

**ESMA's THREE
CONSULTATION PAPERS
ON DRAFT TECHNICAL ADVICE
RELATING TO
THE PROSPECTUS REGULATION**

AMAFI's contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions

For over two years, AMAFI has been paying close attention to progress in the Capital Markets Union (CMU) initiative and, within such initiative, to the proposals which aimed at revising the Prospectus Directive with a view to making it easier and cheaper for companies, and in particular smaller companies, to access capital and improve prospectus accessibility for investors.

Having contributed to the 2015 EC consultation on the review for the Prospectus Directive (*AMAFI / 15-27*), AMAFI is now keen, after the publication of the Prospectus Regulation, to contribute to the three consultations launched by ESMA on 6 July 2017 - until 28 September 2017- on the **draft technical advice** that it proposes to give to the EC on:

- **Format and content of the Prospectus** (*ESMA31-62-532*);
- **Content and format of the EU Growth Prospectus** (*ESMA31-62-649*);
- **Scrutiny and approval of the Prospectus** (*ESMA1-62-650*).

You will find below, for each of these three consultations, AMAFI's answers to the questions raised by ESMA, with a reference, for each group of questions to the subject matter concerned and the specific draft technical advice (DTA) to which that group of questions refers.

I. Consultation Paper - Draft technical advice on format and content of the Prospectus

A. Format of the Prospectus, the Base Prospectus and the Final Terms (DTA on p. 21 to 29 of the CP)

Question 1: 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?

No, AMAFI disagrees with that proposal for several reasons: the purpose of such cover notes is not clear; the principle of such notes is not provided by level 1 legislation and there is not ground for adding such a requirement at level 2; finally, it could duplicate the information contained in the summary and raise liability issues.

Therefore, cover notes should not be mandatory. The possibility of having cover notes should simply remain a possibility as provided in ESMA's Q&A § 9 ([ESMA/2016/1674](#)).

Question 2: Would a short section on “how to use the prospectus” make the base prospectus more accessible to retail investors? If so, should it be limited to base prospectuses? Would this imply any material cost for issuers? If yes, please provide an estimate of such cost.

It is usual practice to have such a section in the base prospectus for retail investors. AMAFI considers that that it would be inappropriate to extend this practice to equity prospectuses for which there is no need for such a section. In addition, it can be noted that the URD, which is likely to be widely used in France, would not, by definition, contain such a section. As a result, this “how to use the prospectus” section in the prospectus may end up being more confusing than helpful.

Question 3: 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?

AMAFI is not opposed to having the location of risk factors in a prospectus prescribed in the legislation, save for URDs (see Question 4 below). This should make it easier for investors and all parties concerned to read and understand the key elements of the prospectus.

Question 4: Should the URD benefit from a more flexible order of information than a prospectus?

AMAFI considers that the URD should benefit from a more flexible order of information than a prospectus because a URD is also a communication tool for the issuers who can choose the way and the order in which they will present the elements to be included in the URD. AMAFI fully agrees with ESMA's position expressed in § 27 of the CP. Indeed, for as long as a cross reference list is provided, it is important to

allow issuers to disclose information in an order and format that can be adapted, depending on the type of issuer and securities.

Question 5: Would a standalone and prominent use of proceeds section be welcome for investors?

Yes, AMAFI considers that a standalone and prominent “use of proceeds” section would be welcome. It already exists in the share securities note and in the base prospectus.

Question 6: Is the list of “additional information” in Annex XXI of the Commission Regulation fit for purpose? What other types of additional information should be included in a replacement annex?

Yes, but it would also be appropriate to add an item in Annex XXI to include specific listing disclosures.

Question 7: Are the definitions proposed to be carried over to the new regime, and new definitions proposed adequate? Should any additional definitions be added?

AMAFI agrees with the proposal to carry the existing definitions over to the new regime.

Regarding the definition of “debt securities” in Article A (d), AMAFI assumes and understands it covers debt securities for which the interest is capitalised and paid at the same time as the principal debt, such as, for instance, “the zero coupon bonds”.

Question 8: What is the overall impact of the above technical advice, especially in terms of costs to issuers and benefits to investors? If you have indicated that the proposed technical advice 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).

As a professional organisation, AMAFI is unable to respond to this question.

B. Share registration document (Annex 1)
(DTA on p. 40 to 59 of the CP)

Question 9: Do you agree that the scope of NCA approval should be included in the cover note? If not, please provide your reasoning.

AMAFI considers that it is not appropriate to provide for mandatory cover notes (please see our response to Question 1 above).

Having said that, on prospectuses approved by the French authority (AMF), a specific wording appears on the front page stating that the AMF has delivered a visa n°...on the said prospectus which has been

prepared by the issuer and is the responsibility of the persons whose signatures appear therein. It further specifies that such approval has been given after verification of the completeness, comprehensibility and consistency of the information given in the draft prospectus and that it does not imply approval of the appropriateness of the transaction or authentication of the accounting and financial elements presented.

This wording could/should be maintained in the future. AMAFI considers that there is no need for anything further than that.

Question 10: Do you agree that the requirement for issuers of equity and retail non-equity to include selected financial information in the prospectus can be removed without significantly altering the benefits to investors?

AMAFI agrees with that proposal, in particular as prospectuses for equity and retail non-equity will always include a summary and that summary will contain a selection of historical key financial information.

Question 11: Do you agree that issuers should be required to include their website address in the prospectus? Do you agree that issuers should be required to make documents on display electronically available? Would these requirements imply any material additional costs to issuers?

AMAFI agrees that issuers should be required to include their website address in the prospectus and make documents on display electronically available. In a limited number of cases, this may require certain adjustments for small issuers, but in the end, it should be far less burdensome and costly for them.

Question 12: Do you consider that a description of material past investments is necessary information for the purpose of the prospectus?

AMAFI considers that a description of material past investments is necessary.

Question 13: Do you agree with the proposal to align the OFR requirement with the management reports required under the Accounting Directive? Would this materially reduce costs for issuers?

AMAFI agrees with the proposed alignment which should reduce costs for issuers.

Question 14: 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?

Please note that AMAFI is not in a position to respond to this question for non-equity issuances. Therefore please consider that **the response below concerns exclusively equity issuances.**

AMAFI is fully aware of the pros and cons of requiring the inclusion of profit forecasts in the prospectus together or without an auditor's report on such forecasts.

For AMAFI, there is no doubt that outstanding profit forecasts should be included in the prospectus. As to the auditor's report, unlike for EU Growth prospectuses for which the cost of requiring an auditor's report is a major concern for the small and medium size issuers concerned (see AMAFI's response to Question 7 of the CP on the EU Growth Prospectus), AMAFI considers that for "regular" issuers (outside the scope of the EU Growth Prospectus), this is not an incommensurable requirement. And on the other hand, it is a requirement that can be very beneficial to investors, for their information and protection, and it can therefore contribute to the success of the operation for the issuer.

Consequently, AMAFI disagrees with ESMA's proposal, regarding the proposed deletion of the obligation to include an accountant's or an auditor's report **for equity issuances**.

Question 15: Do you agree with the proposal to explain any 'emphasis of matter' identified in the audit report?

No, AMAFI does not agree with that proposal. In the audit report, the point raised by the auditor is explained. There is no need - and furthermore it would be inappropriate - for the issuer to add any comment to the auditor's statement and explanations.

Question 16: Should there be mandatory disclosure of the size of shareholdings pre and post issuance where a major shareholder is selling down? Would this requirement imply any material additional costs to issuers?

AMAFI supports this proposal which is already standard practice in France. It seems important however to add some language to make it clear that the disclosure requirements in that respect (i.e. the different scenarios to be disclosed) should be proportionate and reasonable.

Question 17: Do you consider that the new requirement to disclose potential material impacts on the corporate governance would provide valuable information to investors?

Yes, AMAFI considers that this new requirement would provide valuable information to investors. In fact, it is even surprising that this requirement is not yet applicable.

Question 18: Do you agree with the proposal to clarify the requirement for restated financial information?

AMAFI would agree with the proposal to have one full set of financial statements (instead of having two years' financial information) which is consistent with the next financial statements (taking into account that such financial statement would also have the comparative figures for the previous second year). In the case of IPOs, it is generally useful, for marketing reasons, to have three years of financial statements and for that reason, issuers doing an IPO are often advised to produce three years of financial statements but there is no need to include that in legislation.

Question 19: 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?

AMAFI agrees with that proposal.

Question 20: Should any further changes be made to the share registration document? Please advise of any costs and benefits implied by the further changes you propose.

No.

Question 21: 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).

As a professional organisation, AMAFI is unable to respond to this question.

C. Share securities note (Annex 2) **(DTA on p. 63 to 73 of the CP)**

Question 22: Do you consider that the requirement for a working capital statement should be different in the case of credit institutions and insurance companies?

Yes, the requirement for a working capital statement could be different in the case of credit institutions and insurance companies, although it may be necessary to provide for differences also between these two categories. AMAFI however cannot comment further on this as ESMA does not clearly indicate what those differences might be.

Question 23: Do you agree that issuers should be required to update their capitalisation and indebtedness table if there are material changes within the 90 day period? Would this imply any material additional cost to issuers? If yes, please provide an estimation.

Yes, AMAFI agrees with that proposal which seems legitimate, provided that such request applies only in the case of "material change".

Question 24: Do you consider the changes to dilution requirements would be helpful to investors at the same time as being feasible to provide for issuers?

Yes, AMAFI agrees with that proposal, provided, as mentioned above (see Question 16) that the requested disclosure be reasonable and proportionate, failing which it will be too costly/complex for the

issuer and it might even not be helpful to investor if the information provided is too complicated and envisage an exaggerate number of scenarios.

AMAFI would also like to suggest a modification of item 9.1, as mentioned below, in order to make it clearer and to reflect the fact that the proposed comparison only makes sense if it takes into account the situation of one shareholder which does not participate in the operation and not the situation of all the shareholders.

Proposed modification:

9.1 *A comparison of:*

- a) *Participation in share capital and voting rights of an existing shareholders before and after the capital increase resulting from the public offer, with the assumption that such existing shareholders does not subscribe for the new shares; and*
- b) *The net asset value..... that public offer*

Question 25: Do you agree that the information solicited by item 9.2 is important for investors?

Yes, AMAFI considers that this information is important for investors. It is already required in France to provide such information.

Question 26: Do you consider that any further changes be made to the equity securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

AMAFI suggests amending the first sentence of article 5.3.1 regarding Pricing to specify that the requirement to indicate the amount of expenses and taxes charged to the subscriber or purchaser can only refer to the expenses charged by the issuer or the offeror.

Therefore, the first sentence should be amended as follows:

“An indication of the price at which the securities will be offered and the amount of any expenses and taxes charged to the subscriber or purchaser by the issuer or offeror”.

Question 27: 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).

As a professional organisation, AMAFI is unable to respond to this question.

D. Retail debt and derivatives registration document (Annex 3) **(DTA on p. 76 to 87 of the CP)**

Question 28: Do you agree with the proposal to delete disclosure on principal investments and replace this with a requirement to provide details on the issuer's funding structure and borrowing requirements? Would this significantly affect the informative value of the prospectus for investors?

Yes.

Question 29: Do you agree that an issuer of retail non-equity should be required to include a credit rating previously assigned to it in the prospectus?

Yes.

Question 30: Do you agree with the proposal to remove the requirement for profit forecasts and estimates to be reported on? Would this significantly affect the informative value of the prospectus for investors?

Question 31: Do you agree with the proposal that outstanding profit forecasts and estimates should be included in the registration document?

Question 32: Do you agree with the deletion of the disclosure requirement related to board practices? Would this significantly affect the informative value of the prospectus for investors?

Question 33: Do you consider that any further changes should be made to the retail debt and derivatives registration document? Please advise of any costs and benefits that would be incurred by the further changes you propose.

Question 34: 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).

As a professional organisation, AMAFI is unable to respond to this question.

E. Wholesale (qualified) debt and derivatives registration document (Annex 4)
(DTA on p. 88 to 96 of the CP)

Question 35: Do you agree with the removal of the requirement for wholesale non-equity issuers to restate their financial statements? Would this significantly affect the informative value of the prospectus for investors?

Yes.

Question 36: Do you consider that any further changes be made to the wholesale debt and derivatives registration document? Please advise of any costs and benefits that would be incurred by the further changes you propose.

No.

Question 37: 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).

F. Retail debt and derivatives securities note (Annex 5)
(DTA on p.98 to 106 of the CP)

Question 38: Do you agree with the way in which disclosure on taxation has been reduced? Would this significantly affect the informative value of the prospectus for investors?

In principle, AMAFI supports the proposed reduction, with two limits however:

- the first one concerns the requirement to include a summarized description of the “specific tax regime” which an investment may entail. If this requirement were to be maintained, this notion of “specific tax regime” should be clearly explained. This notion is not clear enough and in the end, this may affect the effectiveness of the proposed simplification as regards tax disclosures;
- the second limit is that the warning could be interpreted as a “risk” with the consequences attached to that interpretation. Therefore, AMAFI suggest replacing the word “warning” by a more neutral word such as “*an indication*” or “*a statement indicating that...*”.

Question 39: Do you consider there are any negative consequences of the requirement to make details on representation of security holders available electronically and free of charge? Would this imply any material additional costs to issuers? If yes, please provide an estimation.

In France, these details are included in the terms of conditions of prospectuses and therefore, they are already made available to security holders.

Question 40: Do you consider that expenses charged to the purchaser should also include implicit costs i.e. those costs included in the price (item 5.3.1)?

No, AMAFI considers that this is unrealistic.

Question 41: Do you agree with the proposal that the issue price of the securities to be included in the prospectus in the case of an admission to trading?

Yes, AMAFI agrees with that proposal.

Question 42: Do you consider that any further changes be made to the retail debt and derivatives securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

AMAFI noticed that the item "type of securities" has been moved from category B to A. It would be necessary to understand what additional type of information is expected.

Question 43: 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).

As a professional organisation, AMAFI is unable to respond to this question.

G. Wholesale debt and derivative securities note (Annex 6) **(DTA on p. 108 to 112 of the CP)**

Question 44: Do you consider that any further changes be made to the wholesale debt and derivatives securities note? Please advise of any costs and benefits that would be incurred by the further changes you propose.

Question 45: 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).

As a professional organisation, AMAFI is unable to respond to this question.

H. Derivative securities building block (Annex 7) **(DTA on p. 114 to 121 of the CP)**

Question 46: Do you agree with the proposal to make derivate disclosures a building block?

Yes, AMAFI agrees with that proposal.

Question 47: Do you agree with the proposal to reclassify the how the return on derivatives take place from B to A? If not, please explain why.

AMAFI disagrees with this proposal, the implementation of which might be costly without any significant value to such change. In additions, since pay-offs used under structured programmes are already fully disclosed in the base prospectus, it is unclear what additional disclosure is expected. Clarification on this point from ESMA appears necessary.

Question 48: Do you consider agree with ESMA's proposals to enhance the disclosure in relation to situations where investors may lose all or part of their investment?

No, AMAFI does not agree with ESMA's proposal. What is proposed seems too complex and burdensome. It is likely to make the prospectus longer which is not the general objective of the new prospectus legislation.

In particular, for structured programmes, it is not possible to provide this level of disclosure since on the approval date of base prospectuses, if the type of underlying that will be used (i.e. shares, indices...) is known, it is not yet the case, for instance, for the issuer of the underlying shares and therefore it is not possible to provide information on such issuer. Indeed, the underlying shares used for the issue will be determined at the time of the issue under the programme and will be set out in the final terms.

In addition, if issuers of these underlyings were to be described in the base prospectus, issuers would have to prepare supplements each time there is a new material information affecting the issuers of these underlyings. This would be very cumbersome for issuers.

The fact that this level of information is required for asset backed securities is relevant but this is not the case for derivative securities.

This type of information should be left to the marketing documentation.

Question 49: Do you consider that the requirements should be different where the return of the investment is linked to the credit of other assets (i.e. credit linked securities) than where the return is linked to the value of a security?

No, please refer to AMAFI's answer to Question 48. It is not possible in the base prospectus to already set out reference obligations of the credit linked securities and their issuers. This information can only be known on the issue date.

Question 50: Do you consider that any further changes be made to the derivatives securities building block? Please advise of any costs and benefits that would be incurred by the further changes you propose.

Question 51: 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).

As a professional organisation, AMAFI is unable to respond to this question.

I. Building block on the underlying share (Annex 8) **(DTA on p. 123 and 124 of the CP)**

Question 52: Do you agree with the proposed amendments to the annex relating to the underlying share?

AMAFI agrees with the proposed amendments which are already in effect in France, except as regards item 1.11 in respect of which it has two observations:

The first one is that the language of a) of item 1.11 should be modified, as mentioned below, in order to make it clearer and to reflect the fact that what is proposed only makes sense if it takes into account the situation of one shareholder which does not participate in the operation and not the situation of all the shareholders

The second observation is that for equity-linked products, the dilution calculation on the basis of the net asset value per share makes no sense. Therefore the b) paragraph should be deleted.

Consequently, it is proposed to modify item 1.11 as follows:

Proposed modification:

1.1 ~~A comparison of:~~

- a) ~~Participation in share capital and voting rights of **an** existing shareholders before and after the capital increase resulting from the public offer, with the assumption that **such** existing shareholders **does** not subscribe for the new shares; **and**~~
- b) ~~The net asset value per share as of the date of the latest balance before the public offer (selling offer and / or capital increase) and the offering price per share within that public offer.~~

Question 53: 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).

As a professional organisation, AMAFI is unable to respond to this question.

J. Registration document for securities issued by third countries and their regional and local authorities (Annex 9)
(DTA on p. 125 to 128 of the CP)

Question 54: Do you agree that the annex for third countries and their regional and local authorities should remain unchanged (with the exception of the reference to Member States)?

K. Asset-backed securities registration document (Annex 10)
(DTA on p. 129 to 136 of the CP)

Question 55: Do you agree with the proposal relating to the asset backed securities registration document?

Question 56: 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).

L. Additional building block for asset-backed securities (Annex 11)

(DTA on p. 140 to 145 of the CP)

Question 57: Do you agree with the proposal relating to the asset backed securities building block?

Question 58: Do you agree with the proposal to allow reduced disclosure where the securities comprising the assets are listed on an SME Growth Market?

Question 59: 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).

M. Building block for pro forma financial information (Annex 12)

(DTA on p. 146 to 148 of the CP)

Question 60: Do you agree with the amendments to the pro forma building block? Should any further amendments be made to this annex? Please advise of any costs and benefits implied by the further changes you propose.

AMAFI agrees with the proposed amendments.

N. Additional building block for guarantees (Annex 13)

(DTA on p. 150 of the CP)

Question 61: Do you agree that the additional building block for guarantees does not need to change other than the minor amendments proposed by ESMA?

AMAFI agrees that the additional building block for guarantees does not need any further change.

O. Schedule on depository receipts issued over shares (Annex 14)
(DTA on p.152 to 187 of the CP)

Question 62: Do you think that depository receipts are similar enough to equity economically to require the inclusion of a working capital statement and / or a capitalisation and indebtedness statement? Please advise of any costs and benefits that would be incurred as a result of this additional disclosures.

AMAFI cannot disagree with this analysis and, in consequence, with the requirement of a working capital statement and / or a capitalisation and indebtedness statement.

Question 63: 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).

As a professional organisation, AMAFI is unable to respond to this question.

P. Registration document for securities issued by collective investment undertakings of the closed-end type (Annex 15)
(DTA on p. 189 to 196 of the CP)

Question 64: Do you agree with the changes proposed by ESMA for collective investment undertakings?

Question 65: Is greater alignment with the requirements of AIFMD necessary? If so, where?

Question 66: Do you agree with the proposal to allow reduced disclosure where the securities issued by the underlying issuer/collective investment

Question 67: 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).

Q. Requirements for convertible and exchangeable debt securities

(Proposal appearing on p. 196 of the CP)

Question 68: Do you consider that any changes are required to the existing regime for convertible and exchangeable securities? If so, please specify.

AMAFI considers that no changes other than those proposed are required regarding convertible and exchangeable securities.

R. List of specialist issuers (Annex 16)

(DTA on p. 196 of the CP)

Question 69: Do you consider that any other types of specialist issuers which should be added? If so, please specify.

AMAFI disagrees with the proposed replacement of the notion of “*Companies with less than three years of existence*” by that of “*Start-up companies*”, the latter being a notion which is far more difficult to understand than the former. Explanations concerning all categories of “*specialist issuers*” should be given at Level 2.

S. Registration document for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD

(Proposal appearing on p. 198 of the CP)

Question 70: Do you agree with ESMA’s proposal not to develop a schedule for securities issued by public international bodies and for debt securities guaranteed by a Member State of the OECD?

T. Universal Registration Document (Annex 17)

(DTA on p. 203 and 204 of the CP)

Question 71: Do you agree that the URD disclosure requirements should be based on the share registration document plus additional disclosure items?

AMAFI agrees with that proposal.

First of all, AMAFI considers that the URD can be a very useful tool for certain issuers who want to seize market opportunities and be in a position to complete a transaction rapidly.

Secondly, the URD is also, generally speaking, a communication tool for issuers (please refer to AMAFI’s response to Question 4) who should therefore benefit from a more flexible order of information than a

prospectus and be able to choose the way and the order in which they will present the elements to be included in the URD. AMAFI fully agrees with ESMA's position expressed in § 27 of the CP. Indeed, for as long as a cross reference list is provided, it is important to allow issuers, in the URD, to disclose information in an order and format that can be adapted depending on the type of issuer and securities.

Question 72: Should the URD schedule contain any further disclosure requirements?

No.

Question 73: 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).

As a professional organisation, AMAFI is unable to respond to this question.

U. Secondary issuance registration document (Annex 18)
(DTA on p. 210 to 219 of the CP)

Question 74: Do you consider that the proposed disclosure is sufficiently alleviated compared to the full regime? If not, where do you believe that additional simplification can be made? Please advise of any costs and benefits implied by the further changes you propose.

AMAFI strongly disagrees with the proposal in § 13.1 (explained in § 245 of the CP) to have “a summary... presented in an easily analysable, concise and comprehensible form and shall not be a replication of information already published under Regulation (EU) N° 596/2014”. Furthermore, it is specified in § 245 of the CP that “The summary shall not consist of simply a list of disclosures or links thereto and only MAR disclosures that are relevant to a particular offer shall be summarized”.

AMAFI considers that this requirement is far too burdensome. It should be possible to simply give a list of disclosures already made with links giving access to such information. Requiring a specific summary goes against the objective of simplification.

Question 75: Should secondary disclosure differ depending on whether the issuer is listed on a regulated market or on an SME Growth Market?

No, there is no reason to make a difference depending on whether the issuer is listed on a regulated market or an SME Growth Market, as the issuer in both cases is subject to both the Transparency Directive and MAR. In addition, making such a difference would complicate significantly the disclosure process.

Question 76: Do you consider that item 9.3 (information on corporate governance) is necessary?

Information on corporate governance appears in item 8.3. AMAFI agrees with the proposal (and also with what is proposed in item 9.3).

Question 77: Do you consider that information on material contracts is necessary for secondary issuance?

Information on material contracts should already appear in Section 5 (Business overview) and / or in Section 13 (Regulatory Disclosures). Having regard to the objective of alleviating prospectuses for secondary issuances, it does not seem necessary to have a specific item dedicated to material contracts.

Question 78: 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).

As a professional organisation, AMAFI is unable to respond to this question.

V. Secondary issuance securities note (Annex 19)
(DTA on p. 220 to 231 of the CP)

Question 79: Do you consider that there is further scope for alleviated disclosure in the securities note? Please advise of any costs and benefits implied by the further changes you propose.

No.

Question 80: Is a single securities note, separated by security type, clear or would it be preferable to have multiple securities note schedules?

AMAFI is in favour of having a single securities note, separated by security type, which is likely to give a clear and more understandable information.

Question 81: 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)

As a professional organisation, AMAFI is unable to respond to this question.

II. Consultation Paper – Draft technical advice on content and format of the EU Growth Prospectus

A. Format of the EU Growth Prospectus (DTA on p.18 to 20 of the CP)

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

AMAFI considers that some information that it is proposed not to require in the registration document and/or the securities note could be particularly important for certain issuers, if only to make their offer attractive to investors: for instance, information concerning research and development, patents and licenses, joint ventures and undertakings and real estate, can be particularly of value in certain cases. It should be left to issuers to decide whether to include such information with a recommendation to disclose the type of information which is particularly important given the activity of the issuer.

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

AMAFI is not opposed to limiting the flexibility in that respect and having a standardized format which, in the end, may be easier to use for the issuers and may be more attractive for investors.

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

AMAFI agrees with the proposal. It is important for SMEs and midcaps to be able to put forward their strategy, performance and business environment before describing the risk factors which, in any case, will already appear, for most of them, in the summary.

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

No, AMAFI disagrees with that proposal (please see also AMAFI's response to Question 1 of the first consultation *on the format of the Prospectus, the Base Prospectus and the Final Terms*), for several reasons: the purpose of such cover notes is not clear; the principle of such notes is not provided by

level 1 legislation and there is not ground for adding such a requirement at level 2; finally, it could duplicate the information contained in the summary and raise liability issues.

Therefore cover notes should not be mandatory. The possibility of having cover notes should simply remain a possibility as provided in ESMA's Q&A §9 ([ESMA/2016/1674](#)).

B. Content of the EU Growth registration document (Annex 1) **(DTA on p. 34 to 49 of the CP)**

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

Yes, AMAFI agrees with that presentation and considers that it is fit for purpose for SMEs.

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

Yes, AMAFI agrees with the proposal to have a single registration document applicable to both equity and non-equity issuances.

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

It is particularly important that SMEs and midcaps publish profit forecasts if they want to attract investors. This question however raises a sort of conflict between the issuers' need to alleviate the cost of producing a prospectus and the investors' need to have reliable information on an issuer before considering making an investment. The proposal to include, in the EU Growth prospectus, any published forecasts without an obligation for an auditor's report would certainly have a significant and positive impact on the cost of producing such a prospectus. However, the possible risk is that it may not give the potential investors the comfort they need in order to make an investment decision. On the other hand, if an auditor's report were to be required, it is likely that some issuers would not publish any forecasts at all, which would be an even less satisfactory situation.

In the end, all things considered, AMAFI would agree with ESMA's proposal on the basis that it is in the issuers' interest to provide valuable and reliable information even in the absence of an auditor's report.

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

Yes.

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

Yes, the information required in relation to major shareholders is fit for purpose.

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

AMAFI agrees that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards. However, it should not be an obligation. To reflect the fact that this should be left to the issuer's decision, AMAFI considers that the wording of the second sentence of § 6.1.3 should be modified as follows:

"If IFRS is not applicable, the financial statements ~~must~~ **may** be prepared according to:

- (a) [.....]
- (b) [.....]"

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

No.

Question 12: Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.

AMAFI considers that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers.

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

As a professional organisation, AMAFI is unable to respond to this question.

C. Content of the EU Growth securities note (Annex 2) **(DTA on p. 54 to 69 of the CP)**

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

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

AMAFI agrees with this proposal to have a single securities note applicable both to equity and non-equity issuances.

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

AMAFI considers that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers.

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

No.

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

As a professional organisation, AMAFI is unable to respond to this question.

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

A further reduction or simplification of the disclosure requirements would necessarily have an impact on the cost of drawing up a prospectus. And the more significant the reduction or simplification, the more significant would be the impact on the price. But this should not be the sole concern. The major concern should be how to produce, at the best possible cost, a prospectus that will contain sufficient reliable information to make it attractive for investors to invest in the issuer. AMAFI considers that to achieve that dual objective, the proposed scheme appears to be satisfactory.

D. Summary of the EU Growth Prospectus (Annex 3) **(DTA on p. 74 to 80 of the CP)**

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

Yes, it is.

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

Limiting the length of the summary may constitute an additional constraint. AMAFI wonders whether this really constitutes an improvement for the issuers and investors concerned. If indeed, the particulars of an issuer are less "consistent", the summary is likely to be shorter. But this may not necessarily be the case. And therefore, is it really worth reducing by one page the maximum length of the summary of the EU Growth prospectus? AMAFI is not convinced of that.

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

AMAFI considers that imposing a maximum of 10 risk factors instead of 15 may constitute an additional constraint in certain cases and therefore, such mandatory reduction does not constitute an improvement and is not likely to be beneficial to either the issuer or the investors. In practice, and in certain cases, there may be more risks involved in investing in a smaller company than in a larger company. Therefore limiting the number of risk factors in the resume, which is more likely to be the main (or even sole) document on which most investors will rely, seems inappropriate and counterproductive.

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

Yes, SMEs are less likely to have their securities underwritten. On the other hand, they are more likely to be the subject of subscription commitments/undertakings by historical shareholders or by new investors. If such commitments exist, it seems important to disclose them as they may have a significant impact on the future success of the offer.

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

AMAFI agrees with the proposed content of the key financial information set out in the summary of the EU Growth prospectus.

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

Yes.

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

No.

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

Yes.

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

As a professional organisation, AMAFI is unable to respond to this question.

III. Consultation Paper – Draft technical advice on scrutiny and approval of the Prospectus

A. Scrutiny of the prospectus and scrutiny and review of the URD (DTA on p. 28 to 32 of the CP)

Question 1: 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?

AMAFI agrees with the proposed criteria for scrutinizing or reviewing the completeness of the information.

Question 2: 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.

Yes, NCAs should definitely apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses as the investors concerned have necessarily a very different knowledge of those matters and ability to understand the information put at their disposal. Given the knowledge and ability of wholesale investors, the criteria set forth in Article A(2) seems far too detailed and burdensome.

Question 3: 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?

AMAFI agrees with the criteria for assessing the consistency of a prospectus proposed in Article A(3).

Question 4: 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?

No.

Question 5: Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?

AMAFI agrees that it is not necessary to address partial/repeated reviews of a URD in the technical advice.

Question 6: 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)?

Yes, absolutely. It is important that the principle of a proportionate approach be adequately implemented.

Question 7: 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.

As a professional organisation, AMAFI is unable to respond to this question.

Question 8: 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?

No.

B. Approval of the prospectus and approval and filing of the URD (DTA on p. 43 to 48 of the CP)

Question 9: Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?

It would seem that ESMA has identified the necessary amendments to be made to the existing procedures for approval of the prospectus.

Question 10: Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

Question 11: Do you agree with the procedures for approval of the URD?

Question 12: 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?

Question 13: 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.

As a professional organisation, AMAFI is unable to respond to this question.

C. Conditions for losing status of frequent issuer **(Proposal on p. 51 of the CP)**

Question 14: 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.

AMAFI agrees that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer which are sufficiently detail at Level 1.

Question 15: Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?

No.

