

Consultation Paper

Draft Guidelines on disclosure requirements under the Prospectus Regulation



Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. 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 **4 October 2019**.

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 form “ESMA31-62-1333 Response form to CP on Draft Guidelines on disclosure requirements under the PR”, available on ESMA’s website alongside the present Consultation Paper (www.esma.europa.eu → ‘Your input – Open consultations’ → ‘Consultation on Draft Guidelines on disclosure requirements under the Prospectus Regulation’).
- Please do not remove tags of the type <ESMA_QUESTION_CPG_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_CPG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_CPG_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 Draft Guidelines on disclosure requirements 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 standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 this 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.

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Acronyms and definitions

Applicable accounting framework	For the purpose of these guidelines any of the following: (i) International Financial Reporting Standards (IFRS) as adopted in the EU pursuant to Regulation (EC) No 1606/2002 on the application of international accounting standards ¹ ; or (ii) National Generally Accepted Accounting Principles (GAAP), i.e. the accounting requirements stemming from the transposition of the European Accounting Directives (78/660/EEC ² and 83/349/EEC ³ or 2013/34/EC ⁴) into the legal system of the Member States of the European Union; or (iii) GAAP laying down equivalent requirements in accordance with Commission Regulation (EC) No 1569/2007 ⁵ establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directive 2003/71/EC and 2004/109/EC of the European Parliament and of the Council for issuers that are exempted from the requirement of preparing IFRS as endorsed in the EU.
AIF	Alternative investment fund
AIFMD Level 2	Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision ⁶
Alternative Investment Fund Managers Directive (AIFMD)	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC

¹ OJ L 243, 11.09.2002, p. 1-4.

² OJ L 222, 14.08.1978, p. 11-31.

³ OJ L 193, 18.07.1983, p 1-17.

⁴ OJ L 182, 29.06.2013, 19-76.

⁵ OJ L 340, 22.12.2007, p. 66-68.

⁶ OJ L 83, 22.03.2013, p. 1-95.



and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁷

CESR	Committee of European Securities Regulators
CESR recommendations	ESMA update of the CESR recommendations for the consistent implementation of the Commission Regulation (EC) No 809/2004 ⁸
Commission Decision 2008/961/EC	Commission Decision 2008/961/EC of 12 December 2008 on the use by third countries' issuers of securities of certain third country's national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements (notified under document number C(2008) 8218 ⁹
Commission Delegated Regulation	Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 ¹⁰
Competent authority	A competent authority responsible for approving prospectuses under the Prospectus Regulation
ESFS	European System of Financial Supervision
ESG	Environmental, social and governance
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹¹

⁷ OJ L 174, 01.07.2011, p. 1-73.

⁸ ESMA/2013/319 | 20 March 2013

⁹ OJ L 340, 19.12.2008, p. 112-114.

¹⁰ OJ L 166, 21.06.2019, p. 26-176.

¹¹ OJ L 331, 15.12.2010, p. 84-119.



ESMA's Prospectus Directive Q&As	Questions and Answers, Prospectuses, 30th updated version – April 2019 (ESMA31-62-780)
ESMA's Prospectus Regulation Q&As	Questions and Answers on the Prospectus Regulation, Version 1 – 27 March 2019 (ESMA31-62-1258)
EU	European Union
IAS	International Accounting Standards
IAS Regulation	Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards
IFRS	International Financial Reporting Standards (IFRS) as adopted in the EU pursuant to Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council ¹²
Liquidity Coverage Ratio	Liquidity coverage ratio as defined in Article 4(1) of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions ¹³
Minimum Capital Requirement	Minimum capital requirement as defined in Article 248 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Solvency II ¹⁴
Net Stable Funding Ratio	Net stable funding ratio as defined in Article 428(b) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
OFR	Operating and financial review
Persons responsible for the prospectus	The persons to whom responsibility for the information in a prospectus attaches, that is, as the case may be,

¹² OJ L 320, 29.11.2008, p. 1-481.

¹³ OJ L 11, 10.10.2014, p. 1-36.

¹⁴ OJ L 12, 17.01.2015, p. 1-797.

the issuer or its administrative, management or supervisory bodies, the offeror, the persons asking for the admission to trading on a regulated market or the guarantor and any further persons responsible for the information given in the prospectus and identified as such in the prospectus

Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ¹⁵
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ¹⁶
SFT Regulation	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ¹⁷
Shareholder Rights Directive	Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies ¹⁸
Solvency II	Directive 2009/138/EC of the European Parliament and of the Council of the 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ¹⁹
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC ²⁰

¹⁵ OJ L 345, 31.12.2003, p.64-89.

¹⁶ OJ L 168, 30.06.2017, p. 12-82.

¹⁷ OJ L 337, 23.12.2015, p. 1-34.

¹⁸ OJ L 184, 14.07.2007, p. 17-24.

¹⁹ OJ L 335, 17.12.2009, p. 1-155.

²⁰ OJ L 390, 31.12.2004, p. 38-57.



UCITS prospectus

UCITS prospectus referred to in Article 69 of Directive 2009/65/EC of the European Parliament and Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities²¹

URD / RD

Universal registration document or registration document as referred to in the Prospectus Regulation

²¹ OJ L 302, 17.11.2009, p. 32-96.

I. Executive summary

Reasons for publication

In 2005, ESMA's predecessor CESR adopted recommendations in order to provide guidance to financial market participants about how to comply with various disclosure requirements in the Prospectus Directive. By now, a significant amount of time has passed since the CESR recommendations were written and additionally, they were not adopted as guidelines under Article 16 of the ESMA Regulation which means that the comply-or-explain mechanism does not apply to them.

As such, ESMA believes that it is appropriate to update the CESR recommendations in order to make them consistent with the contents of the Prospectus Regulation, while at the same time converting them into guidelines. According to Article 16(2) of the ESMA Regulation, ESMA shall, where appropriate, conduct open public consultations regarding guidelines and analyse the related costs and benefits. ESMA has therefore prepared draft guidelines (please see Annex 2) and is with this Consultation Paper requesting financial market participants to provide their views.

The draft guidelines are addressed to competent authorities and financial market participants. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants shall make every effort to comply with the guidelines once they are finalised. Competent authorities should do so by incorporating the guidelines into their national legal or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

Content

Section II of the Consultation Paper provides the background to the draft guidelines while Section III sets out their purpose and scope. Section IV describes how market participants and competent authorities should comply with the draft guidelines. Section V provides information on the approach that ESMA has taken in relation to updating the CESR recommendations and converting them into guidelines.

ESMA has included several questions throughout the consultation paper to invite stakeholder feedback. For convenience, these questions are summarised in Annex 1. Lastly, Annex 2 contains the draft guidelines.

Next steps

ESMA will consider all feedback it receives to this Consultation Paper. A final report containing a summary of all consultation responses and a final version of the guidelines is expected to be published on ESMA's website in Q2 2020.

II. Background

1. ESMA was set up with the objective of helping to foster investor protection through the establishment of common regulatory and supervisory standards and practices. ESMA achieves this aim by contributing to the construction of a single rule book for EU financial markets and ensuring its consistent application across the EU. One of ESMA's areas of responsibility is to promote the effective and consistent application of financial services legislation with the overall objective of ensuring that investors are provided with appropriate disclosure that enables them to make informed investment decisions.
2. The CESR recommendations were originally adopted in 2005 by ESMA's predecessor CESR in order to provide guidance to market participants about how to comply with various disclosure requirements in the Prospectus Directive and the legislation promulgated thereunder. The CESR recommendations were grandfathered when ESMA was established in 2011, reissued by ESMA in 2011 and subject to an update in 2013.
3. ESMA observes that a significant amount of time has passed since the CESR recommendations were last updated, and that the update was relatively limited in scope. Furthermore, ESMA notes that the CESR recommendations were not adopted as guidelines under Article 16 of the ESMA Regulation, which means that the comply-or-explain mechanism does not apply to them. Lastly, ESMA observes that the Prospectus Regulation will enter into application on 21 July 2019.
4. On that basis, ESMA believes that it is now appropriate to conduct a more substantial update of the CESR recommendations to take into account the Prospectus Regulation and new developments in the capital markets, while at the same time converting the CESR recommendations into guidelines. ESMA is seeking the views of relevant stakeholders in relation to these draft guidelines with this Consultation Paper.

III. Purpose and scope

5. As stated in Article 16(1) of the ESMA Regulation, ESMA "*... shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants.*"
6. The aim of the draft guidelines covered by this Consultation Paper is to ensure that market participants have a uniform understanding of the relevant disclosure required in the various annexes included in the Commission Delegated Regulation. More specifically, the persons responsible for a prospectus may have doubts about the extent of the information to be supplied under a certain disclosure item of the Commission Delegated Regulation. The purpose of these draft guidelines is to help the persons responsible for the prospectus assess which disclosure is required and to promote consistency across the Union in the way that the annexes to the Commission Delegated Regulation are interpreted.

7. The draft guidelines are also addressed to competent authorities to assist them when assessing the completeness, comprehensibility and consistency of information in prospectuses.

IV. Compliance and reporting obligations

8. The draft guidelines are addressed to competent authorities and financial market participants who, in accordance with Article 16(3) of the ESMA Regulation, shall make every effort to comply with them. Competent authorities should incorporate the guidelines into their supervisory practices to ensure that persons responsible for the prospectus comply with them.

V. The draft guidelines

9. ESMA has tried to ensure that the content of the draft guidelines generally follows the content of the CESR recommendations, with some drafting changes being introduced to simplify the content and improve readability. The explanatory text (the text which follows the bold text within each guideline) also broadly replicates the content of the CESR recommendations. Additional changes have been made to transform the text of the CESR recommendations into guidelines and to reflect the repeal of the Prospectus Directive and its replacement with the Prospectus Regulation. Where the content of the draft guidelines adheres to the content of the CESR recommendations, this Consultation Paper refers to the relevant paragraphs of the CESR recommendations.
10. Although the general approach was to update the content of the CESR recommendations, ESMA has also included some new guidelines as well as added some new content in explanatory text. Where this is the case, this Consultation Paper identifies the new content and explains its purpose. Additionally, the CESR recommendations relating to selected financial information (paragraphs 20-26) have not been converted into guidelines, because selected financial information is not required under the Prospectus Regulation.
11. The CESR recommendations relating to specialist issuers²² are not being converted into guidelines at this time. However, ESMA is currently considering how to approach the topic of specialist issuers and plans to address these recommendations in the future. In the meantime, ESMA will not rescind the CESR recommendations which means that issuers and their advisors can continue to apply the recommendations relating to specialist issuers. Although the recommendations relating to specialist issuers were drafted for application under the Prospectus Directive, ESMA sees no issues with applying these recommendations after the entry into application of the Prospectus Regulation. This is in line with ESMA's Prospectus Regulation Q&A 2.1 concerning the applicability of Level 3 guidance relating to the Prospectus Directive after the entry into application of the Prospectus Regulation.

²² The various types of specialist issuers are set out in Annex 29 of the Commission Delegated Regulation and consist of property companies, mineral companies, scientific research-based companies, start-up companies and shipping companies.

12. As stated in Recital 27 of the Prospectus Regulation, a prospectus should not contain information that is not material or specific to the issuer and the securities concerned, as that could obscure the information relevant to the investment decision and undermine investor protection. This is also reflected in Article 6(1) of the Prospectus Regulation, which states that a prospectus shall contain the necessary information which is material to an investor making an informed assessment of the information specified in that paragraph.
13. On this basis, when drafting the guidelines ESMA had the expectation that the persons responsible for the prospectus will not include information that is not material in the context of the issuer or the securities and will also refrain from duplicating information in the prospectus. The persons responsible for the prospectus should keep this in mind when applying the guidelines.
14. ESMA notes that the persons responsible for the prospectus may refer to where information can be found instead of duplicating it, provided that this does not harm the comprehensibility of the prospectus. This should help the persons responsible for the prospectus to avoid the duplication of information. For example, the persons responsible for the prospectus may cross-refer to relevant information provided in the financial statements in order to provide information under these draft guidelines.

V.I. Financial information issues

V.I.i. Operating and financial review (OFR)

15. The draft guidelines on the OFR are based on paragraphs 27-32 of the CESR recommendations. They provide guidance on information provided under relevant annexes of the Commission Delegated Regulation in relation to the operating results and financial conditions of the issuer in order to assist the investor's assessment of past performance. According to the Commission Delegated Regulation, this analysis must be balanced and comprehensive and "*through the eyes of management*", while focusing on those issues that the issuer considers significant in view of the circumstances of their business as a whole.

Guideline 1: Purpose of the OFR

16. This draft guideline generally adheres to the content of the CESR recommendations. The explanatory text has been amended to clarify that when a certain issue affecting a business line or segment is particularly relevant, it should be considered significant for the business as a whole. Some of the general content originally included in paragraph 28 of the CESR recommendations has not been carried over since it is now covered by Level 2 provisions.

Guideline 2: Overarching principles of the OFR

17. This draft guideline sets out the principles that should be used for the compilation of OFR information and is not substantially different from the corresponding CESR recommendations. A few minor revisions were made in order to simplify the language

with reference to the principles of reliability and comparability and to clarify the concept of qualified investor included under the audience principle.

Guideline 3: Content of the OFR

18. This draft guideline provides details on some of the elements that should be discussed in the OFR, such as “the issuer’s likely future development” by using “*both financial and, where appropriate, non-financial Key Performance Indicators relevant to the particular business*”²³. The only noteworthy change to the CESR recommendations is that the guidelines update previous wording related to environmental and employee matters by referencing ESG disclosure.

Guideline 4: Use of the management report

19. This draft guideline clarifies how the disclosure required by the Commission Delegated Regulation can be satisfied by the inclusion of the management report and, when applicable, any separate non-financial report. The draft guideline requires that the persons responsible for the prospectus ensure the comprehensibility and consistency of the management report with the rest of the prospectus. The explanatory text provides further details by clarifying the kind of information in the management report that should be taken into consideration when assessing its consistency with the rest of the prospectus. It also clarifies that the management report should be included for all the financial periods covered by the OFR.

Question 1:	Do you agree with the choice to largely carry over the CESR recommendations on OFR? If not, could you please indicate what further guidance should be provided and the legal basis for such?
Question 2:	Do you agree with the introduction of draft guideline 4 in order to provide further guidance on the use of the management report? Do you believe the inclusion of any separate non-financial report (when applicable) could materially increase the length of equity prospectuses? If so, please provide your reasoning and an alternative proposal.
Question 3:	Do you believe the application of draft guidelines 1, 2, 3 and 4 will impose <u>additional</u> costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.ii. Capital resources

20. The draft guidelines on capital resources are largely based on paragraphs 33-37 of the CESR recommendations. They provide guidance on information required under the relevant annexes of the Commission Delegated Regulation in relation to capital resources and liquidity. They furthermore set out the relevant ratios that the persons responsible for the prospectus should ensure are provided in the context of such disclosure. They also clarify the general principle whereby the persons responsible for

²³ Annex 1, Item 7.1 and Annex 24, Item 2.5 of the Commission Delegated Regulation.

the prospectus may cross-refer to relevant information provided in the financial statements included in the prospectus, for example under IAS 7, IFRS 7 and IFRS 12.

Guideline 5: Discussion of cash flows

- 21. This draft guideline focuses on the specific information required in order to provide “an explanation of the sources and amounts of and a narrative description of the issuer’s cash flows”²⁴. While reworded to ensure better readability, the bulk of the pre-existing text in the CESR recommendations has been carried over with the exception of the introductory paragraph 33.

Guideline 6: Information on funding and treasury policies

- 22. Like draft guideline 5, this draft guideline broadly carries over the previous CESR recommendations in relation to the information that needs to be provided on funding and treasury policies.

Guideline 7: Discussion of covenants

- 23. This draft guideline clarifies the requirement in Annex 1, Item 8.4 of the Commission Delegated Regulation to provide “information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer’s operations”. While the previous wording has been revised to ensure better clarity and readability, the bulk of the relevant CESR recommendation is reflected in the new text. For example, the new explanatory text clarifies that a brief description of the contents of any covenants that could materially restrict the use of the issuer’s credit facilities should be provided.
- 24. Additionally, new explanatory text has been included to clarify that if information on the breach of covenants overlaps with the information provided in the working capital statement, the persons responsible for the prospectus may cross-refer to the working capital statement.

Guideline 8: Liquidity

- 25. This draft guideline covers how disclosure requirements related to sources of funds should be complied with by the persons responsible for the prospectus. The original CESR content has been broadly carried over, with some adjustments to the wording to ensure better readability.

Question 4:	Do you agree with the choice to largely carry over the CESR recommendations on capital resources? If not, could you please indicate what further guidance should be provided and the legal basis for such?
Question 5:	Do you consider that the clarifications in these draft guidelines on how text provided elsewhere should be cross-referred to are useful?
Question 6:	Do you believe the application of draft guidelines 5, 6, 7 and 8 will impose <u>additional</u> costs on the persons responsible for the

²⁴ Annex 1, Item 8.4 of the Commission Delegated Regulation.

prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.iii. Profit forecasts and estimates

26. The draft guidelines on profit forecasts and estimates are based to a significant extent on paragraphs 38-50 of the CESR recommendations. They provide guidance on the overarching principles relating to the preparation of disclosure on profit forecasts and estimates, as required by relevant annexes of the Commission Delegated Regulation. It should be noted that paragraphs 47-48 of the CESR recommendations have not been included in the scope of the draft guidelines as their content is not suitable for guidelines.

Guideline 9: Due care and diligence

27. This draft guideline provides details on the factors that should be taken into account by the persons responsible for the prospectus when applying the principles of due care and diligence for the compilation of the information required under the relevant annexes of the Commission Delegated Regulation.
28. While most of the content of this draft guideline is carried over from paragraph 40 and 50 of the CESR recommendations, its explanatory text includes a specific reminder to issuers of the importance of checking the accuracy of profit forecasts and estimates when a URD / RD is used as a constituent part of the prospectus. The explanatory text also clarifies that if profit forecasts or estimates are to be updated, this must be done via a supplement or an amendment to the URD / RD.

Guideline 10: Principles for preparing profit forecasts and estimates

29. Draft guideline 10 sets out the principles for preparing profit forecasts and estimates and explains how profit forecasts and estimates should be made clear and unambiguous, as required by the annexes of the Commission Delegated Regulation. The principles provided for by this draft guideline are carried over from the relevant provisions in the CESR recommendations and their wording has been simplified. New explanatory text has been included to clarify how the principle of comparability applies when an issuer of equity securities has a complex financial history or has made a significant financial commitment and the profit forecasts or estimates assume that the relevant transaction has already been completed.
30. While some of the explanatory text also replicates existing content, paragraphs 43-44 of the CESR recommendations have not been carried over as they are now covered by the annexes of the Commission Delegated Regulation, such as item 11.1 of Annex 1. Similarly, paragraph 49 of the CESR recommendations has not been carried over as its content is addressed in ESMA's Prospectus Directive Q&A 102, which provides clear and practical examples of what does and does not constitute a profit forecast or estimate.

Guideline 11: Clean statement of comparability and consistency of the profit forecast or estimate

31. This draft guideline clarifies how to satisfy the requirement to include “a statement that the profit forecast or estimate has been compiled and prepared on a basis which is both: (a) comparable with the historical financial information, (b) consistent with the issuer’s accounting policies.”²⁵ The draft guideline indicates that a clean statement is required, i.e. one that does not contain qualifications or caveats or that could create confusion regarding its basic message.
32. Furthermore, the explanatory text clarifies how to deal with an objective lack of the information necessary to make the profit forecasts or estimates comparable with the historical financial information. In such cases the persons responsible for the prospectus should explain in the statement how the requirements of comparability and consistency have been fulfilled.

Guideline 12: Profit forecast or estimate in relation to a material undertaking

33. The draft guideline clarifies how to deal with the situation in which an outstanding profit forecast or estimate concerns a material undertaking that the issuer has acquired. While some of the previous wording has been simplified to improve clarity, the bulk of the existing CESR recommendation has been simply carried over.

Question 7:	Do you agree with the choice to largely carry over the CESR recommendation on profit forecasts and estimates? If not, could you please indicate what further guidance should be provided and the legal basis for such?
Question 8:	Do you believe the application of draft guidelines 9, 10, 11 and 12 will impose <u>additional</u> costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.iv. Historical financial information

34. The draft guidelines on historical financial information are based on paragraphs 51-86 and 89 of the CESR recommendations.

Examples relating to draft guidelines 13, 14, 15 and 16

35. The examples relating to draft guidelines 13, 14, 15 and 16 on historical financial information provide clarity on the situations that are pertinent for the use of these draft guidelines. These situations would be when the issuer will apply IFRS for the first time in order to comply with a specific legal requirement or on a voluntary basis, as well as when the issuer is going to adopt the accounting framework of a Member State which is different from its current accounting framework.

²⁵ See Annex 1, Item 11; Annex 6, Item 8; Annex 7, Item 8; Annex 3, Item 7; Annex 8, Item 7; Annex 24, Item 2, Annex 25, Item 2 of the Commission Delegated Regulation.

Guideline 13: Restatement of historical financial information

36. Draft guideline 13 is based on paragraphs 56 - 57, 84 and 89 of the CESR recommendations and explains that the persons responsible for the prospectus should ensure comparability between the restated financial statements and the statutory financial statements. An example illustrating when issuers should apply this draft guideline is included in the explanatory text.
37. In order to group material from the CESR recommendations that address the same topic, ESMA has based some of the explanatory text in draft guideline 13 on paragraph 89 of the CESR recommendations to provide guidance on prospectuses that contain both restated financial information and pro forma financial information.
38. Furthermore, some of the CESR recommendations were not carried over to the draft guidelines. The CESR recommendations that were laid aside address cases where the issuer's accounting framework is the same in the last and the next published financial statements or refer to the standards or policies that will be applied to the next published financial statements. ESMA believes that the persons responsible for the prospectus should consult the principles laid down in their accounting framework and, therefore, is of the opinion that it is not within its remit to provide guidance on these cases.
39. On this basis, ESMA anticipates that the persons responsible for the prospectus would in all cases have regard to future new or amended standards or policies that will be applicable to the next published financial statements. Where the information is available and is expected to have a material impact on the results and financial position of the issuer, they would be expected to provide additional qualitative and / or quantitative disclosure in the prospectus to the extent that such disclosure is allowed by the applicable accounting framework. Therefore, ESMA anticipates that in case of future new or amended standards, the persons responsible for the prospectus would consider the disclosure of appropriate qualitative or quantitative information pursuant to Article 6(1) of the Prospectus Regulation.

Guideline 14: Bridge approach for prospectuses that include three years of financial information

40. Draft guideline 14, which is based on paragraphs 59-60 of the CESR recommendations, builds upon the guidance provided under draft guideline 13 in relation to the comparability between the historical and the restated financial information. In ESMA's view, draft guideline 14 is necessary in order to describe the application of the bridge approach in the case of a prospectus that includes three years of historical financial information.

Guideline 15: Presentation of restated financial information

41. Draft guideline 15 reflects the content of paragraph 60 of the CESR recommendations and addresses the presentation of restated financial information. More specifically, the draft guideline provides guidance on how to deal with a lack of comparability between the presentation format of the restated financial information and the presentation format of the financial information prepared under the current accounting framework.

Guideline 16: Audit of the restated historical financial information

42. Draft guideline 16 is based on the contents of paragraphs 78 and 82 of the CESR recommendations and section 2 of prospectus Q&A 14. ESMA updated the relevant CESR recommendations in line with the requirements set out in the Commission Delegated Regulation, while no substantial changes were proposed compared with the approach set out in section 2 of Q&A 14. As such, the draft guideline clarifies that the audit report that is produced for the purposes of the prospectus should cover the restated historical financial information and explains which auditing standards should be applied.

Guideline 17: Content of historical annual financial information

43. Draft guideline 17 is based on paragraphs 84 and 86 of the CESR recommendations and addresses the situation where the issuer is not required to prepare some of the statements required under the relevant annexes of the Commission Delegated Regulation under its applicable accounting framework. ESMA understands that under some national accounting standards, the cash flow statement and / or the statement of changes in equity may not be mandatory for all issuers. Nevertheless, these statements should be included in the prospectus if they are required under Level 2.
44. The draft guideline clarifies that the issuer should look at the applicable accounting framework to determine which principles are applicable to the preparation of these statements. Alternatively, when the aforementioned accounting framework does not provide any relevant information, draft guideline 17 explains that the issuer should refer to IFRS principles.

Question 9:	In relation to draft guideline 14, do you consider that it is beneficial to clarify the application of the bridge approach for prospectuses that include less than three years of financial information? If not, please elaborate on your reasoning and suggest an alternative approach.
Question 10:	Do you agree with the guidance set out in draft guidelines 13, 14, 15, 16 and 17? If not, please explain your reasons and provide alternative suggestions.
Question 11:	Do you consider that additional guidance is necessary as regards the restatement of historical financial information in the case of prospectuses that include less than three years of financial information? If so, please explain your view.
Question 12:	Do you believe the application of any of the draft guidelines 13, 14, 15, 16 and 17 will impose <u>additional</u> costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.v. Pro forma information

45. The draft guidelines relating to pro forma information cover the contents of paragraphs 87-94 of the CESR recommendations, and guidance which is currently set out in ESMA's Prospectus Directive Q&As 50-55 has furthermore been transferred to the draft guidelines.

Guideline 18: Assessing if a transaction constitutes a significant gross change

46. Draft guideline 18 is based on paragraphs 91-94 of the CESR recommendations and on prospectus Q&As 52 and 53. ESMA has carried over the three indicators of whether a transaction constitutes a variation of more than 25% to the size of the issuer's business. However, ESMA has clarified that these indicators should not only be used to determine whether a transaction constitutes a significant gross change, but also whether it constitutes a significant financial commitment.
47. Furthermore, ESMA has added that calculation of whether a transaction constitutes a 25% variation should be based on figures which reflect the issuer's business before the transaction took place, normally from the issuer's audited historical financial information for the last year. Paragraph 94 of the CESR recommendations permitted the use of figures from the issuer's last or next published annual financial statements, but as Annex 20 of the Commission Delegated Regulation has removed the option of referring pro forma information to the current financial period, the draft guideline has been adapted accordingly. Additionally, the draft guideline clarifies that the indicators of the issuer's size should be calculated on an annual basis to remove the effects of seasonality.
48. Paragraphs 83-84 of draft guideline 18 address how the persons responsible for the prospectus should handle a situation where the issuer is involved in multiple transactions. Here, ESMA proposes a new approach compared to its current prospectus Q&A 52, as follows: When an issuer is involved in several transactions which individually do not, but which collectively do, constitute a 25% variation to the size of the issuer's business, ESMA proposes that pro forma information should be included in the prospectus. ESMA considers that pro forma information should be provided when the issuer's size has changed by at least 25%, regardless of whether this change took place in one or several transactions, as the purpose of pro forma information is to assist investors by providing them with an additional aspect of the issuer's business which might otherwise be difficult for them to understand. However, ESMA acknowledges that it can be costly for issuers to prepare pro forma information and has therefore included a clause in the guideline which states that pro forma information should not be required if it would be disproportionately burdensome for the issuer to produce it.
49. Based on the same reasoning, ESMA proposes that where an issuer is involved in multiple transactions, of which only one constitutes a 25% variation to the size of the issuer's business, the persons responsible for the prospectus should include pro forma information covering all these transactions. Again, ESMA has included the caveat that pro forma should not be included for the transactions which fall below the 25% threshold if producing such information would be disproportionately burdensome.

Guidelines 19 and 20: Hypothetical date of the transaction

50. Draft guidelines 19 and 20 are based on ESMA's Prospectus Directive Q&A 50, section a. The draft guidelines explain which date should be used as a reference when the persons responsible for the prospectus prepare the pro forma profit and loss account and the pro forma balance sheet. ESMA has not proposed any substantial changes compared with the approach set out in Q&A 50.

Guideline 21: Time period covered by pro forma information

51. This draft guideline is based on ESMA's Prospectus Directive Q&A 50, sections b and c and Q&A 51. The draft guideline provides guidance on which time period to cover with the pro forma information and which financial information to use to meet the requirement to include historical unadjusted information. While the material from Q&A 51 has been turned from concrete illustrations into more generally applicable rules, no changes have been made to the substantial approach set out in either of the Q&As.

Guideline 22: Transaction already covered in historical or interim financial information

52. Draft guideline 22 carries over material from ESMA's Prospectus Directive Q&A 51, explaining that when a transaction is already fully reflected in the historical or interim financial information in the prospectus, it does not also have to be reflected with pro forma information. While the concrete illustrations in Q&A 51 have been turned into a more general rule, ESMA has not intended to change the substance of the current approach.

Guideline 23: Using other information than pro forma information

53. This draft guideline is based on section a of ESMA's Prospectus Directive Q&A 50. The draft guideline has been expanded to clarify that the persons responsible for the prospectus should obtain the agreement of the competent authority before using other information than pro forma information to reflect a significant gross change, and that the requirement for a report by an independent accountant / auditor does not apply if the prospectus does not include pro forma information.

Guideline 24: Which events to cover with pro forma information

54. Draft guideline 24 carries over material from paragraphs 87-88 and the second indent of paragraph 89 of the CESR recommendations and as such provides guidance on how the persons responsible for the prospectus should determine which events to cover in the pro forma information. Compared to the CESR recommendations, ESMA has added guidance on how to determine whether the results of a capital increase should be covered in the pro forma information included in the prospectus.

Guideline 25: Accountant / auditor report

55. Draft guideline 25 covers the guidance which is currently set out in ESMA's Prospectus Directive Q&A 55. In line with the Q&A, the draft guideline requires the accountant / auditor report to follow the wording in Annex 20, Section 3 of the Commission Delegated Regulation and to leave out qualifications. As a strengthening of the approach taken in Q&A 55, ESMA proposes also prohibiting inclusion of an emphasis of matter in the report as it considers that the conclusions of the accountant / auditor report should be clear and not allow investors to be left in doubt as to the conclusion of the report.

Guideline 26: Voluntary pro forma information

56. Draft guideline 26 follows the approach of ESMA's Prospectus Directive Q&A 54 by explaining that pro forma information may be included in the prospectus on a voluntary basis as long as it complies with the same requirements which apply to mandatory pro

forma information. Compared to Q&A 54, ESMA has clarified that also issuers of non-equity securities may voluntarily include pro forma information in the prospectus.

Question 13:	Should draft guideline 18 include any other standard indicators of size? Have you ever used other indicators because the three indicators included in draft guideline 18 would produce anomalous results?
Question 14:	In draft guideline 18, do you agree that when an issuer is involved in several transactions which individually do not, but which collectively do, constitute a 25% variation to the issuer's size, pro forma information should be required unless it is disproportionately burdensome to produce it?
Question 15:	In draft guideline 18, do you agree that when an issuer is involved in several transactions of which only one constitutes a 25% variation to the issuer's size, pro forma information should be required for all the transactions unless it is disproportionately burdensome to produce it?
Question 16:	In draft guideline 25, do you agree that the accountant / auditor report should not be permitted to include an emphasis of matter?
Question 17:	In relation to draft guidelines 19, 20, 21, 22, 23, 24 and 26 which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.
Question 18:	Do you believe the application of any of the draft guidelines 18, 19, 20, 21, 22, 23, 24, 25 and 26 will impose <u>additional</u> costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.vi. Interim financial information

57. The draft guidelines on interim financial information provide guidance on information required in relation to quarterly or half-yearly financial information under the Commission Delegated Regulation. The content of the relevant CESR recommendations has been updated to ensure consistency with the current regulatory framework.

Guideline 27: Compilation of interim financial information

58. This draft guideline clarifies that if the issuer has published quarterly or half-yearly financial information since the date of its last audited financial statements, this must be included in the registration document²⁶.

59. While the key content of paragraph 101 of the CESR recommendations was maintained, paragraph 102 has not been carried over to the draft guidelines, since it is not compatible with the current legal framework. New explanatory text has been provided in order to cover the situation in which the quarterly financial report is the most recent financial information published by an issuer. In particular, the draft guideline reflects the revision

²⁶ Commission Delegated Regulation Annex 1, Item 18.2; Annex 6, Item 11.2; Annex 24, Item 5.2; and Annex 25, Item 5.2.

of the Transparency Directive under which the quarterly financial report is no longer mandatory at EU level and is as such prepared by issuers either on a voluntary basis or in accordance with national rules.

60. Furthermore, new explanatory text leverages on the contents of ESMA's Prospectus Directive Q&A 24 in order to clarify the appropriate application of the guidelines. Finally, paragraphs 98-100 of the CESR recommendations were not carried over, since they are of an introductory nature and not necessary in the context of the draft guidelines.

Guideline 28: Relevant accounting policies and principles

61. This draft guideline aims at further clarifying the application of the Commission Delegated Regulation when accounting policy changes have been applied by the issuer after the publication of the most recent annual financial statements. When compared with the contents of paragraph 103 of the CESR recommendations, the draft guideline takes a more practical approach by referring to the applicable accounting standards and specifying that interim financial information should follow the applicable accounting framework. The draft guideline also acknowledges that in certain cases, the accounting framework may require specific disclosure in the interim report following changes in accounting policies.
62. Paragraph 104 of the CESR recommendations was not carried over as it is not relevant in the context of the current legislative framework. Equally, paragraph 105 of the CESR recommendations was not carried over as the Commission Delegated Regulation does not provide for a cash flow statement when the national accounting framework does not require such a statement. In fact, a cash flow statement is required only for annually audited financial statements prepared in accordance with a national accounting framework.

Question 19: Do you agree with the proposal to carry over only part of the CESR recommendations on interim financial information since some of the contents appear to be obsolete under the current legislative framework? If not, could you please indicate which CESR recommendations should have been retained and the legal basis for including them in these draft guidelines?

Question 20: Do you believe the application of draft guidelines 27 and 28 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.vii. Working capital statements

63. The draft guidelines concerning working capital statements are addressed to the issuer instead of to the persons responsible for the prospectus because the issuer is responsible for providing a working capital statement (for example, see Annex 11, Item 3.1 of the Commission Delegated Regulation).

Guideline 29: Robust procedures

64. Draft guideline 29 sets out requirements which the issuer should follow when preparing a working capital statement to ensure that the statement is robust. The draft guideline is based on paragraphs 124-126 of the CESR recommendations, and no changes have been made to the substance of those paragraphs.

Guideline 30: Unambiguous

65. This draft guideline requires the working capital statement to be unambiguous and provides guidance on what this means in practice. It carries over material from paragraphs 111 and 115 of the CESR recommendations without making any changes in substance.

Guideline 31: Rules for calculation of working capital

66. Draft guideline 31 presents new material, as ESMA finds it useful to provide guidance on the circumstances in which the issuer can include the proceeds of an offer in its working capital. ESMA considers it should only be possible to count the proceeds where there is a high level of certainty that the issuer will in fact receive the proceeds. ESMA therefore proposes that the issuer should only be permitted to include the proceeds of the offer in the working capital statement if the offering is underwritten on a firm commitment basis, or if irrevocable undertakings have been given for placings.

Guideline 32: Rules for calculation of present requirements

67. This draft guideline carries over material from paragraphs 108 and 110 of the CESR recommendations. ESMA proposes expanding this material by requiring that where the issuer has made a commitment to acquire another entity within the 12 months following the approval of the prospectus, the acquisition should be considered in its present requirements.

Guideline 33: Preparation on a consolidated basis

68. Draft guideline 33 requires the issuer to determine its working capital and present requirements on a consolidated basis. As such, it carries over the content of paragraph 112 of the CESR recommendations without making any changes in substance.

Guidelines 34 and 35: Credit institutions and (re)insurance undertakings

69. When ESMA consulted on its technical advice on the content of the prospectus in 2018, respondents were in favour of having different requirements relating to the working capital statement for credit institutions and (re)insurance undertakings²⁷. In its feedback statement, ESMA clarified that it could not include such different measures in its technical advice as it had not consulted on these proposals. However, ESMA indicated that it would consider addressing this topic with possible Level 3 measures.
70. As such, ESMA proposes including two guidelines which are specifically addressed to issuers that are credit institutions or (re)insurance undertakings. While these types of issuers are covered by the general requirements relating to the working capital

²⁷ [Final Report on Technical Advice under the Prospectus Regulation](#) (ESMA31-62-800), page 51-52.

statement, draft guidelines 34 and 35 aim to ensure that they are required to determine their working capital in a way which reflects their specific business models. In particular, the draft guidelines require that these issuers use, where appropriate, applicable liquidity metrics, and, in the case of (re)insurance undertakings, regulatory capital requirements.

71. Specifically, ESMA proposes that credit institutions should use the applicable ratios required by EU legislation (particularly, the Liquidity Coverage Ratio and the Net Stable Funding Ratio) when calculating liquidity for their working capital. ESMA acknowledges that (re)insurance undertakings are not covered by similarly harmonised legislative requirements but proposes that they use the metrics which they have adopted and submitted to their supervisory authority pursuant to Solvency II, including the Minimum Capital Requirement.
72. To ensure that the basis on which these entities determine their working capital is up-to-date, ESMA proposes that both credit institutions and (re)insurance undertakings are required to use the most recently calculated metrics and to take account of all events which could affect their liquidity risk – and regulatory capital requirements, in the case of (re)insurance undertakings – which have occurred since the date of calculation.
73. ESMA observes that there is no requirement to disclose in the prospectus how the working capital and the present requirements were calculated. Therefore, ESMA clarifies that the requirement for credit institutions and (re)insurance undertakings to use applicable prudential metrics does not oblige them to disclose these metrics in the prospectus itself. The draft guidelines merely require that credit institutions and (re)insurance undertakings use these metrics when assessing whether they should provide a clean or a qualified working capital statement.
74. ESMA sought the input of integrated regulators when developing draft guidelines 34 and 35.

Guideline 36: Determining whether the working capital statement should be clean or qualified

75. This draft guideline sets out guidance on how the issuer should determine whether its working capital statement should be clean or qualified. It is based on material from paragraphs 107, 114 and 116 of the CESR recommendations and does not change the substance of those paragraphs in any major way.

Guideline 37: Content of a qualified working capital statement

76. The last draft guideline on working capital statements provides guidance on how the issuer should draft a qualified working capital statement and which information should be included in such a statement. The draft guideline reiterates material from paragraphs 117-122 of the CESR recommendations without making any changes to the substance of that material.

Question 21: Do you agree with the rules for calculation of working capital in draft guideline 31? If you do not agree, please explain why and propose an alternative approach.

Question 22:	Do you agree with the rules for calculation of present requirements in draft guideline 32? If you do not agree, please explain why and propose an alternative approach.
Question 23:	Do you agree that it is useful to require credit institutions to take their liquidity risk into account when they determine their working capital? Do you agree with the requirements of draft guideline 34?
Question 24:	Do you agree that it is useful to require (re)insurance undertakings to take their liquidity metrics and their regulatory capital requirements into account when they determine their working capital? Do you agree with the requirements of draft guideline 35?
Question 25:	In relation to draft guidelines 29, 30, 33, 36 and 37, which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.
Question 26:	Do you believe the application of any of the draft guidelines 29, 30, 31, 32, 33, 34, 35, 36, and 37 will impose <u>additional</u> costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.I.viii. Capitalisation and indebtedness

Guideline 38: Statement of capitalisation

77. Draft guideline 38 carries over content from paragraph 127 of the CESR recommendations, including the capitalisation table. ESMA has made small adjustments to the capitalisation table which are not meant to reflect a change in substance. In particular, within the table, ESMA has slightly changed the wording in brackets after Total non-current debt from “*excluding current portion of long-term debt*” to “*excluding current portion of non-current debt*” to consistently use the terminology current / non-current instead of using long-term. A corresponding clarification has been inserted in brackets after Total current debt. The two footnotes included in the table in the CESR recommendations have been turned into regular text in the explanatory text after the table. ESMA has not carried over the wording regarding the age of the information in the capitalisation statement since this has been made redundant by changes at Level 2.
78. The draft guideline also incorporates the content of ESMA’s Prospectus Directive Q&A 97 on an additional column in the statements of capitalisation and indebtedness. The structure of the text has been amended to convert it into a guideline, but ESMA has not intended to change the substance.
79. Two new elements have been added in relation to the capitalisation statement. Firstly, ESMA has specified that if a line item in the table does not apply in the Member State where the issuer has drawn up its financial information, the table should be adapted in cooperation with the competent authority. This is to avoid inadvertently imposing new requirements on issuers and at the same time to ensure that the capitalisation statement remains informative for investors. Secondly, ESMA has added text which requires credit institutions and (re)insurance undertakings to adapt the table to their prudential

requirements related to regulatory capital. The purpose of this paragraph is to ensure that the capitalisation statement reflects the business model of these types of issuers and provides helpful information to investors.

Guideline 39: Statement of indebtedness

80. Draft guideline 39 carries over content from paragraph 127 of the CESR recommendations. ESMA has made the following changes to the wording of the indebtedness statement, considering a general wish to align it with IFRS:

B *Cash equivalent (Detail)* has been changed to *Cash equivalents*: ESMA has removed the word in brackets as it was not sufficiently clear and has instead clarified in the narrative below the table that the persons responsible for the prospectus should explain what the cash equivalents, which are covered in the indebtedness statement, consist of.

C *Trading securities* has been changed to *Other current financial assets*: ESMA acknowledges that the wording in the CESR recommendations is not very well-defined and wishes to clarify this line item. In addition to the change within the indebtedness statement itself, ESMA has provided an explanation on this line item in the text below the table.

F, G, K *Current bank debt* has been changed to *Current financial debt (including debt instruments, but excluding current portion of non-current financial debt)*, *Current portion of non-current debt* has been changed to *Current portion of non-current financial debt*, *Non-current bank loans* has been changed to *Non-current financial debt (excluding current portion and debt instruments)*: These changes were made to include all financial liabilities in the indebtedness statement and to create consistency in the wording of the statement.

E, H, M *Current financial receivable* has been changed to *Current trade and other receivables*, *Other current financial debt* has been changed to *Current trade and other payables*, *Other non-current loans* has been changed to *Non-current trade and other payables*: As line item E requires inclusion of receivables, ESMA considers that a corresponding requirement should apply for payables. Furthermore, ESMA has become aware that there are different understandings of these line items, as some market participants consider them to cover only interest-bearing assets / debt while others consider that they also include non-interest-bearing assets / debt. To address these issues, ESMA proposes 1) adding a reference to trade receivables in line item E and 2) rewording line items H and M to refer to trade and other payables. This approach ensures that the indebtedness statement covers all financial assets and liabilities which, according to IAS 32.AG4, comprise trade receivables and payables. ESMA considers that the indebtedness statement should provide a full picture of the issuer's indebtedness, regardless of whether it is interest-bearing. In some sectors, such as health care, construction and service concession agreements, trade

payables and receivables can represent significant amounts, and leaving them out of the indebtedness statement could be misleading.

- I *Current financial debt* has been changed to *Current financial indebtedness*: To apply terms in the statement consistently, ESMA uses “debt” in individual line items which show the amount of a specific type of debt, while it uses “indebtedness” for aggregated amounts which show the overall level of debt the issuer has assumed.
- L *Bonds issued* changed to *Debt instruments*: This wording change is aimed at allowing for a broader inclusion of instruments and at aligning with IFRS.
- O *Net financial indebtedness* changed to *Total financial indebtedness*: ESMA has made this change to clarify that the final line item is the “total” financial indebtedness of an issuer.

81. Furthermore, ESMA proposes inserting some new wording which explains what certain of the line items in the indebtedness statement should cover so that the statement is prepared in a harmonised way across different jurisdictions. These explanations are set out in paragraph 165 which, among other things, clarifies that financial debt covers liabilities related to leases. This is to acknowledge that a wide range of issuers will have to recognise substantial liabilities resulting from operating leases under IFRS 16. Additionally, ESMA has expanded on the material on contingent and deferred indebtedness in the CESR recommendations by carrying over wording from its prospectus Q&A 61.

82. Finally, ESMA has added text which requires credit institutions and (re)insurance undertakings to adapt the table to their prudential requirements, and the requirements described in relation to guideline 38 (paragraphs 158-161) have also been added in relation to the indebtedness statement.

Question 27:	Would you like more specific guidance on what to disclose concerning the type of guarantee according to draft guideline 38? If so, please explain which type of further guidance would be helpful.
Question 28:	Would you like more specific guidance on how credit institutions and (re)insurance undertakings should adapt the capitalisation statement according to draft guideline 38? If so, please explain which type of further guidance would be helpful.
Question 29:	Do you agree that trade receivables and trade payables should be included in the indebtedness statement, as proposed in draft guideline 39?
Question 30:	In the indebtedness statement, do you agree that financial liabilities from leases should be included under financial debt and described further in a paragraph after the statement of indebtedness?
Question 31:	Do you consider that any line items in either the capitalisation or the indebtedness statement are not useful to investors? Please explain your answer.

- Question 32: Do you have any other comments on draft guidelines 38 and 39?
- Question 33: Do you believe the application of draft guidelines 38 and 39 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II. Non-financial information issues

V.II.i. Remuneration

Guideline 40: Types of remuneration

83. Draft guideline 40 follows on from the CESR recommendation on compensation. The change in the title from ‘compensation’ to ‘remuneration’ is simply to align with the language used throughout the annexes of the Commission Delegated Regulation. The content of this draft guideline and its accompanying explanatory text is almost entirely based on the content of paragraph 148 of the CESR recommendations.
84. The only new element of substance concerns an option to include a remuneration report, as required by the Shareholder Rights Directive, where this is applicable.

- Question 34: Do you agree with the approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.
- Question 35: Do you believe the application of draft guideline 40 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.ii. Related party transactions

Guideline 41: Issuers not applying IAS 24

85. Draft guideline 41 is based on paragraph 149 of the CESR recommendations. It sets out guidance on information provided under the Commission Delegated Regulation in relation to details of related party transactions that are to be disclosed when the respective standards under the IAS Regulation do not apply. The draft guideline clarifies item 17.1 of Annex 1 and item 10 of Annex 3 of the Commission Delegated Regulation which indicate that the definition of related party transactions is the one set out in the standards adopted in accordance with the IAS Regulation. The draft guideline explains that this definition also applies to issuers that do not apply IAS 24.
86. Furthermore, the draft guideline clarifies (i) the disclosure duties applying to issuers that do not apply IAS 24 and (ii) that the use of standards which have been granted equivalence with the IAS / IFRS framework in accordance with Commission Decision 2008/961/EC is considered to comply with the corresponding definitions under IAS 24.

Question 36: Do you agree with the content of this draft guideline? Do you think it provides further clarity to the market? If not, please explain.

Question 37: Do you believe that the application of draft guideline 41 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.iii. Acquisition rights and undertakings to increase capital

Guideline 42: Acquisition rights and undertakings to increase capital

87. Draft guideline 42 on acquisition rights and undertakings to increase capital is based on paragraph 150 of the CESR recommendations. The text of paragraph 150 has essentially been carried over with a small number of wording adjustments which are not intended to modify its content.

Question 38: Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

Question 39: Do you believe the application of draft guideline 42 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.iv. Options agreements

Guideline 43: Compiling information on options agreements

88. The draft guideline on options agreements is based on paragraphs 160-165 of the CESR recommendations. It provides guidance on information required under the Commission Delegated Regulation on items that relate to the disclosure of details on any capital of any member of the group which is under option.
89. While the bulk of the previous CESR recommendations has been carried over with some adjustments on the drafting and structure order to improve readability, point (vi) of this guideline of the draft guideline is new and aims at providing clarity on the potential dilution effects connected with the exercise of option agreements.

Question 40: Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

- Question 41: Do you agree with the introduction of a specific disclosure point on the potential dilution effects connected to the exercise of option agreements?
- Question 42: Do you believe the application of draft guideline 43 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.v. History of share capital

Guideline 44: Changes related to share capital

90. The draft guideline on history of share capital concerns changes in share capital for the period covered by the historical financial information and aims to clarify the disclosure which should be provided in relation to such changes. The text is based on paragraphs 153-154 of the CESR recommendations and carries over the content of these paragraphs without any noteworthy modifications.

- Question 43: Do you agree with the guidance set out in draft guideline 44 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 44: Do you believe the application of draft guideline 44 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.vi. Description of the rights attaching to shares of the issuer

Guideline 45: Rights attached to the issuer's shares

91. Draft guideline 45 is based on paragraph 155 of the CESR recommendations and essentially carries over its content without substantial modifications. The draft guideline aims to clarify the disclosure that should be provided concerning general rights attached to shares of the issuer. There is no explanatory text accompanying this draft guideline as each of its elements is self-explanatory.

- Question 45: Do you agree with the guidance set out in draft guideline 45 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 46: Do you believe the application of draft guideline 45 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.vii. Statements by experts

Guideline 46: Material interest

92. Apart from very minor adjustments that relate to presentation of the draft guideline, the content of draft guideline 46 and its explanatory text is almost entirely based on paragraphs 156-159 of the CESR recommendations. The draft guideline aims to clarify the elements that persons responsible for the prospectus should consider when trying to determine whether an expert associated with the prospectus has a material interest in the issuer or issue.

- Question 47: Do you agree with the guidance set out in draft guideline 46 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 48: Do you believe the application of draft guideline 46 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.viii. Information on holdings

Guideline 47: Compiling information on holdings

93. The draft guideline on information on holdings is based on paragraphs 160-165 of the CESR recommendations and provides guidance on the information relating to either joint ventures or undertakings which are likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses as required under the relevant annexes of the Commission Delegated Regulation.
94. Overall, draft guideline 47 carries over the bulk of the guidance set out in the aforementioned CESR recommendations, while adjusting wording and structure to improve clarity and making language more consistent with current IFRS concepts. However, provisions in the CESR recommendations were not carried over when:
- a. they were obsolete (such as paragraph 162 that referred to an old provision in the IFRS under which no consolidation of transitory control was required);
 - b. they specified concepts that are already covered by general principles, such as materiality (e.g. paragraph 164); or
 - c. they referred to the financial statements (for example, the calculation of the value attributable to the interests under the equity mode in paragraph 163).
95. The draft guideline also explains the purpose behind the information items required and includes the general principle that where the issuer has provided information required by the guideline in its consolidated / separate financial statements prepared in accordance with IFRS, it is not necessary to duplicate the disclosure of this information in the prospectus.

- Question 49: Do you agree with the proposal to carry over only part of the CESR recommendations on information on holdings? If not, please indicate what further CESR recommendations should be retained and the legal basis for their inclusion in these draft guidelines.
- Question 50: Do you consider the clarification on the general principle whereby this draft guideline does not apply when the required information is provided in the issuer's consolidated / separate financial statements prepared in accordance with IFRS to be useful?
- Question 51: Do you believe the application of draft guideline 47 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.ix. Interests of natural and legal persons involved in the issue / offer

Guideline 48: Interests

96. Draft guideline 48 is based on paragraph 166 of the CESR recommendations. It aims to provide clarity on the parties (natural and legal persons) which the persons responsible for the prospectus should consider relevant when providing disclosure on interests as well as on the type of factors the persons responsible for the prospectus should consider.
97. Apart from very minor adjustments that relate to the presentation of the draft guideline, the content of this draft guideline and its explanatory text is almost entirely based on the content of paragraph 166 of the CESR recommendations.

- Question 52: Do you agree with the guidance set out in draft guideline 48 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 53: Do you believe the application of draft guideline 48 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

V.II.x. Collective investment undertakings

98. The draft guidelines on the terminology used in the schedule on collective investment undertakings of the closed-end type aim to provide clarity on key terms and disclosure requirements which apply in respect of closed-end funds. They focus on elements such as closed-end fund investment strategy and the type of products a closed-end fund will invest in, and they try to outline the information that persons responsible for the prospectus should endeavour to describe in respect of the relevant disclosure item. The draft guidelines are based on paragraphs 167-172 of the CESR recommendations and

apart from some minor adjustments, and two entirely new draft guidelines, the content largely mirrors those paragraphs.

99. As for the small changes, these consist mainly of terminology updates, e.g. for consistency with Commission Delegated Regulation or AIFMD terminology. Accordingly, for the purpose of this consultation, it is best to focus on the more substantial revisions where new content has been added.

Guidelines 49, 50, 52, 53, 54, 55 and 57

100. Draft guidelines 49, 50, 52, 53, 54, 55 & 57 have only been subject to minor revisions. As such, these draft guidelines are largely consistent with the existing CESR recommendations. Some of the minor adjustments consist of aligning the terminology in the draft guidelines with the terminology in the Commission Delegated Regulation and AIFMD Level 2. For example, the first bullet point of draft guideline 57 has been reconciled with Article 110 of AIFMD Level 2²⁸.
101. Elsewhere, new draft explanatory text has been added to support the draft guideline. The new explanatory text is not intended to impact the substance of what is currently contained in the CESR recommendations.
102. In certain cases, the draft guidelines have been formed by splitting a paragraph contained in the CESR recommendations. For example, draft guidelines 49 and 50 and the accompanying explanatory text of draft guideline 49 were all previously part of paragraph 167 of the CESR recommendations.

Guideline 51

103. This draft guideline is completely new and was added to ensure that appropriate information on investments is disclosed in situations where collective investment undertakings invest in derivatives, financial instruments, money market instruments or currencies other than for efficient portfolio management. To provide this transparency, the draft guideline sets out disclosure criteria which are similar to the requirements for a UCITS prospectus or AIF disclosure set out in Section B of the Annex to the SFT Regulation²⁹.

Guideline 56

104. This draft guideline is completely new. It has been included to clarify what the 'brief description' of the entity providing investment advice should entail. The general principle underlying the inclusion of this new draft guideline is that a basic level of transparency should be provided in relation to an entity that can influence the use of a collective investment undertaking's assets.

Question 54: Do you agree with the guidance set out in the draft guidelines which have been subject only to minor revision, i.e. draft guidelines 49, 50,

²⁸ This text has been aligned with Article 110(1)(a) of Commission Delegated Regulation (EU) 231/2013.

²⁹ Please see Section B – Information to be included in the UCITS Prospectus and AIF disclosure to investors – of the Annex to the SFT Regulation.

	52, 53, 54, 55 and 57? If not, please elaborate on your reasoning and suggest an alternative approach.
Question 55:	Do you agree with the inclusion of new draft guideline 51? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.
Question 56:	Do you agree with the inclusion of new draft guideline 56? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.
Question 57:	Do you believe the application of any of the draft guidelines 49, 50, 51, 52, 53, 54, 55, 56 and 57 will impose <u>additional</u> costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Annex 1: List of questions for consultation

Operating and financial review

- Question 1: Do you agree with the choice to largely carry over the CESR recommendations on OFR? If not, could you please indicate what further guidance should be provided and the legal basis for such?
- Question 2: Do you agree with the introduction of draft guideline 4 in order to provide further guidance on the use of the management report? Do you believe the inclusion of any separate non-financial report (when applicable) could materially increase the length of equity prospectuses? If so, please provide your reasoning and an alternative proposal.
- Question 3: Do you believe the application of draft guidelines 1, 2, 3 and 4 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Capital resources

- Question 4: Do you agree with the choice to largely carry over the CESR recommendations on capital resources? If not, could you please indicate what further guidance should be provided and the legal basis for such?
- Question 5: Do you consider that the clarifications in these draft guidelines on how text provided elsewhere should be cross-referred to are useful?
- Question 6: Do you believe the application of draft guidelines 5, 6, 7 and 8 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Profit forecasts and estimates

- Question 7: Do you agree with the choice to largely carry over the CESR recommendation on profit forecasts and estimates? If not, could you please indicate what further guidance should be provided and the legal basis for such?
- Question 8: Do you believe the application of draft guidelines 9, 10, 11 and 12 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Historical financial information

- Question 9: In relation to draft guideline 14, do you consider that it is beneficial to clarify the application of the bridge approach for prospectuses that include less than three years of financial information? If not, please elaborate on your reasoning and suggest an alternative approach.

- Question 10: Do you agree with the guidance set out in draft guidelines 13, 14, 15, 16 and 17? If not, please explain your reasons and provide alternative suggestions.
- Question 11: Do you consider that additional guidance is necessary as regards the restatement of historical financial information in the case of prospectuses that include less than three years of financial information? If so, please explain your view.
- Question 12: Do you believe the application of any of the draft guidelines 13, 14, 15, 16 and 17 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Pro forma information

- Question 13: Should draft guideline 18 include any other standard indicators of size? Have you ever used other indicators because the three indicators included in draft guideline 18 would produce anomalous results?
- Question 14: In draft guideline 18, do you agree that when an issuer is involved in several transactions which individually do not, but which collectively do, constitute a 25% variation to the issuer's size, pro forma information should be required unless it is disproportionately burdensome to produce it?
- Question 15: In draft guideline 18, do you agree that when an issuer is involved in several transactions of which only one constitutes a 25% variation to the issuer's size, pro forma information should be required for all the transactions unless it is disproportionately burdensome to produce it?
- Question 16: In draft guideline 25, do you agree that the accountant / auditor report should not be permitted to include an emphasis of matter?
- Question 17: In relation to draft guidelines 19, 20, 21, 22, 23, 24 and 26 which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.
- Question 18: Do you believe the application of any of the draft guidelines 18, 19, 20, 21, 22, 23, 24, 25 and 26 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Interim financial information

- Question 19: Do you agree with the proposal to carry over only part of the CESR recommendations on interim financial information since some of the contents appear to be obsolete under the current legislative framework? If not, could you please indicate which CESR recommendations should have been retained and the legal basis for including them in these draft guidelines?

Question 20: Do you believe the application of draft guidelines 27 and 28 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Working capital statements

Question 21: Do you agree with the rules for calculation of working capital in draft guideline 31? If you do not agree, please explain why and propose an alternative approach.

Question 22: Do you agree with the rules for calculation of present requirements in draft guideline 32? If you do not agree, please explain why and propose an alternative approach.

Question 23: Do you agree that it is useful to require credit institutions to take their liquidity risk into account when they determine their working capital? Do you agree with the requirements of draft guideline 34?

Question 24: Do you agree that it is useful to require (re)insurance undertakings to take their liquidity metrics and their regulatory capital requirements into account when they determine their working capital? Do you agree with the requirements of draft guideline 35?

Question 25: In relation to draft guidelines 29, 30, 33, 36 and 37, which largely carry over existing material, do you agree that this material should be carried over? If you do not, please specify which material is no longer relevant and explain why.

Question 26: Do you believe the application of any of the draft guidelines 29, 30, 31, 32, 33, 34, 35, 36, and 37 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Capitalisation and indebtedness statements

Question 27: Would you like more specific guidance on what to disclose concerning the type of guarantee according to draft guideline 38? If so, please explain which type of further guidance would be helpful.

Question 28: Would you like more specific guidance on how credit institutions and (re)insurance undertakings should adapt the capitalisation statement according to draft guideline 38? If so, please explain which type of further guidance would be helpful.

Question 29: Do you agree that trade receivables and trade payables should be included in the indebtedness statement, as proposed in draft guideline 39?

Question 30: In the indebtedness statement, do you agree that financial liabilities from leases should be included under financial debt and described further in a paragraph after the statement of indebtedness?

Question 31: Do you consider that any line items in either the capitalisation or the indebtedness statement are not useful to investors? Please explain your answer.

Question 32: Do you have any other comments on draft guidelines 38 and 39?

Question 33: Do you believe the application of draft guidelines 38 and 39 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Remuneration

Question 34: Do you agree with the approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

Question 35: Do you believe the application of draft guideline 40 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Related party transactions

Question 36: Do you agree with the content of this draft guideline? Do you think it provides further clarity to the market? If not, please explain.

Question 37: Do you believe that the application of draft guideline 41 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Acquisition rights and undertakings to increase capital

Question 38: Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

Question 39: Do you believe the application of draft guideline 42 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Options agreements

Question 40: Do you agree with the general approach taken for this draft guideline, i.e. to almost entirely replicate the existing CESR recommendations? If not, please provide your reasoning and suggest an alternative approach.

Question 41: Do you agree with the introduction of a specific disclosure point on the potential dilution effects connected to the exercise of option agreements?

Question 42: Do you believe the application of draft guideline 43 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

History of share capital

- Question 43: Do you agree with the guidance set out in draft guideline 44 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 44: Do you believe the application of draft guideline 44 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Description of the rights attaching to shares of the issuer

- Question 45: Do you agree with the guidance set out in draft guideline 45 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 46: Do you believe the application of draft guideline 45 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Statements by experts

- Question 47: Do you agree with the guidance set out in draft guideline 46 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.
- Question 48: Do you believe the application of draft guideline 46 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Information on holdings

- Question 49: Do you agree with the proposal to carry over only part of the CESR recommendations on information on holdings? If not, please indicate what further CESR recommendations should be retained and the legal basis for their inclusion in these draft guidelines.
- Question 50: Do you consider the clarification on the general principle whereby this draft guideline does not apply when the required information is provided in the issuer's consolidated / separate financial statements prepared in accordance with IFRS to be useful?
- Question 51: Do you believe the application of draft guideline 47 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Interests of natural and legal persons involved in the issue / offer

- Question 52: Do you agree with the guidance set out in draft guideline 48 which has been subject only to minor revision? If not, please elaborate on your reasoning and suggest an alternative approach.

Question 53: Do you believe the application of draft guideline 48 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Collective investment undertakings

Question 54: Do you agree with the guidance set out in the draft guidelines which have been subject only to minor revision, i.e. draft guidelines 49, 50, 52, 53, 54, 55 and 57? If not, please elaborate on your reasoning and suggest an alternative approach.

Question 55: Do you agree with the inclusion of new draft guideline 51? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.

Question 56: Do you agree with the inclusion of new draft guideline 56? If not, please explain and indicate an alternative approach that would provide sufficient investor protection.

Question 57: Do you believe the application of any of the draft guidelines 49, 50, 51, 52, 53, 54, 55, 56 and 57 will impose additional costs on the persons responsible for the prospectus? If so, please provide evidence of the costs and – on a best-effort basis – quantify them.

Annex 2: Draft Guidelines on disclosure requirements under the Prospectus Regulation

I. Scope

Who?

1. These guidelines apply to competent authorities as defined in the Prospectus Regulation and market participants, such as the persons responsible for a prospectus under Article 11(1) of the Prospectus Regulation.

What?

2. The purpose of these guidelines is to help market participants to comply with the disclosure requirements set out in the Commission Delegated Regulation and to enhance consistency across the Union in the way that the annexes to the Commission Delegated Regulation are interpreted. The guidelines have been drafted pursuant to Article 16(3) of the ESMA Regulation.

When?

3. These guidelines apply from [date].

II. Legislative references, abbreviations and definitions

Legislative references

Accounting Directive	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ³⁰
Audit Directive	Regulation 2014/56/EU of the European Parliament and Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts ³¹
Audit Regulation	Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements

³⁰ OJ L 182, 29.06.2013, p. 19-76.

³¹ OJ L 158, 27.05.2014, p 196-226.

regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC³²

Commission Decision
2008/961/EC

Commission Decision 2008/961/EC of 12 December 2008 on the use by third countries' issuers of securities of certain third country's national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements (notified under document number C(2008) 8218³³

Commission Delegated
Regulation

Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004

ESMA Regulation

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC³⁴

Prospectus Regulation

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC³⁵

SFT Regulation

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012³⁶

Shareholder Rights
Directive

Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies³⁷

³² OJ L 158, 27.05.2014, p. 77-112.

³³ OJ L 340, 19.12.2008, p. 112-114.

³⁴ OJ L 331, 15.12.2010, p. 84-119.

³⁵ OJ L 168, 30.06.2017, p. 12-82.

³⁶ OJ L 337, 23.12.2015, p. 1-34.

³⁷ OJ L 184, 14.07.2007, p 17-24.

Solvency II	Directive 2009/138/EC of the European Parliament and of the Council of the 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ³⁸
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC ³⁹

Abbreviations

ESFS	European System of Financial Supervision
ESG	Environmental, social and governance
ESMA	European Securities and Markets Authority
EU	European Union
GAAP	Generally Accepted Accounting Principles
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IPO	Initial public offer
OFR	Operating and financial review
SFT	Securities financing transactions

Definitions

Applicable accounting framework	For the purposes of these guidelines, the applicable accounting framework may be any of the following: <ul style="list-style-type: none"> - International Financial Reporting Standards (IFRS) as adopted in the EU pursuant to Regulation (EC) No
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³⁸ OJ L 335, 17.12.2009, p. 1-155.

³⁹ OJ L 390, 31.12.2004, p. 38-57.

1606/2002 on the application of international accounting standards.

- National Generally Accepted Accounting Principles (GAAP), i.e. the accounting requirements stemming from the transposition of the European Accounting Directives (78/660/EEC, and 83/349/EEC or 2013/34/EC) into the legal system of the Member States of the European Union.
- GAAP laying down equivalent requirements in accordance with Commission Regulation (EC) No 1569/2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directive 2003/71/EC and 2004/109/EC of the European Parliament and of the Council for issuers that are exempted from the requirement of preparing IFRS as endorsed in the EU.

Competent authority	A competent authority responsible for approving prospectuses under the Prospectus Regulation.
Liquidity Coverage Ratio	Liquidity coverage ratio as defined in Article 4(1) of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions.
Minimum Capital Requirement	Minimum capital requirement as defined in Article 248 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Solvency II.
Net Stable Funding Ratio	Net stable funding ratio as defined in Article 428(b) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
Persons responsible for the prospectus	The persons to whom responsibility for the information in a prospectus attaches, that is, as the case may be, the issuer or its administrative, management or supervisory bodies, the offeror, the persons asking for the admission to trading on a regulated market or the guarantor and any

further persons responsible for the information given in the prospectus and identified as such in the prospectus

URD

Universal registration document as referred to in the Prospectus Regulation

III. Purpose

4. As stated in Article 16(1) of the ESMA Regulation, ESMA “... shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants.”
5. These guidelines aim to ensure that market participants have a uniform understanding of the relevant disclosure required in the various annexes included in the Commission Delegated Regulation. These guidelines are also addressed to competent authorities to assist them when assessing the completeness, comprehensibility and consistency of information in prospectuses.

IV. Compliance and reporting obligations

Status of the guidelines

6. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with these guidelines.
7. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and / or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

Reporting requirements

8. Within two months of the date of publication of the guidelines on ESMA’s website in all official EU languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
9. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA’s website in all official EU languages of their reasons for not complying with the guidelines.
10. A template for notifications is available on ESMA’s website. Once the template has been filled in, it shall be transmitted to ESMA.



11. Financial market participants are not required to report whether they comply with these guidelines.

V. Guidelines on prospectus disclosure

V.I. Introduction

12. The purpose of these draft guidelines is to help the person(s) responsible for the prospectus determine the information to be supplied under a certain item of an annex to the Commission Delegated Regulation and to assist consistency across Europe in the way that the annexes to the Commission Delegated Regulation are interpreted.
13. When determining which information is to be supplied under a certain item of an annex to the Commission Delegated Regulation, ESMA expects that the persons responsible for a prospectus will not mention information that is not material in the context of the issuer or the securities. As stated in Recital 27 of the Prospectus Regulation, a prospectus should not contain information that is not material or specific to the issuer and the securities concerned, as that could obscure the information relevant to the investment decision and undermine investor protection. This is also reflected in Article 6(1) of the Prospectus Regulation, which states that a prospectus shall contain the necessary information which is material to an investor making an informed assessment of the information specified in that paragraph.
14. ESMA also notes that the duplication of information in prospectuses should be avoided. Therefore, issuers may refer to where information can be found instead of duplicating it, provided that this does not harm the comprehensibility of the prospectus. For example, the persons responsible for the prospectus may cross-refer to relevant information provided in the financial statements e.g. under IAS 7 and IAS 12 in order to provide information on treasury and funding policies required under these draft guidelines.

V.II. Operating and financial review (OFR)

Purpose of the OFR

This guideline is based on Article 2 (Annex 1, Item 7.1) and Article 28 (Annex 24, Item 2.5) of the Commission Delegated Regulation.

15. **Guideline 1: The persons responsible for the prospectus should ensure that the OFR assists investors in assessing the issuer's business and financial condition and its performance and informs them of any material changes and developments regarding the issuer's results.**
16. The OFR should set out a fair analysis of the development of the issuer's business and financial condition and its performance, together with a description of the principal risks and uncertainties the issuer faces. This analysis should be balanced, comprehensive and consistent with the size and complexity of the business in order to provide investors with a historical review of the issuer's business, financial condition and its performance through the eyes of its management. When preparing the OFR, the persons responsible for the prospectus should focus on those issues which they consider significant for the issuer's business as a whole. If a certain business line or segment is particularly relevant, it should be considered significant for the business as a whole.

Overarching principles of the OFR

This guideline is based on Article 2 (Annex 1, Item 7.1) and Article 28 (Annex 24, Item 2.5) of the Commission Delegated Regulation.

- 17. Guideline 2: The persons responsible for the prospectus should bear in mind that the OFR should be in line with the following overarching principles:**
- (i) audience;**
 - (ii) time-frame;**
 - (iii) reliability; and**
 - (iv) comparability.**
18. Audience: The persons responsible for the prospectus should ensure that OFR focuses on matters that are relevant to investors. The persons responsible for the prospectus should not assume that investors have detailed prior knowledge of the business or the significant features of its operating environment (i.e. qualified investors).
19. Time-frame: The persons responsible for the prospectus should ensure that the OFR discusses the performance in the periods for which historical financial information is included in the prospectus. In doing so, they should identify the trends and factors which are relevant to investors' assessment of the past and which are likely to affect the issuer's business in subsequent periods and the achievement of its long-term objectives.
20. Reliability: The persons responsible for the prospectus should ensure that the OFR is neutral and free from bias and that it treats positive and negative aspects in a balanced way.
21. Comparability: The persons responsible for the prospectus should ensure that investors can compare the information in the OFR with similar information provided elsewhere, such as in the historical financial information of the issuer for the period under review.

Content of the OFR

This guideline is based on Article 2 (Annex 1, Item 7.1) and Article 28 (Annex 24, Item 2.5) of the Commission Delegated Regulation.

- 22. Guideline 3: The persons responsible for the prospectus should ensure that the OFR discusses returns to shareholders, including distributions and share repurchases. In order to enable investors to better assess the sustainability of earnings and cash flow in the future, the persons responsible for the prospectus should furthermore include information about:**
- (i) the material components of the issuer's earnings and cash flow;**
 - (ii) the issuer's material business assets and liabilities; and**
 - (iii) the extent to which items (i) and (ii) are recurring elements.**

23. The persons responsible for the prospectus should ensure that the OFR discusses performance in the context of the issuer's long-term objectives. The discussion should cover any special factors that have affected performance in the period under review. This includes factors whose effect cannot be quantified, and any specific non-recurring items identified in the same financial period.
24. The persons responsible for the prospectus should furthermore ensure that the OFR discusses material assets and liabilities and / or changes from year to year to the extent they help provide a comprehensive picture of the issuer's business and activities.
25. If information about future developments or activities in the field of research and development is included in the OFR, it should be balanced and consistent with the information given elsewhere in the prospectus. In case any of this information qualifies as a profit forecast, the persons responsible for the prospectus should consider guidelines 9-12.
26. If non-financial key performance indicators that are relevant to the particular issuer (i.e. key value drivers) are disclosed in the OFR, information relating to environmental, social and governance (ESG) matters should be included to the extent it is necessary for investors to understand the company's development, performance and condition.

Use of the management report

This guideline is based on Article 2 (Annex 1, Item 7.1) and Article 28 (Annex 24, Item 2.5) of the Commission Delegated Regulation.

27. **Guideline 4: If the OFR requirement is satisfied by the inclusion of management reports⁴⁰ (and where applicable any separate non-financial report) prepared in accordance with national transposition of Articles 19 or 29 of the Accounting Directive (and, if necessary for the purposes of prospectus disclosure, Articles 19(a) or 29(a)), the persons responsible for the prospectus should - in addition to what is prescribed under guidelines 1, 2 and 3 - ensure that the management report is comprehensible and consistent with the rest of the prospectus.**
28. Where the management report is used to comply with the requirement to include an OFR, the person(s) responsible for the prospectus should also assess whether the management report is still up to date and consistent with the information in the prospectus concerning the operating results and capital resources and any prospective information such as trends and profit forecasts. If this is not the case, then the person(s) responsible for the prospectus should provide the necessary clarifications. For example, the persons responsible for the prospectus should provide additional information when parts of the management report are outdated as a result of a change in the group structure or provide clarifications when there is a doubt concerning some explanations in the management report.
29. In case the OFR covers the last three years, the related management reports should cover the same period.

⁴⁰ This requirement equally applies to the case of EU Growth Prospectuses.

V.III. Capital resources

Discussion of cash flows

This guideline is based on Article 2 (Annex 1, Item 8.2) of the Commission Delegated Regulation.

- 30. Guideline 5: The persons responsible for the prospectus should ensure disclosure of:**
- (i) cash inflows and outflows during the latest financial period and any subsequent interim period;**
 - (ii) any material changes to the issuer's cash flows thereafter; and**
 - (iii) any material unused sources of liquidity.**
31. The description should provide an analysis of the sources and amounts of the issuer's cash flows. This should include the nature and extent of any material legal or economic restrictions on the ability of subsidiaries to transfer funds to the issuer in the form of cash dividends, loans or advances, and the impact such restrictions have had or are expected to have on the ability of the issuer to meet its cash obligations. Examples of restrictions include exchange controls and taxation consequences of transfers.
32. For the purpose of this disclosure, the persons responsible for the prospectus may cross-refer to relevant information provided in the financial statements included in the prospectus, in accordance with applicable accounting standards.

Information on funding and treasury policies

This guideline is based on Article 2 (Annex 1, Item 8.3) of the Commission Delegated Regulation.

- 33. Guideline 6: The persons responsible for the prospectus should ensure that information on the issuer's funding and treasury policies is provided.**
34. This information should cover the issuer's objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.
35. For the purpose of this disclosure, the persons responsible for the prospectus may cross-refer to relevant information provided in the financial statements included in the prospectus, in accordance with applicable accounting standards.

Discussion of covenants

This guideline is based on Article 2 (Annex 1, Item 8.4) of the Commission Delegated Regulation.

- 36. Guideline 7: The persons responsible for the prospectus should ensure disclosure of:**
- (i) whether the issuer has entered into covenants with lenders which could materially restrict the use of credit facilities and a brief description of the content of those covenants; and**
 - (ii) whether relevant negotiations with the lenders on the operation of these covenants are taking place.**
- 37. Where a breach of a covenant has occurred or there is a substantial risk it may occur, the persons responsible for the prospectus should ensure that information on the impact of the breach and how the issuer will remedy the situation is provided.**
38. Where the information on breach of covenants (or other information on capital resources) overlaps with the information provided in the working capital statement (Item 3.1 in Annex 11 and Item 1.1 in Annex 13 of Commission Delegated Regulation), the persons responsible for the prospectus may cross refer to the working capital statement ensuring appropriate consistency.

Liquidity

This guideline is based on Article 2 (Annex 1, Item 8.4) of the Commission Delegated Regulation.

- 39. Guideline 8: The persons responsible for the prospectus should ensure that information is provided on the issuer's liquidity and the anticipated sources of the funds which the issuer will need to fulfil its commitments.**
40. This information should include the level of borrowings, the seasonality of borrowing requirements (indicated by the peak level of borrowings during the period), and the maturity profile of both borrowings and undrawn committed borrowing facilities.
41. For the purpose of this disclosure, the persons responsible for the prospectus may cross-refer to relevant information provided in the financial statements included in the prospectus, in accordance with applicable accounting standards.

V.IV. Profit forecasts and estimates

Due care and diligence

This guideline is based on Article 2 (Annex 1, Item 11.2), Article 4 (Annex 3, Item 7.2), Article 7 (Annex 6, Item 8.2), Article 8 (Annex 7, Item 8.1), Article 9 (Annex 8, Item 7.2), Article 28 (Annex 24, Item 2.7.2), Article 29 (Annex 25, Item 2.5.1) of the Commission Delegated Regulation.

- 42. Guideline 9: The persons responsible for the prospectus should apply due care and diligence when compiling profit forecasts and estimates to ensure that they are not misleading to investors.**
43. The following non-exhaustive list presents factors that the persons responsible for the prospectus should take into consideration when preparing profit forecasts:
- (i) past results, market analysis, strategic evolutions, market share and position of the issuer,
 - (ii) financial position and possible changes therein,
 - (iii) the impact of an acquisition or disposal, change in strategy or any major change in environmental matters and technology,
 - (iv) changes in legal and tax environment, and
 - (v) commitments toward third parties.
44. The persons responsible for the prospectus should always assess the accuracy of the information they include in the prospectus. However, due to the sensitivity of profit forecasts and estimates to changing circumstances, where a registration document or universal registration document contains profit forecasts / estimates and is used as a constituent part of a prospectus, the persons responsible for the prospectus should specifically assess whether the profit forecasts / estimates remain valid and correct. If they are not, the persons responsible for the prospectus should amend the profit forecasts / estimates as of the date of approval of the prospectus, by filing a supplement or amendment.

Principles for preparing profit forecasts and estimates

This guideline is based on Article 2 (Annex 1, Item 11.3), Article 4 (Annex 3, Item 7.3), Article 7 (Annex 6, Item 8.3), Article 8 (Annex 7, Item 8.2), Article 9 (Annex 8, Item 7.3), Article 28 (Annex 24, Item 2.7.3), Article 29 (Annex 25, Item 2.5.2) of the Commission Delegated Regulation.

- 45. Guideline 10: The persons responsible for the prospectus should ensure that profit forecasts and estimates are:**
- (i) understandable;
 - (ii) reliable;

(iii) comparable; and

(iv) relevant.

46. Understandable: Profit forecasts and estimates should contain disclosure that is not too complex for investors to understand, for example when it comes to the disclosure of profits after taxes that are materially affected by tax effects.
47. Reliable: Profit forecasts should be supported by a thorough analysis of the issuer's business and should represent factual, as opposed to hypothetical, strategies, plans and risk analysis.
48. Comparable: Profit forecasts and estimates should be drawn up in a way that it is easy for investors to compare with the historical and interim financial information included in the prospectus.
49. For the purpose of comparability, profit forecasts or estimates can be compared with pro-forma financial information or additional financial information included in the prospectus pursuant to Article 18(2) of Commission Delegated Regulation where: i) the issuer of equity securities has a complex financial history, or ii) has made a significant financial commitment and the profit forecasts or estimates have been prepared assuming that the relevant transaction has already been completed (e.g. with reference to the combined entity) while the historical and interim financial information contained in the prospectus do not include the relevant transaction.
50. Additional comparative information may be relevant in some other cases to facilitate comparability of profit forecasts or estimates with historical and interim financial information. For example, if a significant legal dispute has arisen after the date of preparation of historical financial information relating to the last preceding period, narrative information may explain the impact of such uncertainty on profit forecasts or estimates and that the dispute did not exist at the end of the previous period. Further, if the issuer changes its accounting policy when preparing profit forecasts or estimates, it should present restated historical financial information, where those changes are applied retrospectively, as comparative financial information. It should also specify whether such restated information has been audited or subject to limited review.
51. Relevant: Profit forecasts and estimates should have an ability to influence economic decisions of investors and assist in confirming or correcting past evaluations or assessments of historical financial information.
52. The persons responsible for the prospectus should note that, as opposed to profit forecasts, estimates are not expected to be particularly sensitive to assumptions, because estimates refer to economic transactions that have already occurred.

Clean statement of comparability and consistency of the profit forecast or estimate

This guideline is based on Article 2 (Annex 1, Item 11.3), Article 4 (Annex 3, Item 7.3), Article 7 (Annex 6, Item 8.3), Article 8 (Annex 7, Item 8.2), Article 9 (Annex 8, Item 7.3), Article 28 (Annex 24, Item 2.7.3), Article 29 (Annex 25, Item 2.5.2) of the Commission Delegated Regulation.

53. **Guideline 11: The persons responsible for the prospectus can meet the requirement to include the statement that the profit forecast or estimate has been compiled and prepared on a basis which is both comparable with the historical financial information and consistent with the issuer's accounting policies, as required by Commission Delegated Regulation, by providing a clean statement.**
54. In addition, when specific circumstances affect comparability and/or consistency of profit forecasts or estimates with historical financial information, for example if the issuer changes its accounting policy when preparing profit forecasts or estimates, the persons responsible for the prospectus should ensure that the statement explains how the requirements of comparability and consistency have been fulfilled.
55. In a statement of comparability, the persons responsible for the prospectus should avoid qualifying that statement with any caveats or softening the message.

Profit forecast or estimate in relation to a material undertaking

This guideline is based on Article 2 (Annex 1, Item 11.1), Article 4 (Annex 3, Item 7.1), Article 7 (Annex 6, Item 8.1), Article 9 (Annex 8, Item 7.1), Article 28 (Annex 24, Item 2.7.1) of the Commission Delegated Regulation.

56. **Guideline 12: Where there is an outstanding profit forecast or estimate in relation to a material undertaking which the issuer has acquired, the persons responsible for the prospectus should ensure that it is properly considered if the profit forecast or estimate made by the material undertaking is still valid and correct and whether it is necessary to provide disclosure on this matter in the prospectus.**
57. When applicable, the persons responsible for the prospectus should furthermore report in the prospectus the effects of the acquisition and the profit forecast or estimate made by the material undertaking on the issuer's financial position and / or profits as if the profit forecast or estimate had been made by the issuer itself.

V.V. Historical financial information

Examples relating to guidelines 13, 14, 15 and 16 relating to historical financial information

58. Guidelines 13, 14, 15 and 16 apply in the case of issuers that will adopt a new accounting framework in the next published financial statements. Points (i), (ii) and (iii) below are used as examples to illustrate how the guidelines should be applied and reviewed and should be read in connection with the guidance provided in the guidelines.

- (i) The issuer is a new applicant for admission to trading on a regulated market of equity securities. It used national GAAP as basis for its consolidated financial statements in 2017, 2018 and 2019. Pursuant to the EU Regulation 1606/2002, the issuer will have to apply IFRS as of 1 January 2020, i.e. for the reporting periods ending after the date of the admission to trading (and present comparatives for 2019). If the prospectus for the IPO is approved after April 2020, the next published annual financial statements will be the 2020 ones, i.e. IFRS financial statements as at 31 December 2020. These financial statements will be published at the latest by April 2021.
- (ii) A similar situation is that of an issuer which always presented historical financial information under national GAAP. However, this issuer decides at the time of the IPO to voluntarily adopt IFRS for the preparation of the financial statements for the reporting periods starting on or after 1 January 2020. This situation is in fact similar to the one covered under point (i) above since for the purpose of the restatement it is not relevant whether the adoption of new accounting framework is mandatory or voluntary.
- (iii) The issuer was preparing its statutory financial statements in 2017, 2018 and 2019 under national GAAP of Member State A. However, the issuer has moved its registered office to Member State B. As a result of this change the issuer will adopt as of 1 January 2020 the accounting framework of that Member State.

Restatement of historical financial information

This guideline is based on Article 2 (Annex 1, Item 18.1.4), Article 7 (Annex 6, Item 11.1.4), Article 10 (Annex 9, Item 8.2.3), Article 28 (Annex 24, Item 5.1.4), Article 29 (Annex 25, Item 5.1.4) of the Commission Delegated Regulation.

- 59. Guideline 13: The persons responsible for the prospectus should ensure that the restated financial statements should be comparable with the financial statements prepared under the previous accounting framework.**
60. When the issuer intends to adopt a new accounting framework in its next published financial statements, the financial information covering the last financial year, should be presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements. In order to do so, they should apply the new accounting framework to the period being restated (for instance, IFRS as endorsed in the EU). The restatement should apply to all parts and aspects of the financial information. However, the restatement in a form consistent with that which will be adopted in the issuer's next published annual financial statements doesn't mean an obligation to adopt amended or new standards before their effective date.
61. For example, an issuer who is going to adopt IFRS as of 1 January 2020 should apply the relevant requirements under IFRS. In particular, the issuer should apply IFRS 1 which sets out principles for adopting IFRS for the first time and provides guidance in relation to the transition from the accounting framework which the issuer previously applied (e.g. national GAAP).

62. While the persons responsible for the prospectus are not required to restate the first year of financial information included in the prospectus (in the examples above 2017), its inclusion in the prospectus is mandatory under the disclosure requirements of the Commission Delegated Regulation.
63. Where the prospectus contains pro forma financial information, the persons responsible for the prospectus should draw up the pro forma financial information in accordance with the new accounting framework applied to the restated financial information. This will enable investors to compare the restated financial information with the pro forma financial information.
64. Where the entire annual historical financial information that is required to be included in the prospectus has been restated to comply with the Commission Delegated Regulation, the persons responsible for the prospectus may present the audited restated financial statements and their comparatives in the prospectus as a substitute for the statutory financial statements.

Bridge approach for prospectuses that include three years of financial information

This guideline is based on Article 2 (Annex 1, Item 18.1.4) of the Commission Delegated Regulation.

65. **Guideline 14: Where the prospectus is required to include historical financial information for three financial years, and all years of financial information are not restated, the middle period should be presented under the current and the new accounting framework and the last period should be presented only under the new accounting framework.**
66. According to the Commission Delegated Regulation, the persons responsible for the prospectus are required to completely restate the financial information covering the last two financial years. In this case the middle period is used as a bridge between the first and the third year while the first financial year may be presented under the previous accounting framework. Figure 1 sets out an approach that the persons responsible for the prospectus may use when the historical financial information in the prospectus is required to cover three financial years in the situations mentioned under points (i), (ii) and (iii) in paragraph 58.

Figure 1: Application of bridge approach for prospectuses that include three years of financial information



	Year 2019	Year 2018	Year 2018	Year 2017
Items of financial statements	Application of IFRS or new GAAP (restated)	Application of IFRS or new GAAP (restated as comparative)	Application of previous GAAP (as previously published)	Application of previous GAAP (as published)

67. Referring to Figure 1 and taking into consideration that equity issuers are required to present audited financial statements restated under IFRS for the last two years in its prospectus, such issuers should apply IFRS 1 in the 2019 financial statements (as restated under IFRS). This implies that the financial information related to 2018 will be restated into IFRS as comparatives in the 2019 IFRS financial statements.

Presentation of restated historical financial information

This guideline is based on Article 2 (Annex 1, Item 18.1.4), Article 7 (Annex 6, Item 11.1.4), Article 10 (Annex 9, Item 8.2.3) / Article 28 (Annex 24, Item 5.1.4), Article 29 (Annex 25, Item 5.1.4 of the Commission Delegated Regulation).

68. **Guideline 15: Where the presentation format of the financial information prepared under the current accounting framework is not easily comparable with the presentation format of the restated financial information, the persons responsible for the prospectus should set out the financial information prepared under the current accounting framework separately.**
69. The persons responsible for the prospectus should follow the new applicable accounting framework regarding the presentation of the restated historical financial information. For instance, in case of restatement to IFRS, the applicable accounting standard would be IFRS 1.
70. The persons responsible for the prospectus should assess whether the presentation format of the statutory financial statements is sufficiently compatible with the presentation format of the restated financial information to allow investors to obtain a clear understanding of the issuer's performance and financial development over time. Where the persons responsible for the prospectus consider that comparison of the historical financial information included in the prospectus is not facilitated, for example due to significant differences in the presentation format of the current and the new accounting framework, they should present the historical financial information prepared under the two accounting frameworks separately (e.g. on separate pages of the prospectus).

Audit of the restated historical financial information

This guideline is based on Article 2 (Annex 1, Item 18.1.4), Article 7 (Annex 6, Item 11.1.4), Article 10 (Annex 9, Item 8.2.3), Article 28 (Annex 24, Item 5.1.4), Article 29 (Annex 25, Item 5.1.4) of the Commission Delegated Regulation.

- 71. Guideline 16: The persons responsible for the prospectus should ensure that the audit report produced for the purposes of the prospectus covers the restated historical financial information, including any comparative information, presented in the prospectus.**
72. Where applicable, the audit report will be presented in accordance with the Audit Directive and the Audit Regulation. Where the Audit Directive and the Audit Regulation do not apply, the following rules should be followed:
- (i) the auditor should audit the restated financial information in accordance with auditing standards applicable in a Member State or equivalent standards. The auditor should include an audit opinion regarding whether, for the purposes of the prospectus, the restated historical financial information gives a true and fair view in accordance with the relevant accounting framework; and
 - (ii) if the auditor has refused to provide an audit report on the restated historical financial information, or if the auditor has included qualifications, modifications of opinion, disclaimers or an emphasis of matter in the audit report, the persons responsible for the prospectus should reproduce the qualifications, modifications, disclaimers or emphasis of matter in full in the prospectus and give the reasons for them.
73. If the persons responsible for the prospectus use the 'bridge approach' set out in guideline 14 and present the middle year under the two accounting frameworks, the audit report that is produced for the purpose of the prospectus is only required to cover the restated historical financial information and should include an opinion on whether the restated information gives a true and fair view of the issuer's financial performance and position. In the example above, the audit report will cover the 2019 restated historical financial information and include as comparatives the 2018 restated historical financial information. Furthermore, to comply with the disclosure requirements in the Commission Delegated Regulation, the historical financial information prepared under the current accounting framework – in the example above the 2018 and 2017 historical financial information – will be covered by the statutory audit reports in respect of each year that will be included in the prospectus. For the avoidance of doubt, the persons responsible for the prospectus should use the disclosure requirements that refer to the change of accounting framework in the relevant annexes of Commission Delegated Regulation in conjunction with the information required on the auditing of historical financial information pursuant to that Regulation.
74. The case in which the competent authority requested additional disclosures or even a restatement of the accounts following a review of the statutory financial information should be distinguished from the case where a restatement is made in accordance with Annex 1, item 18.1.4. This guideline will apply if the restatement is made in accordance with Annex 1, item 18.1.4. However, when a restatement is made by the issuer as a

result of an enforcement procedure, the restated information should be included in the prospectus along with the original accounts, unless the original accounts are officially corrected. In this case, the restated information does not necessarily have to be audited as this will depend on the circumstances of the case.

Content of historical annual financial information

This guideline is based on Article 2 (Annex 1, Item 18.1.5) and Article 7 (Annex 6, Item 11.1.5) of the Commission Delegated Regulation.

75. **Guideline 17: If the national accounting standards of a Member State do not require the inclusion in the annual financial information of some components of the financial statements required by the applicable annexes of the Commission Delegated Regulation, the persons responsible for the prospectus should ensure that additional statements are prepared in accordance with the applicable accounting framework.**
76. When the applicable accounting framework does not include specific guidance for the preparation of such statements, the persons responsible for the prospectus should consider following the principles of the IFRS to the extent possible.
77. In some cases, the applicable accounting framework will not require issuers to prepare all the components of the historical financial information required under the relevant annexes of Commission Delegated Regulation, for instance the cash flow statement or the statement of changes in equity. In such cases, the persons responsible for the prospectus should prepare the missing information for the purposes of the prospectus. Where the applicable accounting framework contains principles for the preparation of such information, the persons responsible for the prospectus should follow those principles. Where the applicable accounting framework does not contain such principles, the persons responsible for the prospectus should consider following the principles set out in IFRS to the extent possible.

V.VI. Pro forma financial information

Assessing if a transaction constitutes a significant gross change or a significant financial commitment

This guideline is based on Article 1(e) and Article 18(4) of the Commission Delegated Regulation.

78. **Guideline 18: To assess whether a transaction constitutes a significant gross change within the meaning of Article 1(e) of the Commission Delegated Regulation or a significant financial commitment within the meaning of Article 18(4) of that Regulation, the persons responsible for the prospectus should consider the size of the transaction relative to the size of the issuer's business. This should be done based on figures which reflect the issuer's business before the transaction took place and by using appropriate indicators of size which will generally be one of the following line items:**
 - (i) total assets;

(ii) revenue; or

(iii) profit or loss.

79. However, where those indicators of size produce an anomalous result or are inappropriate to the specific industry of the issuer or to the transaction itself, the persons responsible for the prospectus may use alternative indicators. An anomalous result could arise where a large company with a profit close to zero or a loss acquires a company with much smaller assets and revenue which has a small positive profit. This would lead the profit of the acquiring company to increase by more than 25%, however, considering the acquisition of the small company as a significant gross change would be misleading. In such cases, the persons responsible for the prospectus should discuss their proposals for alternative indicators with the competent authority during the prospectus approval process.
80. Calculation of whether the 25% threshold is reached should be made on the basis of unadjusted historical financial information. For example, in the case of an acquisition, the persons responsible for the prospectus should use figures which do not include the acquired company. They should normally use figures from the issuer's audited historical financial information for the last financial year.
81. Sometimes an issuer will publish a prospectus – including pro forma information to cover a significant gross change, complex financial history or significant financial commitment ('the first transaction') – and subsequently undertake or commit to undertake a second transaction and prepare a second prospectus, without publishing any financial information between the two prospectuses. In such cases, the persons responsible for the prospectus should use the historical unadjusted information, i.e. the issuer's financial information before the first transaction, to determine if the second transaction constitutes a significant gross change or a significant financial commitment. Where the second transaction constitutes a significant gross change or a significant financial commitment, and pro forma information is therefore required, the persons responsible for the prospectus should cover both the first and the second transaction in the pro forma information.
82. The calculation of the indicators in paragraph 78 should be made on an annual basis, regardless of the figures which are used. This should be done by using financial statement figures covering a 12-month period to remove any effect of seasonality during the year.
83. If an issuer undertakes or commits to undertake several transactions which individually do not constitute more than a 25% variation to one or more indicators of the size of the issuer's business, but which collectively do constitute more than a 25% variation, the persons responsible for the prospectus should include pro forma information, unless it is disproportionately burdensome to produce such pro forma information. If an issuer undertakes or commits to undertake several transactions, and only one of them constitutes more than a 25% variation to one or more indicators of the size of the issuer's business, the persons responsible for the prospectus should include pro forma information covering all the transactions, unless it is disproportionately burdensome to produce such pro forma information for the transactions which do not constitute more than a 25% variation. When determining if it is disproportionately burdensome, the

persons responsible for the prospectus should consider the costs of producing the pro forma information versus the value of the information for investors.

84. For example, an issuer has undertaken a transaction which constitutes a 27% increase to its total assets and another transaction which constitutes a 1% increase. In this case, it might be disproportionately burdensome to produce pro forma information for the 1% increase compared to the added value this information will bring investors.

Hypothetical date of the transaction (pro forma profit and loss account)

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

85. **Guideline 19: In case of a significant gross change,**
- (i) when the persons responsible for the prospectus prepare pro forma information with reference to the last completed financial period, they should draw up the pro forma profit and loss account as if the transaction had been undertaken on the first day of that period;**
 - (ii) when the persons responsible for the prospectus prepare pro forma information with reference to the most recent interim period for which relevant unadjusted information has been published or is included in the registration document / prospectus, they should draw up the pro forma profit and loss account as if the transaction had been undertaken on the first day of that period.**
86. When the issuer's business has undergone a significant gross change, and the persons responsible for the prospectus therefore have to prepare pro forma information, they perform a simulation of how the transaction would have affected the issuer if it had taken place at an earlier date. This date is independent from the date on which the prospectus is approved.
87. For example: An equity prospectus is drawn up in May 2020 and includes audited historical financial information covering 2017, 2018 and 2019. The date of the balance sheet which is included in the 2019 historical financial information is 31 December 2019. The issuer has published unaudited financial information for the first quarter of 2020, including a balance sheet dated 31 March 2020, which is also included in the prospectus. The issuer's total assets increased by 27% in April 2020 due to the acquisition of Company XYZ.
88. When the persons responsible for the prospectus prepare pro forma information with reference to the full financial year of 2019, they should draw up the pro forma profit and loss account as if the issuer's acquisition of Company XYZ had taken place on 1 January 2019.
89. When the persons responsible for the prospectus prepare pro forma information with reference to the first quarter of 2020, they should draw up the pro forma profit and loss account as if the issuer's acquisition of Company XYZ had taken place on 1 January 2020.

90. The persons responsible for the prospectus should make sure that any interim financial information used as the basis for the pro forma profit and loss account has been prepared with due care.

Hypothetical date of the transaction (pro forma balance sheet)

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

91. **Guideline 20: In case of a significant gross change,**
- (i) **when the persons responsible for the prospectus prepare pro forma information with reference to the last completed financial period, they should draw up the pro forma balance sheet as if the transaction had been undertaken on the last day of that period;**
 - (ii) **when the persons responsible for the prospectus prepare pro forma information with reference to the most recent interim period for which relevant unadjusted information has been published or is included in the registration document / prospectus, they should draw up the pro forma balance sheet as if the transaction had been undertaken on the last day of that period.**
92. In the example included in paragraph 87 above, when the persons responsible for the prospectus prepare pro forma information with reference to the full financial year of 2019, they should draw up the pro forma balance sheet as if the issuer's acquisition of Company XYZ had taken place on 31 December 2019.
93. In the example included in paragraph 87 above, when the persons responsible for the prospectus prepare pro forma information with reference to the first quarter of 2020, they should draw up the pro forma balance sheet as if the issuer's acquisition of Company XYZ had taken place on 31 March 2020.
94. The persons responsible for the prospectus should make sure that any interim financial information used as the basis for the pro forma balance sheet has been prepared with due care.

Time period covered by pro forma information

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5), Article 18 (Annex 20, Item 2.2) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation in light of the principle of consistency laid down in Article 2(r) of the Prospectus Regulation.

95. **Guideline 21: The persons responsible for the prospectus should ensure that the time period covered by the pro forma profit and loss account / balance sheet is consistent with the financial information included in the prospectus.**
96. The persons responsible for the prospectus can draw up pro forma financial information in relation to the latest financial year which has closed and / or in relation to the latest

half year or quarter for which the issuer has published financial information or for which the persons responsible for the prospectus have included financial information in the registration document or prospectus.

97. While the persons responsible for the prospectus should normally use half-yearly financial information when they draw up pro forma financial information in relation to interim financial information, they may use quarterly financial information where such information has been prepared with the same level of care as the half-yearly information. The half-yearly and quarterly financial information will either be information which the issuer has already published, for example to comply with the requirements of the Transparency Directive, or which the persons responsible for the prospectus are including in the prospectus.
98. Where the prospectus contains annual financial statements as the only financial information, the pro forma profit and loss account / balance sheet should cover the full year. Where the prospectus contains annual financial statements as well as interim financial information, the persons responsible for the prospectus may decide to cover only the interim period, only the full year or both the interim period and the full year in the pro forma profit and loss account / balance sheet. When the persons responsible for the prospectus consider covering only the interim period in the pro forma profit and loss account, they should ensure that this will sufficiently describe how the transaction might have affected the earnings of the issuer (e.g. where the issuer's business is affected by seasonality, it may not be sufficient to cover the interim period, and the pro forma profit and loss account may need to cover the full year).
99. To comply with the requirement to include historical unadjusted information in the pro forma profit and loss account / balance sheet, the persons responsible for the prospectus should normally use the audited historical financial information for the last completed financial period or the most recent quarterly or half-yearly financial information published by the issuer or included in the prospectus before the transaction took place. In specific circumstances, this rule will not apply, for example when the issuer has drawn up financial information specifically for the purpose of the prospectus.
100. To comply with the requirement to present the pro forma profit and loss account and the pro forma balance sheet in a columnar format, the persons responsible for the prospectus should normally insert the historical unadjusted information as the first column.

Transaction already covered in historical or interim financial information

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5), Article 18 (Annex 20, Item 1.1(b)) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

- 101. Guideline 22: The persons responsible for the prospectus are not required to include a pro forma profit and loss account / balance sheet in the prospectus, if the transaction is already fully reflected in the profit and loss account / balance sheet contained in the historical or interim financial information in the prospectus.**

102. The purpose of including pro forma information in the prospectus is to (i) allow investors to understand the financial history of an issuer with a complex financial history; (ii) enable issuers to assess the expected effects of an upcoming transaction, or (iii) inform investors of how a transaction might have affected the issuer if it had occurred at an earlier point in time. If the transaction is already reflected in the profit and loss account / balance sheet in the historical or interim financial information included in the prospectus, there is no need to provide a pro forma profit and loss account / balance sheet as investors have already been provided with the necessary information. For example, where an issuer underwent a significant gross change in November 2018, and a prospectus is prepared in March 2019, containing audited annual financial statements for 2018, the persons responsible for the prospectus should include a pro forma profit and loss account, since the profit and loss account in the annual financial statement does not reflect the impact of the transaction on the entire year. On the other hand, they do not need to include a pro forma balance sheet, since the balance sheet in the annual financial statement fully reflects the transaction.

Using other information than pro forma information

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

- 103. Guideline 23: In case of a significant gross change, the persons responsible for the prospectus may exceptionally, and in agreement with the competent authority, describe the effect of the transaction differently than through pro forma information.**
104. As a rule, the persons responsible for the prospectus should provide pro forma information in accordance with Annex 20 to reflect a significant gross change. However, in rare situations they may be able to describe the effect of the transaction:
- (i) by providing only a pro forma profit and loss account and no pro forma balance sheet / by providing only a pro forma balance sheet and no pro forma profit and loss account (even if the transaction is not reflected in the profit and loss account / balance sheet contained in the historical or interim financial information in the prospectus, as described in guideline 22); or
 - (ii) by providing only a narrative and neither a pro forma profit and loss account nor a pro forma balance sheet.
105. This might be the case when the issuer will acquire another entity and it is not feasible to obtain the relevant financial information relating to that entity, when the issuer has acquired an asset and no or insufficient financial information is available, and when pro forma information would not accurately describe the effect of the transaction.
106. The persons responsible for the prospectus should obtain the agreement of the competent authority before proceeding with the approach described in paragraph 104. If the persons responsible for the prospectus follow the approach described in paragraph 104(ii), they are not required to include a report prepared by the independent accountants or auditors.

Which events to cover with pro forma information

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5), Article 18 (Annex 20, Item 2.3(b) and (c)) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

- 107. Guideline 24: When preparing pro forma adjustments, the persons responsible for the prospectus should reflect the transaction giving rise to the pro forma information, regardless of whether the transaction has already occurred or has not yet occurred. In doing so, they should only reflect matters which are:**
- (i) an integral part of the transaction; and**
 - (ii) capable of a reasonable degree of objective determination.**
108. The pro forma adjustments should cover the transaction giving rise to the pro forma information, regardless of whether the transaction has already occurred (in case of a significant gross change or a complex financial history), or it has not yet taken place (in case of a significant financial commitment).
109. Whereas pro forma adjustments must present all significant effects directly attributable to the transaction, the persons responsible for the prospectus should not include future effects which are very uncertain as this could give a misleading picture of the transaction. In particular, pro forma information should generally not include adjustments which are dependent on actions to be taken once the transaction has been completed, even where such actions are central to the issuer's purpose in entering into the transaction, e.g. synergies. For instance, the persons responsible for the prospectus should as a rule not include deferred or contingent consideration if that consideration is not directly attributable to the transaction but to a future event. If they are capable of a reasonable degree of objective determination, such adjustments may, however, be included on a case-by-case basis, depending on the use of the pro forma information and after discussion with the competent authority.
110. The persons responsible for the prospectus should always base pro forma adjustments on reliable and documented evidence. Such evidence will typically consist of published accounts, management accounts, other financial information and valuations contained in the documentation relating to the transaction, purchase and sale agreements and other agreements to the transaction covered by the prospectus. For instance, in relation to management accounts, the interim figures for an undertaking being acquired may be derived from the consolidation schedules underlying that undertaking's interim statements.
111. In some cases, the issuer undertakes a capital increase (requiring a prospectus) to raise funds for the acquisition of another entity (constituting a significant financial commitment, thereby triggering the need for pro forma information which illustrates the impact of the acquisition if it had taken place at an earlier date). If the acquisition is conditional on the capital increase being successful, in addition to covering the impact of the acquisition in the pro forma information, the persons responsible for the prospectus should also cover the impact of the capital increase. If it is very uncertain whether the offer will be

subscribed, the persons responsible for the prospectus should consider adding a risk factor in this regard.

Accountant / auditor report

This guideline is based on Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5), Article 18 (Annex 20, Section 3) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

- 112. Guideline 25: When the independent accountants or auditors prepare their report under Annex 20, Section 3 of the Commission Delegated Regulation, the persons responsible for the prospectus should ensure that they follow the exact wording set out in that Section.**
113. The purpose of the report prepared by the independent accountants or auditors is to inform investors that the pro forma information was properly compiled on a basis consistent with the accounting policies of the issuer. The persons responsible for the prospectus should ensure that the independent accountants or auditors do not include qualifications or emphases of matter in their report as these pieces of information would only serve to reduce its clarity. Instead, the persons responsible for the prospectus should ensure that the independent accountants / auditors say that, in their opinion, the pro forma information has been properly compiled on the basis stated, and that this basis is consistent with the accounting policies of the issuer.

Voluntary pro forma information

This guideline is based on Article 6 of the Prospectus Regulation read in conjunction with Article 2 (Annex 1, Item 18.4.1), Article 4 (Annex 3, Item 11.5), Article 18 (Annex 20) and Article 28 (Annex 24, Item 5.7) of the Commission Delegated Regulation.

- 114. Guideline 26: The persons responsible for the prospectus should comply with the requirements of Annex 20 of the Commission Delegated Regulation if pro forma information is included in a prospectus on a voluntary basis.**
115. Even in the absence of a significant gross change, a significant financial commitment or a complex financial history, the persons responsible for the prospectus may decide to voluntarily include pro forma information in the prospectus. The same applies to issuers of non-equity securities.
116. The fact that pro forma information is included in the prospectus on a voluntary basis should not imply that it is possible for this information to be provided with less care than when included on a mandatory basis. Pro forma information, if not prepared with due care, might confuse or even mislead investors. Therefore, the persons responsible for the prospectus should apply the requirements of Annex 20 if they decide to include pro forma information on a voluntary basis.

V.VII. Interim financial information

Compilation of interim financial information

This guideline is based on Article 2 (Annex 1, Item 18.2), Article 7 (Annex 6, Item 11.2.1), Article 28 (Annex 24, Item 5.2.1), Article 29 (Annex 25, Item 5.2.1) of the Commission Delegated Regulation.

- 117. Guideline 27: Where the most recent financial information published by the issuer is the half-yearly financial report prepared in accordance with the Transparency Directive, the persons responsible for the prospectus should include in the registration document at least the condensed set of financial statements included in that half-yearly financial report.**
- 118. Where the most recent financial information published by an issuer is the quarterly financial report prepared either on a voluntary basis or in accordance with national rules, the persons responsible for the prospectus should include in the registration document at least the condensed set of financial statements included in that quarterly financial report.**
119. Two different situations can be envisaged:
- (i) An issuer submits a prospectus for approval on 30 July. The issuer has published half-yearly financial information (30 June) and information on the first quarter: in that case the latest interim financial information is sufficient (half-yearly).
 - (ii) An issuer submits a prospectus for approval on 30 October. The issuer has published information on the third quarter and half-yearly financial information (30 June): in that case the latest interim financial information is not sufficient, and the issuer should include in its prospectus both quarterly (Q3) and half-yearly financial information provided that there is no duplication of information. When interim financial information for the third quarter also covers the first nine months of the year and is prepared with the same level of care of the half-year financial information, the half-yearly financial information does not need to be disclosed.

Relevant accounting policies and principles

This guideline is based on Article 2 (Annex 1, Item 18.2), Article 7 (Annex 6, Item 11.2.1), Article 28 (Annex 24, Item 5.2.1), Article 29 (Annex 25, Item 5.2.1) of Commission Delegated Regulation, read in conjunction with the principle of consistency laid down in Article 2(r) of the Prospectus Regulation.

- 120. Guideline 28: When the issuer has published quarterly or half-yearly financial information, the persons responsible for the prospectus should present the interim financial information according to the issuer's accounting framework.**

V.VIII. Working capital statements

Robust procedures

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation.

- 121. Guideline 29: The issuer should prepare its working capital statement based on robust procedures to limit the risk that the statement is called into question.**
122. When preparing a working capital statement, the issuer should follow procedures appropriate to ensure the robustness of the statement which should be similar to the procedures applied in concluding that the issuer's annual accounts can be drawn up on a going concern basis. The issuer should normally take the following steps:
- (i) preparing unpublished supporting prospective financial information in the form of internally consistent cash flow, profit and loss and balance sheet information;
 - (ii) conducting business analysis covering both the issuer's cash flows and the terms and conditions and commercial considerations associated with banking and other financing relationships;
 - (iii) considering the issuer's strategy and plans and the related implementation risks together with checks against evidence and analysis provided by its advisors; and
 - (iv) assessing whether there are sufficient resources to cover a reasonable worst-case scenario (sensitivity analysis). Where there is insufficient headroom between required and available funding to cover reasonable alternative scenarios, the issuer will need to reconsider its business plans or arrange additional financing if it wishes to provide a clean working capital statement.

Unambiguous

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation.

- 123. Guideline 30: The issuer should ensure that the working capital statement is unambiguous.**
124. Regardless of whether the working capital statement is clean or qualified, the issuer should make sure it sends a clear message, so that it is obvious to investors whether in the issuer's opinion there is sufficient working capital.
125. In a clean working capital statement, issuers should say that their working capital 'is sufficient'. They should avoid saying that they 'will' or 'may' have sufficient working capital or that they 'believe' they have sufficient working capital, as these latter terms could create confusion regarding when the working capital will be sufficient and which

events would have to occur for the working capital to be sufficient. A clean working capital statement could for example have the following wording: In the company's opinion, its working capital is sufficient to meet its present requirements over at least the next twelve months.

Rules for calculation of working capital

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation.

- 126. Guideline 31: When the issuer calculates its working capital, it should only count the proceeds of an offering, if the offering is underwritten on a firm commitment basis, or if irrevocable undertakings have been given for placings.**
127. Where only a part of the offering is to be underwritten on a firm commitment basis or irrevocable undertakings have only been given for part of the placings, the issuer should only count the proceeds of that part in its working capital.

Rules for calculation of present requirements

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation read in light of the duration of the validity of the prospectus established in Article 12 of the Prospectus Regulation.

- 128. Guideline 32: For the purpose of the working capital statement and in line with the duration of the validity of the prospectus, the issuer should include liabilities for a minimum of 12 months from the date of approval of the prospectus when calculating its present requirements. If it has made a commitment to acquire another entity within the 12 months following the date of approval of the prospectus, it should include the acquisition when calculating its present requirements.**
129. When calculating its present requirements, the issuer should take into account the actions foreseen in its strategy. For example, if the issuer's strategy foresees expenditures relating to research and development or equipment, this should be taken into consideration.
130. Where the issuer is aware of working capital difficulties that may arise more than 12 months after the date of approval of the prospectus, the persons responsible for the prospectus should consider including supplementary disclosure in the prospectus.

Preparation on a consolidated basis

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation read in light of the principle of including consolidated information in the prospectus in Article 2 (Annex 1, Item 18.1.6), Article 7 (Annex 6, Item 11.1.6), Article 8 (Annex 7, Item 11.1.5), Article 28 (Annex 24, Item 5.1.6) and Article 29 (Annex 25, Item 5.1.6) of the Commission Delegated Regulation.

- 131. Guideline 33: In line with the requirement to include consolidated financial statements in the prospectus where such statements are prepared, when an issuer prepares its working capital statement, it should determine the working capital and the present requirements on a consolidated basis.**
132. For an issuer which is the parent company of a group, the investor is in substance investing in the business of the whole group and this is the basis on which information in the prospectus is presented. As such, financial information in the prospectus is presented on a consolidated basis, and this principle should also apply to the working capital statement. When determining its working capital and present requirements, the issuer should consider, among other things, the nature of group arrangements and any restrictions on the transfer of funds between subsidiaries (for example where overseas subsidiaries are involved).

Credit institutions

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation.

- 133. Guideline 34: When determining its working capital, an issuer which is a credit institution⁴¹ should take its liquidity metrics as the starting point. The issuer should take into account all available information which may have a material impact on its liquidity risk.**
134. Issuers which are credit institutions should provide a working capital statement in line with the general rules set out in guidelines 29-33 and 36-37 when issuing equity securities. However, this statement should be drawn up on a basis that reflects the specificities of their business model by relying on the relevant applicable prudential requirements, except where relying on such requirements would render the working capital statement misleading. EU credit institutions should use the applicable ratios required by EU legislation⁴² to calculate liquidity. In particular, these institutions should use the Liquidity Coverage Ratio and Net Stable Funding Ratio (or any applicable national stable funding provisions before the Net Stable Funding Ratio is required by EU legislation) to calculate liquidity. The same applies to third country credit institutions which calculate those ratios. Third country credit institutions which do not calculate those

⁴¹ As defined in Article 2(g) of the Prospectus Regulation.

⁴² Regulation (EU) No 575/2013; Commission Delegated Regulation (EU) 2015/61; Commission Implementing Regulation (EU) No 680/2014.

ratios should instead use ratios consistent with the applicable legal framework within their jurisdictions to calculate liquidity.

135. When taking its liquidity metrics as the starting point for determining its working capital, the issuer should make use of the most recently calculated ratio(s). Where a ratio is calculated several months before the date of approval of the prospectus, the issuer should take into account all events since the date of calculation which could have affected its liquidity.
136. The requirement to use applicable prudential ratios for preparing the working capital statement does not in and of itself mean that credit institutions are required to disclose these ratios in the prospectus.

Insurance and reinsurance undertakings

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Section 2 and Item 2.1) of the Commission Delegated Regulation.

137. **Guideline 35: When determining its working capital, an issuer which is an insurance or reinsurance undertaking⁴³ should take the liquidity metrics which were agreed with the supervisory authority and regulatory capital requirements as the starting point.**
138. Issuers which are insurance or reinsurance undertakings should provide a working capital statement in line with the general rules set out in guidelines 29-33 and 36-37 when issuing equity securities. However, this statement should be drawn up on a basis that reflects the specificities of their business model by relying on the relevant applicable prudential requirements, except where relying on such requirements would render the working capital statement misleading. EU insurance or reinsurance undertakings should use the metrics which they have adopted and submitted to the supervisory authority for monitoring its liquidity risk pursuant to the Solvency II regime⁴⁴, including Minimum Capital Requirement. Third country insurance and reinsurance undertakings should use metrics consistent with the applicable legal framework on prudential supervision within their jurisdictions.
139. The issuer should make use of the most recently calculated metrics when determining its working capital. Where a metric is calculated several months before the date of approval of the prospectus, the issuer should take into account all events since the date of calculation which could have affected its liquidity risk and regulatory capital requirements.
140. The requirement to use applicable prudential metrics for preparing the working capital statement does not in and of itself mean that insurance and reinsurance undertakings are required to disclose these metrics in the prospectus.

⁴³ As defined in Article 13(1) and (4) of Directive 2009/138/EC.

⁴⁴ Directive 2009/138/EC; Commission Delegated Regulation (EU) 2015/35 and related implementing measures.

Determining whether the working capital statement should be clean or qualified

This guideline is based on the acknowledgement in Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Item 2.1) of the Commission Delegated Regulation that the working capital statement can either reflect that the issuer has sufficient working capital to meet its present requirements or that it does not have sufficient working capital to do so, read in light of the duration of the validity of the prospectus established in Article 12 of the Prospectus Regulation.

- 141. Guideline 36: Where an issuer can state without qualifying wording that it has sufficient working capital to meet its present requirements, it should provide a clean working capital statement. Where the issuer cannot state without qualifying wording that it has sufficient working capital to meet its present requirements, it should provide a qualified working capital statement.**
142. The persons responsible for the prospectus can meet the requirement to include a working capital statement in the prospectus either:
 - (i) by including a clean working capital statement, stating that the issuer, in its own opinion and in line with the duration of the validity of the prospectus, has sufficient working capital for a period of at least 12 months; or
 - (ii) by including a qualified working capital statement, stating that the issuer, in its own opinion, does not have sufficient working capital and explaining how it proposes to provide the additional working capital needed.
143. When considering whether its working capital statement should be clean or qualified, the issuer should assess whether it is able to access cash and other available liquid resources in order to meet its liabilities as they fall due.
144. The working capital statement should be consistent with the other parts of the prospectus. Where other parts of the prospectus, for example the risk factors, describe elements that could adversely impact the issuer's ability to meet its present requirements, the issuer should not make a clean working capital statement. Where the auditor's report is qualified or contains an emphasis of matter, and the working capital statement is clean, the persons responsible for the prospectus should provide explanation for this in the prospectus.
145. An issuer may consider that it has sufficient working capital and that its working capital statement should therefore be clean, but at the same time wish to include qualifying wording such as assumptions, sensitivities, risk factors or potential caveats in the statement. If an issuer finds it necessary to include such qualifying wording, this implies that it cannot firmly state that it has sufficient working capital to meet its present requirements, and it should therefore provide a qualified working capital statement instead of a clean one.
146. It is not acceptable for the issuer to state that it is unable to confirm whether it has sufficient working capital. In such cases, the issuer should provide a qualified working capital statement.

Content of a qualified working capital statement

This guideline is based on Article 12 (Annex 11, Item 3.1), Article 13 (Annex 12, Item 3.3), Article 14 (Annex 13, Item 1.1) and Article 30 (Annex 26, Item 2.1) of the Commission Delegated Regulation.

147. Guideline 37: In a qualified working capital statement, the issuer should state that it does not have sufficient working capital for its present requirements. Furthermore, it should describe the following factors:

- (i) timing;**
- (ii) shortfall;**
- (iii) action plan; and**
- (iv) implications.**

148. The issuer should explicitly state that it does not have sufficient working capital to meet its present requirements. After this statement, it should provide information on the factors listed in paragraph 147 in order to ensure that investors are fully informed as regards the issuer's actual working capital position.

149. Timing: The working capital shortfall could arise immediately or sometime in the future, and investors need information on the timing to assess the urgency of the problem. The issuer should therefore state when it expects to run out of working capital.

150. Shortfall: To allow investors to understand the magnitude of the problem, the issuer should state the approximate amount of the working capital shortfall.

151. Action plan: The issuer should describe how it plans to rectify the working capital shortfall. The description should include details of specific proposed actions, for example refinancing, renegotiation of or new credit terms / facilities, decrease in discretionary capital expenditure, revised strategy / acquisition programme or asset sales. The issuer should explain the timing of the proposed actions and how confident it is that they will be successful.

152. Implications: Where relevant, the issuer should state the consequences of any of the actions proposed in the action plan being unsuccessful (for example whether the issuer is likely to enter into administration or receivership and if so, when).

V.IX. Capitalisation and indebtedness

Statement of capitalisation

This guideline is based on Article 12 (Annex 11, Item 3.2), Article 13 (Annex 12, Item 3.4), Article 14 (Annex 13, Item 1.2) and Article 30 (Annex 26, Item 2.2) of the Commission Delegated Regulation.

- 153. Guideline 38: The persons responsible for the prospectus should include the content set out below when preparing the statement of capitalisation.**

Total current debt (including current portion of non-current debt)
- Guaranteed
- Secured.....
- Unguaranteed / unsecured
Total non-current debt (excluding current portion of non-current debt)
- Guaranteed
- Secured.....
- Unguaranteed / unsecured
Shareholder equity
- Share capital
- Legal reserve(s)
- Other reserves
Total

154. If a line item in the above table is not applicable in the Member State where the issuer has drawn up its financial information, for instance because the issuer's legal framework does not require it, the persons responsible for the prospectus should adapt the statement of capitalisation upon discussion with the competent authority.
155. When the issuer has *current or non-current debt which is guaranteed by another entity*, i.e. the debt obligation is assumed by as third party in the event the issuer defaults, the persons responsible for the prospectus should describe which types of guarantees apply. When the issuer has *secured current or secured non-current debt*, i.e. the debt is backed by collateral, the persons responsible for the prospectus should describe the types of assets used to secure the debt.
156. *Legal reserve(s)* and *Other reserves* should not include the profit and loss of the reporting period. The persons responsible for the prospectus are therefore not expected to calculate the profit and loss of the reporting period for the purpose of the capitalisation statement.

157. Credit institutions and insurance and reinsurance undertakings should adapt the table provided above to their business model by focusing on their prudential requirements related to regulatory capital. This does not mean that credit institutions and insurance and reinsurance undertakings are required to disclose prudential information which they are not already required to disclose according to Pillar 3 requirements.
158. When the issuer's business has recently undergone a change, the persons responsible for the prospectus may wish to illustrate this change by presenting an additional column in the capitalisation statement. When determining whether this is permissible, they should apply the following rules:
- a. when the change has triggered the requirement to include pro forma information in the prospectus, the persons responsible for the prospectus may present an additional column in the capitalisation statement. The additional column should be consistent with the pro forma information presented elsewhere in the prospectus and adjustments may be explained by referring to that information;
 - b. when the change has not triggered the requirement to include pro forma information in the prospectus:
 - (1) when the change was complex (e.g. an acquisition which does not constitute a significant gross change):
 - (a) if the persons responsible for the prospectus include pro forma information in the prospectus on a voluntary basis in accordance with guideline 26, they may present an additional column accordingly;
 - (b) if the persons responsible for the prospectus do not include pro forma information in the prospectus, they may only present an additional column if it is comprehensible and easily analysable;
 - (2) when the change was straightforward (e.g. conversion of debt into equity), the persons responsible for the prospectus may normally present an additional column. If the additional column consists of illustrative figures, e.g. figures covering the first six months of a year adjusted by a capital conversion which was undertaken in July, the persons responsible for the prospectus should pay special attention to the comprehensibility of the figures and explain adjustments in detail.
159. Recent changes may also be presented through the inclusion of the actual figures in the statements of capitalisation.
160. Similarly, when the issuer stands before a future change, the persons responsible for the prospectus may wish to illustrate this change by presenting an additional column in the capitalisation statement. When determining whether this is permissible, they should apply the following rules:

- c. when the change has triggered the requirement to include pro forma information in the prospectus, the persons responsible for the prospectus may present an additional column in the capitalisation statement. The additional column should be consistent with the pro forma information presented elsewhere in the prospectus and adjustments may be explained by referring to that information;
 - d. when the change has not triggered the requirement to include pro forma information in the prospectus (e.g. a binding agreement to undertake an acquisition which does not constitute a significant financial commitment, financed by a capital increase):
 - (1) the persons responsible for the prospectus may present an additional column to illustrate the possible outcome of the capital increase, provided that they ensure that the column does not give the impression that the outcome is certain, unless it truly is. The persons responsible for the prospectus should describe the adjustments made and their underlying assumptions. If shares are offered at a price range, the persons responsible for the prospectus should use the average price when calculating the possible offer proceeds, unless there are special grounds for using a different price. They should also take transaction costs into account;
 - (2) the persons responsible for the prospectus should only present other potential future changes than the outcome of the capital increase if they are factually supportable. If the future outcome is uncertain, such as where an issuer wishes to present a future change in its debt structure even though negotiations with the credit institution(s) are incomplete, presenting an additional column reflecting the potential outcome may endanger the comprehensibility and analysability of the prospectus and is therefore normally not allowed.
161. Due to its limited effects, the mere inclusion of an additional column in the capitalisation statement to present recent or future changes does not normally trigger the requirement to include pro forma information in the prospectus according to Annex 20.

Statement of indebtedness

This guideline is based on Article 12 (Annex 11, Item 3.2), Article 13 (Annex 12, Item 3.4), Article 14 (Annex 13, Item 1.2) and Article 30 (Annex 26, Item 2.2) of the Commission Delegated Regulation.

162. **Guideline 39: The persons responsible for the prospectus should include the content set out below when preparing the statement of indebtedness.**

A	Cash
B	Cash equivalents.....
C	Other current financial assets
D	Liquidity (A + B + C)
E	Current trade and other receivables
F	Current financial debt (including debt instruments, but excluding current portion of non-current financial debt).....
G	Current portion of non-current financial debt
H	Current trade and other payables
I	Current financial indebtedness (F + G + H)
J	Net current financial indebtedness (I - E - D)
K	Non-current financial debt (excluding current portion and debt instruments)
L	Debt instruments
M	Non-current trade and other payables
N	Non-current financial indebtedness (K + L + M).....
O	Total financial indebtedness (J + N).....

163. If a line item in the above table is not applicable in the Member State where the issuer has drawn up its financial information, for instance because the issuer's legal framework does not require it, the persons responsible for the prospectus should adapt the statement of indebtedness upon discussion with the national competent authority.
164. Where the issuer is required to prepare consolidated financial statements, the persons responsible for the prospectus should calculate indebtedness on a consolidated basis.
165. Where the issuer has *cash equivalents*, the persons responsible for the prospectus should provide detail on what they consist of. The persons responsible for the prospectus should disclose any restrictions on the availability of cash and cash equivalents. *Other current financial assets* should cover financial assets (for example securities held for trading) that are not (i) cash, (ii) cash equivalent or (iii) derivatives used for hedging purposes. *Financial debt* should cover debt which is remunerated (i.e. interest-bearing debt) which comprises, amongst others, financial liabilities related to short- and/or long-term leases. The persons responsible for the prospectus should

clarify in a paragraph after the indebtedness statement whether *financial debt* includes any liabilities related to leases, and when it does, they should provide the amount of short- and/or long-term lease liabilities. *Current financial debt* should include debt instruments which are redeemable within the coming 12 months. *Current portion of non-current financial debt* means non-current financial debt which is to be repaid within 12 months of the date of approval of the prospectus. *Trade and other payables* should include non-remunerated debt, for example debt to suppliers.

166. Indirect and contingent indebtedness should not be included in the indebtedness statement itself, but in a separate paragraph after the statement which should contain information on the amount of indirect and contingent indebtedness and analyse the nature of these items. The persons responsible for the prospectus should consider any obligation that has not been directly incurred by the issuer considered on a consolidated basis, but which the issuer may have to meet in certain circumstances, as indirect indebtedness. An example of indirect indebtedness is a guarantee to honour a bank loan to an entity which is not in the issuer's group, if this entity defaults on repayments on the loan. Furthermore, the persons responsible for the prospectus should consider the maximum total amount payable in relation to any obligation which has been incurred by the issuer but which has yet to have its final amount assessed with certainty, irrespective of the likely actual amount payable under that obligation at any one moment in time, as contingent indebtedness. Contingent indebtedness is for example the total VAT liability due in goods in a bonded warehouse where the amount payable to the tax authorities will depend on the level of the goods bought and deposited in the warehouse which are actually sold on to customers.
167. Credit institutions and insurance and reinsurance undertakings should adapt the table provided above to their business model by focusing on their prudential requirements. This does not mean that credit institutions and insurance and reinsurance undertakings are required to disclose prudential information which they are not already required to disclose according to Pillar 3 requirements.
168. The rules set out in paragraphs 158-161 of guideline 38 apply mutatis mutandis to inclusion of an additional column in the indebtedness statement.

V.X. Remuneration

Types of remuneration

This guideline is based on Article 2 (Annex 1, Item 13.1), Article 28 (Annex 24, Item 4.2.1) of the Commission Delegated Regulation. Please also note that when applying Annex 2 (URD) or Annex 5 (DRs) of the Commission Delegated Regulation Article 2 (Annex 1, Item 13.1) is also relevant.

169. **Guideline 40:** In accordance with the items on remuneration, the persons responsible for the prospectus should disclose if the issuer paid any remuneration pursuant to a bonus or profit-sharing plan, via stock options or any other benefit in kind.

170. Where remuneration has been provided pursuant to a bonus or profit-sharing plan, the persons responsible for the prospectus should provide a brief description of the plan and the basis upon which any persons participated in the plan. For the purpose of this guideline, a plan includes any type of arrangement for remuneration, even if the terms of the plan are not contained in a formal document.
171. Where remuneration has been provided using stock options, the persons responsible for the prospectus should provide details concerning:
- (i) the total amount of securities covered by the options;
 - (ii) the exercise price;
 - (iii) the consideration for which the options were or will be created (if any);
 - (iv) the period during which the options can be exercised; and
 - (v) the date on which they expire.
172. If any other benefits in kind were granted, such as medical healthcare or transportation, the persons responsible for the prospectus should provide details in this regard. In the case of non-cash benefits, the total estimated value should be mentioned.
173. Where available, the persons responsible for the prospectus may include or cross-refer to a remuneration report, as required by the Shareholder Rights Directive, in the prospectus.

V.XI. Related party transactions

Issuers not applying IAS 24

This guideline is based on Article 2 (Annex 1, Item 17.1), Article 4 (Annex 3, Item 10.1), Article 28 (Annex 24, Item 6.4.1) of the Commission Delegated Regulation.

174. **Guideline 41: When the issuer does not apply IAS 24 and has entered into related party transactions during the period covered by the historical financial information included in the prospectus and up to the date of the registration document, the persons responsible for the prospectus should provide information on the nature and extent of any transactions which are – as a single transaction or in their entirety – material to the issuer.**
175. **This disclosure should include, but not be limited to, the amount or the percentage to which related party transactions form part of the turnover of the issuer and the amount or the percentage to which related party transactions form part of the assets and liabilities of the issuer.**
176. The persons responsible for the prospectus of issuers that do not apply IAS 24 should follow the definition of related party transactions provided under IAS 24. The use of standards which have been granted equivalence with the IAS / IFRS framework in

accordance with the Commission Decision 2008/961/EC (and its subsequent updates) is considered to comply with the corresponding definitions under IAS 24.

V.XII. Acquisition rights & undertakings to increase capital

Acquisition rights and undertakings to increase capital

This guideline is based on Article 2 (Annex 1, Item 19.1.5), Article 4 (Annex 3, Item 12.1.2), Article 28 (Annex 24, Item 6.5.6) of the Commission Delegated Regulation

177. Guideline 42: If there is authorised but unissued capital or an undertaking to increase the capital of the issuer, the persons responsible for the prospectus should provide the following information:

- (i) the amount of all outstanding securities giving access to share capital and the amount of the authorised capital / capital increase and, where appropriate, the duration of the authorisation,**
- (ii) the categories of persons having preferential subscription rights for the additional portions of capital, and**
- (iii) the terms, arrangements and procedures for the share issue corresponding to those portions.**

178. The following are examples where there will normally be authorised but unissued capital or an undertaking to increase the capital: warrants, convertible bonds or other outstanding equity-linked securities, or subscription rights granted.

V.XIII. Options agreements

Compiling information on options agreements

This guideline is based on Article 2 (Annex 1, Item 19.1 and 19.1.6), Article 4 (Annex 3, Item 10.1), Article 28 (Annex 24, Item 6.5.1 and 6.5.7) of the Commission Delegated Regulation.

179. Guideline 43: When any entity of the issuer's group has capital which is under option, or which is agreed conditionally or unconditionally to be put under option, the persons responsible for the prospectus should include the following information:

- (i) title and amount of the securities covered by the options;**
- (ii) the exercise price;**
- (iii) the consideration for which the options were / will be created;**
- (iv) the period during which the options can be exercised;**
- (v) the date in which they expire; and**

(vi) the potential dilution connected to its exercise.

180. Where options have been granted, or have been agreed to be granted, to all the holders of shares or debt securities, or of any class thereof, or to employees under an employee share scheme, the persons responsible for the prospectus may:
- (i) disclose that fact in the prospectus without giving the names of the persons to whom the options relate; and
 - (ii) provide a range of exercise prices, exercise periods and expiry dates.

V.XIV. History of share capital

Changes related to share capital

This guideline is based on Article 2 (Annex 1, Items 19.1 and 19.1.7) of the Commission Delegated Regulation.

181. **Guideline 44: For the period covered by historical financial information included in the prospectus, the persons responsible for the prospectus should provide the following information:**
- (i) **changes related to issued share capital; and**
 - (ii) **price of the shares and other material details relating to the shares.**
182. Changes related to issued share capital: This should include information on the events which have changed the amount of issued share capital and the number and classes of shares of which it is composed should be described. Additionally, there should be a description of changes in voting rights attached to the various classes of shares during that time.
183. Price of the shares and other material details relating to the shares: Price relates to the price of shares which have been issued; whereas material details could be information on consideration where this is other than in cash, e.g. information regarding discounts, special terms or instalment payments.
184. Where there is a reduction of the amount of share capital, for instance due to share repurchases or share cancellations, the persons responsible for the prospectus should disclose the reasons for such a reduction and the ratio of capital reduction.

V.XV. Description of the rights attaching to issuer's shares

Rights attached to the issuer's shares

This guideline is based on Article 2 (Annex 1, Item 19.2 and Item 19.2.2) of the Commission Delegated Regulation.

185. **Guideline 45: The persons responsible for the prospectus should, where relevant, provide a description of at least the following:**

- (i) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favour this entitlement operates;
- (ii) voting rights;
- (iii) rights to a share in the issuer's profit;
- (iv) rights to a share in any surplus in the event of liquidation;
- (v) redemption provisions;
- (vi) reserves or sinking fund provisions;
- (vii) liability to further capital calls by the issuer; and
- (viii) any provisions discriminating against, or favouring, existing or prospective holders of such securities, as a result of the shareholder owning a substantial number of shares.

V.XVI. Statements by experts

Material interest

This guideline is based on Article 2 (Annex 1, Item 1.3 (d), Article 4 (Annex 3, Item 1.3 (d), Article 7 (Annex 6, Item 1.3 (d), Article 8 (Annex 7, Item 1.3 (d), Article 9 (Annex 8, Item 1.3 (d), Article 10 (Annex 9, Item 1.3 (d), Article 11 (Annex 10, Item 1.3 (d), Article 12 (Annex 11, Item 1.3 (d), Article 13 (Annex 12, Item 1.3 (d), Article 15 (Annex 14, Item 1.3 (d), Article 16 (Annex 15, Item 1.3 (d), Article 17 (Annex 16, Item 1.3 (d), Article 28 (Annex 24, Item 1.3 (d), Article 29 (Annex 25, Item 1.3 (d), Article 30 (Annex 26, Item 1.3 (d), and Article 31 (Annex 27, Item 1.3 (d) of the Commission Delegated Regulation.

186. Guideline 46: Where a statement or report is included in the registration document or securities note and is attributed to a person who is considered an expert, the persons responsible for the prospectus should determine whether that person has a material interest in the issuer by considering the following factors:

- (i) ownership of securities;
- (ii) former employment or compensation;
- (iii) membership; and
- (iv) connections to financial intermediaries involved in the offering or listing of the securities.

187. If one or more of these criteria are fulfilled, the persons responsible should consider if this will result in a material interest, taking into account the type of securities being offered.

188. **The persons responsible should clarify in the prospectus that, to the best of their knowledge, these (or other circumstances) have been taken into account in order to fully describe the material interest (if any) of the expert.**
189. Ownership of securities: This should relate to securities issued by the issuer, or by any company belonging to the same group, or options to acquire or subscribe for securities of the issuer.
190. Former employment or compensation: This should relate to any previous employment with the issuer or any form of compensation previously received from the issuer.
191. Membership: This should relate to any past or current membership in any of the issuer's bodies.
192. Connections to financial intermediaries involved in the offering or listing of the securities: This should relate to connections with any financial intermediaries involved in the offering or listing of the securities of the issuer.

V.XVII. Information on holdings

Compiling information on holdings

This guideline is based on Article 2 (Annex 1, Item 5.7.3) of the Commission Delegated Regulation.

193. **Guideline 47: For each joint venture or undertaking, in which the issuer holds a proportion of the capital which is likely to have a significant effect on its assessment of its assets and liabilities, financial position and / or profits and losses, the persons responsible for the prospectus should enable users to evaluate the nature, extent and financial effects of their interests in holdings and as such provide the following information:**
- (i) name, registered office and field of activity;**
 - (ii) issued capital and proportion of capital – and voting power if different – held by the issuer;**
 - (iii) reserves;**
 - (iv) net profit or loss for the last financial year;**
 - (v) value at which the issuer shows shares held in its accounts;**
 - (vi) amount still to be paid on shares held;**
 - (vii) amount of dividends received during the last financial year for shares held; and**
 - (viii) amount of debt owed to the issuer by the joint venture / undertaking and amount of debt owed to the joint venture / undertaking by the issuer.**

194. To the extent the issuer has provided information required by this Guideline in its consolidated/separate financial statements prepared in accordance with IFRS, the disclosure under this guideline is complied with.
195. An undertaking in which the issuer holds a proportion of the capital which is likely to have a significant effect on its assessment of its assets and liabilities, financial position and / or profits and losses can be for example an associate (i.e. undertaking in which the issuer has a significant influence), an unconsolidated subsidiary (such as an investment entity) or a holding in which the issuer holds less than 20% of capital accounted as a financial investment.
196. The persons responsible for the prospectus should consider that a joint venture or undertaking is likely to have a significant effect on the issuer's assessment of its own assets and liabilities, financial position and / or profits and losses in the following cases:
- (i) the issuer has a direct or indirect holding in the joint venture / undertaking, and the book value (or purchase value in case of a recent acquisition whose book value is not yet reflected in the most recent historical financial information) of that holding represents at least 10% of the issuer's net assets, or the interest generates at least 10% of the issuer's net profit or loss at the end of the most recent reporting period, or
 - (ii) in the case the issuer is a parent of a group, the issuer has a direct or indirect holding in the joint venture / undertaking, and the book value of that holding represents at least 10% of the group's consolidated net assets, or the holding generates at least 10% of the group's consolidated net profit or loss.
197. In relation to holdings in which the issuer holds at least 10% of the capital, points (i) and (ii) should be disclosed unless the omission of this information is unlikely to mislead investors in making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or its group and of the rights attaching to the securities.
198. The persons responsible for the prospectus may omit points (iii) to (iv) of paragraph 193 if the joint venture / undertaking does not publish its annual accounts.

V.XVIII. Interest of natural and legal persons involved in the issue/offer

Interests

This guideline is based on Article 12 (Annex 11, Item 3.3), Article 13 (Annex 12, Item 3.1), Article 14 (Annex 13, Item 5.2), Article 15 (Annex 14, Item 3.1), Article 16 (Annex 15, Item 3.1), Article 17 (Annex 16, Item 3.1), Article 30 (Annex 26, Item 1.6) and Article 31 (Annex 27, Item 1.6) of the Commission Delegated Regulation.

- 199. Guideline 48: The persons responsible for the prospectus should consider the parties involved in the issue/offer and the nature of their interests, and in particular any conflicts of interests, when including disclosure on interests.**

200. Persons responsible for the prospectus could consider, for example, parties such as advisors, financial intermediaries and experts (even if no statement produced by an expert(s) is included in the prospectus) when including disclosure on interests.
201. When considering the nature of the interests the persons responsible for the prospectus should consider whether the parties involved in the issue/offer hold equity securities of the issuer, or equity securities of any subsidiaries of the issuer, or have a direct or indirect economic interest that depends on the success of the issue, or have any understanding or arrangement with major shareholders of the issuer.

V.XIX. Collective investment undertakings

Investment strategy

This guideline is based on Article 5 (Annex 4, Item 1.1 (a) of the Commission Delegated Regulation.

- 202. Guideline 49: When the persons responsible for the prospectus include a description of the investment strategy, they should provide information on the methodology to be employed in pursuing that strategy and indicate whether the investment manager intends to apply an active or a passive strategy.**
203. The information should specify, for example, whether the investment strategy will be focusing on growth opportunities, or whether the intention is to target mature companies paying out regular dividends.

Description of the assets

This guideline is based on Article 5 (Annex 4, Item 1.1 (c) of the Commission Delegated Regulation.

- 204. Guideline 50: When the persons responsible for the prospectus include a description of the types of assets in which the collective investment undertaking may invest, they should provide at least the following information, where material and applicable as regards the investment portfolio:**
- (i) geographical areas of investment;**
 - (ii) industry sectors;**
 - (iii) market capitalisation;**
 - (iv) credit ratings / investment grades; and**
 - (v) whether the assets are admitted to trading on a regulated market.**

Securities financing transactions

This guideline is based on Article 5 (Annex 4, Item 2.8) of the Commission Delegated Regulation.

205. Guideline 51: When a collective investment undertaking uses securities financing transactions (SFTs) and total return swaps other than for the purposes of efficient portfolio management, the persons responsible for the prospectus should provide the following information:

- (i) general description;**
- (ii) the criteria used to select counterparties;**
- (iii) acceptable collateral;**
- (iv) risks; and**
- (v) custody and safe-keeping.**

206. The above information items are aligned with the information requested by Annex (Section B) of the SFT Regulation. Accordingly, the terms “securities financing transactions” and “total return swap” should be understood to have the meanings set out in Articles 3 (11) and 3 (18) of such Regulation.

207. General description: This should provide a general description of the SFTs and total return swaps, including the rationale for their use. For each type of SFT and total return swap, this information should cover:

- (i) the types of assets that can be subject to them; and
- (ii) the maximum proportion of assets under management that can be subject to them, and the expected proportion of assets under management that will be subject to each of them.

208. Criteria used to select counterparties: This should include information on the criteria applied by the issuer to select counterparties, including legal status, country of origin and minimum credit rating.

209. Acceptable collateral: This information should cover asset types, issuer, maturity, liquidity as well as the collateral diversification and correlation policies.

210. Risks: This should comprise of a description of the risks linked to SFTs and total return swaps as well as risks linked to collateral management and, where applicable, arising from its reuse. The disclosure may relate to operational, liquidity, counterparty, custody and / or legal risks.

211. Custody and safe-keeping: This should include a specification of how assets subject to SFTs and total return swaps and collateral received are safe-kept (e.g. with a fund custodian).

Broadly based index

This guideline is based on Article 5 (Annex 4, Item 2.10) of the Commission Delegated Regulation.

212. Guideline 52: The persons responsible for the prospectus should consider a broadly based and recognised published index as one which possesses the following characteristics:

- (i) adequately diversified and representative of the market it refers to;**
- (ii) calculated with sufficient frequency to ensure appropriate and timely pricing and information on the constituents of the index;**
- (iii) published widely to ensure its dissemination to the relevant user/investor base; and**
- (iv) compiled and calculated by a party independent of the collective investment undertaking and be available for purposes other than the calculation of the return of the collective investment undertaking.**

Fees

This guideline is based on Article 5 (Annex 4, Item 3.2) of the Commission Delegated Regulation.

213. Guideline 53: When referring to fees, in addition to fees paid to service providers the persons responsible for the prospectus should consider the following non-exhaustive items:

- (i) subscription fees;**
- (ii) redemption fees;**
- (iii) distribution fees;**
- (iv) placement fees;**
- (v) variable management fees;**
- (vi) fees associated with changes in the composition of the portfolio:**
 - (1) transaction fees;**
 - (2) brokerage service fees;**
 - (3) advertising fees; and**
 - (4) compliance and reporting fees.**

214. Subscription fees and redemption fees: These items relate to both fees that are guaranteed by the collective investments undertaking or negotiable.

215. Variable management fees: These items could for example relate to performance fees.
216. Fees associated with changes in the composition of the portfolio: These are fees which may seem immaterial individually but can be material when grouped together.

Regulatory status of the investment manager

This guideline is based on Article 5 (Annex 4, Item 4.1) of the Commission Delegated Regulation.

217. **Guideline 54: When providing a description of the investment manager's regulatory status, the persons responsible for the prospectus should provide the name of the regulatory authority by which the investment manager is regulated or, if the investment manager is not regulated, a negative statement.**
218. The reference to the regulatory authority should not create the impression that the investment is in any way endorsed, approved or guaranteed by such authority.

Experience of the investment manager

This guideline is based on Article 5 (Annex 4, Item 4.1) of the Commission Delegated Regulation.

219. **Guideline 55: When providing a description of the investment manager's experience, the persons responsible for the prospectus should provide the following information:**
- (i) an indication of the number of funds (including sub-funds) which the investment manager is managing under delegation;
 - (ii) the relevance of the investment manager's experience to the investment objective of the collective investment undertaking; and
 - (iii) if material to investors' assessment of the investment manager, the experience of the specific personnel who will be involved in the investment management of the collective investment undertaking.

Description of the entity responsible for advice

This guideline is based on Article 5 (Annex 4, Item 4.2) of the Commission Delegated Regulation.

220. **Guideline 56: When providing a brief description of the entity providing investment advice, the persons responsible for the prospectus should include the following information:**
- e. address;
 - f. country of incorporation;
 - g. legal form;

- h. regulatory status;**
- i. the nature of the entity's business; and**
- j. information on the entity's experience.**

221. Information on the entity's experience: In relation to this item, the persons responsible for the prospectus should provide information on the number of funds in relation to which advice is currently being or has previously been given. They should also explain the relevance of the experience to the investment objective of the collective investment undertaking.

Portfolio analysis

This guideline is based on Article 5 (Annex 4, Item 8.2) of the Commission Delegated Regulation.

222. **Guideline 57: When providing a comprehensive and meaningful analysis in line with Item 8.2, the persons responsible for the prospectus should include the following information, where this is material to the assessment of the investment portfolio:**
- (i) details of the main instruments in which the collective investment undertaking is trading, including a break-down of financial instruments and its geographical and sectoral focus; and**
 - (ii) an analysis between equity shares, convertible securities, fixed income securities, types or categories of derivative products, currencies and other investments, distinguishing between securities which are listed and unlisted and traded on or off regulated market in the case of derivatives; and/or**
 - (iii) an analysis by currency type stating the market value of each section of the portfolio so analysed.**