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European Commission
DG Financial Stability, Financial Services and Capital Markets Union
Unit C3 – Securities markets

13 May 2015

Subject: Portuguese Issuers Response to the Consultation on the Review of the
Prospectus Directive

AEM – Associação de Empresas Emitentes de Valores Cotados em Mercado, the Portuguese Issuers Association, representing the interests of quoted companies in Portugal, welcomes the opportunity to respond to the above-referred consultation and to comment on the Review of the Prospectus Directive.

As a full member of EuropeanIssuers, the leading European association promoting the interests of companies listed on stock exchanges, and a member of its Board of Directors, AEM has actively participated in the preparatory discussions and production of EuropeanIssuers' Response to the Consultation on the Review of the Prospectus Directive, which intends to draw your attention to the common concerns Issuers have regarding the functioning and impacts of the Prospectus Directive.

Yours faithfully,

Abel Sequeira Ferreira

Executive Director

RESPONSE TO THE COMMISSION CONSULTATION ON REVIEW OF THE PROSPECTUS DIRECTIVE**12 MAY 2015****I. INTRODUCTION**

EuropeanIssuers, representing the interests of quoted companies across Europe, welcomes the Commission's initiative to review the Prospectus Directive and opportunity to contribute to the consultation in this context.

With membership including both national associations and companies from all sectors in 14 European countries, we aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

Over the years, financial regulation has become extremely complex. As a result the costs to companies are increasingly higher and they have not been as well served by European capital markets. This has a negative impact on all quoted companies, that have market capitalisations ranging from many billions of euros to a few million euros. Regulation is thus not designed for the needs of all the approximately 10,000 listed companies across Europe.

This also applies to the Prospectus Directive, where we believe the changes proposed to make the time and costs of publication of such documents more proportionate for smaller companies during the last review were insufficient to achieve this purpose, and that further changes are required.

Moreover, we believe that the Prospectus Directive should also be revised with respect to requirements applicable to large companies. While cost of producing a prospectus is one of the main costs of IPO transactions¹, we hear that costs of IPO transactions have risen from only 2-2.5% twenty years ago to:

- 10 to 15% of the amount raised from an initial offering of less than EUR 6 million;
- 6 to 10% from less than EUR 50 million;
- 5 to 8% from between EUR 50 million and EUR 100 million;
- 3 to 7, 5% from more than EUR 100 million

nowadays.

According to one of our French member associations, the length of a prospectus has increased from approximately 11 pages in 1987, to 347 pages in 2014. Meanwhile, our Italian member association counted the average number of pages for a prospectus for an IPO as 553 pages and for a secondary

¹ See answer to Q2 for more information

offering at 303 pages. At the same time, we hear that many investors do not read prospectuses as they don't find them user friendly and instead ask companies for shorter marketing material.

The need for a revision of the Prospectus Directive to make it workable both for companies and investors has been also recognized by the European IPO Task Force. This Task Force was supported jointly by European Issuers, EVCA and FESE and gathered experts representing the broad spectrum of professionals from different Member States and different parts of the capital markets (issuers, investors both retail and institutional, stock exchanges, venture capital, private equity, investment bank, lawyer, auditor), but with a common vision about how Europe's IPO markets should function.²

We call for a proper revision of the Prospectus Directive, with a pilot project for any proposals to be tested with some real companies and real investors in small-cap funds, to ensure practitioner input.

KEY RECOMMENDATIONS:

- Introducing the concept of an IPO and Secondary Public Offer in the Prospectus Directive;
- Creating a Proportionate Prospectus for Secondary Public Offers on regulated markets;
- Ensuring that the Proportionate Prospectus for Secondary Offers applies to all types of secondary public offers;
- Alleviating provisions regarding incorporation by reference and the supplement to the prospectus;
- Addressing the process of the national competent authority approving a prospectus;
- Increasing the thresholds under which a prospectus does not have to be produced;
- Creating a specific prospectus regime for SME Growth Markets; and
- Relying on the web portal interconnected with national mechanisms instead of creating a single data base.

Q1 Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for:

- admission to trading on a regulated market

- an offer of securities to the public?

Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public). If yes, please give details.

The principle remains valid for admission to trading on a regulated market. We believe that some revision is required for an offer of securities. We also believe in the need for differentiated disclosure at different stages of a company's development, from crowdfunding, through other forms of finance such as venture capital and private equity, to growth markets and regulated markets. We would also like to stress that regulation should not prevent other new, more innovative forms of funding to develop in the future.

We believe that some form of document should be required whenever securities are admitted to trading on a regulated market or offered to the public. However, we would like to point out that the prospectus, since its introduction in 2005, has had the effect of restricting companies' access to public equity.

² <http://www.europeanissuers.eu/en/?inc=page&pageid=spotlight&id=44>

The length of the prospectus, its complexity and the costs associated with its production make it unattractive for companies to seek access to equity finance. In most cases, the cost of producing a prospectus is regarded as too high in proportion to the amount of money companies (and especially smaller ones) will typically seek to raise – often around 10% of the amount of money raised. Companies have been therefore limited to stay within the available exemptions from the requirement to produce a prospectus, or look for other sources of financing.

In order to stay within the exemptions of the Prospectus Directive to avoid these disproportionate costs, companies, therefore, habitually conduct limited placings with institutional shareholders, which disenfranchises existing shareholders from later fundraisings and reduces the ability of companies to raise public equity at a time when it is sorely needed. This reduced ability to use offers to the public means that many companies, especially smaller ones, have been blocked from accessing funding, while the public has been blocked from the ability to invest and participate in companies' growth.

Moreover, the relevance of the prospectus as a document in which investors base their investment decisions is questionable. The Study on the Impact of the Prospectus Regime on EU Financial Markets published in June 2008 stated that “unlike institutional investors, small retail investors do not, on average make use of prospectuses for their investment decisions”. In addition, institutional investors will usually make an investment decision during the course of the marketing exercise carried out in the period before the prospectus is available, thus basing their decision on that exercise and their own internal assessment.

It is therefore vital to address the fact that prospectuses are not serving their original purpose: to provide meaningful information to help investors to make an investment decision. We believe that a less complex prospectus would reduce the time and cost required from companies to produce them in addition to increasing its relevance for both private, retail and institutional investors. This would have great impact not only for small but also for all companies throughout the EU, enabling greater access to finance, growth and investment in these companies.

In order to make the prospectus regime work more efficiently, we believe that the Prospectus Directive should be amended to **distinguish clearly between the level of information required in a prospectus for a public offer that is part of an IPO and one related to a secondary offer.**

We recognise that the level of disclosure for an IPO needs to be high, as, at that time, there is less information about the company available in the public domain. However, prospectuses are often cluttered and difficult to read. Repeating information that is already available detracts from the important new or offer-specific information. This, arguably, can reduce investor protection, especially for those who do not have the training or the resources to conduct the analysis (i.e. retail investors).

By clearly distinguishing between the requirements of a public offer that is part of an IPO and that which is a secondary one, this would allow the Commission to **create a truly proportionate disclosure regime for secondary offers, where there is already a great deal of information already available to the public.**

Q2 In order to better understand the costs implied by the prospectus regime for issuers:

a) Please estimate the cost of producing the following prospectus

- equity prospectus

- non-equity prospectus

- base prospectus

- initial public offer (IPO) prospectus

We tried gathering this information from our members, but we have not managed to obtain it from all countries. Despite a three month consultation, a parallel consultation on Capital Market Union, ongoing revision of the Shareholder Rights Directive, etc., also kept our members busy. In addition, the volume of recent financial regulation has stretched their resources available. In addition, it is often lawyers and company advisers that are in a better position to provide this information, as it includes various costs and fees and is dependent on a number of factors (type of a market, primary versus secondary offer, with or without a fundraise, etc.) Since the companies do not often write prospectuses, they do not have the structures in place to capture the relevant information.

We would like to encourage the Commission to conduct some more in-depth research on costs of producing a prospectus (with a breakdown to various types) that would allow for a comparison amongst all Member States, and also with other jurisdictions (like US, main Asian markets, etc.).

Please find below the information we've managed to obtain:

UK

The Quoted Companies Alliance has assessed the deal costs for an IPO of either a commercial company on the Main Market or AIM and for undertaking a secondary issue (with or without a prospectus) on the Main Market or AIM.

The exact cost of producing a prospectus cannot be precisely ringfenced based on this data; however, inferences can be made from the relative costs of secondary issues with a prospectus compared to those without. Evidence that a properly proportionate disclosure regime is needed could be supported by the fact that it does not seem significantly cheaper to raise funds (looking at the average cost as a percentage of a fundraise) even once a company is listed as compared to the costs of undertaking an IPO (and, so far as we are aware, no one has done a proportionate disclosure regime prospectus in the UK).

These total deal costs also do not take into consideration the time spent preparing the necessary documentation and the costs associated with the delays this causes.

Average deal costs: ³

³ Source: Practical Law What's Market:

IPOs – Main Market: IPOs of commercial companies with market capitalisations of £150 million or more (2012 – 2013) or £100 million or more (2014 – 2015) (by UK and non-UK issuers) conducted on the Main Market where admission occurred between 1 January 2012 and 19 February 2015. This totals 63 commercial companies, three of which did not undertake a fundraising when they listed.

IPOs – AIM: IPOs of companies with a market capitalisation of £25 million and above (by UK and non-UK issuers) conducted on AIM where admission occurred between 1 January 2012 and 19 February 2015. This totals 124 companies, six of which did not issue shares to coincide with the IPO.

Secondary issues – Main Market: Secondary issues made by commercial companies listed on the Main Market announced between 1 January 2012 and 13 February 2015. For placings that were announced during 2012 and 2013, this includes "significant placings"; for those announced in 2014 onwards, this includes issues of £10 million and above. For open offers that were announced during 2012 and 2013, this includes issues of £20

	Average total deal cost (with fundraising)	Maximum – Minimum costs as a percentage of fundraising	Maximum – Minimum costs (with fundraising)	Average cost (no fundraising)	Average cost (no prospectus)
IPOs – Main Market	£16,271,164	18.57% - 8.09%	£63,800,000 - £3,900,000	£11,200,000	N/A
IPOs - AIM	£2,267,000	550% - 15.87%	£14,000,000 - £400,000	£783,610	N/A
Secondary Offers – Main Market	£11,786,071	28.81% - 2.27%	£132,000,000 - £230,000	N/A	£3,500,000 (5,6%)
Secondary Offers – AIM	£7,900,000	12,06%	N/A	N/A	£1,313,912 (4,86%)

Italy

According to a survey in Italy on 2012 by Astrid and Respublica (Time for growth: favorire la quotazione in Borsa), the prospectus is one of the major costs for companies. The survey did not provide precise data about the costs, but rather an indication. On a ranking from 1 to 9, the costs for the prospectus were at 6.5 and were listed in second place after the costs for periodic financial information in terms of their magnitude. Assonime, the association of Italian joint stock companies, collected some data about the average weight and the average number of pages of prospectuses for IPOs, secondary offerings and bond issuances in Italy (during the last 5 years). According to this data, the average number of pages for a prospectus for an IPO is 553 pages and for a secondary offering 303 pages. Prospectus for an issuance of bonds is 107 pages.

The cost of a prospectus in Italy will depend on many factors, including the size of the offer and of the issuer, the sector of activity and the eventual listing:

- Equity prospectus: 150.000 to 400.000 € (5% of the offer for small companies to 0,2% for big companies)

- non-equity prospectus: 150.000 (if the issuer is already listed)

million and above; for those announced in 2014 onwards, this includes issues of £10 million and above. For rights issues that were announced during 2012 and 2013, this includes issues of £60 million and above; for those announced in 2014 onwards, this includes issues of £10 million and above. This equals 130 companies in total, 62 of which published a prospectus (47.69%).

Secondary issues – AIM: We looked at those secondary issues made by premium equity commercial companies admitted to AIM announced between 1 January 2015 and 13 February 2015. For placings that were announced during 2012 and 2013, this includes “significant placings”; for those announced in 2014 onwards, this includes issues of £10 million and above. For open offers that were announced during 2012 and 2013, this includes issues of £20 million and above; for those announced in 2014 onwards, this includes issues of £10 million and above. For rights issues that were announced during 2012 and 2013, this includes issues of £60 million and above; for those announced in 2014 onwards, this includes issues of £10 million and above. This totals 162 companies, only one of which published a prospectus (0.62%).

- initial public offer (IPO) prospectus: recent Italian IPOs of non financial firms: 300.000€ to 800.000€

Share, in per cent, of the following in the total costs of a prospectus in Italy:

- Issuer's internal costs: 20%
- Audit costs: 15% - Legal fees: 50%
- Competent authorities' fees: 5%
- Other costs (please specify which): 10%

In response to the question: "What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?", these would be from 10% (if listed issuer) to 50% (IPO).

Germany

On an average, the preparation of an IPO prospectus costs about 1.706.500 EUR, only audit costs, legal fees and competent authorities' fees. Bank fees and internal costs are excluded. Bank fees are usually calculated as a percentage part (0,5% to 2% of the gross proceeds. The percentage part depends on the probability of default). Prospectuses in the case of capital increases require comparable costs. A stand-alone, non-equity prospectus is about 100.000 EUR, also without bank fees and internal costs. The internal costs are about 50.000 EUR respectively 1 to 2 months FTE. The preparation of the first base prospectus is about 140.000 EUR (plus internal costs of 45.000 EUR respectively 2 months FTE), the annual update about 55.000 EUR (plus internal costs of 1 month FTE) and every single tranche 10.000 to 15.000 (plus internal costs of 1 week FTE), in every case bank fees excluded. Supplements require approximately 5.300 EUR of (external) legal fees.

France

The rough cost of producing a prospectus for IPOs is estimated by Middledenext at around 1 million euro (it may increase depending on communication costs). We hear that the cost is too high for companies willing to raise 5 to 7 million euro.

Approximate number of pages over the years:

1987 : 11 pages (Thermador today a market cap of over 330 million euro)

1997 : 117 pages

2014 : 347 pages

At the same time, French financial analysts and investors in small and mid caps are often only interested in the accounts without the impact of IFRS and instead ask for a PowerPoint presentation of 20 slides maximum.

Please see also statistics gathered by the Federation of European Securities Exchanges, and provided in the EU IPO Task Force Report⁴, on costs for the IPO transaction, which are disproportionately higher for smaller companies:

- 10 to 15% of the amount raised from an initial offering of less than EUR 6 million;
- 6 to 10% from less than EUR 50 million;
- 5 to 8% from between EUR 50 million and EUR 100 million;
- 3 to 7, 5% from more than EUR 100 million.

Among those, we are told that the cost of producing a prospectus is one of the highest costs.

Moreover, as mentioned in the EU IPO Task Force, costs for the IPO transaction have been significantly increasing over the years. One of the Task Force members estimated that those costs were only 2-2.5% twenty years ago.

b) What is the share, in per cent, of the following in the total costs of a prospectus:

- Issuer's internal costs: [enter figure]%
- Audit costs: [enter figure]% - Legal fees: [enter figure]%
- Competent authorities' fees: [enter figure]%
- Other costs (please specify which): [enter figure]%

No response.

What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?

We are told that audit costs have in some cases doubled since the introduction of IFRS, although this varies by national market, and is unrelated to prospectus costs.

The legal fees are considerably higher for prospectuses than for equivalent disclosures for annual reports.

The competent authority fees were only introduced with the advent of the prospectus directive; before that, the fees were charged by the stock exchanges and the competent authorities were not generally involved.

Q3 Bearing in mind that the prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority outweighed by the benefit of the passport attached to it?

Even though many large companies may appreciate the benefits of the passport attached to a prospectus (although even this is questionable compared with the costs involved), and may use this

⁴ Available at

http://www.europeanissuers.eu/_mdb/spotlight/44en_Final_report_IPO_Task_Force_20150323.pdf.

opportunity to raise money in other EU Member States, we believe that for smaller companies especially, the costs do outweigh the benefits of the passport. See also our reply to Q2 and Q8.

ESMA's Report on Prospectuses Approved and Passporting – January 2014 to June 2014⁵ mentions that in this period, almost 75% of all prospectuses approved were not passported, which means that most companies are not seeking to make use of this facility, and so are subjected to all the costs of using a cross-border prospectus, without needing the benefits. Moreover, even within the total number of prospectuses passported in this period (505) we can see that this is done in only a few Member States; most Member States are not passporting any prospectuses, or are doing so in very limited numbers.

The number of prospectuses passported 'sent' mostly originate from only a few Member States (e.g. Luxembourg, with 224 and Germany with 123). 14 Member States have not sent any prospectuses to other Member States in this period; nine Member States have sent between one and five.

The above clearly demonstrates that the passporting mechanism is not functioning in an efficient way, particularly for smaller companies. Investment in these companies is mostly made by local investors, and improvements to this system would be important to allow better cross-border access to equity and investment.

We believe that companies should be allowed to choose to offer their shares only to local investors, and then to opt up to a pan-EU passport at a later stage of their development, when they have reached the stage where the benefits are likely to outweigh the costs.

II. ISSUES FOR DISCUSSION

A. When a prospectus is needed

A.1 Adjusting the current exemption thresholds

Q4 The exemption thresholds in Articles 1(2)(h) and (j), 3(2)(b), (c) and (d), respectively, were initially designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. Should these thresholds be adjusted again so that a larger number of offers can be carried out without a prospectus? If yes, to which levels? Please provide reasoning for your answer.

a) the EUR 5 000 000 threshold of Article 1(2)(h):

- Yes, from EUR 5 000 000 to EUR 20 000 000 ☒

- No

- Don't know/no opinion

Textbox: [justification]

We do not believe that an appropriate balance has been struck.

⁵ ESMA report of 21 October 2014 (ESMA2014/1277), available at http://www.esma.europa.eu/system/files/2014-1277_report_prospectuses_jan-jun_2014.pdf.

It is important to limit the circumstances when smaller companies are required to go through the additional cost and time of producing a prospectus when seeking to raise public equity finance.

Two key exemptions to having to produce a prospectus for a public offer – the fundraising threshold and the number of persons – were helpfully increased in the previous review. In our experience, these have been of significant benefit to companies in raising finance and we believe that they should be increased further, without this undermining investor protection.

Our view is that the fundraising threshold could be increased from EUR 5 million to EUR 20 million. As companies throughout the European Union are very diverse and have different growth levels and needs, we believe that it is important to ensure that enough flexibility is retained so that more companies in different Member States can take advantage of this option. This would reinforce the key message of 'one size does not fit all' and ensure that more companies could access growth opportunities.

b) the EUR 75 000 000 threshold of Article 1(2)(j):

- Yes, from EUR 75 000 000 to EUR [enter monetary figure]

- No

- Don't know/no opinion ☒

Textbox: [justification]

c) the 150 persons threshold of Article 3(2)(b)

- Yes, from 150 persons to 500 persons ☒

- No;

- Don't know/no opinion

Textbox: [justification]

As noted previously, it is important to limit the circumstances when smaller companies are required to go through the additional cost and time of producing a prospectus when seeking to raise public equity finance, without undermining investor protection.

We believe that the number of investors that an offer can go to before a company needs to publish a prospectus should increase from 150 to at least 500 persons. We trust that, in the context of the Capital Markets Union's objectives of promoting better access to a single market for capital, this would encourage greater investment and a wider investor base than the one that exists currently. This is necessary to promote growth in the European Union.

Furthermore, the limit on the number of persons should be clarified so that it is clear that it applies per Member State and is not an aggregate limit across all Member States. Failing to include this clarity within the wording of the article has led to misinterpretation that the rule is to be applied to the total number of investors, which is detrimental to companies and only benefits institutional investors. This should be considered in the context of having an SME Growth Markets regime with a

pan-European set of standards across Member States for companies that choose to access finance outside their home market.

d) the EUR 100 000 threshold of Article 3(2)(c) & (d)

- Yes, from EUR 100 000 to EUR [enter monetary figure]

- No

- Don't know/no opinion ☒

Textbox:

Q5 Would more harmonisation be beneficial in areas currently left to Member States discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

Yes

No

Other areas: ☒

Don't know/no opinion

Textbox: [justification]

The answer to this question is not a simple yes or no answer. In certain areas, some harmonisation would be beneficial, while in others, we believe that more flexibility is needed.

We believe that it is important to design a 'layered' system, which allows companies at different stages of growth and in different Member States to adopt solutions suitable to their funding needs. Many smaller companies prefer to stay local (they aim at local investors and their needs are satisfied at the local level). These companies should be allowed to meet the local rules. Only once they would like to seek a wider pool of European investors, should they then opt up to the next level.

For instance what should be harmonised is:

- Abolishment of obligation to produce prospectus for a secondary offers (a securities note type document would be sufficient)
- Removing pre-vetting for secondary offers

On the other hand flexibility is needed in the following areas:

- The exemption thresholds in Articles 1(2)(h) and (j), 3(2)(b), (c) and (d)
- Pre-vetting for IPOs.

Q6 Do you see a need for including a wider range of securities in the scope of the Directive than transferable securities as defined in Article 2(1)(a)? Please state your reasons.

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

No, we do not believe that the Prospectus Directive should include a wider scope of securities (i.e. non-transferable securities). The Prospectus Directive was written for transferable securities; to add non-transferable securities into the scope would both not work within its parameters or be aligned with the original aim of the Prospectus Directive.

It would prevent companies from being able to access finance. Different circumstances call for different approaches.

Q7 Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

Yes ☒

No

Other areas: Don't know/no opinion

Textbox: [justification]

Yes, we believe that the following areas should be considered:

- Interaction with the Takeover Directive (please see below);
- Differences in approach from national regulators regarding the scope and principles of using the passport (please see our response to Q 3).

We believe that offers carried out under the Takeover Regime should be specifically exempted from the application of the Prospectus Directive.

Article 4 of the Prospectus Directive already allows an exemption from the requirement for a prospectus for securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of a prospectus, taking into account the requirements of EU legislation.

It is the practice in the UK for the national competent authority⁶ to establish that a takeover document is equivalent by carrying out a similar pre-vetting process to that used for a prospectus, except that no formal approval of the equivalent offering document is actually given by the

⁶ The UK Listing Authority

competent authority. The consequence of this approach is that the UK competent authority effectively imposes all of the disclosure requirements contained in the Annexes to the Prospective Directive into such offer documents, which are subject to the reduced level of disclosure deemed to be necessary under the Takeover Directive⁷.

In the UK, the Takeover Panel is the competent authority for takeovers, as prescribed in UK national law. The Takeover Panel does not carry out pre-vetting of any takeover offer document except for those relating to whitewashes (i.e. shareholder approval to relieve a potential bidder from making a mandatory bid).

The Single Market is not best served when a competent authority is allowed the opportunity to apply a more onerous regime to the Takeover Directive's regime by imputing the Prospectus Directive's regime, especially since the Prospectus Directive was not drawn up specifically to address offers in relation to a takeover bid and the national competent authority does not have jurisdiction in the arena of the Takeover Directive.

One way companies grow is by acquisition, possibly of other quoted companies which are subject to the Transparency Directive and the Market Abuse Regulation. One of the benefits for a smaller company of being on a securities market is the ability to use its shares as an acquisition currency. Funding acquisitions by cash may be commercially unattractive, particularly if it would involve the production of a prospectus. A regime that effectively requires an equivalent document which contains the information required in a prospectus means that, in practice, the 'exemption' has no application.

There would appear to be diverging practices among the national regulators, which make life more difficult for companies. A review of differences in national implementation may be useful.

Accordingly, we would propose that **any offers carried out under the Takeover Directive regime should be specifically exempted from the Prospectus Directive regime entirely and not subject to any form of pre-vetting or ex ante review**, unless if required by the competent authority for takeovers as prescribed in national law under the Takeover Directive.

A.2 Creating an exemption for "secondary issuances" under certain conditions

Q8 Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant information updates are made available by the issuer?

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

We agree. We support the creation of a **proportionate prospectus for secondary public offers on regulated markets**.

⁷ Directive 2004/25/EC

An issuer which is already admitted to trading on a public equity market will have already published its IPO document (whether it is a prospectus or admission document). This issuer is also subject to requirements for ongoing disclosure of information⁸.

Due to the above, having to disclose all such information again within a prospectus for a secondary offer adds very little value. We believe that this is one of the key issues and inconsistencies within the Prospectus Directive: its failure to adequately distinguish between the information appropriate when an issuer is new to a public market and when it is seeking financing through secondary offers – where significant information is already in the public domain.

Therefore, we believe that the **requirement to draw up a full-blown prospectus should be lifted for any subsequent secondary issuance of the same securities on a regulated market**, provided that a securities note type document would be published. We believe that another specific consultation, expert group or a pilot project with some real life testing on real investors and companies (something similar to UK FRC lab) should be set up to decide what exactly this document should look like. We would be happy to contribute to such a group / pilot project.

We believe that using a document more relevant and focused on the salient terms of an offer and of an issuer will benefit investor protection, and will result in fact in existing and potential investors being better informed about both the company and the offer, since the most important details of the offer will be clearly visible.

We also support the creation of a distinct regime for secondary public offers on SME Growth Markets. Please see our response to Q18.

Q9 How should Article 4(2)(a) be amended in order to achieve this objective ? Please state your reasons.

The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued ☒

No amendment

Don't know/no opinion

Textbox: [justification]

We believe that all types of secondary offers should be exempted.

⁸ For example, the Transparency Directive and Market Abuse Regulation (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, as amended by Directive 2010/73/EU and Directive 2013/50/EU, which includes a statement of management responsibility; and Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC)

Q10 If the exemption for secondary issuances were to be made conditional to a fullblown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

[] years

There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago) ☒

Don't know/no opinion

Textbox: [justification]

We believe that there should be no timeframe. As mentioned previously, once a company is admitted to trading on a market it has ongoing disclosure requirements and an obligation to publish any price sensitive information. This ensures that investors and potential investors are kept duly informed about the company.

A prospectus only provides a snapshot in time of a company - the information it contains is prone to becoming outdated. The information in a prospectus is replaced over time by annual reports and accounts together with market announcements. The publication of the prospectus for admission to trading should have no bearing on the document required for a secondary offer.

A.3 Extending the prospectus to admission to trading on an MTF

Q11 Do you think that a prospectus should be required when securities are admitted to trading on an MTF? Please state your reasons.

Yes, on all MTFs

Yes, but only on those MTFs registered as SME growth markets

No ☒

Don't know/no opinion

Textbox: [justification]

No, we do not believe that a prospectus should be required when securities are admitted to trading on an MTF.

The prospectus regime was not designed with the needs of companies on MTFs in mind and we believe that it would be inappropriate and harmful to extend it to these markets.

MTFs were introduced in MiFID I serving the purpose of allowing market development by market operators outside of the regulated market regime in the EU. We strongly believe that MTFs should remain subject to the specific rules of market operators under the principles established in MiFID.

Furthermore, regarding those MTFs that will register as an SME Growth Market, ESMA's Technical Advice on MiFID II notes that a prospectus should not be required for admission to trading on a SME

Growth Market; ESMA instead advises outlining high-level principles as to the requirements for these markets and admission to trading on them.

We believe that the introduction of the concept of SME Growth Markets offers an excellent opportunity to improve further the availability of public equity finance for SMEs. As these markets are a category distinct from regulated markets, we believe that a specific prospectus regime should be created for them where the requirement to produce a prospectus is triggered and exemptions are not available. We discuss how we believe this regime should work more in our responses to questions 18 and 20 – 22.

Q12 Were the scope of the Directive extended to the admission of securities to trading on MTFs, do you think that the proportionate disclosure regime (either amended or unamended) should apply? Please state your reasons.

Yes, the amended regime should apply to all MTFs

Yes, the unamended regime should apply to all MTFs

Yes, the amended regime should apply but not to those MTFs registered as SME growth markets

Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets ☒

Yes, the amended regime should apply but only to those MTFs registered as SME growth markets

Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets

No

Don't know/no opinion

Textbox: [justification]

As noted in our response to Q 11, we disagree that a prospectus (whether it is a full prospectus or a proportionate disclosure prospectus) should be required when securities are admitted to trading on a MTF.

Our response to this question reflects solely on the possibility of the scope of the Directive being extended to cover the admission of trading on MTFs. We would strongly oppose this extension. If there were a need to create a new disclosure regime, we believe that a specific prospectus regime should be created for these markets, which recognises that they are distinct from regulated markets.

As noted in our response to Q11, regardless of whether the scope of the Directive is extended to admission of securities trading on MTFs, we believe that a distinct and bespoke prospectus regime should apply to SME Growth Markets where the requirement to produce a prospectus is triggered and exemptions are not available. Please see our response to Q18b for our proposals regarding SME Growth Markets.

A.4 Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)

Q13 Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA) of the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document? Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds.

Yes, such an exemption would not affect investor/consumer protection in a significant way

No, such an exemption would affect investor/consumer protection

Don't know/no opinion ☒

Textbox: [justification]

A.5 Extending the exemption for employee share schemes

Q14 Is there a need to extend the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies ? Please explain and provide supporting evidence.

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

Yes, we believe that the scope of the exemption should be extended to non-EU, private companies.

A.6 Balancing the favourable treatment of issuers of debt securities with a high denomination per unit, with liquidity on the debt markets

Q15 Do you consider that the system of exemptions granted to issuers of debt securities above a denomination per unit of EUR 100 000 under the Prospectus and Transparency Directives may be detrimental to liquidity in corporate bond markets? If so, what targeted changes could be made to address this without reducing investor protection?

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

The threshold for exemptions for debt securities have been raised significantly over the years (from 5 000 euro in the original proposal). 100.000 is already a very high threshold, which has probably resulted in a reduced number of companies tapping the bond markets for financing, in addition to the very high costs of producing a prospectus. Smaller companies in particular are more likely to be interested in raising small amounts.

We believe that liquidity on the bond markets should be the subject of a separate study.

In any case existing exemptions should continue to be granted to issuers of debt securities.

If you have answered yes, do you think that:

(a) the EUR100 000 threshold should be lowered?

- Yes, to EUR [5000]
- No
- Don't know/no opinion
- Textbox: [justification]

This is more realistic for smaller companies.

(b) some or all of the favourable treatments granted to the above issuers should be removed?

- Yes, please indicate to what extent : []
- No
- Don't know/no opinion
- Textbox: [justification]

All exemptions should continue to be granted, given the high costs involved.

(c) the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?

- Yes
- No
- **Don't know/no opinion**
- Textbox: [justification]

B. The information a prospectus should contain

B.1 Proportionate disclosure regime

Q16 In your view, has the proportionate disclosure regime (Article 7(2)(e) and (g)) met its original purpose to improve efficiency and to take account of the size of issuers? If not, why?

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

As briefly discussed in our response to Q12, we were highly supportive of the idea to introduce a proportionate disclosure regime for issuers with reduced market capitalisations/SMEs and for certain types of rights issues⁹ in the previous revision of the rules. However, we believe that this was a missed opportunity both in the scope of its application and in the very limited reduction in the disclosure requirements. The end result has been a failure.

Research by our UK member association, the Quoted Companies Alliance, shows that no issuers in the UK have chosen to use the proportionate disclosure regime for rights issues or for issuers with a reduced market capitalisation. The same seems to be applicable in Germany, where the proportionate regime is not used because it is perceived to be uncertain in terms of what it means for the liability of the issuer. It is also little used in France, due to its limited relief from the requirements.

Furthermore, there are technical issues with the proportionate disclosure regime for rights issues, which limit its use unnecessarily. At the moment, the proportionate disclosure regime for rights issues applies to rights issues but not to (non-compensatory) open offers¹⁰.

We believe that the proportionate disclosure regime should be extended to all types of issues to existing shareholders. Please see our response to Q18 for further detail.

Q17 Is the proportionate disclosure regime used in practice, and if not what are the reasons? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

- Yes

- No

- Don't know/no opinion

- Textbox: [justification]

⁹ Chapter IIIA – inserted by Commission Delegated Regulation 486/2012/EU

¹⁰ Chapter IIIA – inserted by Commission Delegated Regulation 486/2012/EU

As mentioned in our response to Q16, the proportionate regime has not been used by companies. We assume that is because the reduction in costs and burden is not sufficiently significant as against producing a full prospectus and that the reduction in disclosures does not translate into a faster pre-vetting timetable with the national competent authority. Please see our response to Q18 for further detail.

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation

- Yes

- No

- Don't know/no opinion

- Textbox: [justification]

As mentioned in our response to Q16, the proportionate regime has not been used by companies. We assume that is because the reduction in costs and burden is not sufficiently significant as against producing a full prospectus and that the reduction in disclosures does not translate into a faster pre-vetting timetable with the national competent authority. Please see our response to Q18 for further detail.

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

- Yes

- No

- Don't know/no opinion

- Textbox: [justification]

Q18 Should the proportionate disclosure regime be modified to improve its efficiency, and how? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

Textbox: []

Yes, we believe that the proportionate disclosure regime be modified to improve its efficiency.

Regarding the proportionate disclosure regime for rights issues, the Commission must address the fact that this regime has not been effective at making secondary public offers more accessible and efficient for quoted companies.

The proportionate disclosure regime for rights issues should be extended at a minimum to all types of issues to existing shareholders. There should be no reason why companies should need to make a

rights issue (when an open offer would be more appropriate) purely because the costs of an open offer are prohibitive due to the unavailability of the proportionate regime.

The principle of the proportionate disclosure regime being available for rights issues is that investors already have access to much of the information that must be included within a prospectus, as the company is already on the market. An open offer is no different. In fact, an open offer is more restricted than a rights issue as the entitlement of existing shareholders cannot, unlike rights issues, be traded. Both rights issues and open offers are offers to existing shareholders, with the same information available to them, so the distinction has no relevance to the level of information that should be included within a prospectus. In our view, proportionate disclosure should be available to all secondary public offers.

However, as discussed in our responses to Q1 and Q8, we believe that best way to address this issue is to introduce the concept of an IPO and secondary offer in the Prospectus Directive. Then, the Commission could effectively replace the proportionate disclosure regime for rights issues with a proportionate prospectus for secondary public offers that recognises that there is already sufficient information available on a quoted company in the public domain.

We also believe that the Commission should create a bespoke regime for companies on SME Growth Markets, when a prospectus is required (i.e. an IPO which is accompanied by a public offer fundraising above the exemption limits and a secondary public offer).

An issuer which is already admitted to trading on a public equity market will have published its IPO document (whether it is a prospectus or admission document). This issuer is also subject to requirements for ongoing disclosure of information¹¹.

Due to the above, having to disclose all such information again within a prospectus for a secondary offer adds very little value. We believe that this is one of the key issues and inconsistencies within the Prospectus Directive: its failure to adequately distinguish between the information appropriate when an issuer is new to a public market and when it is seeking financing through secondary offers – where significant information is already in the public domain.

Therefore, we believe that shortening and making a secondary offer document more relevant and focused on the salient terms of an offer will benefit investor protection, and will result in fact in existing and potential shareholders being better informed about both the company and the offer, since the most important details of the offer will be clearly visible.

Moreover, it is important to highlight that each director must sign a responsibility statement confirming that all relevant information has been included in the prospectus. This provides the necessary assurance that the prospectus includes all information which is necessary to make an informed decision.

We believe that for such secondary offers, the proportionate prospectus should include the key details of the offer, presenting information in an easily understandable way and by using simple

¹¹ For example, the Transparency Directive and Market Abuse Regulation (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, as amended by Directive 2010/73/EU and Directive 2013/50/EU; and Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC)

language. Moreover, it should make use as much as possible of incorporation by reference of information which can be easily found on the issuer's website.

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation

Textbox: []

Yes, we believe that the Commission must address the fact that the proportionate disclosure regime for SMEs and companies with reduced market capitalisation has not been effective at facilitating public offer fundraisings for smaller companies.

As discussed in our responses to questions 1, 8 and above in 18a, we believe that best way to address this issue is to introduce the concept of an IPO and secondary offer in the Prospectus Directive.

We also believe that the Commission should create a bespoke regime for companies on SME Growth Markets, when a prospectus is required (i.e. an IPO which is accompanied by a public offer fundraising above the exemption limits and a secondary public offer), which effectively would replace the proportionate regime for SMEs and companies with reduced market capitalisations.

The introduction of SME Growth Markets offers an excellent opportunity to improve further the availability of public equity finance for SMEs. As these markets are a category distinct from regulated markets, we believe that a specific prospectus regime should be created for them where the amount raised is above the threshold exemptions. We propose that the following aspects are part of this regime:

a) Create a SME Growth Market Prospectus for IPOs that are a public offer

First of all we believe that a profound evaluation of the current situation in all Member States (what exists at present) should be performed (possibly also comparing with other jurisdictions. It is important to follow the "Think Small First" principle and design any regulation for such markets from a bottom up rather than top-down approach. Companies should have the option to either stay local and follow local rules, while having possibility to opt in to the EU level rules in case they want to raise funds in other EU countries.

We believe that any disclosure regime for SME Growth Markets should facilitate raising finance, rather than hinder it. As such, we propose that companies that seek admission to a SME Growth Market with a fundraising element that raises money from the public (above the threshold exemptions in the Directive) should produce a specialised SME Growth Market Prospectus, which does not have to be pre-vetted or approved by the national competent authority.

The content requirements should be principles-based. These should not be an exhaustive list of requirements, but instead a list of minimum disclosures. We believe that there should be, as now, an overriding principle that all information about the offer that is necessary to make an investment decision is included in the document.

The above is in line with ESMA's Technical Advice to the Commission on MiFID II and MiFIR regarding the requirements for SME Growth Markets.

b) Create a SME Growth Market Proportionate Prospectus for Secondary Public Offers

We believe that companies should not have to produce a full prospectus for a secondary public offer (whether on a regulated market or SME Growth Market) because there is already a great deal of information available to the public as a result of ongoing disclosures.

c) Allow companies on SME Growth Markets to incorporate information by reference

We believe that the ability to incorporate information by reference should be extended to issuers on SME Growth Markets. Issuers should be able to incorporate by reference any information that has been released to the market and is publicly available, so that a prospectus is not cluttered with information that is already available to investors.

Currently, incorporation by reference is only available to issuers on regulated markets, but we cannot see any reason why this should not be extended to issuers on SME Growth Markets for information that has been released to the market and is available for investors to review.

This is in line with the principles behind the creation of the SME Growth Market under MiFID II. Furthermore, we note that ESMA's Technical Advice to the Commission on MiFID II and MiFIR states that all RNS announcements in the previous five years of companies on SME Growth Markets must at a minimum be published on the market operator's website.

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

Textbox: []

Q19 If the proportionate disclosure regime were to be extended, to whom should it be extended?

To types of issuers or issues not yet covered? Please specify: To all secondary offers and at the least to open offers ☒

To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify: [text box]

Other. Please specify: [text box]

Don't know/no opinion

Textbox: [justification]

Please see our response to Q18.

We believe that the proportionate disclosure regime for rights issues should be replaced by a proportionate prospectus for secondary offers.

As discussed in our response to Q18, the proportionate disclosure regime for rights issues should be extended at a minimum to all types of issues to existing shareholders. As we have said previously, there should be no reason why SMEs should need to make a rights issue (when an open offer would be more appropriate) purely because the costs of an open offer are prohibitive due to the unavailability of the proportionate regime.

The principle of the proportionate disclosure regime being available for rights issues is that investors already have access to much of the information that must be included within a prospectus, as the company is already on the market. An open offer is no different. In fact, an open offer is more restricted than a rights issue as the entitlement of existing shareholders cannot, unlike rights issues, be traded. Both rights issues and open offers are offers to existing shareholders, with the same information available to them, so the distinction has no relevance to the level of information that should be included within a prospectus. In our view, proportionate disclosure should be available to all secondary public offers.

B.2 Creating a bespoke regime for companies admitted to trading on SME growth markets

Q20 Should the definition of "company with reduced market capitalisation" (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

Yes, we believe that the definition should be aligned if the proportionate prospectus regime for SMEs and companies with reduced market capitalisations is retained.

However, as mentioned before, we believe that this issue would be best tackled by introducing the concept of an IPO and secondary offer in the Prospectus Directive.

Also, as mentioned before, we believe that a bespoke regime for companies on SME Growth Markets when a prospectus is required should be created, (i.e. for an IPO which is accompanied by a public offer fundraising above the exemption limits and a secondary public offer). This would effectively replace the proportionate regime for SMEs and companies with reduced market capitalisations.

Q21 Would you support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market, in order to facilitate their access to capital market financing?

Yes ☒

No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets.

Don't know/no opinion

Textbox: [justification]

Yes, we would support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME Growth Market, in the cases where a prospectus is required or an offer is outside of the current exemptions of the Prospectus Directive. As noted in our response to Q11, we do not support the extension of the requirement to produce a prospectus for companies seeking admission to trading on a MTF or SME Growth Market.

Please see our response to Q18b.

Q22 Please describe the minimum elements needed of the simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market.

Textbox: [justification]

Please see our response to Q18b and Q21.

B.3 Making the “incorporation by reference” mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information

Q23 Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility? If yes, please indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference)?

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

Yes, we believe that the provision of Article 11 (incorporation by reference/IBR) should be recalibrated in order to bring more flexibility. While recognising that Article 11(3) of the current Prospectus Directive requires ESMA to develop draft regulatory technical standards on that point, we disagree with the elaboration of an exhaustive list of documents that should be allowed to be incorporated by reference.

With incorporation by reference, investors are able to access and review the key information they need in a shorter and more easily understandable prospectus dealing with specific factors relevant to the issuance. There is no loss of protection for investors, provided the issuer clearly states in the prospectus or in the securities note where and how relevant information can be found (for secondary issuances, please refer to our response to question 8).

We believe that a restrictive interpretation of the application of incorporation by reference would be disproportionately burdensome for issuers and would impede access to capital markets. Please note, that with the amendment to the Transparency Directive and a narrow scope of the incorporation by reference mechanism, quarterly reports will no longer be required as from November 2015.

In addition, the approval by the NCA of documents eligible for incorporation by reference is time consuming and prevents issuers from taking advantage of favourable market conditions. One

restraining factor for IPOs is the fact that the time window is often very short. Delays in approval may mean that the company would miss the opportunity.

However, we would disagree with setting out an exhaustive list of documents that may be incorporated by reference, like ESMA suggests in its Consultation Paper ESMA/2014/1186, as this would not be within the principles or spirit of the Prospectus Directive.

A wider use of incorporation by reference should be allowed in order to strike a balance between reducing costs for companies raising capital and ensuring that the goal of providing adequate investor protection is respected. In that regard, and in the context of the Consultation on the Draft Regulatory technical standards on prospectus under Omnibus II directive, the Commission proposed a list of documents to be incorporated by reference. The SMSG advice¹², on one side, stated that the list had not to be exhaustive in order to allow flexibility and, on the other side, asked for the possibility to incorporate by reference documents not mentioned directly but provided under the laws, regulations and administrative provisions of a Member State according to art. 3.1 of the Transparency Directive (such as the bylaws and minutes of shareholder meetings) or other documents regarded by the competent authority as being equivalent to the prospectus itself, and which already have to be available according to art. 4.2 (c) (d) of the Prospectus Directive.

We would therefore encourage the Commission to look at the report from the Stakeholder Group.

Finally, incorporation by reference could also be considered for upcoming documents, such as financial statements to be published and updates to the registration document.

Q24 (a) Should documents which were already published/filed under the Transparency Directive no longer need to be subject to incorporation by reference in the prospectus (i.e. neither a substantial repetition of substance nor a reference to the document would need to be included in the prospectus as it would be assumed that potential investors have anyhow access and thus knowledge of the content of these documents)? Please provide reasons.

No ☒

Don't know/No opinion

Textbox [justification]

The question is somewhat confusing. We do not believe that there is need for a repetition of substance and thus, incorporation by reference should be implicit for all documents already published, provided that the prospectus or securities note specifies on which website they can be found and how to access this information. Please see our response to Q23.

(b) Do you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive?

Yes

No ☒

Don't know/No opinion

¹² See ESMA/2015/SMSG/003.

Textbox [justification]

Please see our responses to Q23 and Q24. Rather than streamlining disclosure requirements, we believe that incorporation by reference should be improved.

Q25 Article 6(1) Market Abuse Directive obliges issuers of financial instruments to inform the public as soon as possible of inside information which directly concerns the said issuers; the inside information has to be made public by the issuer in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Could this obligation substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive?

Yes ☒

No

Don't know/No opinion

Textbox [justification]

Please see our responses to Q23 and Q24. Rather than streamlining disclosure requirements, we believe that incorporation by reference should be improved.

However, the fact that issuers are already subject to requirements under the Market Abuse Directive should indeed be recognised and duplication avoided. Issuers should not have to produce a supplement for information already disclosed under the Market Abuse Directive. In the same way as for documents published/filed under the Transparency Directive, the issuer should specifically state in the prospectus / securities note on which website the documents published/filed can be found in order to access this information.

Q26 Do you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive?

Yes

No ☒

Don't know/No opinion

Textbox [justification]

Please see our responses to Q23 and Q24. Rather than streamlining disclosure requirements, we believe that incorporation by reference should be improved.

However, the fact that issuers are already subject to requirements under the Market Abuse Directive should indeed be recognised and duplication avoided. Issuers should not have to produce a supplement for information already disclosed under the Market Abuse Directive. In the same way as for documents published/filed under the Transparency Directive, the issuer should specifically state in the prospectus / securities note on which website the documents published/filed can be found in order to access this information.

We would also refer you to our separate comments on the Market Abuse Directive, where we believe that some of the disclosure requirements proposed are inappropriate and too costly.

B.4 Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation

Q27 Is there a need to reassess the rules regarding the summary of the prospectus? (Please provide suggestions in each of the fields you find relevant)

a) Yes, regarding the concept of key information and its usefulness for retail investors ☒

b) Yes, regarding the comparability of the summaries of similar securities

c) Yes, regarding the interaction with final terms in base prospectuses

d) No.

e) Don't know/no opinion

Textbox: [justification]

We believe that the summary should include basic information that is useful for investors to know and refer back to the prospectus for more detailed information. This would automatically make the summary considerably shorter and fit for the purpose intended of it.

We agree that the Prospectus summary may need some revision in order to be workable both for issuers and investors, as it has become too complicated and too long. One option could be to use an easy-to-follow format, where a certain number of relevant topics providing essential information on the issuer would be mentioned. While ensuring adequate investor protection, this could prove more workable than an arbitrary limitation on the length of the prospectus.

What we propose is to either run another, more detailed public consultation on this specific topic (given that we hear from our members that they need more time to consult their members in such detail) and/or to set up an expert group, task force or lab (similar to the UK FRC Lab including both companies and investors) to develop a feasible prospectus summary that would work both for issuers and investors.

Meanwhile, we disagree with the application of a Key Information Document as designed in the PRIIPs Regulation to shares and corporate bonds, including convertible bonds. This is because there has been no study of shares and bonds as a different product, nor of the costs, because of the difficulties in determining performance scenarios and summary risk, especially using synthetic indicators, the undesirability of using the KID as the basis for an informed investment decision, as well as the liability attached to this purpose, requirements to keep documentation up to date.

Please see the analysis in an annex to our [most recent position](#) on that topic. Similar issues apply to shares.

Q28 For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

a) By providing that information already featured in the KID need not be duplicated in the prospectus summary. Please indicate which redundant information would be concerned : [textbox]

b) By eliminating the prospectus summary for those securities.

c) By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products

d) Other: [textbox] ☒

e) Don't know/no opinion

Textbox: [justification]

Representing corporates who don't issue packaged retail investment products, we are not best placed to answer.

However, regarding non-financial companies/corporates, this question specifically targets convertible bonds, which are in the scope of the PRIIPS Regulation, which we believe should be out of the scope of this Regulation, as they are of a very different nature than other instruments covered by this Regulation. Please our previous positions on that topic¹³.

B.5 Imposing a length limit to prospectuses

Q29 Would you support introducing a maximum length to the prospectus? If so, how should such a limit be defined?

Yes, it should be defined by a maximum number of pages and the maximum should be [figure] pages

Yes, it should be defined using other criteria, for instance: [textbox]

No ☒

Don't know/no opinion

Textbox: [justification]

We believe that the prospectus needs to be as long or as short as it needs to be taking into consideration different factors such as type of company or complexity of business sector. Imposing a length limit would potentially mean that important areas would not be covered properly. The length of the prospectus in any particular case should be guided by the principles of materiality and comprehensibility.

¹³ http://www.europeanissuers.eu/_mdb/position/269_20140124_EI_FINAL_POSITION_PRIIPs.pdf
http://www.europeanissuers.eu/_mdb/position/258_FINAL_EI_POSITION_ON_KID_3_07_2013.pdf

Imposing a length limit to the prospectus could also raise great concerns on what that could mean in terms of risk of investment and liability of directors. A company director is personally liable for ensuring that all the information that is needed to go into a prospectus is included in the document; having to do so while constrained by a length limit would be difficult and possibly deter companies from raising equity finance or other capital.

What could be useful would be to promote some best practice examples.

Q30 Alternatively, are there specific sections of the prospectus which could be made subject to rules limiting excessive lengths? How should such limitations be spelled out?

Textbox: []

Please see our response to Q29.

B.6 Liability and sanctions

Q31 Do you believe the liability and sanctions regimes the Directive provides for are adequate? If not, how could they be improved?

	Yes	No	No opinion
The overall civil liability regime of Article 6	X		
The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)	X		
The sanctions regime of Article 25	X		

Q32 Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive? If yes, please give details.

Yes

No

Don't know/no opinion ☒

Textbox: [justification]

C. How prospectuses are approved

C.1 Streamlining further the approval process of prospectuses by national competent authorities (NCAs)

Q33 Are you aware of material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses that are submitted to them for approval? Please provide examples/evidence.

Yes

No

Don't know/no opinion

Textbox: [justification]

We hear that there are differences. Certain differences should be allowed, some should be discouraged. This would allow for balance between need for consistency and flexibility.

Some of that may be related to the competence and level of expertise of Competent Authorities in different financial products. In order to avoid this, it could be helpful to develop centres of expertise in different Member States and also some education programmes for Competent Authorities. Once you have centres of expertise, if you have an unusual product, you could consult this expertise centre.

We also need an overview of information that has been requested – on the basis of that, further discussion could take place.

Please find below some examples of inconsistencies we were told about.

French regulations (General Regulations of the French financial markets authority/Autorité des Marchés Financiers/AMF) require a control of the prospectus by the issuer's statutory auditors, the issuance by them of a "work completion letter", which the issuer must provide to the competent authority (AMF). This document, which does not reduce the issuer's liability, is not published, but its existence is known to investors, which in practice may ask for this letter to be communicated to them.

The UK FCA required issuers to give additional statements for example that the Russian sanctions had been obeyed. Such an approach was inconsistent between national authorities.

See also our response to Q7 above.

Q34 Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs? If yes, please specify in which regard.

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

The review process by a Competent Authority is, in our view, one of the most significant contributors to the expense of producing a prospectus. It can also contribute to delays in a timetable when funds are needed on a relatively short timescale. IPO windows are very short and therefore the opportunity may be lost if prospectus approval takes too much time.

Indeed, a significant problem of the approval process regards the time limits and the fact that the Competent Authority may require supplementary information according art. 13, par. 4. Sometimes this procedure is repeated several times, as expressly stated by the SMSG's advice to ESMA on the CP on the draft RTS under Omnibus directive (see. p. 3 at http://www.esma.europa.eu/system/files/2015-smsg-003_smsg_advice_prospectus.pdf). This may create uncertainty about the real time limits and may also lengthen the timeframe for the approval.

Also, we believe that it is important to address the complexity and delay caused by the Competent Authority checking the information included in the prospectus for comprehensibility, rather than just for completeness (i.e. has each item required by the Prospectus Regulations to be included in the document been included). The process should aim to make any review by the NCA as efficient as possible.

We believe that the Commission could further contribute to a more efficient review process by NCA's if it were to restrict NCA's from raising new questions late in the review process (unless new information is submitted by the issuer). This would also avoid adding delays and costs to the review process. To further increase efficiency of the process, it would be useful to explicitly limit the binding comments of the regulator to formal compliance with the Prospectus Directive (meaning that regulator would be free to provide additional comments which would be helpful at the margin, but would not be binding).

In addition, we do not believe that NCA's should be able to wait until the end of the working day following the day the decision to approve (or refuse approval) was taken to inform the issuer. This causes unnecessary delays in the transaction process. We see no reason why this decision cannot be communicated immediately. .

We hear that regulators' approach to pro forma financial statements/financial simulations in case of companies with complex financial history is also not efficient. A dedicated task force, expert group or a real like pilot project with real life investors and companies (similar to the UK FRC lab) would be useful to investigate that and suggest improvements to this process.

Another important aspect aiming at shortening the process, is to enforce procedures for electronic filing of the prospectus (see also Q 43 &44) and electronic communication with the regulator. This would also be more consistent with a Digital Single Market.

A comparison of the approval processes among various, also non-EU jurisdictions, would be helpful. For instance, we have seen reports that China is envisaging delegating prospectus approval to the stock exchanges, rather than to the regulator, which would probably make Asian markets more flexible.

Aside from the minimal reduction in disclosure requirements, in our view, a further significant reason why the proportionate disclosure regime has been singularly unsuccessful is the unwieldy pre-vetting process. This can add up to 4-6 weeks on to a fund raising timetable, and during this time an opportunity speedily to take advantage of market conditions can be lost. It is not an efficient process which will foster a dynamic, fast moving and modern economy.

Especially for secondary offers, where a company is already admitted to trading and is complying with EU directives on transparency and market abuse, we struggle to see the need for, or the cost effectiveness of, a hugely detailed, further prospectus requiring an inevitably longer pre-vetting process. In theory, all price sensitive information relating to an issuer will be available to the market (usually via at least the company websites). Investors are able to buy shares in the secondary market

based on that information. If the issuer subsequently decides to embark on fundraising, the only additional information that investors need at that point is a much shorter document – similar to a securities note or term sheet – describing the terms of the current offer and the intended use of proceeds. Such a document, if subject to the pre-vetting regime for regulated markets, should be able to pass through that regime in a much more shortened and efficient timescale with significant cost reductions.

Finally, tacit approval by the NCA – under Article 13 (2) of the Prospectus Directive – should be considered, especially where mandatory information is reduced.

In short, we insist on the need to remove pre-vetting for secondary offers, while, for the IPO, it should be up to the National Competent Authority to decide whether it is needed or not. Post vetting should be sufficient.

Q35 Should the scrutiny and approval procedure be made more transparent to the public? If yes, please indicate how this should be achieved.

Yes

No

Don't know/no opinion

Textbox: [justification]

We are not sure what would be the purpose behind this question. The added value of increased transparency should be further explained. If that would lead to increased comparison of quality of work of the NCA and act as a competitive encouragement to improve their processes, it could be useful.

Perhaps it could also be useful for the public to have a more realistic understanding of what it means for a prospectus to be approved by the competent authority. The meaning of 'approval by the NCA' should be better explained and stated in the document. The liability of the NCA in this regard should also be clearly set out on the NCA's website.

Q36 Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved? If yes, please provide details on how this could be achieved.

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

Yes, we believe that it would be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved. We believe that this would be helpful and cause no detriment to retail investors.

This could be achieved by having to demonstrate (for example, by issuing a red-line version and a supplement on the material differences), within a certain period of time, what changes have been made to the document once the end of the approval process is reached.

Q37 What should be the involvement of NCAs in relation to prospectuses? Should NCAs:

- a) review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)
- b) review only a sample of prospectuses ex ante (risk-based approach)
- c) review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)
- d) review only a sample of prospectuses ex post (risk-based approach)
- e) **Other** ☒

f) Don't know/no opinion Please describe the possible consequences of your favoured approach, in particular in terms of market efficiency and investor protection.

Textbox: [justification]

As stated above, we would like to see the removal of pre-vetting for secondary offers, while for the IPO it should be up to the National Competent Authority to decide whether it is needed or not. Please see our reply to Q34 for more explanations.

Regarding pre-vetting for IPOs on regulated markets, it is also essential that the procedures by NCAs ease bureaucratic requirements and shorten the delays. A comparison of existing national procedures and their pros and cons could be helpful as best practice and to properly understand which systems are the most efficient.

We note that the growth markets operate effectively without pre vetting by Competent Authorities (usually this is done by the relevant stock exchange but also there are usually additional requirements on the company's advisers) and we strongly believe that this system should remain.

Q38 Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive), be more closely aligned with the approval of the prospectus and the right to passport? Please explain your reasoning, and the benefits (if any) this could bring to issuers.

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

No, there is no reason for the decision to admit securities to trading on a regulated market to be more closely aligned with the approval of the prospectus and the right to passport.

We believe that the admission decision should not be that of the NCA. The roles are distinct: the Recognised Investment Exchange should be responsible for defining what should be admitted to its market while the NCA is responsible for reviewing the admission document.

We are not entirely sure what the Commission has in mind with this question, as we struggle to see any benefits to issuers, so would be happy to discuss further.

Q39 (a) Is the EU passporting mechanism of prospectuses functioning in an efficient way? What improvements could be made?

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

The passporting mechanism is not functioning in an efficient way, particularly for smaller companies, in the sense that it is not being used as frequently as would perhaps be desirable. Investment in these companies is mostly made by local investors, and improvements to this system would be important to allow better cross-border access to equity and investment.

We also hear some complaints about national authorities, as highlighted above.

Please see our response to Q3.

(b) Could the notification procedure set out in Article 18, between NCAs of home and host Member States be simplified (e.g. limited to the issuer merely stipulating in which Member States the offer should be valid, without any involvement from NCAs), without compromising investor protection?

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

We believe that the Commission should consider the creation of a centralised, web-based mechanism to facilitate the exchange of information by NCAs. This would allow the possibility of a prospectus being available for immediate use throughout different Member States after the approval by one of the NCAs.

C.2 Extending the base prospectus facility

Q40 Please indicate if you would support the following changes or clarifications to the base prospectus facility. Please explain your reasoning and provide supporting arguments:

	I support	I do not support	Justify
a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed			See comment below
b) The validity of the base prospectus should be extended beyond one year	Extension of the period of validity to three years		See comment below
c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA	Yes, in case a registration document has already been filed with the NCA (only).		See comment below
d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs			
e) The base prospectus facility should remain unchanged		<input checked="" type="checkbox"/>	
f) Other (please specify)			

We are not convinced that the base prospectus is actually a useful facility for most companies, particularly the smaller ones. We do not therefore have strong views on its improvement, as we think it is mostly not relevant. However, we support its existence for companies that may want to use it.

For those that may wish to use it, we suggest that:

A period of validity of three years would enable European issuers to benefit from better conditions to access capital markets, such as those that apply to US issuers[2], and make European markets more appealing (response to questions 40 b) and d)). The use of the base prospectus facility should be allowed for both equity and non-equity securities (response to question 40 a)).

Issuers should be allowed to incorporate information by reference (please see our responses to questions (23), (24) and (25)). Material changes in the issuer's business over a period of time longer than one year should be made available to the public, in order to ensure investor protection.

Finally, the Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed with the national competent authority. In this respect, it should be noted that the registration document is not necessarily "approved" by the NCA (response to question 40 c)).

C.3 The separate approval of the registration document, the securities note and the summary note ("tripartite regime")

Q41 How is the "tripartite regime" (Articles 5 (3) and 12) used in practice and how could it be improved to offer more flexibility to issuers?

Textbox: []

C.4 Reviewing the determination of the home Member State for issues of non-equity securities

Q42 Should the dual regime for the determination of the home Member State for nonequity securities featured in Article 2(1)(m)(ii) be amended? If so, how?

a) No, status quo should be maintained.

b) Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000. ☒

c) Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked.

Textbox: [justification]

Yes. Issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000.

In principle, we are in favour of the freedom of movement of capital, which would mean that issuers should have the choice of where to go to raise capital within the EU. Not all companies would use this option, but the choice should be there.

C.5 Moving to an all-electronic system for the filing and publication of prospectuses

Q43 Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

Yes. We support the removal of the options to publish a prospectus in a printed form and by insertion in a newspaper, while providing for the possibility to obtain a paper copy upon request and free of charge.

We understand that investors also support that approach which would also save costs for issuers. A digital format (such as pdf) should be made the default format for prospectus (please also see our response to question 45 for more detailed information relating to electronic formats).

Q44 Should a single, integrated EU filing system for all prospectuses produced in the EU be created? Please give your views on the main benefits (added value for issuers and investors) and drawbacks (costs)?

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

Procedures for electronic filing of the prospectus and electronic communication with the regulator should be allowed. Companies support the creation of a web portal to serve as a European electronic access point to regulated information of issuers, along the lines already defined in the Transparency Directive.

The interconnection between this portal and the national officially appointed mechanisms (OAM) for the central storage of regulated information will facilitate effective cross-border access to all prospectuses produced in the EU.

Creating a single database that would operate as a unique entry point for both investors and persons producing and filing prospectuses across the EU, however, would be burdensome and costly and would not add value. Therefore a single database is not necessary.

Q45 What should be the essential features of such a filing system to ensure its success?

Textbox: []

Whatever the filing system may be, it should not imply a requirement on companies to apply certain technical approaches/options as regards the electronic format to be used.

While recognising the need to implement the Transparency Directive's requirement, companies continue to highlight the major concerns related to some technical options that are being considered by ESMA as regards the electronic reporting format (European Single Electronic Format/ESEF).

Companies are particularly opposed to the introduction of a mandatory reporting format based on a "built-in or integrated" approach or a structured electronic format, such as XBRL and Inline XBRL, which would lead them to make upstream significant and costly changes throughout their processes and information technology systems¹⁴.

On the contrary such format would have far-reaching consequences on the quality of issuers' reporting and on the liability attached. Indeed, many data in annual financial reports — such as quantitative or narrative data — could not be properly reflected in taxonomies and in reports that would use an integrated approach.

Companies emphasize the absence of demand from information users for an electronic reporting format based on an integrated approach and the difficulties encountered in the United States in the implementation of XBRL.

Essential features of the system

Against this background, the system introduced by the Transparency Directive:

- should allow for the prospectuses to be quickly available, in order to be useful;
- should provide maximum flexibility in corporate communication, without affecting its quality;
- should not lead to companies being held responsible or liable for the consequences of using taxonomies that would prove unsuitable or of using an electronic format that eventually would fail to reflect the substance of their communications.

Please see also our response to Q44.

C.6 Equivalence of third-country prospectus regimes

Q46 Would you support the creation of an equivalence regime in the Union for third country prospectus regimes? Please describe on which essential principles it should be based.

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

We don't have strong views, because our members are generally within the EU. However, if EU wants to create a Capital Markets Union that is capable of attracting investors and companies from other countries, than probably there would be the need for workable equivalence regimes.

¹⁴ Besides significant direct costs (such as costs of tagging each item of data), the use of a taxonomy or of a structured format — such as XBRL or Inline XBRL — involves very high indirect costs relating to overhauling the architecture and content of companies' internal IT applications, even for applications that do not use a structured format (costs related to consultancy, overhauling applications, maintenance and control). Indeed, as most companies' IT systems include interrelated applications, even the partial use of a structured format would imply to review and change all these systems.

Q47 Assuming the prospectus regime of a third country is declared equivalent to the EU regime, how should a prospectus prepared by a third country issuer in accordance with its legislation be handled by the competent authority of the Home Member State defined in Article 2(1)(m)(iii)?

a) Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18

b) Such a prospectus should be approved by the Home Member State under Article 13

c) Don't know/no opinion ☒

Textbox: [justification]

Please see our response to Q46.

III. FINAL QUESTIONS

Q48 Is there a need for the following terms to be (better) defined, and if so, how:

a) "offer of securities to the public"

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

b) "primary market" and "secondary market"?

Yes

No ☒

Don't know/no opinion

Textbox: [justification]

We believe that the Prospectus Directive should be amended to distinguish clearly between a public offer that is part of an IPO and a public secondary offer.

As mentioned before, we recognise that the level of disclosure for an IPO needs to be high, as, at that time, there is less information about the company available in the public domain. However, prospectuses are often cluttered and difficult to read. Repeating information that is already available detracts from the important new or offer-specific information. This, arguably, can reduce investor protection, especially for those who do not have the training or the resources to conduct the analysis (i.e. private investors).

By clearly distinguishing between the requirements of a public offer that is part of an IPO and that which is a secondary one, this would allow the Commission to create a truly proportionate disclosure regime for secondary offers, where there is already a great deal of information already available to the public.

Q49 Are there other areas or concepts in the Directive that would benefit from further clarification?

No, legal certainty is ensured

Yes, the following should be clarified: []

Don't know/no opinion ☒

Textbox: [justification]

Q50 Can you identify any modification to the Directive, apart from those addressed above, which could add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies on capital markets, whilst maintaining effective investor protection? Please explain your reasoning and provide supporting arguments.

Yes ☒

No

Don't know/no opinion

Textbox: [justification]

In order to allow more flexibility for the issuance of securities, and to ensure freedom of movement of capital, a modification of the definition of “Home member State” in art. 2.1 (m) (i) would be needed. Home Member State for issuers of shares could be not only the Member State where the issuer has its registered office, but also the one where the securities are to be admitted to trading, at the choice of the issuer, as already set forth for issuers of non equity securities at art. 2.1 (m) (ii).

Another way to incentivize the raising of debt by companies on capital market is to allow the distribution of bonds directly on the market (with the previous publication of a prospectus in the case where there is a public offer); according to this procedure, already in place in Italy and ruled by Borsa Italiana¹⁵, the issuer may use the market for the distribution of bonds and the related contracts are concluded by an intermediary who matches buying and sell orders directly on the market. One of the advantage is the costs cut because the issuer does not have to appoint an intermediary in charge of the placement of the securities.

Also, as mentioned in our response to Q4 c), the limit on the number of persons should be clarified so that it is clear that it applies per Member State and is not an aggregate limit across all Member States. Failing to include this clarity within the wording of the article has led to misinterpretation that the rule is to be applied to the total number of investors, which is detrimental to companies and

¹⁵ See art. 2.4.3 of Borsa Italiana Regulation. This procedure has been supported by Conosb (see communication n. 0049126 on 11 June 2014); this procedure has been recently used for the distribution of Intek corporate bonds on MOT which is a regulated market for bond managed by Borsa Italiana..

only benefits institutional investors. This should be considered in the context of having an SME Growth Market regime with a pan-European set of rules across Member States for companies that choose to access finance outside their home market.

Finally, the number of comparative periods in the information required to be published in the prospectus should be reduced to two years. Such a measure would alleviate the descriptive information that has already been presented in former documents, without depriving investors from information needed for decision-making.

Q51 Can you identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors? Please explain your reasoning and provide supporting arguments.

Yes

No

Don't know/no opinion ☒

Textbox: [justification]

One comment may be that that the prospectus should not be looked at in isolation. What is important for investor protection includes a much wider ecosystem, including the role played by the stock exchanges' admission rules as well as that of the company's financial advisers, and the education provided to companies to ensure that they understand what is involved in accessing the capital markets and whether this is the most appropriate route for them before going public, etc. Disclosure is only one factor and needs to be viewed more holistically.

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We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

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