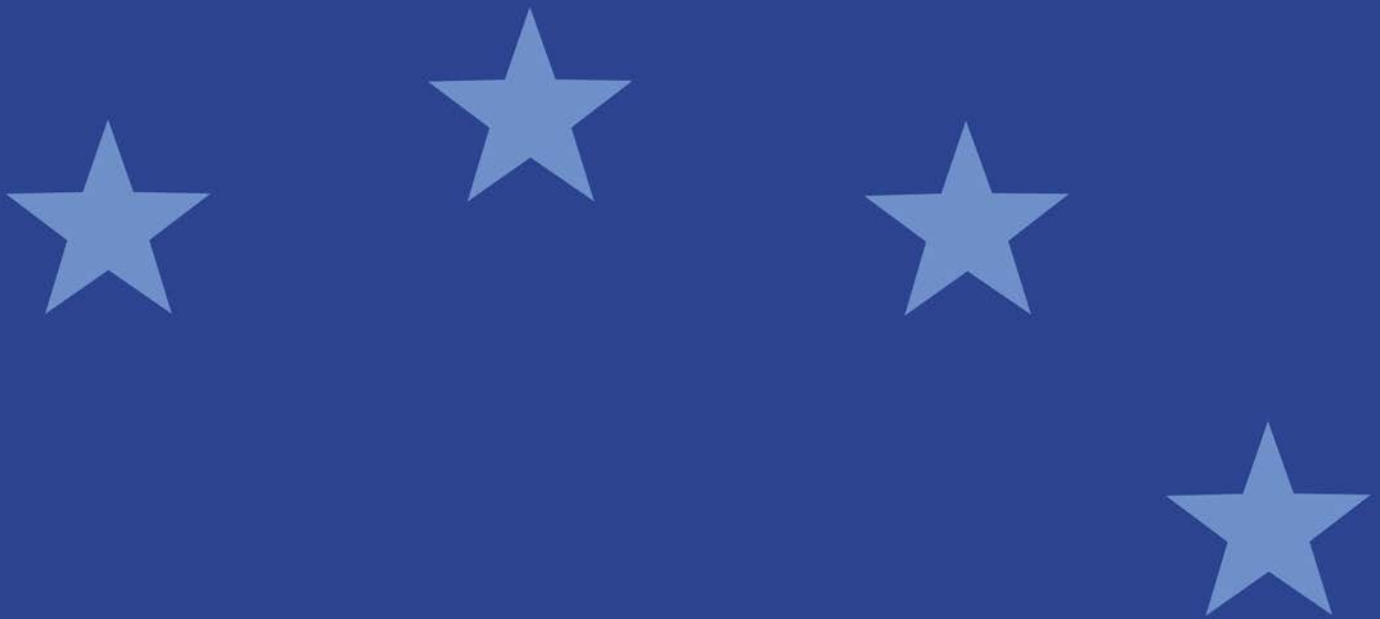




European Securities and
Markets Authority

Response form to Consultation Paper

Draft Guidelines on disclosure requirements under the Prospectus Regulation



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.
- 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.

General information about respondent

Name of the company / organisation	KPMG
Activity	Audit/Legal/Individual
Are you representing an association?	<input type="checkbox"/>
Country / region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CPG_1>

We thank ESMA for the progress being made to update the guidelines for the Prospectus Directive. Our comments are based on discussions between colleagues across the EU who have extensive experience providing assurance to issuers on prospectuses.

We have made comments to specific questions based on our experience as auditors associated with prospectuses and also have the following overall observations:

- It will be important to ensure there is consistency between terminology and definitions with other regulations and guidelines. We have flagged some examples in our response.
- It would be helpful to clarify how these guidelines would interact with the prospectus directive Q&As, whether there is a project to update those Q&As, and whether consideration has been given to including the Q&As in the guidance to facilitate consideration and compliance. If they are not included then it would be helpful to understand the reasons for not doing so. We note that certain Q&As have been included in the draft guidelines.

<ESMA_COMMENT_CPG_1>

Questions

Operating and financial review

Q1 Do you agree with the choice to largely carry over the CESR recommendations on OFR? If not, could you please indicate what further guidance should be provided and the legal basis for such?

<ESMA_QUESTION_CPG_1>

Guideline 2

Para 19 timeframe comments:

- clarify that it is not appropriate to discuss the performance in periods prior to those for which historical financial information is included in the prospectus (note that we have seen cases where an issuer wanted to do so).
- clarify how trends can be identified and specify how the analysis is made when only one period is presented (this can occur in secondary offerings)
- add a requirement to also discuss significant known trends that arose since the end of the last period for which historical financial information is included in the prospectus

Para 21 comparability comments

- add guidance on expected discussion in the OFR of the impacts of recent or upcoming changes in accounting principles (guidance on this is provided by the SEC in SAB 74)

Guideline 3

Para 22 comments:

- add that materiality of a component should also be assessed by reference to the description of the entity's financial and non-financial objectives and strategy, not only by its relative size based on historical earnings, cash flows, assets and liabilities
- define the term "recurring", consistent with the guidance provided in the APM guidelines

Para 26

- align with Item 7.1.1 of Annex 1 which requires non-financial KPIs to be analysed to the extent necessary for an understanding of the issuer's development, performance or position. As the analysis of non-financial KPIs is one of the key changes introduced by the new regulation, this paragraph of the guidelines could give further guidance with respect to this development.

<ESMA_QUESTION_CPG_1>

Q2 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>

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<ESMA_QUESTION_CPG_2>

Q3 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>
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Capital resources

Q4 Do you agree with the choice to largely carry over the CESR recommendations 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_4>

Q5 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_5>

Q6 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>
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<ESMA_QUESTION_CPG_6>

Profit forecasts and estimates

Q7 Do you agree with the choice to largely carry over the CESR recommendation 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>
Para 26 of the executive summary notes that paras 47-48 of the CESR recommendations “have not been included in the scope of the guidelines as their content is not suitable for guidelines”. It would be useful to clarify where this guidance will be included.

Para 47 'reliable' comments

- revise the definition of “reliable” consistent with the definition of “reliability” in §20 by including the concepts of “neutral and free from bias”; also consider adding the concept of completeness
- clarify what is meant by “factual” in the context of forecasts, since by nature forecasts are based on assumptions

Para 48 'comparable' comments

- clarify that “historical and interim financial information” referred to in this paragraph is information of the issuer, to distinguish it from that of other entities (which is addressed in para 49)

Para 49 comments

- We do not think a profit forecast can be comparable to pro forma financial information. Pro forma financial information purports to illustrate the effect of a single transaction as if it had taken place at an earlier date (either the start or the end of an accounting period). As the guidance on pro forma financial information notes, this is a hypothetical situation, not an actual one. A profit forecast is supposed to deal with the actual prospective situation of an issuer, where the transaction takes place at the actual date for accounting purposes. Whilst it is doubtless possible to make a comparison, it is stretching matters somewhat to suggest that the information is comparable.

Para 50 'comparable' comments

- clarify what is the basis for the requirement to present restated historical financial information in level 1 regulation, how this requirement should be fulfilled and what changes trigger this requirement. This could be particularly onerous and should be clarified in what circumstances would be required. The guidance as currently drafted suggests that if an issuer changes an ‘accounting policy’ when preparing profit forecasts the issuer should present “restated historical financial information, where those changes are applied retrospectively, as comparative financial information”. When preparing a profit forecast for a period, a preparer would naturally take account of changes within the accounting framework which impact the forecast period. Section 18 of Annex 1 is clear that restatement of historical financial information is only required when there is a change in accounting framework, and makes it clear that changes within an accounting framework do not require audited financial statements to be restated. Is the reference to accounting ‘policy’ in paragraph 50 perhaps intended to be a reference to ‘accounting framework’? In final sentence "Limited" should be removed as it is likely to not be consistent with applicable standards.

Guideline 11

Para 54 comments

- same comment as for para 50: clarify when an issuer should change its accounting policy when preparing forecasts or estimates
- clarify what is meant by “should ensure that the statement explains how the requirements of comparability and consistency have been fulfilled” – consider replacing with

guidance on how to fulfill such requirements (for example by requiring a quantitative or alternatively a qualitative description of the impacts)

Guideline 12

Para 56 comments

- clarify that this applies when the undertaking is subject to the prospectus regulation and has itself published a forecast or estimate

<ESMA_QUESTION_CPG_7>

Q8 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>

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<ESMA_QUESTION_CPG_8>

Historical financial information

Q9 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>

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<ESMA_QUESTION_CPG_9>

Q10 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>

Overall comments on guidelines 13 to 15.

- Guideline 13 states that the persons responsible for the prospectus should ensure that the restated financial statements should be “comparable” with the financial statements prepared under the previous accounting framework. It is not clear how financial statements prepared under different accounting frameworks can be ‘comparable’ unless the frameworks themselves make provision for them to be comparable. As the reason for the existence of different frameworks is that standard setters have different objectives, it is not clear how financial statements prepared under different frameworks can be expected to be ‘comparable’ or how preparers of prospectuses can be expected to make them comparable if the frameworks do not permit it.
- The wording of Guideline 15, which anticipates circumstances where the financial information is ‘not easily comparable’ highlights the difficulties with the drafting of Guideline 13. Is the purpose of the guidance in paragraphs 68 to 70 to highlight that

although the bridge approach discussed in Guideline 14 will usually lead to presentation of the financial information under the two frameworks *together* (even though this is not stated) there may be circumstances where the presentation will be separate? If so, it would be more helpful if the drafting made this clearer. If not, what is the context in which Guideline 15 is intended be applied? We note also the use of the term 'compatible' in paragraph 70 (where elsewhere the term 'comparable' is used).

Specifically on guideline 13, para 60 comments

- To clarify the sentence "When the issuer intends to adopt a new accounting framework in its next published financial statements, the financial information covering the last financial year, should be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements", we suggest replacing "financial information covering the last financial year" by the "financial statements covering the last financial year"

Specifically guideline 16 comments

- Add guidance on the acceptability (or not) of IFRS financial statements presented for only one year without comparatives, when only one year of [restated] financial information is required. We note that paras 80-81 of the CESR recommendations have not been included. Note that the SEC has guidance on this.

Para 72 (i) comments

- It is unclear why "for the purposes of the prospectus" has been included here if the financial statements are likely being prepared under a fair presentation, general purpose framework. If such financial statements are prepared under a fair presentation, general purpose framework they could be, and likely are, used for purposes other than solely for inclusion in the prospectus.
- It may not be appropriate for parts of an audit or review report to be "reproduced" in the prospectus. Quoting an extract from such a report may be misleading or may not be fully comprehensible. Making reference to such a report and explaining the reasons for qualifications, modifications or disclaimers would be appropriate. It is unclear what "reasons" could be provided for an emphasis of matter paragraph, other than the auditor's intention to emphasise a matter disclosed in the financial information. Accordingly this requirement should not necessarily have to apply to an emphasis of matter paragraph.

Specifically para 73 comments

- clarify the sentence "the audit report will cover the 2019 restated historical financial information and include as comparatives the 2018 restated historical financial information" – it is not appropriate to say that the audit report includes financial information. If the intent of this sentence is to say that the audit report and the opinion therein should cover both the 2019 and 2018 financial information, then it should state so clearly

<ESMA_QUESTION_CPG_10>

Q11 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>

Q12 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

Q13 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>
Guideline 18

Para 80 comments

- Add guidance on the application of the 25% threshold in acquisitions when the acquired entity's historical total assets, revenue and profit or loss are insignificant but the acquisition price is significant, resulting in a change of more than 25% in the issuer's total assets. It is unclear whether pro forma financial information is required to be presented in such situations, in particular when the acquisition is already reflected in the most recent historical balance sheet presented.

<ESMA_QUESTION_CPG_13>

Q14 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>
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<ESMA_QUESTION_CPG_14>

Q15 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>
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<ESMA_QUESTION_CPG_15>

Q16 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>
Guideline 25

Para 113 comments

The guidance needs to recognise that circumstances where an accountant considers it necessary to insert a qualification into a report will be one where the pro forma financial information presented by the person responsible for the prospectus is in some way not compliant with the preparation requirements. The guidance needs therefore to go on to say that in such circumstances the person responsible for the prospectus must either amend the pro forma financial information so that the reporting accountant does not need to include a qualification in its report, or, if it is unable to do this, it must remove the pro forma financial information from the prospectus. Similarly the reporting accountant should have the ability to include an emphasis on matter in the report where appropriate, although this might be rare it is permitted under ISAE 3420

<ESMA_QUESTION_CPG_16>

Q17 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>
Guideline 19

Paras 88 / 89 comments

clarify the application of these paragraphs when a pro forma profit and loss account is prepared for both the full financial year 2019 and the first quarter of 2020. Application of these paragraphs as written may result in certain impacts (e.g. expensing of acquisition expenses) being recorded in both periods.

Heading - **Hypothetical date of the transaction (pro forma balance sheet)**

Could consider revising use of term "Balance sheet" and possibly change to "statement of financial position" in line with current IFRS / IAS terminology.

Guideline 21

Para 96 comments

- clarify that preparation of pro forma financial information for any other period (for example, the financial year preceding the latest financial year) is not permitted.
-

Para 99 comments

- clarify how financial information drawn up “specifically for the purpose of the prospectus” in the last sentence differs from financial information “included in the prospectus” in the preceding sentence.

Guideline 22

Para 102 comments

- clarify what is meant by “allow investors to understand the financial history of an issuer with a complex financial history” in the context of pro forma information.
- Final sentence of example could possibly say “the issuer should not include such a pro forma statement of financial position, since the balance sheet in the annual financial statement fully reflects the transaction.” We have observed attempts to provide such a pro forma statement of financial position which may provide misleading / incomprehensible information.

Guideline 24

Para 107 comments

- notwithstanding the heading “Which events to cover with pro forma information”, this guideline does not address the types of events for which pro forma information is required / may be prepared.

Para 107/109 paras comments

- clarify the concept of “capable of a reasonable degree of objective determination” and how this relates to the concept of “factually supportable” in item 2.3 of Annex 20 of the Commission Delegated Regulation
- the third sentence of para 109 may be in conflict with the requirements of the issuers’ applicable accounting frameworks (for example, IFRS 3.39) which requires that the acquirer “recognise the acquisition-date fair value of contingent consideration as part of the consideration transferred in exchange for the acquiree.” The requirements of this sentence should therefore be reconsidered. One possible approach would be to reword the sentence as follows: “For instance, the persons responsible for the prospectus should as a rule not include deferred or contingent consideration, other than consideration that is recognise as part of the consideration transferred in exchange for the acquiree under the applicable accounting framework, if that consideration is not directly attributable to the transaction but to a future event.”
- Clarify which type of adjustments could be considered in example “such adjustments may, however, be included on a case-by-case basis.”

Para 110

- Clarify the relationship / linkage between management accounts and pro forma adjustments.

Para 111

- clarify the terms “conditional on the capital increase” and whether the guidance provided therein for a capital increase is also applicable for other types of financial instruments (including debt instruments) issued to raise funds for the acquisition.

Guideline 26

Paras 114-116 comments

- Clarify what is meant by “voluntary pro forma information”, for example is this guidance applicable when an issuer presents one or several key performance indicators labelled as on a “pro forma” basis, for example “pro forma revenue” in connection with an acquisition which does not meet the 25% threshold? At what point is the presentation of such KPIs considered “voluntary pro forma information” for purposes of those paragraphs?

<ESMA_QUESTION_CPG_17>

- Q18** 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.

<ESMA_QUESTION_CPG_18>

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<ESMA_QUESTION_CPG_18>

Interim financial information

- Q19** Do you agree with the proposal to carry over only part of the CESR recommendations 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 recommendations should have been retained and the legal basis for including them in these draft guidelines?

<ESMA_QUESTION_CPG_19>

Guideline 27

Para 119 (ii) comments

- Clarify condition related to “duplication of information” and if necessary provide guidelines to address the course of action to be taken.
- Clarify how “level of care” is defined and assessed in “When interim financial information for the third quarter also covers the first nine months of the year and is prepared with the same level of care of the half-year financial information, the half-yearly financial information does not need to be disclosed”.

Guideline 28

Para 120 comments

- The proposed drafting of Guideline 28 is not entirely clear in relation to its intention / requirement and should be reconsidered “**When the issuer has published quarterly**

or half-yearly financial information, the persons responsible for the prospectus should present the interim financial information according to the issuer's accounting."

<ESMA_QUESTION_CPG_19>

Q20 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_20>

Working capital statements

Q21 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_21>

Q22 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_22>

Q23 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_23>

Q24 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_24>

Q25 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>
Paragraph 122 (iii) comments

- The previous guidance referred to ‘checks against external evidence and opinion’, which is a reasonably clear reference to published market data and studies which the issuer had access to. In the updated version, this has changed to ‘checks against evidence and analysis provided by its advisors’. It is not clear why this has been changed, or why the evidence now has to be provided by advisors, rather than simply being taken by the issuer from published sources.

Guideline 36

Para 142 comments

- Clarify what is meant by “in line with the duration of the validity of the prospectus”

Para 144 comments

It would be helpful to clarify the purpose of providing an explanation as presumably such explanation needs only be provided if the qualification or emphasis of matter paragraph affects / is relevant to the working capital statements. In addition, if the intention is to capture going concern material uncertainty then §144 needs to be reworded since under ISA 570 (Revised) Going Concern ‘material uncertainty related to going concern’ is no longer referred to as an emphasis of matter but it is considered a separate paragraph in the auditor’s report (presented under a separate heading ‘Material Uncertainty Related to Going Concern’). Therefore, we suggest rewording §144 as follows.

“Where the auditor’s report is qualified, or contains an emphasis of matter or ‘material uncertainty related to going concern’, and the working capital statement is clean, the persons responsible for the prospectus should provide explanation for this in the prospectus to the extent that the matter is relevant to the working capital statement.”

<ESMA_QUESTION_CPG_25>

Q26 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_26>

Capitalisation and indebtedness statements

Q27 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_27>

Q28 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_28>

Q29 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_29>

Q30 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_30>

Q31 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>
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<ESMA_QUESTION_CPG_31>

Q32 Do you have any other comments on draft guidelines 38 and 39?

<ESMA_QUESTION_CPG_32>
Overall comments on Guidelines 38 / 39

- Under the previous guidance, it seemed reasonably clear that the term ‘Capitalisation’ referred to an issuer’s shareholder equity, and that indebtedness referred to debt, (distinguishing between guaranteed and unguaranteed and secured and unsecured debt).
- The new guidance seems to have redefined capitalisation to include both debt and equity, and has defined indebtedness as debt and ‘current trade and other payables’, minus cash and cash equivalents and ‘current trade and other payables’.
- It is not clear why these changes have been made, or whether the level of disclosure included in the guidance is actually necessary given the wording of the Regulation. It is not clear in particular why ‘current trade and other payables’ and ‘current trade and other payables’ are now required to be included in indebtedness. This information was

not considered to be part of indebtedness previously, would not traditionally be considered part of debt, and has not formed part of indebtedness under any other regime.

- It would also seem that an opportunity has been missed to simplify rather than extend the disclosure obligations. For example there is no need for debt to be analysed twice, (once under the 'capitalisation' section and once under the 'indebtedness' section), and the wording of the Regulation gives no indication that it is necessary to disclose both gross and net debt and implies that the gross figure is sufficient.

Other specific comments

Guideline 38

Para 160 d.(1)

- Clarify whether in the situation described in this paragraph, the additional column would also illustrate the impact of the acquisition (e.g. the indebtedness of the acquired entity)

Para 160 d

- Clarify whether the guidance provided therein for a capital increase is also applicable for other types of financial instruments (including debt instruments) issued to raise funds for the acquisition.

Guideline 39

Paras 162 / 165

- Clarify the difference between "financial debt" and "debt instruments"

Para 166 comments

- We are not convinced that the definitions of "Indirect" and "contingent" indebtedness are sufficiently clear to achieve consistent disclosure. There might be substantial divergence in practice as a consequence of the lack of clarity in these definitions.
- It is unclear as to "Indirect" and "contingent" indebtedness relate to IFRS / IAS items such as contingent liabilities, provisions, and contractual commitments (IAS 16 for example), and whether these are items that have been recognized in and / or disclosed in the financial statement Para 166.

<ESMA_QUESTION_CPG_32>

Q33 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CPG_33>

Remuneration

Q34 Do you agree with the approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_34>

Q35 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_35>

Related party transactions

Q36 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_36>

Q37 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_37>

Acquisition rights and undertakings to increase capital

Q38 Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_38>

Q39 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_39>

Options agreements

Q40 Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

<ESMA_QUESTION_CPG_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_40>

Q41 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_41>

Q42 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_42>

History of share capital

Q43 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>

Q44 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

Q45 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_45>

Q46 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

Q47 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_47>

Q48 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_48>

Information on holdings

Q49 Do you agree with the proposal to carry over only part of the CESR recommendations on information on holdings? If not, please indicate what further CESR recommendations should be retained and the legal basis for their inclusion in these draft guidelines.

<ESMA_QUESTION_CPG_49>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_49>

Q50 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_50>

Q51 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

Q52 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_52>

Q53 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_53>

Collective investment undertakings

Q54 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_54>

Q55 Do you agree with the inclusion of new draft guideline 51? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.

<ESMA_QUESTION_CPG_55>
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<ESMA_QUESTION_CPG_55>

Q56 Do you agree with the inclusion of new draft guideline 56? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.

<ESMA_QUESTION_CPG_56>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CPG_56>

Q57 Do you believe the application of any of the draft guidelines 49, 50, 51, 52, 53, 54, 55, 56 and 57 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_57>
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