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BANKING AND FINANCE

Public consultation on the review of the Prospectus Directive

Fields marked with * are mandatory.

Introduction

The Prospectus Directive 2003/71/EC has applied since July 2005. The Directive, together with its Implementing Regulation n°809/2004, lays down the rules governing the prospectus that must be made available to the public when a company makes an offer or an admission to trading of transferable securities on a regulated market in the EU. The prospectus contains information about the offer, the issuer and the securities, and has to be approved by the competent authority of a Member State before the beginning of the offer or the admission to trading of the securities.

Two key objectives underpin the Directive:

- **Investor and consumer protection.** A prospectus is a standardised document which, in an easily analysable and comprehensible form, should contain all information which is necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a regulated market.
- **Market efficiency**. A prospectus aims at facilitating the widest possible access to capital markets by companies across the EU. The Directive sought to achieve this through requiring a common form and content of the prospectus and introducing an EU wide passport: a prospectus approved by the competent authority of one Member State should be valid for the entire Union without additional scrutiny by the authorities of other Member States.

Following a review, the Directive was amended in November 2010 in the following areas: (i) investor protection was strengthened by improving the quality and effectiveness of disclosures and by facilitating comparison between products through the summary; (ii) efficiency was increased by reducing administrative burdens for issuers through various proportionate disclosure regimes (including for small and medium-sized enterprises (SMEs), companies with reduced market capitalisation and rights issues), a recalibration of the thresholds below which no prospectus is required and some further harmonisation of technical details in certain areas (withdrawal rights).

The review of the Directive in the context of the Commission's action plan for a Capital Markets Union

The prospectus is the gateway into capital markets for firms seeking funding, and most firms seeking to issue debt or equity must produce one. It is crucial that it does not act as an unnecessary barrier to the capital markets. It should be as straightforward as possible for companies (including SMEs) to raise capital throughout the EU. The Commission is required to assess the application of the Directive by 1 January 2016 but given the importance of making progress towards a Capital Markets Union, has decided to bring the review forward. The review will seek to ensure that a prospectus is required only when it is truly needed, that the approval process is as smooth and efficient as possible, the information that must be included in prospectuses is useful and not burdensome to produce and that barriers to seeking funding across borders are reduced.

The review of the Prospectus Directive is featured in the Commission Work Programme for 2015, as part of the Regulatory Fitness and Performance Programme (REFIT).

Shortcomings of the Directive and objectives of the review

There are several potential shortcomings of the prospectus framework today. The process of drawing up a prospectus and getting it approved by the national competent authority is often perceived as expensive, complex and time-consuming, especially for SMEs and companies with reduced market capitalisation. Member States have applied differently the flexibility in the Directive to exempt offers of securities with a total value below EUR 5 000 000: the requirement to produce a prospectus kicks in at different levels across the EU. There are indications that prospectus approval procedures are in practice handled differently between Member States. Prospectuses have become overly long documents, which has brought into question the effectiveness of the Directive from an investor protection perspective.

The objective of the review of the Directive is to reform and reshape the current prospectus regime in order to make it easier for companies to raise capital throughout the EU and to lower the associated costs, while maintaining effective levels of consumer and investor protection.

The Directive also needs to be updated to reflect market and regulatory developments including the development of multilateral trading facilities (MTFs), creation of SME growth markets and organised trading facilities (OTFs), the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014.

This public consultation seeks to identify the needs of market users with regard to prospectuses concerning scope, form, content, comparability, the approval process, liability and sanctions. In addition, interested parties should provide feedback about the aspects which unduly hinder access to capital markets for issuers, and which, if amended, could reduce administrative burden without undermining investor protection.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-prospectus-consultationec.europa.eu.

More information:

- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

1. Information about you

*Are you replying as:

- ○ a private individual
- ◉ an organisation or a company
- ○ a public authority or an international organisation

*Name of your organisation:

Law Society of England and Wales

Contact email address:

The information you provide here is for administrative purposes only and will not be published

helena.raulus@lawsociety.org.uk

*Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

- (●) Yes
- ( ) No

*If so, please indicate your Register ID number:

38020227042-38

*Type of organisation:

- ( ) Academic institution
- ( ) Consultancy, law firm
- ( ) Industry association
- ( ) Non-governmental organisation
- ( ) Trade union
- ( ) Company, SME, micro-enterprise, sole trader
- ( ) Consumer organisation
- ( ) Media
- ( ) Think tank
- (●) Other

*Please specify the type of organisation:

Membership organisation

*Where are you based and/or where do you carry out your activity?

United Kingdom

*Field of activity or sector (*if applicable*):

at least 1 choice(s)

- [ ] Accounting
- [ ] Auditing
- [ ] Banking (issuing-finance department)
- [ ] Banking (investment department)
- [ ] Credit rating agencies
- [ ] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Social entrepreneurship
- [x] Other
- [ ] Not applicable

*Please specify your activity field(s) or sector(s):

Legal

Important notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- (•) Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

I. Introduction

Please refer to the corresponding section of the consultation document to read some context information before answering the questions.

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:
   - [x] Admission to trading on a regulated market
   - [x] 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)
   - [ ] Other
   - [ ] Don't know / no opinion

Additional comments on the principle whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public:

1,000 character(s) maximum

We do not believe that a full prospectus should be required in all cases of securities being admitted to trading on a regulated market or offered to the public. This is not the case at present. The Prospectus Directive includes a number of exemptions to the general requirement, for example, the exemption for further issues of less than 10% of the same class as securities already admitted to trading. For issuers with securities already admitted to trading, the level of disclosure requirements to which they are subject pursuant to continuing disclosure regimes means that there should be less need for a full disclosure document to be published.

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):

Don't know (add an X in the next three fields)	Minimum cost (in €)	Maximum cost (in €)	For a total consideration of (in €)
Equity prospectus			
Non-equity prospectus			
Base prospectus			
Initial public offer (IPO) prospectus			
Don't know (add an X in the next three fields)			

Additional comments on the cost of producing a prospectus:

1,000 character(s) maximum

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

Don't know (add an X in the next three fields)	Share in the total costs (in %)
Issuer's internal costs	
Audit costs	
Legal fees	
Competent authorities' fees	
Other costs (please specify which)	
Don't know (add an X in the next three fields)	

Additional comments on the share in the total costs of a prospectus:

1,000 character(s) maximum

c. 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

Additional comments on the fraction of the costs indicated above that would be incurred by an issuer anyway:

1,000 character(s) maximum

The costs of preparing a prospectus will vary a great deal and, for smaller issuers in particular, can act as a barrier to accessing capital markets. Please see our accompanying letter for further information on why costs may vary. In addition to the internal costs and the advisers' and other fees associated with preparation of a prospectus, the time taken to draft and obtain approval of a prospectus can also restrict the ability of issuers to access the capital markets. The need to prepare a prospectus can add several weeks or months to the timetable for a capital raising and hence inhibit issuers' flexibility in seeking to raise capital, especially when markets are volatile. The need for recent audited financial information to be included can create limited windows during which an offering can be made. If a window is missed, further financial information will need to be prepared, resulting in further postponement, cost and delay.

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?

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

Additional comments on the possibility that additional costs are outweighed by the benefit of the passport attached to the prospectus:

1,000 character(s) maximum

In our experience a relatively small proportion of equity prospectuses that are produced need to be passported. This is because in the majority of cases there is no retail offering or admission to trading outside the issuer's home member state. In the context of equity issues, UK issuers mainly use the passport in the case of: (a) a rights issue, if they already have a large numbers of retail shareholders in other EU jurisdictions: or (b) in the case of a takeover or merger where the company being acquired or merged with has numerous retail shareholders in other EU jurisdictions. In these situations, the ability to passport is very helpful. With respect to other forms of equity offer, UK issuers in particular do not see benefit in making a retail offering in their own country, let alone in other countries, and so the possibility of the passport is of no practical benefit.

II. Issues for discussion

Please refer to the corresponding section of the consultation document to read some context information before answering the questions.

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

Please justify your answer on the EUR 5 000 000 threshold:

1,000 character(s) maximum

We would support raising the threshold to allow more issuers to avoid having to produce a prospectus. However, if more and larger offerings/issues can be made without a prospectus being required, the need for other forms of investor protection will become more important to ensure that investors are adequately protected. Examples of such protection could include provisions governing documents promoting financial offerings at national level (such as the protection afforded by the UK's financial promotion regime) and existing EU-wide provisions such as marketing restrictions under MiFID/MiFID II. Please see our accompanying letter for further information on the financial promotion regime.

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

Please justify your answer on the EUR 75 000 000 threshold:

1,000 character(s) maximum

See answer to (a) above.

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

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

Please justify your answer on the 150 persons threshold:

1,000 character(s) maximum

See answer to (a) above. In addition, given the desired intention to develop a single European capital market, it seems illogical for the 150 person exemption to apply on a country by country basis, especially as this takes no account of variations in population size and different levels of retail demand. Under the current regime, a prospectus would be required if shares were, for example, offered to 150 retail investors in one member state but not if they are offered to, say, 1000 retail investors in 10 different member states (100 investors in each state). We would therefore suggest increasing the threshold to, say, 4000 across all member states rather than having a limit per member state. This figure is equivalent to less than the product of 150 times the number of member states and so would not create a greater overall risk to investors, but would give issuers greater flexibility to carry out retail offerings in those states where there is more retail demand.

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

Please justify your answer on the EUR 100 000 threshold:

1,000 character(s) maximum

See answer to (a) above.

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

Please justify your answer on whether more harmonisation be beneficial:

1,000 character(s) maximum

We are not aware of any problems in practice with lack of harmonisation in relation to member states' flexibility to require a prospectus for total offers below EUR 5,000,000 because these will usually be conducted within one member state. However, we can see a need for more harmonisation of rules where a prospectus is not required if the number of exemptions or the thresholds for requiring a prospectus are significantly increased.

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

Please justify your answer on the possibility of including a wider range of securities in the scope of the Directive:

1,000 character(s) maximum

We do not think that investor protection has suffered because a prospectus is not required for non-transferable securities.

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

Please justify your answer on possible other area:

1,000 character(s) maximum

See answer to Question 50 below.

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

Please justify your answer on the possible mitigation of the obligation to draw up a prospectus:

1,000 character(s) maximum

Where an issuer is subject to continuing disclosure obligations there is little justification for requiring a full prospectus on a further issue or public offering of shares. Many of the required contents of a prospectus will already be publicly available, and investors can already buy and sell securities in the market on the basis of the information that is made available pursuant to the issuer's continuing disclosure obligations. The only requirements for a further issue should therefore be to disclose new information directly related to the offer or issue (both legal e.g. information relating to the rights of securities being offered (if different from existing securities) and details of any disapplication of pre-emption rights and commercial e.g. information relating to a linked acquisition or details of how the money raised is to be used) together with any other information required to update previously published information.

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

Please justify your answer on the amendment of Article 4(2):

1.000 character(s) maximum

We believe that there should not be a requirement for a full prospectus for secondary issuances of equity securities for an issuer with equity securities already admitted to trading but that there should be harmonisation of the contents of any information document setting out the reasons for and terms of any issue in excess of the threshold so that the benefits of the passporting regime applicable to prospectuses are not lost. Please see our accompanying letter for further information on how this could be achieved.

We would also support an extension of the 10% exemption to cover depository receipts. There is little justification for an issuer to be required to produce a full prospectus for example to increase available headroom in an existing block listing as a result of a secondary offering when a prospectus would not be required for a further issue of shares.

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

Please justify your answer on the convenience of having a timeframe for the exemption:

1,000 character(s) maximum

We do not think there should be a timeframe given that issuers are subject to continuing disclosure obligations under the Transparency Directive. This is consistent with the fact that it is possible to purchase securities in the market on the basis of such continuing disclosure obligations regardless of how long ago the issuer last published a prospectus. In addition, specifying such a timeframe could imply that a prospectus within the timeframe should be able to be relied upon by investors, when in fact, in a particular case, such a prospectus might be misleading, so that only later disclosures should be relied upon. It is also worth bearing in mind that companies may go through a period of rapid change once listed as they naturally adapt to the requirements of the public market.

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

Please justify your answer on whether a prospectus should be required when securities are admitted to trading on an MTF:

1,000 character(s) maximum

We believe that there should be different levels of regulation (and regulatory burden) for companies on different markets. For instance, those MTFs which are to become designated as SME growth markets under the new MiFID II regime will only be able to attract large numbers of market participants if the entrance requirements are more flexible (and less expensive) than those for admission to a regulated market.

The promotion of new investment into issuers admitted to trading on SME growth markets could provide an engine of growth for European economies. An effective prospectus regime to support companies listing on SME growth markets rather than remaining private and raising funds through off-market routes such as crowdfunding should enable greater levels of investor protection through greater liquidity and higher quality standards. It may also drive further capital investment into growing SMEs, thereby creating jobs and sustainable value.

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

Please justify your answer on the possible application of the proportionate disclosure regime:

1,000 character(s) maximum

See the answer to question 11 above.

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

Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds:

1,000 character(s) maximum

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

Please explain your answer on the possible extension of the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies and provide supporting evidence:

1,000 character(s) maximum

If the employee exemption were to be extended to offers by non-EU private companies, the EU would expose employees based in the EU to the risks of share ownership whilst only requiring them to receive the minimal information currently required by the Prospectus Directive for employee offers.

The process of obtaining a ruling on equivalence from the Commission is so slow that non-EU listed companies cannot in fact make use of the exemption and, in our experience, are continuing to utilise other Prospectus Directive exemptions when making offers within the EU. It would be helpful to put in place a more effective process for determining equivalence.

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

15. 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

Please justify your answer on whether the system of exemptions may be detrimental to liquidity in corporate bond markets:

1,000 character(s) maximum

No opinion.

Please justify your answer on whether the EUR 100 000 threshold should be lowered:

1,000 character(s) maximum

No opinion.

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

Please justify your answer on whether the proportionate disclosure regime has met its original purpose:

1,000 character(s) maximum

In our experience, the regime is not used. See question 17 below.

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

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

Please justify your answer on the proportionate regime for rights issues:

1,000 character(s) maximum

We are not aware of any instances of the regime being used for rights issues or open offers in the UK. Reasons for this include the fact that issuers may have shareholders outside the EU and are concerned that a proportionate disclosure regime prospectus might not fully meet the disclosure requirements elsewhere e.g. in the United States.

In addition, the regime does not sufficiently reduce the prospectus disclosure requirements for companies to seek to make use of it. This is partly because the overriding disclosure standard under Article 5 of the Prospectus Directive still applies.
Either there needs to be a full exemption from the prospectus disclosure standard in Article 5 in order for the proportionate disclosure regime to operate, or Article 5 needs to be revised to provide for different disclosure standards in different contexts. Please see our accompanying letter for further information.

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

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

Please justify your answer on the proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation:

1,000 character(s) maximum

See the answer to (a) above.

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

Please justify your answer on the proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC:

1,000 character(s) maximum

No opinion.

18. 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:

1,000 character(s) maximum

See answer to question 17.

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

1,000 character(s) maximum

No opinion.

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

1,000 character(s) maximum

No opinion.

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

Please justify your answer on to whom the proportionate disclosure regime should be extended:

1,000 character(s) maximum

As explained above, we think that a reduced disclosure standard and proportionate disclosure regime could apply to any subsequent issues of securities by an issuer which already has shares admitted to trading on a regulated market.

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

Please justify your answer on the possible alignment of "company with reduced market capitalisation" (Article 2(1)(t)) 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:

1,000 character(s) maximum

No opinion.

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

Please justify your answer on the possible creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market:

1,000 character(s) maximum

We would support a simplified form of prospectus or disclosure document for companies seeking to make a public offer at the time of admission to trading on an SME growth market. Our accompanying letter sets out an illustrative table illustrating how a multi-layered prospectus regime could operate and provides further information on our proposal. The branding and labelling of SME growth markets would be a necessary part of the new landscape, so that potential investors can easily understand that the standards are different from those of regulated markets.

See also our answer to question 11 above. Also, if our suggestion in paragraph B of our accompanying letter is adopted that example prospectuses should be created to demonstrate how a prospectus might look, it would be important for some of the examples to reflect SMEs raising money through admission to a growth market.

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:

2,000 character(s) maximum

Please see the table in our opening remarks.

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

Please justify your answer on the possible recalibration of the provision of Article 11 (incorporation by reference) in order to achieve more flexibility:

1,000 character(s) maximum

Subject to our response to the question immediately below, issuers should be able to incorporate by reference any and all regulatory filings made in accordance with the Market Abuse Directive/Regulation, Transparency Directive and relevant implementing measures in the member states, as well as filings under any specific national obligations in member states, or voluntary filings, so long in each case as they are accessible to the public in the same way as Market Abuse Directive/Regulation and Transparency Directive information. This should also extend to documents published during the prospectus review process, or contemporaneously with the prospectus, and be available to first time issuers. Incorporation by reference is a valuable tool that greatly reduces cost and administrative burden on issuers without impacting investor protection, given that investors are still able to access the information.

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

Please justify your answer on whether documents which were already published/filed under the Transparency Directive should no longer need to be subject to incorporation by reference in the prospectusr:

1,000 character(s) maximum

As discussed above, once securities are admitted to trading on a regulated market, investors, including retail investors, are able to buy and sell those securities without a prospectus having been published in many years, and therefore purely on the basis of the disclosures that are available under the Transparency Directive and the Market Abuse Directive/Regulation. In effect, secondary market investors are assumed to have knowledge of these and there seems no reason not to make the same assumption for primary market investors. However, consideration should be given to allowing issuers an option to indicate to investors which information may be relevant to them, and to exclude previously published information which is no longer relevant.

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

Please justify your whether you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive:

1,000 character(s) maximum

No opinion.

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

Please justify your whether the above-mentioned obligation could 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:

1,000 character(s) maximum

We agree that publishing information under the Article 6(1) of the Market Abuse Directive may be sufficient instead of a supplementary prospectus being required. The competent authorities do not review announcements made under Article 6(1) of the Market Abuse Directive (or indeed financial reports issued pursuant to the provisions of the Transparency Directive). It would appear illogical for the issuer to be required to produce a supplementary prospectus covering the same or similar information and obtain approval for it. As explained above, where an issuer is issuing further shares of the same class it should provide information as to how the proceeds are to be used or, if it is issuing shares of a different class, it should explain how the proceeds are to be used and how the new class relates to existing classes. It may be helpful to clarify that this information should be disclosed to meet the requirements of the Market Abuse legislation.

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

Please justify your whether you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive:

1,000 character(s) maximum

No opinion.

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

Please justify your answer on the possibility to reassess the rules regarding the summary of the prospectus:

1,000 character(s) maximum

We believe that retail investors, in particular, may find a summary useful (in that this is the part of the prospectus which they are most likely to read. The new summary format requirements and comparability objective introduced by Directive 2010/73/EU amending the Prospectus Directive (particularly the 'key information' concept in Article 5(2) of the Prospectus Directive) and Article 24 and Annex XXII to the Prospectus Regulation have not been helpful. The previous requirements allowed for a more readable format. In the case of share offers, at least, investors are rarely making a direct comparison between one investment and another (as each company's business, growth prospects, and likely future dividends are, to an extent, unique) and including this objective does not serve a useful purpose. It would be helpful to refocus the summary regime so that the summary is not required to be in a rigid specified format.

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

Please justify your answer on the possible ways to address the overlap of information required to be disclosed:

1,000 character(s) maximum

No opinion.

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

Please justify your answer on the possible introduction of a maximum length to the prospectus:

1,000 character(s) maximum

We do not believe it would be helpful to define a maximum number of pages for the prospectus for a number of reasons. Doing so would not take into account factors such as differences in the complexity of businesses. It also seems inequitable to prevent an issuer from including disclosure to protect itself from liability. Please see our accompanying letter for more information on our reasoning. As an alternative, it would be helpful to encourage competent authorities to share more widely amongst themselves and to discuss with third country regulators such as the SEC in the US how they deal with the prospectus review process and ensure that prospectus disclosure meets the requirement to be easily analysable and comprehensible. Our suggestion for 'example prospectuses' may also help to influence the creation of shorter, clearer prospectuses.

30. 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?

1,000 character(s) maximum

No. We do not think it is helpful to prescribe limits to particular sections, as in some cases this may unduly inhibit useful disclosure. It would, however, be helpful to encourage issuers and their advisers to make the risk factors section more specific to the issuer (which would have the effect of making it shorter). Disclosure of general risks which are equally relevant to many issuers should be discouraged.

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	◉	○	○
The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)	◉	○	○
The sanctions regime of Article 25	◉	○	○

Please justify your answer on the adequacy of the liability and sanctions regimes the Directive provides for:

1,000 character(s) maximum

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

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

Please justify your answer on possible problems relating to multi-jurisdiction (cross-border) liability:

1,000 character(s) maximum

Although many securities offerings are made cross-border to institutional investors, the risk of cross-border liability is a factor that deters some issuers from making cross-border offers and so is a barrier to the development of the single European capital market. If a prospectus is alleged to be misleading, issuers and their advisers can face litigation in multiple jurisdictions and under different laws. The costs and loss of management time in doing this are potentially very significant, and may operate to the detriment of both the issuer and its shareholders.

We would support rules to remove the risk of multi-jurisdictional liability by allowing an issuer to require that any action against that issuer be brought in the courts of and under the laws of the issuer's home member state (i.e. the place where the prospectus is approved). Please see our accompanying letter for more information.

C. How prospectuses are approved

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

Please refer to the corresponding section of the consultation document to read some context information before answering the questions.

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

If you aware of material differences, please provide examples/evidence:

1,000 character(s) maximum

Please justify your answer on possible material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses:

1,000 character(s) maximum

The role of the competent authority in the UK would appear to be broader than simply reviewing the 'completeness,' 'consistency' and 'comprehensibility' of the prospectus (as contemplated by PD Article 2(1)(q) of the Prospectus Directive). The competent authority in the UK comments on specific drafting and disclosure issues and may require disclosure additional to that contemplated by the Prospectus Regulation (and the UK's Prospectus Rules). This also seems inconsistent with the provisions of Article 2 (1) (q) of the Prospectus Directive, Article 3 of the Prospectus Regulation and Article 6 of the Prospectus Directive.

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

If you think there is a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs, please specify in which regard:

1,000 character(s) maximum

Please justify your answer on the possible need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs:

1,000 character(s) maximum

It would be helpful to review the time limits set out in Articles 13(2), 13(3) and 13(4) of the Prospectus Directive to ensure that they reflect the reality in practice. A longer period of two weeks is appropriate for the initial review, with shorter periods for further reviews. Further clarification on when the clock starts on a review period would also be helpful. This review should be conducted in conjunction with ESMA, which looked at time periods in its consultation on draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive (2014/51/EU). Getting the review period right is especially important for secondary issues, especially those that interplay with other regimes e.g. an issue of shares requiring a prospectus as consideration for a public takeover.

The competent authority in the UK provides helpful indicative deadlines for document review, which vary depending on the type of issue.

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

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

Please justify your answer on the opportunity to make the scrutiny and approval procedure more transparent to the public:

1,000 character(s) maximum

We do not support a requirement to make draft prospectuses public during the period while they are being considered for approval by the competent authority. Issuers would be unwilling to have draft prospectuses open to public scrutiny when there are matters that might be subject to change, so the process of obtaining approval would become more time consuming overall. Although some overseas authorities do make draft prospectuses public, the fact that the approval process in Europe is confidential is, in our experience, regarded as helpful by issuers.

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

Please justify your answer on the possibility 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:

1,000 character(s) maximum

It is already practice in UK IPOs for potential investors to be informed about a potential offer before the prospectus is approved through an 'intention to float' announcement and meetings with the issuer. Independent research is also published. Marketing to institutional investors is often carried out based on a 'pathfinder' prospectus (a final or near final draft). Such activities are covered by the Prospectus Directive advertising regime and by the UK's financial promotion regime (see question 4). The availability of the tripartite prospectus also allows for flexibility. Also see our accompanying letter.

Making earlier drafts available to qualified investors (on an information only basis) is not prohibited under UK law but is generally regarded as undesirable given concerns that investors may wish or need (to avoid risk of confusion) to be specifically informed about changes from the draft they have received, and that this could cause undue focus on matters that have changed.

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

- ◌ review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)
- ◌ review only a sample of prospectuses ex ante (risk-based approach)
- ◌ review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)
- ◌ review only a sample of prospectuses ex post (risk-based approach)
- ◌ Other
- ◌ Don't know / no opinion

Please describe the possible consequences of your favoured approach, in particular in terms of market efficiency and invest protection:

1,000 character(s) maximum

On an IPO it is helpful for the competent authority to review the prospectus in advance to give a degree of certainty that requirements are complied with, particularly where, as in the UK, the competent authority is also responsible for the decision on admission to listing.

On further issues, we would support a more risk based or ex post approach to prospectus/document review. Removing the requirement for review would shorten timetables and might make it easier to access the markets. It is worth noting that pre-vetting is not required for other key documents issued by, or in connection with, listed companies and relied upon by investors, such as annual reports and accounts, information released under the Market Abuse Directive and the Transparency Directive and (in the UK at least) public takeover documentation.

Equally, if prospectuses can be shorter and simpler, it might be possible to reduce the time allowed for competent authorities to approve them.

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

Please explain your reasoning and the benefits (if any) this could bring to issuers:

1,000 character(s) maximum

In the UK, the process of approving the prospectus is aligned with the process of determining eligibility for listing and, in effect, for determining admission to the regulated market, and this works well.

39. a) Is the EU passporting mechanism of prospectuses functioning in an efficient way?

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

What improvements could be made to the EU passporting mechanism of prospectuses?

1,000 character(s) maximum

Please justify your answer on whether the EU passporting mechanism of prospectuses is functioning in an efficient way:

1,000 character(s) maximum

The process is relatively cumbersome and it would be helpful for it to be simplified. One of the most cumbersome procedures is the requirement by certain competent authorities for part of the passported prospectus to be translated. Any such requirement should be limited to a prospectus prepared in connection with an initial public offer. It would also be helpful to have a more unified regime across Europe, with a common timetable. If an issuer wishes to passport into more than one EU jurisdiction, it should have the confidence that it will be able to commence the offer at the same time on the same day in each such jurisdiction (and not have its offer timetable unnecessarily delayed by differing review periods, time zones and public holidays).

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

Please justify your answer on whether the notification procedure set out in Article 18 between NCAs of home and host Member States could be simplified:

1,000 character(s) maximum

Greater use of e-communications could make the process quicker and more streamlined.

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:

- (●) I support
- ( ) I do not support

Please justify your answer on whether or not you support the possibility for the use of the base prospectus facility to be allowed for all types of issuers and issues, and for the limitations of Article 5(4)(a) and (b) to be removed:

1,000 character(s) maximum

it would be helpful for use of the base prospectus to be extended to equity securities. This is likely to be of most use to issuers who expect to be repeat issuers e.g. certain investment companies (who currently use the tripartite regime)

b) The validity of the base prospectus should be extended beyond one year:

- (●) I support
- ( ) I do not support

Please indicate the appropriate validity length:

[ ] months

Please justify your answer on whether or not you support the possibility for the validity of the base prospectus to be extended beyond one year:

1,000 character(s) maximum

Sorry, no opinion here. It was not possible to erase the answer.

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:

- ○ I support
- ○ I do not support

Please justify your answer on whether or not you support the possibility for the Directive to 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:

1,000 character(s) maximum

No opinion.

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:

- ○ I support
- ○ I do not support

Please justify your answer on whether it should be possible for the components of a tripartite prospectus to be approved by different NCAs:

1,000 character(s) maximum

No opinion.

e) The base prospectus facility should remain unchanged:

- ○ I support
- ○ I do not support

Please justify your answer on whether the base prospectus facility should remain unchanged:

1,000 character(s) maximum

f) Other possible changes or clarifications to the base prospectus facility (please specify):

1,000 character(s) maximum

C3. The separate approval of the registration document, the securities note and the summary note ("tripartite regime")

41. 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?

1,000 character(s) maximum

In the UK, for equity issues, this has occasionally been used for retail offers (which are in any event relatively uncommon) or fund offers. It is helpful in these circumstances to be able to distribute the summary as a separate document (and the liability regime for summaries is helpful in this respect). It would also be helpful if, as for the summary, it is clear that liability should not attach to the registration statement or the securities note alone, provided that, taken together, they contain the required information and are not misleading.

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

Please justify your answer on the possibility for the dual regime for the determination of the home Member State for non-equity securities to be amended:

1,000 character(s) maximum

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

Please justify your answer on the possible supression of the options to publish a prospectus in a printed form and to be inserted in a newspaper:

1,000 character(s) maximum

We do not see any benefit in continuing to allow prospectuses to be published in a newspaper. We agree that a paper version should be available on request, although in our experience such requests are rare.

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

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

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

1,000 character(s) maximum

We do not think it is necessary for there to be a single filing system. The list of prospectuses notified to it that is maintained by ESMA is already a useful central database. This database should be comprehensive and contain all prospectuses (with no time limit applied).

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

1,000 character(s) maximum

N/A

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

Please describe on which essential principles the creation of an equivalence regime in the Union for third country prospectus regimes should be based:

1,000 character(s) maximum

This may be worth considering.

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

Please justify your answer on how a prospectus prepared by a third country issuer in accordance with its legislation should be handled by the competent authority of the Home Member State:

1,000 character(s) maximum

We understand that Israel is currently the only recognised third country for equivalence, and would suggest that more thought is given to other jurisdictions with an appropriate legislative regime. We would also suggest that consideration is given to establishing a framework which allows for the use of third country prospectuses throughout the EU, including the ability to passport between jurisdictions.

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

Please justify your answer on the need for "offer of securities to the public" to be better defined:

1,000 character(s) maximum

Market practitioners understand the term and if it were redefined there would be a risk of unforeseen consequences or greater uncertainty.

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

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

Please justify your answer on the need for "offer of securities to the public" to be defined:

1,000 character(s) maximum

No, we are not aware of the lack of specific definitions for these terms causing problems in practice.

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

What according to you should still be clarified:

1,000 character(s) maximum

See our answer to Question 50 below.

Please justify your answer on whether there are other areas or concepts in the Directive that would benefit from further clarification?:

1,000 character(s) maximum

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

Please explain your reasoning and provide supporting arguments for other possible modification to the Directive which could add flexibility to the prospectus framework:

1.000 character(s) maximum

Please see our accompanying letter, which provides suggestions in relation to (amongst others): using the exemptions in Articles 1(2)(h), 3(2) and 4(1) of the Prospectus Directive cumulatively, extending the exemptions in Articles 4(1)(a) and 4(1)(d) of the Prospectus Directive, clarifying the exemptions in Articles 4(1)(b), 4(1)(c), 4(2)(c) and 4(2)(d) of the Prospectus Directive, clarifying when withdrawal rights apply and improving the application of Article 4(2)(h) of the Prospectus Directive.

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

Please explain your reasoning and provide supporting arguments for identifying incoherence(s) in the current Directive's provisions:

1,000 character(s) maximum

See our accompanying letter. In relation to the protection of investors, in particular investors in equity securities, since most equity securities are bought in the secondary market, the prospectus is of little relevance. For retail investors, in particular, (as well as general risk warnings) education and appropriate financial advice on matters such as the importance of a diverse portfolio of equity investments rather than investing in one or only a few issuers, provide a significant element of investor protection. For smaller investors, investment in a fund rather than direct investment in shares may be more appropriate, and regulation under MiFID/MiFID II of the services of managing or providing advice on investments should be designed to ensure that investors obtain appropriate advice and protection.

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

- **7e2d4cd4-d23c-4eb6-8c58-b6174b38c216/A19878050 v0.0 Additional_Comments[1].docx**

Useful links

Consultation details (http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index_en.htm)

Consultation document (http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf)

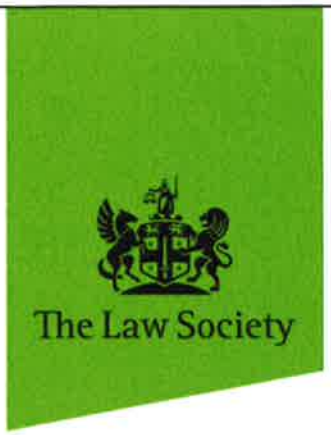
Specific privacy statement (http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/privacy-statement_en.pdf)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

fisma-prospectus-consultation@ec.europa.eu

The City of London Law Society



European Commission consultation on the review of the Prospectus Directive

Additional comments

Law Society and City of London Law Society joint response

May 2015

Joint Working Party Response to the European Commission's consultation on the Prospectus Directive dated 18 February 2015

The comments set out both in this letter and in our responses submitted via the European Commission's website in response to the above consultation have been prepared by the Listing Rules Joint Working Party of the Company Law Committees of the Law Society of England and Wales and the City of London Law Society.

The Law Society of England and Wales is the representative body of over 159,000 solicitors in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators and Government in both the domestic and European arena. This response has been prepared on behalf of the Law Society by members of the Company Law Committee.

The City of London Law Society ('CLLS') represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

The Listing Rules Joint Working Party is made up of senior and specialist corporate lawyers from both the Law Society and the CLLS who have a particular focus on the Listing Rules and the UK Listing Regime.

The CLLS is registered on the European Commission's Transparency Register, and its registration number is 24418535037-82.

The LSEW is registered on the European Commission's Transparency Register, and its registration number is 38020227042-38.

The Joint Working Party welcomes the opportunity to engage with the Commission in relation to the review of the Prospectus Directive, and is supportive of the objective of making it easier for companies to raise capital throughout the EU and to lower the associated costs, while maintaining effective levels of consumer and investor protection.

This letter is submitted in addition to our responses to the Prospectus Directive Review questions on the European Commission's website. We set out in Annex 1 some general remarks and suggestions on the review of the Prospectus Directive. We set out in Annex 2 additional explanation or detail for certain of the responses submitted to the Prospectus Directive review questions on the European Commission's website. Our responses are focused on equity issues.

We would be happy to discuss any aspect of our response in due course.

Annex 1

General remarks on the prospectus regime

We believe that the current prospectus requirements can in some cases lead to excessively long prospectuses, which:

- are burdensome for issuers to produce;
- are unhelpful to investors because the information they really need is obscured; and
- discourage those issuers which are small and medium-sized enterprises (many of which are precisely those high-growth companies which are seeking risk capital to grow and innovate) from making public offers due to the cost and complexity involved in the preparation of prospectuses. This applies, in particular, to prospectuses for further issues of shares by companies already admitted to trading on a regulated market, as well as to debt prospectuses.

The objective should be to ensure that prospectuses **only** contain that information which is material, useful and relevant to investors and prospective investors. Unnecessary repetition of information already readily available should not be required. The current regime does not succeed in achieving this objective. Any reforms should take into account the following considerations:

1. **A distinction between (a) initial offer to the public/admission to a regulated market and (b) secondary fundraising**

   The overarching disclosure obligation in Article 5 of the Prospectus Directive (Directive 2003/71/EC) leads to prospectuses needing to give complete disclosure about the issuer, its financial position, profits and losses and prospects, whereas investors in the secondary market rely on information already provided by the issuer under its continuing obligations (under the Market Abuse Directive/Regulation, the Transparency Directive and any other provisions under national law or corporate governance codes). The justification that is usually given for requiring a prospectus on a further issue of securities is that the issuer is attracting 'new money'. Yet there is in fact no real rationale in investors having a different level of information provided to them when shares are issued or sold directly to them by the issuer (or are the subject of a public offering by an existing shareholder), compared with when they buy such shares in the secondary market. If the prospectus is not read by investors, because it is long and complex, it does not serve to inform investors but rather serves as a potential basis for them to seek compensation if they subsequently suffer loss. To the extent that any such claim for compensation is against the issuer, it may be detrimental to other shareholders and therefore arguably not in the interest of investors more broadly.

2. **A focus on the intended audience**

   A prospectus will not provide meaningful investor protection if it is not read and understood by those whom it is seeking to protect. Retail investors are unlikely to read prospectuses, given their length, complexity and required structure. The practice of preparing summary or Q&A type documents for retail offers supports the proposition that a shorter, simpler document is more appropriate for them.

3. **Interface with other regulatory regimes**

We recognise that a balance is necessary between investor protection and the need for companies to be able to offer securities and raise capital easily. However, the prospectus regime is only one of a number of means of protecting investors (including regulation under the Markets in Financial Instruments Directive (Directive 2004/39/EC) (MiFID), MiFID II (Directive 2014/65/EU), the Alternative Investment Fund Managers Directive (Directive (2011/61/EU) (AIFMD), the Market Abuse Directive/Regulation, and the Transparency Directive as well as the specific laws and regulations of individual member states). These may be a more effective way of ensuring investor protection, particularly for retail investors, than the prospectus regime.

4. **Responsibilities and liability standards applied to the issuer and/or its directors**

The content of prospectuses is affected not just by the prescribed content and format of prospectuses under the Prospectus Directive regime but also by liability regimes. Harmonisation of liability regimes would be difficult and may offend the principle of subsidiarity, but it is not surprising that those who may have liability for errors or omissions in a prospectus (which may include the underwriters or other financial intermediaries as well as the issuer and its directors or any selling shareholder) seek to defend themselves from potential liability by applying the highest level of disclosure. Market practice for large issues has been especially driven by liability concerns regarding offerings into the United States. A practice has grown up of underwriters requiring an issuer in effect to prepare a full prospectus following US as well as European norms, even where the relevant transaction has no or a very limited US component. This means that any European reforms to reduce prospectus requirements could have limited impact in practice.

5. **Market expectations**

Where liability is determined by reference to an expected standard of care, it is likely that issuers and the relevant courts will be influenced by the market's expectation as to the amount and type of information disclosed. Any attempt to change expectations as to what is acceptable by way of disclosure in a particular member state or market will therefore need to involve those involved in influencing the expected standards.

In the light of these considerations we make the following suggestions as to how to approach reforms, and our responses to the specific questions should be read in light of them.

A. We believe that Article 5 of the Prospectus Directive should be modified to set different disclosure objectives to meet different circumstances, accompanied by amendments to the Annexes to focus disclosure on what is relevant to the particular circumstances, taking into account factors such as the other regulated information that has already been published by the issuer or the different level of information required by debt investors compared with equity investors. Thus the existing standard in Article 5 would continue to apply for IPO prospectuses for shares admitted to trading on a regulated market but would be amended to provide for different standards tailored to other types of offer.

A modified Article 5 would facilitate shorter disclosure documents in the case of further issues by companies whose securities are already admitted to trading on a regulated market; most importantly simpler documents would only include information specific to the issue or offering being made and other information necessary to update or supplement previously published information and would not need to replicate the general requirement under Article 5 to contain all "the information necessary to make an informed assessment

of the assets and liabilities, profits and losses and prospects of the issuer... and the rights attaching to the transferable securities", which will almost always replicate large amounts of previously published information rather than focus on the new, material information, which is then lost in a sea of words. Shorter, more relevant and more accessible documents will be better understood by investors.

We set out below a table illustrating how a multi-layered prospectus regime for equity securities could operate in practice.

Market	Type of offer	Type of admission document	Disclosure standard
Regulated Market	IPO	Prospectus	Full disclosure requirements
	Secondary Public Offer	Revised proportionate Prospectus for Secondary Public Offers	Key terms and new information only Ability if required to incorporate by reference other sources of information (specific hyperlinks)
SME Growth Markets	IPO Non-public offer	Admission Document (as required by that SME growth market)	Content requirements determined by the market operator under MiFID II No Prospectus Directive nexus
	IPO Public Offer	SME Growth Market Prospectus (**"Prospectus Light for SMEs"**)	Some additional aspects of a prospectus, but in a less prescriptive manner: all of the information the investor needs to come to an informed view about the securities offer The purpose is to make this a document which can be produced in a cheaper and more efficient manner than a prospectus
	Secondary Public Offer	SME Growth Market Revised proportionate Prospectus for Secondary Public Offers	Key terms and new information only Ability (if required) to incorporate by reference other sources of information (specific hyperlinks)

B. As a practical matter, once a new approach is determined, we think it could be helpful for the competent authorities in member states to support a project to take some example prospectuses and rewrite these to show how they could be written in a more concise

manner to meet new standards. The Financial Reporting Council in the UK has had some success in working with issuers in the UK to demonstrate how they can write their annual report and financial statements in a clearer and more concise way, and then publicising the results of this and how it was achieved to other issuers, and we think a similar project for prospectuses could be helpful. This would need to involve a competent authority, an issuer, its advisers and banks advising on the issue and their advisers. It would be helpful for competent authorities to share their experiences of this with other competent authorities. In some cases, competent authorities might wish to run such a project in conjunction with other competent authorities.

C. It may also be useful to establish a dialogue with third country regulators such as the US Securities and Exchange Commission on how they have sought to make prospectus disclosure most useful. For example, the SEC's guidance on the use of plain, easy to understand language has had an influence in making US prospectuses clearer and easier to read. The SEC has also given guidance on risk factors to ensure that these are focussed and not too generic, and on operating and financial reviews, which we also believe has helped to improve the quality of disclosure in US prospectuses.

D. The exemption from the requirement for a prospectus for issues of less than 10% of the same class as securities already admitted to trading recognises that a prospectus is not always needed for further issues, but this 10% threshold is arbitrary and could be set higher. As an alternative to providing for complete exemption for further issues of shares above this threshold, we suggest providing for an alternative document for secondary offerings or extended revised version of the proportionate disclosure regime under the Prospectus Directive which would enable reduced, and less burdensome, prospectus disclosure while still providing a harmonised level of investor protection and enabling issuers to take advantage of the EU-wide passporting regime where this would be beneficial to them. The ability to use abbreviated (proportionate) disclosure documents could be conditional. For example, a similar requirement to that contained in Article 4(2)(h) Prospectus Directive could be introduced (please see our answer to Question 50 for further details).

Annex 2

Additional information in response to certain consultation questions (as numbered)

Additional information in response to Question 2 on costs

Variations in the cost of preparing a prospectus will result from factors such as: whether the issuer has previously prepared a prospectus or similar document (and how long ago that happened); the size, nature and complexity of its business; whether the issuer has a second listing elsewhere; whether expert reports need to be included; the scope of the additional accounting information to be prepared (which may involve restating financial statements into IFRS on an IPO or additional information if acquisitions or disposals have been made in the context of both an IPO and a secondary offer); the nature of the securities being offered or issued; the reasons for the offering or issue of the securities; the terms of the offering; the extent to which information can be incorporated by reference; and whether the securities are also to be offered in jurisdictions outside the EU.

Additional information in response to Question 4 on exemption thresholds

The financial promotion regime in the UK prohibits the communication by a person, in the course of its business, of an invitation or inducement to engage in investment activity, unless that person is an authorised person (broadly, regulated entities such as investment banks) or the content of the communication has been specifically approved by an authorised person. A breach of this prohibition is a criminal offence and agreements resulting from an unlawful communication may be unenforceable. However, more than 65 exemptions are provided, including in relation to communications made to investment professionals (broadly similar to qualified investors), documents required or permitted by market rules, prospectuses and annual reports and accounts. The fundamental principles applying to authorised persons are that: (a) a financial promotion should be clearly identifiable as such; and (b) all such communications made or approved by an authorised person are fair, clear and not misleading. Record keeping requirements apply and there are legal and regulatory sanctions for breach.

Additional information in response to Question 9 on Article 4(2)(a)

In our response to the Prospectus Directive review questions submitted via the European Commission's website, we noted that there should not be a requirement for a full prospectus for secondary issuances of equity securities for an issuer with equity securities already admitted to trading but that there should be harmonisation of the contents of any information document setting out the reasons for and terms of any issue in excess of the threshold so that the benefits of the passporting regime applicable to prospectuses are not lost. This could be achieved by specifying the format and minimum contents of the information document (an 'abbreviated prospectus') and requiring that such abbreviated prospectus should be approved by the relevant competent authority in the same way as a full prospectus, but with a shorter timetable reflecting the very much briefer nature of the document (and could be achieved as a practical matter by revising the proportionate disclosure regime). Where the securities are not the same class as the equity securities already listed, additional information should be included on the rights of the new securities and how they rank in relation to existing securities.

Additional information in response to Question 17 on the proportionate regime

As noted in our response to this question submitted via the European Commission's website, we are not aware of any instances of the regime being used for rights issues or open offers in the UK. Reasons for this include the fact that issuers may have shareholders outside the EU and are concerned that a proportionate disclosure regime prospectus might not fully meet the disclosure requirements in non-EU jurisdictions. In particular, underwriters often have specific liability concerns regarding offerings into the United States so that the practice has grown up of underwriters requiring an issuer in effect to prepare a full prospectus, even where the relevant transaction has little or no US component.

In addition, the proportionate disclosure regime does not sufficiently reduce the prospectus disclosure requirements to make a compelling case for companies to seek to make use of it. This is partly because the overriding disclosure standard under Article 5 of the Prospectus Directive still applies and is arguably not compatible with the production of shorter prospectuses. For this reason, we believe that either there needs to be a full exemption from the prospectus disclosure standard in Article 5 in order for the proportionate disclosure regime to operate, or that Article 5 needs to be revised to provide for different disclosure standards in different contexts.

If Article 5 were changed to allow for different disclosure standards in different contexts, the required disclosure standard on an issue of equity securities by a company with equity securities already admitted to trading on a regulated market could be "the information necessary for investors to understand the reasons for the issue and the use of the proceeds of the issue, together with any other material information required to update information previously published" (under the issuer's continuing obligations under the Market Abuse Directive/Regulation and the Transparency Directive, with a relevant cut off date applying to give certainty as to which information is covered). Where further securities are of a different class, there should also be a requirement to provide information on the rights of the new securities and how they rank in relation to existing securities. The Prospectus Regulation Annexes relating to the proportionate disclosure regime would also need to be radically shortened to ensure they do not require disclosure of any additional information.

An alternative would be to include language similar to that included in Section 80 of the UK Financial Services and Markets Act 2006, which relates to the duty of disclosure in listing particulars (disclosure documents used in lieu of a prospectus for admission to official listing of securities which are outside the scope of the Prospectus Directive). Section 80 has a similar disclosure standard to Article 5 and contains helpful clarificatory language relating to the matters that relevant persons should have regard to, such as information available to investors or their professional advisers as a result of requirements imposed on the issuer by rules of the relevant stock exchange, listing rules or other laws.

Additional information in response to Question 21 on SMEs

As noted in our response to this question submitted via the European Commission's website, we would support a simplified form of prospectus or disclosure document for companies seeking to make a public offer at the time of admission to trading on an SME growth market. Please see our general remarks for an illustrative table illustrating how a multi-layered prospectus regime could operate.

The result of a multi-layered approach could be that more documents would be classified as prospectuses and more investment opportunities made available to retail investors, rather than

fundraisings being carried out to attract either institutional money or funds from exempt persons (such as those of high net worth).

Clearly it should be apparent on the face of each document which category it falls into. At present in the United Kingdom it is clear on the face of a document whether it is, for example, an AIM admission document (which is not approved by the national competent authority) or a prospectus (which is so approved).

The branding and labelling of SME growth markets would be a necessary part of the new landscape, so that potential investors can easily understand that the standards are different from those of regulated markets.

See also our answer to question 11 above. Also, if our suggestion in paragraph B of our general comments is adopted that example prospectuses should be created to demonstrate how a prospectus might look, it would be important for some of the examples to reflect SMEs raising money through admission to an SME growth market.

Additional information in response to Question 29 on maximum length to the prospectus

We do not believe it would be helpful to define a maximum number of pages for the prospectus as a whole for the reasons set out below:

(a) issuers may, as a result, make arbitrary choices with respect to the appropriate length of the component parts of the prospectus;

(b) issuers which have complex businesses and/or other matters requiring to be disclosed, could be unhelpfully constrained in their disclosure while other issuers, with simpler businesses, would still be able to produce prospectuses that are longer than necessary. Furthermore, issuers may be encouraged to prepare shorter financial statements, which provide less disclosure;

(c) it could be a potential source of conflict between issuers and competent authorities - an issuer may want to make room for more meaningful issuer or deal-specific disclosure under Article 5(1) of the Prospectus Directive by shortening 'boilerplate' disclosure of additional information under the Annexes to the Prospectus Regulation. A competent authority may be less well-placed to assess what Article 5(1) disclosures are needed and more focussed on ensuring that Annex items are adequately disclosed;

(d) it seems inequitable to prevent an issuer from including disclosure to protect itself against legal liability, given that the issuer (and not the competent authority) will be liable for prospectus omissions under Article 6 of the Prospectus Directive;

(e) how would information incorporated by reference be treated?;

(f) would a length limit apply to tripartite prospectuses (and if so, how?) The registration document and securities note typically duplicate some information - would 'repeated' information count towards the length limit? If the securities note is prepared later, it may supplement the registration document. In that case, would both the "out-dated" and "new" information count towards the length limit?; and

(g) would the aggregate length limit apply to the prospectus or the base prospectus plus any supplement(s)? How would the latter work in practice? Would both 'out-dated' and 'new' information be counted?

As an alternative, it would be helpful to encourage competent authorities to share more widely amongst themselves and to discuss with third country regulators such as the SEC in the US how they deal with the prospectus review process and ensure that prospectus disclosure meets the requirement to be easily analysable and comprehensible. Our suggestion for 'example prospectuses' may also help to influence the creation of shorter, clearer prospectuses.

Additional information in response to Question 32 on multi-jurisdictional (cross-border) liability

The potential liability of issuers, significant selling shareholders and underwriters/financial advisers/(UK) sponsors with regard to the Directive influences the disclosure that is made in prospectuses and other offering documents. As explained above, potential liability that arises in other ways under national laws is also relevant. However, the fear of potential legal liability is only one element of a risk assessment associated with offerings of securities, and banks advising issuers or underwriting offerings will also be concerned about reputational damage, should a prospectus with which they are involved turn out to be misleading, even if they are not responsible for its contents under relevant national laws. In particular, where securities are being offered cross-border, whether or not they are being offered in the United States, many international banks as a matter of policy require prospectuses to be drafted, and subject to a high level accompanying due diligence, as if a registered offering were being made in the US. This drives a tendency towards longer documents.

Although many securities offerings are made cross-border to institutional investors, the risk of cross-border liability is a factor that deters some issuers from making cross-border offers and so is a barrier to the development of the single European capital market. If a prospectus is alleged to be misleading, issuers and their advisers can face litigation in multiple jurisdictions and under different laws. The costs and loss of management time in doing this are potentially very significant, and may operate to the detriment of both the issuer and its shareholders.

We would support rules to remove the risk of multi-jurisdictional liability by allowing an issuer to require that any action against that issuer be brought in the courts of and under the laws of the issuer's home member state (i.e. the place where the prospectus is approved) and for this to be made clear in the prospectus. This would provide greater certainty to issuers.

Additional information in response to Question 36 on early marketing

Elsewhere in Europe, we understand that early marketing is also possible in France using a split prospectus under the existing Prospectus Directive regime - the 'document de base' is approved first and used in early marketing.

Additional information in response to Question 50 on further modifications

We believe that the following modifications to the Directive could be helpfully considered:

(a) it would be helpful to clarify that the exemptions in Articles 1(2)(h), 3(2) and 4(1) of the Prospectus Directive can be used cumulatively with each other;

(b) the exemption in Article 4(1)(a) (shares issued in substitution) of the Prospectus Directive could expressly cover share splits, share consolidations, re-denominations and reclassifications of existing shares;

(c) the exemption in Article 4(1)(d) (scrip dividends) of the Prospectus Directive could be expressly extended to other similar schemes for the payment of dividends in the form of

shares, especially dividend reinvestment plans (DRIPs) in which cash dividends are used to acquire existing shares, or to subscribe for new shares;

(d) the exemptions in Articles 4(1)(b), 4(1)(c), 4(2)(c) and 4(2)(d) (equivalent documents) of the Prospectus Directive may be more useful if an 'equivalent document' on a takeover etc. only needs to contain information equivalent to that contained within a prospectus, i.e. it need not follow the layout/content requirements applicable to prospectuses (with a summary and risk factors at the front), as the competent authority in the UK currently requires. This would make it easier for bidders to use their takeover offer document as an equivalent document under this exemption;

(e) in the context of supplementary prospectuses, it would also be helpful if the rules relating to withdrawal rights for exempt offers could be clarified to specify that withdrawal rights are not applicable to offerings to qualified investors where a prospectus is produced solely in relation to admission of securities to a regulated market; and

(f) the exemption in Article 4(2)(h) of the Prospectus Directive for securities admitted to trading on another regulated market is little used. One reason for this is the restrictive interpretation by some competent authorities of Article 4(2)(h)(iv), (namely that: 'the on-going obligations for trading on that other regulated market have been fulfilled.') This is interpreted as an absolute test by some competent authorities and is very difficult to comply with. It would be helpful if some form of materiality were to be inserted e.g. providing that the relevant competent authority should not have commenced enforcement action with respect to any breach of relevant Market Abuse Directive/Regulation and Transparency Directive obligations. It would also be helpful to clarify who would be the home member state going forward and the expected scope of the required summary document.