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RESPONSE TO THE COMMISSION CONSULTATION ON CMU MID-TERM REVIEW

17 March 2017

INTRODUCTION

EuropeanIssuers has been supportive of the European Commission's Capital Markets Union (CMU) aimed at deeper and more integrated capital markets in the EU through reducing the burdens for companies and creating more opportunities for investors. Capital markets can promote growth and deliver jobs while providing capital and risk management solutions for European companies.

While progress has been made since the adoption of the 2015 action plan, results remain insufficient. To create more favourable environment fostering growth and jobs and meet the concerns of companies, as end users of capital markets, certain new initiatives should be taken, while some of the planned ones should be abandoned.

In addition, the CMU project needs some reflection and changes to compensate for the consequences of UK's referendum to leave the EU. We believe that the outcome of the referendum reinforced the necessity to rethink the regulation of listed companies for the sake of the competitiveness of European companies. The prospect of EU's largest capital market moving outside the EU could result in an increased market fragmentation and decrease liquidity and depth of the capital markets in EU 27, unless a decisive EU action promotes deeper and better integrated markets. We therefore call for a CMU that first and foremost aims at deepening of capital markets, which are underdeveloped in several Member States, and more integration of financial markets, which despite significant progress still operate on a largely national basis.

Furthermore, as EU and UK companies still need mutual access to each other markets, due consideration should be given to reforming third country regimes with the aim of allowing for deeper, faster and more transparent equivalence tests and strengthening the approval process. A general extension, harmonisation and more efficient structuring of existing third-country regimes would enhance the attractiveness of European capital markets vis-à-vis third countries.

To promote financial integration, we need a more functional and cross-sectoral approach with a view to creating an environment more conducive to bigger and more liquid markets that attract more participants in the EU27.

The mid-term review of the CMU project thus offers the possibility to take a wider view on the CMU and reminds the co-legislators on core needs of companies, also non-financial ones, that are end users of the capital markets, accessing them not only for funding purposes. We believe that the CMU project should take into account the following aspects:

- The CMU project should be more balanced and address the needs not only of SMEs, but also of small and mid-caps (also defined as the Growth Companies) and of bigger, more seasoned companies, with robust relations to international institutional investors and millions of employees, to create a favourable regulatory environment for all European publicly listed companies. While we strongly support financing, and enabling growth of young and small companies, large companies also need markets with balanced rules to ensure a well-functioning funding escalator. Better reflecting the needs of experienced players will also serve smaller companies as regulatory disincentives to use the capital markets impact companies of all sizes. Smaller companies entering markets need reassurance that the capital markets will keep satisfying their needs while they grow. Therefore, if the interests and concerns of larger companies are not taken seriously, CMU may never be successful from a macroeconomic point of view.
- While supporting the importance of fostering the equity culture, we would like to emphasise the need for healthy corporate bonds markets, successfully used by smaller and large companies for financing.
- We feel that the needs of companies as end users of capital markets should be reflected better in the regulation. To overcome market-access impediments and on-going burdens, all regulatory requirements (not only confined to reporting), for publicly quoted companies of all size should be made more proportionate. The existing requirements are too burdensome and not only deter companies from listing but also encourage listed companies to delist, as demonstrated by the decreasing number of listed companies in the EU.
- An example that shows burdens on non-financial companies should be avoided and further reduced, are risk management activities. Non-financial companies use OTC derivatives to manage real economic business, contributing significantly to the economy and employing millions of people, and treasury financing risks (fluctuations in exchange rates, interest rates or commodity prices). The derivatives' regulation (the European Market Infrastructure Regulation- EMIR) is a good example of increasing influence of financial legislation on non-financial companies. We fully recognize that reducing costs and alleviating burdens on companies must be achieved without impairing post-crisis financial sector reforms – upholding increased transparency for supervisors and reducing systemic risk. Our concern, however, is that the upcoming promise of EMIR review for the real economy will not be achieved unless several principles are followed, including retaining the corporate hedging exemption for non-financial companies. See our response to question 2 for more detail.

- Reducing burdens on companies can be achieved without reducing the level of investor protection through an appropriate balancing of investors' and companies' needs.

Moreover, investor protection is best achieved through financial and economic literacy and not additional disclosures. Enhancing retail investors' financial and economic literacy is key to ensure that they can access and analyse all available information, identify what is missing and ask the right questions. Unfortunately, this is one of the important issues not addressed by the CMU Action Plan.

- To succeed, the CMU needs also to attract investors to the market and encourage them to channel more funds towards capital markets, especially long-term oriented. As mentioned above, greater emphasis should be placed on protecting investors through financial education initiatives. In addition, certain prudential rules should be re-considered as their recalibration could unlock large pools of long term investments. To promote capital markets and, equity culture in particular, we also need to encourage investment in equity using certain tax incentives.

- Finally, the CMU project should improve and ensure consistency of the political and regulatory objectives across different regulations.

  We firmly believe that an effective CMU requires ensuring that different regulations are cross-checked to provide a coherent regulatory environment for European companies. Capital markets regulation is not always coherent and often imposes duplicative and disproportionate obligations to companies, thereby rendering capital markets less attractive. While we appreciated the "Call for Evidence on the cumulative impact of financial service" we felt it failed to reflect the concerns of non-financial companies as end users of capital markets. Also, its focus was on financial regulation only, while publicly quoted companies also face many requirements stemming from company law and corporate governance rules, for instance. We therefore call for a holistic assessment of all European regulation affecting European publicly quoted companies, separately for financial and non-financial companies. This assessment should not only analyse the inconsistencies of rules, but also whether the burdens are justified. The ultimate objective should be to reduce existing non-justified burdens to facilitate access to capital markets for companies. What issuers need is that their perspective is taken into account and that the regulatory framework strikes the right balance between financial stability and entrepreneurial freedom, so that capital markets can effectively be used for the purpose of efficient corporate finance and risk management.

RESPONSE TO SPECIFIC QUESTIONS

Question 1: Are there additional actions that can contribute to fostering the financing for innovation, start-ups and non-listed companies?

Against the background set out in the cover note we are convinced that fostering the financing of innovation will not succeed without reviewing the rules of listed companies. Our comments on Q 2 to 6 thus also apply to Q 1.

Question 2: Are there additional actions that can contribute to making it easier for companies to enter and raise capital on public markets?

1. **Comprehensive assessment of existing regulation for companies as end users of financial markets**

To further develop capital markets in Europe, it is important to drive companies to capital markets and ensure that they remain users of capital markets. In that respect, the regulatory environment plays a key role. Capital markets regulation should strike the right balance between entrepreneurial freedom, investor protection and financial stability so that capital markets can be effectively used for the financing and risk management of European companies. From discussions with our members we hear, that the continuously increasing regulatory burdens often discourage companies from accessing public capital markets, while we also observe many de-listings. To create an environment in which companies can raise finance from capital markets for innovation and growth it is therefore necessary to properly assess and reduce compliance costs as well as other burdens for publicly quoted companies of all sizes. In addition, we recommend to make EU legislation more proportionate for small and medium-sized quoted companies (small and mid-caps) and provide them with a simplified reporting regime.

We therefore **call for a proper assessment of all European regulation affecting European publicly quoted companies (separately for financial and non-financial companies), followed by a revision and significant reduction of all regulatory and administrative costs related to listing for companies by at least 30-50%.**

Both the assessment and the revision should address separately the financial and non-financial companies, as their legislation, its purpose as well as means of those companies and reasons for tapping capital markets, vary a lot. We welcomed the Commission's call for evidence on the cumulative impact of the Financial Services Regulation launched in 2015 (with a follow up published last year), but **we were disappointed with the focus on financial companies and financial services regulation** only. Publicly quoted companies are faced with various **regulatory requirements and burdens, not only those stemming from financial services regulation**, but also from various other reporting requirements (e.g. non-financial reporting), company law and corporate governance rules, etc. To **create capital markets in which non-financial companies can flourish and grow over the long term, all EU rules affecting publicly quoted companies need to be assessed and revised**. This obviously includes both level I and level II measures.

To improve competitiveness of European capital markets, we need to have a comprehensive approach and avoid a silo mentality, still so often encountered in the European decision making. In view of recent political developments, it is more important than ever to raise to the challenge and prove that the European Union is not about producing ever increasing regulations and administrative burdens but that it can help foster an entrepreneurial environment in which companies of all sizes can deliver growth, jobs and shareholder value over the long term.

Below are described some examples of rules which put heavy and often disproportionate and / or unnecessary burdens on publicly quoted companies:

a) The Market Abuse Regulation (MAR) and extension of its scope are scaring companies away from public equity markets

We believe that the new Market Abuse rules are overly burdensome and disproportionate towards all publicly quoted companies. Although the new rules have been applied only as from 3 July 2016, we believe they should be reassessed as they could strongly discourage companies from the public capital markets and therefore are not in line with the Capital Markets Union. The main problems experienced are:

- Listed companies are confronted with a high level of legal uncertainty as e.g. the interpretation of important legal definitions remains unclear. Moreover, the European Securities Markets Authority (ESMA) has often interpreted the MAR duties extensively which further adds complexity. The problems arising hereof are aggravated by the fact that the level of sanctions has been increased dramatically so that listed companies are now confronted with higher sanctions and less legal certainty at the same time. This generally makes a listing less attractive.
- The scope of application of the MAR has been extended to trading platforms (MTFs) beyond regulated markets. This extension has substantially increased the level of regulation for smaller companies listed on these MTFs, as these companies now must compile insider lists, notify managers' transactions and comply with the duty to publish inside information. Many smaller companies entered those junior markets because they considered themselves not ready to cope with a more stringent regulatory environment yet and wanted to benefit from lighter and more proportionate rules. Extension of MAR to MTFs could endanger the business model of some of these markets developed to attract small growing companies to capital markets. Moreover, the only two exemptions aimed at smaller companies were linked to the concept of SME Growth Markets, which due to delay of the entry into force of MiFID II, do not apply yet. By having the MiFID II requirements come into force after the entry into force of MAR, the EU has effectively removed the necessary exemption for growth companies, which will need to put systems in place for insider lists and be subject to rules that require the same level of information from larger companies with different resources. We **therefore advocate for reducing the scope of MAR to exclude non-regulated markets**, notwithstanding the possibility for each MTF to choose to apply some of the MAR provisions.

- We welcome recognition by the EU Commission of the **huge burden of the ongoing and periodic reporting obligations** which can also discourage companies from seeking capital market finance (see report, p. 9). There has been an increasing amount of reporting obligations, some of them still in the pipeline (e.g. European Single Electronic Format, non-financial information reporting, etc.) which creates a burden for companies of all sizes. Moreover, to ensure the success of the capital markets, it is necessary that the obligations on large companies are adequate and do not prompt companies to look for financing elsewhere.

b) <u>Prospectus Regime</u>

The EU Commission has identified the prospectus regime as an important element of the Capital Markets Union and was aimed at alleviating overly burdensome prospectus rules for companies, while maintaining appropriate levels of investor protection, ultimately promoting listing and capital markets in Europe.

Despite some positive changes and a great ambition of some of the EU policy makers, we fear that this revision of prospectus rules[1] would not bring a major relief for companies seeking to access capital markets or those already listed, in some cases even increasing administrative burdens and costs. Nevertheless, the level II measures will play a key role in the final shape of the prospectus rules. We therefore call on the Commission and ESMA to adopt a holistic approach and alleviate burdens of both smaller and larger companies, both tapping on capital markets for the first and consecutive times. While access of smaller companies seeking capital finance for the first time should be facilitated, we would like to remind that European capital markets should remain an attractive place also for already listed / quoted companies, including the larger ones. Otherwise, they may seek other forms of financing or from elsewhere, decreasing attractiveness and sustainability of European capital markets.

In particular, we are concerned with the categorisation of risk factors, as:

- materiality and probability of occurrence are very difficult to assess, given the different characteristics of risks and, as regards materiality, may be subjective: what are the most material risks to certain investors may not be for others. Furthermore, not all the risks can be assessed and quantified to be categorized (reputational risk, for instance).

- prioritization of risks factors can expose issuers to an unacceptable level of increased liability, given the potential for misclassification (risks are rapidly changing and evolving while lawsuits are brought with the benefit of hindsight).

Therefore**, we are calling on the Commission and ESMA to develop level II measures which will allow for maximum flexibility in that respect**. We believe that especially considering the recent political developments it is high time that the European legislation became more principle based and less prescriptive. We would also like to stress that investor protection is best achieved

[1] political agreement struck in December 2016

through financial literacy and not with more disclosures. Enhancing investors' financial and economic literacy would ensure that they can access and analyse all available information, identify what is missing and ask (themselves) the right questions.

2. Avoid new burdens for European publicly quoted companies

Equally important as re-assessing financial markets regulation currently in force (see above), is refraining from imposing any new regulatory burdens on companies, which would run counter the CMU project. This includes new requirements already in the pipelines as those that are currently debated. We provide some examples below.

a) ESMA's advice to use the iXBRL reporting format

In line with article 4 paragraph 7 of the Transparency Directive, as from 2020 Financial Year, companies (including non-financial ones) must file their annual reports in an electronic format. Despite strong objections from companies across Europe, as well as mixed feedback from ESMA's Securities and Markets Stakeholder Group and no strong demand from the investors' side, ESMA decided to require that companies must file their consolidated financial IFRS statements using Inline XBRL technology and prepare their Annual Financial Reports in XHTML. Moreover, in the future ESMA may extend mandatory tagging of information using XBRL to other parts of the annual financial report or to financial statements prepared under third country GAAP.

If ESMA's proposals are accepted, this will generate additional costs for companies that would far outweigh the benefits for both investors and companies considering:

- the complexity of XBRL and the significant costs related to its implementation and ongoing maintenance;
- that the IFRS could be subject to significant changes in the future impacting the XBRL taxonomies, thus increasing both complexity and costs on an ongoing basis;
- the potential negative impacts on financial disclosure and reporting of public companies and issues in terms of liability for issuers, which are not currently addressed in a satisfactory manner.

For more information see our position.

We therefore request the Commission to re-consider in the Final Regulatory Technical Standard the opportunity to allow publication in a searchable PDF format which is the easiest and most efficient solution and also the most preferred by investors[2].

b) Other new reporting requirements

Apart from the recent new requirement imposed on large publicly listed companies regarding non-financial and diversity information (Directive 2014/95/EU), there have been various discussions on ESG and Integrated Reporting. We fear that those discussions, could lead to additional reporting requirements for listed companies while the benefits for investors are not clear.

[2] See the Financial Reporting Council's Financial Reporting Lab Project on Digital Reporting: https://frc.org.uk/Our-Work/Publications/FinancialReporting-Lab/Lab-Project-Report-Digital-Present.pdf

Moreover, the European Institutions should refrain from introducing a country specific public reporting for multinational corporations (so-called „Public Country-By-Country Reporting"). Competitive disadvantages for the European economy are expected, as international competitors could draw conclusions from the published reports regarding margins and business strategies of their European counterparts. This contradicts the aim of the Capital Markets Union to ultimately foster the competitiveness of European companies. For more information see our position.

3. Avoid constraints and facilitate companies' risk management

Another example where burdens on non-financial companies should be avoided and further reduced, are risk management activities. Non-financial companies use OTC derivatives to manage real economic business, contributing significantly to the economy and employing millions of people, and treasury financing risks (fluctuations in exchange rates, interest rates or commodity prices). The derivatives' regulation (the European Market Infrastructure Regulation- EMIR) is a good example of increasing influence of financial legislation on non-financial companies. We fully recognize that reducing costs and alleviating burdens on companies must be achieved without impairing post-crisis financial sector reforms – upholding increased transparency for supervisors and reducing systemic risk. Our concern, however, is that the upcoming promise of the EMIR review for the real economy will not be achieved unless several principles are followed:

- Commercial hedging does not present systemic risk – EMIR's current corporate hedging exemption must be upheld and not diluted in any manner;
- Reporting burdens for companies are significant (latest cost estimates: €2.4bn-€4.6bn annually[3]) and should rest with financial counterparties
  - This requires responsibility for the content and timing of reporting to be fully transferred to the financial counterparty to a transaction;
  - The principle of single-sided reporting has already been established under MIFID's RTS2 article 7 (Paragraphs 5-6);
  - EMIR's current delegated-reporting model does not achieve this full transfer of burdens nor does the current SFTR reporting model
- Intragroup transactions by corporates are not relevant for systemic risk monitoring and should be exempted from repository reporting.

As background information, we would recall that non-financial companies hedging commercial risks (NFC minuses) represent only 2% of all the derivatives transactions in Europe's markets today. But these same companies represent 76% of all the counterparties captured by EMIR.

The current dual-sided reporting framework is not delivering on its objective of transparency and is at the same time costly and disproportionate for NFCs. The estimated annual ongoing cost for NFCs is between €2.4bn to €4.6bn [4]– expenditure which is essentially unproductive and unjustified from the perspective of financial stability. Moreover, intragroup transactions reporting requirements significantly increase the reporting burden on NFCs, as an NFC that

[3] Industry study based on ISDA survey estimates and available information in July 2016
[4] Industry study based on ISDA survey estimates and available information in July 2016

centralizes its risk management in this manner would be responsible for three or more reports for a single external derivatives transaction, without bringing useful information in terms of supervision. Better supervisory oversight in terms of better data quality, as well as significant cost savings for NFCs, could be achieved through a simplified reporting framework where the financial institutions report on behalf of their corporate clients and are liable for the content and timing of the information they report. To achieve a meaningful alleviation of EMIR's reporting burdens, a single-sided entity-based reporting model would have to be combined with an intragroup transaction exemption for NFCs, while retaining the current exemption from clearing and margining for the NFCs. For more details please see our letter and joint position. We are currently finalising our more detailed position on this topic and are happy to discuss further.

4. **Promote equity as permanent risk capital**

Various studies and reports[5] demonstrate the **unique role of equity in providing permanent risk capital** which cannot be financed in the same way by debt that requires a guaranteed return. Hence, the risk capital financing enabled by IPOs contributes to innovation and faster economic growth[6]. We do not suggest to replace debt with public equity, but further promote and encourage public equity culture in Europe, complementing other sources of financing to ensure a broad and continuous spectrum of financing options available to companies and investors.

We understand that taxation falls under the competence of the Member States, nevertheless designing the right tax incentives could improve the state of IPO markets in Europe and promote equity culture. Member States should be encouraged to use tax policy to encourage long-term investment and to ensure the fair treatment of debt and equity financing, in particular through **reducing tax burdens on equity**. We would like to point out to some well working systems, e.g. the Italian (ACE tax deduction scheme) or Belgian on notional interest on equity. Whilst being favourable towards the current competition amongst Member States in the field of taxation, we acknowledge the approach followed in the proposal for a Common Consolidated Corporate Tax Base (CCCTB), providing for an allowance for equity issuance[7]. We welcome this specific aspect of the proposal, although we think **it could be more ambitious** introducing a corporate tax offset allowance. Moreover, to promote equity culture and encourage investment in Europe, it would be useful to combine it with **tax incentives at the investors' level**. This could include simplifying the system to reclaim withholding tax when these are subject to double taxation and other possible reliefs for investors in capital markets. We understand that the Commission Services are working with Member States to agree on a Code of Conduct on relief-at-source from withholding taxes procedures, although we question whether this measure will be sufficient to make a real change.

5. **Create a more balanced regulatory environment for small and mid-cap quoted companies**

[5] Isaksson M. and Çelik S., "Who Cares? Corporate Governance in Today's Equity Markets"
[6] Wright W., "Driving Growth: making the case for bigger and better capital markets in Europe", pages 52-53
[7] A set rate, composed of a risk-free interest rate and a risk premium, of new company equity will become tax deductible each year. Under current market conditions, the rate would be 2.7% (read more)

Capital markets need to be revitalised and enable both smaller and large companies to raise capital for investments in innovation and thus boost growth. To ensure that capital markets flourish, companies of all sizes should find those markets attractive to join them but also to remain listed / publicly quoted (over the years we have seen a significant number of de-listings).

In this section, we would like to elaborate on measures that could increase the supply of companies to the capital markets, in particular smaller growing companies which have the potential to expand quickly.

To enhance market financing for smaller companies, the **EU should promote a more proportionate legislation for smaller quoted companies** under every piece of EU legislation, by promoting the use of dedicated platforms (SME Growth Markets) and indirectly, by developing pan-European asset class for smaller companies.

- **A definition & asset class for Small and Mid-Size Quoted Company**

There is no legal definition of a small and mid-size quoted company in the EU. We believe it is important to recognise the importance of such companies to create growth and jobs, as well as their constraints in accessing capital markets. Creating an EU definition (and/or asset class) for these companies would be helpful in promoting awareness and ensure that regulations can be focused and proportionate. Small and mid-size quoted companies are fundamentally different from blue chip companies (e.g. in terms of their growth potential, size, turnover, market capitalisation, job creation, percentage shareholding of investors, and types of investors, among others). As such, they require a different regulatory and market ecosystem. However, since there is not a definition, there are not any appropriate and tailored rules for these companies.

We would propose carving out a definition of growth companies (which could be linked both to the size and to the period of listing), which would benefit from a simplified regime that would gradually encourage small and mid-size quoted companies to grow. This could include a transitional simplified regime applicable for a definite period of time (e.g. the first 5 years of listing). We strongly believe that the current regime is damaging growth potential, and hence there must be different regimes applicable to companies' different stages of growth.

We must add that policy initiatives targeted towards the smaller companies should not be restricted to SME Growth Markets as there is a significant number of smaller listed companies on regulated markets that suffer from the general level of regulation (see above).

- **SME Growth Markets**

However, since the overburdening regulation for listed companies is extended to MTFs that have been used by smaller listed companies, SME Growth Markets benefitting from more favourable rules will become an opportunity not only for companies but also for the development of capital markets and the economy. SME Growth Markets have the potential to become the remedy to existing obstacles to market financing for smaller companies: unhealthy ecosystems, difficulty in attracting companies to financial markets and raise funds, lack of clarity of the growth market's vision, rules and structure for the future. Therefore, it is crucial that the rules for the functioning of SME Growth Markets, as well as the proportionate legislation applicable to issuers on those markets, strike the right balance.

- **Accounting standards for SME Growth Markets**

The Commission is exploring with the International Accounting Standards Board (IASB) and stakeholders the possibility of developing a voluntary tailor-made accounting solution for companies admitted to trading on SME Growth Markets.

We believe, however, that it would be unhelpful to develop and adopt another set of accounting standards for MTFs or SME Growth Markets. This new set of accounting standards—coexisting alongside International Financial Reporting Standards (IFRS) and national standards—would increase market fragmentation, add complexity and decrease comparability. We firmly believe that companies on SME Growth Markets and MTFs should have the choice to use their local accounting standards (GAAP) or full IFRS.

Question 3: Are there additional actions that can contribute to fostering long-term, infrastructure and sustainable investment?

Although European companies as end users of capital markets welcome the intention to promote infrastructure projects by revising the capital requirements of banks and insurance companies, it is felt that certain asset classes are discriminated in comparison with sovereign debt for instance. We have observed this especially regarding equity investments of banks and insurance companies. They tend to have a higher risk weight than other asset classes, often due to their long-term character and performance. In line with the objectives of the Capital Markets Union, aiming to promote growth through long-term finance and more capital based financing, investment in public equity should be promoted.

In addition, to deepen the markets and reduce fragmentation, opening closed-end fund structures to new categories of investors could be envisaged. In this respect, we draw the Commission's attention to the shortcomings of the European Long Term Investment Funds[8] ("ELTIFs"), created to favour long-term investment (especially in infrastructure and medium-sized companies). ELTIF may largely remain an empty shell if the capital requirement associated with ELTIFs is not directly linked with the underlying exposures of the fund. Restructuring of such funds could be envisaged to facilitate investment by institutional investors like insurance companies or pension funds. Public listing of such funds could enhance participation of other retail and/or institutional investors further increasing capital flows and cross-border investment.

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[8] The ELTIF Regulation was adopted on 20 April 2015 by the Council.,

Question 4: Are there additional actions that can contribute to fostering retail investment?

We support enhancing participation of retail investors in the capital markets as means to develop those markets further.

a) Enhancing financial and economic literacy

The above-mentioned examples also illustrate that the objective of investor protection can be understood wrongly and, thus, overstretched at the expense of other objectives. For the benefit of ensuring effective investor protection we should rather create an environment providing for widespread financial and economic literacy than pursuing an ecosystem with even more regulatory requirements for companies as end users of capital markets.

A sufficient level of financial literacy should be ensured. Investors must be enabled to make sound investment decisions under their own responsibility. Future efforts to reform the European framework for investor protection thus should focus on a widespread economic literacy as core element. The objective of promoting education to achieve an economy based on knowledge and innovation, as contained in the EU 2020 Strategy, is to include measures to improve financial and economic literacy. Investors should be able to evaluate, compare financial instruments and make informed investment decisions.

a) Financial advice

Investment advice becomes increasingly more regulated. Advisors seem to increasingly struggle with the costs of compliance. Certain advisors, could retreat from providing investment advice especially regarding equity. This could have a negative impact on the private equity investment, especially at a time when investments in fixed interest instruments hardly yield above the inflation rate. Therefore, rules regarding investment advice could be reassessed and recalibrated.

b) Employee share ownership schemes to promote capital markets

Employee share ownership is a useful tool to promote equity culture and a powerful instrument of employees' motivation and corporate cohesion. Moreover, it allows companies to rely on a certain percentage of well-known and usually stable share owners who better understand and adhere to strategic choices of the management in the long-term.

Employee share ownership encourages equity investments and is an opportunity for individuals to get familiarised with equity investments. This can encourage them to diversify their portfolio with public equity of other companies. Therefore, companies providing broad employee share programs contribute to the equity culture. However, large companies, and especially those with cross-border activities, encounter great difficulties with implementation of employee share-ownership plans on cross-border basis. This is due to the diversity of the legal, fiscal and social framework in force in various countries.

We therefore ask the Commission to take an action regarding the promotion of employee share ownership in the Member States. In particular, we recommend a scrutiny of the existing European legislation creating obstacles for the implementation of employee share plans :

bureaucracy should be reduced to the bare minimum to facilitate implementation of employee share plans across Europe.

We believe that at this stage, the most realistic approach to deal with these difficulties would be to encourage at the European level a mutual recognition mechanisms and a minimum harmonisation of the most essential rules, in a phased approach:

Phase 1

- EU level support for creation of **corporate investment funds** made up of shares from the company;
- Harmonisation of certain principles in defining **employees' eligibility** for share ownership plans and of **companies** implementing them (typically the companies within the perimeter of the consolidated accounts, but Member States would have the possibility of extending the definition of the group to other companies e.g. when there is a capital equity interest over 10 %).

Phase 2

- Ensuring a possibility for an **employee** moving to another MS to **benefit from the same social and fiscal treatment** until the end of the share ownership plan;
- Enabling companies to offer employees **a discount (or rebate)** on the share subscription price, with thresholds to be specified and discount calculation methods clarified;
- **Beneficial fiscal and social treatment** of share-ownership plans both for employees and employers. An EU recommendation on minimum exemption thresholds would be useful in this respect.

Question 5: Are there additional actions that can contribute to strengthening banking capacity to support the wider economy?

As recognised by the Commission, companies should have a wide choice of various forms of financing. Therefore, while encouraging promoting healthy capital markets financing, we recognise that banks will continue to play their role in the economy. Bank financing remains important for SMEs as well as for large European non-financial companies. Therefore, bank and capital market financing should remain complementary.

There is a growing concern among non-financial companies that the intensity of bank regulation may ultimately undermine the ability of banks and other intermediaries to provide non-financial companies with the services (e.g. risk management, underwriting, back up facilities, credit lines) they need in a competitive global environment. Thus, the Capital Markets Union project should also keep an eye on more traditional forms of finance and the role of banks in financing non-financial companies and providing other services to them.

Question 6: Are there additional actions that can contribute to facilitating cross-border investment?

While we believe that certain additional initiatives could be taken to improve the capital markets environment and strengthen the CMU, some actions could be counter-productive and therefore should be removed from the Commission's agenda. In particular, we believe that the following two legislative measures would be detrimental to the functioning of the capital markets, would negatively impact non-financial companies and impair their ability to deliver growth and jobs:

- **EU Financial Transaction Tax**

We firmly believe that the objectives behind the initiative, i.e. to ensure that the financial sector makes a fair contribution to covering the costs of the financial crisis, to discourage certain financial activities that do not bring value to the overall economy, to raise revenues in the long-term and to make markets safer, would not be achieved with the adoption of the current proposal. On the contrary, the introduction of a Financial Transaction Tax in some Member States would put them at a competitive disadvantage, impact financial transactions with a genuine economic substance that did not cause the financial crisis. Thus, it will impose considerable costs on non-financial. There are numerous reasons why the current proposal would be very harmful to the real economy and to the end users of financial instruments (e.g., non-financial companies responsible for the economic growth, investors and savers). For more details see our position.

We urge the Council to refrain from harming the real economy and to abandon the idea of impairing the already faltering European economy with the introduction of a Financial Transaction Tax, which runs counter the CMU objectives and Commission's priority to foster growth and jobs in the EU.

- **Securities Ownership Rules**

There should be equal treatment of all (end) investors across Europe when they invest in a security and they should never be subject to uncertainty as to what they acquire when paying for a security. Currently they face considerable uncertainty whether they really acquire what has been created under applicable law in the country of the issuer or whether they only require a contractual claim against an intermediary, especially in countries which do not offer right in rem but only offer less like a securities interest or similar instruments. Additionally, there is the risk that by an intermediary imposing upon investors a choice of law for the account agreement which differs from the law under which the securities that investors lose out and are less favourably treated than domestic investors. In some European regulations, the approach of the law of the country where the securities account is maintained or located (the "place of the relevant intermediaries securities account") has been used. This approach carries considerable risks, one is that investors outside the European Member State where the security has been created are less favourably treated than domestic investors and secondly, confer upon intermediaries the power to decide on the place of the account so investors may lose their legal position due to a choice of law which is based on the place of the account.

In its action plan the Commission has targeted action on **securities ownership rules** to address alleged uncertainty over which law applies in the event of legal challenges on ownership in transactions involving different Member States. In our view, differences in national ownership regimes have never created legal uncertainties: The source for uncertainty is the non-application by intermediaries of the core European principle of equal treatment of domestic with non-domestic investors. To eliminate this violation of European principles **the law applicable to the acquisition or disposition of securities of any kind should always be the law of the member State under which the securities have been created.**

Also in most European jurisdictions, investors purchase securities on the assumption that they obtain in rem rights in securities. The exact legal nature of those in rem rights varies among member states, however the acquisition of an in rem right appears in most European jurisdictions. Only few Member States apply the principle that intermediaries would obtain the right in rem and end investors, although having paid the full price for the security, would not acquire a right in rem. We encourage the Commission to put an end to this disenfranchisement of end investors and oblige all intermediaries offering services in the European Union to serve the justified interests of end investors and thus promote the capital markets union

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EuropeanIssuers *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 € 7.6 trillion 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.

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