

FSUG answers to question 1 & 5

(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?

Yes, the principle is of course still valid, if not the main criterion for investor protection. It is however important to recognise that information disclosure per se is not that effective at tackling information asymmetries between financial institutions/ intermediaries and investors. Most importantly, information disclosure is not effective at dealing with conflicts of interest between financial institutions/ intermediaries and investors.

Extensive and complex information disclosure is used to shift responsibility from firms to consumers. We would not argue with the need for consumers to read key information and answer questions honestly, but there is an unacceptable view in some sectors of the industry that complex and potentially detrimental products can be widely promoted, provided they are transparent through good disclosure. This is accompanied by an expectation that consumers can, and should, acquire the skills, knowledge and understanding required to deal with this complexity and choice, which places an unreasonable burden on the consumer and is not an approach adopted by other industry sectors.

It should be clear the prospectus does not serve its primary aim anymore: providing in an easily analysable and comprehensible form all information which is necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a market. The prospectus has become a document of, in some cases, a couple of hundreds of pages which is not used by investors as it is unformatted/not standardised, written in legal Jargon instead of plain English. It is prepared by lawyers and for lawyers and therefore serves rather as an instrument to release out of liability than as information tool for investors. It is also not comparable to KIDs for other investment products.

While standardised disclosure is still in a process of development and experimentation, it should be taken into account the need to reduce the number of elements disclosed, to make the disclosures easier to read, to offer the disclosures at times when they are most useful and reduce the cognitive costs of information processing.

The Commission has tried to achieve this by introducing the summary prospectus. However, this document is currently of little use, if not read in conjunction with the remainder of the prospectus. A major problem is that the summary prospectus is not standardized, that there is currently no liability attached and still consists of 25 pages.

FSUG therefore proposes to revise the summary prospectus. The summary prospectus should provide the investor with an overview of all the material risks associated with a certain investment decision. It is the responsibility of the issuer to judge the materiality of the risks associated and to make sure that the summary prospectus provides a true and fair view. The issuer should be liable on the basis of this revised summary prospectus. The length should be limited to 10 pages (instead of 25 pages).

Value-enhancing measures should moreover include a requirement for an adequate readability of the (summary) prospectus accompanied by the introduction of a risk-weighting model that shows (potential) investors the probability of risk occurrence and the risk impact.

FSUG fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardized format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products. FSUG refers to good practices as there are in Belgium.

Furthermore, FSUG believes that, ideally, the obligation to draw up a prospectus should be mandatory for all offers and admissions to trading, except for certain secondary offerings and offers exclusively to qualified investors. Instead of narrowing the scope of the Directive, FSUG supports an extension of the proportionate disclosure regime and incorporation by reference in order to alleviate administrative burdens for certain issuers and offers.

Regarding the information a prospectus should contain, FSUG considers that it is necessary to equip individual investors with the tools and resources needed to properly evaluate and compare sustainable investments across asset classes about the financial characteristics but also about the ESG (Environment, Social and Governance) characteristics. Indeed, this ESG characteristics may create huge risks and opportunities for the investors.

Finally, it should be noticed that the Prospectus Directive is one of the main existing relevant regulatory frameworks that sets the level playing field on equity crowdfunding for the majority of the European member states that have not developed respective specific frameworks. The Securities and Markets Stakeholder Group (SMSG) of the European Securities and Markets Authority (ESMA) recently published a position paper¹, according to which *“some exemptions could be granted from the obligation to prepare a prospectus, independently of the limit specified in the home country, for those platforms fulfilling specific requirements in terms of: transparency towards investors; performing duties about investors awareness and/or financial sufficiency; guaranteeing platform continuity, etc.”* (SMSG-ESMA, para. 74). Bearing in mind that *“the Commission does not intend to come up with legislative measures at the moment”* (SMSG-ESMA, para. 55) and also considering that *“it would be impossible and ineffective to make amendments to the current regulatory frameworks limiting crowdfunding (Prospectus, Transparency, MAD, etc.). But some kind of unified regulation should be targeted, without necessity to change member countries’ regulation on IPO”* (SMSG-ESMA, para. 69), we fully support the SMSG-ESMA view as described in para. 74 above, as a way to enhance growth in equity crowdfunding, within an, as much as possible, homogenous pan-european regulatory framework.

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). If yes, please give details.

If a prospectus should contain all information which is necessary to enable investors to make an informed assessment of the issuer and the securities offered or admitted to trading on a regulated market, the answer should be negative.

(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, in order to move to a genuine European capital market, FSUG supports maximum harmonization when it comes to prospectus rules.

Convergence of disclosure requirements in EU Member States would be beneficial to the safety and soundness of the financial markets, would contribute to ensuring the same level of

¹ <http://www.esma.europa.eu/system/files/2014-smsg-010.pdf>

consumer protection and would help creating a level playing field for financial service providers.

Therefore FSUG supports the ideas that:

1. Member States would not allow any offer of securities to be made to non-qualified investors within their territories without prior publication of a prospectus (Investor and consumer protection);
2. A full harmonisation at EU level would 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 (Market efficiency).

FSUG suggests to achieve this through requiring a common form and content of the prospectus for each offer of securities to non-qualified investors and introducing an EU wide passport : a prospectus approved by the competent authority of one Member State should be valid for the entire Union without additional scrutiny by the authorities of other Member States.

However, FSUG suggests to introduce the use of an adequate proportional disclosure regime to define the form and the content of the prospectus according to the risks associated with the envisaged commitment or investment.

The thresholds of risks can be determined according to:

1. the degree of risk of not recovering one's initial investment at maturity;
2. the total value of securities owned by the investor at the end of the offer.

According to the degree of risk of not recovering one's initial investment at maturity, FSUG refers to good practices as in Belgium where financial products marketed to retail clients will, as from 12 June 2015, be assigned a standardized risk label.

The Regulation sets out the criteria used to categorize savings and investment products in one of the five classes on the risk label. The principle underlying the criteria is indeed the degree of risk of not recovering one's initial investment at maturity. The main lines governing the classification are as follows:

- class 1: financial products denominated in euro that fall under the deposit guarantee scheme offered by a highly creditworthy Member State of the European Economic Area, and debt securities denominated in euro issued directly by such a Member State (e.g. a savings or term deposit account or a Class 21 insurance contract written by a Belgian credit institution or insurance company);
- class 2: financial products denominated in euro that promise to repay the investment after at most 10 years, issued by a creditworthy debtor (for instance an 8-year bond issued by a company with an investment grade rating);
- class 3: financial products denominated in euro without capital protection but with a risk spread and limited volatility, and class 2 products with a maturity over 10 years or which promise to repay at least 90 per cent of the investment (e.g. units in a harmonised investment fund with a volatility indicator of SRRI 3);
- class 4: financial products that cannot be specifically allocated to classes 1, 2, 3 or 5 (such as a share, a subordinated bond or a bond denominated in a foreign currency);
- class 5: derivative instruments and equivalent products (such as CFDs and options).

According to the second threshold, the issuer would obviously not be obliged to determine a cap for the total value of securities owned by each non-qualified investor at the end of the offer.

Without determining a cap in the offer, the complete disclosure regime would be of application.

With a cap fixed in the offer, the issuer would be authorised in some cases to publish only a limited content. It would be the case for the offers that meet the following conditions:

Class	Maximum total value of securities owned by each non-qualified investor at the end of the offer
1	20.000
2	15.000
3	10.000
4	5.000
5	0