FESE
FEDERATION OF EUROPEAN SECURITIES EXCHANGES

FESE Response to the European Commission's consultation paper on the review of the Prospectus Directive

1. Introduction

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 19 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE is a keen defender of the Internal Market and many of its members have become multi-jurisdictional exchanges, providing market access across multiple investor communities. FESE represents public Regulated Markets. Regulated Markets provide both institutional and retail investors with transparent and neutral price-formation. Securities admitted to trading on our markets have to comply with stringent initial and ongoing disclosure requirements and accounting and auditing standards imposed by EU laws.

At the end of 2014, FESE members had up to 9,051 companies listed on their markets, of which 7% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,442 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a single market in capital markets.

FESE members are pleased to have the opportunity to contribute to this public consultation on the review of the Prospectus Directive.

2. FESE response to the consultation

Q1: Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for:

- **admission to trading on a regulated market**
- **an offer of securities to the public?**

Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public). If yes, please give details.

FESE considers that the current principle remains valid and that the concepts of offering to the public and admission to trading to Regulated Markets are generally accepted by market participants.

FESE believes that it is important to differentiate between an initial public listing and additional offerings. This is crucial in terms of the disclosure requirements for each activity. For initial public listings, we believe that a full prospectus is necessary for admission to trading on a regulated market (RM). However, in cases where a share is only being admitted to trading after being initially listed, a prospectus should not be required. This is due to the fact that the share is already subject to disclosure requirements in line with the Transparency Directive and Market Abuse Regulation. Moreover, for additional offerings, we believe that to the extent that an exemption is not available, companies should only be required to produce a simplified prospectus.

Q2: In order to better understand the costs implied by the prospectus regime for issuers:

a) Please estimate the cost of producing the following prospectus

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

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?

FESE recognises that the costs of raising capital on the capital markets have risen substantially over the last ten years and have become too high. Most of these continuous costs come from mandatory regulation and the costs of seeking legal and financial advice; both relating to the Prospectus Regime. Deutsche Börse has estimated the average total flotation costs for a new issue to 7.6 % at Euronext, 8.3 % at Deutsche Börse and 9.7 % at Nasdaq.

For IPOs, the costs of raising capital is summarised below:

- 10 to 15% of the amount raised from an initial offering of less than EUR 6 million:
- 6 to 10% from less than EUR 50 million;
- 5 to 8% from between EUR 50 million and EUR 100 million;
- 3 to 7, 5% from more than EUR 100 million.

Ten years ago the cost of an IPO transaction was approximately 2-2.5 %, which shows that the costs have risen in a disproportionate manner. However, the Commission must note that currently the fees charged by exchanges for an IPO on average represent a small amount (5%) of the total cost of the IPO.

FESE therefore believes that a target for reducing the regulatory and administrative costs of listing by 30-50 % should be introduced.

Q3: 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?

To date, FESE notes that the passporting procedure has worked for large scale capital raisings as the benefit of an offer in several EU Member States definitely outweighs the extra cost given the possibility of tapping additional liquidity from international investors. However, this is not the case for small and medium offers taking into account the extra costs associated, in particular, with the preparation of the prospectus in a language customary in the sphere of international finance.

Looking to the future, we believe that there should not be a need for such a regime in a fully harmonised Capital Market Union as this would be an additional burden for companies where the additional requirements would not bring any significant benefits to investors or issuers. In order to make this a reality, there must be a maximum level of harmonisation in order to avoid hugely divergent interpretations by NCAs, e.g. harmonisation regarding language requirements, requirements to publish an advertisement/notice in a local newspaper, or how exemptions are applied.

Q4: 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):
b) the EUR 75 000 000 threshold of Article 1(2)(j):
c) the 150 persons threshold of Article 3(2)(b)
d) d) the EUR 100 000 threshold of Article 3(2)(c) & (d)

Regarding the exemption thresholds, FESE believes that:

- The EUR 5 000 000 threshold of Article 1(2)(h) should be adjusted to a higher level, e.g. up to € 10.000.000.
- The 150 persons threshold of Article 3(2)(b), should be adjusted to a higher level, e.g. up to 300 persons.

This would simplify and expedite the fund raising process for small issuers & offers, thereby contributing to the reduction of administrative burdens and increasing fund raising opportunities for such cases. This would help create an EU funding hub for small cap issuers and enhance the international competitiveness of the Union.

In principle, FESE agrees with the proposed thresholds of cases b) and d).

We would urge the Commission to ensure that there is harmonised implementation of these thresholds. In particular, any exemptions must be fully harmonised to ensure a level playing field. The Commission must also avoid any instance of gold plating of these requirements as FESE is concerned that gold plating could negatively impact exchanges operating across multiple jurisdictions. For example, if certain jurisdictions were to raise the threshold, while another jurisdiction could maintain or even lower current thresholds, this would result in regulatory arbitrage.

Q5: 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?

FESE believes that gold-plating provisions should be avoided as much as possible. Although, flexibility for each Member State can be maintained for offers below EUR 5 million as exempting these type of offers in accordance with the Prospectus regime best serves the needs of SMEs across EU and reduce burdensome and time consuming administrative procedures with local regulators.

Q6: 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)?

No, FESE would support retaining the current regime. We would urge the Commission to ensure that there is harmonised implementation of the thresholds (current or adjusted). In particular, any exemptions must be fully harmonised to ensure a level playing field.

Q7: 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?

When companies reach a stage in their development at which a public listing becomes an option it is critical that these issuers have options which are tailored to their conditions. Many FESE Members offer both Regulated Markets and Multilateral Trading Facilities (MTFs) options to companies seeking access to capital through a public market listing. A listing on the Regulated Market requires compliance by the issuer with a full set of disclosure requirements as mandated by the Prospectus, Transparency and Market Abuse frameworks as well as adoption of full IFRS. As an alternative, listing on MTF markets generally requires no / or a simplified disclosure document in terms of admission to trading and provides issuers (among other things) with the flexibility to opt for either local GAAP or full IFRS. Issuers can choose the market they want to list on taking into consideration the (ongoing) requirements for such listing and the investors' base. Once listed on these MTFs, there is always the option for an issuer to move to the main Regulated Market at the appropriate stage of its development. FESE strongly believes that this flexibility should be maintained within the CMU.

In addition, FESE would like to draw the attention to an issue that has arisen as a result of the amendment of the general scope of the Prospectus Directive by means of Council Directive 2003/71/EC.

- Article 1 of the former Prospectus Directive (Council Directive 89/298/EEC) sets out that "This Directive shall apply to transferable **securities which are offered to the public for the first time** in a Member State provided that these securities are not already listed on a stock exchange situated or operating in that Member State."

- In the 2003 amendment, Article 1 of the Prospectus Directive (Council Directive 2003/71/EC) set out that "The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectus to be published **when securities are offered to the public or admitted to trading on a regulated market** situated or operating within a Member State."

As a result, companies had to be concerned that any general statement about their shares – be it in the form of a company presentation on the trading venue's website, a press release or any other statement about a private placement of shares (i.e. without a public offering) – would trigger a public offering.

Therefore, FESE supports a return to the previous wording ("for the first time") or a clarification regarding the scope of the Prospectus Directive to the effect that companies no longer have to worry about triggering a public offering merely through general statements.

Q8: 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, FESE agrees. We consider that a full prospectus is necessary for a new company coming to the Regulated Market for the first time. However, we believe that the approach should be different for

companies with securities already admitted to trading on a Regulated Market and that are complying with the disclosure obligations in other EU securities legislation, such as the Transparency and Market Abuse Directives. In this situation, we believe that: (1) the exemption percentage level at which a prospectus is required should be increased to 33%; and (2) where a prospectus is required, the disclosure requirements should reflect that certain information about the company and its securities is already in the market. Please see our response to Q1.

For secondary offers or listings, a simplified prospectus could consist of an issuers' statement containing at least the terms of the offer, use of funds to be raised and relative timetable. It could incorporate by reference financial information, price sensitive information and constitutional documents which are publicly available as a result of the company's admission to listing on a regulated market. The document should be disseminated to the investment community prior to the fund raising procedure.

Q9: How should Article 4(2)(a) be amended in order to achieve this objective ? Please state your reasons.

FESE believes that the exemption should apply to all secondary issues. In a capital increase, the issuer should have to provide information about the use of proceeds and the expense of the offering as this information cannot be obtained by potential investors from other sources.

If, however, such an exemption cannot be implemented, then FESE supports raising the current 10% threshold as stated in Q8. Raising the threshold to a higher percentage (e.g. 20% or 33%) would facilitate many listed companies to proceed with share capital increases at low cost, keeping in mind that a cost for drawing up a Prospectus is an important fraction of the total issuance cost.

Q10: 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?

FESE believe that there should not be any timeframe for such approval.

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

No, FESE believes that a prospectus should be required only when securities are admitted to trading on a Regulated Market. In the case of an MTF or an MTF registered as SME Growth Markets, the prospectus should not be required. We consider this view to be in line with the need for flexibility for MTFs to require their own disclosure requirements. This must be taken into account also with respect to the purpose of an MTF and whether it is set up as a facility to provide access to capital, or as a venue for secondary trading of already established large caps.

There is currently clarity in the market for investors about the regulatory requirements that apply to Regulated Markets and those that apply to MTFs. In our view, initiatives to bring MTFs within the scope of the PD or other EU securities legislation relating to 'Regulated Markets' could create a significant risk of brand confusion, where investors and, in particular, non-EU investors may find it difficult to determine which regulation applies to the various market types. We strongly believe therefore that the clarity that exists around regulatory requirements for existing market types is paramount, particularly given the objective under the CMU of making the EU's capital markets work better for companies and market participants.

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, FESE believes that the proportionate disclosure regime (either amended or unamended) should apply only to Regulated Markets.

Q13: Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA) of the closed-ended type and marketed to non-professional investors, be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document? Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds.

FESE considers that provided the disclosure requirements are the same, we would not advocate changing the current regime. However, the Commission must analyse all the current requirements that are in place to avoid any unnecessary overlap that leads to administrative burdens due to different regimes being applied.

Q14: 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, FESE believes that there is the need to extend the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies.

Q15: 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?
(a) the EUR 100 000 threshold should be lowered?
(b) some or all of the favourable treatments granted to the above issuers should be removed?
(c) the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?

FESE does not consider the system of exemptions detrimental to liquidity in corporate bond markets. Therefore, we believe that the current threshold of EUR 100 000 should be maintained.

Q16: 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, the proportionate disclosure regime did not meet its original purpose to improve efficiency. On the contrary, the current disclosure requirements are too detailed and would need to be revised. This may be due to the fact that the benefits of applying the proportionate regime are too limited and its application does not outweigh the disadvantage of being perceived by investors as providing more limited information compared to large companies.

Therefore, FESE asks the Commission to consider reducing the contents of prospectuses (irrespective of the size of the company).

Q17: 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**
- **b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation**

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

a) Please refer to the response provided for Q16.

b) The prospectus regime, coupled with other EU securities legislation, makes Regulated Markets less attractive for SMEs and companies with reduced market capitalisations. We believe that there is scope for revising the disclosure requirements without impacting investor protection.

c) The proportionate disclosure regime does not seem to be availed of by credit institutions and we believe the reason is due to the cap of EUR 75,000,000 on the total consideration for the offer.

Q18: 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

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

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

a) Please refer to the response provided for Q16.

b) We consider that the prospectus disclosure regimes for SMEs and companies with reduced market capitalisations are still too onerous and an opportunity exists to further streamline the prospectus disclosure requirement and therefore reduce the administrative burden and cost of preparing a prospectus while at the same time maintaining an appropriate level of investor protection.

c) The cap on consideration for the offer in the Union should be increased.

Q19: 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: [text box]**
- **To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify: [text box]**
- **Other. Please specify: [text box]**
- **Don't know/no opinion**

FESE believes that the proportionate disclosure regime should not be extended to admissions of securities to trading on an MTF (including MTFs registered as SME growth markets). In our view, MTFs should not be brought into the scope of the Directive.

Q20: 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?

Despite the fact that FESE Members have adopted SME definitions with different thresholds, FESE agrees with the Commission that the definition of 'companies with reduced market capitalisation' should be reviewed and further harmonised. While the Commission suggests aligning this with the SME Growth Market definition of 200 million EUR market cap, FESE would recommend increasing this to 1 billion EUR to ensure that the complete diversity in scale of SMEs in Europe is taken into account, with a maximum number of SMEs thereby being eligible for relief.

Q21: 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?

FESE believes that a prospectus should be required only when securities are admitted to trading on a Regulated Market. In the case of an MTF or an MTF registered as SME Growth Markets, the prospectus should not be required.

Q22: 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

Please see our response to Question 11.

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)?

No, it should not be recalibrated as it currently works well. FESE considers that all documents filed with an NCA should be eligible for incorporation by reference.

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.

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

a) FESE believes that documents published/filed under the Transparency Directive have to be subject to incorporation by reference in the prospectus, in order to provide equal access to information to all potential investors.

b) We do not believe that there is a need to align the requirements. A prospectus provides a snapshot of information about a company to investors at a particular point in time, whereas the TD seeks to deliver information about a company to investors on an on-gong basis.

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?

Yes, this obligation could substitute the PD requirements. However, the Commission must ensure that there are sufficient levels of investor protection, while implementing a regime that is less burdensome and more efficient.

Q26: Do you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive?

Information disclosed to the market under the Market Abuse Regulation should continue to be capable of being incorporated by reference in a prospectus.

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)

The summary is far too detailed, mainly because the summary disclosure requirements are too prescriptive. There is an opportunity to significantly revamp the summary requirements. In our view, companies should have more discretion to determine the appropriate information to be included in a summary, rather than mandating a prescriptive list of disjointed disclosure items.

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?

A - Providing that information already featured in the KID need not be duplicated in the prospectus summary as it only creates market inefficiency and increases costs. Any overlap between PRIIPS Regulation and the Prospectus Regulation should be avoided to increase efficiency and to avoid the creation of additional burdens.

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

No, there should not be a maximum length to the prospectus as it will not increase accessibility and readability or reduce costs. Moreover, this could give rise to liability issues.

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?

FESE does not agree with rules limiting excessive lengths with regard to the information to be provided. However, we consider that the section on Risk Factors is excessive in length and that this paragraph should be more focused on risk associated to the specific company instead of general disclaimer and standardised factors.

Q31: 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: [justification]

FESE believes that the liability and sanctions regimes need to be harmonised throughout the European Union in order to ensure a level playing field.

Q32: 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: [justification]

FESE has no comments on this issue.

Q33: 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.

FESE considers that there are certain key difference on how NCAs make an assessment, notably in terms of response time, scrutiny of financial information, and risk factors taken into account.

Q34: 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.

FESE urges the Commission to ensure that there is harmonised implementation and that any exemptions must be fully harmonised to ensure a level playing field. In particular, there is a need for further harmonisation of the scrutiny and approval procedures across Member States – for example, with regard to the way a prospectus can be submitted to an NCA (i.e. electronically vs. hard copy) and the liability regime applied.

Q35: Should the scrutiny and approval procedure be made more transparent to the public? If yes, please indicate how this should be achieved.

No, FESE considers that this is not necessary.

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.

Yes, however, the final version of the prospectus might differ substantially from the first draft and investors should be made aware of this in order to avoid confusion. It must also be required that any publication or advertisement of the offering must clearly state that the provided prospectus is still subject to approval and that no binding subscription or purchase can be made at this stage.

Q37: What should be the involvement of NCAs in relation to prospectuses? Should NCAs:

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

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

FESE believes that NCAs should review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place).

Q38: 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.

No, the market operator should retain the decision to admit securities to trading. Market operators should be authorised to decide on admissions requests (with minimum requirements set by EU laws). This approach provides the necessary flexibility for market operators to create and operate its markets providing the most efficient access to capital to issuers. Linking the decision to admit securities to trading on a regulated market with the approval of the prospectus and the right to passport would have a negative impact on market efficiency.

The approval decision for a prospectus involves ensuring that the requirements of the Prospectus Directive are satisfied by an issuer and, in particular, those relating to the content requirements of the prospectus itself. The approval decision regarding admission of securities to trading and listing is a completely separate decision, not related to disclosure, and requires the assessment of whether or not an issuer complies with conditions for admission to the regulated market, whether set out in the admission rules of the market operator or the listing requirements. The listing authority and/or market operator is significantly better placed to make that decision.

Given the clear distinction between the admission/listing requirements and the disclosure requirements under the PD, we do not see any benefit in aligning the two decision processes. In fact, we believe there is stronger investor protection afforded by having the admission and prospectus approval decisions being made by separate entities.

We believe that the PD scrutiny and approval procedures should be harmonised across Member States. Moreover, the decision to admit securities to trading on a RM and the acceptance of the prospectus for such an admission should remain with the market operator.

Q39:
(a) Is the EU passporting mechanism of prospectuses functioning in an efficient way? What improvements could be made?
(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?

No, as previously indicated, an EU passporting mechanism of prospectuses should not be required in an integrated and harmonised Capital Market Union.

Q40: Please indicate if you would support the following changes or clarifications to the base prospectus facility. Please explain your reasoning and provide supporting arguments:

	I support	I do not support	Justify
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	**[X]**	**[ ]**	**[***The use of the base prospectus facility could be extended to issues of equity securities.***]**
b) The validity of the base prospectus should be extended beyond one year	**[ ] Please indicate the appropriate validity length: [ ]**	**[X]**	**[***In our experience of listing many non-equity securities off base prospectuses, we believe that they should only remain valid for 12 months and then be updated at that point. As a result, we would not support the extension beyond one year*
c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA	**[]**	**[ ]**	**[textbox]**
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	**[X]**	**[ ]**	**[***We would support this as it would allow additional flexibility and enhance the passport regime***]**
e) The base prospectus facility should remain unchanged	**[ ]**	**[X]**	**[textbox]**
f) Other (please specify)	**[textbox]**		

Q41: 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?

FESE considers that the 'tripartite regime' is not frequently used in certain Member States. There seems to be a lack of understanding on how the regime works.

Q42: 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.**

Textbox: [justification]

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.

Q43: 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, the options should be suppressed as they create additional burdens for issuers.

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)?

FESE supports the establishment of an integrated EU filing system for all prospectuses. In our view, it would make sense to set up such a filing system at ESMA. As the NCAs have all prospectuses available, they could be asked to provide ESMA with the documents.

The European Electronic Access Point which is in progress by ESMA and deals with the dissemination of regulated information could be used to cover this need with no additional implementation costs.

Q45: What should be the essential features of such a filing system to ensure its success?

The filing system should be free of charge for all interested parties. The prospectuses should be available for an indefinite period of time.

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, FESE would support this proposal.

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)?

B – Such a prospectus should be approved by the Home Member State under Article 13.

Q48: Is there a need for the following terms to be (better) defined, and if so, how:

a) "offer of securities to the public"
b)"primary market" and "secondary market"?

FESE sees a need to better define the term "offer of securities to the public" (a) – see our response to Question 1.

Also, FESE believes that the difference between primary and secondary market should be further clarified as secondary market is often wrongly identified with only trading and not fund-raising.

Q49: Are there other areas or concepts in the Directive that would benefit from further clarification?

FESE has no comments on this issue.

Q50: 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.

Please refer to the response provided for Q30.

Q51: 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.

FESE has no comments on this issue.