

## Joint proposal from European Investors, European Issuers and FESE on the EU Growth Prospectus Regime

We fully support the European Commission's 'Action Plan on Building a CMU' and its willingness to give priority to strengthening the European economy and ensuring easier access to markets for all companies, in particular for 'small and medium-sized enterprises' (SMEs). We believe that the Prospectus Regulation proposal is an important first step to reduce frictional costs and to deliver a more unified European capital market, improving funding choices for issuers and investment opportunities for investors.

In particular, the new Regulation should deliver a more effective proportionate regime for European growth companies. In this regard, we believe that the Commission's proposal to establish an optional minimum disclosure regime for SMEs, which will reduce burdens and costs and will be recognised by investors is a step in the right direction. Moreover, we very much welcome the amendments proposed in ECON's draft report which also recognise the importance of mid-size quoted companies (referred to as 'mid-cap enterprises').

### EU Growth Prospectus should apply across all trading venues

The Commission's proposal for a minimum disclosure regime for SMEs is designed to apply to SMEs and mid-cap enterprises listed on MTFs and SME Growth Markets. For the purpose of this regime we support the definition of mid-caps as 'companies that have an average market cap of between EUR 200 million and EUR 1 billion', as included in the European Parliament draft report of 16<sup>th</sup> March. However, to ensure a level playing field, we believe that this specific regime should apply to all small and mid-size companies across all trading venues, including Regulated Markets (RMs) and be designated EU Growth Prospectus regime following De Backer's report. Given that an SME and mid-cap enterprise are defined based on objective criteria, there would be no reason to exclude those companies listed on RMs from the scope of this specific regime.

**Therefore, the EU Growth Prospectus should be extended to include all companies on SME Growth Markets and to all small and mid-size companies qualifying as SMEs or mid-cap enterprises, independently of the venue they are listed on.**

The inclusion of RMs in the scope reflects current market practices while any further restriction will create additional barriers. Limiting the EU growth disclosure regime to specific venues will reduce mobility among trading venues. We fear that companies will have no incentives to eventually move onto the RM because they will be subject to additional legal requirements even if they remain smaller compared to larger companies. As a result, a financing gap will be created which will be in contrast with the objective of the European Commission's Growth Agenda.

**In many European jurisdictions, small and mid-size companies have the possibility to list only on the main market and these companies should not be discriminated against.**

We propose that small and mid-size companies listed on the RM and benefitting from this optional regime are allocated a label which investors would be clearly able to identify. In addition, in order to guarantee an adequate level of investors' protection, we believe that the text should explicitly state that investors should receive a warning that the EU Growth prospectus is subject to reduced information requirements and does not provide the same level of protection as a prospectus drawn up in accordance with Article 13.

## What rules will apply to companies for public offers under the proposed regime? RM still 'gold standard'

Rules	RM	MTF	SME GM
Full Prospectus	Above SME Size		
SME Regime	Only SMEs	Only SMEs	All companies
MiFID II	✓	✓	✓
MAR	✓	✓	✓
Transparency Directive	✓		
Takeover Directive	✓		
Shareholder Rights Directive	✓		

The Prospectus Regulation focuses on one set of rules for public offers and will not affect the other set of requirements which apply to RMs. Companies opting for the SME regime on a RM will be labelled accordingly and will benefit from the advantages of being listed on the main market.

RMs are currently considered the 'gold standard' for listed companies due to the overall set of rules a company is subject to once they list.

### Simpler prospectuses, less costly for issuers, but comprehensive for investors

The EU Growth Prospectus should be simpler, shorter in length and less costly for small and mid-size companies to produce. Such prospectus should focus on the key details of the issuer and the securities, using simple language and making use of incorporation by reference. We believe that the summary should not be required if the document is drawn up as a questionnaire. For all other prospectuses drawn up under the proportionate regime, the summary should be subject to reduced information requirements.

It is essential that this new regime remains optional for small and mid-size issuers and is not mandated.

Please see the section below that contains our detailed proposal.

**Article 15**

*Text proposed by the Commission*

*Amendment*

<b>Minimum disclosure regime for SMEs</b>	<b><i>EU Growth Prospectus</i></b>
	<p><b><i>Recital (new)</i></b>  <b><i>Small and mid-size companies listed on a regulated market and benefitting from an EU Growth prospectus should be allocated a label which investors will be clearly able to identify, and which will indicate higher risks they are subject to while investing in companies benefitting of this regime as a result of reduced information requirements.</i></b></p>
<p>1. SMEs may choose to draw up a prospectus under the minimum disclosure regime for SMEs in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market. The minimum disclosure regime shall consist of a specific registration document and a specific securities note. When establishing the corresponding prospectuses schedules, the information shall be adapted to the size and to the length of the track record of such companies.</p>	<p>1. SMEs <b><i>and mid-cap enterprises as well as issuers referred to in Article 3(1a)</i></b> may choose to draw up <b><i>an EU Growth prospectus</i></b> under the <b><i>proportionate minimum</i></b> disclosure regime <b><i>set out in this Article for SMEs</i></b> in the case of an offer of securities to the public <b><i>provided that they have no securities admitted to trading on a regulated market on a regulated market or MTF or SME Growth Market.</i></b></p> <p><b><i>An EU Growth prospectus under the proportionate The minimum</i></b> disclosure regime <b><i>referred to in the first subparagraph</i></b> shall consist of <b><i>a specific summary</i></b>, a specific registration document and a specific securities note. <b><i>When establishing the corresponding prospectuses schedules, the information shall be adapted to the size and to the length of the track record of such companies.</i></b></p> <p><b><i>These documents shall include the information required in the prospectus schedules in simple language and using incorporation by reference where appropriate, and enable an informed investment decision.</i></b></p> <p><b><i>The summary shall be proportionate and subject to reduced minimum requirements. The summary shall contain a warning that the EU Growth prospectus is subject to reduced</i></b></p>

	<p><i>information requirements and does not provide the same level of protection as a prospectus drawn up in accordance with Article 13. A summary is not required if the prospectus is drawn up as a questionnaire under Article 15 (2).</i></p> <p><i>Without prejudice to Article 6(1), the prospectus schedules shall determine the disclosures required as a minimum, which shall cover:</i></p> <ul style="list-style-type: none"> <li><i>a) Name of the issuer and persons responsible</i></li> <li><i>b) Business overview and Current Trading</i></li> <li><i>c) Number and nature of the securities forming part of the offer</i></li> <li><i>d) Terms and Conditions of the Offer (including Issue Price)</i></li> <li><i>e) Information on Underwriting / Placing</i></li> <li><i>f) Information on issued share capital (before and after the offer) – including aggregate information on rights giving the option to subscribe for, or convert into, shares</i></li> <li><i>g) Proceeds of the offer and expenses</i></li> <li><i>h) Reasons for the offer and Intended use of net proceeds</i></li> <li><i>i) Risks Factors</i></li> <li><i>j) Working Capital</i></li> <li><i>k) Profit Forecast (if relevant)</i></li> <li><i>l) Financial Information (incorporated by reference)</i></li> <li><i>m) Pro Forma Financial Information (if relevant)</i></li> <li><i>n) No significant change statement (from date of latest published financial information)</i></li> <li><i>o) Statement on Material Litigation</i></li> <li><i>p) Dividend Policy</i></li> </ul> <p>When establishing the corresponding prospectuses schedules, the information shall be adapted to the size and to the length of the track record of such companies, <i>and this list should not be considered exhaustive.</i></p>
2. Companies making use of the minimum	2. Companies making use of the minimum

<p>disclosure regime referred to in paragraph 1 and offering shares or non-equity securities which are not subordinated, convertible or exchangeable, do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument, shall be entitled to draw up a prospectus under a format structured in the form of a questionnaire with standardised text, to be filled in by the issuer. For this purpose, both the specific registration document and the specific securities note shall be structured in that form.</p>	<p>disclosure regime referred to in paragraph 1 and offering shares or non-equity securities which are not subordinated, convertible or exchangeable, do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument, <del>shall be entitled to</del> <b>may, at their option</b>, draw up a prospectus under a format structured in the form of a questionnaire with standardised text, to be filled in by the issuer. For this purpose, both the specific registration document and the specific securities note shall be structured in that form.</p> <p><b><i>This format is optional and does not exclude issuers from drawing up the prospectus in the proportionate disclosure regime format referred to in paragraph 1.</i></b></p>
<p>3. The Commission shall adopt delegated acts in accordance with Article 42 to specify the reduced information to be included in the schedules applicable under the minimum disclosure regime and the optional format allowed under paragraph 2. Those delegated acts shall be adopted by [enter date of application].</p>	<p>3. The Commission shall adopt delegated acts in accordance with Article 42 to <b><i>stipulate the key information to be included in the proportionate summary referred to in paragraph 1 and to</i></b> specify the reduced information to be included in the schedules applicable under the <b><i>proportionate disclosure EU Growth prospectus regime under paragraph 1</i></b> and the optional format allowed under paragraph 2. Those delegated acts shall be adopted by [enter date of application].</p>
<p>4. ESMA shall develop guidelines addressed to SMEs on how to draw up a prospectus under the format referred to in paragraph 2. The procedures set out in subparagraphs 2 to 4 of Article 16(3) of Regulation (EU) No 1095/2010 shall not apply.</p>	<p>4. ESMA shall develop guidelines addressed to <b><i>SMEs issuers</i></b> on how to draw up a prospectus under the <b><i>optional</i></b> format referred to in paragraph <b><i>2 and 2(new)</i></b>. The procedures set out in subparagraphs 2 to 4 of Article 16(3) of Regulation (EU) No 1095/2010 shall not apply.</p>

## About FESE

The **Federation of European Securities Exchanges (FESE)** represents 36 exchanges in equities, bonds, derivatives and commodities through 19 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation. At the end of 2015, FESE members had 9,201 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,299 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a single market in capital markets.

For more information, please visit [www.fese.eu](http://www.fese.eu)

## About European Investors

The **European Investors' Association** is a pan-European association that was launched in 2015 and that promotes the interests of investors, both in the regulatory domain as well as in corporate litigation proceedings and shareholder disputes.

In regulatory and legislative matters, we aim to contribute to efficient, transparent, fair and orderly financials markets in which retail investors are confident to put their capital to work, either directly or through intermediated channels, and are enabled to take informed investment decisions that suit their personal circumstances and needs.

For more information, please visit: [www.europeaninvestors.eu](http://www.europeaninvestors.eu)

## About European Issuers

**European Issuers** is a pan-European organisation representing the interests of publicly quoted companies across Europe to the EU Institutions. As at 31 December 2014, there were 13 225 such companies on both the main regulated markets and the alternative exchange-regulated markets. Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth € 7.2 billion market capitalisation with approximately 8000 companies.

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

For more information, please visit [www.europeanissuers.eu](http://www.europeanissuers.eu)