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RESPONSE TO ESMA CONSULTATION ON GUIDELINES ON RISK FACTORS UNDER THE PROSPECTUS REGULATION

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SUMMARY

We welcome ESMA's consultation and would like to **insist on the following points**:

- the specificity criterion has to be clarified, in order to make sure that risk factors that apply to a wide range of companies but are still specific to every one of those companies, are considered specific according to the guidelines on risk factors.
- the description of the potential negative impact of the risk factors must not result in an obligation for issuers to produce quantitative information or to disclose information which would endanger their operations or create new risks.
- the concept of mitigating language should be clarified to ensure that description of specific risk management strategies and techniques does not fall under this definition.
- the limit of ten categories of risk factors does not ensure comprehensibility for investors and should not be imposed.

RESPONSE TO THE SPECIFIC QUESTIONS

Specificity

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

We agree that the risks disclosed in a prospectus should be specific to the issuer/guarantor and to the securities concerned and that their description should establish a clear and direct link. However the guidelines, as currently drafted, are written with the presumption that risk factors are always binary, being either general or specific, but not both. Yet, certain risk factors relating to an industry or market sector may be relevant for all issuers operating in that space and if so, should also be included – notwithstanding that they may also be included in many other prospectuses. We are concerned that the suggested draft guidelines on specificity ignore this fact.

Therefore, we recommend ESMA clarify the approach issuers should take in this regard. The guidelines should recognize that there are certain generic risk factors which will be relevant to all prospectuses for a particular type of security and consequently, they should be included if relevant.

For example, plain vanilla securities (e.g. 10-year fixed rate bonds) even of different issuers can have identical securities features. It seems only logical that the description of the securities risks for such bonds are also very similar. Deviating descriptions of identical securities do not support a better understanding of the securities risks for these instruments and could be misleading especially for retail investors. ESMA should acknowledge that there can be similar descriptions of securities risks for such plain vanilla securities. Another example would be investors considering the opportunity to acquire securities issued by a biotechnology company: they should be aware that these companies in the first stage of their development usually "burn cash" and do not recognise any revenue.

While we understand ESMA's desire to avoid generic risk factors, the requirement for specificity should not result in the requirement to disclose details especially trade secrets. It cannot be the intention of ESMA to require an issuer to identify, for instance, specific weak spots in the IT security and thereby "invite" cyberattacks. In this example, the description of an IT security risk for the issuer should not be required to contain such details. ESMA should specify that issuers may resort to a more general description of risks if specificity would endanger their operations or create new risks.

Also, we see critical if companies are required to draft different risk reports according to different pieces of EU legislation. For example, it must be made clear that the descriptions of the risk factors in the annual financial report comply with the requirements of the Prospectus Regulation. According to the principle of better regulation and following the call for evidence on coherence and consistency of EU financial markets regulation, inconsistencies in reporting requirements should be avoided. Therefore, companies should be allowed to copy and paste or incorporate by reference risk factors from other reports they have filed.

Finally, the reference to boiler-plate risks or disclosures remains unnecessary. Worse than that, the word "boiler-plate" has no legal definition and could for this reason create undesirable legal uncertainty.

Hence, we suggest amending draft guideline 1 as follows:

« Each risk factor should identify and disclose a risk that is relevant for the issuer/guarantor or the securities concerned ~~rather than simply disclosing 'boiler-plate' risks or using and avoid 'boiler-plate' disclosures~~. **However, the description of the risk factor does not require disclosure of any confidential information that would endanger the operations of the issuer/guarantor or create new risks.** »

Materiality

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

Please refer to our answer to question 10: we consider that the sentence starting with «*The competent authority should not approve a prospectus where…*» should be deleted.

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

Article 16 of the Prospectus Regulation is clear that there is no obligation to include quantitative information on the potential impacts of the risks disclosed in the risk factors section: « ***Each risk factor shall be adequately described, explaining how it affects the issuer or the securities*** *being offered or to be admitted to trading. The assessment of the materiality of the risk factors provided for in the second subparagraph* ***may*** *also be disclosed by using a qualitative scale of low, medium or high*. »

Disclosing quantitative information on potential impacts raises major issues for issuers taking into account that risks are rapidly changing and evolving. Furthermore, materiality is very difficult to assess, given the differing characteristics of risks (probability and timing of occurrence, as well as uncertain effects) and may be subjective. Finally, issuers have the obligation to provide the investors with all relevant details on the risks related to the issuer (and the guarantor, if any) and the relevant security and not with an estimated figure which might lead the investor into a wrong direction.

ESMA should consider that quantitative information, where disclosed in a prospectus, would need to be covered by the comfort letter provided by the auditors of the issuer to the banks placing the securities. As auditors are very hesitant to cover any numbers not derived from the financial reporting of the issuer, we anticipate that it may cause a significant burden for issuers or be impossible, to have quantitative information (which is likely to be an estimate) covered by comfort letter. Therefore, no issuer should be required to produce quantitative information.

Besides, we believe that in some cases disclosing quantitative information would require a lengthy set of arbitrary assumptions which would divert attention from the underlying risk. Thinking of cyberattacks as an example, these may result in business interruption, property damage and also liability claims each of which could be huge – but nearly impossible to quantify. Considering the prospectus liability it can be very burdensome for issuers to quantify risks in a way presentable in a prospectus. Such information can often be expected to be an estimate for which an issuer may not want to fall under the prospectus liability.

We suggest the following amendments to draft guideline 4 in order to faithfully reflect the requirement laid down in article 16 of the Prospectus Regulation:

«**The competent authority should review that the potential negative impact of the risk factor on the issuer/guarantor and/or the securities is disclosed.**

~~Where available, the disclosure of quantitative information, in order to~~ **T**he description of the potential negative impact of the risk factors may be described using a qualitative approach**.**

~~For example, in relation to qualitative disclosure, to the extent it is explained how the risk factor affects the issuer or the securities one option for the presentation of the materiality of risk factors may be by reference to the scale of low, medium or high as per Article 16(1) subparagraph 3 of the Prospectus Regulation. However, the persons responsible for the prospectus are not obliged to provide such a scaled ranking of risks according to their materiality. The potential impact of the risk factor needs to be disclosed in any case.~~ »

As regards the last paragraph above, we are not sure that repeating the level 1 legislation, which already clearly states that the assessment of materiality may be disclosed using a qualitative scale, really helps both regulators and issuers preparing prospectuses.

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

We consider that it should be made clear that a description by an issuer of the measures and procedures in place to prevent and/or manage specific risks should not be considered mitigating language.

Placing a prohibition on a company explaining how it seeks to mitigate the risks that it faces can only serve to give a distorted view of the actual residual risk that it, and by extension its investors, face. This

could lead to situations where investors do not receive all of the information that they require, in order to make an informed investment decision.

Regarding for instance risks linked to financial instruments, issuers can cross-reference the content of the risk factors section with information disclosed in the notes of their financial statements established under IFRS. In accordance with IFRS 7, issuers are required to disclose information about management's objectives, policies, and processes for managing those risks.

Therefore, we suggest adding the following statement in the explanatory text following draft guideline 5: « **Any description of the measures and/or policies in place to prevent, manage and/or monitor the risks identified, should not be considered mitigating language.** »

Corroboration

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

We consider that when checking the corroboration of risk factors, the competent authority should assess whether the description of the risk factors is capable of being understood, taking into consideration the nature and circumstances of the issuer, the type of securities and the type of investors targeted.

Please refer also to our answer to question 10: we consider that the sentence starting with «The competent authority should not approve a prospectus where…» should be deleted.

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.

We agree with draft guidelines 7, 8, 9 and 10 regarding the presentation of risks factors across categories. As regards the different categories (draft guideline 7), we support ESMA's approach to illustrate with examples the categorisation of risk factors and leave flexibility to issuers to determine their own categories. As a matter of fact, the choice of the categories does not only depend on the activities and/or nature of the company but also on its strategy, political or macroeconomic developments and even technological evolution: some companies have recently included, in their risk factors section, a description of risks linked to cybercrime. Other companies mention human resources risks linked to either the key role played by some senior managers or specific skills required in their activities.

Consequently, we agree that ESMA should not establish a mandatory list of categories. Companies should be able to determine themselves what categories suit them the best.

As regards the presentation of the most material risk factors in each category, we would like to insist on the fact that there should not be any ranking of the risk factors whether most material or not.

We are suggesting some amendments to draft guideline 7 to clarify this: « In accordance with Article 16 of the Prospectus Regulation, the most material risk factors must be presented first in each category~~,. but i~~It is not mandatory **to rank** ~~that all further~~ risk factors within each category ~~must be ranked~~ in order of their materiality. »

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.

The number of ten categories is questionable and does not ensure comprehensibility for investors: where ten categories could be considered as disproportionate for an issuer, fifteen would be weighed as the right fit for another considering the nature of the issuer and/or securities. There is no need to set in stone such an arbitrary limit. The assessment of disproportion must be made *in concreto* taking into consideration the characteristics of the issuer and/or securities and/or transaction. The key issue is to ensure comprehensibility of the prospectus and as long as comprehensibility is not impaired, issuers should be allowed to determine the number of risks categories.

We are therefore suggesting some amendments to draft guideline 9:

« The competent authority should ensure that the number of categories included in the prospectus is not disproportionate to the size/complexity of the transaction and risk to the issuer/guarantor.

ESMA considers that ~~including more than ten categories in the case of a standard, single issuer, single security prospectus, would go beyond the requirement in Article 16(1) of the Prospectus Regulation which states that the 'risk factors shall be presented in a 'limited' number of categories''. This figure of up to ten categories should be reduced where such a number of categories is not relevant or, in other circumstances, it could be extended depending on the case~~ **the assessment of disproportion must be made *in concreto* taking into consideration the characteristics of the issuer and/or securities, in order to ensure that the risk factors are presented in a comprehensible manner.**

~~Fewer categories should be included where that is all that is necessary to categorise the risk factors in a comprehensible manner.~~ »

Focused/concise risk factors

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

We agree with draft guideline 11. ESMA should be aware that the « size inflation » of prospectus is also directly attributable to the practices of some competent authorities and of some counsels, in order to comply with (institutional) investors requests and/or international practices.

Since these guidelines are addressed to competent authorities, ESMA could in addition clarify/explain how competent authorities should address the « size inflation » by limiting requests for adding additional disclosure. Not every item discussed between the authority and the issuer during the review process needs to be included/reflected in the draft prospectus. ESMA should also consider implementing other measures to harmonise the practises of the competent authorities (please refer to our answer to question 10). As regards investors and counsels and other services providers involved in the drafting of prospectuses, ESMA could also envisage developing specific communication strategies to raise awareness.

Summary

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

We agree with draft guideline 12 and that the disclosure of the risk factors in the summary (if applicable) should be consistent with the presentation in each category of the prospectus.

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?

The approval of a prospectus is defined by the Prospectus Regulation as "the positive act at the outcome of the scrutiny by the home Member State's competent authority of the completeness, the consistency and the comprehensibility of the information given in the prospectus". At the end of the day, and after having reviewed the entire prospectus, competent authorities are sole responsible for deciding whether the prospectus should be approved or not. We consider thus that it is inappropriate, in a "level 3" measure, to recommend to competent authorities to refuse the approval of a prospectus. Bearing in mind that the nature of the Level 3 measures is non-binding, and regarding more specifically draft guidelines 2, 3, 6 and 7, we consider that the sentence starting with "*The competent authority should not approve a prospectus where…*" should be deleted.

As regards the disclosure of risk factors, a key challenge for regulators when reviewing risk factors is to ensure that disclosures by different companies operating in a same business sector and/or of the same nature are consistent (i.e. mining companies, for instance, should be faced with the same risks or type of risks). Competent authorities therefore should guarantee that these companies are all subject to the same requirements and level of disclosure of risk factors in order to ensure a level playing field. These guidelines may not be the right tool to address this issue. ESMA should therefore strive to handle this issue through other means such as training programs, workshops, etc. To ensure an efficient and harmonised implementation of article 16 of the Prospectus Regulation it is essential that each competent authority should have a clear policy regarding risk factors and that this policy be harmonised at EU level. The tools mentioned could achieve this goal. On the other hand, too tight guidelines will produce unnecessary burden on issuers and there is still the problem that supervisors will handle the guidelines differently.

We also ask for clarification that the description of the risk factors in the annual financial report can be simultaneously used for the risk section in prospectuses.

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.

Yes, we anticipate a significant increase of direct costs due to the requirements to "rephrase" risk factors year by year and to prioritize them, in particular for the purpose of developing the top 15 risk factors for the summary. These additional requirements will create a massive administrative burden for the issuers and require more coordination between the involved departments (Treasury, Accounting, Legal, Tax, IR, HR etc.).

In addition to that, external costs will also most likely rise due to the increased complexity. The prospectus is a liability document and is always reviewed by external advisors (lawyers, tax lawyers, auditors, etc.). Increasing complexity automatically leads to rising fees. A total estimate of the effects is difficult. However, doubling of the prospectus costs seems likely.

The indirect deterrent effect of increased complexity and legal risks created by the new regulation has also to be taken into account and should not be underestimated. There is an increasing number of issuers that even accepts a financial disadvantage of an estimated 50 to 100 basis points in less heavily regulated financial products.

Last but not least, the required due diligence for an issuance as well as any update of or supplement to a base prospectus will take longer now. So certain market opportunities will not be available for issuers anymore.

All in all, we expect that more and more issuers will look for alternative capital markets outside the EU to satisfy their funding needs. The biggest investors will follow them.

Suggested amendments

ESMA Draft guidelines on risk factors	Amendments: ~~deleted~~ / added
Draft guidelines on Specificity **Guideline 1: The competent authority should review whether the disclosure of the risk factor establishes a clear and direct link between the risk factor and the issuer, guarantor or securities. The competent authority should challenge the persons responsible for the prospectus if it appears that risk factor disclosure has not been drafted specifically for the issuer/guarantor or the securities.** Specificity related to the issuer/guarantor may depend on the type of entity (e.g. start-up companies, regulated entities, specialist issuers, etc.) and specificity related to the type of security may depend on the characteristics of the security. Each risk factor should identify and disclose a risk that is relevant for the issuer/guarantor or the securities concerned rather than simply disclosing 'boiler-plate' risks or using 'boiler-plate' disclosures. Risk factors should not merely be copied from other documents published by other issuers or previously by the same issuer if they are not relevant to the issuer/guarantor and/or the securities. **Guideline 2: The competent authority should challenge the inclusion of risk factors that are generic and only serve as disclaimers or where**	**Draft guidelines on Specificity** **Guideline 1: The competent authority should review whether the disclosure of the risk factor establishes a clear and direct link between the risk factor and the issuer, guarantor or securities. The competent authority should challenge the persons responsible for the prospectus if it appears that risk factor disclosure has not been drafted specifically for the issuer/guarantor or the securities.** Specificity related to the issuer/guarantor may depend on the type of entity (e.g. start-up companies, regulated entities, specialist issuers, etc.) and specificity related to the type of security may depend on the characteristics of the security. Each risk factor should identify and disclose a risk that is relevant for the issuer/guarantor or the securities concerned**.** ~~rather than simply disclosing 'boiler-plate' risks or using and avoid 'boiler-plate' disclosures.~~ **However, the description of the risk factor does not require disclosure of any confidential information that would endanger the operations of the issuer/guarantor or create new risks.** Risk factors should not merely be copied from other documents published by other issuers or previously by the same issuer if they are not relevant to the issuer/guarantor and/or the securities. **Guideline 2: The competent authority should challenge the inclusion of risk factors that are**

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there is no clear and direct link between the issuer/guarantor or the securities and the risk factor. Where necessary, the competent authority should request that the persons responsible for the prospectus amend such risk factor or request a clearer explanation. The competent authority should not approve a prospectus where specificity is not apparent from the disclosure of the risk factor. The following could be considered examples of disclosures that illustrate the specificity of risk factors to the issuer, or extracts from risk factor disclosures that show a clear and direct link between the risk factor and the issuer. (…)	**generic and only serve as disclaimers or where there is no clear and direct link between the issuer/guarantor or the securities and the risk factor. Where necessary, the competent authority should request that the persons responsible for the prospectus amend such risk factor or request a clearer explanation. ~~The competent authority should not approve a prospectus where specificity is not apparent from the disclosure of the risk factor.~~** The following could be considered examples of disclosures that illustrate the specificity of risk factors to the issuer, or extracts from risk factor disclosures that show a clear and direct link between the risk factor and the issuer. (…)
Draft guidelines on Materiality **Guideline 3: Where the materiality is not apparent from the disclosure in the risk factor, the competent authority should challenge the inclusion of the risk factor. Where necessary, the competent authority should request that the persons responsible for the prospectus amend such a risk factor or request a clearer explanation. The competent authority should not approve a prospectus where materiality is not apparent from the disclosure of the risk factor.** If the review of the disclosure in the risk factor contained in a prospectus creates doubt about the materiality of the risk factor, the competent authority should challenge the persons responsible for the prospectus by reference to their responsibilities set out in Article 16 (1) of the Prospectus Regulation. **Guideline 4: The competent authority should review that the potential negative impact of the risk factor on the issuer/guarantor and/or the securities is disclosed.** Where available, the disclosure of quantitative information, in order to illustrate the potential negative impact of a risk factor should be included. However, where quantitative information is not available, the description of the potential negative impact of the risk factors may be described using a qualitative approach.	**Draft guidelines on Materiality** **Guideline 3: Where the materiality is not apparent from the disclosure in the risk factor, the competent authority should challenge the inclusion of the risk factor. Where necessary, the competent authority should request that the persons responsible for the prospectus amend such a risk factor or request a clearer explanation. ~~The competent authority should not approve a prospectus where materiality is not apparent from the disclosure of the risk factor.~~** If the review of the disclosure in the risk factor contained in a prospectus creates doubt about the materiality of the risk factor, the competent authority should challenge the persons responsible for the prospectus by reference to their responsibilities set out in Article 16 (1) of the Prospectus Regulation. **Guideline 4: The competent authority should review that the potential negative impact of the risk factor on the issuer/guarantor and/or the securities is disclosed.** ~~Where available, the disclosure of quantitative information, in order to illustrate the potential negative impact of a risk factor should be included. However, where quantitative information is not available,~~ The description of the potential negative impact of the risk factors may be described using a qualitative approach.

ESMA Draft guidelines on risk factors	Amendments: ~~deleted~~ / added
For example, in relation to qualitative disclosure, to the extent it is explained how the risk factor affects the issuer or the securities one option for the presentation of the materiality of risk factors may be by reference to the scale of low, medium or high as per Article 16(1) subparagraph 3 of the Prospectus Regulation. However, the persons responsible for the prospectus are not obliged to provide such a scaled ranking of risks according to their materiality. The potential impact of the risk factor needs to be disclosed in any case.	~~For example, in relation to qualitative disclosure, to the extent it is explained how the risk factor affects the issuer or the securities one option for the presentation of the materiality of risk factors may be by reference to the scale of low, medium or high as per Article 16(1) subparagraph 3 of the Prospectus Regulation. However, the persons responsible for the prospectus are not obliged to provide such a scaled ranking of risks according to their materiality. The potential impact of the risk factor needs to be disclosed in any case.~~
Guideline 5: Where materiality is compromised by the inclusion of mitigating language the competent authority should challenge the inclusion of such language. Where necessary, the competent authority should request that the persons responsible for the prospectus to amend the risk factor disclosure in order to remove such mitigating language.	**Guideline 5: Where materiality is compromised by the inclusion of mitigating language the competent authority should challenge the inclusion of such language. Where necessary, the competent authority should request that the persons responsible for the prospectus to amend the risk factor disclosure in order to remove such mitigating language.**
Mitigating language is that which could limit the perception of risk including the impact or the probability of the risk factor occurring to the extent that the reader is not clear whether there is any remaining risk. Where mitigating language is included in relation to a risk factor, it can only be used in relation to illustrate its probability of occurrence and the expected magnitude of its negative impact.	Mitigating language is that which could limit the perception of risk including the impact or the probability of the risk factor occurring to the extent that the reader is not clear whether there is any remaining risk. Where mitigating language is included in relation to a risk factor, it can only be used in relation to illustrate its probability of occurrence and the expected magnitude of its negative impact. **Any description of the measures and/or policies in place to prevent, manage and/or monitor the risks identified, should not be considered mitigating language.**
The following is an illustration of mitigating language which reduces the materiality of a risk factor and which obscures the remaining risk. The following mitigating language should be amended in order to remove the mitigating language: In the course of its business activities, the Group is exposed to a variety of risks, including credit risk, market risk, liquidity risk and operational risk. Although the Group invests substantial time and effort in risk management strategies and techniques, it might nevertheless fail to manage risk adequately in some circumstances.	The following is an illustration of mitigating language which reduces the materiality of a risk factor and which obscures the remaining risk. The following mitigating language should be amended in order to remove the mitigating language: In the course of its business activities, the Group is exposed to a variety of risks, including credit risk, market risk, liquidity risk and operational risk. Although the Group invests substantial time and effort in risk management strategies and techniques, it might nevertheless fail to manage risk adequately in some circumstances.
Draft guidelines on Corroboration of the materiality and specificity	**Draft guidelines on Corroboration of the materiality and specificity**

ESMA Draft guidelines on risk factors	Amendments: ~~deleted~~ / added
Guideline 6: Where the competent authority considers that the materiality and the specificity of a risk factor is not corroborated by a reading of the prospectus, the competent authority should challenge the inclusion of such risk factor. Where necessary, the competent authority should request that the persons responsible for the prospectus amend the relevant risk factor or request an explanation, so as to make it clear why it is specific and material. The competent authority should not approve a prospectus where it is not apparent that materiality and specificity are corroborated. While direct/clear corroboration of the materiality and specificity of the risk factor is normally demonstrated via the inclusion of corresponding information elsewhere in a prospectus, this is not necessary in all circumstances. In certain cases, it is sufficient that materiality and specificity of risk factors is identifiable by reference to the overall picture of the issuer/guarantor and the securities presented in the prospectus.	**Guideline 6: Where the competent authority considers that the materiality and the specificity of a risk factor is not corroborated by a reading of the prospectus, the competent authority should challenge the inclusion of such risk factor. Where necessary, the competent authority should request that the persons responsible for the prospectus amend the relevant risk factor or request an explanation, so as to make it clear why it is specific and material. ~~The competent authority should not approve a prospectus where it is not apparent that materiality and specificity are corroborated.~~** While direct/clear corroboration of the materiality and specificity of the risk factor is normally demonstrated via the inclusion of corresponding information elsewhere in a prospectus, this is not necessary in all circumstances. In certain cases, it is sufficient that materiality and specificity of risk factors is identifiable by reference to the overall picture of the issuer/guarantor and the securities presented in the prospectus.
Draft guidelines on Presentation of risk factors across categories **Guideline 7: The presentation of risk factors across categories (depending on their nature) should aid investors in navigating the risk factors section. Where this is not the case, the competent authority should challenge the presentation. Where necessary, the competent authority should request that the persons responsible for the prospectus amend the presentation of risk factors across categories. The competent authority should not approve a prospectus when risk factors are not presented across categories based on their nature.** The categorisation of risk factors and the ordering of risk factors within each category should support their comprehensibility. Both should assist investors in understanding the source and nature of each disclosed risk factor. A risk factor should only appear once, in the most appropriate category. In accordance with Article 16 of the Prospectus Regulation, the most material risk factors must be presented first in each category, but it is not	**Draft guidelines on Presentation of risk factors across categories** **Guideline 7: The presentation of risk factors across categories (depending on their nature) should aid investors in navigating the risk factors section. Where this is not the case, the competent authority should challenge the presentation. Where necessary, the competent authority should request that the persons responsible for the prospectus amend the presentation of risk factors across categories. ~~The competent authority should not approve a prospectus when risk factors are not presented across categories based on their nature.~~** The categorisation of risk factors and the ordering of risk factors within each category should support their comprehensibility. Both should assist investors in understanding the source and nature of each disclosed risk factor. A risk factor should only appear once, in the most appropriate category. In accordance with Article 16 of the Prospectus Regulation, the most material risk factors must be presented first in each category~~,~~. ~~but i~~It is not

ESMA Draft guidelines on risk factors	Amendments: ~~deleted~~ / added
mandatory that all further risk factors within each category must be ranked in order of their materiality. (…)	mandatory to rank ~~that all further~~ risk factors within each category ~~must be ranked~~ in order of their materiality. (…)
Guideline 8: The competent authority should ensure that each of the categories are identified within the risk factors section of the prospectus via the use of appropriate headings. Headings should reflect the nature of the risk factors. When presenting headings it should be ensured that they are easily identifiable in the prospectus, through the use of appropriate spacing and bold font. A category should not be included when it is not relevant. Where a risk factor, or risk factors are similar in nature, they can be arranged and presented under the same heading.	**Guideline 8: The competent authority should ensure that each of the categories are identified within the risk factors section of the prospectus via the use of appropriate headings.** Headings should reflect the nature of the risk factors. When presenting headings it should be ensured that they are easily identifiable in the prospectus, through the use of appropriate spacing and bold font. A category should not be included when it is not relevant. Where a risk factor, or risk factors are similar in nature, they can be arranged and presented under the same heading.
Guideline 9: The competent authority should ensure that the number of categories included in the prospectus is not disproportionate to the size/complexity of the transaction and risk to the issuer/guarantor. ESMA considers that including more than ten categories in the case of a standard, single-issuer, single-security prospectus, would go beyond the requirement in Article 16(1) of the Prospectus Regulation which states that the 'risk factors shall be presented in a 'limited' number of categories''. This figure of up to ten categories should be reduced where such a number of categories is not relevant or, in other circumstances, it could be extended depending on the case. ESMA understands the case of a multi-product base prospectus as an example where further categories may be relevant. Fewer categories should be included where that is all that is necessary to categorise the risk factors in a comprehensible manner.	**Guideline 9: The competent authority should ensure that the number of categories included in the prospectus is not disproportionate to the size/complexity of the transaction and risk to the issuer/guarantor.** ESMA considers that~~ including more than ten categories in the case of a standard, single-issuer, single-security prospectus, would go beyond the requirement in Article 16(1) of the Prospectus Regulation which states that the 'risk factors shall be presented in a 'limited' number of categories'',. This figure of up to ten categories should be reduced where such a number of categories is not relevant or, in other circumstances, it could be extended depending on the case~~ **the assessment of disproportion must be made *in concreto* taking into consideration the characteristics of the issuer and/or securities, in order to ensure that the risk factors are presented in a comprehensible manner.** ~~ESMA understands the case of a multi-product base prospectus as an example where further categories may be relevant.~~ ~~Fewer categories should be included where that is all that is necessary to categorise the risk factors in a comprehensible manner.~~ »
Guideline 10: Categories should only be further	**Guideline 10: Categories should only be further**

ESMA Draft guidelines on risk factors	Amendments: ~~deleted~~ / added
divided into sub-categories in cases where sub-categorisation can be justified on the basis of the particular type of prospectus. Competent authorities should challenge the use of sub-categories in the risk factors section in other circumstances. Sub-categories should only be used where their inclusion can be justified on the basis of the particular type of prospectus. For example, in the case of a base prospectus containing multiple types of securities, sub-categories might be necessary for the presentation of risk factors. In the event that sub-categories are used, the principles that apply for the presentation of risk factors, as described throughout this sub-section on presentation of risk factors across categories, should apply.	**divided into sub-categories in cases where sub-categorisation can be justified on the basis of the particular type of prospectus. Competent authorities should challenge the use of sub-categories in the risk factors section in other circumstances.** Sub-categories should only be used where their inclusion can be justified on the basis of the particular type of prospectus. For example, in the case of a base prospectus containing multiple types of securities, sub-categories might be necessary for the presentation of risk factors. In the event that sub-categories are used, the principles that apply for the presentation of risk factors, as described throughout this sub-section on presentation of risk factors across categories, should apply.

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