

## RESPONSE TO THE ESMA'S CONSULTATION ON CONTENT AND FORMAT OF THE EU GROWTH PROSPECTUS

28 SEPTEMBER 2017

### SUMMARY

We welcome the opportunity to respond to ESMA's draft technical advice on an EU Growth prospectus' content and format. While we responded to specific questions below, our main comments are:

- We welcome the simplification proposed by ESMA not to require a working capital statement in an EU Growth prospectus where a company has a market capitalisation of €200m or less, even if it's inclusion may continue to be a practice for many SMEs.
- Other disclosure requirements that could be considered by ESMA to be left out of the EU Growth Prospectus are: a history of share capital, disclosure of the resolutions under which securities are created and objects and purpose clause in Memorandum and Articles of Association.
- We believe that the requirements for equity and non-equity issuances should be separated to be clearly and swiftly understood by issuers and their advisers.
- We support the proposal that issuers should be free to determine the order of information items within the specified sections.
- We do not support any mandatory requirement for a cover note or for its contents.
- Issuers should have the flexibility whether to include or not an outstanding profit forecast in prospectus, although if the issuer chooses not to include outstanding profit forecasts, an explanation could be included as to why this was decided. We welcome the idea to abandon the requirement to provide the audit /accounting report on profit forecast. In the same vein, we would propose to abandon the requirement for an audit report on pro forma information.
- Companies should be given free rein to report whatever KPIs (if any) they consider appropriate.
- We would propose a fundamentally different approach regarding the summary (particularly where the issuer draws up an EU Growth prospectus as a single document):
  - We consider the proposal to restrict the number of risk factors from 15 to 10 and the maximum number of pages from 7 to 6 an arbitrary arithmetical approach and unhelpful both to issuers and investors.
  - Instead, we would propose restructuring the summary as a reader's guide to the prospectus, simply giving an overview of the issuer and the offer, without including in it any risk factors or financial information available shortly after in the main body of the SME Growth prospectus.
  - There is no real advantage of disclosing the condensed pro forma information in the summary of the EU Growth Prospectus while it would add to the length of the summary

unnecessarily. A reference in the summary of where the pro forma information can be found would be sufficient.

## RESPONSES TO SPECIFIC QUESTIONS

### I. Format of the EU Growth prospectus

**Question 1: Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.**

We fundamentally agree that the EU Growth Prospectus and its sections should be specifically calibrated to facilitate access to equity finance and growth to small and mid-size companies.

Broadly, we have no particular concerns over the proposed sections to be inserted in an EU Growth Prospectus. However, we believe that the specific sections proposed should follow a different order:

- the corporate governance section could follow the section on strategy, performance and business environment;
- details of the offer/admission and terms and conditions of the securities would be better set out ahead of the risk factors and working capital statement;
- the working capital statement and statement of capitalisation and indebtedness would be better set out together with the financial statements and KPIs; and
- the risk factors should be included at the end of the document.

Presenting the specific sections in this order would allow smaller issuers to better explain their reasoning and specificities in a logical and more fluid way.

We welcome the simplification proposed by ESMA not to require a working capital statement in an EU Growth prospectus where a company has a market capitalisation of €200m or less. Nevertheless, we believe that this may continue to be a practice for many SMEs, as it is an important disclosure underpinning a proposed investment in an SME and could be necessary to comply with the overriding requirement of Article 6.

On the other hand, other disclosure requirements could be more generally considered by ESMA to be left out of the EU Growth Prospectus in order to provide the kind of substantive alleviation smaller issuers would have hoped for. For example:

- the need for a history of share capital;
- disclosure of the resolutions under which securities are created;
- objects and purpose clause in Memorandum and Articles of Association.

As explained in our response to Q4, we do not support any mandatory requirement for a cover note or for its contents. We would also take a fundamentally different approach to the contents of the summary (particularly where the issuer draws up an EU Growth prospectus as a single document).

Furthermore, we believe that the requirements for equity and non-equity issuances should be separated in order for them to be clearly and swiftly understood by issuers and their advisers, making the process more cost-effective. Please see our response to Q6.

**Question 2: Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?**

We support the proposal that issuers should be free to determine the order of information items within the specified sections. It has to be recognised that a prospectus is, ultimately, a selling or offering document and issuers should be free to disclose certain information in a manner which best serves their interests and in a manner which they consider to be the most material. Imposing too much rigidity would detract from this purpose. We do not consider that this approach would have any detrimental effect on investor protection.

In addition, in our view, allowing this flexibility would not have a significant deleterious effect on comparability, as most seasoned professional investors are highly adept at assessing comparability. Allowing flexibility in the disclosure of information is unlikely to undermine their ability to make this assessment. We would suggest that most retail investors do not carry out extensive or sophisticated comparability studies when deciding to invest in particular securities. Other heterogeneous factors are, typically, given more weight by retail investors, such as relationship or connection with the issuer, the sector in which the issuer operates, the nature of the products or services offered by the issuer or simple 'word of mouth'.

**Question 3: Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU Growth prospectus? If not please explain and provide alternative suggestions.**

We believe that there is merit in placing the risk factors between the description of the issuer's strategy, performance and business environment and details of the offer, which would seem to benefit investor protection as it would appear in early stages in the document. However, we believe that, from the perspective of the issuer, the section on risk factors should be located at the end of the document. By locating risk factors at the end of the document, issuers would be allowed to better explain them while being able to flag them in contents and relevant statements throughout the document.

As explained in our response to Q20, we fundamentally disagree with the approach taken by ESMA in relation to the summary. In our view, nevertheless, we believe that it is dangerous, particularly in a single unified prospectus, for an arbitrary number of risk factors to be summarised in the summary and also to be fragmented in the manner suggested by ESMA.

To include some risk factors in the summary, with a mathematical cut off at 10 is unhelpful and not pragmatic. If a limit is set at 10 in the summary, then there is a risk that a retail investor when he reads the risk factors section may ignore the others or not give sufficient weight to them. That adds risk to both the investor and the issuer. In our view, a better approach would be to include in the summary an explanation saying there is a number of risk factors that affect the issuer and its securities and which impact the potential value of an investment, which should be read carefully.

**Question 4: Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?**

It is difficult to assess whether it is appropriate for the suggested cover note to be limited to three pages without ESMA giving further indications as to what it expects to be contained within the cover note. We would not support any mandatory requirements. However, if the concept of a cover note is simply the name of the issuer and a broad outline of the offer (as it is “standard practice”, as mentioned by ESMA) as well as the suggested statement that the EU Growth prospectus has been drawn up in accordance with Article 15 of the Prospectus Regulation, it is difficult to see that such a cover note would ever extend beyond 3 pages. In these circumstances, we question whether there is merit in mandating that it should be no more than 3 pages as, in practice, it never will be that lengthy. Furthermore, given that the EU Growth Prospectus should be a simplified document, adequate to the needs of smaller issuers, we would challenge the overall need for such a mandatory cover note.

## **II. Content of the EU Growth registration document**

**Question 5: Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.**

While we welcome the simplification proposed by ESMA not to require a working capital statement in an EU Growth prospectus where a company has a market capitalisation of €200m or less, we believe that this may continue to be a practice for many SMEs, as it is an important disclosure underpinning a proposed investment in an SME and could be necessary to comply with the overriding requirement of Article 6.

We believe that other disclosure requirements could be more generally considered by ESMA to be left out of the EU Growth Prospectus in order to provide the kind of substantive alleviation smaller issuers would have hoped for. For example:

- the need for a history of share capital;
- disclosure of the resolutions under which securities are created;
- objects and purpose clause in Memorandum and Articles of Association.

**Question 6: Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

In our view, it would be less confusing, and clearer, if the Level 2 measures for registration documents for equity and non-equity issues were mandated separately. This would allow issuers to look at one set of requirements for each type of issue rather than reviewing a composite set of requirements and eliminating those that are not applicable. We also suggest that this allows for an easier drafting by the issuers and a potentially faster review by the NCA.

**Question 7: Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.**

Issuers should have the flexibility whether to include or not an outstanding profit forecast in prospectus. Profit forecasts are no longer required to be reported on. It is intended to be a cost saving here. But if the issuer chooses not to include outstanding profit forecasts, an explanation should be included as to why this was decided. Our view is that, although not critical from an investors' perspective, in practice, if a profit forecast/estimate is included in the document, as part of the due diligence and verification process, there is likely to be a high level of "private" comfort work involved which will partially erode the intended cost saving of not requiring "public" comfort. We welcome that this private comfort is proposed to be voluntary and not mandated. We believe that no audit /accounting report on profit forecast should be required.

It is also interesting to contrast the intended approach for the disclosure of pro forma information in a prospectus (which approach will also be adopted for SME Growth prospectuses) where an accountants' report will be needed.

It does not make sense to seek to reduce the regulatory burden for profit forecasts (which we support) by eliminating the requirement for an accountant's report whilst maintaining one for pro forma financial information. Surely, on this basis and for consistency the requirement for an accountants' report on pro forma information should also be eliminated.

In terms of costs, the majority of the cost goes on the diligence report, the extra cost of the public opinion is minimal in comparison – it is principally just a risk premium.

**Question 8: Do you consider that the requirement to provide information on the issuer's borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.**

While we consider these requirements to also be relevant to non-equity issues, we agree with ESMA's advice not to include them in the EU Growth registration document for non-equity issues.

**Question 9: Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.**

We recommend that the definition of major shareholders should be that stipulated by the Transparency Directive (EU 2004/109/EC (as amended by Directive 2013/50/EU)). However, we recommend no to use the same threshold as the size of the companies in the SME Growth Markets is different from those in the regulated markets. Therefore, we would suggest a unique threshold of 10% unless a lower threshold has been set by the law of the country of incorporation of the issuer for companies listed on the SME Growth Markets.

Furthermore, we believe that the reference to "direct or indirect interests in the issuer's capital or voting rights", rather than notifiable voting rights is not very clear or desirable. This would require additional information over and above the Transparency Directive's requirements in the context of a prospectus as it could lead to confusion. We believe that these provisions would be clearer and easier to apply if aligned with the notification requirements under Article 7 of the Transparency Directive and its associated terminology.

**Question 10: Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.**

We support that IFRS is not mandatory and national accounting standards should be permitted. There is undoubtedly a cost issue associated with the work stream of converting an issuer's national accounting standards to IFRS. That said, in certain Member States, national accounting standards are being increasingly harmonised with IFRS, meaning that in those Member States, the costs associated with IFRS conversion are diminishing. However, having issuers adopting different accounting standards on EU Growth Markets will make comparisons more difficult. While potentially not eliminating the costs, this measure would allow flexibility to simplify SME's access to finance.

**Question 11: Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.**

We question some of the specific requirements. For example:

- the need for a history of share capital;
- disclosure of the resolutions under which securities are created;
- objects and purpose clause in Memorandum and Articles of Association.

**Question 13: Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

Please see our response to Q11.

In relation to KPIs, ESMA mentions, in paragraph 75, the "inclusion of at least one KPI based on liquidity such as current ratio, acid-test ratio, cash ratio, quick ratio, cash conversion cycle and at least one based on indebtedness such as debt to total assets ratio, debt to equity ratio or other measures of liquidity and indebtedness that are appropriate for the issuer and/or its industry". We believe that ESMA should not mandate which KPIs companies should calculate – many small and mid-size companies do not routinely measure KPIs, instead just focus on the financials themselves (e.g. balance sheet). Again, similarly to our response to Q24, companies should be given free rein to report whatever KPIs (if any) they consider appropriate.

### **III. Content of the EU Growth securities note**

**Question 14: Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

Please see our response to Q15.

**Question 15: Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

In line with what we had explained above in our response to Q6, our view, it would be clearer if the Level 2 measures for securities notes for equity and non-equity issues were mandated separately. This would allow issuers to look at one set of requirements for each type of issue rather than reviewing a composite set of requirements and eliminating those that are not applicable. We also suggest that this would allow for an easier drafting by the issuers and a potentially faster review by the NCA.

**Question 16: Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

As most of the disclosure items are based on the information required by the Prospectus Regulation (EU No 809/2004), we believe that they should be familiar to issuers.

**Question 17: Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosures items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.**

Please see our response to Q11.

**Question 18: Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.**

No benefit would be estimated in the case of equity and non-equity being amalgamated. Please see our response to Q15.

**Question 19: Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

We do not have any further comments.

#### **IV. Summary of the EU Growth prospectus**

**Question 20: Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

We would propose a fundamentally different approach regarding the summary. We believe that ESMA has the opportunity to propose a simpler, more pragmatic and cost-effective approach to the contents of the summary of an EU Growth prospectus.

A reduction from 7 pages to 6 pages seems an arbitrary arithmetical approach and is unhelpful. Likewise, the reduction in the number of risk factors from 15 to 10. We question whether these would be effective measures. Furthermore, mostly reducing the page length or the allowed number of risk factors instead of actually cutting down on items to be included could be seen as a 'quick-fix' solution by ESMA to meet the Commission's mandate for a shorter summary, without addressing the root of the problem or serving any effective benefit for issuers.

Moreover, much of the information in the summary will repeat information which will be given shortly after in the main body of the SME Growth prospectus. This seems a pointless and unnecessarily costly exercise. This will particularly be the case where the SME Growth prospectus is drawn up as a single document rather than a tri-partite document. Such duplication will have a cost element, as will the professional analysis required to condense and "corroborate" the information in the main body of the SME Growth prospectus.

Furthermore, it would be a time consuming and potentially misleading exercise to try to artificially fit both risk factors and financial information into a prescribed smaller space (e.g. where risk factor 11 is as important as risk factor 10) and less comprehensible for investors (e.g. trying to shoe-horn financials into the summary format). In this regard, the summary could just explain where this information can be found and that investors should be aware of the risks and review the financials.

We consider that this "document within a document" approach is unnecessary and will lead to needless duplication and additional cost to SME issuers. It should be avoided.

Investors in SMEs, particularly retail investors, should read the whole document and any measures designed to encourage them to read only certain sections will be significantly detrimental to investor protection.

Given that one of the objectives of the SME Growth prospectus is to make it more retail user-friendly, perhaps it would make more sense to make the summary into a sort of "readers guide" to the prospectus, which simply gives an overview of the issuer and the offer. There is no need for a substantial repetition of risk factors and financial information. Condensing and omitting this information may have a deleterious effect.

Also, we question the wisdom of identifying a summary with a PRIIP and allowing it to be a free-standing document is another investor protection scandal waiting to happen (see above on working capital). A retail investor should not be encouraged to focus and rely solely on the summary. The investment decision should be based on the entire "shortened" EU Growth prospectus.

**Question 21: Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.**

As mentioned above in our response to Q20, we consider the proposal to introduce a six-page limit for the summary of the EU Growth prospectus as an arbitrary measure which would *de facto* make the EU Growth Prospectus and its summary shorter, but that in practice would not have met the Commission's mandate to create a shorter summary that is specific for smaller issuers.

As an alternative to limiting the number of pages, we would propose restructuring the summary as a reader's guide to the prospectus, simply giving an overview of the issuer and the offer (while taking into consideration the Commission's mandate). Please see our response to Q20 for more details on this.



**Question 22: Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.**

As mentioned above in our response to Q20, we consider the proposal to reduce the number of risk factors as an arbitrary measure which would *de facto* make the EU Growth Prospectus and its summary shorter, but that in practice would not have met the Commission's mandate to create a shorter summary that is specific for smaller issuers.

While taking into consideration the Commission's mandate, we would propose restructuring the summary as a reader's guide to the prospectus, simply giving an overview of the issuer and the offer, and not including in it any risk factors. Please see our response to Q20 for more details on this.

**Question 23: Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?**

In practice, it is less common for offers by SME issuers to be underwritten. For economic reasons, given their stage of development, SME's are less likely to engage the services of large financial institutions which have the balance sheet capability to underwrite SME offers.

Moreover, the size of most SME offers does not warrant underwriting. However, we agree that if there was an underwriting we would expect there to be disclosure of the underwriting arrangements, for example, certainty of funds and the commission and underwriting fees involved. The so-called 'soft underwriting' is not uncommon for SME issuers, which should in that case be disclosed.

**Question 24: Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.**

We believe that ESMA should not be prescriptive of the line items which should be included, since different measures are important for different industries. By specifying certain measures there is the danger that issuers will default to just producing those, without addressing what might be appropriate for their particular industry. For example, revenue and revenue growth may be of little relevance to an early stage natural resource developer. Furthermore, because use of local accounting standards is permitted, by specifying certain line items issuers will need to spend time trying to identify appropriate equivalent line items in their local accounting standards, rather than considering what might be appropriate measures.

Furthermore, the use of KPIs should not be mandated – they should be an optional way of summarising the issuer's liquidity, indebtedness and profitability.

**Question 25: Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure**

We believe that there is no real advantage of disclosing the condensed pro forma information in the summary of the EU Growth Prospectus. Given that the pro forma information will be included later on, the additional costs of summarising it for the summary will not be significant; however, this would add to the length of the summary unnecessarily. Instead, there should only be a reference in the summary of where the pro forma information can be found.

**Question 26: Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.**

We do not have any further comments.

**Question 27: Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

Whereas we consider that the disclosure items proposed by ESMA are clear enough to be understood by Issuers as explained in our response to Q20 we would take a different approach that would be more beneficial to them.

**Question 28: Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

Please see our response to Q20. In terms of cost alleviation, the simplifications that we have proposed would significantly reduce time for preparing, drafting, editing and revising the prospectus, which in effect translates into reduced adviser and management fees and thus money saved by issuers.

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