



Maria Teresa Fabregas Fernandez  
European Commission  
SPA2 03/079  
1049 Brussels  
Belgium  
E-mail: [Maria-Teresa.Fabregas-Fernandez@ec.europa.eu](mailto:Maria-Teresa.Fabregas-Fernandez@ec.europa.eu)

CC: [fisma-prospectus-consultation@ec.europa.eu](mailto:fisma-prospectus-consultation@ec.europa.eu)

19 May 2015

Dear Ms Fabregas,

**Re: FEE comments on The Review of the Prospectus Directive**

- (1) The Federation of European Accountants (FEE)<sup>1</sup> with number 4713568401-181 of the European Commission's (the Commission) Register of Interest Representatives is pleased to provide you with its comments on the European Commission's Public Consultation on the review of the Prospectus Directive.
- (2) We welcome the Commission's initiatives to issue a Green Paper on Capital Markets Union, review the prospectus directive and seek input to set the principles for a simple, transparent, standardised securitisation within the European Union. We are pleased to provide you with our response to the prospectus directive review.
- (3) We understand the requirement to draw up a prospectus prior to a public offering is intended to balance investor protection and reducing the barriers of entry to capital markets for issuers. With this in mind we urge the Commission to consider also introducing qualitative criteria that the issuers should take into account when they assess the need for a full prospectus. In our detailed comments (attached in the appendix to this letter) we explain that the quantitative criteria, which are included in the Directive, should not be used in isolation. In addition, issuers should assess the level of protection that the targeted audience needs (this depends on the level of financial literacy of the

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<sup>1</sup> FEE's represents 47 professional institutes of accountants and auditors from 36 European countries, including all 28 European Union (EU) Member States. It has a combined membership of over 800.000 professional accountants, working in different capacities in public practice, small and big accountancy firms, businesses of all sizes, government and education. Adhering to the fundamental values of their profession – integrity, objectivity, independence, professionalism, competence and confidentiality – they contribute to a more efficient, transparent and sustainable European economy.

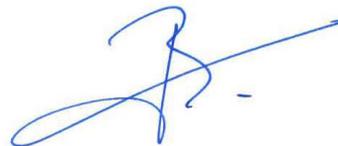
- targeted investors) when assessing whether there is a need to draw up a full prospectus.
- (4) Regarding the questions on Multilateral Trading platforms (MTFs) and SME Growth Markets, we believe that the cost and benefit equation is different compared to Regulated Markets. A full prospectus requirement for these markets will significantly increase the costs for issuers and this might act as a deterrent for those entities, resulting in a failure to achieve the main objective of these markets (i.e. provide access to finance to SMEs).
  - (5) In line with our comments in the Capital Markets Union consultation, we believe that high quality financial information provided by the application of a transparent accounting framework that depicts accountability and stewardship would decrease the information asymmetry between issuers and investors.
  - (6) To this end we propose a proportionate application of IFRS. This could be achieved through ongoing simplification of recognition and measurement requirements, and reduced disclosures through the completion of the Disclosure Initiative project of the IASB. In such circumstances we believe that there is a limited need for a full prospectus for entities seeking to raise finance on MTFs (or SME Growth Markets) and such a requirement should not be introduced.
  - (7) Finally, we strongly support “incorporation by reference” as long as all the available information is clearly referenced and the key messages are properly summarised and included in the prospectus. Incorporation by reference eases the preparation of the prospectus as issuers would not need to reproduce the same information that is already publicly available; instead they need to make sure that it is clearly referenced.
  - (8) FEE’s responses to the specific questions posed in the consultation document are included in the annex to this letter. We would be pleased to provide you with more detailed responses or any additional information you would find useful.

For further information please contact Pantelis Pavlou, manager from the FEE Team on +32 2 285 40 74 or via e-mail at [Pantelis.Pavlou@fee.be](mailto:Pantelis.Pavlou@fee.be).

Yours sincerely,



Petr Kriz  
President



Olivier Boutellis-Taft  
Chief Executive

Encl. FEE Response to the Public Consultation on the Review of the Prospectus Directive

## Introduction

1. 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.

- (1) Yes.
- (2) FEE believes that the principle, whereby a prospectus is required whenever securities are admitted to trading on a Regulated Market (RM) or offered to the public, is still valid. While we support the requirement for a prospectus for admission to trading on a regulated market, we do not believe that the current regime for MTFs should be amended (please refer to our comments to the specific question below).
- (3) We see that one of the main objectives of investor protection is to provide investors with information that is not available elsewhere and that it is essential for the investors to understand the main purpose for an entity seeking funding from the public via an RM. Another benefit is to “introduce”, in an official manner, the company to the public. A prospectus achieves both these objectives and therefore we conclude that the requirement for a prospectus still provides benefits to investors.
- (4) Furthermore we believe that circumstances where there is a need for a prospectus and the information to be included in a prospectus should be defined and should depend on the target audience of the public offering and not solely on other quantitative thresholds/factors, including the number of targeted individual investors and the amount of the denomination of the securities (we expand further below on this particular matter).

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

a) Please estimate the cost of producing a prospectus (between how many euros and how many euros for a total consideration of how many euros):

- equity prospectus
- non-equity prospectus
- base prospectus
- initial public offerings

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

- Issuer's internal costs
- Audit costs
- Legal Fees
- Competent Authorities' fees
- Other costs

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? Please estimate this fraction.

Yes, a percentage of the costs above would be incurred anyway

No, don't know / no opinion

Please specify which fraction of the costs above would be incurred anyway (in %):

(5) FEE represents accounting member bodies across (but not limited to) Europe, therefore we are not in a position to provide any quantitative information re the costs of a prospectus on a European level.

3. 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?

- (6) Yes, we believe that the benefits outweigh the costs.
- (7) We believe that there are significant benefits from allowing companies to raise capital across all EU capital markets once the prospectus has been approved by the home competent authority. This is true especially for companies which aim to be listed in different EU capital markets and also for investors who are interested in investing in different jurisdictions (“cross-border” investments). Some argue that this might not be relevant for SMEs, however we are not aware of any solid evidence that can support this view. On the other hand, the “passport” approach enhances the harmonisation of the approval process as regulators, knowing that their local approval allows an entity to list cross-border, are now applying uniform approval process for prospectuses.
- (8) Furthermore, investors can benefit from a single regime across the EU for prospectuses and a harmonised (to the extent possible) approval process from National Competent Authorities (NCAs).
- (9) Based on the arguments developed above, we support the regime that already exists, i.e. that once an issuer obtains an approval from an NCA in the EU it can then list on other regulated markets within the EU.
- (10) On other hand, we believe that for those issues that are only directed to domestic investors, the Member States should be provided with an option to exclude companies from such a requirement.

## II. Issues for discussion

### A. When a prospectus is needed

#### A1. Adjusting the current exemption thresholds

4. 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 more
- No
- Don't know / no opinion

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

- Yes, from EUR 75 000 000 to more
- No
- Don't know / no opinion

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

- Yes, from 150 persons to more
- No
- Don't know / no opinion

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

- Yes, from EUR 100 000 to more
- No
- Don't know / no opinion

(11) In principle we agree with the rationale for introducing thresholds for exemptions for preparing a prospectus in the directive as these thresholds provide an indication of whether a full prospectus is required to achieve a high level of investor protection. However quantitative thresholds should not be assessed in isolation, instead we believe that the profile of the targeted audience (investors) should also be taken into account. Where the targeted audience consists solely of more sophisticated investors, who can obtain further information (especially in the case when the number of potential investors is limited) and perform their own analysis and due diligence, there

may not be a need for a full prospectus. Where investors do not have (or are perceived not to have) an adequate level of financial education, a full prospectus might be needed to provide them with all the necessary information<sup>2</sup>.

(12) While we understand that quantitative thresholds can be used as an indication of the investment profile of the targeted investor audience, we believe that the entity should always analyse the investors' profile and provide the information that is necessary to achieve a high level of investor protection. Therefore, we believe that it should be mainly the responsibility of the issuer to assess whether a full prospectus is needed and then provide all the necessary supporting information to the National Competent Authority.

(13) Regarding the proposed quantitative thresholds, we agree in principle with the amounts stated as a starting point for a quantitative assessment; however to maintain their relevance, the nominal amounts for thresholds need to be adjusted for inflation.

5. 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

(14) "Yes"

(15) We support further harmonisation in capital markets to achieve a "real" Capital Market Union (also relevant to our comments to the CMU green paper consultation). As already mentioned in question 4, a factor that should be taken into account when assessing the need for a prospectus, should be the profile and financial education of targeted investors and therefore the quantitative, nominal thresholds should not be assessed in isolation.

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<sup>2</sup> The categorisation of investors could be based on the 'classification of clients' under the Markets in Financial Instruments Directive (2014/65/EU) article 24 and Annex II

6. 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)?

- Yes
- No
- Don't know / no opinion

(16) "No"

(17) We do not see any ground for expanding the range of securities in the scope of the Directive.

7. 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
- Don't know / no opinion

(18) "Yes"

(19) One area of review is whether there is a need to protect investors who invest via crowdfunding platforms. Even though we understand that crowdfunding platforms mainly operate within the borders of a single Member State (with some exceptions), we believe that the Commission should start looking at this (mainly by stocktaking of the current status) and then assess whether an EU Directive is necessary.

(20) Having said that, we strongly believe that new legislative process might not always be the right answer for all new initiatives. We firmly believe that regulators should foster innovation first and only intervene when it is necessary to concrete the market initiatives that evolved to become best practices.

## A2. Creating an exemption for “secondary issuances” under certain conditions

8. 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, provided that relevant information updates are made available by the issuer?

- Yes
- No
- Don't know / no opinion

(21) “Yes”

(22) We do not believe that this should be required for all public offers of securities. In line with our suggestions above, we suggest that as part of the assessment process the profile of the targeted audience should be taken into account.

(23) Furthermore, we strongly agree with the principle of incorporation by reference (as explained later in the relevant question). Therefore we propose that if information that is publicly available to investors (including the prospectus for the IPO) is still relevant, then the issuers may use it in the context of the subsequent prospectus as long as it is adequately referenced.

9. How should Article 4(2)(a) be amended in order to achieve this objective?

- The 10% threshold should be raised
- 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

(24) “The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued”.

(25) However, for the reasons explained in question 8, we suggest that other qualitative criteria need to be taken into account when deciding the need for a prospectus as well the possibility of drawing up a prospectus by reference to the existing available information.

10. If the exemption for secondary issuances were to be made conditional to a full-blown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

- One or several 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

(26) "There should be no timeframe"

(27) However, for the reasons explained in question 8, we suggest that other qualitative criteria need to be taken into account when deciding on the need for a prospectus as well the possibility to draw up a prospectus by reference to the existing available information (including an assessment of the relevance of the prospectus for the IPO).

### A3. Extending the prospectus to admission to trading on an MTF

11. Do you think that a prospectus should be required when securities are admitted to trading on an MTF?

- Yes, on all MTFs
- Yes, but only on those MTFs registered as SME growth markets
- No
- Don't know / no opinion

(28) "No"

(29) From our experience we believe that one of the benefits of MTF markets is that participants are exempted from the requirements to prepare a full prospectus and therefore some issuers find it more beneficial to list on such markets. Changing the requirements by expanding the scope of the Directive might have unintended consequences by adding administrative costs for issuers without adequate benefits for investors.

(30) Furthermore, based on the main arguments developed in the FEE response to the Commission's Green Paper on Capital Market Union (question 8), we believe that a common financial reporting regime for listed entities on MTFs will enhance the quality of the financial information provided to current and potential investors and therefore (following also the arguments for the adequate financial education of potential investors), we believe that the information asymmetry will be reduced and the need for a full prospectus for MTFs will decrease.

(31) Our arguments are also relevant for question 12 below and specific questions 20-22 below re SME Growth Markets.

12. 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?

- 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

(32) "No"

(33) Our comments are developed in question 11.

#### **A4. Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)**

13. 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?

- 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

(34) "No opinion"

## A5. Extending the exemption for employee share schemes

14. 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?

- Yes
- No
- Don't know / no opinion

(35) "Yes"

(36) FEE supports a level playing field for EU and non-EU issuers. The same arguments that exist for the exemption of EU issuers are also true for non-EU issuers, and therefore we believe that the exemption should be made available for the non-EU issuers. Having said that, we do not believe that the employees of the non-EU issuer should be placed in a disadvantaged position. It would be crucial for them to receive high quality financial information regarding the entity's position and performance. In order to ensure this is achieved, we would suggest introducing a requirement for the exception to apply to Non-EU issuers, the issuer or the (ultimate) parent of the issuer should produce financial statements under IFRS.

**A6. Balancing the favourable treatment of issuers of debt securities with a high denomination per unit with liquidity on the debt markets**

15. (a) 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?

- Yes
- No
- Don't know / no opinion

If so, what targeted changes could be made to address this without reducing investor protection? Do you then think that

The EUR 100 000 threshold should be lowered?

- Yes
- No
- Don't know / no opinion

Do you then think that some or all of the favourable treatments granted to the above issuers should be removed?

- Yes
- No
- Don't know / no opinion

Do you then think that 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

(37) (a) "No"

(b) "No"

(c) "No"

(38) Following our comments from question 4 of the consultation paper, we believe that the quantitative thresholds should not be assessed in isolation. Qualitative aspects should be taken into account (like the targeted audience's investment profile and financial education level). Assessing the need for a prospectus solely on quantitative criteria increases the risks described in this section and hinders liquidity of capital markets.

(39) Despite the fact that we do not have any quantitative data, we believe that in principle, the higher the denomination of securities the bigger the impact on the liquidity in the market. We urge the Commission to consider ways to introduce additional qualitative characteristics to achieve the same desired outcome for the exemptions for prospectus without providing incentives to companies to

merely meet the quantitative thresholds and cause unintended consequences to the markets.

## B. The information a prospectus should contain

### B1. Proportionate disclosure regime

16. 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

(40) "No"

(41) From our experience the reduced disclosure regime did not achieve its objectives as it has not been widely used in practice.

17. Is the proportionate disclosure regime (Article 7(2)(e) and (g)) 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
- (b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation
- (c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

(42) (a) "Don't know / no opinion"

(b) "Don't know / no opinion"

(c) "Don't know / no opinion"

(43) Our comments to Q16 above are also relevant for Q17. Even though we have information that this regime has not been applied in practice, we are not in a position to provide further evidence on specific areas its application.

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

- To types of issuers or issues not yet covered
- To admissions of securities to trading on an MTF, supposing those are brought into the scope of the -Directive
- Other
- Don't know / no opinion

(44) "Don't know / no opinion"

## **B2. Creating a bespoke regime for companies admitted to trading on SME growth markets**

20. 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

(45) "Yes"

(46) We believe that the prospectus directive should use the same definitions as those introduced through existing union legislation in order to avoid confusion among different constituents. Raising the capitalisation limit to EUR 200 000 000 would be welcome as it would ensure the definition of an SME is in line with MiFID 2 (2014/65/EU).

21. 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

(47) "Yes"

(48) We see the SME Growth Markets as a subset of MTFs, therefore we believe that the same regime like MTFs should apply to SME Growth Markets.

22. 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.

(49) We believe that the same regime as the MTFs should apply to SME Growth Markets.

### **B3. Making the “incorporation by reference” mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information**

23. Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility?

- Yes
- No
- Don't know / no opinion

(50) “Yes”

(51) We support any effort to reduce the duplication of the work that already exists and therefore we support the initiative to review Article 11 of the Directive to provide more flexibility to issuers. In general we believe that issuers may use the information that is available in the public domain as part of the prospectus as long as it is properly referenced, summarised (if needed) and any key conclusions are clearly stated.

(52) Furthermore, we believe that this will assist in decreasing the volume of prospectuses and also make them more user/reader friendly provided that the key or important information are presented in a more prominent manner.

24. 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)?

- Yes
- No
- Don't know / no opinion

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

(53) (a) "No"

(54) We believe that any document available in the public domain and considered to be relevant for a prospectus can be used in the prospectus as long as it is properly referenced, explained and summarised (if necessary to meet the objectives of a prospectus).

(55) (b) "Don't know/no opinion"

(56) We do not have any specific suggestions on how to better streamline the disclosure requirements of the Prospectus and Transparency Directives.

25. 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

(57) "Don't know / no opinion"

26. 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

(58) "Don't know / no opinion"

(59) We do not have any specific suggestions for Q 25 and Q 26.

#### **B4. Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation**

27. Is there a need to reassess the rules regarding the summary of the prospectus?

- Yes, regarding the concept of key information and its usefulness for retail investors
- Yes, regarding the comparability of the summaries of similar securities
- Yes, regarding the interaction with final terms in base prospectuses
- No
- Don't know / no opinion

(60) "Don't know / no opinion"

28. 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?

- By providing that information already featured in the KID need not be duplicated in the prospectus summary
- By eliminating the prospectus summary for those securities
- 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
- Other
- Don't know / no opinion

(61) "By providing that information already featured in the KID need not be duplicated in the prospectus summary"

(62) In line with our comments in previous questions we believe that information that is already available can be used for prospectuses as long as it is properly referenced in order to avoid duplication and unnecessary costs (for issuers and investors).

## B5. Imposing a length limit to prospectuses

29. 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
- Yes, it should be defined using other criteria
- No
- Don't know / no opinion

(63) "No"

(64) While we understand that prospectuses have become more voluminous in recent years, in order to ensure that the company complies with all the legal requirements, we do not believe that limiting the number of pages of a prospectus is the way forward. In line with our comments on "incorporating by reference", we believe that the volume of a prospectus would be significantly reduced if a company can make reference to the information that is available in the public domain.

(65) The main challenge for a prospectus is to make a clear reference to the main messages and key conclusions to provide all the information to the investors. This can be addressed in the summary of the prospectus and also by introducing a qualitative requirement that a prospectus should give prominence to the key messages and conclusions and not "bury" them in boilerplate and detailed disclosures.

30. Alternatively, are there specific sections of the prospectus which could be made subject to rules limiting excessive lengths?

(66) Please refer to our comments to question 29.

### B6. Liability and sanctions

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?

	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

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(67) FEE is not in a position to provide any input on this matter.

32. Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive?

- Yes
- No
- Don't know / no opinion

(68) "Don't know/no opinion"

## C. How prospectuses are approved

### C1. Streamlining further the scrutiny and approval process of prospectuses by national competent authorities (NCAs)

33. 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?

- Yes
- No
- Don't know / no opinion

(69) "Don't know/no opinion"

34. Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs?

- Yes
- No
- Don't know / no opinion

(70) "Don't know/no opinion"

35. Should the scrutiny and approval procedure be made more transparent to the public?

- Yes
- No
- Don't know / no opinion

(71) In general terms we support transparency in capital markets.

(72) However, experiences from the US show that following the amendments introduced by the Jumpstart Our Business Start-ups (JOBS) Act on April 5, 2012 to allow confidential filings, the number of companies seeking access to the market increased.

(73) This area should be further considered and any decision that is to be taken needs to be supported by thorough research to ensure that they do not hinder the access to finance to SMEs.

36. 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?

- Yes
- No
- Don't know / no opinion

(74) "Yes"

(75) In our experiences issuers use marketing activities to promote the upcoming offering (so called "teasers"). Therefore setting a framework on how the issuers may use such information would enhance investor protection. As a minimum requirement could be that the issuers should make it clear that the final prospectus has not yet been approved by the NCA.

37. What should be the involvement of national competent authorities (NCA) in relation to prospectuses? Should NCA:

- (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

(76) "Other"

(77) In some jurisdictions prospectuses are required to be audited; however even though the auditor signs off the prospectuses, the NCA also reviews them in detail. It would make sense that for certain instances (for example secondary issues of a small size) the prospectus can be assumed to be approved once the auditor signs-off the prospectus and the regulator can review the prospectus if considered to be necessary. This would considerably speed up the listing process. We believe that the NCA should use the services of professional accountants and auditors if needed, in order to be able to review all the prospectuses ex ante.

38. 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?

- Yes
- No
- Don't know / no opinion

(78) "Don't know/no opinion"

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

- Yes
- No
- Don't know / no opinion

(79) "Don't know/no opinion"

b) Could the notification procedure between NCAs of home and host Member States set out in Article 18 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

(80) "Don't know / no opinion"

## C2. Extending the base prospectus facility

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

- 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
- b) The validity of the base prospectus should be extended beyond one year
- 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
- 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
- f) Other possible changes or clarifications to the base prospectus facility (please specify)

(81) "Don't know / no opinion"

## C4. Reviewing the determination of the home Member State for issues of non-equity securities

42. Should the dual regime for the determination of the home Member State for non-equity securities featured in Article 2(1)(m)(ii) be amended?

-No, status quo should be maintained

-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

-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

(82) "Don't know / no opinion"

### **C5. Moving to an all-electronic system for the filing and publication of prospectuses**

43. 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

(83) "Don't know / no opinion"

44. Should a single, integrated EU filing system for all prospectuses produced in the EU be created?

- Yes
- No
- Don't know / no opinion

(84) "Yes"

(85) We develop our views in Question 45 below

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

(86) We believe that investors could benefit from a single database that can be used as a search engine for prospectuses. From our experience, investors cannot easily navigate into the NCAs' websites or other national databases to find the necessary information they are looking for. This adds barriers to cross border investors. Therefore, we suggest a single procedure for filing that can be used as a search engine and that allows investors to access to such information easily.

(87) Furthermore we believe that investors will benefit from a single Pan-European index system, showing which company is listed in which market and by which NCA the prospectus has been approved.

(88) Finally, we understand the prospectuses are usually submitted in the home country's language and they are not always translated to English. We believe that a requirement to translate the summary, or some other key information to English might ease cross-border investments.

## C6. Equivalence of third-country prospectus regimes

46. Would you support the creation of an equivalence regime in the Union for third country prospectus regimes?

- Yes
- No
- Don't know / no opinion

(89) "Don't know / no opinion"

47. 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)?

-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

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

-Other

-Don't know / no opinion

(90) "Don't know / no opinion"

## III. Final questions

48. 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

(91) "Don't know / no opinion"

49. 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

(92) "Don't know / no opinion"

50. 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?

- Yes
- No
- Don't know / no opinion

(93) "Don't know / no opinion"

51. Can you identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors?

- Yes
- No
- Don't know / no opinion

(94) "Don't know / no opinion"