EUROPEAN COMMISSION CONSULTATION DOCUMENT

REVIEW OF THE PROSPECTUS DIRECTIVE

13 May 2015

SUMMARY OF MAIN AMF PROPOSALS

- We should adapt our approach for secondary issuances of seasoned issuers on the regulated market

The prospectus remains **essential for primary offerings** as the issuer is yet unknown to market. When **secondary issuances** do not reflect a significant change in the overall perimeter or situation of the issuer, we believe the prospectus **does not meet its main purpose** of providing potential investors with qualitative and comprehensive information on both the issuer and the security that they are contemplating investing in.

In that respect, the current admission exemption threshold set at a maximum dilution of 10% **could be increased up to 20%**. For the same reason, this threshold should be applied to **all secondary issuances** (without the additional criteria of the offer to the public, i.e. the 5M€ or 150 subscribers and with no difference between plain vanilla equity or equity linked products).

This being said, **NCAs have some key concerns** related to the prospectus regime that need be taken into account: how to ensure some level of harmonisation at the European level, what tools NCAs should keep or obtain to be able to address effectively potential harmful financial operations and how to accommodate the investors' minimum disclosure requirements (cf. offering circulars / admission documents "spontaneous" content).

In this perspective, the **quality of the information made regularly available** to the market is another issue to bear in mind as, where it improved, we could capitalize on it to offer more flexibility to the issuers. The annual report defined by the Transparency Directive is quite remote from the registration document described in appendices I and IV of the European rules 809/2004 (that are used in France by many issuers to draw and file with the AMF every year a "document de reference") and, if we look at foreign standards, from the US 10-K.

On that basis, the simplification of the European prospectus system could be based on full exemptions for issuers and issuances fulfilling the **following set of conditions**:
- repeated filing of a reinforced annual report (more comprehensive than the actual TD standard, that could be defined as an optional standard in the Prospectus Regulation);
- no dispute between the issuer and the NCA regarding periodic and permanent information ;
- reasonable dilutive impact of the issuance (less than 20%) for equity and equity linked products;
- issuance related standardized press release, pre-approved by the NCA.

These exemptions would be suspended in the event of a breach or major disagreement between the issuer and the NCA regarding its communication.

An **extension to debt instruments** could be envisaged with the problem of defining a suitable criteria equivalent to the dilution (increase in the gross debt / EBITDA or Core Tier 1 ratios could be candidates).

- There is room for some improvement of the SME proportionate regime that should be available to all SMEs (same format on the regulated market and MTFs)

This objective is not new and quite difficult but **some streamlining is possible**, essentially related to the **duplication of the information** (on financial performance for example) and enhancing the **materiality filter** the issuers need to use for their disclosure, for instance in the business model and risk factors sections.

- Extending the admission prospectus to MTFs would create a heavy burden for SMEs

The flexibility offered to issuers who are traded on a MTF for the admission of their securities (when the issuance does not qualify as an offer to the public) is a **key component of the attractiveness of the MTF platforms**. In the perspective of enhancing SMEs' access to the financial markets, this flexibility should be maintained.

- The summary has become of little use and does not fulfill its primary purpose: providing a synthetic and accessible summary of the financial operation, its issuer and context

The summary became a "**mini-prospectus**". A new approach seems necessary, that could be inspired by the work done on the **Key Investor Document** related to the PRIIPS European rule. The new format would **be 4 or 5 pages**, tailored to issuer and issuance related topics (business model and activity, risk factors, category of issued instruments, shareholding structure, latest financial performance etc.) written in **a plain language** and with the possibility to include **some references** to focus the document on the key messages, notably when the issuance is covered by a KID under PRIIPs Regulation.

- The *a priori* approval system should remain the rule as the European system is not sanction oriented and not yet equipped for that

Making public the interactions between the issuer and the NCA during the preparatory phase would very often raise confidentiality issues. The potential benefits do not seem significant enough to justify facing these issues (considering class actions are not yet possible on the European market).

- The offer to the public thresholds should not be changed but some precision could be made in the overall definition of the offer to the public concept

We have **no evidence** that the thresholds are **not well calibrated**. National regimes under the €5M threshold should also be maintained given the variable size of the markets. Regarding the overall definition that is currently very wide**, 2 criteria** seem to **crystallise the divergences**: (i) the "communication to persons in any form and by any means" and (ii) "enabling an investor to decide to purchase or subscribe to these securities".

- The action of the NCAs on marketing and advertising materials should be promoted

Many issuances of securities involve a **strong marketing approach** and the AMF pays great attention to these materials. We have developed four criteria for appraising misselling risks: poor presentation of the risks and payoff profile of the product, retail clients' lack of familiarity with the financial instrument because of the underlying assets used, payoff profile depending on the simultaneous occurrence of several conditions across two or more asset classes and number of mechanisms in the formula for calculating the financial instrument's payoff. The prospectus legislation ma**y adequately better acknowledge the role and powers of both home and host competent authorities in that respect,** in relation with the new MiFID provisions regarding product intervention.

- Some instruments that are not securities should be included in the Prospectus perimeter

The capital structure of some issuers is based on specific instruments, typically members' shares or certificates that are not seen as transferrable securities but may **have similar economic characteristics** as equity or debt securities. As recently stated by ESMA in its recent advice on equity-based crowdfunding, such non-financial instruments might also be offered to circumvent the prospectus regime. Covering all types of instruments that have the same economic characteristics as equity or debt securities would be economically consistent and allow for a better investor protection and information to the market.

- A genuine third-country equivalence regime

The current regime is incomplete and should be replaced by a single, integrated equivalence regime under condition of reciprocity.

- The sanction regime could be made more harmonised and more efficient

In practice, investors or issuers are **usually sanctioned under the Market Abuse** regime rather than under the Prospectus Directive because it is rather difficult to evaluate the impact on the market of the lack of filing the required documentation. An **automatic / fixed sanction** could be an efficient repellent for these objective infringements and behaviours, and providing a more precise sanction regime would be consistent with the approach taken under sectorial directives (Transparency, UCITS V…).

- The base prospectus is an efficient tool, for debt issuances

The base prospectus is well used by market participants for debt securities. On the other hand, the **relevant authorisations / decisions regime** (approval by shareholders' general meetings and/or board of directors) for **shares or equity-linked issues is quite different** and the description made in the base prospectus would not be adequate. More flexibility could also be granted on tripartite base prospectuses and on the validity period of base prospectuses, without necessarily extending this validity above 12 months.

I. INTRODUCTION

(1) Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for:
■ Admission to trading on a regulated market
■ An offer of securities to the public?
■ Should a different treatment be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public). If yes, please give details.
☐ Other
☐ Don't know/no opinion
Textbox:
[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 characters maximum)]

The purpose of a prospectus is primarily to provide potential investors with qualitative, understandable and comprehensive information on both the issuer and the security that they are contemplating investing in.
When the issuer is not yet known to the market (IPO or first admission to trading), this purpose is even more acute, whether there is an offer to the public or not since the prospectus is the only way to ensure that an independent authority has approved the content of the document made available to potential investors.
The admission of securities (with or without a public offering) of an issuer already listed may deserve a different treatment with lighter requirements or an exemption of prospectus, especially within the framework of secondary issuances without a major diluting effect or related to plain vanilla bonds.

(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 (between how many euros and how many euros for a total consideration of how many euros):

	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 a X in the next three fields)			

Textbox: [Additional comments on the cost of producing a prospectus (1,000 characters maximum)]

AMF charges a fee for prospectus approvals: (i) 1 000 € per registration document, (ii) 1 500 € per base prospectus, (iii) 0,02% of the value of the issued equity or equity-based instruments and (iv) 0,005% of the value of the issued debt or debt-based instruments.
We do not have a precise view on the different production costs of a prospectus. This being said, producing a prospectus requires the assistance of several services providers (underwriters, listing sponsors, communication and investor relation specialists, legal advisors, auditors, exchange, *etc*.) and to devote human resources. Some of the fees related to these services are proportional to the amount of capital raised and others are fixed costs. In fact, while IPO fees amount to 2 to 3% of the capital raised on average, they can reach up to 6-10% for small companies due to the fixed costs. Logically the costs for an IPO are higher than for secondary issuances.
Internal and indirect costs might also have to be considered, such as reorganization and human costs (new recruitments, creation of new departments).
Nevertheless, the alternative financing routes (private placement, bank loans, high yield etc.) would also require arrangement, commission and legal fees.

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

	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 a X in the next field)	

Textbox: [Additional comments on the share in the total costs of a prospectus (1,000 characters maximum)]

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**
Textbox: [Additional comments on the fraction of the costs indicated above that would be incurred by an issuer anyway (1,000 characters 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 are outweighed by the benefit of the passport attached to it?
○ **Yes, a percentage of the costs above would be incurred anyway**
○ **No**
● **Don't know/no opinion**
Textbox: [Additional comments on the possibility that additional costs are outweighed by the benefit of the passport attached to the prospectus (1,000 characters maximum)]

There would logically be distribution costs for each market notwithstanding the passport if the offering is made to retail investors.

II. ISSUES FOR DISCUSSION

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):
○ **Yes, from EUR 5 000 000 to EUR [***enter monetary figure***]**
● **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the EUR 5 000 000 threshold (1,000 characters maximum)]

This threshold appears well calibrated, especially for small IPOs or secondary offers initiated by SMEs or growth companies which benefit from a prospectus providing investors with accurate and comprehensive information. The AMF has no actual evidence of a more appropriate higher threshold.

b) the EUR 75 000 000 threshold of Article 1(2)(j):
○ **Yes, from EUR 75 000 000 to EUR [***enter monetary figure***]**
● **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the EUR 75 000 000 threshold (1,000 characters maximum)]

This threshold is rarely applied in France; the vast majority of banks' issues are above this size.

c) the 150 persons threshold of Article 3(2)(b)
○ **Yes, from 150 persons to [***enter figure***] persons**
● **No;**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the 150 persons threshold (1,000 characters maximum)]

This figure somehow refers *per se* to a quite large number of investors and can be understood as a quantitative starting point of the "public", notwithstanding the absence of legal definition of this notion. However, it is acknowledged that such a threshold, regardless of the figure, is in practice difficult to monitor and control for issuers and underwriters. It also constitutes a barrier for securities crowdfunding. Yet, the AMF has no precise view on where a more relevant threshold should be placed, if it were to be raised.

d) the EUR 100 000 threshold of Article 3(2)(c) & (d)
○ **Yes, from EUR 100 000 to EUR [***enter monetary figure***]**
● **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the EUR 100 000 threshold (1,000 characters maximum)]

Although the € 100,000 threshold may have some drawbacks, for instance for the repurchase of unit-linked life insurance contracts, the AMF believes that reducing it (and coming back to the former € 50,000 threshold) to allow for a larger exemption would not bring obvious benefits or may create new inconsistencies, notably considering:

- The uncertain impact on liquidity of the raise introduced with the 2010 revision.
- The importance of this threshold for the asset management industry, € 100,000 being the minimum subscription amount for certain alternative investment funds which are accessible only to professional investors.
- The need to avoid having a negative impact on marketable short-term debt instruments, the French regime of which provides for a minimum counter value of € 150,000 or € 200,000, depending on the instruments.

(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**
Textbox: [Please justify your answer on whether more harmonisation be beneficial (1,000 characters maximum)]

Article 211-2 of the AMF General Regulation provides that within the meaning of Article L. 411-2 of the Monetary and Financial Code, an offering of financial securities constitutes a public offer if its total amount in the Union is between € 100,000 and € 5,000,000 (or the foreign currency equivalent thereof) and the transaction concerns financial securities accounting for more than 50% of the capital of the issuer.
The AMF believes that this latter condition is justified by the major impact such an offering, while being proposed to the public, exerts on the shareholding structure and the financial profile of the issuer. This flexibility is also justified by the discrepancy in size of national markets, so that public offers may be significant under € 5 million. Moreover, this threshold is substantially higher than the amount of the majority of equity crowdfunding offers. Consequently, the AMF is believes that further harmonisation is not necessary for offers between € 100,000 and € 5,000,000.

(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.
● **Yes**
○ **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the possibility of including a wider range of securities in the scope of the Directive (1,000 characters maximum)]

The capital structure of some issuers, such as cooperative and mutual banks or insurance companies, is based on specific instruments, typically members' shares ("parts sociales" in French) and certain types of certificates, which are not seen as transferable securities but, from an investor's (and among them, the issuer's clients) perspective, are similar to that of transferable securities. Pursuant to article 212-38-1 of AMF General Regulation, such offerings can be subject to a prospectus on a voluntary basis and would therefore need to comply with the same regime as that applicable to transferrable securities. A specific set of information is in any case (whether or not the prospectus option is retained) required under the French regulation.
In other situations, as stated by ESMA in its recent advice on equity-based crowdfunding, such non-financial instruments might also be offered to circumvent the prospectus regime.
In that respect, covering all types of instruments that have the same economic characteristics as equity or debt securities would be economically consistent and allow for a better investor protection and information to the market.

(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**
Textbox: [Please justify your answer on possible other area (1,000 characters maximum)]

Plain vanilla bonds issuances could also benefit from a prospectus exemption when a reasonable leverage increase is involved. The corresponding threshold could be based on a measure of the increase in the ratio Gross debt / EBITDA or, for credit institutions, the increase in the Core Equity Tier One ratio.
Some harmonization regarding equity-linked products could also be beneficial: the dilution timing is not a sufficient justification for a different threshold from the shares issuances (see below answer to question n° 8).
Whereas it is not directly related to the prospectus, a certain degree of harmonisation of information provided to investors for offers of securities made on crowdfunding platforms (regulated under national MiFID exemptions or investment services providers' regimes) under the prospectus' thresholds should be envisaged. Considering the extension of this activity, such harmonisation will prove necessary both to strengthen investor protection and to ease pan European development of crowdfunding providers, by enabling issuers and platforms to avoid dealing with several national information regimes. A template providing basic information on risks and perspectives of the project to be funded could then be introduced by means of European legislation (possibly under PD sections on exemptions) or recommendation.

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**
○ **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the possible mitigation of the obligation to draw up a prospectus (1,000 characters maximum)]

Assuming that the issuer provides the market with timely and relevant information updates, some subsequent secondary issuances should be exempted beyond the current framework as in theses occurrences, the added value of a prospectus for the market would be limited.
This being said, to ensure the necessary protection of the investors, such exemption should be made available only to those issuers that would have demonstrated their capacity and willingness to provide suitable and timely information to the market. Our experience shows that a significant part of the effort for issuers to reach this level of compliance is made during the first couple of years of trading, through the interactions with the NCA and investors on the initial offering prospectus and the subsequent documents.
An exemption regime could therefore be offered to "well known, seasoned issuers". This regime could be inspired – more in terms of objective than procedural features – by the WKSI system introduced by the SEC in 2005 while accommodating for differences in market sizes and liability regimes (it is crucial to understand that the class action system and publicity of SEC reviews of the WKSIs shelf registrated documents foster a strong incentive for issuers to comply with maximum disclosure rules).
This label could be granted following a period of time of satisfactory exchanges with the NCA and provided that the issuer would file on an annual basis a synthetic annual report that includes the annual accounts, the relevant information required under the Transparency and Market Abuse Directives as well as shareholding structure, key relevant risk factors and governance presentation (the components of the US 10-K or 20-F that are the annual documents required to be filed annually by the SEC are not dissimilar to these items). A specific press release would also have to be issued before the issuance (see below answer to question n° 9).
This label would be optional for any issuer listed on a regulated market and could be rescinded upon any breach in the issuer's disclosures obligations or dispute with the NCA.

(9) How should Article 4(2)(a) be amended in order to achieve this objective? Please state your reasons.
● **The 10% threshold should be raised to [20]%**
○ **The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued.**
○ **No amendment**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the amendment of Article 4(2) (1,000 characters maximum)]

The 10% threshold could be raised up to 20% and extended to all equity and equity-linked securities issued by "well known, seasoned issuers", as explained above in the answer to question n°8, provided that:

(i) the relevant information under the TD and MAD/MAR is up to date,
(ii) the issuance is described in a specific press release (notably containing the main risk factors, a working capital statement and essential information on the securities to be listed). The issuer should also request non-objection from the NCA on the press release before publishing it, and
(iii) the issuer filed with the NCA an annual report (based on a pre-agreed framework) providing a financial statement and information on the ownership structure, key risk factors and main corporate governance

features. At least one annual report following the year of an IPO or two successive annual reports would have to be filed.

This exemption would relate to secondary issuances of equity or equity-linked securities, whether or not they fell under the prospectus obligation because they constitute an admission to trading or an offer to the public representing a dilution superior to 10% of the capital.

(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
Textbox: [Please justify your answer on the convenience of having a timeframe for the exemption (1,000 characters maximum)]

The exemption criteria should not be conditional to a full prospectus having been approved within a certain timeframe, but should depend on timely and accurate information provided by the issuer on an annual basis (see above question 8) as well as an update of its financial situation at the time of the issuance. Such information on a regular basis would provide better safety to investors than a prospectus possibly not having been approved for a longer period.

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.
○ Yes, on all MTFs
○ Yes, but only on those MTFs registered as SME growth markets
● No
○ Don't know/no opinion
Textbox: [Please justify your answer on whether a prospectus should be required when securities are admitted to trading on a MTF (1,000 characters maximum)]

The current articulation between MTF and RM platforms aims to reflect the different profile and maturity of the issuers whose securities are admitted to trading. An escalating scale of constraints, which is known to investors, allows issuers to choose the market best suited to their needs. Therefore, the flexibility offered to issuers who are traded on a MTF for the admission of their securities when they do not qualify as an offer to the public should remain as it constitutes a key component of the attractiveness of the platform. Although the frequent higher risk profile of these issuers could be used as an argument to push for an extension of the prospectus obligation, strong similarity, at least in the topics visited, between the prospectus format and the content of the offering circulars or admission documents required by most of the MTF should be a strong mitigant to that argument.

(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.
○ Yes, the amended regime should apply to all MTFs
○ Yes, the unamended regime should apply to all MTFs
○ Yes, the amended regime should apply but not to those MTFs registered as SME growth markets
○ Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets
● Yes, the amended regime should apply but only to those MTFs registered as SME growth markets
○ Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets
○ No
○ Don't know/no opinion
Textbox: [Please justify your answer on the possible application of the proportionate disclosure regime (1,000 characters maximum)]

Considering the current proportionate regime is quite well used by the SME issuers listed on the regulated market (at least in France), it should remain available to them. Regarding the issuers listed on an MTF, in so far as the proportionate regime is tailored for SMEs, it would seem logical to also apply it to the SME growth markets platforms if the prospectus regime were to be extended to admissions to trading on MTFs. There also seems to be some leeway to improve the proportionate regime (see below answer to question n° 18 b).

A.4. 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)[5] of the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document? Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds.
● **Yes, such an exemption would not affect investor/consumer protection in a significant way**
○ **No, such an exemption would affect investor/consumer protection**
○ **Don't know/no opinion**
Textbox: [Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds (1,000 characters maximum)]

The ELTIF Regulation aims at boosting European long-term investments in the real economy and lays down specific rules regarding the composition of their portfolio and the investment instruments that they are allowed to use. EuVECA and EuSEF Regulations, which aim at establishing uniform rules applicable to venture capital and social entrepreneurship funds, lay down quality requirements for the use of the labels.
EuVECA and EuSEF funds are meant to be marketed on a wide range scale and an exemption from the prospectus requirements, provided that investors' protection is met through the PRIIPs Regulation, seems sensible as it would favor their take up. Somehow, when granting such an exemption one should make sure that if shares of such funds are admitted to listing this should not provide any opportunity for marketing these elsewhere than towards the initial targeted customers.
Concerning the ELTIF Regulation, an exemption seems sensible too since its retail investors would already be protected both by the PRIIPs Regulation and the specific ELTIF prospectus. As with EuVECA and EuSEF, when granting such an exemption one should make sure that where a public offer of such shares is made the ELTIF prospectus should not be duplicated by a second prospectus in the sense of the considered Directive 2003/71/EC, but that it should only be enhanced in order to meet the latter's requirements.

A.5. 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**
○ **No**
○ **Don't know/no opinion**
Textbox:

This US regime (exemption) is very interesting in this perspective as many US companies or subsidiaries which are not listed in the EU have a large pan-European basis, so that such an extension would provide flexibility and easier access to these issuers' shares for employees. Yet, it should be outlined that this exemption framework also relies on investment caps based on their employees' revenues. These caps provide some security for the employees' financial resources diversification and should also be part of the discussion in Europe.
Considering the nature of the offer, such an extension should also be subject to a specific equivalence regime, regarding accounting standards applicable in the non-European country.

A.5. Balancing the favourable treatment of issuers of debt securities with a high denomination per unit with liquidity on the debt market

(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?
○ **Yes**
●**No**
○ **Don't know/no opinion**
Textbox:
[Please justify your answer on whether the system of exemptions may be detrimental to liquidity in corporate bond markets (1,000 characters maximum)]
[Please justify your answer on whether the EUR 100 000 threshold should be lowered (1,000 characters maximum)]

Considering that this threshold was previously set at € 50,000 and that the increase of this threshold has had no material impact on the liquidity of this market, it does not seem to be a significant limiting factor. Although the currently acknowledged lack of liquidity may be correlated to the € 100,000 threshold, this does not account for a

causality which is mainly to be related to other factors, notwithstanding the fact that the liquidity of the bond market, due to a frequent “buy and hold” behavior, is *per se* not fully comparable to that of the equity market.

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?
○ **Yes**
○ **No**
● **Don't know/no opinion**
Textbox: [Please justify your answer on whether the proportionate disclosure regime has met its original purpose (1,000 characters maximum)]

This regime is rarely used in France, especially those regarding credit institutions and rights issues, and therefore does not seem to have met its original purpose.

(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**
Textbox:

In practice, this regime is almost never used because the issuers usually file every year with the NCA a “document de reference” (based on the registration document provided by Annex I of the Commission Regulation 809/2004) that provides the required information related to the issuer. The prospectus incorporates by reference this document (and its required updates) when the issuer decides to issue some securities – the proportionate disclosure regime does not offer significant streamlining upside in that respect. Moreover, this regime does not sufficiently take into account the knowledge existing shareholders might have of the issuer through the disseminated regulated information.

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation
● **Yes**
○ **No**
○ **Don't know/no opinion**
Textbox:

This exemption regime is quite often used by the SMEs for their IPOs (14 out of 20 SME IPOs in 2014), mainly due to the number of sets of accounts that need to be produced (2 years vs. 3 years) but they usually still produce half yearly financial statements, although they are not required by the proportionate regime.

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC
○ **Yes**
● **No**
○ **Don't know/no opinion**
Textbox:

This regime is not used in France because credit institutions also use the “document de reference” system. Small institutions from the mutualist sector also issue specific equity securities (“parts sociales”) that are not financial instruments and therefore do not fall into the PD regime but are covered by a similar national regime (see above answer to question n°6).

(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
Textbox: [(1,000 characters maximum)]

This regime would better be replaced by the well-known seasoned issuer exemption regime (see above answers to questions n° 8 and 9), the scope of which would cover any issuance (admission or offer) of securities or rights below a certain diluting effect.

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation
Textbox: [(1,000 characters maximum)]

This regime could benefit from further streamlining in order to build a simplified prospectus focusing on SME relevant topics.
The minimum elements are not substantially different from the standard prospectus: description of the issuer, its keys risk factors, its financial performance, its governance, its shareholder structure, its key contracts and assets, the description of the investment contract related to the issuance (nature, characteristics and conditions of the securities, related risks), the impact and rationale of the operation. The possible areas for streamlining are essentially related to avoiding the duplication of the information (on financial performance for instance), a shorter presentation of some sections (for example the governance section could better reflect some of the effort of presentation tailoring recently produced in France with professionals' associations) and enhancing the materiality filter the issuers need to use for their disclosure, for instance in the business model and risk factors sections.

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC
Textbox: [(1,000 characters maximum)**]**

Considering the reasons why this regime is not used in France (alternative procedure), we see no need to amend (or keep) it.

(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? Please specify**
● **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**
Textbox: [Please justify your answer on to whom the proportionate disclosure regime should be extended (1,000 characters maximum)]

See above answer to question n° 12.

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**
○ **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the possible alignment 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 (1,000 characters maximum)]

This alignment would provide an increased visibility and simplicity for investors and avoid the inconsistency stemming from the current two definitions of the same kind of issuers. The alternative economic criteria currently applicable for the eligibility to the proportionate regime should be maintained for SMEs since some companies (like biotechnologies) – although these cases may be rare – may have greater capitalisations but real SMEs constraints.

(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** (only if the PD scope is extended)
○ **No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets.**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the possible creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on a SME growth market (1,000 characters maximum)]

As stated in our answers to questions n°12 and 18 b), such a simplified prospectus would be needed only if the prospectus regime were to be extended to admissions on SME growth markets, and should consist in a better SME proportionate regime, through an additional simplification effort.

(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.
Textbox: [Please describe the minimum elements needed of a simplified prospectus for SMEs and companies with reduced market capitalization admitted to trading on a SME growth market (2,000 characters maximum)]

See above answer to question n° 18 b), as the same proportionate regime would apply on RM and SME GM.

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**
○ **No**
○ **Don't know/no opinion**
Textbox: [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 characters maximum)]

In order to decrease the size of prospectuses while providing accurate information and to remove some legal obstacles of the current Article 11, this regime could be extended to all the documents that are voluntarily filed with the NCA, provided that voluntary filing is not without limits and that these documents are required under the Prospectus and Transparency directives or Market Abuse regulation. The liability regime related to these incorporations should also be clarified to allow for a secure and consistent integration of the related documents, especially when they are not approved by the NCA (such as registration documents). This should also allow for incorporation by reference of the documents filed by SME GM issuers in compliance with the market rules and those of the upcoming delegated regulation regarding periodic financial reporting by issuers**.**

(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**
Textbox: [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 characters maximum)]

A reference should still be made to facilitate the understanding of and access to the relevant information for investors. The reference would also be instrumental to protect the responsibility regime related to the 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**
Textbox: [Please justify whether you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive (1,000 characters maximum)]

(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**
Textbox: [Please justify whether the above-mentionned 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 characters maximum)]

These disclosures do not cover all potential situations, for example public withdrawal of a statement previously made by the management. The key difference between the permanent information regime and supplements lies in the withdrawal right provided to investors by the latter. This right, related to a major new event, figure or information at the time of the issuance, is of prominent importance for investors as it allows them to reassess the global interest of the operation and possibly change their investment decision on a new basis.

(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
Textbox: [Please justify whether you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive (1,000 characters maximum)]

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
○ 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
Textbox: [Please justify your answer on the possibility to reassess the rules regarding the summary of the prospectus (1,000 characters maximum)]

The prospectus summary is currently very much codified, often too long and mechanically assembled, hence resembling a “mini prospectus”. A new approach seems necessary and an alternative could consist in using a format inspired by the KID template with 4 or 5 pages, obviously tailored to issuer related topics (business model and activity, risk factors, category of issued instruments, shareholding structure, latest financial performance etc.), especially in the case of IPOs, rather than attempting to substantially limit the current format or to come back to the original spirit of PD 2003.

(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. Please indicate which redundant information would be concerned
○ 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
Textbox: [Please justify your answer on the possible ways to address the overlap of information required to be disclosed (1,000 characters maximum)]

The new summary format (as mentioned under question 27) – inspired by the KID template but preserving the current summary’s liability regime – should apply to all types of issuances and securities, being or not under the scope of PRIIPS Regulation (the summary would therefore not be eliminated for securities falling under the scope of PRIIPs). Compared to the KID, this new brief summary would at least add value by providing essential information on the issuer, specific risk factors and the purpose of the operation.
In order to reduce the administrative burden for issuers, limited references to the KID’s content (information on securities) could be made in this new summary or, if the current prohibition of incorporation by reference in the summary were to be maintained (and considering the distinct timeframe and liability regime of the summary and the KID), the same information on securities could be inserted in both documents.

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?
○ Yes, it should be defined by a maximum number of pages and the maximum should be [figure] pages
○ Yes, it should be defined using other criteria, for instance: [textbox]
●No
○ Don't know/no opinion
Textbox: [Please justify your answer on the possible introduction of a maximum length to the prospectus (1,000 characters maximum)]

A maximum length would not allow for the necessary flexibility associated with the complexity of some operations or issuers, not to mention the difficulty to establish the "right" limit.

(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?
Textbox: [(1,000 characters maximum)]

An alternative to the maximum length could be to define a maximum number of risk factors listed and described in the prospectus, or to limit the global length of these factors (whatever their number), in order to get rid of the "disclaimer" tendency. The directive should at least provide that the information on risk factors needs to be very specific, precise and accurate, and not generic, legalistic or comprehensive.

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?

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

Textbox: [Please justify your answer on the adequacy of the liability and sanctions regimes the Directive provides for (1,000 characters maximum)]

It is understood that the prospectus should be signed by one person, who is therefore the only person liable under the civil regime. In practice, this is not always possible (asset contributions, spin-off…). It seems more desirable to align the liability regimes amongst Member States in that respect and to avoid having joint responsibility for several stakeholders in addition to a global liability for one person.
Regarding the sanctions regime, in practice, investors or issuers are usually sanctioned under the market abuse regime (especially dissemination of false or misleading information) rather than under the Prospectus Directive. The reason for this is that it is rather difficult to evaluate the impact on the market of the lack of filing the required documentation. An automatic / fixed sanction could be an efficient repellent for these objective infringements and behaviors**.** As provided in other sectoral directives such as Transparency, UCITS V or MIFID, the sanction regime should also specify the breaches, sanctioning powers and exercise of these powers, especially in the case where a non-exempt public offer is made without prospectus in violation of its scope and provisions.

(32) Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive? If yes, please give details.
○ Yes
○ No
● Don't know/no opinion
Textbox: [Please justify your answer on possible problems relating to multi-jurisdiction (cross-border) liability (1,000 characters maximum)]

The French AMF has not experienced actual issues related to multi-jurisdiction liability. Uncertainties may however occur when a registration document is used in several Member States and scrutinized by more than one NCA.

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?
● **Yes**
○ **No**
○ **Don't know/no opinion**
Textbox: [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 characters maximum)]

As stated in a recent thematic convergence study undertaken by ESMA, there are some areas where differences in the level of scrutiny applied by NCAs may lead to an unlevel playing field, and which would deserve greater convergence of NCA practices, such as: factors of a risk-based approach, approach to consistency with external sources, scrutiny of historical financial information (and complex financial history) or scrutiny of information regarding capitalisation and indebtedness. The French AMF supports ESMA's role of promoting a better harmonisation of NCA practices and welcomes any corresponding initiative, which may prove to be efficient.
Our experience also shows that a high level of scrutiny on the quality and consistency of the information provided by the issuers in the early years of trading provides them with a sound framework going forward and "easier to maintain" quality standard of information.

(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**
● **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on possible need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs (1,000 characters maximum)]

A prerequisite for the alleviation proposals made in section B is that the NCAs can make sure the information initially provided by the issuers is sufficiently accurate, consistent and comprehensive to enable the investors to make an informed decision. In that perspective, a lighter prospectus regime may imply a more qualitative dialogue between the NCA and issuers and a simplified box ticking approach would be significantly detrimental to the market integrity.
Clarifying the notions of comprehensibility and consistency in the directive or under level 2 would help reducing room for forum shopping.

(35) Should the scrutiny and approval procedure be made more transparent to the public? If yes, please indicate how this should be achieved.
○ **Yes**
● **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on the opportunity to make the scrutiny and approval procedure be made transparent to the public (1,000 characters maximum)]

Making public the interactions between the issuer and the NCA during the preparatory phase would very often raise confidentiality issues and occasionally lead to superfluous legal proceedings whether the issuer is already listed or not. The potential benefits do not seem significant enough to justify facing these issues.

(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.
○ **Yes**
● **No**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on 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 characters maximum)]

For already listed issuers, allowing marketing activities based on a draft prospectus would expose the investors to a significant risk than could only be counterbalanced by a severe sanction regime related to wrongful information disclosure. Considering the answers provided to question 31, it does not seem advisable.

The approach can be different for initial offerings as there is yet no market to harm: the AMF already allows marketing activities based on the base registration document once it is approved (this document follows the current Appendix I format). Such an approach is also conceivable on a short period of time for wholesale bonds issues.

(37) What should be the involvement of NCAs in relation to prospectuses? Should NCAs:
● **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**

Textbox: [Please describe the possible consequences of your favoured approach, in particular in terms of market efficiency and invest protection (1,000 characters maximum)]

The considered alleviations (B section) would probably reduce significantly the number of prospectuses and reinforce the importance of the credibility of the remaining ones. Ex post approval may increase the risk of arbitrariness and, where based on a risk-approach, compel NCAs to provide justification for selecting the sample of prospectuses.

(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**
○ **No**
● **Don't know/no opinion**
Textbox: [Please explain your reasoning and the benefits (if any) this could bring to issuers (1,000 characters maximum)]

The market operator's decision to admit securities to trading and the NCA's approval of the corresponding prospectus are in practice well-coordinated (in terms of timeframe and exchange of information) on the French market. Such alignment is necessary to prevent any risk of subscription of securities that would eventually not be admitted to the trading platform.

(39) (a) Is the EU passporting mechanism of prospectuses functioning in an efficient way? What improvements could be made?
● **Yes**
○ **No**
○ **Don't know/no opinion**
Textbox: [What improvements could be made to the EU passporting mechanism of prospectuses (1,000 characters maximum)]
Textbox: [Please justify your answer on whether the EU passporting mechanism of prospectuses is functioning in an efficient way (1,000 characters maximum)]

Sent passported prospectuses account for a minority of total prospectuses approved by AMF (around 13% in 2013) but represent quite a large proportion of non-equity prospectuses. The AMF has not encountered major difficulties regarding the passport mechanism for prospectus sent or received.

(b) Could the notification procedure set out in Article 18, between NCAs of home and host Member States be simplified (e.g. limited to the issuer merely stipulating in which Member States the offer should be valid, without any involvement from NCAs), without compromising investor protection?
○ **Yes**
● **No**
○ **Don't know/no opinion**
Textbox: [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 characters maximum)]

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**
● **I do not support**
Textbox: [Please justify your answer on whether or not you support the possibility of 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 (1,000 characters maximum)]

The relevant authorisations / decisions regime (approval by shareholders' general meetings and/or board of directors) for shares or equity-linked issues is quite different and the description made in the base prospectus would not be adequate for this extended use. A broader exemption for secondary issues (in terms of securities as well as diluting impact), as described in answers to questions 8 and 9, would also in some ways meet the same objective, so that the benefits for such an extension do not seem to exceed its disadvantages.

b) The validity of the base prospectus should be extended beyond one year
○ **I support**
● **I do not support**
Textbox: [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 characters maximum)]

The current period of validity of the base prospectus is intentionally aligned on the annuality of accounts and the "normal" prospectuses' period of validity. An extension of the validity beyond 12 months would add significant complexity in the documents structure (base prospectus and supplements) as core information like a new set of annual accounts would be added on top of potential previous supplements. This layering of supplements could seriously hinder the overall prospectus understanding easiness for the investors. In terms of investor protection, the approval of a new base prospectus seems therefore preferable to provide investors with a full new set of relevant information.
However, it seems conceivable to allow public offers under final terms which were filed within the validity of the base prospectus to be continued for a short period of time (a few weeks or months) after the base prospectus' validity. In order not to jeopardize accurate investor information if the financial situation of the issuer were to change significantly in the course of the operation, the base prospectus may have to be updated by a supplement as long as the offer under the latest final terms is ongoing.

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**
Textbox: [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 characters maximum)]

Article 26(4) of Prospectus Regulation, in combination with articles 5(3), has led to various interpretations but the so far existing practice of tripartite base prospectuses has been contradicted by the opinion issued by ESMA on 17 Dec. 2013 ("The base prospectus shall not be drawn up as a tripartite prospectus and any incorporation by reference of relevant information should comply with the conditions set out in the Regulation"). To the extent that this former practice did not harm investor protection or reliability of financial information, the directive or regulation should provide a clear legal basis for it.

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**
Textbox: [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 characters maximum)]

The logical consequence of recognizing the possibility to draw up a tripartite base prospectus would be to allow approval of its components by different NCAs, as well as passporting these components.

e) The base prospectus facility should remain unchanged
● **I support**
○ **I do not support**

Textbox: [Please justify your answer on whether the base prospectus facility remain unchanged (1,000 characters maximum)]

The flexibility offered by the base prospectus is appreciated and well used by market participants.

f) Other possible changes or clarifications to the base prospectus facility
Textbox: [Please justify (1,000 characters maximum)]

N/A

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?
Textbox: [Please specify (1,000 characters maximum)]

Apart from a possible extension of the tripartite regime to non-equity base prospectuses (see answer to question 40 c)), the tripartite regime is very commonly used in France for equity issuances (even *in lieu* of the proportionate regime for rights issue) and is seen as offering significant flexibility.

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?
● **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.**
Textbox: [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 characters maximum)]

This dual regime is well perceived and widely used by market participants. The absence of choice for issuances with a denomination per unit below EUR 1 000 is consistent with the targeted investors – potentially more retail oriented – especially considering national rules on direct marketing of listed securities and corporate law regimes governing the representation and rights of bond holders. There seems therefore no need to change a regime that works well.

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**
○ **No**
○ **Don't know/no opinion**
Textbox: [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 characters maximum)]

These two options are rarely used in practice, create additional costs and do not seem consistent with the widespread digitalisation of financial information for both issuers and investors. They could therefore be deleted, while maintaining the possibility to provide the investor with a paper version solely upon request, pursuant to Article 14(7), notably to allow information of retail investors who would not have easy access to internet means.

(44) Should a single, integrated EU filing system for all prospectuses produced in the EU be created?
○ **Yes**
● **No**
○ **Don't know/no opinion**
Textbox: [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 characters maximum)]

An EU filing system for approved prospectuses already exists. Considering participants on the French market also benefit from an integrated TD, PD and MAD/MAR portal managed by the AMF, adding a third system would add unnecessary complexity, keeping in mind that those prospectuses are most of the time written in local languages.

(45) What should be the essential features of such a filing system to ensure its success?
Textbox: [(1,000 characters maximum)]

N/A

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**
○ **No**
○ **Don't know/no opinion**
Textbox: [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 characters maximum)]

The current regime is incomplete and to a large extent “decentralised” to Member States, which is not consistent with an integrated market and may lead to inefficiencies. The French AMF supports the creation of a genuine single European equivalence regime for third-country prospectuses, as provided in other sectoral legislations, such as the certification process of credit rating agencies. However, such a regime would preferably require a full reciprocity principle (disclosure, content of the prospectus, review by the NCA) and equivalence of rules assessment.

(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**
Textbox: [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 characters maximum)]

The logic of an actual and comprehensive equivalence regime is not to require a new approval by the competent authority of the Home Member State

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**
Textbox: [Please justify your answer on the need for “offer of securities to the public” to be better defined (1,000 characters maximum)]

The notion of offer of securities to the public, as defined in the original Directive 2003/71/EC, is potentially very wide and gives room for various interpretations among Member States. Two criteria tend to crystallise divergences and would deserve clarification:

- a “communication to persons in any form and by any means”, which may have a determining impact on the national canvassing and direct marketing regimes;
- enabling “an investor to decide to purchase or subscribe to these securities”, as no difference is made between an individual and a collective investment decision (pursuant to the approval of a financial resolution by the shareholders’ general meeting for instance).

One should also bear in mind that the European Court of Justice has recently (judgment of 17 September 2014 on case C-441/12 Almer and Daedalus vs Van den Dungen and Oosterhout) interpreted Article 3(1) of Directive 2003/71/EC as meaning that the obligation to publish a prospectus is not applicable to an enforced sale of securities. In spite of the general meaning of the “communication” (which could have implied to maintain such an enforced sale in the scope), two important implicit criteria that have been considered by the ECJ are the necessary active cooperation of the issuer and an effective access to the information regarding the latter (so as to be able to fill in the prospectus’ sections).
It is also debatable whether a dividend payment in kind of securities falls in the scope of the directive, as it can be understood that there is neither actual purchase nor subscription from the investor.
This definition should therefore be better delimited, at least at level 2. The various references to “public offer” and “offer” in the directive may also have to be harmonised.

b) "primary market" and "secondary market"?
○ **Yes**
○ **No**
● **Don't know/no opinion**
Textbox: [Please justify your answer on the need for "primary market" and "secondary market" to be better defined (1,000 characters maximum)]

Considering possible new lighter requirements for some "secondary issuances", a clear distinction should be made between:
- the primary market, covering the first admission to trading (with or without offer to the public) of securities of issuers which do not have securities admitted to trading on a regulated market or an MTF;
- a secondary issuance, meaning any offer to the public or admission to trading of securities issued by an issuer whose shares are already listed on a regulated market or an MTF.

(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: [common regime regarding scrutiny of marketing documents]**
○ **Don't know/no opinion**
Textbox: [Please justify your answer on whether there are other areas or concepts in the Directive that would benefit from further clarification (1,000 characters maximum)]

Many issuances of securities involve a strong marketing approach once the prospectus has been approved, especially as soon as retail investors are targeted. As one of its main legal missions is to protect retail investments in financial instruments, the French AMF pays great attention to advertising and marketing materials. In that respect, it issued in 2010 a specific position on the marketing of complex financial instruments, which lays down four criteria for appraising misselling risks:
- poor presentation of the risks and payoff profile of the product;
- retail clients' lack of familiarity with the financial instrument because of the underlying assets used;
- payoff profile depending on the simultaneous occurrence of several conditions across two or more asset classes; and
- number of mechanisms in the formula for calculating the financial instrument's payoff.

Consequently, the prospectus legislation (at level 1 and/or 2) may adequately better acknowledge the role and powers of both home and host competent authorities in that respect, in relation with the new MiFID provisions regarding product intervention.

(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, legal certainty is ensured**
○ **Yes, the following should be clarified: [ ]**
● **Don't know/no opinion**
Textbox: [Please explain your reasoning and provide supporting arguments for the possible modification to the Directive which could add flexibility to the prospectus framework (1,000 characters maximum)]

(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.
○ **Yes**
○ **No**
● **Don't know/no opinion**
Textbox: [Please explain your reasoning and provide supporting arguments for identifying incoherence(s) in the current Directive Provisions (1,000 characters maximum)]

ADDITIONAL INFORMATION

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional documents
[Save a draft]