

9 March 2018

European Securities and Markets Authority
103 rue de Grenelle
75007 Paris
France

Re: Consultation paper – draft regulatory technical standards under the new Prospectus Regulation.

Dear Sir/Madam,

CFA Institute appreciates the opportunity to comment on ESMA's draft regulatory technical standards under the new Prospectus Regulation.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 140,000 members in 150 countries and territories, including 133,000 Chartered Financial Analyst® charterholders, and 147 member societies.

Specific Comments

Question 1: Do you agree that the KFI extracted from the issuer's historical financial information should be sign-posted?

CFA Institute generally supports ESMA's position on key financial information (KFI) in the summary prospectus. In our recent report *Designing a European Summary Prospectus using Behavioural Insights*¹ we proposed a template for this disclosure document, which we believe is compatible with the KFI requirements in this consultation. First, we agree that KFI set out in the summary must be extracted from the historical financial information presented in the relevant sections of the prospectus and not be generated in a unique way for the summary. We agree with ESMA's rationale for this approach, the general premise being that the term 'summary' implies that the investor cannot expect to find an exhaustive set of financial information in the document and must therefore expect to refer to the full prospectus to obtain a comprehensive picture of the issuer.

More specifically, ESMA proposes that, for non-financial equity issuers, three years of historical financial information must be provided along with the most recent interim income, cash flow, and balance sheet statements. For retail non-equity issuers, the historical record is reduced to two years. To allow further flexibility in the summary prospectus, ESMA proposes to allow Alternative Performance Measures (APMs) to be used as long as they are obtained from the full prospectus. Specifically, three APM line items are allowed as long as they are key to the issuer or the securities being offered, and these must be flagged/ sign-posted as such in the summary.

¹ <https://www.cfainstitute.org/learning/products/publications/ccb/Pages/ccb.v2017.n2.1.aspx>

CFA Institute has, in general, supported sign-posting as a communication principle. Sign-posting helps readers to identify the linkage between information within filed documents and/ or helps to identify information sets of differing attributes (e.g. audited versus non-audited). Hence, we would support signposting that distinguishes audited historical financial information versus APMs presented within the KFI.

Question 2: Would you suggest the inclusion of specific templates for other types of issuer? Please specify and explain your reasoning.

CFA Institute agrees with ESMA's proposal that the nature of the disclosures in the summary prospectuses should be allowed to vary somewhat between different types of issuers, particularly between equity and non-equity securities. ESMA proposes six templates:

- 1) Non-financial entities – equity securities;
- 2) Non-financial entities – non-equity securities;
- 3) Credit institutions – equity and non-equity securities;
- 4) Insurance companies – equity and non-equity securities;
- 5) Special Purpose Vehicles; and
- 6) Closed-end funds.

CFA Institute does not have a strong view on the correct number of different types of issuers that should have unique templates, but would caution against expanding this list even further as this may begin to introduce needless complexity, and cause the summary prospectus to lose some of the generality and simplicity that was one of the aims of the Prospectus Regulation.

Question 4: Given the page limit for the summary please provide your views on which items of historical financial information would be most useful for retail investors.

CFA Institute recognises the limits placed on the presentation of financial information in a fixed-page document. In our report *Designing a European Summary Prospectus using Behavioural Insights* we dedicate one full page to tables of summarised financial information. Within that page, the space dedicated to each financial statement broadly reflects our opinion on the rank order of usefulness of financial information to retail investors:

- Statement of financial performance/ income statement;
- Statement of financial position/ balance sheet;
- Statement of cash flows for non-financial institutions; and
- APMs/ further line items.

Question 5: Do you agree with the proposal to allow the use of footnotes to describe APMs or could this result in lengthy footnotes and complicated explanations?

CFA Institute supports the proposal to allow the use of footnotes to explain APMs as this will help investors to better understand these measures. The benefits of enhanced transparency from such disclosures should outweigh the concerns about excessive detail as there is a fixed limit of three APM line items in the summary. Given ESMA's requirement that all information contained in the summary (including APMs) be included in the prospectus itself, CFA Institute believes it should be possible for issuers to provide concise footnotes that summarise a particular APM and reference the relevant part of the prospectus where further elaboration is deemed necessary.

Question 6: Do you agree that issuers should be given flexibility to present pro forma financial information as additional columns to the relevant tables or as a separate table? If not, should a format be mandated, bearing in mind the page limit for the summary as well as the requirement for the summary to be comprehensible?

ESMA proposes that pro forma figures should be presented in the summary prospectus in the form of extra columns appended to the tabular templates, or a separate pro forma table. Given the full prospectus must be read to make an informed investment decision, ESMA considers that there need not be a requirement to include the full narrative underpinning the pro forma figures, merely a brief explanation.

In general, CFA Institute agrees with ESMA's proposal but would like to caution against the likelihood that presenting an additional one or two columns for pro forma figures (in addition to the historical and/or interim data) will not be possible while maintaining the readability and comprehensibility of a typical page. The discussion in paragraphs 48 to 51 is not very clear on the reasons underpinning the choices presented, and what the different presentation formats would look like. A tabular illustration would have been helpful, but appears to be missing from pages 24-32.

It is also not clear whether paragraph 51 is referring to some form of reconciliation. If this is the case, we again reiterate our concerns about physically presenting a table with 2-3 years of historical data, interim data, pro-forma data, and additionally a column of adjustments that yield the pro forma figures.

CFA Institute recommends that ESMA consider requiring a separate pro forma table in the interests of readability, and by creating this opportunity cost for using the finite document length to present pro forma figures, to encourage issuers to carefully consider whether the pro forma information is genuinely necessary for inclusion in the summary.

Question 7: Do you agree that complex financial information in the summary should be presented according to its presentation in the prospectus? If not, please specify and provide alternative ways of presentation.

CFA Institute believes that for issuers with complex financial histories, where information about entities other than the issuer is necessary to make an informed investment decision, the summary prospectus should not be considered a sufficient document on the basis of which to make that decision. We do not think it is a prudent use of the finite document length to attempt to replicate particularly complex financial histories presented in the full prospectus in the summary document. Instead, in these complex cases, we believe investors should be presented with a summary of the complex financial history and a strong warning that the summary will not and cannot provide a comprehensive account of that history, and that referral to the full prospectus is necessary.

Question 22: In particular, do you agree with the requirement to include warnings in advertisements? Do you consider that the suggested warnings are fit for purpose in terms of investor protection?

CFA Institute agrees with the requirement to include warnings in advertisements. In our report *Designing a European Summary Prospectus using Behavioural Insights* we document the importance of investor warnings, and integrate them into several pages of our proposed summary prospectus template. Behavioural research (see, for example: Erta, et al. (2013)²) finds that in the context of

² Erta, K., S. Hunt, Z. Iscenko, and W. Brambley. 2013. *Applying Behavioural Economics at the Financial Conduct Authority*. London: Financial Conduct Authority.

investment products, when interpreting the range of returns, consumers make more conservative choices when information on a fund's losses was emphasized. This highlights the importance of constantly reminding readers of a prospectus that the investment is risky and capital losses may occur.

Concluding Remarks

CFA Institute appreciates this opportunity to contribute to ESMA's efforts in developing technical standards under the Prospectus Regulation. Please do not hesitate to contact us should you wish further elaboration of the points raised.

Yours faithfully,



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