted to trading **in order to assess the market risk associated with them** in a limited number of categories....”.

b). **Item 4.1** - We query why type and class of security has been changed to Category A. Taking the example of a debt programme which permits a range of securities to be issued – such as, registered and bearer securities or senior and subordinated securities – it will be necessary to specify details in Final Terms. The concern is that changing the categorisation to A might lead to difficulties where it is not possible to give the disclosure in the base prospectus because it ultimately depends on the particular securities being issued.

ICMA would also reiterate here a point raised previously in the context of Prospectus Regulation (EU) 2017/1129 discussions. Note that the word “class” makes more sense in the context of shares – such as the references to “*each class of share capital*” or “*more than one class of existing shares*”. It is less clear what “*class of security*” means in the context of debt securities. It would help to clarify, for example, whether it is intended to refer to the seniority of the debt (such as, senior debt or subordinated debt) or to capture whether securities are intended to be fungible with existing securities of the same “class” which have been previously issued?

c). **Item 6.1** - Why is an estimate of the total expenses related to the admission to trading required ? It is not required by the retail debt and derivatives Annexes (Annex 3 (*retail debt and derivatives registration document*) or 5 (*retail debt and derivatives registration securities note*))?

d). **Benchmark Regulation** - A disclosure requirement has been added to the Derivatives Annex to reflect the requirement contained in Regulation 2016/1011 to state whether any benchmark referenced is provided by an administrator included in the register referred to in Article 36 of the Benchmark Regulation. A similar provision should be included in this Annex.

<ESMA_QUESTION_FAC_44>

45. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_45>
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46. : Do you agree with the proposal to make derivate disclosures a building block?

<ESMA_QUESTION_FAC_46>

Derivatives disclosure: As mentioned in the introductory comments above, we note that the Consultation Paper does not include suggested replacement provisions for many of the operative articles of the current Prospectus Regulation and does not include the proposed replacement for the Table of Combinations in current Annex XVIII. ICMA requests that ESMA share the proposed drafting for these as soon as possible and in advance of the final advice, in order that consideration can be given to provisions which bring the derivative securities building block (and, indeed, the other Annexes) into application. We also refer to the points made in Question 7 requesting ESMA to review or provide guidance on the definition of debt securities such that it captures all debt securities and does not leave some (such as, zero coupon notes or other "technical derivatives") to fall within the derivative securities building block).

<ESMA_QUESTION_FAC_46>

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

<ESMA_QUESTION_FAC_47>

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<ESMA_QUESTION_FAC_47>

48. : Do you consider agree with ESMA’s proposals to enhance the disclosure in relation to situations where investors may lose all or part of their investment?

<ESMA_QUESTION_FAC_48>

Potential loss of all or part of investment: See comments on item 4.2.2 in our response to Question 49 below.

<ESMA_QUESTION_FAC_48>

49. : Do you consider that the requirements should be different where the return of the investment is linked to the credit of other assets (i.e. credit linked securities) than where the return is linked to the value of a security?

<ESMA_QUESTION_FAC_49>

Credit linked securities: (i) references to “*reference obligation*” should be replaced with references to the “reference entity”. Reference Obligation only trades are relatively rare. As such there may not be a reference obligation specified for all credit linked securities and for those securities where a reference obligation is specified, that reference obligation may change over the lifetime of the securities. The credit risk is ultimately taken on the underlying reference entity and as such any enhanced disclosure should focus on the reference entity.

(ii) the reference to “*significant business activities/investment policy*” of the issuer/reference entity should be removed from item 4.2.2(d). We presume the rationale for providing a differentiated regime for listed underlying issuers/reference entities is that regulated disclosure will already have been prepared for such entities. As such, there seems no justification for requiring an issuer to assume the additional liability and expense of extracting items from such disclosure when there is no additional benefit for investors in them doing so. What is important is ensuring that investors have the information necessary to locate such disclosure and the other items required in item 4.2.2(d).

(iii) we do not see the reason for distinguishing between the approach for listed issuers/reference entities which comprise greater than 20% of the pool and those that comprise less than 20% of the pool. Assuming the amendments proposed in our response above to item 4.2.2(d) are made, we believe it will be preferable to simply require the prospectus to contain the same information for listed issuers/reference entities regardless of whether they fall above or below the 20% threshold. Whilst item (c) in the section of item 4.2.2 that relates to underlyings comprising less than 20% of the pool purports to provide a less stringent regime, in fact, in the context of listed underlying issuers/reference entities, requiring the prospectus to contain a “brief description of the security or reference obligations [reference entity]” opens the

debt security issuer to liability and cost in preparing that brief description and risks divergent disclosure between different debt security issuers. As such, we would suggest the following amendments:

“In case of a pool or underlyings, where a single security or [reference entity] represents less than 20% of the pool:

(a) the names of the issuers of the security or the [reference entities];

(b) where the relevant underlying is a security, the ISIN (International Security Identification Number) of that security;

(c) if there is principal at risk for the security for which the prospectus is drafted:

(i) if the issuer of the relevant underlying security or the relevant reference entity has securities already admitted to trading on a regulated market, equivalent third country market or SME Growth Market, its name, address, country of incorporation and the name of the market in which its securities are admitted; or

(ii) otherwise, a brief description of the relevant underlying security or the relevant reference entity (as applicable).”

(iv) We note that “*equivalent third country markets*” is listed on page 7 in the Acronyms and Definitions section of the Consultation Paper, but that there is no such definition included in the proposed definitions or operative provisions. ESMA is therefore requested to provide some clarification in relation to the phrase “*equivalent third country markets*” for the purposes of the item 4.2.2(d) disclosure requirement. To minimise cost and liability for issuers, it is important that the alternative regime under item 4.2.2(d) applies wherever appropriate on-going disclosure is available in relation to the underlying security issuer/reference entity. To the extent that major corporations which already provide appropriate public disclosure would not fall within this provision, this would impose unnecessary cost on issuers without benefit to investors. ICMA assumes, therefore, that the reference to equivalent third country market in 4.2.2(d) gives NCAs the scope to continue to determine whether an underlying reference security or reference entity is already admitted to trading on an appropriate market, such that an investor can access appropriate on-going public disclosures about that security/entity. If, however, it is intended that there will be a more formal equivalence decision process to determine equivalent third country markets, these decisions will need to be as broad as possible and in place in advance of application of Prospectus Regulation (EU) 2017/1129 in order to minimise additional costs to issuers and facilitate issuance. Furthermore, whilst some sovereigns will also have securities admitted to regulated markets or equivalent third country markets, it would in any event be helpful to also acknowledge that an issuer can follow the lighter alternative regime in 4.2.2(d) where the underlying is a sovereign.

(v) in the case of large pools of underlying securities/reference entities we query whether a further threshold should be introduced, below which specific disclosure on particular underlying security issuers/reference entities should not be required. For example, if the exposure to an underlying security/reference entity is less than 5% (or such lower threshold as ESMA may determine based on materiality), we query whether the exposure to the relevant underlying security issuer/reference entity is sufficiently material to justify separate disclosure on each underlying security issuer/reference entity.

(vi) in relation to item 4.2.2(c) (and subject to the further points raised in (vii) below) the effect of making this Category A information will be to prevent issuers making such issuances under Final Terms. This is likely to significantly increase cost and time to market for issuers and also to increase the workload for competent authorities as all such trades will need to be documented using drawdown prospectuses (or similar approved PD-compliant documentation). The alternative would either be (i) far longer base prospectuses which seek to include the required standard of disclosure on all potential underlying issuers/reference entities: however, we see this as impractical for issuers or (ii) issuers preparing numerous supplements to base prospectuses to incorporate the required disclosure on relevant underlying issuers/reference entities at the time of each trade. The effect of this change in disclosure will be particularly acute if the “*equivalent third country markets*” concept in item 4.2.2(d) (see further our response above) is

not interpreted as suggested above or otherwise cast sufficiently broadly. As the identity of potential underlying security issuers/reference entities will not be known at the point at which a Base Prospectus will be prepared (and given the impracticality of including such disclosure in the Base Prospectus even if this were known) we believe that it would be preferable for this information to be classified as Category C information to permit the continued documentation of such trades under Final Terms, which would enable all relevant disclosure to be fully provided in Final Terms at the point of the trade when the identity of the underlying issuer/reference entity is finally known. A similar issue arises in relation to the provisions relating to underlyings that represent less than 20% of the pool, in respect of which we believe item (c) (i.e. the “*brief description of the security or [reference entity]*”) should also be Category C information.

(vii) in relation to item 4.2.2(c) we also query the soundness of the direct analogy drawn to Asset Backed Securities (ABS). The ABS market currently adopts a fundamentally different approach to trade documentation (most trades are completed on the basis of separately approved PD-compliant documentation) and sees far lower trade volumes. As such, in addition to our proposal above that such enhanced disclosure should be classified as Category C information, we also query whether issuers should be required to prepare full wholesale registration document schedule standard disclosure on such underlying issuers/reference entities. We would suggest that as an alternative, a separate redacted form of the wholesale registration document schedule should be included in the annexes to the Prospectus Regulation for use in the context of underlying issuers/reference entities. This redacted form of schedule could require enhanced disclosure as compared to the requirements of item 4.2.2(d) but without requiring the full range of information required under the wholesale registration document schedule, which would seem disproportionate in relation to an issuer of underlying securities or reference entity. If ESMA retains the current proposals for item 4.2.2(c), it is expected that issuers may cease to issue securities which reference “unlisted” securities or entities because (a) practically they will be unable to provide disclosure on the security issuer/reference entity as if they were the issuer, and (b) they will be unable to accept the liability risk associated with giving disclosure on that basis. ICMA would be happy to assist ESMA in any way with the formulation of such redacted schedule.

<ESMA_QUESTION_FAC_49>

50. : Do you consider that any further changes be made to the derivatives securities building block? Please advise of any costs and benefits that would be incurred by the further changes you propose.

<ESMA_QUESTION_FAC_50>

Further changes: Item 4.1.11 is unclear as currently drafted. We believe that this should simply refer to the “maturity date” in the case of notes and the “exercise date” or “expiration date” in the case of exercisable securities (i.e. warrants and exercisable certificates). The reference to “final reference date” is unnecessary and confusing. We would suggest that it is deleted.

<ESMA_QUESTION_FAC_50>

51. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_51>

Overall impact: As noted above in relation to the amendments to item 4.2.2 of the Derivative Securities Annex/Building Block, this has the potential to impose significant ongoing costs for issuers in terms of the cost of legal advice associated with the preparation of extensive prospectus disclosure, the fees of competent authorities in reviewing the same and the time cost involved with these (in particular in the context of securities for which the issuer(s) of the underlying securities/ the underlying reference entity(ies) do not fall within the provisions of item 4.2.2(d) and/or for securities which have a large pool of underlying securities or reference entities). We would suggest that the changes we propose in our response to Question 49 above will reduce such costs whilst still delivering enhanced and appropriate disclosure for investors.



<ESMA_QUESTION_FAC_51>

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

<ESMA_QUESTION_FAC_52>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_52>

53. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_53>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_53>

54. : Do you agree that the annex for third countries and their regional and local authorities should remain unchanged (with the exception of the reference to Member States)?

<ESMA_QUESTION_FAC_54>

Third country issuers, etc: One minor change might be to enable issuers to opt to disclose GVA (Gross Value Add) rather than GDP (Gross Domestic Product) (as some issuers produce GVA rather than GDP) and therefore a specific reference to GVA (and the ability for an issuer to disclose GDP, GVA or both) should be included in item 3.4(b). Furthermore, ICMA queries the addition of the heading “History and development of the issuer” in item 3.1, as it does not seem appropriate in relation to a sovereign issuer and does not correspond to the actual disclosure requirement in 3.1.

<ESMA_QUESTION_FAC_54>

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

<ESMA_QUESTION_FAC_55>

Asset backed securities: ICMA notes the different wording used in item 3.1 “Risk factors” (which refers to “shall receive the highest prominence” instead of “shall be mentioned first” as in the other registration document annexes). While presumably both formulations should be interpreted in the same manner, it is not clear why different wording needs to be used in the asset-backed securities registration document. Please would ESMA clarify the rationale for this or use the same wording as set out in the other annexes.

<ESMA_QUESTION_FAC_55>

56. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_56>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_56>



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

<ESMA_QUESTION_FAC_57>

ESMA notes in paragraph 168 of the Consultation Paper that “*ESMA proposes to amend this requirement to clarify that post issuance reporting is no longer optional for securitisation*”. ICMA would like to remind ESMA that the ABS building block is not just used in a securitisation context – it is also used, for example, in social housing and repackaging deals. There is very little post issuance reporting in such deals. For example, in social housing deals investors are purely interested in the solvency of the obligors (and are therefore provided with financial statements and compliance certificates). ESMA should therefore consider re-crafting the requirement in item 4.1 to recognise that not all deals that follow the ABS building block are required to, or provide, post issuance reporting.

<ESMA_QUESTION_FAC_57>

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

<ESMA_QUESTION_FAC_58>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_58>

59. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_59>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_59>

60. : Do you agree with the amendments to the pro forma building block? Should any further amendments be made to this annex? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA_QUESTION_FAC_60>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_60>

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

<ESMA_QUESTION_FAC_61>

Annex 13 (Guarantees building block): We agree with this approach.

<ESMA_QUESTION_FAC_61>

62. : Do you think that depository receipts are similar enough to equity economically to require the inclusion of a working capital statement and / or a capitalisation and indebtedness statement? Please advise of any costs and benefits that would be incurred as a result of this additional disclosures.



<ESMA_QUESTION_FAC_62>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_62>

63. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_63>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_63>

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

<ESMA_QUESTION_FAC_64>
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<ESMA_QUESTION_FAC_64>

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

<ESMA_QUESTION_FAC_65>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_FAC_65>

66. : Do you agree with the proposal to allow reduced disclosure where the securities issued by the underlying issuer/collective investment undertaking/counterparty are listed on an SME Growth Market?

<ESMA_QUESTION_FAC_66>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_66>

67. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_67>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_67>

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

<ESMA_QUESTION_FAC_68>

Convertible and exchangeable securities: The provisions for equity-linked securities became notoriously complex following changes introduced in 2013 by Commission Delegated Regulation 759/2013 and market participants have tended not to admit these instruments to EEA regulated markets. Simplification

of the requirements would be welcomed. In particular, the PD does not currently require equity disclosure for a bond convertible into the issuer's shares if those shares are already admitted to trading on a regulated market. By contrast, if the bond converts into newly-issued shares (i.e. shares not admitted to trading on the issue date of the bond), then equity disclosure is required even if those shares will, upon issue, be identical to, and form part of the same class of, the issuer's shares which are admitted to trading on a regulated market at the time the bond is issued. From a disclosure perspective, it is difficult to understand the basis for this distinction. If the rationale is that there is sufficient public information regarding shares which are admitted to trading, equally that same information will be relevant to newly-issued shares of the same class.

Equity-linked securities are complex, and accordingly tend to be marketed only to sophisticated investors in high denominations, without the need for a public offer prospectus. Whilst they can have a wide range of terms, the equity option is usually set at a premium of c.20-30% (or higher) to the share price at the issue date of the bond, and therefore, it is by no means certain that equity-linked securities will result in the issue or delivery of shares. If they do, it will often be at the option of the investor. Under Prospectus Regulation (EU) 2017/1129, there is now a requirement to prepare a prospectus for admitting shares to trading on a regulated market if those shares represent 20% or more of the class already admitted to trading over a 12 month period and if the bonds themselves were not the subject of a PD-compliant prospectus. It will likely be impracticable to prepare an equity prospectus for admission purposes upon conversion of an equity-linked security. It may therefore be helpful if the prospectus requirements for admitting an equity-linked security to trading on a regulated market could be streamlined, to enable the prospectus requirement to be cleared (i.e. in relation to admission of the bond) prior to issue of any shares.

Accordingly, ESMA is asked to consider clarifying that there is no need for equity disclosure in a prospectus prepared in the following circumstances:

1. the prospectus is required only for admitting the bond to trading (i.e. not for public offer purposes, for example because it has a denomination per unit of at least EUR 100,000 or is only being offered to qualified investors); and
2. the shares into which the bond may convert (whether or not those particular shares are in issue at the time of approval of the prospectus) are, or will upon issue be, part of a class of shares which class is already admitted to trading on a regulated market at the time of approval of the prospectus.

<ESMA_QUESTION_FAC_68>

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

<ESMA_QUESTION_FAC_69>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_69>

70. : Do you agree with ESMA's proposal not to develop a schedule for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD?

<ESMA_QUESTION_FAC_70>

Public international bodies and debt securities guaranteed by a Member State of the OECD: We note that this Annex is rarely used and that other Annexes might be adapted, should the need arise. Nonetheless, in our view it would seem prudent simply to retain this existing Annex.

<ESMA_QUESTION_FAC_70>

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

<ESMA_QUESTION_FAC_71>

URD disclosure: We note that basing the URD on share registration-style disclosure might dissuade debt issuers using a URD for debt issuance. However, we understand that debt issuers who have an existing MTN programme and base prospectus will be likely to continue to use them for debt issuance, at least in the short-term, and will therefore be unlikely to want to use the URD even for registration statement disclosure.

<ESMA_QUESTION_FAC_71>

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

<ESMA_QUESTION_FAC_72>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_72>

73. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_73>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_73>

74. : Do you consider that the proposed disclosure is sufficiently alleviated compared to the full regime? If not, where do you believe that additional simplification can be made? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA_QUESTION_FAC_74>

Secondary issuance: Further streamlining might be required to this first draft of Annexes 18 (*Registration document for secondary issuances*) and 19 (*Secondary issuance securities note*). Examples are:
a) to acknowledge that sometimes the secondary issuance might be a different security (please see paragraph 252, which seems, in our view, to assume identical secondary issuance); and
b) there is some potential for confusion / duplication, either through items which overlap (such as, 6.7 and 10.4) or items which are inconsistent (such as item 5 in the Securities Note which would seem relevant only to retail debt).

Comments made on Annexes elsewhere in this response would also be relevant to the extent that identical text is replicated in the secondary issuance annexes (for example, “class” – see our response to Question 44 above).

We note the following:

Registration Document for secondary issuances (Annex 18):

a). **Item 5** (*Business Overview*) - This is more onerous than the primary Annexes for retail debt (Annex 3, item 6, at page 79 of the Consultation Paper) and wholesale debt (Annex 4, at item 5, at page 90 of the Consultation Paper) and should be revised in line with those Annexes. The alleviated secondary issuance disclosure regime should not require more than is required under the primary Annexes;

b). **Item 8.4** (*Administrative, Management and Supervisory Bodies and Senior Management*) - See our comments at Questions 33 and 36 above. This should be deleted or amended to require the names of senior management only;

- c). **Item 11.1** (*Financial Information*) - Half-yearly accounts are not required for wholesale debt;
- d). **Item 11.4** (*Significant change in the issuer's financial position*) - This should be deleted as it now duplicates the newly merged item 6.2;
- e). **item 14.1** (*Material contracts*) - It is not clear what is meant by “*not previously disclosed elsewhere*”. Does this mean that the issuer is not required to disclose material contracts as long as they are mentioned somewhere in the public domain? If the requirement is by reference to information disclosed elsewhere in the prospectus, it seems that the requirement is, potentially, more onerous than the requirements of the retail or wholesale Annexes, which relate to disclosure about material contracts resulting in obligations material to the issuer's ability to meet obligations under the securities. We would suggest that the requirement should simply track the primary disclosure Annexes;
- f). **Item 15.1** (*Documents Available*) - This refers to documents being inspected on the website of the issuer whereas the wholesale and retail registration document Annexes (Annex 3, item 17 at page 87 of the Consultation Paper and Annex 4, item 14 at page 96 of the Consultation Paper) require only “an indication of the website” where documents may be inspected (not necessarily the website of the issuer). Please revise this in line with those Annexes. Also, the reference to historical financial information should be removed, consistent with paragraph 87 of the Consultation Paper.

Secondary issuance Securities Note (Annex 19):

- a). **Item 4.5** - The tax warning is included in the retail Annex (Annex 5, item 4.14 at page 103 of the Consultation Paper) but not required under the wholesale Annex and should therefore be marked as relevant to retail non-equity securities;
- b). **Item 4.11** - Past and future performance of the underlying is not required in the wholesale Annex and should therefore be marked as relevant to retail non-equity securities;
- c). **Item 4.13** - The method for yield calculation is not required in the wholesale Annex and should therefore be marked as relevant to retail non-equity securities;
- d). **Item 5** (*Terms and Conditions of the Offer*) - As mentioned above, these should not apply to wholesale debt and none of these requirements can be found in the wholesale Annex. They should therefore be marked as relevant to retail non-equity securities;
- e). **Item 6.7** - An estimate of the total expenses related to the admission to trading is not in the retail Annex. It is contained in the wholesale Annex (Annex 6, item 6 at page 112 of the Consultation Paper) - although see also our comment in the response to Question 44 - and we suggest that this is therefore re-labelled as relevant to wholesale non-equity securities;
- f). **Item 10.5** - Credit ratings assigned to securities should be Cat. C, as in the wholesale Annex (Annex 6, item 7.5 at page 112 of the Consultation Paper), rather than Cat A.
<ESMA_QUESTION_FAC_74>

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

<ESMA_QUESTION_FAC_75>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FAC_75>

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



<ESMA_QUESTION_FAC_76>

Corporate governance: This seems unnecessary.

<ESMA_QUESTION_FAC_76>

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

<ESMA_QUESTION_FAC_77>

Secondary issuance – material contracts: In a debt context, we query the benefit of disclosing material contracts in a prospectus for either primary or secondary debt issuance.

<ESMA_QUESTION_FAC_77>

78. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_78>

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<ESMA_QUESTION_FAC_78>

79. : Do you consider that there is further scope for alleviated disclosure in the securities note ? Please advise of any costs and benefits implied by the further changes you propose.

<ESMA_QUESTION_FAC_79>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FAC_79>

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

<ESMA_QUESTION_FAC_80>

Single securities note: ICMA supports maintaining the status quo.

<ESMA_QUESTION_FAC_80>

81. : What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

<ESMA_QUESTION_FAC_81>

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<ESMA_QUESTION_FAC_81>