



Circular FSMA_2012_20 (*) of 11/12/2012 (updated 24 March 2016)

Procedure for the submission and handling of dossiers relating to public offers

Scope:

Dossiers submitted pursuant to the Law of 16 June 2006 on public offers of investment instruments and on the admission of investment instruments to trading on regulated markets, the Law of 1 April 2007 on takeover bids and its implementing decrees, and Articles 549 and 583 of the Companies Code.

Summary/Objectives:

This Circular deals with the procedure for the submission and handling of dossiers relating to public offers.

(*) Former Circular CBFA/2008_28

This Circular deals with the procedure to be followed in the submission and handling of dossiers relating to public offers.

The dossiers in question are those which are submitted to the FSMA pursuant to:

1. The Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets, hereinafter the “Prospectus Law”;
2. the Law of 1 April 2007 on takeover bids and its implementing decrees;
3. Article 583 of the Companies Code (issue of subscription rights or of convertible bonds);
4. Article 549 of the Companies Code (public solicitation to grant proxies).

The contents of these dossiers, and the time when they are to be submitted to the FSMA, are laid down by the legislation in force¹. Therefore they are not addressed in this circular.

The FSMA requests that anyone who is considering submitting a dossier as referred to above kindly follow the instructions set out in this circular.

¹ If the Belgian language legislation is applicable, the issuer/offeror is responsible for compliance with the same.

1. When submitting a dossier

A dossier requesting a decision by the FSMA regarding a **prospectus**, **advertisement** relating to a (base) prospectus approved by the FSMA, a **special report** or a **public solicitation to grant proxies** is to be submitted:

- by e-mail to: intro.ems@fsma.be², in a searchable electronic format.

The dossier is deemed to have been submitted at the point when the FSMA has received, by post or courier (during office hours), all the documents together with a covering letter signed by a person authorized to represent the issuer in the transaction in question³ and containing the following items:

- a) a clear description of the identity of the issuer, the offeror or party soliciting proxy rights (including the person's nationality);
- b) a clear description of the transaction and of any securities relating thereto;
- c) a clear description of what is being requested from the FSMA (including the legal grounds);
- d) the name, e-mail address and telephone number of the contact person for communications with the FSMA, to whom it can send all written notifications regarding the dossier via electronic means;
- e) other information that may be required under the applicable legislation⁴ and the relevant rules laid down by the FSMA.

A dossier in request of the FSMA's approval of **advertisements** relating to passported operations⁵, is to be submitted in the following manner:

- by e-mail to: intro.ems.passeport@fsma.be.

Once the dossier has been submitted, it is entrusted to one or more members of the FSMA staff. Their names, telephone numbers and e-mail addresses as well as the unique reference number of the dossier will be e-mailed to the party who submitted the dossier as soon as possible and no later than by close of business on the second working day following receipt.

² For the submission of an acquisition dossier, Article 5 of the Royal Decree on Takeover Bids of 27 April 2007 must be complied with (in hard copy by registered letter or delivered by hand with acknowledgment of receipt to the premises of the FSMA).

³ For the submission of an acquisition dossier, Article 6 of the Royal Decree on Takeover Bids of 27 April 2007 must be complied with.

⁴ For dossiers submitted pursuant to Article 32 of the Prospectus Law, over and above the Prospectus Law, Article 2 of Commission Delegated Regulation (EU) 2016/301 of 30 November 2015, the text of which is available on the FSMA website, must also be complied with.

⁵ That is, an operation on the subject of which the supervisory authority of another Member State has addressed a notification letter to the FSMA with regard to European passporting.

2. During the examination of the dossier

Any document that has been modified is to be submitted in full, both in a marked-up and in a clean version:

- by e-mail to the addresses of the staff members concerned, with the subject line indicating the dossier number and the purpose of the message.

For purposes of clarity, the FSMA asks that each new version of a given document carry a version number, as well as the date of the last change, preferably in the upper right-hand corner.

For dossiers submitted pursuant to Article 32 of the Prospectus Law, Article 3 of Delegated Regulation (EU) 2016/301 must also be complied with.

3. Submission of the dossier to the FSMA

The version of the prospectus, report or solicitation for which the approval of the FSMA is being sought should be submitted:

- by e-mail to the addresses of the staff member(s) concerned, with the subject line indicating the dossier number and the purpose of the message.

For dossiers submitted pursuant to Article 32 of the Prospectus Law, Article 4 of Delegated Regulation (EU) 2016/301 must also be complied with.

4. After the FSMA's decision

A copy of the **prospectus** as approved by the FSMA and signed by the persons responsible for the prospectus (in each of the languages in which it will be published) is to be filed with the FSMA's *Final Documents unit* before the launch of the transaction.

As soon as the letter of approval has been received, a true copy of the printed prospectus (in each of the languages in which it will be published) is also to be sent by e-mail in PDF format to: def.ems@fsma.be, with the subject line as indicated in the FSMA's letter of approval.

Approved prospectuses are published by the FSMA on its website. **If the prospectus should not be published immediately upon receipt of the definitive version of the prospectus, the FSMA requests that this be mentioned expressly in the e-mail**, indicating the date when the prospectus may be published.

If the definitive conditions for the offer are not mentioned in the base prospectus and are not to be included in a supplement to the base prospectus, they must be submitted to the FSMA at the e-mail address def.ems@fsma.be, putting in the subject line of the e-mail the subject that is indicated in the FSMA's letter of approval and, where the operation is to take place within Belgium, to be published in compliance with Article 21, §§ 2, 3 and 5 of the Prospectus Law. The e-mail must mention clearly the following information:

- **Issuer Name:**
- **Title of the Programme:**
- **Date of Final Terms:**
- **Issue Date of the Securities:**
- **Date of the Base Prospectus:**
- **International Securities Identification Number (ISIN):**
- **Host member state(s) to which the final terms should be communicated:**
- **Dates of the public offer:**

A hard copy (in each language) of the final version of the signed **report or solicitation** is to be filed with the FSMA, to the attention of the *Final Documents unit*, and is also to be sent by e-mail to: def.ems@fsma.be, with the subject line as indicated in the FSMA's letter of approval.

5. Technical details

Please make sure to observe the following:

- a) each document submitted by e-mail should be saved as a separate file;
- b) it must be possible to read each file in an ordinary Windows environment;
- c) each file should be printable and in a searchable electronic format;
- d) the sender is solely responsible for protecting the data (authentication, confidentiality, etc.). If an electronic signature or encryption process is used, the sender should contact the FSMA in order to determine the procedure to be used.

6. Summary table for dossiers submitted in request of a decision by the FSMA regarding a prospectus, a special report or a public solicitation of proxies

Steps	Type of document	Hard copy	By e-mail to a central address	By e-mail to the addresses of the staff member(s) concerned
Submission of dossier	All documents + covering letter	no	yes, to intro.ems@fsma.be operations	no
			subject line of the e-mail: freely chosen	
During examination of dossier	Modified documents	no	no	yes (full document, both marked-up and clean versions)

			subject line of the e-mail: dossier number and the subject of the message	
Submission to FSMA	Version of the prospectus / report / solicitation to be submitted	no	no	yes
			subject line of the e-mail: dossier number and the purpose of the message	
After FSMA's decision	Prospectus has been signed and approved	yes (1 copy in each language)	yes, to def.ems@fsma.be (1 PDF in each language)	no
			Subject line of the e-mail: cf. letter of approval	
	Final Terms	yes (1 copy in each language)	yes, to def.ems@fsma.be (1 PDF in each language)	no
			Subject line of the e-mail: cf. letter of approval	
	Signed report or final version of the solicitation	yes (1 copy in each language)	yes, to def.ems@fsma.be (1 PDF in each language)	no
			subject line of the e-mail: cf. letter of approval	

7. Summary table for dossiers submitted in request of the FSMA's approval of advertisements

Steps	Type of document	Hard copy	By e-mail to a central address	By e-mail to addresses of the staff member(s) concerned
Submission of dossier	All documents + covering letter	no	yes, to intro.ems@fsma.be (in the case of advertisements relating to prospectuses approved by the FSMA) or to intro.ems.passeport@fsma.be (in the case of advertisements relating to passported operations)	no
			subject line of the e-mail: freely chosen	
During examination of dossier	Modified documents	no	no	yes
			subject line of the e-mail: dossier number and the purpose of the message	