

Response to the Public Consultation on Prospectus Regulation Level 2

I. Executive Summary

The European Investors' Association (hereafter: European Investors) welcomes the new Prospectus Regulation. European Investors wants to ensure that the overarching goals of the regulation are reflected and developed in level 2.

European Investors always uses the opportunity to respond to consultations on technical advice. Individual investors mostly don't have the resources to respond to important consultations. European Investors takes care of their interest by responding to consultations such as the present consultation. Overall ESMA delivered a balanced draft technical advice and succeeds in realigning the technical requirements to the goals set out in level 1 while achieving the necessary continuity in the interest of supervision and market participants. On the SME Growth prospectus regime, simplifying disclosure requirements in proportion with the smaller scale of SME securities issuance and generally simpler operations and ensuring easier access to capital for smaller companies, ESMA has balanced this objective against the needs of investor protection and ensuring investors are presented with relevant and material facts to enable them to make **informed investment decisions**.

On a more detailed scale, some issues have been identified where improvements can still be made. European Investors believes that the prospectus should follow a given structure with a prominent placement for risk factors to help investors gaining a quick overview over the issuance. On the other hand, within the sections, rules on the contents shouldn't be overly prescriptive and formalistic to ensure enough flexibility vis-à-vis the differences in the business models of the issuer as well as differences of the issuance. Also, while standardization as such is helpful for markets participants involved, there are some striking differences between equity and non-equity issuances which require to be taken into account. This applies specifically to the question whether it should be required that profit forecasts are accompanied by an accountant's or auditor's report to ensure their reliability even further. An **issuance of equity should always be accompanied** by such a report.

II. Explanatory remarks

European Investors welcomes the changes introduced by the Prospectus Regulation, the objective of which is to make it easier and more attractive to access the capital markets especially for small and medium enterprises while at the same time providing investors with relevant information on issuers and financial instruments to help them making an informed investment decision. Thus, the prospectus regulation is both, an important element of the Capital Market Union strategy to foster economic growth in the Union and one important factor in ensuring the right level of investor protection for retail and professional investors alike.

Investors are in need of a clear and accessible documentation which is both readable and easy to understand as well as setting out all information necessary for the investment decision. The information for the investor must be reliable, of high quality and at the same time relevant and transparent. These are key elements for creating demand on the markets and providing the capital needed to finance the European economy. Reliability and transparency require striking the right balance between ensuring that all necessary information is given while relevant information should not be buried in too much ancillary information contained in the documentation. This may require a differentiating approach when looking at the characteristics of certain instruments or when looking at the investor base targeted, especially between instruments which may be appropriate for retail investors and those which are fitting for the wholesale market only. When looking specifically at retail investors, it is to be noted that the information in the prospectus is backed up by other sources of information such as key investor information documents and advice if required by an investor. The new MiFID regime will not only focus on the point of sale but also require certain issuers to identify a target market and, by setting up product governance requirements, maintain a constant watch over the instruments once issued.

The Prospectus Directive gives special consideration to SME Growth Markets as a venue for smaller companies to raise capital (Recital 24) in view of their contribution to the growth and job creation in the wider economy as well as their less complex operation and smaller issuances. Therefore, the Directive provides for more limited disclosure requirements, zooming in on information that is both, relevant and material to investors in securities, offered by SMEs. Article 15 on “EU Growth Prospectus” specifies the high level principles of the “proportionate disclosure regime”. In this vein, the EU Growth prospectus should be designed in such a way that it alleviates requirements and avoids complexity. Simplified prospectus schedules will result in a win-win situation for both issuers and investors alike as they are less costly to produce whilst being more readable for investors. However, also within the EU Growth Prospectus regime, investors have to be able to rely on the information given is relevant, correct and the issuer is completely transparent on risk and possible returns.

Supervisory convergence should be fostered in order for the new regime to work. This is essential to avoid regulatory arbitrage, harmonise practices and ensure an efficient approval process which would create a level playing field for companies wanting to raise capital and **an appropriate level of investor protection** across the EU. Enhanced supervisory convergence could be achieved via the promotion of best practices across jurisdictions to help reduce approval times and streamline burdensome processes and, at the same time, uphold the same level of investor protection.

III. Public Consultation on format and content of the prospectus

3.4. Order of information in the prospectus

Q1: Do you agree with the proposal that cover notes be limited to 3 pages? If not, what do you consider to be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?

In para. 22 on page 16 ESMA proposes to make a cover note mandatory which should not exceed three pages in length. While European Investors agrees that the regulation should reflect market practice, the approach should also be a bit flexible. Where a cover note is deemed necessary, the length of it should be guided by the principle that all information material for potential investors should be included in the document but also restricted to that. The cover note is the place for additional information on the issuance and especially helps potential investors from other jurisdictions to understand if the offer is extended to them. The necessity of such information and its depth depends on the individual circumstances. Therefore, European Investors is not in favour of a too prescriptive approach. Par example, if the issuer, to cope with the prescribed three pages, has to put too much information on those three pages in small letters which make the cover note almost unreadable, the NCA should be able to grant an extra page to be used.

Q3: Should the location of risk factors in a prospectus be prescribed in legislation or should issuers be free to determine this? If it should be set out in legislation, what positioning would make it most meaningful?

European Investors strongly believes that ESMA should prescribe an order to ensure transparency and efficiency for investors and that the placing of risk factors should be very prominent.

Q5: Would a standalone and prominent use of proceeds section be welcome for investors?

ESMA in para. 26 on page 17 considers clarity as to the use of proceeds to be of paramount importance for the investors. Specifically issuers should “endeavor” to give a precise breakdown of how funds will be employed. European Investors wonders if issuers who are in search of general funding will be able to fulfil such a requirement for a precise breakdown. Probably, an indication that the issuance will serve general funding purposes should be sufficient to meet the investor’s information needs. However, there will be the risk that issuers could tend to switch to a general funding purpose whenever possible leaving investors with less information. Such behaviour will be in conflict with the general principles of the prospectus being a reliable source of information and including all information relevant for an informed investment decision. Although European Investors would like to trust that ESMA’s wording (“endeavor”) reflects that thinking, a more elaborate discussion of the different situations might be better to prevent endless debates after implementing the regulation.

Q9: Do you agree that the scope of NCA approval should be included in the cover note? If not, please provide your reasoning.

ESMA proposes in para. 23 on page 16 clarity for the investor about the scope of NCA’s approval. This in the best interest of investors, therefor European Investors supports this approach.

4.3 Content of the share registration document

Q14: Do you agree with ESMA's proposal to require outstanding profit forecasts for both equity and non-equity issuance to be included? Do you agree with the deletion of the obligation to include an accountant's or an auditor's report for equity and retail non-equity? Please provide an estimate of the benefits for the issuers arising from the abovementioned proposals. Would these requirements significantly affect the informative value of the prospectus for investors?

ESMA proposes in para. 71 on page 35 to remove the requirement for the report of an auditor for profit estimates/forecasts. European Investors might understand the concern about costs, but this forward looking information is pertinent by investors in equity, enhances the information value and increases the reliability of the prospectus. An audit provides investors with an independent opinion on the accuracy of companies' information. As a result, audits contribute to the orderly functioning of markets by improving the confidence in the integrity of financial statements – which has been one of the main goals of the recent audit reform. Having some form of third party oversight of these matters provides an important safeguard for investors and therefore, European Investors considers that the benefits for investors outweigh the costs to issuers of producing such a report. European Investors is not convinced by the argument that the difficulty of finding auditors to sign off/the cost of such a sign off may deter issuers from including profit forecast/estimate information - and that this is a reason to remove the requirement.

Q19: Do you agree with the lighter requirement in relation to replication of the issuer's M&A in the prospectus? Would this significantly affect the informative value of the prospectus for investors?

European Investors does not agree with the proposal of ESMA to delete certain provisions of the M&A in the share registration document. While understanding that a pure duplication of information already included in the M&A may ease administrative burden for issuers, European Investors considers that this does not outweigh the benefits for investors as the informative value of the prospectus would be reduced significantly. European Investors would like to underline that the information ESMA proposes to delete in 21.2.2, 21.2.4, 21.2.5, 21.2.6 and 21.2.7 concerns important investor rights and can be material for an investment decision. Such fundamental information should be kept in a condensed way in the share registration document to directly alert investors where an issuer deviates from local law. Even if a given deviation is already published in the M&A, investors (e.g. individual investors from outside the applicable jurisdiction) may not be expected to be familiar with the legal basis under which the issuer is operating and where it deviates from it. European Investors further notes that at least the information requested in 21.2.4 (conditions for change of rights of shareholders incl. indication where the conditions are more significant than legally required) and 21.2.7 (threshold for disclosure of ownership) are not regularly included in issuers' M&A's.

4.5. Content of the retail debt and derivatives registration document

Q30: Do you agree with the proposal to remove the requirement for profit forecasts and estimates to reported on? Would this significantly affect the informative value of the prospectus for investors?

In para. 120 on page 75 ESMA proposes the mandatory inclusion of profit forecasts and estimates in order to align the requirements for equity and retail debt. European Investors in principle disagrees with ESMA. Although there might be a difference in the information needs of an investor in equity and one in debt European Investors would suggest not to remove the requirement. Whereas the equity investment may directly be affected by slighter changes in profits and their forecasts, the debt investor (with the exception of convertible bonds) will have to look at material and adverse changes of the issuer's solvency. In these cases, he will be duly informed by the Trend Information in the prospectus under item 8.1 of Annex 3. This difference might be addressed in the final draft of the Level 2 regulation.

Independent auditors should also provide a judgment on the reasonableness of the assumptions that are made by the issuer and that forms the basis for forward looking information. A comparison with the assumptions made by peers could provide a valuable information. If the independent auditor has doubts about the reasonableness of assumptions, par exemple related to the sustainability of the business, he should consider disclosing such doubts in his report.

4.9 Content of the derivative securities building block

Q 44: Do you consider it useful that use of proceeds of issuance under this annex should be disclosed when different from making a profit or hedging risk?

ESMA proposes in para. 145 and 146 that prospectuses for securities with an underlying should include information on all reference obligations. This would be of concern for both ABS structures and Credit-Linked Notes. Accordingly, the draft Technical Advice in 4.2.2. (ii) c) sets out that the prospectus should include either a reference to securities or reference obligations if those are admitted are listed on a regulated market or, in the case of non-listed underlyings, information relating to the issuer of the underlying as far as known or obtainable from the issuer of the underlying "as if it were the issuer". While it is in the interest of the investor to get hold of the necessary information to evaluate the underlying, it seems that a requirement to inform "as if it were the issuer" is too demanding. A third party is never able to verify the completeness of the information known to him.

The situation is aggravated by the fact that the information is currently expected to be included in category A, that is in the base prospectus at a very early point of time. Changes in the final terms would not be allowed. In practice, the underlyings of an issue are not always fully identified at that early point in time. All in all, such a demand would therefore lead to legal uncertainties which would prevent such instruments from being issued. European Capital Markets would lose this segment of

instruments. European Investors could support a initiative to allow the inclusion of less detailed and more concentrated information on the issuer to be required at a later point of time.

4.7 Content of the retail debt and derivatives securities note

Q43: What is the overall impact of the proposed technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that it will pose additional costs for issuers, please provide an estimate and indicate their different type (e.g. extra staff costs, advisor costs, etc.) and nature (one-off vs. ongoing costs).

European Investors is unable to specifically estimate the benefits to Investors. Therefore European Investors suggests to start a evaluation process by an independent third party four years after the regulation entered into force.

IV: Public Consultation on content and format of the EU Growth prospectus

General observations

In light of the political objectives to encourage access to capital markets for smaller and medium enterprises, the EU Growth prospectus should be designed in such a way that it alleviates requirements and avoids complexity and unnecessary costs. Simplified prospectus schedules will result in a win-win situation for both issuers and investors. European Investors notes that the market expects less research being produced especially for smaller listed companies when MiFID II will come into force next year. This development makes it even more important that investors have relevant, reliable and at the same time clear and readable information at hand.

Format of the EU Growth prospectus

Q1: 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. European Investors considers that sections of the registration document and the securities note of the EU Growth prospectus are well thought out and do not see the need to add or remove any. European Investors suggests that ESMA should prescribe an order regarding the risk factors to ensure transparency and efficiency for investors which is identical to the order in the general prospectus. European Investors strongly believes that ESMA should prescribe an order to ensure transparency and efficiency for investors and that the placing of risk factors should be very prominent.

Q2: 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 standardization?

While European Investors considers that sections should follow a prescribed order, however, within a specific section issuers should be granted some flexibility if this leads to better information and thus a higher level of investor protection. As the order of the sections would be imposed and investors already have a standardized grid, the flexibility on the more detailed level would allow issuers to better highlight their distinctive characteristics and features and could make the prospectus even more comprehensible. Also, issuers should be free to include additional information if they deem it necessary and if the information is material to investors to make an informed investment decision.

Q3: 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.

European Investors believes that it would be valuable for investors to find the risk factors prominently and at the same location to enable a quick digestion of the information.

Q4: 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?

Where a cover note is deemed necessary, the length of it should be guided by the principle that all information material for potential investors should be included in the document, even within the EU Growth Prospectus regime. The cover note is the place for additional information on the issuance and especially helps potential investors from other jurisdictions to understand if the offer is extended to them. The necessity of such information and its depth depends on the individual circumstances. Therefore, European Investors is not in favour of a too prescriptive approach. Par exemple, if the issuer, to cope with the prescribed three pages, has to put too much information on those three pages in small letters which make the cover note almost unreadable, the NCA should be able to grant an extra page to be used.

Content of the EU Growth prospectus

Q6: 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.

European Investors suggest ESMA to consider to mandate registration documents for equity and non-equity issues 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.

Q7: 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.

In order to make direct capital market access more attractive for SMEs, European Investors finds it reasonable to not require reports from independent accountants or auditors of profit forecasts for non-equity, non-retail issuances. As mentioned above (Par. III, Q14) European Investors stresses the importance of the reporting by independent accountants or auditors regarding equity issuance.

Q8 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.

European Investors considers such information relevant to non-equity issues as it could allow an evaluation of the solvency of the issuer. That said, such a requirement for non-equity issues could be restricted to material information only.

Q9 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.

European Investors understands the importance of information on major shareholdings even if SME Growth Markets are not covered by the Transparency Directive. However, it remains unclear how holdings, specifically indirect holdings, are to be determined. Legal certainty for the issuer and investors would require either a reference to the rules in the Transparency Directive or – in the interest of proportionality - a set of simpler rules on its own. This simpler set of rules should be aligned with the principles of the Transparency Directive and certainly not contractionary to the standards set by the Transparency Directive.

Q10 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.

European Investors is not opposing the proposal that IFRS is not made mandatory and that national accounting standards should be permitted. Especially smaller issuers might want continue to use national accounting standards for cost or efficiency reasons. However, the benefits of a EU wide use of the same accounting standards for listed companies are quite obvious.

Q13: 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.

European Investors is generally of the opinion that further reduction or simplification of the disclosure requirements for the EU Growth prospectus is not necessary as any alleviation of costs of preparation for issuers is likely to be marginal while the information needs for investors is at a risk of not being fully met.

Content of EU Growth securities note

Q15: 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.

European Investors considers appropriate to introduce single securities note for both equity and non-equity issuances and finds the disclosure items included in the Technical advice fit for purpose. However, it could be appropriate to mandate the requirements for equity and non-equity 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. This would allow for easier drafting by the issuers and a potentially faster review by the NCA.

Q19: 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.

European Investors does not consider any further reduction or simplification of the disclosure requirements of the securities note for the EU Growth prospectus necessary or beneficial to SME issuers in significantly reducing preparation costs of the prospectus.

Summary of the EU Growth prospectus

Q20: 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.

Q21: 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.

European Investors contemplate that the proposed reduction of the number of risk factors to 10 and the page limit of 6 is a too formalistic approach and could possibly lead to a cut off of important information. In any case, the requirement should not be different from the approach suggested for the general prospectus.

Q22: 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.

A straightforward reduction of the number of risk factors reflected in the summary is the wrong approach. European Investors believes that the emphasis should be on relevance and materiality of risk factors rather than on their number. In that respect European Investors suggests to ESMA that the disclosure of 10 risk factors be considered a guideline rather than a strict requirement and issuers be given the flexibility to disclose fewer or up to 15 factors as the case may be.

Q23: 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?

European Investors generally agrees that normally a specific disclosure on underwriting in the summary should not be mandatory. However in minority cases where an underwriting arrangement is in place, including a disclosure in the summary along the lines of Article 7 (8)(c)(ii) of the Prospectus Regulation would be beneficial.

Q24 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.

European Investors strongly believes that ensuring investors are presented with relevant and material facts to enable them to make **informed investment decisions** is the key measurement by deciding what is key financial information. By specifying certain measures danger excites that issuers will default to just producing those, without addressing what might be appropriate for their particular industry or issuance.

Q25 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

In order to keep the length of the summary and amount of information under control, European Investors agrees that it would be appropriate and sufficient to include a reference that a pro forma information can be found in the prospectus.

Q28: 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.

European Investors does not consider any further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus necessary or beneficial to SME issuers in significantly reducing preparation costs of the prospectus.