



Public consultation on the review of the Prospectus Directive

Introduction

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The French Banking Federation welcomes the opportunity to comment on the European Commission's Green paper approach to putting in place the building blocks for CMU, and namely on the possible measures which should be taken to achieve this objective through the Prospectus Directive.

1. Information about you

Are you replying as:*

- a private individual
- an organisation or a company**
- a public authority or an international organisation

First name and last name:*

Name of your organisation:*

Name of the public authority:*

Contact email address:

The information you provide here is for administrative purposes only and will not be published

mgansou@bf.fr

Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be

registered to reply to this consultation. [Why a transparency register?](#))*

Yes

No

If so, please indicate your Register ID number:*

ID: 09245221105-30

Type of organisation:*

Academic institution

Consultancy, law firm

Industry association

Non-governmental organisation

Trade union

Company, SME, micro-enterprise, sole trader

Consumer organisation

Media

Think tank

Other

Please specify the type of organisation:*

Type of public authority*

International or European organisation

Regional or local authority

Government or Ministry

Regulatory authority, Supervisory authority or Central bank

Other public authority

Please specify the type of public authority:*

Where are you based and/or where do you carry out your activity?*



Please specify your country:*

FRANCE

Field of activity or sector (if applicable):*

Accounting

Auditing

Banking (issuing-finance

department) **Banking**

(investment department)

Credit rating agencies

Insurance

Pension provision

Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)

Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges) Social entrepreneurship

Other

Not applicable

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

Please indicate if you are:*

- a company listed on a regulated market of the European Economic Area (EU, Iceland, Liechtenstein and Norway)
- a company whose securities are admitted to trading on a multilateral trading facility (MTF) of the EEA
- none of the above**

Please indicate if you are:*

- a company with a market capitalisation below 200M€ (“small and medium-sized enterprise” under the meaning of Art. 4(1)(13) of Directive 2014/65/UE)
- a company meeting at least 2 of the following 3 criteria: 1. *an average number of employees during the financial year of less than 250*, 2. *a total balance sheet not exceeding 43M€* 3. *an annual net turnover not exceeding 50M€* (“small and medium-sized enterprise” under the meaning of Art. 2(1)(f) of Directive 2003/71/EC)
- none of the above**



Important notice on the publication of responses

Contributions received are intended for publication on the Commission’s website. Do you agree to your contribution being published?

- Yes, I agree to my response being published under the name I indicate (name of your organisation/company/public authority or your name if your reply as an individual)**
- No, I do not want my response to be published

2. Your opinion

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 should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)

Other

Don't know / no opinion

Please describe which different treatment should be granted to the two purposes:

1,000 character(s) maximum

Please describe what other possible reasons why a prospectus is necessary:

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:

It took much time to build the European regime of prospectus and the current framework has now been taken into account by the market participants. For this reason, and despite the necessity to reconsider in some cases the interest for a prospectus or its content (see question 8 hereunder), FBF considers that the issue of both existence and content of the prospectus does not relate to any distinction between admission to trading on a regulated market and offer of securities to the public. More specifically, the definition of "offer to the public" did not prove to be inefficient, and we therefore consider that it would not be appropriate to amend it. In comparison to the past situation, the definition alleviates for instance in France the burdensome caused by the status of "émetteur faisant appel public à l'épargne".

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

a) Please estimate the cost of producing a prospectus (between how many euros and how many euros for a total consideration of how many euros):

Don't know (add an X in the next three fields)	Minimum cost (in €)	Maximum cost (in €)	For a total consideration of (in €)
Equity prospectus			
Non-equity prospectus			
Base prospectus			
Initial public offer (IPO) prospectus			
Don't know (add an X in the next three fields)			

Additional comments on the cost of producing a prospectus:

Access to markets and the prospectus preparation require the assistance of professionals covering legal, tax, financial, accounting or advertising issues whose fees vary and may be substantial. Besides, costs linked to the prospectus may also depend on the types of issuers (SMEs, large companies, growth companies...). It has been noticed that the costs borne by SMEs in this respect are relatively higher than those borne by large companies (see question 3 hereunder).

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

Don't know (add an X in the next three fields)	Share in the total costs (in %)
Issuer's internal costs	
Audit costs	
Legal fees	
Competent authorities' fees	
Other costs (please specify which)	
Don't know (add an X in the next three fields)	

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

1,000 character(s) maximum

c. What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law? Please estimate this fraction.

- Yes, a percentage of the costs above would be incurred anyway
- No
- Don't know / no opinion**

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

 %

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

1,000 character(s) maximum

3. Bearing in mind that the prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority outweighed by the benefit of the passport attached to it?

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

Additional comments on the possibility that additional costs are outweighed by the benefit of the passport attached to the prospectus:

Prospectus benefits should not be assessed in comparison to possible additional costs. Firstly, because prospectus' burdensome and complexity are currently more mentioned than cost itself by market participants. Secondly, additional costs mentioned in the consultation must be clearly more detailed and it has been noticed that existing costs (additional or not) may already prevent some issuers (SMEs) from accessing the market. That is why FBF regrets the ESMA's position on the financial analysis as it may have a very negative impact both on the SME's coverage by financial analysts and on their ability to access the financial markets,

which could be very detrimental to their financing.

II. Issues for discussion

Please [refer to the corresponding section of the consultation document](#) before answering the questions.



to read some context information

A. When a prospectus is needed

A1. Adjusting the current exemption thresholds

4. The exemption thresholds in Articles 1(2)(h) and (j), 3(2)(b), (c) and (d), respectively, were initially designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. Should these thresholds be adjusted again so that a larger number of offers can be carried out without a prospectus? If yes, to which levels? Please provide reasoning for your answer.

a) the EUR 5 000 000 threshold of Article

1(2)(h): Yes, from EUR 5 000 000 to

more

No

Don't know / no opinion

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

€

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

This threshold is not problematic in itself. The problem is the lack of harmonization throughout the EU and the flexibility given to the Member States to require a prospectus for offers below that threshold (see Question 5 hereunder). Also, another problem is the way in which the threshold is calculated over a period of 12 months, by reference to the amount offered rather than to that effectively subscribed. This is particularly damaging for SMEs which try to raise capital to finance their development but can't afford to fall within the scope of Prospectus Directive. If they need to call for capital again during the same 12 month period, they need to be able to call also for the amount which may have been previously offered but not subscribed. Therefore FBF strongly advocates that the reference be changed to the amount subscribed (and not simply offered).

b) the EUR 75 000 000 threshold of Article

1(2)(j): Yes, from EUR 75 000 000 to more

No

Don't know / no opinion

Please specify from EUR 75 000 000 up to how many euros:

€

Please justify your answer on the EUR 75 000 000 threshold:

For FBF, that threshold has not been specifically highlighted because it seems not to be used by market participants.-More feedback is globally needed by market participants on the purpose of this provision in order for FBF to advise on whether this threshold should be modified or not.

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

Yes, from 150 persons to more

No

Don't know / no opinion

Please specify from 150 persons up to how many persons:

persons

Please justify your answer on the 150 persons threshold:

For FBF, the current number of 150 could be increased to 300 notably for the purpose of the distribution of structured products (other than to the public). This figure of 300 is based on the exemption in force before the 2003 Prospectus Directive and related to the number of people under the “limited circle of investors”.

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

(d): Yes, from EUR 100 000 to more

No

Don't know / no opinion

Please specify from EUR 100 000 up to how many euros:

€

Please justify your answer on the EUR 100 000 threshold:

FBF considers that this threshold should be lowered to EUR 50,000. Indeed, the exemption threshold of Article 3 (2) (d) appears to be too high when the EUR 100,000 units are purchased by insurance companies to be placed in unit-linked contracts. This high amount is detrimental to the liquidity of these products.

Secondly, FBF considers that it would be useful to indicate clearly that the figure of EUR 100,000 (or a lower figure) should be assessed at the time of issuance of the securities concerned (so as to avoid any side effect for depreciable debt securities).

5. Would more harmonisation be beneficial in areas currently left to Member States' discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

Yes

No

Other areas

Don't know / no opinion

Please specify what other area:

1,000 character(s) maximum

As previously mentioned (see question 4 here above) and in the context of the contemplated capital markets union (CMU) to be implemented between twenty-eight Member States within EU, FBF is of the

opinion that more harmonization is needed in such areas. An effective CMU in term of information framework requires more predictability and, therefore, less flexibility given to the Member States.

Please justify your answer on whether more harmonisation be beneficial:

1,000 character(s) maximum

6. Do you see a need for including a wider range of securities in the scope of the Directive than transferable securities as defined in Article 2(1)(a)?

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

Please justify your answer on the possibility of including a wider range of securities in the scope of the Directive:

FBF-considers that the relevant securities have already been included in the scope of the Directive.

7. Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

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

Please specify what other area:

1,000 character(s) maximum

Please justify your answer on possible other area:

1,000 character(s) maximum

A2. Creating an exemption for “secondary issuances” under certain conditions

8. Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, provided that relevant information updates are made available by the issuer?

Yes

No

Don't know / no opinion

Please justify your answer on the possible mitigation of the obligation to draw up a prospectus:

1,000 character(s) maximum

FBF considers that some equity issues are linked to the exercise of rights related to the securities already issued. These issues are carried out by companies having already published a prospectus and whose new securities have the same features as the existing shares. FBF therefore proposes that such secondary-issues receive a relief from the prospectus requirements.

FBF also considers that the exemption of the prospectus requirement should also benefit to a further admission to trading on the regulated market of debt securities already listed on such regulated market.

FBF also agrees to lift any prospectus requirement in cases any relevant information updates have been made available by the issuer. A system based on the WKSI ("Well-known seasoned Issuer") status put in place by the SEC in 2005 could be implemented within EU for issuers who have, for instance, filed a registration document with their national authority for 3 consecutive years and have not been subject to specific fines. Such a system would favor the financing of companies on the financial markets.

9. How should Article 4(2)(a) be amended in order to achieve this objective?

The 10% threshold should be raised

The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued

No amendment

Don't know / no opinion

FBF considers that the exemption should apply to all secondary issuances of fungible securities regardless of their proportion with respect to those already issued. Indeed, this exemption is based on the fact that the necessary information has already been given to the public without any relation to a specific percentage of the concerned share capital of this issuer.

%

Please justify your answer on the amendment of Article 4(2):

1,000 character(s) maximum

10. If the exemption for secondary issuances were to be made conditional to a full-blown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

One or several years

There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)

Don't know / no opinion

Please specify the length of the ideal timeframe (in years):

years

Please justify your answer on the convenience of having a timeframe for the exemption:

The exemption for secondary issuances should not be made conditional to a full-blown prospectus having been approved within a certain period of time. As mentioned in question 9 here above, the basis for such exemption is that the necessary information has been given and is given regularly to the public (or in the case of a subsequent admission to trading without any offer to the public, the fact that there is no need for any further information) and, consequently, that investors have been entitled to make a well-informed investment decision based on such an accurate and updated information.

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A3. Extending the prospectus to admission to trading on an MTF

11. Do you think that a prospectus should be required when securities are admitted to trading on an MTF?

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

Please justify your answer on whether a prospectus should be required when securities are admitted to trading on an MTF:

FBF considers that the prospectus requirement should absolutely not be extended to admissions of financial instruments to trading on MTFs. Indeed, such extension (i) would be contradictory with the different nature of regulated markets and MTFs and (ii) would be detrimental to SMEs (it would increase their costs for accessing the markets, which would be contradictory with the Commission's objective to promote SMEs' access to the financial market).

12. Were the scope of the Directive extended to the admission of securities to trading on MTFs, do you think that the proportionate disclosure regime (either amended or unamended) should apply?

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

Please justify your answer on the possible application of the proportionate disclosure regime:

1,000 character(s) maximum

Since FBF disapproves the extension of the prospectus requirement to the admission to trading on MTFs, FBF considers that no options mentioned above are relevant.

A4. Exemption of prospectus for certain types of closed-ended alternative investment funds (AIFs)

13. Should future European long term investment funds (ELTIF), as well as certain [European social entrepreneurship funds \(EuSEF\)](#) and [European venture capital funds \(EuVECA\)](#) of the closed-ended type and marketed to non-professional investors be exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document?

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

Please state your reasoning, if necessary by drawing comparisons between the different sets of disclosure requirements which cumulate for these funds:

FBF considers that at the launch of the process, it is irrelevant to outweigh ELTIFs information regime as long as a bespoke disclosure regime exists. ELTIF's framework has recently been built and could contribute to the long term investment. This potential positive impact of ELTIFs must be taken into account within the context of the contemplated modification of the Directive.

A5. Extending the exemption for employee share schemes

14. Is there a need to extend the scope of the exemption provided to employee shares schemes in

Article 4(1)(e) to non-EU, private companies?

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

Please explain your answer on the possible extension of the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies and provide supporting evidence:

Even if the extension of existing exemption for non EU private companies seems to be an issue, FBF considers that this extension would be positive. Indeed, it would favor EU employees as it would allow non EU private companies to offer their securities to their employees within EU without being required to publish a prospectus. Of course, conversely, that point shall be analyzed jointly with the debate on reciprocity and level playing field for a fair competition with non EU companies. This should justify the request from non EU companies to consent to the possibility for EU companies to offer their securities to their employees located in their territories.

A6. Balancing the favourable treatment of issuers of debt securities with a high denomination per unit with liquidity on the debt markets

15. Do you consider that the system of exemptions granted to issuers of debt securities above a denomination per unit of EUR 100 000 under the Prospectus and Transparency Directives may be detrimental to liquidity in corporate bond markets?

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

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

1,000 character(s) maximum

As mentioned in our answer to question 4 here above, FBF considers that this threshold should be lowered to EUR 50,000. Indeed, the exemption threshold of Article 3 (2) (d) appears to be too high when the EUR 100,000 units are purchased by insurance companies to be placed in unit-linked contracts. This high amount is detrimental to the liquidity of these products.

Secondly, FBF considers that, it would be useful to indicate clearly that the figure of EUR 100,000 (or a lower figure) should be assessed at the time of issuance of the securities concerned (so as to avoid any side effect for depreciable debt securities).

Please justify your answer on whether the system of exemptions may be detrimental to liquidity in corporate bond markets:

1,000 character(s) maximum

a) Do you then think that the EUR 100 000 threshold should be lowered?

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

Please specify to which amount (in euro) the EUR 100 000 threshold should be lowered:

€

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

As mentioned above in relation to question 4(d), the exemption threshold of Article 3 (2) (d) appears to be too high when the EUR 100,000 units are to be purchased by insurance companies to be placed in unit-linked contracts. This high amount is detrimental to the liquidity of these products. For that reason, FBF recommends that this threshold be lowered to EUR 50,000.

b) Do you then think that some or all of the favourable treatments granted to the above issuers should be removed?

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

Please indicate to what extent the favourable treatments granted to the above issuers should be removed:

1,000 character(s) maximum

Please justify your answer on whether the favourable treatments granted to the above issuers should be removed:

1,000 character(s) maximum

c) Do you then think that 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?

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

Please justify your answer on whether 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:

1,000 character(s) maximum

An impact assessment is needed on this question and more globally on the threshold modification. In terms of method, the discussion shall take into account the liquidity impact that another regime would bring and the relevant measures to be adopted in order to favor the issuance of debt securities.

B. The information a prospectus should contain

B1. Proportionate disclosure regime

16. In your view, has the proportionate disclosure regime (Article 7(2)(e) and (g)) met its original purpose to improve efficiency and to take account of the size of issuers? If not, why?

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

Please justify your answer on whether the proportionate disclosure regime has met its original purpose:

FBF understands that the simplification presumably offered by the proportionate disclosure regime is actually very limited and that this regime is still perceived as being too burdensome. Clearly, it has not delivered its intended effect.

17. Is the proportionate disclosure regime (Article 7(2)(e) and (g)) used in practice, and if not what are the reasons? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues

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

Please justify your answer on the proportionate regime for rights issues:

The proportionate regime is not used for right issues because it contains no simplification which could be useful for such types of transactions--

1,000 character(s) maximum

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

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

Please justify your answer on the proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation:

1,000 character(s) maximum

The proportionate regime appears to be occasionally used by small and medium-sized companies with reduced market capitalization. But as mentioned in our answer to question 16 here above, the simplification supposedly offered by such regime is actually very limited. Consequently, this regime is still perceived as being too burdensome and therefore not attractive enough, including for SMEs.

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

This proportionate regime for issues by credit institutions, which is crucial for banks, should be preserved and improved.

Please justify your answer on the proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC:

1,000 character(s) maximum

18. Should the proportionate disclosure regime be modified to improve its efficiency, and how? Please specify your answers according to the type of disclosure regime.

a) Proportionate regime for rights issues:

1,000 character(s) maximum

The proportionate disclosure regime tries to mitigate the impact of the process burdensome but remains rather inefficient. FBF is of the opinion that the framework set up under article 7 should be reframed to be more attractive.

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

A pro-active regulation with the purpose of facilitating SME's access to the market is urgent while the process of financial desintermediation is growing. Please see on this issue our answers to questions 19 to 22 hereunder.

Furthermore some market participants notice that the problem of SME definition has not been totally settled notably because SME's definition is not consistent in the Prospectus Directive and in MIFID.

1,000 character(s) maximum

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

1,000 character(s) maximum

Such proportionate regime contributes to the flexibility requires by credit institutions operations.

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

- To types of issuers or issues not yet covered
- To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive
- Other**
- Don't know / no opinion

Please specify which types of issuers or issues not yet covered:

The proportionate disclosure regime should be extended to all issuers with a market capitalization of up to one billion euros (EUR 1,000,000,000). As it is not proposed in this consultation to raise the capitalization limit of companies defined as "company with reduced market capitalization" to more than EUR 200,000,000, FBF strongly advocates the creation of a new category of companies with a market capitalization of up to 1 billion euros (this notion shall of course also apply to companies seeking for the first time the admission to trading of their securities on a regulated market). The new category shall be referred to as that of "mid-sized companies" given that the notion of "SME" not only exists already but also, based on-its capitalization limit, concerns far more small companies than mid-sized companies

Please specify which admissions of securities to trading on an MTF:

As mentioned above (see our answers in relation to questions 11 and 12 here above), FBF is strongly opposed to the inclusion of the admission to trading on MTFs within the scope of the Directive.

Please specify which other possibilities:

1,000 character(s) maximum

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

1,000 character(s) maximum

B2. Creating a bespoke regime for companies admitted to trading on SME growth markets

20. Should the definition of “company with reduced market capitalization” (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalization limit to EUR 200 000 000?

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

Please justify your answer on the possible alignment of “company with reduced market capitalization” (Article 2(1)(t)) with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000:

FBF considers that the definition of SMEs in Directive 2014/65/EU should be modified, as the market capitalization retained (EUR 200,000,000) to define a SME is far too low. Of course, the proposed alignment should be made and therefore, the capitalization limit for “companies with reduced capitalization” should be raised to EUR 200,000,000. But, as this not sufficient to reflect the reality of mid-sized companies seeking to access capital markets but for whom the obligations currently in force under the Prospectus Directive (including its “proportionate disclosure regime”) are too burdensome and not attractive enough, FBF also advocates the creation of a new category of mid-sized companies, with a market capitalization of up to 1 billion euros (see question 19 here above) for which a bespoke regime could be put in place (see question 21).

21. Would you support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market, in order to facilitate their access to capital market financing?

- Yes
- No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets
- Don't know / no opinion

Please justify your answer on the possible creation of a simplified prospectus for SMEs and

companies with reduced market capitalisation admitted to trading on an SME growth market:

FBF considers that it is not only for SMEs, companies with reduced market capitalization and “mid-sized companies” but also for large caps that the prospectus should be simplified in order to avoid notably the risk of having the same information to be provided. Therefore, significant simplification could be made in that respect for the benefit of all issuers. Also, a significant part of the difficulties encountered particularly by SMEs comes from the implementation of the EU rules at national level, with additional constraints imposed by the national competent authorities whereas national options left to Member States should be avoided as much as possible.

Besides, for mid-sized companies listed on an MTF, FBF suggests to create a lighter bespoke disclosure regime which could replace the prospectus requirement (see our answer to question 20 here above). Because the issuers concerned are not listed on a regulated market, a lighter disclosure regime which gives the investors a lesser degree of protection is perfectly justified. In that case, both the issuer and the investors will take their risk – with the result that probably only investors seeking a more risky profile of investment will be interested.

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:

FBF is of the opinion that SMEs’ access to market must be analyzed globally and as OCDE noticed recently in the report “***New approaches to SME and entrepreneurship financing: Broadening the range of instruments***” dedicated to SMEs, national competent authorities shall withdraw the obstacles that are limiting SMEs’ use of a broader range of financial instruments by”

- Addressing the SME skills gap in finance;
- **Designing regulation that balances financial stability, investor protection and the development of innovative financing channels for SMEs;**
- Creating information infrastructures to improve credit risk assessment; and
- Increasing participation of private actors in SME finance.”

“

B3. Making the “incorporation by reference” mechanism more flexible and assessing the need for supplements in case of parallel disclosure of inside information

23. Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility?

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

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

1,000 character(s) maximum

FBF believes that it should be possible to incorporate in the prospectus by reference any information that has been filed with or approved by the national competent authority irrespective of whether it has been filed by virtue of a legal obligation or voluntarily. We cannot concur with ESMA’s extremely rigid interpretation of both the Prospectus Directive and the Transparency Directive.

Equally, repeating in the prospectus information that has already been filed does not support investor protection because it does not enhance transparency. Rather, incorporation by reference allows

investors to access all the relevant information and base their decision on it.

Furthermore, it should be clarified that final terms (under a base prospectus) may also be incorporated by reference. This would allow the issuer to continue the related public offering even after the validity of the base prospectus has expired.

Last but not least, it would be helpful to clarify that translation of documents which have been approved by or filed with the competent authority of the home Member State may also be used for incorporation by reference purposes. It should, for example be possible to incorporate by reference the information contained in an (certified) English translation of a registration document, which has been drawn up and approved in French.

Please justify your answer on the possible recalibration of the provision of Article 11 (incorporation by reference) in order to achieve more flexibility:

1,000 character(s) maximum

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

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

Please justify your answer on whether documents which were already published/filed under the Transparency Directive should no longer need to be subject to incorporation by reference in the prospectus:

Even though it might apply to all documents already approved/filed/published under the Transparency and Prospectus Directives, FBF is rather opposed to this solution unless all such information to be automatically incorporated by reference is made easily accessible by the issuer, for instance by a hyperlink to a dedicated space on its website where all such information to be incorporated by reference would be located (which does not appear to be the case at the moment). Should a single, integrated EU filing system for all prospectuses drafted in the EU be put in place in the future (as envisaged in § C5) it would definitely make it more manageable to have a system of automatic incorporation by reference.

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

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

Please justify your whether you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive:

1,000 character(s) maximum

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

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

Please justify your whether the above-mentioned obligation could substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive:

1,000 character(s) maximum

FBF is supportive of the initiative consisting to address possible differences between the Market Abuse directive and the Prospectus Directive regarding disclosure requirements. Furthermore, FBF supports the European Commission's consideration that any ad-hoc publication in accordance with Article 6(1) of the Market Abuse Directive shall substitute the requirement in the Prospectus Directive to publish a supplement without jeopardizing investor protection. However this requirement should only apply for certain information, i.e. not for the publication of full year and/or interim financial statements.

We consider that information already disclosed according to Article 17 Regulation (EU) No 596/2014 on market abuse (MAR) does not need to be additionally published in a supplement to the prospectus according to Article 16 of Prospectus Directive 2003/EC/71. The information is already publically available and investors have the possibility to consider it in respect to their investment decision. We see no need for an additional publication.

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

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

Please justify your whether you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive:

1,000 character(s) maximum

FBF is supportive of the initiative consisting to address possible differences between the Market Abuse directive and the Prospectus Directive regarding disclosure requirements (see our answer to question 25 here above).

B4. Reassessing the objectives of the prospectus summary and addressing possible overlaps with the key information document required under the PRIIPs Regulation

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

- Yes, regarding the concept of key information and its usefulness for retail investors
- Yes, regarding the comparability of the summaries of similar securities
- Yes, regarding the interaction with final terms in base prospectuses**
- No
- Don't know / no opinion

Please provide suggestions for re-assessment of the concept of key information and its usefulness for retail investors:

1,000 character(s) maximum

Please provide suggestions for re-assessment of the comparability of the summaries of similar securities:

1,000 character(s) maximum

On the one hand the summary seems too long and finally unclear for the attention of span of retail investors. KID could serve them better. However, on the other hand, a summary could continue to be required, as substantial change in the regime could result in costs for issuers in re-working the summaries in their prospectus and base prospectus.

For example, the requirement for summaries to contain “*key information on the key risks*” that are specific to the issuer and its securities in Annex XXII to the Prospectus Regulation and the requirement for the prospectus to contain risks “*which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions*” in Article 2(3) of the Prospectus Regulation use different terms “*key*” and “*material*”, which might suggest a different standard of disclosure. It is not clear, as matter of legislative construction, the extent to which these standards differ or as a matter of policy why they should differ. Different competent authorities from time to time take different approaches in interpreting this.

FBF considers that an issuer should be able to include in its base prospectus a summary that combines both a base prospectus summary and a pro forma summary for individual issues. This has the advantage of making a base prospectus shorter and more streamlined.

Please provide suggestions for re-assessment of the interaction with final terms in base prospectuses:

1,000 character(s) maximum

Please justify your answer on the possibility to reassess the rules regarding the summary of the prospectus:

1,000 character(s) maximum

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

- By providing that information already featured in the KID need not be duplicated in the prospectus summary
- By eliminating the prospectus summary for those securities**
- By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products
- Other
- Don't know / no opinion

Please indicate which redundant information would be concerned:

1,000 character(s) maximum

Requiring both documents would be costly and time consuming for issuers without benefit for investors' protection. In addition, for securities issued under a base prospectus, the program summary will be available in any event.

Therefore, FBF considers that when securities fall under the scope of both PRIIPS and Prospectus regulations, the constraint of the prospectus summary should be removed to the benefit of the KID (imposed by PRIIPS regulation).

Furthermore, for sake of clarity, Article 18 (1) of the Prospectus Directive (relating to the passport) shall be also modified to provide for that when no summary is required because a KID has been established, a translation of the KID will validly replace the translation of the summary which is requested under this Article.

Please specify which other ways you would consider to addressing the overlap of information required to be disclosed:

1,000 character(s) maximum

Please justify your answer on the possible ways to address the overlap of information required to be disclosed:

1,000 character(s) maximum

B5. Imposing a length limit to prospectuses

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

- Yes, it should be defined by a maximum number of pages
- Yes, it should be defined using other criteria
- No**
- Don't know / no opinion

What should be the maximum number of pages?

pages

What other criteria could be used to set the maximum length of the prospectus:

Even if FBF acknowledges that the tendency towards lengthier prospectuses is a real issue (since it might lead to investors being overwhelmed and therefore not reading prospectuses), FBF is opposed to the introduction of a maximum length to the prospectus, for the following reasons: (a) it could be burdensome for issuers and even raise a risk of liability for them if they are not able to include all information that they consider to be relevant for investors; (b) it could also result in prospectuses being less understandable for investors since setting-up a length limit could increase the use of market jargon.

For all these reasons, the use of qualitative criteria in order to enhance analyzability and comprehensibility of prospectuses would be more appropriate than a length limitation.

Please justify your answer on the possible introduction of a maximum length to the prospectus:

1,000 character(s) maximum

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

1,000 character(s) maximum

No.

B6. Liability and sanctions

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?

	<u>Yes</u>	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"/>

If not, how could they be improved?

The liability regime under the Prospectus Directive does not raise any difficulty in itself. The problems are rather linked to the diversity of liability systems within the EU. It is particularly true for the sanctions regime where differences between Member States can be quite significant. Harmonization should be sought on this issue between the Member States.

Please justify your answer on the adequacy of the liability and sanctions regimes the Directive provides for:

1,000 character(s) maximum

32. Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive?

- Yes
 No
 Don't know / no opinion

If you have identified problems relating to multi-jurisdiction (cross-border) liability, please give details:

1,000 character(s) maximum

Please justify your answer on possible problems relating to multi-jurisdiction (cross-border) liability:

1,000 character(s) maximum

C. How prospectuses are approved

C1. Streamlining further the scrutiny and approval process of

prospectuses by national competent authorities (NCAs)

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

If you are aware of material differences please provide examples/evidence:

The way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses is still subject to material differences. This has in particular been supported in ESMA's "Prospectus Directive: Peer Review Report on good practices in the approval process" (ESMA/2012/300 – the "Peer Review"), published in 2012:

- **while some competent authorities take a rather formalistic approach, other competent authorities, in consideration of the investor protection objective of the Prospectus Directive, take a more pragmatic and practical approach;**
- **while some member States (for instance UK, Belgium) have a system of ex-post control of the prospectus, which is rather similar to the WSKI system (*Well Known Seasoned Issuer*) referred to above in relation to question 8 and in place in the United States, some other regulators also tend to request information beyond what is imposed by the Directive.**

Please justify your answer on possible material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses:

34. Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs?

- Yes
 No
 Don't know / no opinion

If you think there is a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs, please specify in which regard:

1,000 character(s) maximum

We think that the national competent authorities (NCAs) must take an approach that ensures a balance between the investor protection objective of the Prospectus Directive and the issuer's needs for flexibility.

Prospectus approval processes take a lot of time and are extremely cost-extensive.

It would be extremely helpful if NCAs could return clear comments in writing to the issuer of the prospectus as part of the approval process to make the entire process more efficient.

It would also be extremely helpful if the NCAs could refer in their comments to the relevant provisions of prospectus law that they believe have not been complied with, and could provide the reasons for their decision. This would also help to streamline the prospectus review process and would ensure that any potential requests from NCAs are limited to the content of the Directive.

Please justify your answer on the possible need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs:

1,000 character(s) maximum

35. Should the scrutiny and approval procedure be made more transparent to the public?

- Yes
 No
 Don't know / no opinion

If you think the scrutiny and approval procedure should be made more transparent to the public, please indicate how this should be achieved:

1,000 character(s) maximum

At this stage of the process, NCA are the relevant entities to receive the information. This is not the case for the public. Indeed, ensuring transparency in favor of the public may have side effects as it may lead to disclose some events / information too soon.

Please justify your answer on the opportunity to make the scrutiny and approval procedure more transparent to the public:

1,000 character(s) maximum

36. Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved?

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

If you think it is 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, please provide details on how this could be achieved:

1,000 character(s) maximum

It is conceivable only if those marketing activities are limited to promotional activities carried-out in very general terms towards institutional investors only and with no specific reference to the proposed transaction.

Please justify your answer on the possibility to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version:

1,000 character(s) maximum

37. What should be the involvement of national competent authorities (NCA) in relation to prospectuses? Should NCA:

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

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

As mentioned in our answer to question 8 here above, FBF favors a system inspired from the WKSJ status in place for regular issuers in the USA. For instance, issuers who have filed a registration document for three consecutive years and have not been subject to some specified sanctions could acquire this status. For such issuers, the involvement of the NCA would be limited to a review ex-post of only a sample of prospectuses. The review ex-ante would be maintained for all other issuers.

As already mentioned, this system would favor the financing of the companies on the financial markets.

1,000 character(s) maximum

38. Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive), be more closely aligned with the approval of the prospectus and the right to passport?

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

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

FBF has not been acknowledged of any issue relating to this topic.

1,000 character(s) maximum

39. a) Is the EU passporting mechanism of prospectuses functioning in an efficient way?

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

What improvements could be made to the EU passporting mechanism of prospectuses?

FBF considers that the passporting mechanism of prospectuses seems to be working quite well in most cases. However FBF has been informed that, in some cases, the NCAs of the host Member State have requested additional information/document beyond what is provided for under the Directive.

Please justify your answer on whether the EU passporting mechanism of prospectuses is functioning in an efficient way:

1,000 character(s) maximum

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

- Yes
 No
 Don't know / no opinion

Please justify your answer on whether the notification procedure set out in Article 18 between NCAs of home and host Member States could be simplified:

1,000 character(s) maximum

C2. Extending the base prospectus facility

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

a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed:

- I support**
 I do not support

Please justify your answer on whether or not you support the possibility for the use of the

base prospectus facility to be allowed for all types of issuers and issues, and for the limitations of Article 5(4)(a) and (b) to be removed:

FBF considers that the use of the base prospectus facility should be allowed for all type of issuers and issues since we do not see any relevant investor protection reason for the limitations referred to in Article 5 (4) (a) and (b).

1,000 character(s) maximum

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

- I support**
 I do not support

Please indicate the appropriate validity length:

24 months

Please justify your answer on whether or not you support the possibility for the validity of the base prospectus to be extended beyond one year:

1,000 character(s) maximum

If a system of automatic incorporation by reference is put in place (which assumes that all regulated information published by an issuer – including updates – is easily accessible, for instance by an hyperlink to a dedicated space on the issuer’s website – see our response to question 24 here above), FBF considers that the validity of the base prospectus could be extended up to 2 years. In that case, the annual update of the base prospectus would no longer be necessary (save in case of significant change affecting the issuer or the operation) as all updates of the regulated information would be automatically incorporated by reference and easily accessible through the same channel. For non-equity issuance programs this extension would considerably simplify the process (instead of several supplements to the base prospectus, up-to-date information would be available at all times on the issuer’s website via the hyperlink mentioned above) and would alleviate the cost which are currently incurred in order to renew the prospectus each 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:

- I support**
 I do not support

Please justify your answer on whether or not you support the possibility for the Directive to clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

1,000 character(s) maximum

d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs:

- I support**
 I do not support

Please justify your answer on whether it should be possible for the components of a tripartite prospectus to be approved by different NCAs:

FBF considers that the opportunity for the components to be approved by different NCAs would facilitate the transactions initiated by issuers and, consequently, would favor capital movements throughout the EU.

1,000 character(s) maximum

e) The base prospectus facility should remain unchanged:

- I support**
 I do not support

Please justify your answer on whether the base prospectus facility should remain unchanged:

Market participants being familiar with the base prospectus concept, FBF considers that the general structure should remain unchanged in order to avoid unnecessary costs for issuers, notably concerning their debt issuance programs.

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

Irrespective of the duration of the base prospectus (one year for the moment) an important clarification is requested by the industry. When the base prospectus is completed by final terms, FBF considers that it should be specified that the one-year validity means that both documents should be approved within a 12 month period and that such approval should validly apply to the related offer or admission to trading, even if such offer and/or admission to trading takes place after the expiration of the 12 month period. As of today, given the uncertainty on this topic, issuers of non-equity programs whose duration extends beyond a 12 month period from the base prospectus, are often reluctant to use this facility and rather publish a new prospectus for each offer which is a very heavy and costly solution.

1,000 character(s) maximum

C3. The separate approval of the registration document, the securities note and the summary note (“tripartite regime”)

41. How is the “tripartite regime” (Articles 5 (3) and 12) used in practice and how could it be improved to offer more flexibility to issuers?

The tripartite regime might be used in the base prospectus context (see question 40(c) here above). In addition, to the extent a summary is still required, it should be possible to include the relevant sections of the summary within the relevant documents i.e. the registration document should contain a summary of the information in that document and each securities note should contain a summary of the information in it.

1,000 character(s) maximum

C4. Reviewing the determination of the home Member State for issues of non-equity securities

42. Should the dual regime for the determination of the home Member State for non-equity securities featured in Article 2(1)(m)(ii) be amended?

- No, status quo should be maintained
- Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000**

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

Please explain how this dual regime should be amended:

1,000 character(s) maximum

The dual regime for the determination of the home Member State which can lead to different home Member States for the same issuer depending on the products offered may create some unnecessary complexity. FBF considers that issuers should be allowed to choose their home Member States for all types of non-equity securities, irrespective of their unit value.

Please justify your answer on the possibility for the dual regime for the determination of the home

Member State for non-equity securities to be amended:

1,000 character(s) maximum

C5. Moving to an all-electronic system for the filing and publication of prospectuses

43. Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

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

Please justify your answer on the possible suppression of the options to publish a prospectus in a printed form and to be inserted in a newspaper:

1,000 character(s) maximum

The print options should be maintained to give issuers enough flexibility in case the other options are not available.

44. Should a single, integrated EU filing system for all prospectuses produced in the EU be created?

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

FBF's positive answer is subject to the obtaining of further information regarding what is envisaged, and notably on the cost linked to such a system (which is the global cost for such a system ? by whom will the costs be borne and according to what allocation system?).

The Transparency Directive already provides for (ref. article 4(7)) that, with effect from 1 January 2020, all annual financial reports shall be prepared in a single economic reporting format provided that a cost-benefit analysis has been undertaken by ESMA. FBF considers that a similar cost-benefit assessment with specific budget proposals coming from various operators should be conducted on this subject and all stakeholders consulted before any decision is made in this respect.

Please give your views on the main benefits (added value for issuers and investors) and drawbacks

(costs) of the creation of a single, integrated EU filing system for all prospectuses produced in the EU?

1,000 character(s) maximum

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

Such a filing system should be efficient, simple and not costly. At this stage, FBF has been informed that issuers widely reject the proposed XBRL format which appears to be very costly.

C6. Equivalence of third-country prospectus regimes

46. Would you support the creation of an equivalence regime in the Union for third country prospectus regimes?

- Yes
- No
- Don't know / no opinion (at this stage)**

Please describe on which essential principles the creation of an equivalence regime in the Union for third country prospectus regimes should be based:

1,000 character(s) maximum

FBF might approve the creation of an equivalence regime in the Union for third country prospectus regimes if there is an effective reciprocity with the third country concerned and, consequently, an actual level playing-field.

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

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

Please specify in which other way 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):

1,000 character(s) maximum

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:

An equivalence regime (which for FBF implies reciprocity on the part of the third country whose

regime will be recognized as being equivalent to the EU system, as mentioned in our answer to question 46 here above) implies that the prospectus approved by the NCA of the third country is “*passported*” without further approval within the EU – subject only to the notifications provided for under Article 18.

1,000 character(s) maximum

III. Final question

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

a) “Offer of securities to the public”?

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

Please justify your answer on the need for “offer of securities to the public” to be better defined:

1,000 character(s) maximum

b) “primary market” and “secondary market”?

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

Please justify your answer on the need for “offer of securities to the public” to be defined:

Considering the possibility of lighter requirements for “*secondary issuances*” (see our answer to question 8 here above), it might be useful to define clearly those two terms (i.e. primary market and secondary “issuances”, rather than secondary market which has a different meaning):

- the primary market covering the first admission to trading (with or without offer to the public) of securities of issuers which have no similar securities admitted to trading on a regulated market or on a MTF;
- the secondary issuances meaning any offer to the public or admission to trading of securities issued by an issuer whose securities are already listed on a regulated market or on a 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: the notion of “debt securities exchangeable or convertible into shares”**
- Don't know / no opinion

What according to you should still be clarified:

1,000 character(s) maximum

FBF considers that the notion of “debt securities exchangeable for or convertible into shares” should be clarified in the Prospectus Directive in order to make it consistent with the notions used under French law, pursuant to which the notions of “exchangeable” and of “convertible” refer respectively to existing shares and to new shares.

Please justify your answer on whether there are other areas or concepts in the Directive that would benefit from further clarification?:

1,000 character(s) maximum

50. Can you identify any modification to the Directive, apart from those addressed above, which could add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies on capital markets, whilst maintaining effective investor protection?

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

Please explain your reasoning and provide supporting arguments for other possible modification to the

Directive which could add flexibility to the prospectus framework:

1,000 character(s) maximum

51. Can you identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors?

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

Please explain your reasoning and provide supporting arguments for identifying incoherence(s) in the current Directive's provisions:

1,000 character(s) maximum

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here: