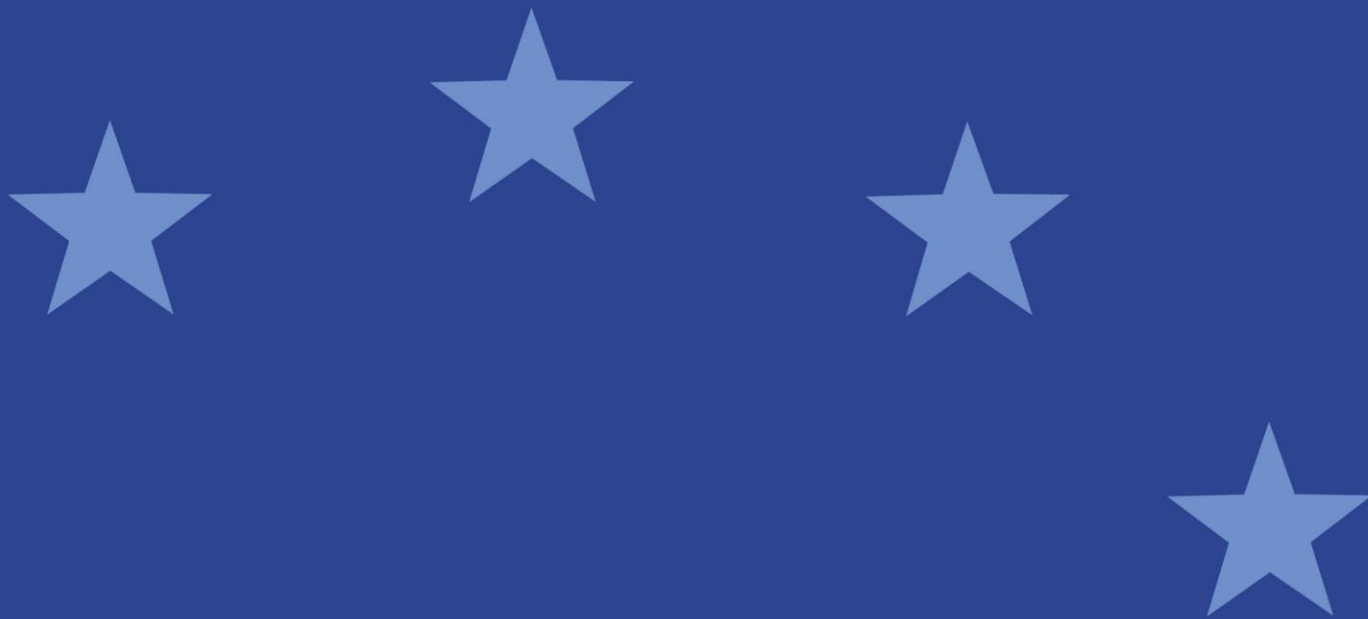


Response form for the Consultation Paper on Guidelines on risk factors under the Prospectus Regulation



Responding to this paper

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

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

ESMA will consider all responses received by 05 October 2018.

Instructions

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

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

Publication of responses

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

Data protection

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

Who should read the Consultation Paper

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

General information about respondent

Name of the company / organisation	Swedish Securities Dealers Association
Activity	Investment Services
Are you representing an association?	<input type="checkbox"/>
Country/Region	Sweden

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_GRF_1>
General comment

II. Swedish Securities dealers Association's comments on ESMA consultation paper on guidelines on risk factors under the Prospectus Regulation

Identification number in EC Register of Interest is 7777147632-40

The Swedish Securities Dealers Association (SSDA) welcomes the opportunity to comment on ESMA's proposed guidelines on risk factors under the prospectus regulation. The SSDA has collaborated with the Swedish Bankers' Association and Finance Denmark with regards to this response to the consultation paper. Each organisation has however registered separate responses.

As a general comment, we believe the draft guidelines to be far too detailed. As seen in the detailed comments below, we think that the guidelines should allow flexibility to include some generic factors regarding e.g. macro-economic risks in the prospectus. Even if a risk factor is of a type that appears in many prospectuses, it is still entirely appropriate for an issuer to disclose it where it is relevant to that issuer, the guarantor or the securities. Moreover, we regarding quantitative or qualitative assessment.

Furthermore, it could be discussed whether ESMA has the mandate to include wording in the guidelines to the effect that supervisory authorities should refrain from approving a prospectus as suggested in guidelines 2, 3, 6 and 7. The scrutiny of prospectus is the responsibility of the NCA and in this regard ESMA should not instruct the NCAs without any legal ground. The mandate to draft guidelines on this topic is based on article 16.4 in the prospectus regulation:

In order to encourage appropriate and focused disclosure of risk factors, ESMA shall develop guidelines to assist competent authorities in their review of the specificity and materiality of risk factors and of the presentation of risk factors across categories depending on their nature."

In our opinion, this does not give mandate to ESMA to in the guidelines mentioned above give instructions to the NCA to not approve prospectus.

<ESMA_COMMENT_GRF_1>

Specificity

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

<ESMA_QUESTION_GRF_1>

We agree that as a rule of thumb risk factors should be specified to the individual issuer and the nature of its business and the security in question, but as illustrated in para 21, example 3, certain generic risk factors may be relevant for many issuers such as macro-economic risks and geopolitical risks. Issuers should be allowed to continue including “boiler-plate” risk descriptions in respect of such generic factors.

In the same way issuers should be allowed to include market driven “boiler-plate” risk factors within the same group of peers like insurance companies looking at each other’s Solvency II risk factors.

We recommend that the specificity guideline considers also the specific industry of the issuer. For example, if an issuer does not include generic industry or market driven risk factors, investors may question this and why issuer X is not exposed to the same industry risks as industry peers in the form of Issuer A, B and C.

The guidelines seem to impose quite strict requirements on specificity considering the examples given in the draft guidelines’ para 21-24. We therefore recommend including additional flexibility in the guidelines as in our experience it may not always be possible for issuers to be so concrete as in ESMA’s examples

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<ESMA_QUESTION_GRF_1>

Materiality

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

<ESMA_QUESTION_GRF_2>

We agree that the concept of materiality should be related to the individual issuer and the nature of its business. NCAs should ultimately leave issuers with room to consider a risk to be potential material to its business.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_2>

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

<ESMA_QUESTION_GRF_3>

Level 1 Article 16 does not require a quantitative assessment of each risk. It may be burdensome for issuers to add a number/percentage to each risk factor for assessing its materiality. If issuers are required to be very detailed in assessing the potential effect of a risk materialising it could expose an issuer to litigation and liability risk for misleading disclosure if the real effect exceeds the quantitative assessment in the prospectus e.g. an event is assessed to have a negative impact of EUR 75,000,000, but it turns out that the real effect is actually EUR 100,000,000. Allowing issuers to include “open” risk like “may have a material negative effect on....” is preferable.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_3>

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

<ESMA_QUESTION_GRF_4>

We agree in principle on not including mitigating language that could blur the risk described in a risk factor but assume that the guidelines are not intended to prevent or limit issuers in describing traditional risk mitigation techniques in other parts of the prospectus such as hedging of interest – and/or currency risks in the issuer description section.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_4>

Corroboration

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

<ESMA_QUESTION_GRF_5>

Issuers should not in all circumstances be required to corroborate a risk by expressly describing the relevant fact in the issuer description. If corroboration can be implied from the overall picture which the issuer description provides that should suffice.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_5>

Presentation of risk factors across categories

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

<ESMA_QUESTION_GRF_6>

The guidelines are too detailed, especially the guidelines in Guideline 8 regarding spacing and bold font. Such detailed guidelines do not serve its purpose to make the risk factors easily identifiable as this can be done in different ways. Many issuers would like to use their own graphic profile in the prospectuses, which can make the risk factors easily identifiable without using e.g. bold font.

In addition, the proposal of challenging the use of sub-categories in the risk factors section in other circumstances in Guideline 10 can lead to that the risk factors become long and hard to overview. As this is not investor friendly, we suggest that sub-categories can be used.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_6>

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

<ESMA_QUESTION_GRF_7>

No. Such guideline is too detailed. The risk factors should be limited to the risks which are specific and material to the specific issuer/securities and not to a fixed number. The consequence will likely be that many issuers will have 10 risk factor categories included, regardless of the risk level of the issuer and the securities, which will be misleading for the investors. It may also lead to the use of very wide categories under which many risk factors can fit, why the category itself will not contribute to clarity for investors. Even though ESMA says that there is flexibility to adapt

the number to the specific case, our experience is that such detailed guidelines are implemented quite strictly by competent authorities, why stating a number will very likely cause more work for everyone involved in a prospectus (including the competent authority) as there will be many discussions on the actual number of categories instead of the materiality.

In addition, the proposal of challenging the use of sub-categories in the risk factors section in other circumstances in Guideline 10 can lead to that the risk factors become long and hard to overview. As this is not investor friendly, we suggest that sub-categories can be used.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_7>

Focused/concise risk factors

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

<ESMA_QUESTION_GRF_8>

Agreed. Risk factors should be concise bearing in mind that e.g. banking regulation can be hard to describe in a short and concise way.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_8>

Summary

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

<ESMA_QUESTION_GRF_9>

Agreed.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_9>

General

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

<ESMA_QUESTION_GRF_10>

A clear majority of prospectuses related to issues of debt securities are prepared for offering such debt securities to professional investors only (qualified investors). This investor category is highly sophisticated and will not normally only base their investments on the prospectus but also their own assessment of the issuer in question. For such “professionals only prospectuses” NCAs should allow issuers more flexibility in how to describe their risk factors as the professional investors are able to deduce the relevant risks from the prospectus.

Requirements to be quite detailed on specificity and include a quantitative assessment of the effects of risks materialising may be too burdensome for some issuers which may then refrain from accessing the capital markets and rely on e.g. bank financing instead. This could be the case for SME issuers.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GRF_10>

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

<ESMA_QUESTION_GRF_11>

Issuers may incur more legal costs and require more internal resources to draft a prospectus if NCAs do not take a flexible approach to the guidelines. "Time to market" may also be longer if NCAs requests multiple changes to and expansions of risk factors thereby prolonging the prospectus approval process.

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<ESMA_QUESTION_GRF_11>