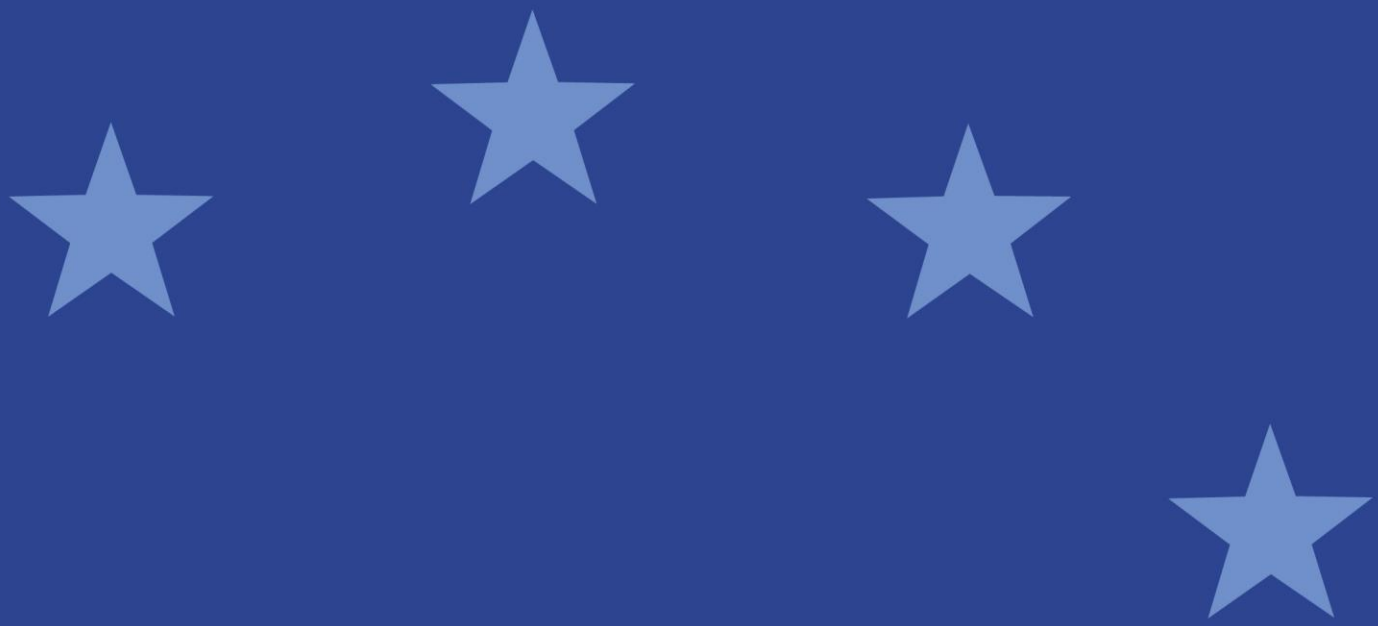
esma European Securities and Markets Authority

Response form for the Consultation Paper on scrutiny and approval



6 July 2017

European Securities and Markets Authority

Date: 6 July 2017

Responding to this paper

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

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

ESMA will consider all responses received by 28 September 2017.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the form "Response form_Consultation Paper on scrutiny and approval", available on ESMA's website alongside the present Consultation Paper (www.esma.europa.eu → 'Your input – Open consultations' → 'Consultation on technical advice under the new Prospectus Regulation').
- Please do not remove tags of the type <ESMA_QUESTION_SAC_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_SAC_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SAC_ABCD_RESPONSEFORM.
- Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading 'Your input – Open consultations' → 'Consultation on technical advice under the new Prospectus Regulation').

Publication of responses

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

dential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

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

Who should read this Consultation Paper

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

General information about respondent

Name of the company / organisation	Federation of European Securities Exchanges (FESE)
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_SAC_1>
We would encourage ESMA to consider specific regimes currently adopted by the existing markets for growth companies, for example in the case of the approval procedures, and to reuse their features as much as possible. We believe that, when considering the content of the Growth Prospectus, it is useful to remember that the market operator may always consider adding requirements for issuers as part of the listing rules for a market. Although many requirements are naturally and still should be harmonised across the EU, there may well be practices which have developed in a local ecosystem and which motivate certain requirements. Especially smaller companies in earlier stages of growth are more dependent on local investors for financing, and thus the room for local adaptation of rules becomes especially important.

In certain jurisdictions, for example, the admission document can be vetted by the exchange itself (under the supervision of the local NCA) in case of admissions to trading (it is the case of Euronext Growth markets), or of public offers prospectuses below certain amounts (Greece). Furthermore, in the case of Nasdaq's First North a practice of "Company Description" has proved to work consistently. They are appropriately short, concise and informative documents, not too costly for the issuer to produce and relatively easily to understand for investors.<ESMA_COMMENT_SAC_1>

Q1 : Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?

<ESMA_QUESTION_SAC_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_1>

Q2 : Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.

<ESMA_QUESTION_SAC_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_2>

Q3 : Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?

<ESMA_QUESTION_SAC_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_3>

Q4 : In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?

<ESMA_QUESTION_SAC_4>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_4>

Q5 : Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?

<ESMA_QUESTION_SAC_5>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_5>

Q6 : In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?

<ESMA_QUESTION_SAC_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_6>

Q7 : Do you believe that application of the proposed criteria will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA_QUESTION_SAC_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_7>

Q8 : Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

<ESMA_QUESTION_SAC_8>
It is important that a consistent approach is adopted by NCAs when reviewing and approving prospectuses. Enhanced consistency could be achieved via the promotion of best practices and peer review exercises across jurisdictions in order to help reduce approval times and streamline burdensome processes.

While we agree with the proposals made by ESMA to harmonise the scrutiny of prospectuses by NCAs, we believe ESMA should introduce further clarifications as to the timeframe in which NCAs are expected to complete the scrutiny process. Feedback from market participants indicate vast discrepancies in the way in which NCAs interpret the duration of the scrutiny process – e.g. should the clock start ticking from the first contact between a company and its NCA or from the last document received? While we are not a position to comment on how long the scrutiny process should last, we believe further guidance from ESMA on this topic would be beneficial on order to harmonise practices across NCAs.<ESMA_QUESTION_SAC_8>

Q9 : Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?

<ESMA_QUESTION_SAC_9>
We believe that the EU Growth Prospectus regime should be granted a fast and not costly approval process which would balance the needs of issuers and investors.

We would encourage ESMA to consider existing models which have proved to be successful. In certain jurisdictions, for example, the admission document can be vetted by the exchange itself (under the supervision of the local NCA) in case of admissions to trading (it is the case of Euronext Growth markets), or of public offers prospectuses below certain amounts (Greece). Furthermore, in the case of Nasdaq's First North a practice of "Company Description" has proved to work consistently. They are appropriately short, concise and informative documents, not too costly for the issuer to produce and relatively easily to understand for investors.

The requirements for the Company Description are included in the First North listing rules and Nasdaq may – and indeed does – require additional information when appropriate. One feature in this system is that the issuers are supported by a so called Certified Adviser when producing the Company Description. The document is approved by the market operator in accordance with well organised procedures, including managing of internal conflicts of interests. The National Competent Authority is not involved in the direct approval of each such Company Description, but supervises the procedure indirectly in its normal supervision of Nasdaq as a market operator.<ESMA_QUESTION_SAC_9>

Q10 : Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

<ESMA_QUESTION_SAC_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_10>

Q11 : Do you agree with the procedures for approval of the URD?

<ESMA_QUESTION_SAC_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_11>

Q12 : Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?

<ESMA_QUESTION_SAC_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_12>

Q13 : Do you believe that any of the proposed procedures for approval and filing will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

<ESMA_QUESTION_SAC_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_13>

Q14 : Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.

<ESMA_QUESTION_SAC_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_14>

Q15 : Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?

<ESMA_QUESTION_SAC_15>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SAC_15>