



## European Commission, Review of the Prospectus Directive

ICAEW welcomes the opportunity to comment on the *European Commission, Review of the Prospectus Directive* published by European Commission on 13 May 2015, a copy of which is available from this [link](#).

ICAEW is listed in the EU Transparency Register (ID number: 7719382720-34).

This response of 13 May 2015 has been prepared on behalf of ICAEW by the Corporate Finance Faculty. Recognised internationally as a source of expertise on corporate finance issues and for its monthly *Corporate Financier* magazine, the Faculty is responsible for ICAEW policy on corporate finance issues including submissions to consultations. The Faculty's membership is drawn from professional services groups, advisory firms, companies, banks, private equity, law firms, consultants, academics and brokers.

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## MAJOR POINTS

1. The review of the Prospectus Directive is one of the priority areas for short-term action identified in the [European Commission's Green Paper, Building a Capital Markets Union](#). We support the idea that Capital Markets Union will provide a context for jobs and sustainable economic growth in the EU and our submission to the Green Paper (ICAEW REP 73/15) may be viewed via this [link](#).
2. We believe that the current prospectus regime is, broadly, effective for larger companies. We also recognise the regime's potential shortcomings, such as the complexity, cost and time involved in drawing up a prospectus and getting it approved by a national competent authority, can be barriers to some companies seeking to access to the capital markets. We are thus supportive of efforts to identify and reduce administrative burdens and unjustified costs for companies and intermediaries, which result from the application of the Prospectus Directive (PD).
3. However, we also consider that the current prospectus regime was not developed for, nor is it aimed at, SMEs. For some businesses, raising capital on a regulated market is not appropriate, and other sources of finance are available. Any reforms or simplifications to the regime should not erode its current effectiveness.
4. Our response to the specific points of the PD, which was made via the Commission's online questionnaire, is reproduced overleaf. The key points are:
  - We do not believe that the current scope of the PD should be extended to the admission of securities to trading on multilateral trading facilities (MTFs).
  - Certain adjustments to the prospectus approval process and minor changes to the thresholds should make it easier for companies to raise capital, without damaging investor protection.



BANKING AND FINANCE

# Public consultation on the review of the Prospectus Directive

Fields marked with \* are mandatory.

## Introduction

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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.

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**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-consultation@ec.europa.eu](mailto:fisma-prospectus-consultation@ec.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

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\*Are you replying as:

- ☐ a private individual
- ☒ an organisation or a company
- ☐ a public authority or an international organisation

\*Name of your organisation:

ICAEW - Institute of Chartered Accountants in England and Wales

Contact email address:

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

katerina.joannou@icaew.com

\*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:

7719382720-34

\*Type of organisation:

- |   |   |
|---|---|
| <input type="radio"/> Academic institution          | <input type="radio"/> Company, SME, micro-enterprise, sole trader |
| <input type="radio"/> Consultancy, law firm         | <input type="radio"/> Consumer organisation                       |
| <input type="radio"/> Industry association          | <input type="radio"/> Media                                       |
| <input type="radio"/> Non-governmental organisation | <input type="radio"/> Think tank                                  |
| <input type="radio"/> Trade union                   | <input checked="" type="radio"/> Other                            |

\*Please specify the type of organisation:

Professional body

\*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  
☒ Other  
☐ Not applicable

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

Corporate finance, tax, financial services



## Important notice on the publication of responses

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\*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

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### 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:

- ☒ Admission to trading on a regulated market
- ☒ An offer of securities to the public
- ☐ Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)
- ☐ 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*

There should be a requirement to publish a prospectus to support an offer of securities to the public and an admission to trading on a regulated market. We believe that there is a strong case for adapting the prospectus regime, in recognition of other forms of available risk finance that are rapidly developing within Member States. The main example is equity (investment-based) crowdfunding. We would like to see certain public offers of securities to be exempt from the prospectus regime, where individual subscriptions are below a threshold (eg, €1,000). There are also good reasons to differentiate the requirement for approval of the prospectus by the NCA. We consider that, in the case of domestic offerings, the prospectus approval requirement should be waived for public offers (though not for admissions to regulated markets) and only mandated where an issuer wishes to extend the offering to other Member States and needs a passport (see Q3).

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) | x                   | x                   | x                                   |

**Additional comments on the cost of producing a prospectus:**

*1,000 character(s) maximum*

We are aware of certain published estimates of the costs of producing a prospectus. We do not think it is meaningful to portray a 'typical' cost, even for businesses that are relatively simple, as a range of factors will influence the cost, including the jurisdiction, the length of trading history and the group's or company's size.

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) | x                               |

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

*1,000 character(s) maximum*

We are not in a position to provide representative data on the total costs of a prospectus, however we would observe that the fees payable to competent authorities are not material compared to internal costs and adviser costs.

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*

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 members' experience, approval of a prospectus draws out and can add weeks to the offering process. Moreover the frequency of a passport being taken advantage of for equity offerings is low. This would suggest that for domestic public offerings (though not for admissions to regulated markets), there should not be a requirement for approval of the prospectus.

## 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 specify from EUR 5 000 000 up to how many euros:

10000000

€

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

*1,000 character(s) maximum*

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*

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

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

Please specify from 150 persons up to how many persons:

250

persons

Please justify your answer on the 150 persons threshold:

*1,000 character(s) maximum*

We would support an increase to the persons' threshold to 250, which would still allow a 'large' offering to a 'small' number of investors to be eligible for exemption.

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*

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 consider that harmonisation in the threshold is not necessary. In our view, smaller markets which currently set a lower prospectus requirement threshold, are not likely to benefit from increased demand for securities.

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*

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 specify what other area:

*1,000 character(s) maximum*

The Directive should be adjusted to allow NCAs to exempt investment based-crowdfunding operating within certain thresholds.

Please justify your answer on possible other area:

*1,000 character(s) maximum*

The availability of risk finance through crowdfunding presents a possible anomaly that should influence the future scope of the Directive. Availability is easy relative to a public offer in the prospectus regime and we believe that the scope of the regime should exclude public offerings that are within the threshold of Article 1(2)(h) and where retail subscriptions are individually less than a pre-determined level (eg €1,000). The nature of appropriate 'high' risk warnings attached to such offerings would clearly need to be considered carefully by the NCA that regulates the crowdfunding platforms. An equivalent exemption from financial promotion requirements would also be desirable.

## **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*

At present placings tend to be favoured, particularly by smaller issuers, as secondary offerings are perceived to be too expensive. Mitigation of the obligation to draw up a prospectus will provide choice to issuers undertaking an additional capital raising of the same securities. It may also encourage appetite for more pre-emptive issues. An EU issuer with securities admitted to a regulated market is subject to continuing disclosure obligations which provides ongoing updates for investors. It will be necessary, however, to ensure that 'investment' liability is not extended to such material.

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 consider that any threshold can potentially distort the market.

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 believe that there should be no timeframe for the exemption. This will not preclude an issuer from deciding to publish a supplementary prospectus.

### **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 would be very concerned if the current prospectus regime were extended to cover admission to trading on an MTF. Improving access to capital should seek to build on the proven success of markets such as AIM and Euronext. The market is capable of distinguishing between Prospectus Directive and non-Prospectus Directive regimes and, in our view, it would be overly restrictive to apply the current prospectus regime to an MTF. However, should the Commission perceive an overwhelming need to apply the current prospectus regime to MTFs, we believe that the revised regime should not require approval by NCAs and should provide for a reduced level of disclosure.

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*

We do not believe that the current scope of the Directive should be extended to the admission of securities to trading on an MTF (see our answer to Q11).

However, if the scope were so extended, then subject to removing the approval regime (see our responses to Q1 and Q11), we would support a proportionate disclosure regime that is close to the set of requirements in Schedule Two of the AIM Rules for Companies.

#### **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*

Exempting funds marketed to non-professional investors from the obligation to prepare a prospectus under the Directive would, in our view, be the wrong way to encourage informed retail investment in AIFs and future ELTIFs. The key information document is designed to give basic information while access to the prospectus gives a comprehensive picture for those who need it. While there may be streamlining possibilities between the Directive requirements and funds' legislation, as in the case of public offerings of securities, the main issue (that also drives up cost) is that AIF prospectuses are often overly long and disclosures are not communicated in a straightforward, comprehensible way. This is partly due to regulatory disclosures but also a matter of format and style.

#### **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*

We believe that extending this exemption is necessary to provide EU employees of non-EU private companies with the same opportunity as EU employees of EU companies. We do recognise that this single measure will not result in tax harmonisation.

## **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*

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

*1,000 character(s) maximum*

## **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*

Our members do not point to significant evidence that issuers have taken advantage of the proportionate disclosure regime.

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*

Our members consider that the proportionate regime is not attractive to issuers as (i) it does not go far enough in relaxing disclosure requirements for rights issues and (ii) it applies only where pre-emption rights have not been waived.

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*

In general we consider that the Prospectus Directive regime was not developed for and is not aimed at small and medium enterprises. The range of definitions for smaller businesses that is used in the PD regime is also unhelpful in this respect.

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*

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*

We consider that there should be an exemption for rights issues from the obligation to publish a prospectus.

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

*1,000 character(s) maximum*

For such companies, an appropriate proportionate disclosure regime would be the set of requirements in Schedule Two of the AIM Rules for Companies.

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*

We have no comment.

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 specify which admissions of securities to trading on an MTF:

*1,000 character(s) maximum*

We do not believe that admissions of securities to trading on an MTF should be brought into the scope of the Directive but, in the event that they are and subject to removing the approval regime, all securities should be covered by the proportionate disclosure regime.

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

*1,000 character(s) maximum*

## **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*

Consistency of definitions is desirable.

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 believe that a regime for such companies could be simpler but not to the extent that it encourages those SMEs for which raising capital on the public markets is not appropriate. More importantly, in our view, is that it should feature proportionate disclosure.

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*

See the set of requirements in Schedule Two of the AIM Rules for Companies.

### **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 please indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference):

*1,000 character(s) maximum*

An issuer's standing data could all be incorporated by reference. This would include a company's memorandum of association, articles of incorporation, information about directors and disclosures about share capital.

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*

Standing data is background information on the issuer that will not influence an investor's decision.  
As an alternative to incorporation by reference company information of this nature could be disclosed on the company's website as is currently the case with AIM companies, in accordance with AIM Rule 26.



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 prospectus:

*1,000 character(s) maximum*

We would not support removal of the need to incorporate such documents by reference. In our view, explicit incorporate by reference is beneficial in (i) making sure all disclosure requirements have been met and (ii) protecting the issuer in the it is clear which information is part of the prospectus (and, therefore, which information the issuer is taking responsibility for in the context of the specific prospectus).

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*

Apart from historical financial information it could be explored whether PDMR dealings and disclosure of resultant holdings could be omitted.

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 do not believe that substituting a supplement with an announcement would jeopardise investor protection. However, from an issuer's perspective, the advantage of a supplementary prospectus is that it is very clear which information is being brought within the prospectus for responsibility and liability purposes.

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*

#### **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*

The prescriptive content for summaries adds to the cost of preparing prospectuses. While there is merit in the current regime for consistency and quality, as the summary cannot be used independently of the whole document it may be worth considering whether it is in fact needed.

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*

## **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*

If investors are protected by disclosure, it does not follow that they will be more protected by shorter documents. Entities that have diverse activities will need more space to describe those activities than those which have a single activity. The requirement for the prospectus to contain the current prescribed matters, as well as the override for 'all information which is necessary to enable investors to make an informed assessment', would need to be revisited, otherwise setting an overall limit to the length of the prospectus would be counterproductive.

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*

The company's historical financial information could be incorporated by reference from a website where they have previously been published. This could make reading the prospectus easier or more convenient, although it would not reduce the information that prospective investors need to consider.

## 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  | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| The sanctions regime of Article 25   | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

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*

## 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

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*

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*

As mentioned in our response to Q1, we suggest that approval by NCAs of prospectuses for public offers (though not for admissions to regulated markets) could be dropped.

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*

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*

The company should have the opportunity to resolve outside the public arena any uncertainties regarding the approval of its prospectus. Versions of the prospectus that are not in the final form should not go into the public arena where they may mislead investors.

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*

Investors should base their decision on the final form prospectus, not on drafts that could be still subject to material revision.

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*

It may be worth exploring whether to drop scrutiny of public offer prospectuses on the basis that the documents are complete when they are submitted to the NCA. However, documents for admission to regulated markets may still benefit from scrutiny, so that the competent authority can contribute advice on consistency of preparation.

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*

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 Commission could consider whether the practice of scrutiny of public offer prospectuses could be dropped, on the basis that the documents are complete when they are submitted to the NCA. It is also worth revisiting the passporting process and whether it is needed in a single market.

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*

## 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*

We have no comment.

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

- ☐ I support  
☐ I do not support

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*

We have no comment.

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*

We have no comment.

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*

We have no comment.

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*

We have no comment.

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

*1,000 character(s) maximum*

We have no comment.

### **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*

We have no comment.

#### **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*

We have no comment.

#### **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 suppression of the options to publish a prospectus in a printed form and to be inserted in a newspaper:

*1,000 character(s) maximum*

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*

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

*1,000 character(s) maximum*

## **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*

We note that any principles of equivalence are more likely to be needed for reporting rather than disclosure matters. There may be third country regimes with which it is worth exploring equivalence however this is unlikely to be a short term action.

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*

### 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*

We have no comment.

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*

We have no comment.

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

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*

In our response to Q18 and Q22, we propose aligning a proportionate disclosure framework with the AIM model. This would remove the current prospectus framework requirements for a capitalisation and indebtedness statement, financial resources and pro forma financial information.

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*

### 3. Additional information

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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:

### Useful links

Consultation details ([http://ec.europa.eu/finance/consultations/2015/prospectus-directive/index\\_en.htm](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](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](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>)

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### Contact

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