European Association of Public Banks
– European Association of Public Banks and Funding Agencies AISBL –

Review of the Prospectus regime:

EAPB considerations
On the prospectus to be published when securities are offered to the public or admitted to trading

Proposal for a Regulation, 2015/0268(COD)

8 March 2016

In the context of the proposed regulation on the prospectus regime, the European Association of Public Banks is pleased to share its related considerations, as set out hereafter.
The EAPB and its members especially welcome the aim of facilitating the approval process for frequent issuers. Nevertheless, further work might be needed in respect of other issues, like the alignment with the PRIIPs Regulation No. 1286/2014. And there are other parts, where the Commission's proposal is on a good way, but could be more ambitious.

1. For frequent issuers a **Universal Registration Document, URD (Art. 9)** has been proposed for a fast-track approval process.

According to the proposed provisions the URD does not seem to facilitate the issuing process in comparison to the prevailing provisions.

The EAPB proposes to enable the URD to be dynamically integrated into the issuing process of frequent issuers in order to exploit the administrative potential thereof. The use of tripartite prospectus by frequent issuers could be incentivised by allowing a single URD as a constituent part to be incorporated to *all* base prospectus' (domestic + EMTN) of a frequent issuer.

The URD as a constituent part of a base prospectus should be determined more precisely, in particular how its contents, form, set up and treatment differs from the common „Registration Document". In our view the provisions regarding the approval

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and filing, publication, supplements, amendments, notification, language requirements and incorporation by reference still need further clarification. Thus, the URD in the form provided in the proposal will not enhance flexibility or cost effectiveness for drawing up prospectuses and in our opinion will not accomplish the objective to provide investors with a central source of information about the issuer. Aside from that, the URD in the form provided will be impossible to implement in practice.
The EAPB can provide further details on request.

2. As for the **risk factors (Art. 16)** it is not clear how the presentation of three distinct risk categories in maximum may be implemented. This is especially the case for the risks specific to the issuer. It is difficult to a) weigh the risks and b) anticipate shifts within the given validity of a base prospectus. This will lead to permanent updates of or supplements to the base prospectus and would absorb (internal and external) resources of the issuers and of NCA's.

Likewise – with regards to investor protection – we disapprove the idea of using potentially mitigating words for labeling different risk categories. This would induce the prospectus reader to stop reading further risk factors, as "they are only of less importance anyway". Mitigating language is generally something that is avoided in prospectus language, as it potentially misleads the reader (hence contrary to the targeted investor protection). Therefore, we suggest the last sentence of Art. 16 (1) to be deleted.

Following the proposed provision, issuers will not only need to set verifiable criteria to a) decide on a maximum of three risk categories but also to b) select 5 key risks for the summary each (Art. 7 (6)(c) and (7)(d)) based on their probability of occurrence. The implementation of the proposed provision requires the issuer to weigh risk factors according to a predefined and objectifiable method. It remains vague if ESMA will define such a method on Level III and who would be liable for such a method if another risk, a less probable determined one not contained in the "5 key risks", materialises.

3. The draft Prospectus Regulation contains several beneficial and welcomed changes in respect of **base prospectuses (Art. 8)**, including the re-introduction of the tripartite base prospectus and the availability of base prospectuses for all types of non-equity securities. All improvements to the base prospectus regime directly

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lead to a more efficient issuance process for frequent issuers. They also help those corporate issuers that issue less frequently, but maintain such a platform for the moment when they need to quickly enter the market. Certain modifications in the new prospectus regulation, however, are in our view detrimental to the efficiency of the base prospectus regime and should be reconsidered.

4. With regards to the provisions of **Art. 24, Notification**: According to our understanding of the provisions regarding the prospectus summary, in case of a base prospectus, a summary shall only be drawn up when the final terms are approved or filed; it shall be specific to the individual issue (Article 8 (7)). With this proposal it is particularly important to provide further clarification on the notification process (Article 24) and the use of language (Article 25) in respect of base prospectuses.

We therefore recommend amending the proposed Art. 24 (1) and providing legal certainty on how a notification of a base prospectuses into EU Host Member States is going to take place.

The current provisions of Art. 24 and its unclear distinction between stand alone prospectus and base prospectus could possibly create a situation where a base prospectus itself and respective annual reports are requested to be translated for the notification by Host Member States. This would result in very high transaction costs and will stop issuers from placing their products cross border which would jeopardize and moreover contradict the political goal of the Capital Markets Unions to stimulate cross border capital flows within the EU.

5. Non-listed issuers (including issuers whose debt securities are admitted to trading on a regulated market and which fulfil the relevant transparency requirements) do not benefit from the minimum disclosure regime for secondary issuance (Art. 14). The proposed provision of Art. 1 (3) does likewise not include an exemption for the offering process of non-listed issuers to existing shareholders. Such an exemption would contribute to one of the major goals of the Capital Markets Union project i.e. to stimulate and facilitate equity financing through capital markets.

The EAPB therefore proposes the following exemption for *non-listed issuers*: No obligation to publish a prospectus for rights issues if the new shares are only

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offered to existing shareholders – such an offering does not constitute an offer to the public.

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The European Association of Public Banks (EAPB) represents the interests of 30 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

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