esma European Securities and Markets Authority

Response form for the Consultation Paper on Guidelines on risk factors under the Prospectus Regulation

13 July 2018

European Securities and Markets Authority

Date: 13 July 2018

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on Guidelines on risk factors under the Prospectus Regulation. Responses are most helpful if they:

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

ESMA will consider all responses received by 05 October 2018.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_GRF_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_GRF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GRF_ABCD_RESPONSEFORM.
    - Upload the form containing your responses, **in Word format**, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Guidelines on risk factors under the Prospectus Regulation").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. **Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed.** A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

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

Who should read the Consultation Paper

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

General information about respondent

Name of the company / organisation	Eumedion
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Netherlands

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_GRF_1>
Intentionally left blank.
<ESMA_COMMENT_GRF_1>

Specificity

Q1 : Do you agree with the suggested draft guidelines on specificity? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_1>
We agree. Some risks may seem generic as they apply to many companies, for example the risk that the company may not be able to refinance its upcoming financial debt obligations. The guidelines in our view validly do not prohibit the inclusion of such a risk in the relevant risk factors, but merely require the company to explain why this risk is so prominent for the company. For example the refinancing risk could be higher if the company has insufficient high quality unencumbered assets to pledge as collateral for a new loan.<ESMA_QUESTION_GRF_1>

Materiality

Q2 : Do you agree with the suggested draft guideline 3? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_2>
We agree. Risk factors should indeed only relate to material risks. The reasons why a risk is material should indeed become evident from the information provided in the prospectus.
<ESMA_QUESTION_GRF_2>

Q3 : Do you agree with the suggested draft guideline 4 on quantitative information? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_3>
We agree, however the guideline would become more useful if it would specifically highlight that the quantitative information could also include the use of scenarios or specifying a range of outcomes. A scenario analysis is already quite common for many companies and benefits from meaningful description on the various scenarios. We also suggest that ESMA would explicitly mention in the final guidelines the possible use of a range as an alternative, or to complement, a point estimate. Such range could indicate a realistic minimum and a realistic maximum exposure to a specific risk. A range is even preferred above a point estimate (or no disclosure at all) if it were unreasonable or less useful for investors to provide a point estimate. For example, if a company faces litigation a point estimate may damage the companies interest if it were to reveal the company's position. In such case the disclosure of a range of outcomes can provide the market with critical information about the potential loss of an unfavourable ruling, without materially damaging the company's position in court.
The disclosure of a range of outcomes may also serve investors better by providing an indication of both a realistic minimum and a realistic maximum exposure to a specific risk if it were to materialise. In the mean time a range is for a company likely to be less sensitive to disclose as in many cases any point estimate is bound to be wrong.<ESMA_QUESTION_GRF_3>

Q4 : Do you agree with the suggested draft guideline 5 on mitigating language? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_4>
We agree. The usefulness of prospectuses benefits from the use of clear and concise language.
<ESMA_QUESTION_GRF_4>

Corroboration

Q5 : Do you agree with the suggested draft guideline 6 on corroboration of specificity and materiality? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_5>
We agree. The relevance of any risk factor should be apparent from the information in the prospectus
<ESMA_QUESTION_GRF_5>

Presentation of risk factors across categories

Q6 : Do you agree with the suggested draft guidelines on Presentation of risk factors across categories? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_6>
We only agree if it remains apparent which of the risks belong to the key risks for the company as a whole (usually not exceeding 10). The names of categories can help provide context to the mentioned risk factors. We agree that within a category, the important risks are presented first. There is also a potential drawback to the use of categories: it is quite likely that companies may assume that if using categories, the concept of key risks should be interpreted identifying key risks of a category. The undesired outcome would be that the total number of key risks balloons in a way that it no longer is apparent what key risks are the key risks for the company are as a whole (usually no exceeding 10). Also, the top risks of each category not necessarily corresponds with the top risks for the company as a whole. Eumedion suggests that irrespective of the number of risk categories a company reports, it should remain apparent which risks belong to the key risks for the company as a whole (usually not exceeding 10). Therefore, some risk categories may not necessarily contain a single key risk.

<ESMA_QUESTION_GRF_6>

Q7 : Do you agree with that the number of categories to be included in a risk factor section, should not usually exceed 10? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_7>
We only agree if it remains apparent which of the risks belong to the key risks for the company as a whole (usually not exceeding 10). We refer to our response to question 6.
<ESMA_QUESTION_GRF_7>

Focused/concise risk factors

Q8 : Do you agree with the suggested draft guidelines on focused/concise risk factors? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_8>
We agree.
<ESMA_QUESTION_GRF_8>

Summary

Q9 : Do you agree with the suggested draft guideline on risk factors in the summary? If not, please provide your reasoning.

<ESMA_QUESTION_GRF_9>
We agree.
<ESMA_QUESTION_GRF_9>

General

Q10 : Do you agree with the proposed draft guidelines? Have you any further suggestions with regard to draft guidelines addressing a particular section or the guidelines in general?

<ESMA_QUESTION_GRF_10>
We have no further suggestions.
<ESMA_QUESTION_GRF_10>

Q11 : Do you believe that market participants will bear any additional cost as an indirect effect of the suggested draft guidelines? If yes, please indicate the nature of such costs and provide an estimation.

<ESMA_QUESTION_GRF_11>
Yes, we believe that market participants will bear such costs. We would not expect these guidelines to result in material changes to the existing costs.
<ESMA_QUESTION_GRF_11>