15 February 2016

EBF position on the proposal for a Regulation to revise the European Prospectus regime

Key points

- The EBF welcomes the Commission's proposal to review the prospectus regime. The EBF is strongly supportive of the objectives of the proposal and we think it is indeed an important step to building a Capital Markets Union. The suggested amendments will contribute to the objective of making capital markets more accessible for investors. The Commission's proposal highlights current shortcomings in the regime such as the costs, complexity, the length of prospectuses, and differences in application between Member States.

- The EBF is of the opinion that the proposed Prospectus regime will contribute to a more streamlined and coherent approach across the European Union, reducing fragmentation at national level and reducing the scope for differences in national legislation. However – in order to ensure a European coherent approach – a greater degree of harmonisation would be favourable. Further harmonisation throughout the European Union would be needed on the following key points: i) the need for harmonisation for offerings below EUR € 10 million; ii) less discretion needs to be granted to Member States for supervising marketing materials, warning signs and texts; and iii) streamlining the requirements regarding the approval process (including approval period).

- The EBF is concerned about the proposed abolition of the wholesale/retail regime regarding the uniform prospectus requirement for bond issuances, irrespective of denomination sizes. While the EBF supports development of retail investment opportunities, the retail disclosure regime should not be developed at the cost of wholesale markets. The proposed abolition of the wholesale/retail regime split will not contribute to the objective to make the bond markets more accessible to a wider investor audience. In addition, since issuers offering non-equity securities solely to qualified investors or requiring a minimum commitment of EUR 100 000 per investor will still benefit from a prospectus exemption, the proposed change may lead to an increase in the number of offerings directed only to qualified investors, which may translate into reduced liquidity in corporate bond markets in the EU. The EBF considers that, instead of a full abolition, a reduction in the threshold would provide a better balance between the cost impact on stakeholders, the protection of retail investors and the intended liquidity enhancement.

1. Maximum harmonisation

The EBF favours maximum harmonisation in Europe regarding prospectus legislation. A common framework could be considered to address administrative, criminal, civil and governmental liability, for the sake of both clarity to market participants (including investors) as well as a level playing field across the European Union. We therefore strongly support the proposal to turn the current directive into a regulation. This step will contribute to a more streamlined and coherent approach across the European Union, reducing fragmentation on a national level and reducing the scope for differences in national legislation. However – in order to ensure a European coherent approach – a greater degree of harmonisation would be favourable. Further harmonisation throughout the European Union would be needed on the following key points:

A. Need for harmonisation for offerings below EUR € 10 million

The proposal does not provide for a harmonisation for offerings below EUR € 10 million. This is area is left entirely to the discretion of Member States. As a result, more transactions will be subject to a variety of unharmonised regimes existing between various EU member states and corresponding divergence in local supervisory practices. Depending on each Member State's choice in this regard, an issuer in one jurisdiction will suffer bigger costs, delays and higher documentation burdens more than others. What is to be understood as "total consideration" (per individual note issue, per issuer or per note programme along 12 months) is another cause of unrest, as this concept can also be interpreted differently in each jurisdiction.

Doubling the threshold from €5m to €10m is in itself questionable. Although we support the importance of strengthening the position on and the access of SME to the EU capital markets, the thresholds under the current regime provides sufficient possibilities for SME and as such modification does not seem necessary. Obviously, this is likely to impact SMEs more than other businesses and is unlikely to contribute to better cross-border access to capital markets for SMEs, which is a key element of the Capital Markets Union of the Commission.

In that respect we consider that the threshold should be linked to a number of investors. We understand that friends and family may be willing to support an SME for which a carve-out of the Prospectus regulation is most welcomed. However, we also see some potential to organise public call to investors completely outside of any disclosure, therefore we would link the EUR 10 million to a maximum number of 150 investors so as to ensure that the public is offered at least the equivalent information as the summary when the objective is to secure financing from the wider public.

Consistency in setting this threshold and the concept of "total consideration" should be pursued in order to improve the effectiveness of a single capital market within the EU. Advantages occurring from such freedom of choice are not repaid by the disadvantage of inconsistency between EU member states and the effect of regulatory arbitrage that would derive from it.

Further reduction of the disclosure requirements for SMEs is undesirable as it affects investor protection where this is most needed. It should be considered that SMEs generally have a high risk profile for investors. Moderation of disclosure requirements could therefore put the position of investors at risk.

B. Less discretion for Member states for the supervision of marketing materials and warning signs

The proposal does not amend any of the existing provisions in respect of advertisements for public offerings of securities (Article 21 of the proposal). Issuer and underwriters are often confronted with varying expectations and differences between national competent authorities as to the minimum requirements that are to be met in respect of advertisements (minimum content, presentation, communication method, etc.). This is often cited as a source of additional costs for issuers and a cause of delays in the process of offering securities in another Member State. The same applies for warning signs. We call for a harmonised and standardised approach to (exemption) warnings on and other requirements of offering materials throughout the EEA.

C. Streamlining the requirements regarding the approval process.

European consistency in the requirements regarding the approval process (including the approval period) between EU member states should be pursued in order to improve the effectiveness of a single market within the EU.

2. Abolition of the EUR 100 000 exemption for offers of non-equity securities to the public

The EBF underlines the importance to promote more buying and selling interest which enhances market liquidity and investor base in the EU bond markets. Especially, as governments currently are withdrawing from collective pension schemes and building up private capital in anticipation of these developments will become increasingly important, including for the mass retail. Therefore accessibility of the bond markets is of great importance.

The EBF regrets that the proposal does not contain the exemption for offers of non-equity securities with an individual denomination of at least EUR € 100,000 that previously existed in the Prospectus regime. This means that the current specific European framework for securities that are distributed to institutional investors only (wholesale) will cease to exist. As a consequence, the disclosure requirements for retail and wholesale issues could be identical.

In order to understand the current European wholesale regime, it is worth coming back to the repealed Listing Particulars Directive 80/390/EEC. Article 10 of said Directive gave an option to Member States to have a wholesale regime for Eurobonds. The EU failed at that time to have a harmonised framework for those issues. This was kept in the Prospectus Directive 2003/71/EC with a different approach, i.e. a recognition of a harmonised wholesale regime in the scope of the Directive upon the condition of a clear delineation through the use of an high individual denomination (in order to have something similar to the US regime of restricted securities in

the context of private placement under the Rule 144A). This was one of the major achievements of this Directive, putting wholesale issues under EU legislation.

Currently, on a yearly average, more than a trillion Euros are raised through private placements and listed on EU regulated markets. A well-functioning wholesale bond market is a key prerequisite for the successful Capital Markets Union. While the EBF supports development of retail investment opportunities, the retail disclosure regime should not be developed at the cost of wholesale markets. The EBF is rather sceptical that new retail oriented rules would improve liquidity in markets where wholesale investors are dominant.

The prospectus exemption for offers of securities with a denomination of EUR 100.000 has provided legal certainty for professional markets. The Commission argues that issuers can still benefit from the exemption if non-equity securities are solely offered to qualified investors or if the minimum commitment per investor is EUR 100.000. However, there are concerns that resale (or availability) of securities to retail investors could trigger a duty to draw-up a prospectus.

The proposed abolition of the wholesale/retail regime split will not contribute to the objective to make the bond markets more liquid. Abolition of the dual regime in itself does not lead to issuers decreasing denominations of their bond issues. At present most wholesale issuers choose a high denomination (EUR 100.000 or above) because they focus their offering to wholesale investors only. We do not expect this practice to change following the abolition of the wholesale / retail dual regime; issuers will still choose high denominations in line with their intended investor audience. The proposed change may, in fact, lead to an increase in the number of offerings directed only to qualified investors, which may translate into reduced liquidity in corporate bond markets in the EU – exactly the contrary of the Commission's goal.

In the end, we expect this to result an increase of both costs as well as the administrative burden on the issuer, making financing via the capital markets throughout the Union more expensive.

Therefore, the EBF suggests to re-introduce the wholesale threshold or to introduce a lower threshold.

3. Obligation to prepare prospectus summary to qualified investors

The Current Directive 2003/71/EC (as amended) does not require a retail-oriented prospectus summary, when the offer is targeted to wholesale markets. According to Article 7(2) "[w]here the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000, there shall be no requirement to provide a summary".

The Commission proposal requires a retail-investor aimed summary to be drawn-up even if the offer is targeted to qualified investors only. However, information requirements between retail and qualified investors differ. The new requirement would increase costs and would complicate the wholesale offer without having specific use or benefit for these investors. The EBF recommends the re-introduction of the flexibility envisaged in the current Directive.

4. Distinction between retail and wholesale prospectuses

The Commission proposes to remove the dual standard disclosure regime (retail / wholesale) when non-equity securities are admitted to trading on a regulated market. A uniform prospectus template would be defined through delegated acts taking wholesale annexes of Regulation (EC) No 809/2004 as a template. The EBF underlines that the EU should avoid "retailisation" of the prospectus regime as it might increase costs significantly. In case the uniform template is adopted, only strictly necessary new items should be added. For retail bond investors the prospectus summary and incoming MiFID II investor protection regime should provide sufficient basis.

5. Denomination and location for issuance of securities

Regarding issuance of non-equity securities it is positive to see that the EU Commission maintains a model where the issuer is able to choose which competent authority should approve the prospectus. However, the free choice only applies to issuances denominated at 1,000 Euros or more. There is no need to sustain this denomination, especially compared to the fact that mortgage credit emissions could be of even lower denominations. Hence, the requirement for a minimum denomination should be removed completely. The minimum denomination should not be decisive for which competent authority the issuer can choose.

It should be noted that active and recurrent issuers currently have issuance programmes (composed by different contractual documents and a prospectus which is updated from time to time) registered in different jurisdictions and some of them in jurisdictions different than the issuer's registered office. Those issuance programmes are essential for the functioning of the EU institutional funding. Reallocating these programmes registered in a different jurisdiction to the issuer's registered office could cause huge damages, such as delays in registrations, additional costs (lawyers, new documentation, translations), modifications (in order to comply with new requirements) and limitations accessing to the market (documentation will no longer be standard). These damages shall not be borne by the issuers, having in mind that their current issuance programmes were established pursuant to and in accordance with the applicable law.

We consider that in line with the CMU objectives, a must-have to ensure a fully integrated market and a competitive market is that issuers should be allowed to opt for their preferred place of issuance. We think that this freedom allowed for non-equity is an element underpinning a dynamic and efficient wholesale market but as well that taking into account other regulations like CSDR or MiFID II it may even be ideal to allow the issuer of any securities instruments to not only trade their instruments on their preferred location, but also ensure cohesion at the issuance point (between CSD and Prospectus regime). This would create one single market in line with the freedom of movement of capital and CMU, and would reduce fragmentation at the trading layer.

6. Presentation of risk factors

Risk factors are a very important part of a prospectus, the importance of which cannot be underestimated. Investors should carefully review the risk factors since they need to be aware of them before making an investment decision. It is not appropriate for an issuer to include all risks that could ever happen, irrespective of how remote they are.

The risk section has become too long and laborious for investors. In accordance to this, this section should be concise and organised logically. However, substance should not be sacrificed for brevity. Risk factors should be concise, well written, with concrete examples, enough detail to fully convey the particular risk and carefully tailored to the specific risks that the company faces in the current business environment. In particular this section should contain short sentences, should define words where necessary and should not contain legal and highly technical business terms. Conceptually we seek to get rid of a pure risk disclaimer document, but instead to present a fair view of the key risks factors.

Article 16 (1) requests a presentation of the risk factors in a maximum of three distinct categories. We strongly disapprove of this idea, as we believe that a categorization can be a subjective exercise, or at least have a debatable outcome, as there will always be grey areas and assumptions made. As a result, this could potentially mislead the reader of the prospectus and as such even be contrary to the envisaged investor protection. Grouping risk factors in three standardised groups will introduce an excessive standardisation and would utilise one-size-fits all approach that would not take into due consideration relevant disclosure factors such as the structure of the transaction, the nature and jurisdiction of the relevant business and the underlying assets.

It must be understood that risk factors serve as protection to both issuers and investors, as risk factors alerts of inherent risks associated to specific investments. Issuers have an incentive to include just those risks factors which are absolutely needed as including unnecessary risk factors may be price sensitive and investors prefer to have as much information as possible, in order to make a correct and precise investment assessment. Therefore, the length and number of risk factors cannot be limited, as limitations imply misinformation to investors.

Current market practice has proven to be useful in this aspect, and it is one of the main pillars of the disclosure requested by investors in order to take an investment decision. Additionally, this extensive but balanced practice is in line with the market practice in some other jurisdictions such as the US and Japan.

The suggested approach which will put restrictions on the possibility for an issuer to describe the risk factors as it considers appropriate is not the correct approach. This also applies for a classification of the risk factors as suggested with an obligation to classify the three categories of risk factors based on materiality, probability of occurrence and expected magnitude of their negative impact. It is not to the benefit of the investors who will take this as a way to choose only to assess certain parts of the risk factors. It is very important that the investors still have the incentive to assess the entire catalogue of risk factors. From an issuers perspective it is hard or even impossible to quantify the risks in such a way that makes it appropriate to order them as suggested in the Proposal. This attached with the quite severe responsibility for the issuers that attach to the prospectus as such makes this unacceptable.

The same issue applies to the restriction of risk factors in the prospectus summary. The proposed limitation on the number of risk factors (i.e. the five most material risks) to be included in the prospectus summary will cause further problems for issuers. It will be difficult to select these out of the risk factors (all of which have to be material anyway). Besides such practical problems such a limitation will also lead to further liability concerns for issuers. Investors may also be misguided and there is always a risk that a further risk will materialise that was not included in the list.

Furthermore, the categorisation would also raise the question whether a prospectus supplement is required if the issuer comes to assess a specific risk as belonging to another category than originally presented at the time of approval of the prospectus. A lack of clarity on this point will most likely lead to the issuer supplementing the prospectus more frequent to be on the safe side and therefore an increase of both costs as well as the administrative burden on the issuer.

As a general comment, it is very difficult to assess the full effect of the Proposal since the more detailed rules on the requirements relating to the contents of the prospectus will follow from the standards as issued by ESMA and the Commission. Although it is difficult to assess the full impact of the proposal without an idea of what the standards will contain once finalised, the predefinition of a maximum of three distinct risk categories is questionable.

7. Alignment of Prospectus summaries with MiFID and PRIIPs requirements

Article 7 (7) of the proposed Regulation foresees that an issuer may substitute the content included in such subparagraph with the information as set out in Article 8 (3) of the PRIIPs Regulation. As the titles of the subsections of the key information on securities as drafted in Article 7 (7) are different from the titles required for a KID according to the PRIIPs Regulation a clarification would be helpful that the entire language in the summary can be replaced by the KID language.

An even better investor friendly alternative would be to eliminate the requirement for a summary on key information on the securities where a KID is produced in accordance with the PRIIPs Regulation for the same security. Overloading the investor with information about the investment should be avoided.

8. Disproportionality of new sanctions regime

The review of the Prospectus Directive should contribute to the objectives of the Capital Markets Union. There is a risk that the proposed sanctions regime runs directly counter the objectives of the CMU. Sanctions should be effective, proportionate and dissuasive. In particular we should avoid at EU level the example of the Sarbanes-Oxley act that among other consequences froze issuance in the US market.

The proposal provides that for a number of infringements of articles[1] in respect of which Member States will need to impose administrative sanctions and measures which would be calculated in terms of percentages of worldwide turnover. These sanctions are very severe. Similar regimes exist under the Market Abuse Regulation. However, the sanctions regime included under the Market Abuse Regulation is a response to a series of proven cases of serious market abuse and manipulations of benchmarks (the LIBOR scandal). A similar justification is not available in respect of public offerings of securities, where there is no evidence of misconduct that is in any respect comparable to the behaviour that justified a severe sanctions regime under the Market Abuse Regulation.

The proposal overlooks the fact that the risk of infringements of prospectus regulations is to a large extent reduced by the fact that the public offering of securities and the publication of a prospectus is subject to an ex ante review by supervisors. This is a fundamental difference with market abuse, which is conduct on the market which is not subject to any ex ante supervision.

The proposal to impose public statements indicating the natural person or legal entity responsible for the breach ("name and shame") is highly intrusive and should be accompanied with adequate safeguards to ensure that such sanctions can only be imposed following a due and fair process and observing the rights of defence. The current proposal is insufficient in this respect.

In the same respect, whistle-blower protection for employees or other persons reporting infringements (Art. 39(2) and (3)) is disproportionate in the light of the limited amount of violations of prospectus regulations and litigation. The same goes in respect of the right for Member States to provide for financial incentives for persons who offer relevant information in respect of infringements (Art. 39(3)) and the publication of decisions (Art. 40).

The risk of exposure to administrative sanctions is likely to increase the due diligence burden for issuers and for underwriters. Moreover some of the administrative sanctions provide for minimum harmonisation (in particular as to minimum fines). Issuers and underwriters also are likely to be exposed to different administrative sanctions in the various Member States. The need to obtain external legal advice and assistance to understand exposures is likely to drive up the costs of cross-border offerings, and this is often cited as one of the reasons for the lack of cross-border offerings.

Finally in order to achieve a truly single market for capital markets, options for Member States to provide for additional sanctions beyond those required under the proposal should be excluded as much as possible (see for instance: Art. 36(3)).

9. Lack of harmonisation of civil liability regimes

[1] Infringements of Article 3, Article 5, Article 6, Article 7(1) to (10), Article 8, Article 9(1) to (13), Article 10, Article 11(1) and (3), Article 12, Article 14(2), Article 15(1) and (2), Article 16(1), Article 17(1) and (3), Article 18(1) to (3), Article 19(1), Article 20(1) to (4) and (7) to (10), Article 21(2) to (4), Article 22 (1), (2) and (4), and Article 25 of the Regulation.

The proposal does not seem to address a number of issues identified in respect of civil liability regimes between the various Member States in respects of public offerings of securities and prospectuses (see ESMA, Report - Comparison of liability regimes in Member States in relation to the Prospectus Directive, 2013: http://www.esma.europa.eu/system/files/2013-619_report_liability_regimes_under_the_prospectus_directive_published_on_website.pdf

As the ESMA report pointed out, an investor can seek compensation and the issuer, offeror or person responsible for drawing up the prospectus or seeking admission to trading on a regulated market could be held liable in more than one jurisdiction as well as possibly in accordance with more than one liability regime. However, particularly in case of cross-border transactions, the diversity in the different jurisdictions could make it difficult for market participants to assess their risks and rights in accordance with the applicable prospectus liability regimes. Furthermore, some Member States have imposed additional withdrawal rights going far beyond those ones pursuant to the existing PD as well as those withdrawal rights proposed in the new draft regulation. Full harmonisation of any civil consequences is needed in order to achieve a level playing field in the context of cross border issues within the European financial markets.

Proper balancing of the right of investors to obtain compensation for infringements of prospectus legislation and the need to alleviate the burden of issuing and publishing a prospectus is a prerequisite for improving access to capital markets by SME's. A harmonised limitation period to introduce claims, more room to allocate liabilities between issuers and underwriters, or, under certain conditions, caps on liability for lighter breaches could contribute to this.

10. Passporting of registration documents

The current regime does not provide for passporting of registration documents (except as part of a complete prospectus) – it only contemplates passporting prospectuses and prospectus supplements. The proposal should provide that an approved registration document, including universal registration document, can be itself passported, with no need for multiple cross-notifications that would increase issuers' administrative burden and cost.

11. Incorporation by reference

Article 18 of the proposal helpfully provides for alignment with the Transparency Directive where companies are subject to ongoing disclosure obligations thereunder. We therefore advocate to clarify in the proposal that issuers of debt securities which use a base prospectus are enabled to incorporate also future publications mentioned in Article 18 such that a supplement is no longer strictly required upon publication of such a future document.

12. The universal registration document.

We are supportive of the proposal as we expect that it should enable listed issuers to conduct large offerings more efficiently, both in terms of cost and time, while at the same time providing better and earlier disclosure to potential investors. In that respect, we cannot emphasise

enough the need for this document as well as the entire process to be primarily based on digital solutions. If the URD becomes the norm, they should be filed at ESMA level, and then instruments should be allowed to be both issued and scrutinised by the Member State of the issuer's choice.

Article 10 (2) re-introduces the requirement of having the Universal Registration Document approved in case it is used as a constituent part of a prospectus. The privilege for frequent issuers to modify the URD by simply filing amendments instead of by approving supplements becomes meaningless if the resulting amended URD cannot directly be used for prospectuses without further approvals. We would suggest not to require an approval of the Universal Registration Document in this case otherwise the filing of a Universal Registration Document without approval does not make any sense as it is always used as part of a prospectus.

The same argument applies for Article 9 (10). The advantage of filing amendments to a Universal Registration Document without prior approval by the competent authority will be cancelled out if it is not applicable in case the Universal Registration Document is part of a prospectus.

The considerations above also apply for the Base-Prospectus regime.

Changes to the URD could automatically become part of all related prospectuses. The issuer information should be included into a prospectus via incorporation by reference of the URD. As the URD is developed to become the central document for the most recent information on any issuer, it should also be the only source for issuer disclosure that securities investors are referred to when provided with a prospectus. To simplify the prospectus processes for frequent issuers, it is important to allow a dynamic reference in the prospectus to the most current URD, instead of prescribing supplements each time the information on the issuer changes. The regular updating of the issuer disclosure could become a centralized workflow that is separate from the management of prospectuses, which would be a substantial contribution to the capital markets union, as it would increase efficiency of the issuance process on a pan-European level.

A URD approved in one Member State should be available with its full functionality for prospectuses to be approved in any other Member State. This would be more efficient and would ensure consistency of disclosure across the EU. This could be achieved by extending the passporting mechanism to registration documents or simply letting the URD be filed with the relevant competent authority of the other Member States, while at the same time discouraging a duplicative review.

13.Secondary issuances – specific optional disclosure regime:

Issuers will benefit from an optional lighter disclosure regime for secondary issuances. It is envisaged that such a prospectus will only contain limited financial information covering the last financial year. We are supportive of this proposal. This should reduce the cost of drawing up prospectuses and should make the resulting disclosure more relevant for potential investors.

14. Exemptions for secondary issuances

We are supportive of the increase of the sub-10% exemption for secondary issuances to 20%. Since the secondary issue is made according to the relevant legislation, the prospectus will not add value to the procedure, but in contrary it will burden the company with extra costs and procedures.

15. Publication of the prospectus

We are supportive of measures to make access to the prospectus easier for all investors. Publishing prospectuses on the website of ESMA will have significant benefits for investors as it will lower search costs and will provide easier, centralised access for investors and potential investors interested in a broad variety of securities issued in the EU. A centralised database (as described in Section 16 below) will provide easier access to investors to all the available and potential investments and could assist the investors in taking better investment decisions.

16. Publication and storage of prospectuses via ESMA access point

Publication of prospectuses should be ensured through the new web portal serving as a European electronic access point ('the access point') which provides the public with free of charge access and search function according to Article 21(a) Transparency Directive 2004/109/EC.

In order to ensure easy accessibility for investors both the already existing storage system (national OAMs) and the upcoming EEAP (ESMA EU access point) pursuant to the TD should be used rather than establishing an additional storage mechanism. "Prospectuses" should qualify as regulated information pursuant to the TD.

17. Supplement to the prospectus

With regard to the possibility to publish a supplement to the prospectus, Art. 22(2) should further clarify that an investor cannot withdraw acceptance if the securities have already been issued and delivered by the time the supplement is published.

Article 22(2) has been amended with respect to the previous version of the Regulation, however it should clarify that if new facts, mistakes and imprecisions have occurred before the closing of the offer and the delivery of the financial instruments, the investor's right of withdrawal should not be granted if the securities have been already delivered by the time of the publication of the prospectus supplement.

It appears this concept has been included in Article 8(10) but only with reference to straddling offers and we would like to see it extended it to all the offers under a base prospectus.

With regard to the right of withdrawal according to Art. 22 (2) of the proposal and in order to prevent unjustified claims, it should be made clear that investors are only entitled to withdraw from their investment in the case of new negative circumstances.

The proposal should also clarify that issuers are permitted to publish a prospectus supplement even in cases of non-material changes in order to provide updates during the year if useful for investors.

18. Scope for Base Prospectuses

Compared against current prospectus law Art. 8 (1) of the proposal restricts the scope of base prospectuses. Current law allows existing offering programs to use base prospectuses which cover all non-equity securities, as well as all forms of warrants and certificates (cf Art. 5 (4)(a) and recital 13 of the PD 2003/71/EC). However, the proposal does not cover "warrants and certificates in any form" any more. Such deletion would obstruct existing offering programs; e.g. base prospectuses being used for warrants issued by the issuer of the underlying shares or by an entity belonging to the group of the issuer. Those warrants or certificates would fall under the obligation to draw up a stand-alone prospectus. There is no apparent rational for such an obstacle.

A useful modification to the base prospectus regime would be to allow that base prospectuses may be supplemented, beyond Art. 22 of the draft, for any reason, as long as the supplement does not introduce new securities that are governed by a different Annex of the level 2 prospectus regulation. It is not obvious why the approval process around supplements should not be sufficient to even include new products into a base prospectus, instead of forcing issuers to get several add-on base prospectuses approved. The comprehensibility of a base prospectus when read together with its supplements is, anyhow, the overriding limit to supplements. And with the right of the competent authority under the proposed rules to request a consolidated version of the prospectus as supplemented, any concerns about the comprehensibility of a specific supplement can be addressed. This change would simplify the base prospectus regime and make issuances in the European capital markets even more efficient.

19. Date of application

For many provisions relating to the content of a prospectus the Commission is empowered to adopt Level 2 measures, and ESMA shall only submit draft regulatory technical standards (RTS) to the Commission 9 months after the entry into force of the Prospectus Regulation. We consider the 12 months period between entry into force of the regulation and its application contained in Article 47 of the proposed prospectus regulation should therefore only apply from the date of entry into force of these Level 2 measures or should at least be extended to 24 months.