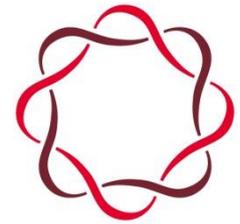


ESMA Consultation Paper on PR Level 2, July 2017

Format and content Paper:



**FINANCE
DENMARK**

Memo

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No	Page	Section	Comment
1	16	23	<p>It should be allowed to use legal disclaimers in the cover note in accordance with current documentation practice. Limiting the cover note to 3 pages is a problem given the need for – in addition to the short presentation of the transaction – (i) legal disclaimers required by the underwriting banks, (ii) various legends relating to non-PR related legislation such as MAR stabilisation legend, PRIIPs selling restriction and potentially MIFID II product governance related selling restrictions including, but not limited to credit institutions regulatory capital issues such as CoCos and (iii) “forward looking statements” legend.</p> <p>We consider that the cover note should be limited to 5 pages as this strike a balance between the needs of issuers and investors.</p>
2	17	26	<p>A precise break down of the proceeds is deemed too burdensome for issuers and advisers in terms of documentation work. Unless a third party involved in the transaction has an interest in the use of the proceeds – which would anyway have to be disclosed as an interest in the issue – or the debt issued is “green bonds” or a similar instrument, a statement that the net proceeds will be used for “General corporate</p>

			purposes" should suffice. Risk to the issuer if the proceeds are used for a different purpose than expressed in a specific disclosure item which could be a situation where the different use is due to circumstances out of the issuer's control.
3	17	27	The format for base prospectuses and standalone prospectuses in the European debt capital markets (EMTN) follows a market practice format which takes into account the relevant disclosure requirements under the current Prospectus Regulation. Issuer should still be permitted to use this well-established format known to issuers, advisers and investors, including where risk factors are included.
4	18	33	Issuers should be allowed to continue the well-established practice of referring to placeholders/information as "Not Applicable". Investors have previously stated that their views is that not deleting not applicable placeholders/information facilitates comparisons between different instruments.
5	18	34	It would be welcomed if more information could be included in the final terms.
6	30	Ques	Q1: Cover note not subject to mandatory limitation on pages (in practice it would probably be around 5 pages).

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			<p>Q2: Retail base prospectuses and standalone prospectuses already include a summary – potentially a PRIIPs KID- and more extensive issuer disclosure why a further section like “How to use the Prospectus” seems like too much documentation work for issuers and could also lead to alleged liability claims from investors if they fail to understand the use.</p> <p>Q3: We suggest that information regarding risk factors should be located after the summary in case this should be regulated.</p> <p>Q4: It would make investor comparisons between different issuers easier if the URD follows a standard format which could be a market precedent driven format.</p> <p>Q5: Maybe for investors but burdensome and potential liability risk for issuers. The existing regime is sufficient.</p>
7	74	118	Disclosure requirements on borrowing requirements and funding structure for retail denominations would include certain forward-looking statements which may expose the issuer to liability risk. The disclosure items seem more onerous than the principal investment items which they are substituting.
8	75	120	Inclusion of profit forecast for debt issues

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			should be optional. It does not seem to be of the same relevance and importance for a debt investor as for an equity investor. If a forecast or estimate is outstanding it would most likely be publicly available and hence accessible by retail investors via other channels e.g. the issuer's financial statements.
9	87	Ques	<p>Q28: Information about the changes in the issuer's borrowings can be assessed by a comparison of the balance sheet of the issuer from year to year. It could impose the issuer to liability if the issuer provides statements with respect to its expectations regarding the future financing of its activities.</p> <p>Q30: Yes, good initiative.</p> <p>Q31: The inclusion of profit forecasts or estimates should be optional.</p>
10	96	Ques	Q35: Yes, good initiative.
11	97	134	It may very well be that it is out the control of the issuer whether an investor has to pay for access to information regarding the performance of the underlying as information regarding the relevant IBOR for the floating rate is often published by a screen rate service. If such screen rate service charge a subscription fee from persons it does not seem fair that the issuer would have to re-

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			imburse the investor for such charge by the service.
12	100	2.1	Risk factor 2.1a) requires disclosure on “the expected size and timing of payments to holders”. It does not seem possible for an issuer to make any statement to this effect as at the date of the relevant base prospectus or standalone prospectus.
13	100	3.2	The very detailed requirements regarding breakdown of proceeds and expenses seem too onerous on issuers. The priority of uses may subsequently change due to reasons which the issuer may not control.
14	101	4.3	The fourth and last section in 4.2 seems to deviate from Article 17 (1)(b) in the new Prospectus Regulation in providing the investors with a “walk-away right” even if the issuer discloses the information in Article 17(1)(b)(i) or (ii) which would otherwise make the walk-away right requirement in Article 17(1)(a) not applicable.
15	103	4.10	The issuer may not control – even though contractual terms to this effect can be included in trust deeds and similar documents - whether the representative of the holders provide all relevant information and documentation free of charges. It does not seem fair that the issuer would have to reimburse the investor for such charge by the

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			representative.
16	107	Ques	<p>Q38: Yes, good initiative.</p> <p>Q39: No negative consequences with respect to electronic availability, but charges for getting access to the information can be an issue.</p> <p>Q40: There should not be any differences in terms of expenses irrespective of whether they are directly payable in cash or whether they are paid via a higher purchase price.</p>
17	109	2.1	Risk factor 2.1a) requires disclosure on "the expected size and timing of payments to holders". It does not seem possible for an issuer to make any statement to this effect as at the date of the relevant base prospectus or standalone prospectus.
18	110	3.2	A statement that the net proceeds will be used for "General corporate purposes" should suffice and more extensive disclosure optional.
19	111	4.11	The issuer may not control – even though contractual terms to this effect can be included in trust deeds and similar documents - whether the representative of the holders provide all relevant information and documentation free of charges. It does not

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			seem fair that the issuer would have to reimburse the investor for such charge by the representative.
20	112	7.5	The last sentence: "A brief explanation of the meaning of the ratings if this has previously been published by the rating provider" should be deleted. Not required under the current Prospectus Regulation for whole sale denominations and investors buying whole sale denominated debt know the meaning of the ratings in the rating provider's rating scale.
21	204	Ques	Q71: In respect of debt issuance we expect that corporates will continue to rely on funding via base prospectuses rather than on the equity-like secondary regime. The base prospectus regime in terms of funding programmes works very well.
22	219	Ques	Q74: In respect of debt issuance we expect that frequent issuers will continue to rely on funding via base prospectuses rather than on the equity-like secondary regime. The base prospectus regime in terms of funding programmes works very well.
23	220	252	The new debt securities issued in the secondary issuance may be issued subject to different legislation and may also be issued in a different form than the primary issuance. The secondary issuance does not

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			necessarily have to be a fungible tap issue issued on identical terms as the original issue.
24	222	2	Risk factor 2 requires disclosure on "the expected size and timing of payments to holders". It does not seem possible for an issuer to make any statement to this effect as at the date of the relevant base prospectus or standalone prospectus.
25	226	4.14	The issuer may not control – even though contractual terms to this effect can be included in trust deeds and similar documents - whether the representative of the holders provide all relevant information and documentation free of charges. It does not seem fair that the issuer would have to reimburse the investor for such charge by the representative.
26	227	5.1.11	The fourth and last section in 5.1.11 seems to deviate from Article 17 (1)(b) in the new Prospectus Regulation in providing the investors with a walk-away right even if the issuer discloses the information in Article 17(1)(b)(i) or (ii) which would otherwise make the walk-away right requirement in Article 17(1)(a) not applicable.
27	231	Ques	Q79: Debt issues will likely continue to fund themselves via base prospectuses and funding programmes.

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SME Growth Prospectus ("GP") Paper:

General comment: Will the Commission encourage SME Growth Market listings and offerings by making amendments to other rules and regulations to motivate investors to buy instruments listed on a SME Growth Market in comparison to traditional MTF listed instruments?

No	Page	Section	Comment
1	20	Ques	<p>Q2:</p> <p>From an equity issuer perspective, we agree with the proposal to allow issuers to define the order of information.</p> <p>Q3: The risk factors should be placed the same place as a traditional EMTN.</p> <p>Q4: A 3 page cover note is too limited for (i) legal disclaimers required by the underwriting banks, (ii) various legends relating to non-PR related legislation such as MAR stabilisation legend, PRIIPs selling restriction and potentially MIFID II product governance related selling restrictions including, but not limited to, credit institutions regulatory capital issues such as Co-Cos, (iv) any "warnings" about the GP being of a more alleviated disclosure and (iv) "forward looking statements" legend.</p>
2	26	55	Inclusion of published profit forecasts or estimates in retail debt or equity add a documentation burden on the issuer and

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			consequential such inclusion should not be a requirement, unless the forecasts and estimates have been prepared and published. Such requirements does not seem to be included in MTF rule books which are the listing venues which the Growth Market will compete against.
3	31	74-75	Inclusion of KPIs should be optional. KPIs are often also Alternative Performance Measures and including KPIs could add more documentation work and costs to the preparation of the GP in comparison to MTF rule books.
4	41	4.1.2	The section refers to 4.1.1.(c) which is only relevant to equity securities which could mean that 4.1.1.(c) could apply also to non-equity.
5	42	4.2-4.3	The sections refer to 4.1.1.(c) which is only relevant to equity securities which could mean that 4.1.1.(c) could apply also to non-equity.
6	49-50	Ques	Q5: KPIs should be optional Q7: Inclusion of published profit forecasts or estimates in retail debt add a documentation burden on the issuer. Such requirement should not apply if the debt is denominated in EUR 100,000 denominations.

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			<p>Q8: No, would add to much documentation work.</p> <p>Q9: Yes, we agree. The issuer is already in possession of basic information of major direct and indirect shareholders through the requirement to submit and disclose direct and indirect shareholdings to the competent authority.</p> <p>Q10: Yes, it is paramount to the success of the GP that IFRS is not required. On the other hand, the issuer must have the flexibility to include IFRS and not national accounting standards, if relevant, in order to attract international investors.</p> <p>Q12: It may make it clearer to issuers if the GP disclosure requirements were set out in annexes for debt and equity respectively.</p>
7	52	88	Disclosure requirements with respect to use of proceeds should only be high-level.
8	57	1.7	Breakdown of expenses and proceeds in principal intended use and order of priority is too burdensome and could impose the issuer for liability risk e.g. if the priority subsequently has to be changed.
9	58	3.1	Risk factor 3.1 a) requires disclosure on "the expected size and timing of payments to

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			holders". It does not seem possible for an issuer to make any statement to this effect as at the date of the relevant base prospectus or standalone prospectus.
10	70	Ques	Q16: It may make it clearer to issuers if the GP disclosure requirements were set out in annexes for debt and equity respectively.
11	71	100	Limiting the summary risk factors to only 10 is too onerous on the issuer as that leaves only a very few risk factors per "risk subject" – in debt: issuer, guarantor(s) and the instruments and in equity: the industry, the issuer and the shares.
12	72	105	It would not be expedient if any GP summary part regarding a guarantor which is not an SME has to follow the "normal" summary disclosure requirements in the Prospectus Regulation for e.g. retail debt. Such summary is also suggested to be limited to a maximum of 6 pages. It may be hard to limit disclosure on the issuer, any guarantor (or guarantors) and the instruments to 6 pages if the regime under the new Prospectus Regulation Article 7 is to also apply for GP summaries.

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13	80	Ques	<p>Q22: Limiting the summary risk factors to only 10 is too onerous on the issuer as that leaves only a very few risk factors per “risk subject” – in debt: issuer, guarantor(s) and the instruments and in equity: issuer, the shares and the industry.</p> <p>Q23: In debt: No, managers will most likely require a subscription/underwriting agreement in their own interest according to internal underwriting policies. In equity markets all IPOs extends to be (regardless of the size of the issuer) subject to underwriting however, sometimes only on a best efforts basis.</p> <p>Q24: KPIs should only be optional but if included by the issuer.</p> <p>Q25: Inclusion of published profit forecasts or estimates in retail debt add a documentation burden on the issuer. Such requirement should not apply if the debt is denominated in EUR 100,000 denominations.</p>
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Kind regards

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