



The City of London Law Society

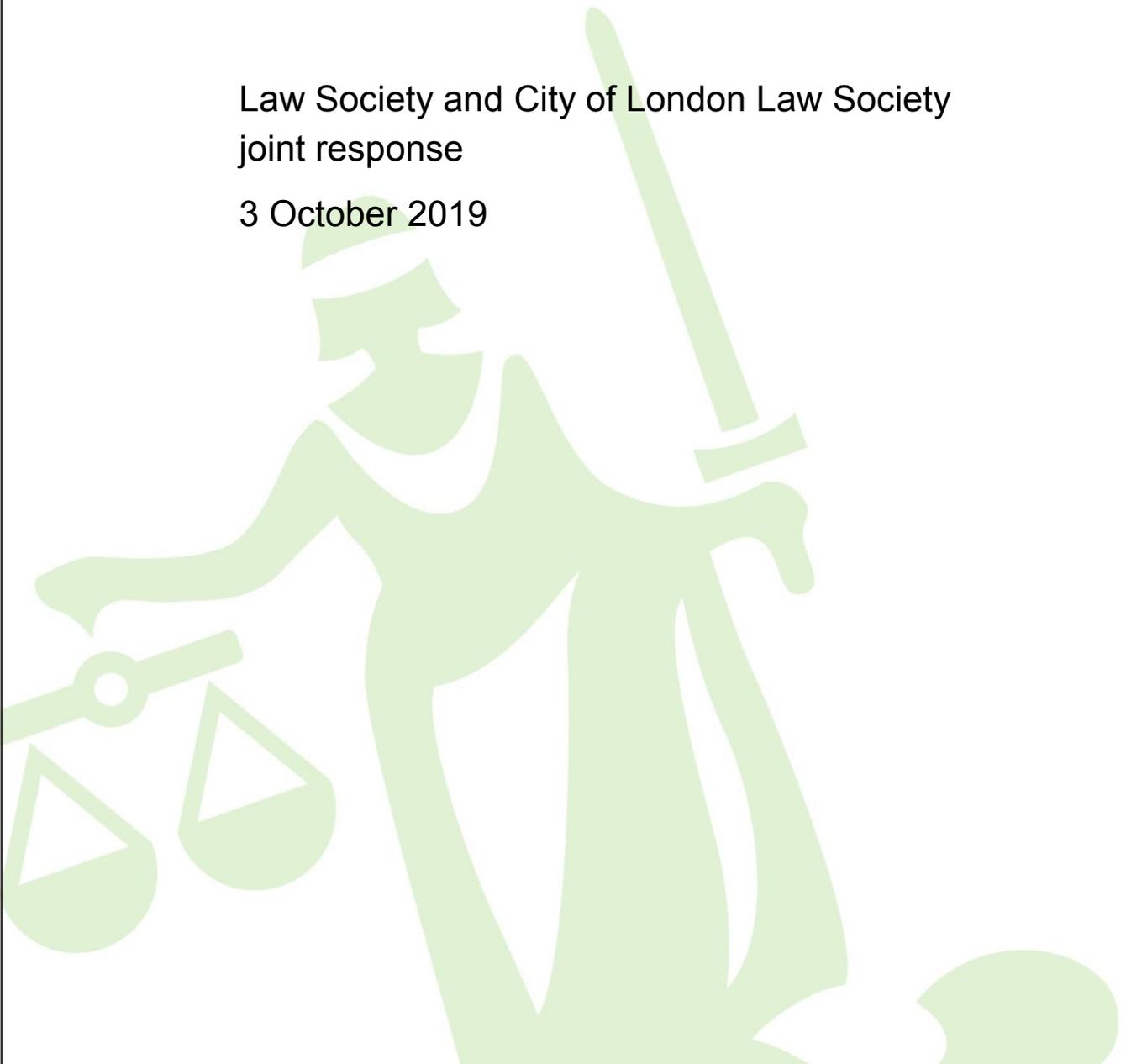


The Law Society

**ESMA CONSULTATION PAPER: DRAFT GUIDELINES
ON DISCLOSURE REQUIREMENTS UNDER THE
PROSPECTUS REGULATION (ESMA 31/62/1239)**

Law Society and City of London Law Society
joint response

3 October 2019



Response to ESMA Consultation 31/62/1239

Introduction

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 160,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to capital markets.

Response

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on Draft Guidelines on disclosure requirements under the Prospectus Regulation (ESMA31-62-1239). Responses are most helpful if they:

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

ESMA will consider all responses received by **4 October 2019**.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_CPG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

Response to ESMA Consultation 31/62/1239

- When you have drafted your response, name your response form according to the following convention: ESMA_CPG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_CPG_ABCD_RESPONSEFORM.
- Upload the form containing your responses, **in Word format**, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Draft Guidelines on disclosure requirements under the Prospectus Regulation").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. **Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish for your contribution to be publicly disclosed.** A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading "Data protection".

Who should read the Consultation Paper

The Consultation Paper may be of particular interest to investors, issuers, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.

Response to ESMA Consultation 31/62/1239

General information about respondent

Name of the company / organisation	Joint Working Party of the City of London Law Society and the Law Society of England and Wales
Activity	Audit/Legal/Individual
Are you representing an association?	<input checked="" type="checkbox"/>
Country / region	UK

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CPG_1>

We have made our comments based on the Guidelines as they apply to shares. We have not undertaken an analysis of how the Guidelines might need to be adapted for other types of securities. As a general matter, we agree with ESMA's decision:

1. to convert the "ESMA update of the CESR Recommendations" (ESMA 2013/319) into Guidelines, so that ESMA is entitled to receive data from national competent authorities (NCAs) and market participants regarding their compliance with the Guidelines. We note that it will be important that NCAs apply the Guidelines in a consistent manner, to achieve ESMA's goal of market participants having a uniform understanding of their application.
2. to confirm that only material disclosure should be included in the prospectus (ESMA's paragraph 12-13 of the Guidelines, at page 14). This approach is consistent with the disclosure requirements under Article 6.1 of the Regulation, which includes a requirement that the information must be "concise", as well as easily analysable and comprehensible.

Our response follows the structure of the Guidelines -- the paragraph numbers refer, unless otherwise stated, to the corresponding paragraph numbers of the Guidelines. In addition, the term:

"Commission Delegated Regulation" means Regulation EU 2019/980

"Prospectus Regulation" or Regulation means the Prospectus Regulation EU 2017/1129

Recommendations means the ESMA update of the CESR Recommendations (ESMA 2013/319)

Executive Summary

We set out below a summary of key issues, which we explain in more detail in our comments on the specific Guidelines or paragraphs.

1. Profit Forecasts and Estimates

Helpfully, the Guidelines are consistent with Section 11 of the Commission Delegated Regulation with respect to inclusion of profit forecasts and estimates in a prospectus. We do not consider that guidance on forward-looking information made outside of a prospectus would inevitably be material information pursuant to Article 6.1 of the Prospectus Regulation, and therefore it would not be

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considered a profit forecast or estimate. Article 6 requires that materiality should be measured with regard to the nature of the issuer and the securities being issued. This can only be done on a case-by-case basis

2. *Financial Information*

(a) *Clear guidance on complex financial history requirements.* It may be impracticable for an issuer with a complex financial history or which has made a significant financial commitment to provide information about the entity that the issuer had acquired or is proposing to acquire (as if that entity were the issuer). Guidelines regarding the application of the information requirements in Article 18 of the Commission Delegated Regulation may be helpful, especially with respect to a significant financial commitment.

(b) *Capitalisation and indebtedness table.* The addition of Guideline 157 is helpful as issuers who are banks and reinsurance companies are otherwise likely to have particular problems complying with the disclosure requirements for contingent liabilities on a timely basis. In general, flexibility needs to be given for each issuer to include a capitalisation and indebtedness table that is appropriate for it and the financial standards it reports under, as long as it complies with the requirements of the Regulation.

3. *Standard of care*

The Guidelines should not go beyond the Prospectus Regulation itself in terms of the standard of care and due diligence an issuer should take in preparing information for inclusion in the prospectus. For example in response to Question 21 (Working Capital) we note that issuers, together with their advisers, should determine what due diligence measures regarding a working capital statement ought to be taken in light of the particular circumstances and in order to determine if the issuer can provide a clean working statement. We note that the working capital statement would be subject to the general duty of disclosure under Article 6 of the Regulation, as is the whole of the prospectus. It should be made clear that the Guidelines regarding working capital are subject to this overarching requirement.

<ESMA_COMMENT_CPG_1>

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Questions

Operating and financial review

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

<ESMA_QUESTION_CPG_1>

Yes.

Non-financial key performance indicators will differ from company to company. The same principle applies to environmental, social and governance (ESG) indicators, which are the subject of ESMA's new paragraph 26. It should remain a judgment for each company what ESG factors it chooses to discuss in its prospectus. It is important that the issuer, with its advisers, is allowed to consider the right ESG reporting standard(s) for it and how it should report compliance, taking into account all the circumstances it believes are relevant to that judgment.

It is unclear what it means to say "*performance should be discussed in the context of the longterm objectives of the business (see paragraph 23)*". It is also unnecessary to carry the provision over from the Recommendations. This is because paragraphs 7.1.1. and 7.1.2 of Annex I to the Commission Delegated Regulation are clear as to what discussion is required in an operating and financial review about the performance of a company. We suggest ESMA delete this wording.

<ESMA_QUESTION_CPG_1>

ESMA Question 2

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

<ESMA_QUESTION_CPG_2>We agree that, in many instances, it will be appropriate to assess whether the management report is fully up to date, and we agree that, if this is not the case, additional disclosure should be encouraged (if it is material), though not required.

<ESMA_QUESTION_CPG_2>

ESMA Question 3

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

<ESMA_QUESTION_CPG_3>

Yes, it is possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether NCAs take a uniform and proportionate approach to the application of the Guidelines.<ESMA_QUESTION_CPG_3>

Capital resources

ESMA Question 4

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

<ESMA_QUESTION_CPG_4>

Yes. The issuer should discuss capital resources and liquidity and provide information on relevant ratios.

We suggest that ESMA adds to the Guidelines an acknowledgement that covenants in debt financing documents are not the only types of restriction on using capital resources that could be relevant. For example, an issuer might have secured funding from a government body that is subject to conditions or, more rarely, equity funding that has certain conditions attached.

A reference to materiality should be added to the trigger for matters to be disclosed under Guideline 7(ii) – “*negotiations with the lender on the operation of these covenants are taking place...*” is very broad and arguably goes further than paragraph 8.4 of Annex 1 to the Commission Delegated Regulation. If any such negotiations were material on the specific facts and the level of certainty of any negotiations that were contemplated warranted it, the general duty of disclosure under Article 6.1 of the Regulation would require its disclosure. This is sufficient and additional requirements at Level 3 appear to go beyond ESMA’s remit.

<ESMA_QUESTION_CPG_4>

ESMA Question 5

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

<ESMA_QUESTION_CPG_5>

Yes.

<ESMA_QUESTION_CPG_5>

ESMA Question 6

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

<ESMA_QUESTION_CPG_6>

Yes, it is possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether NCAs take a uniform and proportionate approach to the application of the Guidelines.<ESMA_QUESTION_CPG_6>

Profit forecasts and estimates

ESMA Question 7 Do you agree with the choice to largely carry over the CESR Guideline on profit forecasts and estimates? If not, could you please indicate what further guidance should be provided and the legal basis for such?

<ESMA_QUESTION_CPG_7>

Guidance on forward looking information provided outside of prospectuses may constitute aspirational information, (“soft guidance”) which is qualified due to the lack of certainty that characterises it. An important aspect of determining materiality of information is the level of certainty that characterises such information. If the qualitative prospective disclosure was consistent with any soft guidance that had been published in the market, it may well be reasonable

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for an issuer to conclude that such guidance was not material and therefore would not be considered a profit forecast or estimate. It is important that the issuer, with its advisers, is allowed to consider whether any guidance made outside of a prospectus is material or not, in the circumstances.

<ESMA_QUESTION_CPG_7>

ESMA Question 8 Do you believe the application of draft guidelines 9, 10, 11 and 12 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_8>

The commentary to Guideline 10, that is set out in paragraph 50, appears to mean that, where an issuer changes its accounting policy when preparing a profit forecast or estimate, it would need to restate its historical financial information. We are concerned that this approach goes beyond accounting practice in EU member states and would impose additional costs on issuers. We suggest ESMA consider deleting this provision.

Guideline 12 may result in additional cost, given that the issuer will often not be familiar with the accounting systems and principles of the acquired entity. Including a profit forecast of an acquired entity may be misleading as it not always clear what this means for an investor in the securities of the issuer. Often the basis of the forecast will have changed as a result of the acquisition. Therefore, a target's forecast should not be treated in the same way as the issuer's forecast and we suggest its inclusion should not be required.

<ESMA_QUESTION_CPG_8>

Historical financial information

ESMA Question 9

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

<ESMA_QUESTION_CPG_9>

Yes.

<ESMA_QUESTION_CPG_9>

ESMA Question 10

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

<ESMA_QUESTION_CPG_10>

Regarding Guideline 13, we note that, if the issuer decides to adopt a new accounting framework, it may be a difficult exercise to make (restated) financial statements that are based on the new accounting framework comparable to the previous framework. It should be sufficient to explain the reason for its restatement and its impact.

We note that draft guideline 17 refers to “*national accounting standards of a Member State*”. This appears to assume that the issuer will be an EEA issuer. Reference should be made to third country issuers, in this Guideline.

<ESMA_QUESTION_CPG_10>

ESMA Question 11

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

<ESMA_QUESTION_CPG_11>

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<ESMA_QUESTION_CPG_11>

ESMA Question 12

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

<ESMA_QUESTION_CPG_12>

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<ESMA_QUESTION_CPG_12>

Pro forma information

ESMA Question 13

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

<ESMA_QUESTION_CPG_13>

The three indicators provide a useful starting point. Even so, the Guidelines should allow NCAs to permit pro forma information to reflect adjustments to present the financial information fairly in accordance with the requirements of Article 6.1 of the Regulation. It would be helpful to have clear Guidelines to ensure a suitable quality of disclosure when it is considered disproportionately burdensome to produce pro forma information under the caveat in paragraph 83 of this Guideline 18. This caveat may lead to different NCAs taking different views regarding what quality of alternative disclosure is required. This may result in a range of approaches emerging in the market, with the risk that the quality of the disclosure in this area is variable.

<ESMA_QUESTION_CPG_13>

ESMA Question 14

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

<ESMA_QUESTION_CPG_14>

In practice, it is only likely to be possible to comply with ESMA's approach, to make transactions which collectively (and not individually) constitute a 25% variation to the issuer's size the subject of pro forma information, where the issuer is able to anticipate the need to publish a prospectus at the start of a financial year (which will rarely be the case).

We request ESMA to clarify in the Guidelines what they mean by "several transactions". In particular, this term should apply only to transactions that have taken place since the last financial year end. We also suggest that it should not include any immaterial transaction or any transaction that is unrelated to the original transaction. The preparation of pro forma information covering several transactions may be costly for issuers.

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<ESMA_QUESTION_CPG_14>

ESMA Question 15

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

<ESMA_QUESTION_CPG_15>

We request ESMA to clarify in the Guidelines what they mean by the carve-out wording "unless it is disproportionately burdensome to produce it". We think that it would be preferable for this to be determined by ESMA rather than left to the discretion of the relevant national competent authority, as otherwise differences could arise between the requirements of Member States.

As a guide to determining the materiality of transactions in this context, we think it is desirable to look at when in the three year period each transaction occurred. It seems likely that the materiality threshold would be lower the closer to the date of the prospectus that the transaction occurred.

<ESMA_QUESTION_CPG_15>

ESMA Question 16 In draft guideline 25, do you agree that the accountant / auditor report should not be permitted to include an emphasis of matter?

<ESMA_QUESTION_CPG_16>

No. In the United Kingdom, an emphasis of matter" paragraph does not represent a modified opinion so it should be permissible to include this type of statement. Instead, emphasis of matter wording represents helpful disclosure as it draws the attention of the reader of the report to an important issue, for example to uncertainties over the going concern status of the company if the fundraising does not succeed or the transaction does not complete, which is material information for investors. The formulation is consistent with the Commission Delegated Regulation.

<ESMA_QUESTION_CPG_16>

ESMA Question 17

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

<ESMA_QUESTION_CPG_17>

In principle, yes. It is important that clear guidance should be set out so that the requirements of Guideline 23 (using other information than pro forma information) are unambiguous and so that they can be applied consistently across the EEA.

We agree that a statement should be included in the Guidelines that pro forma financial information should only be included if the relevant significant gross change occurred since the beginning of the last full annual accounting period. Otherwise the pro forma financial information would be meaningless (given Item 18.4.1 of Annex 1 to the Commission Delegated Regulation).

<ESMA_QUESTION_CPG_17>

ESMA Question 18.

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

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<ESMA_QUESTION_CPG_18>

The scope of the additional work required to prepare an extensive set of pro forma financial information will depend on the specific circumstances and, therefore the cost of preparing it cannot be estimated accurately.<ESMA_QUESTION_CPG_18>

ESMA Question 19 Do you agree with the proposal to carry over only part of the CESR Guidelines on interim financial information since some of the contents appear to be obsolete under the current legislative framework? If not, could you please indicate which CESR Guidelines should have been retained and the legal basis for including them in these draft guidelines?

<ESMA_QUESTION_CPG_19>

It may not be practicable or possible for an issuer to describe the basis of preparation of the relevant information if, for example, the information is in relation to a third party or if such information was prepared when the person to which it relates was a third party.

<ESMA_QUESTION_CPG_19>

ESMA Question 20 Do you believe the application of draft guidelines 27 and 28 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_20>

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<ESMA_QUESTION_CPG_20>

ESMA Question 21 Do you agree with the rules for calculation of working capital in draft guideline 31? If you do not agree, please explain why and propose an alternative approach.

<ESMA_QUESTION_CPG_21>

We agree that the working capital statement should be permitted to be made expressly on the basis of the transaction proceeds and taking into account underwritten, guaranteed, firm placed or firm placed subject to clawback proceeds. We note that the term “firm commitment basis” is undefined and suggest ESMA define it by reference to the concepts in the previous sentence. We also consider that reference should be permitted to be made in the working capital statement to cash, bank and other facilities currently available to the issuer’s group.

The level of due diligence that an issuer should consider is dealt with under Article 6 of the Regulation. To add additional requirements will confuse both issuers and investors. There should be one standard of preparation and due diligence that applies to the whole prospectus.

<ESMA_QUESTION_CPG_21>

ESMA Question 22 Do you agree with the rules for calculation of present requirements in draft guideline 32? If you do not agree, please explain why and propose an alternative approach.

<ESMA_QUESTION_CPG_22>

The standard of disclosure in a prospectus should be governed by Article 6 of the Prospectus Regulation. Issuers, together with their advisers, should be left to determine what due diligence measures ought to be taken in light of the particular circumstances, without any need to specify prescriptive due diligence standards.

<ESMA_QUESTION_CPG_22>

ESMA Question 23 Do you agree that it is useful to require credit institutions to take their liquidity risk into account when they determine their working capital? Do you agree with the requirements of draft guideline 34?

<ESMA_QUESTION_CPG_23>

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Yes. ESMA should recognise that particular types of companies would not be capable of analysing their working capital requirements in the traditional manner, in particular banks and insurance companies. These types of institutions are already typically subject to rigorous capital adequacy requirements, so investors should not be prejudiced by their liquidity metrics as their starting point in their working capital statements. These institutions should not additionally be obliged to disclose information that they are not otherwise obliged to disclose

<ESMA_QUESTION_CPG_23>

ESMA Question 24 Do you agree that it is useful to require (re)insurance undertakings to take their liquidity metrics and their regulatory capital requirements into account when they determine their working capital? Do you agree with the requirements of draft guideline 35?

<ESMA_QUESTION_CPG_24>

We agree that using the metrics adopted and submitted by a (re)insurance undertaking to their supervisory authority pursuant to Solvency II are an appropriate way to frame consideration of a working capital statement.

<ESMA_QUESTION_CPG_24>

ESMA Question 25 In relation to draft guidelines 29, 30, 33, 36 and 37, which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.

<ESMA_QUESTION_CPG_25>

Yes.

<ESMA_QUESTION_CPG_25>

ESMA Question 26 Do you believe the application of any of the draft guidelines 29, 30, 31, 32, 33, 34, 35, 36, and 37 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_26>

Yes, it is possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether NCAs take a uniform and proportionate approach to the application of the Guidelines<ESMA_QUESTION_CPG_26>

Capitalisation and indebtedness statements

ESMA Question 27 Would you like more specific guidance on what to disclose concerning the type of guarantee according to draft guideline 38? If so, please explain which type of further guidance would be helpful.

<ESMA_QUESTION_CPG_27>

No. It should be ensured that the statement of capitalisation does not go beyond what is required in the regular reporting under the Transparency Directive and IFRS. The suggested format is already prescriptive and flexibility needs to be given for issuers to include a capitalisation and indebtedness table that is appropriate for them and the financial standards they report under, as long as it complies with the clear requirements of the Regulation.

We note that the disclosure of shareholders' equity, which ESMA subdivides into share capital, legal reserves and other reserves, is beyond the scope of the Commission Delegated Regulation

<ESMA_QUESTION_CPG_27>

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ESMA Question 28 Would you like more specific guidance on how credit institutions and (re)insurance undertakings should adapt the capitalisation statement according to draft guideline 38? If so, please explain which type of further guidance would be helpful.

<ESMA_QUESTION_CPG_28>

It is useful to align the requirements to the financial disclosure in regular reporting under the Transparency Directive, IFRS or relevant prudential regulation (to the extent it has to be disclosed).<ESMA_QUESTION_CPG_28>

ESMA Question 29 Do you agree that trade receivables and trade payables should be included in the indebtedness statement, as proposed in draft guideline 39?

<ESMA_QUESTION_CPG_29>

No. Complying with the proposed line item with respect to trade and other payables could increase the issuer's costs significantly. This is because such an approach would go beyond current accounting market practice and is likely to require the preparation of some additional form of financial statement.

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<ESMA_QUESTION_CPG_29>

ESMA Question 30 In the indebtedness statement, do you agree that financial liabilities from leases should be included under financial debt and described further in a paragraph after the statement of indebtedness?

<ESMA_QUESTION_CPG_30>

Yes.

<ESMA_QUESTION_CPG_30>

ESMA Question 31 Do you consider that any line items in either the capitalisation or the indebtedness statement are not useful to investors? Please explain your answer.

<ESMA_QUESTION_CPG_31>

There should not be any line items not already required in regular reporting under the Transparency Directive and IFRS. Any additional reporting lacks sufficient guidance in accounting standards so that consistency among various issuers is not ensured. As a result, such line items are not meaningful to investors. Therefore, the additional effort to provide financial information that is not generated out of the "normal" accounting systems create unnecessary cost for issuers<ESMA_QUESTION_CPG_31>

ESMA Question 32 Do you have any other comments on draft guidelines 38 and 39?

<ESMA_QUESTION_CPG_32>

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<ESMA_QUESTION_CPG_32>

ESMA Question 33 Do you believe the application of draft guidelines 38 and 39 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_33>

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<ESMA_QUESTION_CPG_33>

Remuneration

ESMA Question 34 Do you agree with the approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR Guidelines? If not, please provide your reasoning and suggest an alternative approach.

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<ESMA_QUESTION_CPG_34>

Yes.

<ESMA_QUESTION_CPG_34>

ESMA Question 35 Do you believe the application of draft guideline 40 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_35>

Yes, it is possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether NCAs take a uniform and proportionate approach to the application of the Guidelines

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<ESMA_QUESTION_CPG_35>

Related party transactions

ESMA Question 36 Do you agree with the content of this draft guideline? Do you think it provides further clarity to the market? If not, please explain.

<ESMA_QUESTION_CPG_36>

We believe that the correct approach is to encourage those issuers who do not apply IAS 24 to use the definition of related parties for each year used by the GAAP which is applied to the relevant financial information.

If the “bridge” form of presentation described in the Guidelines is used, so there is one year for which two GAAPs have been used, since IFRS would be one of the GAAPs used in that situation, the IAS24 definition of related party should be used for that particular year. If the non-IFRS GAAP used for any such accounts for any particular period did not require disclosure of any related party transactions, then the application of the IFRS definition for that period would be reasonable.

In light of the application of the revised Shareholder Rights Directive (SRD II) since 10 June 2019, we expect that EU companies will, in general, move to using the IAS24 definition of related party as that is the standard used in SRD II.

<ESMA_QUESTION_CPG_36>

ESMA Question 37 Do you believe that the application of draft guideline 41 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_37>

If the “bridge” form of presentation described in the Guidelines is used, so there is one year for which two GAAPs have been used, and (as ESMA proposes) the IAS24 definition of “related party” is used for that particular year, the issuer may incur additional costs in applying that new definition.

It is also possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether NCAs take a uniform and proportionate approach to the application of the Guidelines. TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_37>

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Acquisition rights and undertakings to increase capital

ESMA Question 38 Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR Guidelines? If not, please provide your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_38>

Yes.

<ESMA_QUESTION_CPG_38>

ESMA Question 39 Do you believe the application of draft guideline 42 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_39>

It is also possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether NCAs take a uniform and proportionate approach to the application of the Guidelines.

<ESMA_QUESTION_CPG_39>

Options agreements

ESMA Question 40 Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR Guidelines? If not, please provide your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_40>

In general, the detail in this provision should be qualified by materiality, so that the information should only be provided to the extent it is material in the context of the issuer and the securities being offered or admitted to trading. This would support ESMA's objective of the disclosure being easily analysable and comprehensible, in line with the requirement in Article 6.1 of the Regulation. For example, the granular "exercise price" could be replaced by the applicable price range.

ESMA may wish to address the duplication in paragraph 171 between (iv) and (v) – as they make reference to the "*period during which options can be exercised*" and "*the date in which they expire*" – by deleting one of them.

<ESMA_QUESTION_CPG_40>

ESMA Question 41

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

<ESMA_QUESTION_CPG_41>

Yes, for issuers of shares.

<ESMA_QUESTION_CPG_41>

ESMA Question 42

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

<ESMA_QUESTION_CPG_42>

It is also possible that there would be adaptive costs for issuers and other market participants, in drafting disclosure to meet the requirements of additional or different Guidelines or of the relevant NCA. These adaptive costs are likely to vary from issuer to issuer and may also differ from jurisdiction to jurisdiction. This is because the extent of these costs will partly depend on whether

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NCAs take a uniform and proportionate approach to the application of the Guidelines. TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_42>

History of share capital

ESMA Question 43 Do you agree with the guidance set out in draft guideline 44 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_43>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_43>

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

<ESMA_QUESTION_CPG_44>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_44>

Description of the rights attaching to shares of the issuer

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

<ESMA_QUESTION_CPG_45>

The level of detail provided for in the Guidelines should only be provided to the extent it is material in the context of the issuer and the securities being offered or admitted to trading, to support the requirement for disclosure that is concise easily analysable and comprehensible, in line with the requirement in Article 6.1 of the Prospectus Regulation.

<ESMA_QUESTION_CPG_45>

ESMA Question 46 Do you believe the application of draft guideline 45 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_46>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_46>

Statements by experts

ESMA Question 47 Do you agree with the guidance set out in draft guideline 46 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_47>

We note that this Guideline assumes that the expert will always be a natural person and this may not be the case.

<ESMA_QUESTION_CPG_47>

ESMA Question 48 Do you believe the application of draft guideline 46 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_48>

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<ESMA_QUESTION_CPG_48>

Information on holdings

ESMA Question 49 Do you agree with the proposal to carry over only part of the CESR Guidelines on information on holdings? If not, please indicate what further CESR Guidelines should be retained and the legal basis for their inclusion in these draft guidelines.

<ESMA_QUESTION_CPG_49>Yes, although further streamlining is possible and desirable. For example, the registered office of the undertaking is unlikely to be material information. In general, the level of detail provided for in the Guideline should only be provided to the extent it is material in the context of the issuer of shares and has not been disclosed in the consolidated financial statements.

<ESMA_QUESTION_CPG_49>

ESMA Question 50 Do you consider the clarification on the general principle whereby this draft guideline does not apply when the required information is provided in the issuer's consolidated / separate financial statements prepared in accordance with IFRS to be useful?

<ESMA_QUESTION_CPG_50>

Yes, as duplication of such information is unnecessary.

<ESMA_QUESTION_CPG_50>

ESMA Question 51 Do you believe the application of draft guideline 47 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

<ESMA_QUESTION_CPG_51>

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<ESMA_QUESTION_CPG_51>

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

ESMA Question 52

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

<ESMA_QUESTION_CPG_52>

We consider that it would only be relevant for investors to know about the interests of any expert whose statements are included in the prospectus and we cannot see why the interests of any other persons involved in the issue/offer would be relevant.

We also note that the requirement to disclose details of the *former* employment or compensation of an expert, without any limitation in time, appears to require extensive disclosure of historic information which may be costly and time-consuming to source and yet is not material for investors in the shares which are the subject of the prospectus.

<ESMA_QUESTION_CPG_52>

ESMA Question 53

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

<ESMA_QUESTION_CPG_53>

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<ESMA_QUESTION_CPG_53>

Collective investment undertakings

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

<ESMA_QUESTION_CPG_54>

We agree that a concept of materiality should be applied in determining whether or not any particular investment should be described in detail.