AFME response to European Commission's Review of the Prospectus Directive

13 May 2015

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the European Commission's Review of the Prospectus Directive.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

AFME fully agrees with the objective of this Review which 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 investor protection. Accordingly, AFME has made the following proposals inter alia:

1. A prospectus should allow marketing to extend into all Member States without the need for a specific passporting request for each jurisdiction.
2. We support the creation of a single, integrated EU filing system for all EU prospectus and corporate / regulatory disclosures. Filings made with such a system should be automatically incorporated by reference into a universal base document, which an issuer could then use as part of their disclosure on future debt or equity issues.
3. A secondary offer to the public of securities fungible with those already admitted to trading on a regulated market, or further admission to trading of such securities, should require only a short form prospectus (providing information on the offer), which could be used in conjunction with the universal base document (providing information on the issuer). This approach would require the liability regimes of each Member State pertaining to issuers to be harmonised and Article 5 of the Prospectus Directive to be amended as it relates to short form prospectuses so as to set an appropriate lower disclosure standard.
4. The prospectus exemption threshold relating to non-professional investors should be raised from 150 per Member State to an aggregate number for all Member States.
5. Prospectuses should be allowed to include disclosures regarding forward-looking information in a controlled and responsible way, provided that appropriate carve-outs and liability defences were made applicable.
6. Use of incorporation by reference in a prospectus should be permitted with respect to any regulatory document filed including those filed during the approval process, allowing first-time issuers to incorporate by reference documents filed when their prospectus is published rather than requiring replication of those documents in full.

Responses to 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?

Yes. A full prospectus should be required whenever securities are admitted to trading on a regulated market for the first time and whenever securities that are not admitted to trading on a regulated market are offered to the public. When an issuer of securities admitted to trading on a regulated market makes a subsequent public offer or non-exempt request for admission of fungible securities it should publish a short form prospectus providing offer information (not issuer information). This approach would require modification of Art 5 of the Prospectus Directive and the harmonisation of liability regimes in each member state. There would also need to be consistent application across the EU of the Transparency Directive and other pan-EU continuing obligations and the establishment of an EU equivalent to the US 'EDGAR' system (allowing issuers to file and maintain a universal base document to use on future debt or equity issues. Please see Annex 1 to this response for further detail.

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

   a) Please estimate the cost of producing the following prospectus

   - *equity prospectus*
   - *non-equity prospectus*
   - *base prospectus*
   - *initial public offer (IPO) prospectus*

Additional comments on the cost of producing a prospectus:

The costs of preparing a prospectus will vary greatly depending on individual circumstances, for example, whether the issuer has previously produced a disclosure document, the size and complexity of the issuer's business, the need for an expert report, whether it is possible to incorporate by reference etc. It is a requirement to disclose in the prospectus the total proceeds of an issuance as well as its net proceeds. The total cost can therefore easily be calculated. We are not in a position to specify the cost differentials among these categories of issuance. We note that within a single category there are material differences resulting from factors such as sector, home country, etc.

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

- *Issuer's internal costs*
- *Audit costs*
- *Legal fees*
- *Competent authorities' fees*
- *Other costs (please specify which)*

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

Most of the costs would still be incurred. For example, there would still need to be legal advice. AFME is not in a position to know average costs and the respective percentages, and we understand that these percentages will vary by issuer, sector, country of origin, etc.

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?

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

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

75%

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

Most of the costs would still be incurred. For example, there would still need to be legal advice. AFME is not in a position to know average costs and the respective percentages, and we understand that these percentages will vary by issuer, sector, country of origin, etc.

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?***

No. Equity offerings are commonly made using prospectus exemptions rather than passporting. We recommend conversion of the 150 person exemption to an equivalent pan-EU limit (covering the same number of retail investors across the EU, but without regard to the member state in which they are located, e.g. 5000), to facilitate access for investors and reflect a true capital markets union. Passporting is most often used in rights issues or open offers where an issuer has a significant number of existing shareholders in another state. We suggest that a full or short form prospectus (see our answer to Q1) should allow pan-EU marketing without a formal passporting request for specific jurisdictions. This would streamline rights issues and avoid issuers excluding shareholders in jurisdictions where the availability of an exemption is uncertain. An issuer wishing to make an offer outside a prospectus exemption would still need to translate the summary where required by a host member state.

II. ISSUES FOR DISCUSSION

A. When a prospectus is needed

A.1. 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):***

Don't know/no opinion. The thresholds referred to in 4(a) to (d) were changed as recently as 2010. It would be helpful to have information on the extent to which the new thresholds have been utilised across the EU. If there has been only minimal usage of the new thresholds for exemption, it would be timely to determine why this is the case. Whether low usage has been the case — which is the anecdotal indication we have received — the question is whether there is another reason e.g. marketing a new company is difficult outside its home country. Users of the exemptions would be in a position to say whether they were over-subscribed. Issuers which have issued on the basis of a prospectus would be in a position to say that subscriptions were such that a higher threshold would have avoided the need for a prospectus. We consider that there should be maximum harmonisation to prevent proliferation of national requirements.

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

Don't know/no opinion. See our response to question 4(a).

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

Yes. Although equity offerings are commonly made to qualified investors only, with the 150 person exemption acting as a buffer, we agree that raising the threshold to allow more issuers to avoid the need to produce a prospectus has merit. We believe consideration should be given to making this threshold apply on a pan–EU basis, allowing issuers to offer to a specified number of retail investors across all member states. This would provide greater flexibility for issuers and, if the pan-EU figure were equivalent to the total of the current per Member State thresholds, there would be no increase in risk to EU investors overall. Such an approach would require a renewed focus on other forms of investor protection, such as the UK financial promotion rules, which should be harmonised to ensure protection for all EU retail investors.

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

Don't know/no opinion. See our response to question 4(a).

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. Harmonisation would enable issuers using the prospectus exemptions to make an offer without undue complexity and cost. This approach will be particularly helpful if there are changes to the exemptions and thresholds applicable.

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)? Please state your reasons.***

No. We see no immediate need to add other types of securities or financial instruments to the scope of the Prospectus Directive. We are not aware of any type of existing transferable security which is not within scope. Reserving a power to ESMA to specify additional investment types not included under specified circumstances — to deal with future developments — should be considered.

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. One area where we feel that beneficial changes could potentially be made is in relation to forward-looking information. In an IPO context in particular, permitting issuers and their directors to disclose more forward-looking information in a controlled and responsible way, without materially increasing their liability, would be something that could be explored. It would require appropriate carve-outs and defences to liability on the part of issuers, their directors and the syndicate banks.

A.2. 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, providing relevant information updates are made available by the issuer?***

Yes. For existing listed issuers, many of the required contents of a prospectus will already be publicly available and the secondary market will be trading on the basis of that information. As noted in our response to question 1, therefore, a subsequent secondary issue (that is offered to the public or not within an exemption from the prospectus obligation for admission to trading) should only require a short form prospectus disclosing offer information, which could be used in conjunction with a universal base document maintained to consolidate publicly available issuer information. The content requirements for such a short form prospectus should be prescribed in a similar way as with the PD Annexes at present.

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

No amendment. As noted in our response to question 1, our view is that secondary issues that are offered to the public or which are not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer, made available through an EU central filing system). We are of the view that publication of this sort of short form prospectus for admission to trading of a new issue representing a material percentage of an issuer's share capital is appropriate. While we do not advocate raising the 10% threshold, we could support a small increase in the percentage threshold if this was wished for by other market participants.

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?***

There should be no timeframe. As noted in our response to question 1, our view is that secondary issues that are offered to the public or which are not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer, made available through an EU central filing system). This should be the case no matter when the relevant issuer last published a full prospectus. We believe the right balance is struck by a combination of specific offer information in the short form prospectus and ongoing market disclosures for existing listed issuers.

A.3. 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? Please state your reasons.***

No. We believe that adding a prospectus requirement for MTF listings is unnecessary and would be contrary to a main thrust of this review—simplification of the capital issuance process. In our view, pan-European rules on prospectuses are only required when the relevant rules and requirements (and the ensuing legal harmonisation) are necessary to correct a genuine market distortion or encourage further integration in European financial markets. Please see Annex 2 to this response for further detail.

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? Please state your reasons.

No. As stated in the Consultation Document, the lighter prospectus framework introduced by the proportionate disclosure regime has not had its intended effect and is not widely used in practice. The main reason given for such ineffectiveness and lack of use is that the regime is still perceived as too burdensome. Therefore, it is our view that the application of the proportionate disclosure regime to securities admitted to trading on MTFs would entail many of the same burdens and negative impacts described above with respect to full application of the Directive to MTFs. For this reason, as well as for the reasons stated above in our response to question 11, we do not believe that the scope of the Directive should be extended to the admission of securities to trading on MTFs, whether under the proportionate disclosure regime or not. Please see Annex 2 for the response of AFME's fixed income members.

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

No response.

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 ? Please explain and provide supporting evidence.

Yes – to ensure a level playing field among companies and fairness to employees of non-EU domiciled companies.

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? If so, what targeted changes could be made to address this without reducing investor protection?

No response.

B. The information a prospectus should contain

B.1. 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?

No. As noted in our response to Q12, the framework introduced by the proportionate disclosure regime has not had its intended effect and is not widely used in practice. The regime is perceived as too burdensome as well as raising liability concerns as the proportionate disclosure must still meet the same Article 5 standard as a full prospectus. In addition, the proportionate disclosure regime is not compatible with the 10b-5 standard for a Rule 144A offering into the US, commonly part of significant secondary issues. As noted in our response to Q1, our view is that all secondary issues offered to the public or not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer, made available through an EU central filing system). We believe this approach would be more effective in improving efficiency.

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

a) Proportionate regime for rights issues

No. As noted in our response to question 16, the lighter prospectus framework introduced by the proportionate disclosure regime has not had its intended effect and is not widely used in practice. The regime is perceived as too burdensome as well as raising liability concerns as the proportionate disclosure must still meet the same Article 5 standard as a full prospectus. In addition, the proportionate disclosure regime is not compatible with the 10b-5 standard required for a Rule 144A offering into the US, which commonly forms part of secondary issues. As noted in our response to question 1, our view is that all secondary issues offered to the public or not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer). We believe this approach would be more effective in improving efficiency.

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

Yes. The regime is widely used by companies that are allowed to use it, but this is a small number because of the restrictive definition of SME.

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

No response.

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

As noted in our response to question 1, our view is that all secondary issues offered to the public or not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer). We believe this approach would be more effective in improving efficiency than modification of the proportionate disclosure regime for specific categories of issue or issuer.

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

As noted in our response to question 1, our view is that all secondary issues offered to the public or not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer). We believe this approach would be more effective in improving efficiency than modification of the proportionate disclosure regime for specific categories of issue or issuer.

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

As noted in our response to question 1, our view is that all secondary issues offered to the public or not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer). We believe this approach would be more effective in improving efficiency than modification of the proportionate disclosure regime for specific categories of issue or issuer.

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

Other. As noted in our response to question 18, our view is that all secondary issues offered to the public or not within an admission exemption should require publication of a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer). We believe this approach would be more effective in improving efficiency than modification of the proportionate disclosure regime for specific categories of issue or issuer.

B.2. 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. We do not see in principle why these definitions should not be aligned.

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?

No response.

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.

No response.

B.3. 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? If yes, please indicate how this could be achieved (in particular, indicate which documents should be allowed to be incorporated by reference)?

Yes. We support the creation of a EU system equivalent to the US EDGAR system, allowing central filing of documents for issuers in all member states. Such an EU system should allow issuers to maintain a universal base document of issuer information that can be updated centrally and automatically incorporated by reference into disclosure documents for the offering or admission to trading of any form of security. We further consider that incorporation by reference should be extended to any document filed contemporaneously with publication of a prospectus, i.e. first time issuers should be allowed to incorporate by reference documents filed on the date of publication of their prospectus, rather than reproducing those documents in the prospectus itself.

Please see Annex 2 for the response of AFME's fixed income members and specific suggestions on documents that should be incorporated by reference for structured finance offerings.

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)? Please provide reasons.

No. As noted in our response to question 1, our view is that all secondary issues offered to the public or not within an admission exemption should require a short form prospectus containing offer information (which could be read in conjunction with a universal base document consolidating publicly available information on the listed issuer, made available through an EU central filing system). A universal base document avoids concerns that information may otherwise be contradictory and difficult for investors to locate and adequately comprehend. Any change excluding the ability to incorporate by reference TD-related 'regulated information'

would mean that (absent other changes to EU law) such information would not form part of the prospectus to which specific liability and compensation provisions apply. This may impact international issues (e.g. US 144A issues), where information may need to be incorporated into the prospectus. See Annex 2 for the response of AFME's fixed income members.

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

Yes. All 'regulated information' should be capable of being incorporated by reference in addition to the expanded list of material (as discussed in our response to question 24(a)). Furthermore, we consider that allowing for incorporation by reference of specified future information would be beneficial for flexibility and hence simplification of prospectuses. In this respect, we note however that such proposal would require detailed consideration and opportunity for the industry to comment on more developed solutions.

Please see Annex 2 for the response of AFME's fixed income members.

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. However, the public disclosure by an issuer should include a reference to the prospectus section which is relevant and an indication of the required new understanding resulting from the disclosure. The issuer's website, or the universal base document maintained on an EU central filing system if relevant, should include a re-wording of the relevant prospectus section.

Please see Annex 2 for the response of AFME's fixed income members.

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

No response.

B.4. 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? (Please provide suggestions in each of the fields you find relevant)

Yes, regarding the concept of key information and its usefulness for retail investors.

In our view the new summary format has not been a helpful development. We suggest returning to a system that allowed the issuer to present a summary of the key information it felt was most relevant for investors in that particular issue, subject to high level content requirements but without a rigid framework. This approach should help to ensure that the summary does not become formulaic and hard to understand for retail investors. We would note in particular that the comparison objective of the new formulation is not particularly relevant to equity offerings, where investors are rarely making a direct comparison between one investment and another.

Please see Annex 2 for the response of AFME's fixed income members and further detail on the interaction of PD and KID disclosure requirements.

28. For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation8, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

Other: Please see our response to Question 27.

B.5. 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?

No. We strongly oppose the imposition of any limit on the length of the prospectus, which would unduly constrain issuers with complex businesses or other matters requiring disclosure while not preventing issuers with simpler businesses producing unnecessarily long prospectuses. Any arbitrary restriction on length could raise concerns from the point of view of both prospectus liability and investor protection. Please see Annex 2 for the response of AFME's fixed income members.

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?

No. Please see our response to Question 29. Limits on individual sections could prevent an issuer putting in useful disclosure in specific situations. We do recognise that the length of the prospectus is an issue, however, and therefore support the introduction of other improvements to facilitate reducing the size of a prospectus, such as more flexible incorporation by reference provisions. We note that there is already a limit on the summary.

B.6. Liability and sanctions

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

No. As noted in our response to question 1, a key factor in promoting change in the capital markets is reform and harmonisation of the liability regimes in member states for issuers and investment banks marketing offerings. A change in market practice with regard to prospectus disclosure is unlikely while market participants remain focused on potential liability under a number of different civil liability regimes in relation to one pan-EU offering. In addition, Article 5 of the Prospectus Directive should be modified for secondary issues of securities fungible with those already admitted to trading on a regulated market, such that a short form prospectus is required only to contain all information necessary to enable investors to make an informed assessment of the 'offer'.

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

Yes. There is a strict liability regime in five countries. Class actions are available in twelve countries. Time limits for filing a claim vary between countries. The possible problem is that there could be a much greater liability in some Member States. This is a potential market distortion. A possible solution may be to allow issuers to specify in their prospectus that any action against it is brought in its home member state under that law.

C. How prospectuses are approved

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

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

Yes. In our experience not all NCAs undertake the same level of review of prospectuses submitted for approval, with varying levels of detail seen in comments from NCAs. In addition, not all NCAs meet published turnaround times for the review process, although it is difficult in all cases to isolate the impact of deal-specific factors in such delay.

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

Yes. See response to question 38.

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

No. It is helpful to the process that filings with the NCA are confidential in nature. Were such filings to be made public, we would expect issuers to become wary of making early submissions to avoid making public inaccurate or incomplete information that they would need to correct at a later stage, and the consequent exposure to additional liability. In such circumstances we would expect initial submissions to the NCA would be made later in the process when a 'near final' version of the prospectus is available. In addition, public notification of IPO submissions may have the effect of deterring some issuers from embarking on an IPO process if there is a risk of adverse publicity in the event the IPO does not proceed.

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? If yes, please provide details on how this could be achieved.

No. Using an early draft of the prospectus for marketing would raise concerns as potential investors receiving that draft may need to have changes flagged to them, which might lead to inappropriate focus on the changes made between the earlier and final versions. Furthermore, we note that that the MAR requirements, which will apply from July 2016, separately deal with the regulation of 'market sounding' exercises.

Please see Annex 2 for the response of AFME's fixed income members.

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

(a) All prospectuses should be reviewed ex ante. The other options do not provide sufficient protection for investors.

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

Yes. NCAs should approve all or none.

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

No. As mentioned in our response to question 1, the passporting regime is not commonly used in equity issues with offers outside an issuer's home member state typically making use of prospectus exemptions. In addition, there are problems in some Member States where additional requirements (different in different Member States) are applied.

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

Yes, the procedure could be made automatic.

C.2. 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. See our response to question 1. We support allowing issuers to prepare a universal base document of issuer information that would be valid for 12 months. This universal base document could be used in offering any form of equity or debt securities during its period of validity, supplemented only by specific offer information. Issuers wishing to do so could update their document on an ongoing basis through fillings made with an EU central filing system, facilitating quicker access to markets for frequent issuers without prejudicing investor protection. All filings to such an EU central system would automatically form part of the base document. We do not think a validity period of over one year would be appropriate; all new information should be consolidated in a revised document on an annual basis to ensure the document remains useful for investors.

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

I do not support. See our response to question 40(a).

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. See our response to question 40(a). We support allowing issuers to prepare a universal base document of issuer information that could be maintained on a continuous basis by incorporating by reference future filings with a central EU filing system during the life of the document. An issuer would need to supplement this universal base document with specific offer information either in a short form prospectus for issues of securities fungible with those already admitted to trading on a regulated market, or an appropriate securities note for issues of a new class of securities.

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 do not support. It is not clear why it would make sense to fragment responsibilities between NCAs. This would appear likely to lead to inefficiencies.

e) The base prospectus facility should remain unchanged

I do not support. We consider that positive changes could be made. See our responses to questions 40(a) and 40(c) above.

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

No response

C.3. 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?

Our understanding is that the tripartite regime is not much used in practice. As mentioned in our response to question 1, we suggest issuers be permitted to have a universal base document (the equivalent of an 'off the shelf' prospectus) approved by a competent authority and kept up to date by automatic incorporation by reference of filings with an EU central system. If such an approach were to be adopted, we would expect the tripartite regime to be used more frequently as issuers could supplement such a base document with securities note information for any debt or equity offering. There may be residual concerns from issuers that seeking approval for a base document creates the impression in the market that they will be raising capital soon, although this should be less of an issue where a document can be used for both debt and equity issues and prepared well in advance given the availability of automatic updating.

C.4. 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? If so, how?

a) No, status quo should be maintained.

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

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

No response.

C.5. 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. In our view there is no benefit in continuing to provide for newspaper publication. It is uncommon for a hardcopy to be requested in the context of an offer, but it would seem helpful to investors to retain this as an option.

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

Yes. We think the creation of a single, integrated EU filing system for all prospectuses produced in the EU would be advantageous. We recommend that the system go further and provide for central filing of all information made available by issuers in response to their continuing obligations, for example, under the Transparency Directive and Market Abuse Directive/Market Abuse Regulation, equivalent to the US EDGAR system. The system should be simple to access and not require registration or passwords, providing a one stop shop for investors to make comparisons across members states and sectors.

Please see Annex 2 for the response of AFME's fixed income members.

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

A single, integrated EU filing system should be readily searchable and allow information to be extracted in useful form. It should also ensure that all prospectuses and other information filed there to be hyperlinked for other regulatory disclosure purposes, for example, when incorporating by reference into another prospectus in accordance with PD or when complying with other EU regulatory requirements. As mentioned in our response to question 1 we support allowing issuers to create a universal base document of issuer information that can be continuously updated by automatic incorporation by reference of all filings made to a central EU filing system during the life of the document.

Please see Annex 2 for the response of AFME's fixed income members.

C.6. Equivalence of third-country prospectus regimes

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

Yes. We support creation of an equivalence regime for prospectuses drawn up in accordance with the legislation of third countries. The essential feature of the equivalence regime should be that the information required under the third country prospectus regime corresponds to that under the PD regime. The assessment of whether a given regime is equivalent should be principle-based and take place at the EU level and no additional determination should be necessary at the level of Member States and no reciprocity should be necessary. In addition, subsequent third country regime changes and their impact on the equivalence determination should also be addressed.

Please see Annex 2 for the response of AFME's fixed income members.

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)?

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

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

c) *Don't know/no opinion*

a) We support the development of a single equivalence regime for prospectuses drawn up in accordance with the legislation of third countries where the prospectus regime requirements are equivalent to those of the PD. Such a prospectus should not need approval and should be subject only to the notification to host Member States under Article 18 PD. This would certainly be beneficial for cross-border investment flow if a prospectus approved under third country requirements, for instance US Reg. AB, is treated as compliant with the PD.

Please see Annex 2 for the response of AFME's fixed income members.

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"

No. It would be unhelpful, and potentially increase uncertainty, to seek to redefine these terms when they are well understood in the market.

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

No. It would be unhelpful, and potentially increase uncertainty, to seek to redefine these terms when they are well understood in the market.

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

No. We are not aware of any problems in practice caused by the lack of definitions.

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? Please explain your reasoning and provide supporting arguments.

No response.

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

No response.

AFME contacts

William Ferrari, william.ferrari@afme.eu +44 (0) 20 7743 9320

Richard Middleton, richard.middleton@afme.eu +44 (0) 20 7743 9363

Anna Bak, anna.bak@afme.eu +44 (0) 20 7743 9314

Association for Financial Markets in Europe

ANNEX 1

AFME response to European Commission's Review of the Prospectus Directive

Additional information in response to Q1

13 May 2015

A full prospectus should be required whenever securities are admitted to trading on a regulated market for the first time and whenever securities that are not admitted to trading on a regulated market are offered to the public. When an issuer of securities admitted to trading on a regulated market makes a subsequent public offer or non-exempt request for admission of fungible securities it should publish a short form prospectus providing information on the offer only, to be read in conjunction with a universal base document consolidating publicly available information on the listed issuer. This would place investors in newly issued securities in the same position as investors in fungible existing securities trading in the secondary market.

This approach would require:

- **Harmonised liability regimes across the EU:** A key factor in promoting change in the capital markets is reform and harmonisation of the liability regimes in member states for issuers and investment banks marketing offerings. Any change of regulation allowing preparation of a more streamlined form of prospectus is unlikely to achieve a change in market practice if the liability of those responsible for the disclosure remains the same as under the current prospectus regime. Market participants are rightly focused on the fact that local courts will judge information given to investors with the benefit of hindsight and an issuer or other market participant may be subject to liability under a number of different civil liability regimes in relation to one pan-EU offering.
- **Article 5 of the Prospectus Directive:** Of particular relevance to the suggested new approach is modification of Article 5 of the Prospectus Directive for secondary issues of securities fungible with those already admitted to trading on a regulated market. Article 5 should be amended to clarify that the short form prospectus is required only to contain all information necessary to enable investors to make an informed assessment of the 'offer'. This would be in keeping with the model used in France ('Note D'Operations' supplementing the 'Document de Base') and Spain (terms of the offer in the 'Folleto'). In Spain the liability regime provides expressly that the banks marketing the offer cannot be liable for information outside the terms of the offer excluding, for example, disclosure on the issuer's business.
- **Consistent application of ongoing obligations under the Transparency Directive and Market Abuse Directive/Market Abuse Regulation:** This approach would place a greater emphasis on the quality of disclosures made by listed issuers under the continuing obligations regime. NCAs may wish to take additional steps to ensure that all listed issuer reporting is of an appropriate standard.
- **Central EU filing system:** We support the creation of a central EU system, equivalent to the US EDGAR system, with which all information made available by issuers in response to their continuing obligations, for example, under the Transparency Directive and Market Abuse Directive/Market Abuse Regulation, would need to be filed. Filings made with such a system should be automatically incorporated by reference into a universal base document, ensuring that it remains up-to-date for its period of validity. A central EU filing system would enhance investor protection, both on new issues and in the secondary market, by making it easier for investors to access all relevant issuer information in one place.
- **Harmonising standards with the US regime:** It is common for secondary equity offerings to be made into the US, either because the issuer has an existing US shareholder base or in order to access US liquidity to place shares not taken up by shareholders. A Rule 144A offering into the US requires a prospectus to reach '10b-5' disclosure standards, necessitating a full set of risk factors and a complete operating and

financial review. In order for changes in the EU requirements for prospectuses for secondary offers of securities fungible with those already admitted to trading on a regulated market to impact market practice, it will be necessary to seek to harmonise liability standards with the US such that a short form prospectus, taken together with a universal base document comprising a company's ongoing business description as supplemented by its filings under its 'continuing disclosure obligations', can meet US requirements.

- **Prescribed content requirements for short form prospectuses**: As with the 'building blocks' currently set out in the PD Regulation, a revised regime that contemplated short form prospectuses for secondary issues should incorporate additional 'building blocks' that address the content requirements for such document.

Association for Financial Markets in Europe

ANNEX 2

AFME response to European Commission's Review of the Prospectus Directive

High Yield and Securitisations - additional information in response to certain questions

AFME represents a broad range of European and global participants in the wholesale financial markets. Our members comprise of both equity debt financing experts and therefore in certain areas, such as matters related to the Prospectus Directive review, they may represent different points of view. This Annex is submitted in addition to AFME responses to the Prospectus Directive review via the website of the European Commission and it reflects responses to questions which are particularly relevant from the High Yield and Securitisation perspective. Furthermore, we note that in response to the particular questions below we echo arguments presented in International Capital Market Association (ICMA) response to this consultation.

This Annex contains additional information in response to the following questions:

- Q11
- Q12
- Q23
- Q24
- Q25
- Q27
- Q28
- Q29
- Q30
- Q36
- Q44
- Q45
- Q46
- Q47

A. When the prospectus is needed

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

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

No. In our view, pan-European rules on prospectuses are only required when the relevant rules and requirements (and the ensuing legal harmonisation) are necessary to correct a genuine market distortion or encourage further integration in European financial markets.

While a number of market segments could well benefit from additional harmonisation of prospectus standards, we believe that wholesale debt markets in Europe, including institutional public debt markets for

corporate debt (both investment grade and sub-investment grade), have actually achieved a level of financial integration that is sufficient as they are liquid, deep and well established.

The high-yield corporate market, in particular, has allowed corporate issuers to access a significant pool of capital across Europe, regardless of the country of origin of the relevant issuer. In fact, this market functions almost entirely through institutional trading, outside of the trading platforms of recognised stock exchanges, whether regulated or exchange regulated markets. Listings of the securities issued in this market, when sought, are affected on exchange regulated markets such as the Global Exchange Market in Ireland, the EuroMTF Market in Luxembourg or, less frequently, the London Professional Securities Market.

While investors may generally be in favour of additional disclosure, such additional disclosure would need to come, and would be more effective in that case, through market discipline and improved disclosure practices by issuers, underwriting banks and expert counsel rather than exchange-imposed prospectus standards.

Any lack of harmonisation in that area has not, to date, adversely affected the emergence of a significant and still growing European securities market for institutional corporate debt and we believe that additional prospectus requirements are not necessary and may even be disruptive. For example, additional rules might make it more difficult, or untenable, for certain securities to be admitted to trading, therefore, negatively affecting their marketability. Disclosure requirements under the Prospectus Directive might also make it more difficult, if not impossible, for certain companies (particularly SMEs) that would otherwise trade on an MTF to issue securities in European capital markets.

For these reasons, we would not support an extension of the Prospectus Directive to MTFs, and would argue, in the alternative, that any such extension, if imposed, should include a derogation for corporate debt securities that meet the requisite high denomination threshold.

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

No. As stated in the Consultation Document, the lighter prospectus framework introduced by the proportionate disclosure regime has not had its intended effect and is not widely used in practice. The main reason given for such ineffectiveness and disuse is that the regime is still perceived as too burdensome. Therefore, it is our view that the application of the proportionate disclosure regime to securities admitted to trading on MTFs would entail many of the same burdens and negative impacts described above with respect to full application of the Directive to MTFs. For this reason, as well as for the reasons stated above in our response to question 11, we do not believe that the scope of the Directive should be extended to the admission of securities to trading on MTFs, whether under the proportionate disclosure regime or not.

B. The information a prospectus should contain

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

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

Yes. The provision of Art.11 should be recalibrated for more flexibility; in terms of suggestions as to which documents should be allowed to be incorporated by reference, from structured finance perspective we suggest the following: investor reports, valuation reports (and any other expert report), all future financial information (including any filings that the relevant entity may be required to make in the U.S.) and any other regulatory information or voluntary filings made available via designated public website. We further consider that incorporation by reference should be extended to any document filed contemporaneously during the approval process, including where first time issuers are involved.

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

No. We note that without the ability to incorporate by reference TD-related 'regulated information', such information will not, absent other changes to EU law, form part of the prospectus disclosure to which specific liability and compensation provisions apply under the PD and national laws. Consideration should also be given to the effect the removal of this flexibility may have on international bond issues (e.g. from the U.S. investor perspective on 144A transactions), where retaining the ability to incorporate by reference/making part of the prospectus disclosure all of the relevant material information may also be required.

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

Yes. All 'regulated information' should be capable of being incorporated by reference in addition to the expanded list of material (as discussed above). Furthermore, we consider that allowing for incorporation by reference of specified future information would be beneficial for flexibility and hence simplification of prospectuses. In this respect, we note however that such proposal would require detailed consideration and opportunity for the industry to comment on more developed solutions.

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

No. It is our understanding that Question 25 references to publication of a supplement according to Art. 16 PD (instead of Art. 17 PD).

In our view, as long as all past and future 'regulated information', incl. MAD-related announcements, is capable of being incorporated in prospectus by reference, there is no need to separately provide for the removal of a supplement requirement when it concerns MAD-related information already disclosed to the market via regulatory announcement.

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

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

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

We support the need for reassessing the rules regarding the summary of the prospectus as a general point and support the call for a better co-ordination between PD and KID disclosure requirements. We also reiterate our view expressed in a response to the Discussion Paper on Key Information Documents for PRIIPs that it is not correct to state that a KID must be produced in respect of all instruments issued by SPVs and/or to suggest that this is the effect of the reference to instruments issued by certain special purpose vehicles and entities covered in the PRIIP definition. However, from the ABS perspective we would caution against any prescription (even high-level) for the summary content.

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

d) Other: Please see our response to Question 27.

B.5. Imposing a length limit to prospectuses

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

No. We strongly oppose the imposition of any limit on the length of the prospectus. We urge the Commission to note that while in the context of plain vanilla debt issues the number of aspects required to be addressed by disclosure is relatively limited, in structured deals, there will be many additional disclosure considerations driven by the structure of the transaction, the nature and jurisdiction of underlying assets, counterparties involved, rating agency requirements and certain ABS-specific legal considerations. Therefore, compliance with any requirement imposing a limit on the length of the prospectus in the context of a structured bond issue will be very challenging (if not impossible) in practice for the relevant issuers and will also give rise to concerns from the prospectus liability and investor protection perspectives. Saying that, we do recognise that the length of the prospectus is an issue and therefore we support the introduction of other improvements to facilitate reducing the size of a prospectus, such as more flexible incorporation by reference provisions.

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

No. Please see our response to Question 29.

C. How prospectuses are approved

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

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

No. We do not consider it is necessary or practical to regulate under the PD regime the marketing activities in the period between the first submission of a draft prospectus and the approval of its final version. Marketing activities on the basis of a preliminary prospectus are commonly carried out in the context of certain types of bond issues (including ABS) and there is no clear case as to why a specific regulation of such activities is required to be provided for under the PD regime. Furthermore, we note that that the MAR requirements, which will apply from July 2016, separately deal with the regulation of 'market sounding' exercises.

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

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

Yes. We support a single mechanism for EU filing system of prospectuses for all securities subject to the PD, TD and MAR/MAD regimes. The main benefit of such mechanism is that it would provide efficient access to and allow avoiding duplication of information. Consequently, it potentially will reduce costs for both issuers and EU regulators.

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

The essential features of such filing system would be to ensure that all prospectuses filed there can be hyperlinked and for such link being capable of being used for other regulatory disclosure purposes, for example, when incorporating the relevant prospectus or information contained therein by reference into another prospectus in accordance with PD or when complying with other EU regulatory requirements.

C.6. Equivalence of third-country prospectus regimes

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

Yes. We support in general the creation of equivalence regime for prospectuses drawn up in accordance with the legislation of third countries. The essential feature of the equivalence regime should be that the information required under the third country prospectus regime is corresponding with the PD regime. The assessment whether given regime is equivalent should be principle-based and take place at the EEA level. We consider that no additional determination at the level of Member States and no reciprocity should be necessary. In addition, subsequent third country regime changes and their impact on the equivalence determination should also be addressed.

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

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

We support the development of an equivalence regime for prospectuses drawn up in accordance with the legislation of third countries where the prospectus regime requirements are equivalent to those of PD. Such a prospectus should not need approval, but it should be subject to the publication requirement in accordance with the PD regime (with corresponding adjustments made to the application of the passporting regime/requirements under the PD). This would certainly be beneficial for cross-border investment flow if a prospectus approved under third country requirements is treated as compliant with PD.