

13 May 2015

Mr. Jonathan Hill
Commissioner for Financial Stability, Financial Services and Capital Markets Union
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

CFA Institute Identification number in the EU transparency register: 89854211497-57

Re: Consultation on the review of the Prospectus Directive

Dear Commissioner Hill,

CFA Institute appreciates the opportunity to respond to this consultation paper on the review of the Prospectus Directive.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal is to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 130,000 members in 150 countries and territories, including 123,000 Chartered Financial Analyst charterholders, and 144 member societies.

Summary

CFA Institute advocates for fair, transparent and ethical market practices. As elaborated in the responses below, we support the principle of maximum harmonisation of rules between the Member States. This applies to both the format of the prospectus and the approval regime within the Member States. CFA Institute further supports the creation of a single European repository for prospectuses.

In addition, it would be appropriate to extend the scope of the Prospectus Directive to securities listed on Multilateral Trading Facilities (MTFs). In that context, the proportionate disclosure regime may cover those MTFs that are registered as small and medium-sized enterprise ("SME") growth markets. While we believe that SMEs should be afforded access to capital markets to fund their growth and development, we also maintain that they should provide investors with the transparency and quality of information required for informed decision-making. The shares of SMEs subject to reduced disclosure requirements should thus trade on exchanges or trading platforms (such as SME growth markets) dedicated to companies that take advantage of the limited reporting options. That

would ensure that investors are aware that such companies do not have to adhere to the same transparency and governance requirements as are required of traditionally listed companies.

Furthermore, CFA Institute is aware that prospectuses are assessed differently by different national competent authorities, making it more challenging for issuers to enter the markets outside of their home Member State. The principle of maximum harmonisation on the approval procedures would ensure appropriate safeguards for the investors and increase transparency on how prospectuses are approved.

Specific comments

Question 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:

- a) **Admission to trading on a regulated market**
- b) **An offer of securities to the public**
- c) 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)
- d) Other
- e) Don't know / no opinion

CFA Institute believes that the principle is still valid and that a prospectus is necessary in both cases (options a and b). In order to ensure a level playing field and to simplify the administrative processes associated with preparing, filing and reviewing prospectuses, there should not be a difference in prospectus requirements according to where a security is issued or listed.

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

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

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

- Issuer's internal costs: *[enter figure]*%
- Audit costs: *[enter figure]*%
- Legal fees: *[enter figure]*%
- Competent authorities' fees: *[enter figure]*%
- Other costs (please specify which): *[enter figure]*%

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?

No opinion.

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?

CFA Institute believes that having access to pan-European markets through common prospectus standards lowers the cost of capital for issuers. We thus maintain that as the prospectus enables issuers to reach investors across the EU, the potential gains from having access to a large pool of capital (through lower funding costs) most likely outweigh the cost of producing the prospectus.

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):
- Yes, from EUR 5 000 000 to EUR [*enter monetary figure*]
- No
- **Don't know/no opinion**

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**

c) the 150 persons threshold of Article 3(2)(b)
- Yes, from 150 persons to [*enter figure*] persons
- No;
- **Don't know/no opinion**

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**

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?

- **Yes**
- No
- Other areas:
- Don't know/no opinion

CFA Institute believes that as a principle, harmonisation of standards is preferable as it enables wider access to a pan-European pool of capital. Harmonisation of standards would also ensure a level playing field, which in turn would reassure investors that prospectuses are of equally high quality and conform to the same standards in all Member States.

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)?

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

CFA Institute believes that the scope of the Directive is sufficiently broad. The current scope of the Directive captures all securities likely to be issued and aligns with the scope and definition of transferable securities under the revised Markets in Financial Instruments Directive (MiFID II). Consequently, we do not foresee a need to extend the scope of financial instruments covered.

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?

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

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**
- No
- Don't know/no opinion

CFA Institute supports the European Commission's proposal to mitigate or lift the obligation to draw up a prospectus for secondary issuances. We note that this practice is already used in the US in the form of a 'shelf registration'. Under Rule 415 of the US Securities and Exchange Commission, companies can file a single registration document that permits the issuance of multiple securities.

CFA Institute believes that having to draw up multiple prospectuses for secondary issuances would be an unnecessary burden in particular for small and medium-sized enterprises (“SMEs”) in Europe.

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

- a) The 10% threshold should be raised to *[enter figure]*%
- b) The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued**
- c) No amendment
- d) Don't know/no opinion

Q10 If the exemption for secondary issuances were to be made conditional to a fullblown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

- a) **[2] years**
- b) There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)
- c) Don't know/no opinion

CFA Institute supports option a). There is no need to write a completely new prospectus for secondary issuances, if the original prospectus was approved within 24 months (2 years).

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

- a) Yes, on all MTFs**
- b) Yes, but only on those MTFs registered as SME growth markets
- c) No
- d) Don't know/no opinion

A requirement for a prospectus to be issued for securities admitted to trading on a Multilateral Trading Facility (MTF) is appropriate to ensure a level playing field vis-à-vis the requirements for securities admitted to trading on a regulated market. Such a requirement would therefore reduce the scope for regulatory arbitrage and uphold high common standards of disclosure for prospective investors irrespective of where the security is issued.

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.

- a) Yes, the amended regime should apply to all MTFs
- b) Yes, the unamended regime should apply to all MTFs
- c) Yes, the amended regime should apply but not to those MTFs registered as SME growth markets

- d) Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets
- e) Yes, the amended regime should apply but only to those MTFs registered as SME growth markets
- f) Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets**
- g) No
- h) Don't know/no opinion

CFA Institute believes that the scope of the Prospectus Directive should be extended to MTFs, and that the proportionate disclosure regime within the context of the Directive may cover those MTFs that are registered as SME growth markets. Not requiring a prospectus on MTFs could discourage investors from investing in companies listed on those markets.

While we believe that SMEs should be afforded access to capital markets to fund their growth and development, we also maintain that they should provide investors with the transparency and quality of information required for informed decisions and investor protection. The shares of SMEs subject to reduced disclosure requirements should thus trade on exchanges or trading platforms dedicated to companies that take advantage of the limited reporting options. That would ensure that investors are aware that such companies do not have to adhere to the same transparency and governance requirements as are required of traditionally listed companies.

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.

- a) Yes, such an exemption would not affect investor/consumer protection in a significant way**
- b) No, such an exemption would affect investor/consumer protection
- c) Don't know/no opinion

CFA Institute believes that ELTIFs, EuSEFs and EuVECAs may be exempted from the obligation to prepare a prospectus if they have already produced a Key Information Document. These vehicles should also remain subject to bespoke disclosure requirements under sectorial legislation.

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
- No
- Don't know/no opinion

CFA Institute supports extending the prospectus exemption for non-EU private companies' employee share schemes. The inability of non-EU private companies to provide employee share schemes may deter them from investing in European workforce and thus hamper the creation of new jobs and growth in Europe.

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?

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

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?

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

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

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

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

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

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**

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

No opinion.

Q19 If the proportionate disclosure regime were to be extended, to whom should it be extended?

- a) To types of issuers or issues not yet covered? Please specify
- b) To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive? Please specify
- c) Other. Please specify**
- d) Don't know/no opinion

We believe that investors have similar information needs regardless of the size, nature, or location of the issuer's businesses. If the information is not adequate, investors will have to make decisions based on insufficient information.

While CFA Institute recognizes the hardship such supplementary information may have upon SMEs, we also believe that investors need this information to adequately understand the risks associated with such enterprises. Indeed, the information may be more important in the case of SMEs because of the limitations they have regarding access to capital, revenue sources, sales markets, and management expertise. Consequently, we believe that all issuers should adhere to the same disclosure requirements.

However, if the proportionate disclosure regime was to be applied to SMEs, such companies should be required to list on SME Growth Markets. That would clarify that SMEs operate on a specialised platform adhering to less onerous accounting and governance requirements.

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?

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

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?

- a) Yes
- b) 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.**

- c) Don't know/no opinion

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.

CFA Institute disagrees with the proposal to have a simplified prospectus regime for SMEs. As we note in our response to Question 19, CFA Institute recognizes the hardship such supplementary information may have upon small and medium-sized enterprises (“SMEs”). Nonetheless, we also believe that investors need this information to adequately understand the risks and burdens associated with such enterprises. Indeed, in many cases the information is more important in the case of SMEs because of limitations these entities have with regard to access to capital, new revenue sources, new sales markets, and specialized management expertise.

To prevent the possibility that investors will have to make uninformed decisions, we suggest requiring SMEs to provide three years of financial information (where available) in the same manner required of larger firms. Issuers listed in the SME growth markets should then be required to publish annual financial reports and half yearly financial reports. SMEs should also provide information about their business plans and primary investments. If such a requirement is too burdensome for such issuers, competent authorities should reconsider admitting them to trading markets, or only allowing such issuers to list on designated SME Growth Markets.

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

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

Please see our response to Question 24.

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.

- Yes
- **No**
- Don't know/No opinion

CFA Institute supports the incorporation by reference mechanism. There is no need to duplicate information that is already covered by other Directives/Regulations (e.g. by the Transparency Directive). We believe that companies should provide an indication of where investors can find and inspect all the documents referred to in the prospectus. It is acceptable for companies to provide

that information by reference, so long as they are required to give such information to investors on demand, or provide electronic links to enable investors to access the information themselves.

Furthermore, we believe that companies must provide in the prospectus all annual and interim financial statements and auditor's reports that are less than three years old, and only reference those financial statements that are more than three years old.

(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**

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
- **No**
- Don't know/No opinion

The Prospectus Directive requires a supplement to "every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus". Article 6(1) of the Market Abuse Directive (MAD) makes insider dealing punishable as a criminal offence. Accordingly, as the Prospectus Directive covers also other issues in addition to market manipulation, CFA Institute does not support merely replacing the Prospectus Directive requirements by the MAD requirements. Keeping the requirements for supplementary information in the Prospectus Directive broad will ensure that investors have all the information they may require to make an informed investment decision.

Q26 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**

Q27 Is there a need to reassess the rules regarding the summary of the prospectus?

(Please provide suggestions in each of the fields you find relevant)

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

b) Yes, regarding the comparability of the summaries of similar securities

- c) Yes, regarding the interaction with final terms in base prospectuses
- d) No.
- e) Don't know/no opinion

CFA Institute supports efforts to further harmonise the summary rules in the EU. However, the purpose of the key information document (KID) for retail investors in Packaged Retail and Insurance-based Investment Products (PRIIPs) and in UCITS (Undertakings for Collective Investment in Transferable Securities) is to alleviate the need for a summary prospectus. PRIIPs and UCITS may thus be exempted from summary prospectus requirements. For other (unpackaged) securities for which a summary prospectus is appropriate, we support keeping 7% of the total length of the prospectus, or 15 pages as the maximum length of the summary.

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) 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
- b) By eliminating the prospectus summary for those securities.**
- c) 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
- d) Other
- e) Don't know/no opinion

CFA Institute supports the legislative developments on key information documents and welcomes the efforts to simplify the disclosure requirements for PRIIPs whilst maintaining a high standard of investor protection. We believe that like the KID, the prospectus ought to be concise, clear, and informative. The combination of a prospectus and a KID for packaged products provides sufficient information for prospective retail investors and an additional disclosure requirement in the form of a summary prospectus is not necessary.

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

- a) Yes, it should be defined by a maximum number of pages and the maximum should be [figure] pages
- b) Yes, it should be defined using other criteria, for instance: [textbox]**
- c) No
- d) Don't know/no opinion

The aim of the prospectus is to provide information to potential investors in a clear and comprehensive fashion. Nonetheless, the length of the prospectus has significantly increased in the EU in the past years, making it more challenging for investors to discern relevant information. While CFA Institute does not support determining an exact maximum number of pages, we believe that the prospectuses should minimise the volume of extraneous information. Given the possibility to issue

summary prospectuses of a certain length, we do not see a need to prioritise setting a limit on the length of the underlying prospectuses.

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

No opinion.

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

No opinion.

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

CFA Institute fully supports support efforts to further harmonise liability laws among the Member States. At the moment, the same information is subject to different liability standards depending on the home Member State where the prospectus has been approved (see, for example, ESMA comparison of liability regimes in the Member States ([ESMA/2013/619](#))). The different liability laws could give rise to a liability arbitrage to the extent that the issuer has a choice of its home State. In addition, the circle of persons responsible for the contents of the prospectus varies from Member State to Member State. In line with ESMA's report, CFA Institute recognises the need to harmonise the cross-border liability regimes in the revised Prospectus Directive.

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.

- Yes
- No

- Don't know/no opinion

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.

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

Q35 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

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
- No
- Don't know/no opinion

CFA Institute believes that the issuers should be allowed to carry out some limited marketing activities before the final prospectus is approved by the national competent authority (NCA). The NCAs should restrict their role to an *ex post* observation of the issuer's marketing activities.

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.

CFA Institute believes that an *ex ante* review of the prospectus would ensure that the document provided to investors is fully accurate and fills all the requirements of the Prospectus Directive.

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.

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

CFA Institute maintains that the prospectus acts as a 'quality check' on the securities that are admitted to trading. Accordingly, we would be in favour of more closely aligning the decision to admit securities to trading with the approval of the prospectus and the right to passport.

Q39 (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

(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

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	[•]	[•]	[textbox]
b) The validity of the base prospectus should be extended beyond one year	[•] Please indicate the appropriate validity length: [•]	[•]	[textbox]
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	[•]	[•]	[textbox]
e) The base prospectus facility should remain unchanged	[•]	[•]	[textbox]
f) Other (please specify)	[textbox]		

CFA Institute:

A): We support

B): We support

C): We support

D): We do not support. As the NCA approval procedures across the EU are not yet harmonised, we would like to have less divergent practices in place before the different parts of the base prospectus are approved by different NCAs.

E): We support. The best approach is to ensure the information that must be disclosed is not different regardless of whether the issuer uses the “normal prospectus procedure” or the “base prospectus procedure”.

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?

No opinion.

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.

CFA Institute supports the deletion of the EUR 1,000 threshold (option b). Issuers should be free to choose their home Member State as they see fit provided the same standards and investor protections are in place in all Member States.

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
- No
- Don't know/no opinion

CFA Institute agrees that as long as a paper copy of the prospectus is offered free of charge upon request, issuers and offerors can choose to post their prospectus on a website, rather than publish it in a newspaper.

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

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

CFA Institute supports the creation of a single, integrated EU filing system for all prospectuses. Such a centralised database would provide a number of benefits to investors across the world, thereby enhancing the global competitiveness of EU markets.

Further, by requiring issuers to file prospectuses both in the language of their headquarters and in English, such a repository would create an efficient mechanism for harmonized, simultaneous and broad dissemination of all information across all national boundaries within the EU and beyond, and in the languages investors understand. It also would ensure standardisation not only of filing requirements of issuers, but also of the product that is available to investors. While it may cost issuers more to translate filings into different languages, they will benefit from lower costs of capital resulting from a wider pool of investors.

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

Please see our response to Question 44. Requiring companies to translate their documents into English, in addition to the language of the issuer's home country, is one factor that would make prospectuses more accessible across the EU.

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
- No
- **Don't know/no opinion**

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

- a) **Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18**
- b) Such a prospectus should be approved by the Home Member State under Article 13
- c) Don't know/no opinion

Q48 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**

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

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

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

- No, legal certainty is ensured
- Yes, the following should be clarified: []
- **Don't know/no opinion**

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.

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

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.

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

Concluding Remarks

CFA Institute welcomes the opportunity to comment on the revision of the Prospectus Directive. Please do not hesitate to contact us should you wish further elaboration of the points raised.

Yours faithfully,



Rhodri Preece, CFA
Head, Capital Markets Policy, EMEA
CFA Institute

+44 (0)20 7330 9522
rhodri.preece@cfainstitute.org



Maiju Hamunen
Analyst, Capital Markets Policy, EMEA
CFA Institute

+32 (0)2 401 68 28
maiju.hamunen@cfainstitute.org