EC CONSULTATION ON THE REVIEW OF THE PROSPECTUS DIRECTIVE

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AMAFI's contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions

Accordingly, AMAFI is paying close attention to progress in the Capital Markets Union (CMU) initiative launched last July by the President of the European Commission, which has led to publication of a Green Paper – *Building a Capital Markets Union* – with accompanying proposals aimed at revising the Prospectus Directive and establishing a European framework for simple, transparent and standardised securitisation.

AMAFI is keen to provide its contribution to this vitally important initiative and therefore to respond to the three consultations launched in connection therewith. While AMAFI's contribution to the Green Paper of the European Commission and to the proposal for an EU framework of simple, transparent and standardised securitisation are to be found in two separate documents, respectively *AMAFI / 15-28* and *AMAFI / 15-29*, this is AMAFI's response to the consultation on the review of the Prospectus Directive. To the extent necessary, these three contributions should be read in conjunction with each other.

1. 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

When securities are admitted to trading on a regulated market (RM) for the first time and/or when securities are offered to the public, it is legitimate to require a prospectus. However, in case of further admission to trading on a RM of securities which are fungible with securities of the same issuer which are already listed on the RM, a prospectus should no longer be required (it is of no use since the issuer

is already subject to the Transparency and Market Abuse directives) unless the securities are concurrently offered to the public in which case, a prospectus could be required but with a "lighter regime" (simplified process and/or proportionate disclosure regime – see Q8). Similarly, if the further admission concerns securities which are not fungible with the securities already listed (with or without concurrent offer to the public) a prospectus could be required but also with a "lighter regime" as mentioned above.

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):

	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)			

The cost of producing a prospectus is significant and it is, to a large extent, prohibitive for SMEs – at least the smallest ones.
However, AMAFI, as representative of the intermediaries, does not have a full picture of all the costs incurred by the issuers in order to produce a prospectus and will rely on the issuers themselves and their representatives to produce some reliable figures in that respect.

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

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

Same comment as above. It is up to the issuers and their representatives to respond to that question.

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

Same comment as above. It is up to the issuers and their representatives to respond to that question. Having said that, in relation to Questions 2 (a), (b) and (c), it is difficult to estimate the cost of producing a prospectus as such cost depends to a large extent on the circumstances of the transaction concerned (for instance, in relation to debt products, the cost will vary considerably depending on whether is it a standalone issuance, the set up or update of a programme, or an issuance under an existing programme, etc…).

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

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

For SMEs in particular, the problem lies with the fact that the cost of producing a prospectus is excessive in itself, irrespective of the benefit attached to such prospectus (such benefit being moreover frequently limited by the additional requests made by some NCAs). Furthermore, SMEs are less likely to use the benefit of the passport than companies with larger capitalizations: therefore, such benefit is particularly irrelevant when it comes to assessing the impact of the prospectus on the possibility for such companies to have access to capital markets.

2. Issues for discussion

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

This threshold is not problematic in itself (although AMAFI would not be opposed to raising such threshold in a reasonable way). The problem is the lack of harmonization throughout the EU and the flexibility given to the MS to require a prospectus for offers below that threshold (see Q5 and the French regime which makes it more costly for SMEs to access capital markets). 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 PD. 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 AMAFI 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

In practice, it would appear that this threshold is not used at all and the industry does not seem to understand what was/is the objective of this provision. In order to decide whether this threshold should be modified, it is essential to assess the situations to which it is supposed to apply. In that respect, the few lines set out in the Consultation Document are not sufficient (the professionals consulted by AMAFI do not understand the explanation given by the Commission in its Consultation Document). Therefore, AMAFI would like the European Commission to explain what was or still is the objective of Article 1(2)(j) of the Directive as it is only with this explanation that it will be able to form a view as to whether this threshold should be modified or not.

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

- ◉ Yes, from 150 persons to more : 300
- ○ No
- ○ Don't know / no opinion

For equity transactions, the current 150 persons threshold appears to be acceptable as the number of investors concerned (when the transaction is not intended to be an offer to the public) is generally less than 150. The situation is exactly the opposite when it comes to the distribution of structured products (other than to the public) which generally concerns a much larger number of investors. For that reason, AMAFI's proposal is to raise such threshold to 300. This figure of 300 was used, quite satisfactorily, in France (as the threshold for the status of a company doing "*appel public à l'épargne*" prior to the entry into force of the PD).

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

AMAFI recommend that these thresholds be LOWERED to EUR 50,000. This would facilitate the marketing of debt products to a category of investors, the high net worth individuals, who are closer to the institutional investors than to the basic retail investors and moreover invest most of the time through portfolio managers who are professionals. To them, a prospectus is not of much

use. Encouraging those investments could also usefully increase the financing capability of some mid caps. Also, it would be useful to indicate clearly that the threshold retained should be assessed at the time of issuance of the securities concerned (so as to avoid any doubt when depreciable debt securities are concerned). Finally, whatever the rule, it should be set very clearly so as to avoid any doubt as to when a prospectus is or is not required. This does not always appear to be the case at the moment, due essentially to different interpretations of the text of the exemption by different NCAs.

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

As mentioned above (Q4), AMAFI is strongly opposed to the current lack of harmonization throughout the EU and the flexibility given to the MS to require a prospectus for offers below EUR 5,000,000. For instance, in France, on the regulated market, a prospectus is required for an offer above EUR 100,000 which represents more than 50% of the share capital of the issuer concerned. Moreover, on Alternext (an MTF dedicated to SMEs) a prospectus is required for any offer exceeding EUR 2,500,000. This measure goes exactly against the objective of making it easier for SMEs to access capital markets since it is more costly for an SME to access the market than it is for a large cap (the SMEs having to prepare a prospectus for any offer above EUR 2,500,000 whereas a large cap needs no prospectus under EUR 5,000,000 if the offer concerns less than 50% of the capital).
As a result, AMAFI believes that more harmonization would be highly beneficial in areas currently left to Member States' discretion.

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

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

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

See Q1: no prospectus should be required for further admission on a RM of fungible securities of the same issuer (with securities already listed on the RM) unless concurrently offered to the public, in which case, a prospectus could be required but with a "lighter regime" (simplified process and proportionate disclosure regime). Likewise for a further admission of non fungible securities with or without concurrent offer to the public. In terms of process, a system inspired from the WKSI (*Well Known Seasoned Issuer*) SEC status could usefully be put in place in the EU for regular issuers, e.g. those having filed a registration document for three consecutive years and not been subject to certain specified sanctions. Such a system (possible both for issues of fungible or non fungible securities) would allow eligible issuers to seize favorable market conditions without having to wait for the approval of the prospectus and make it much easier for them to raise financing on capital 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

AMAFI believes that what justifies the proposed exemption for secondary issuances is the fact that the necessary information has already been given and is given regularly to the public. It bears no relation whatsoever to the percentage of the capital concerned. This is why AMAFI believes that this exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued (provided the new securities are not offered to the public). If however the majority view was in favour of limiting the extent of the exemption, AMAFI would then be in favor of raising the threshold of Article 4 (2) (a) to at least 20%.

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

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 above, the basis for such exemption is not the fact that information was given to the public so many months or years ago but rather the fact that the necessary information has been given and is given regularly to the public. This assumes that the information is easily accessible by the investors (see AMAFI's proposal in Q24 a) regarding the dedicated space on the issuers' website where all their financial information would be accessible).

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

An issuer whose securities are traded or are to be traded on an MTF is required to produce a prospectus only if it simultaneously offers securities to the public. On the contrary, no prospectus is required for the mere admission to trading on a MTF (the documentation required in that case is determined by the rules of the MTF on which such securities are to be traded). AMAFI strongly opposes the possibility of requiring a prospectus for the admission of securities on a MTF. This would eliminate the difference between a regulated market and a MTF (which should remain a more flexible listing option with a lesser degree of protection). Furthermore it would make it more burdensome and costly for companies wishing to have their securities traded on a MTF – and this concerns primarily SMEs – to do so. Such a measure would go exactly against the objective the Commission to make it easier and less costly for companies, notably for SMEs, to raise capital throughout the EU.

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

AMAFI refuses to consider and choose among the various options listed above as they all assume that the Directive could be extended to the admission of securities to trading on MTFs. Such a measure would be completely in contradiction with the objectives of the review of the PD which have been put forward by the Commission in its consultation document (please see also AMAFI's responses to Q11 and 21).

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

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

AMAFI would support the extension of the scope of the exemption provided to employee shares schemes in Article 4 (1) (e) to non EU, private companies, so as to make it easier for them to offer their securities to their employees within the EU. In that case, given that the companies in question are not listed, an equivalence decision could not be requested. However, it would be appropriate to request at the same time some reciprocity from the country of the non EU private company, so that EU private companies wishing to offer their securities to their employees within the territory of that country may do so under similar conditions.

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

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

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

The high level of this exemption does not favour the liquidity of the products concerned although this does not appear to be the main argument in favour of lowering the current threshold. Please see AMAFI's response to Question 4 (d) above.

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

- Yes to EUR 50 000
- No
- Don't know / no opinion

As mentioned above (Q 4 (d)), a threshold of EUR 50,000 would facilitate the marketing of debt products to a category of investors, the high net worth individuals, who are closer to the institutional investors than to the basic retail investors and moreover invest most of the time through portfolio managers who are professionals. To them, a prospectus is not of much use. Encouraging those investments could also usefully increase the financing capability of some mid caps. Also, it would be useful to indicate clearly that the threshold retained should be assessed at the time of issuance of the securities concerned (so as to avoid any doubt when depreciable debt securities are concerned). Finally, whatever the rule, it should be set very clearly so as to avoid any doubt as to when a prospectus is or is not required. This does not always appear to be the case at the moment, due essentially to different interpretations of the text of the exemption by different NCAs.

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

Removing the favourable treatment that is currently given to issuers of debt securities with a denomination of at least EUR 100,000 would increase the PD burdens for a significant proportion of debt issuers. This would increase the cost of such issuances and result in a reduction of debt issuance levels within the EU. At the same time, it would not serve any useful purpose in terms of investor protection as the investors concerned are institutional investors who do not need additional disclosures and protection.

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

AMAFI would like to understand better the implications of this proposal. If the proposal is to remove the EUR 100,000 threshold and at the same time exempt all debt issuances, regardless of the denomination per unit, from the obligation to publish a prospectus, AMAFI would support it. On the contrary, AMAFI would be opposed to the removal of the EUR 100,000 threshold if it is not simultaneously accompanied by a measure which would favour 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

The simplification supposedly offered by the proportionate disclosure regime is in fact very limited and therefore, this regime is still perceived as being too burdensome. Clearly, it has not delivered its intended effect. Consequently, the regime for right issues is never used. That for SMEs is used but insufficient. AMAFI would also like to stress that for all companies (small, mid, large caps) the prospectus should be simplified to eliminate, for instance, the repetitions, the

same information to be produced under several different headings, etc. Last but not least, a large part of the difficulties encountered by issuers (primarily but not only SMEs) comes from the implementation of the EC rules at national level, i.e. from the additional constraints imposed by the NCAs. This is even more burdensome than the level of information required under the annexes to the Prospectus Regulation. NCAs should be strongly encouraged to apply all disclosure rules in a proportionate way.

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

The proportionate regime is not used for right issues because it contains no alleviation which could be useful in this connection. More precisely, the difference between the proportionate regime (Annex XXIV to the Prospectus Regulation) and the regular disclosure regime (Annex III to the PR) is the non requirement of the following paragraphs: applicable rules in terms of takeover bids and squeeze out and mention of takeover bids on the concerned securities over the last financial year (4.9 and 4.10 of Annex III); plan of distribution / categories of potential investors (5.2.1) and paragraphs relating to stabilization. Clearly, these alleged alleviations make no real difference.

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

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

The proportionate regime appears to be occasionally used by small and medium-sized companies with reduced market capitalization. But as mentioned above, the simplification supposedly offered by such regime is in fact very limited: essentially to the possibility for SMEs to include in the prospectus only 2 years of financial statements instead of 3 years. Therefore the alleviations for the SMEs and the differences between the disclosure regime for SMEs and the regular regime provided for in Annex I (for IPOs and equity transactions) are very limited and of little interest.
As a result, this regime is still perceived as being too burdensome and therefore not attractive enough. In addition, see Q16 regarding the additional constraints imposed by NCAs, particularly, although not only, on 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

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:

AMAFI suggests that a dedicated working group be established by the European Commission to work on the possible alleviations that could be made to the proportionate regime for right issues to make it more efficient. It is essential however that this working group be composed of professionals who effectively work on such transactions.

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

Please refer to AMAFI's responses to Questions 16 and 17(b) to 22.

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

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

- [x] 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

The proportionate disclosure regime should be extended to all "**mid-sized companies**" i.e. issuers with a market capitalization (or with an expected market capitalization based on the price or price range for IPOs), 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*" (CRMC) to more than EUR 200,000,000 (to align it to the notion of SME unfortunately fixed in MiFID at a level which is too low - see Q20), then AMAFI strongly advocates the creation of a new category – which corresponds to a reality of **"mid-sized companies"** (as opposed to large or small caps) - with a market capitalization of up to 1 billion euros that would include SMEs, CRMC and larger mid-sized companies.

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

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

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion

AMAFI considers that the definition of SMEs, which appears in Directive 2014/65/EU should be modified as soon as possible, as it believes that 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, at the very minimum, the capitalization limit for "*companies with reduced capitalization*" should be raised to EUR 200,000,000. But, as this is 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 PD are too burdensome and not attractive enough, AMAFI advocates the creation of a new category of mid-sized companies, with a market capitalization of up to 1 billion euros (see Q19) for which a bespoke regime could be put in place (see Q21), irrespective of whether they are listed (and where) or not.

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

First of all, as already said (see Q11 and 12), AMAFI strongly opposes the extension to MTFs – and therefore to SME growth markets since these are a category of MTFs – of the obligation to have a prospectus – full blown or simplified – for the admission to trading of securities on that type of market. Therefore, for AMAFI, the simplified prospectus envisaged here could only concern offers to the public made by issuers already listed on such a market.
But beyond that, what AMAFI would support is the creation of bespoke regime for all mid-sized companies (see Q19 and 20) i.e. companies with up to **1 billion euros** of market capitalization, irrespective of whether or not such companies are listed, for any public offering they make. This regime would also apply for the admission to trading of such companies' securities to the market, but only for admission on the regulated market as the admission on a non regulated market (such as an MTF) as already mentioned should not be subject to a prospectus.

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:

AMAFI suggests that a dedicated working group with appropriate representation of all parties concerned (SMEs, intermediaries, counsels who effectively work on such transactions) be put in place to work collectively in order to propose such an optional simplified prospectus.

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

Incorporation by reference is a great tool for issuers as it greatly reduces the costs and administrative burden of producing a prospectus without impacting the investors' protection as they are still able to access easily all necessary information.

The scope of the documents which could be incorporated by reference could be extended, to cover any and all regulatory filings made in accordance with the PD or the TD and Member States' relevant implementing measures. This would of course include documents approved by or filed with one or several NCAs other than the NCA which is due to approve the prospectus".
This however implies necessarily that article 12.3 of PD be modified to make it compatible with the new system (with no ex ante approval for regular issuers – see proposal in Q8) which could be adopted (inspired from the WKSI system).

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

It could be decided indeed that all documents already approved/filed/published under the Transparency and Prospectus Directives no longer need to be subject to incorporation by reference in the prospectus as they have already been published/ filed. In principle, however, AMAFI is not favourable to this solution (which places the burden of identifying and locating these documents on the investors) 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 would require a modification of article 29 (1) (3) of the Prospectus Regulation). Also, if a single, integrated EU filing system for all prospectuses produced in the EU is put in place at some stage 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

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

Under Article 17, a supplement to the Prospectus is required "*if significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus*". There is no doubt that some of these circumstances would also fall under the definition of "inside information" which means that in that case, the obligation under Article 6(1) of MAD to inform the public as soon as possible (and in a manner which enables fast access and complete, correct and timely assessment of the information by the public of inside information which directly concerns the issuer) could be considered to duplicate the objective of the supplement under the PD. It is no certain however that all circumstances in which a supplement is required at present would be deemed to be inside information with the consequence mentioned above. It is not certain therefore that the removal of the supplement required in the context of a specific operation would be an appropriate improvement.

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:

The principles set out in response to Q23 above could apply in the same way to disclosures made under the Market Abuse Directive (if not already required under the Prospectus or Transparency Directive).

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

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

AMAFI strongly regrets the inclusion, in the scope of PRIIPS, of instruments such as convertible bonds which are not investment products manufactured on an *ad hoc* basis with the purpose of offering investment opportunities to retail investors. Logically, the resulting overlap between the KID and the prospectus (or at least its summary) should be resolved in favour of the prospectus by removing the obligation to draft a KID which is totally inappropriate for this type of instrument. However, since this solution is not available, AMAFI supports the proposed elimination of the prospectus summary for these securities and for all securities which are subject to both the PD and PRIIPS. If this solution is retained, Article 18(1) of the PD (relating to the passport) must also be modified to provide 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 for passporting purposes.

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

Introducing a limit would make the process of establishing a prospectus even more burdensome particularly since the length of prospectuses is, to a large extent, the result of the heavy requirements under the PD. AMAFI strongly rejects this option. Also, given the terms of article 5 of the PD, limiting the length of prospectuses could increase significantly the risk of liability for issuers if they are no longer able to include all information which they consider to be relevant for investors. They may also be tempted to use market jargon or abbreviations which would be less understandable for investors. For structured debt instruments, one way of reducing the length of prospectuses would be to allow more information to be specified in the Final Terms (for instance the provisions concerning coupons and redemption payoffs could be in such Final Terms rather than in the programme in the Base prospectus).

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

No, there are no specific sections of the prospectus which could be made subject to rules limiting excessive lengths. See however in Q29 the proposal concerning prospectuses for structured debt products.

B6. Liability and sanctions

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

	Yes	No	No opinion
The overall civil liability regime of Article 6	Matrix answer row 2 column 2 ○	Matrix answer row 2 column 3 ○	Matrix answer row 2 column 4 ○
The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)	Matrix answer row 3 column 2 ◉	Matrix answer row 3 column 3 ○	Matrix answer row 3 column 4 ○
The sanctions regime of Article 25	Matrix answer row 4 column 2 ○	Matrix answer row 4 column 3 ◉	Matrix answer row 4 column 4 ○

The liability regime under the Directive does not raise any difficulty in itself. The problems come rather from the diversity of liability systems in place throughout the EU. It is particularly true for the sanctions regime where differences between Member States can be quite significant. Harmonization should be sought between the Member States. Regarding the publication of the

sanction, some harmonization could be sought with the relevant articles in the more recent directives.

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

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion

The recent CJEU judgment (28 January 2015) in the Kolassa case has highlighted a possible concern in relation to multi-jurisdiction liability. It might be useful to initiate a study in this connection to determine whether it would be appropriate to establish conflict of laws and conflict of jurisdiction rules regarding the liabilities relating to the prospectus.

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

Some MS (i.e. the UK, Belgium) have a system of ex-post control of the prospectus, which bears some resemblance to the WKSI system (see Q8) in place in the US. Also, some NCAs tend to request information beyond what is set in the Directive/Regulation (e.g. in some cases, small caps asked to produce working capital statements in the registration document while no such demands made on large caps, including indebted ones. Also, small or large caps asked to produce charts showing many different share capital breakdown scenarios, all such requests being very costly for the issuer while the resulting figures give the investors no valuable information) Regarding particularly prospectuses for structured products, there are significant differences in the approach of the different NCAs. More harmonization should not lead to even heavier constraints. On the contrary, NCAs should be strongly encouraged to limit their demands to what is set in the PD and PR.

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

As mentioned above, the principle should be reaffirmed in a very strong way that the demands from the NCAs should be limited to what is provided for in the Prospectus Directive and Regulation and cannot go beyond that.

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

- ( ) Yes
- (•) No
- ( ) Don't know / no opinion

In principle it would be a good thing to make the approval procedure more transparent but, from a practical standpoint, it is not realistic and it may also have some negative effects if it leads to disclosing certain facts/events too soon.

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

It is conceivable especially if those marketing activities are limited to promotional activities conducted in very general terms vis-à-vis institutional investors only or in certain circumstances directed at qualified investors. In fact this is already the case and no change to the PD appears to be required in this connection.

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

As mentioned above in relation to Q8, AMAFI would be in favour of a system inspired from the WKSI status in place for regular issuers in the USA. For instance, issuers who have filed a registration document for three consecutive years and not been subject to certain specified sanctions could acquire this status and then, for them, the involvement of the NCA would be limited to a review of only a sample of prospectuses ex-post. The review ex-ante would be maintained for all other issuers. The benefits of this system are twofold: it would alleviate the cost of the operation and it would give eligible issuers the flexibility to time securities sales to meet market conditions, without having to wait for the approval of the prospectus. This would represent a significant business advantage which would make it easier to raise financing on capital markets.

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

AMAFI is not aware of particular difficulties in that respect.

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

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

The passporting mechanism of prospectuses seems to be working quite well in most cases. However, it has been reported to AMAFI that in some cases, the NCA of the host Member State has requested additional information/document beyond what is provided under the Directive.

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

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

The base prospectus facility is not well suited for equity products. AMAFI has no view on other possible changes or extensions.

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

- ◉ I support
- ○ I do not support

Extension to 24 months

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 (see our proposal in Q24), then, the validity of the base prospectus could well be extended up to 2 years (otherwise a one year duration seems appropriate). 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 alleviate the cost which, at present, has to be 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

Yes, clarification is needed in that respect. In fact, it would be very useful if a base prospectus could be drawn up using a tripartite approach because it would allow issuers to prepare one registration document and a series of securities notes (to be completed by final terms) rather than several different base prospectuses for different categories of products.

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

Yes, AMAFI does see why it would not be possible if the offer is made in a Member State which is not the home Member State for the issuer concerned. This can only favour the movement of capital throughout the EU.

e) The base prospectus facility should remain unchanged:

- (•) I support
- ( ) I do not support

Subject to the proposals made by AMAFI in relation to the various subparagraphs of this Q40, in order to improve the mechanism (see in particular the important clarification sought in subparagraph f) below) it appears that the base prospectus facility is satisfactory for non equity issuances and therefore this facility should be maintained (so as not to force issuers to re-structure their debt issuance programmes which would necessary entail additional costs).

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

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 (together the Prospectus), it should be said clearly that the one year validity means that if both documents are signed and the related offer is initiated within that 12 month period, the Prospectus remains valid for the whole duration of the offer, even if such offer extends beyond the 12 month period and for the subsequent admission to trading on a regulated market of the securities concerned (even if is occurs after the end of the 12 month period). At the moment, given the uncertainty which exists in that respect, issuers of non equity programs whose duration extent beyond a 12 month period from the base prospectus, are often reluctant to use this facility and instead they publish a new prospectus for each offer which is a very heavy and costly solution.

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" is commonly used for equity securities. For debt issuances, it is rarely used but It should be made possible to use such regime for the base prospectus (see Q40 c). In addition, to the extent the 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 would contain a summary of the information in that document and each securities note should contain a summary of the information in it.

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

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 that it offers may create some unnecessary complexity. AMAFI does not see why issuers could not be allowed to choose their home Member States for all types of non-equity securities, irrespective of the value of the unit. It is therefore in favour of giving the issuers that freedom.

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

The printed form and the insertion in a newspaper no longer make sense in today's world and should be suppressed (with the remaining possibility for an investor to obtain a paper version upon request and free of charge) as they represent a very significant but useless cost.

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

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion

AMAFI's positive answer is however conditional upon obtaining more information regarding what is envisaged. In other words, while it is an appealing idea to have a single, integrated EU filing system for all prospectuses produced in the EU, it should be balanced against the cost of producing such a system (global cost of producing such a system, borne by whom, according to what allocation system?).The Transparency Directive already provides (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 which is requested to carry out an adequate assessment of possible formats and conduct field tests. AMAFI believes 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.

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. AMAFI has been made aware of a wide rejection by the issuers of the adoption of the 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

AMAFI would support the creation of an equivalence regime in the EU, subject however to full reciprocity with the third country concerned. If a third country prospectus regime is deemed to be equivalent to the EU regime (the decision regarding equivalence should take into account the accounting rules as well), there is no reason not to draw the consequences of such equivalence both ways and allow also EU issuers to make an offer in the third country concerned on the basis of the EU prospectus, just as the third country issuer will be allowed to make an offer within the EU on the basis of its home country prospectus.

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

An equivalence regime (which for AMAFI implies reciprocity on the part of the third country whose regime will be recognized as being equivalent to the EU system) necessarily means 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.

3. Final questions

48. Is there a need for the following terms to be (better) defined, and if so, how:
a) "Offer of securities to the public"?

- ( ) Yes
- (•) No
- ( ) Don't know / no opinion

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

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion

Considering particularly the possibility of lighter requirements for "secondary issuances" (Q8), 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 a MTF;
- the secondary issuances meaning any offer to the public or admission to trading of securities issued by an issuer whose similar securities are already listed on a regulated market or a MTF.

It might also be useful to define "secondary market" as the marketing of securities already admitted to trading on regulated market or 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

- The notion of "*debt securities exchangeable or convertible into shares"* is used several times both in the Prospectus Directive and in the Prospectus Regulation but not always in an adequate manner. Strictly speaking, the notion of "*exchangeable securities*" refers to securities which can be exchanged for existing shares whereas that of "*convertible securities*" refers to the possibility of a conversion into newly issued shares. It would be useful to clarify these definitions as mentioned above and to ensure by the right term is used each time it appears in both the Directive and the Regulation.
- Disclosure required from guarantors: it appears that there is a lack of harmonization in this respect and in the way article 8.3 of the PD is applied. Clear and harmonized rules should be set; taking into account objectives criteria (e.g. the guarantor belongs to the same group as the issuer).

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

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