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RESPONSE TO THE EC CONSULTATION ON BUILDING A PROPORTIONATE REGULATORY ENVIRONMENT TO SUPPORT SME LISTING

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SUMMARY

We welcomed the opportunity to respond to the European Commission's public consultation on building a proportionate regulatory environment to support SME listing. Our main proposals are:

- To fully maximise the potential of SME Growth Markets in the EU, we believe there must be a clear, material advantage for both companies considering listing and those already listed on an SME growth market. Small and mid-cap companies face the most difficulties complying with increasingly more burdensome capital markets, corporate governance and company law rules.
- To facilitate healthy and thriving public capital markets, it is important to recognise the diverse nature of companies on these markets and ensure that the rules applying to smaller companies are appropriate for their size. Therefore, a definition of small and mid-cap is necessary to enable focussed and proportionate rules. In line with the US JOBS Act, we would propose an upper market capitalisation threshold of €1bn, although some flexibility with an upper limit might need to be left to individual Member States. All companies below this threshold should be exempted from certain EU disclosure requirements and should be allowed to access to the SME Growth Markets. Consideration also should be also give to a transitional period exempting the newly listed smaller companies from some of the requirements for five years.
- We also suggest updating the current legal definition of an SME to reflect current realities in different EU countries. We would recommend a revision of the definition of a medium-sized company to a staff headcount of 500 and a turnover /balance sheet total of less than or equal to €500m.
- High compliance costs and the disproportionate regulatory regime are major deterrents to listing. New Market Abuse rules have been particularly challenging. Adjusting the amount of sanctions, simplified and clearer disclosure obligations, and an exemption from drawing up and keeping lists of persons closely associated for issuers on SME Growth Markets are among the top priorities.
- While key advisers can be very helpful to companies going through an IPO, seeking an admission to trading and being faced with the new regulatory requirements during the first years of listing, we feel that key advisers should not be mandatory.
- While it is important there are arrangements allowing for companies' smooth transfer from one market to another, flexibility is key. Rather than introducing harmonised rules on voluntary transfer of listing and delisting rules at EU level, we believe there should be an overarching principle ensuring that local market operators have appropriate arrangements in place.

EuropeanIssuers' Smaller Issuers Committee has analysed the Commission's proposals and advised on this response.

RESPONSE TO SPECIFIC QUESTIONS

SECTION I. QUESTIONS ON CHALLENGES FACED BY PUBLIC MARKETS FOR SMES

Question 1. In your opinion, what is the importance of each of the factors listed below in explaining the weakness of EU SME-dedicated markets?

Please rate each proposal from 1 to 5, 1 standing for "not important factor" and 5 for "very important factor" (also possible to mark Don't know / no opinion / not relevant)

- Low number of companies coming to the public markets: **4**
- Decline of local ecosystems: **5**
- Lack of retail and institutional investors: **4**
- Other (please specify in the textbox below): **5**

Please specify what other factor(s) explains the weakness of EU SME-dedicated markets:

- increase in ever more stringent regulatory requirements
- the reputation of capital markets
- the change of focus of stock exchange business models

See our response to Q 1.2 for more details.

Question 1.2 Please explain and describe the current situation of SME-dedicated markets in your own jurisdiction or countries of operations:

1. We often hear that companies which are no longer SMEs – but which are also not yet large companies – struggle with access to capital markets. Small and mid-cap companies have the most difficulties complying with increasingly more burdensome capital market, corporate governance and company law rules. In Europe, the regulatory focus is too often on the largest 20% of companies, which are better equipped to comply with ever increasing compliance duties.

However, many growing companies are deterred from seeking or maintaining a listing on a public market. This is particularly the case with regards to the costs of listing, which are disproportionate for smaller companies. Therefore, the EU should avoid one-size-fits-all regulatory approach and develop targeted and sufficiently alleviated rules for small and mid-cap companies, differentiating them both from SMEs and from large listed companies.

In recent years, we have observed a significant increase in ever more stringent regulatory requirements on SME-dedicated markets. The Market Abuse Regulation, which has been perceived as stringent and difficult to comply with by large companies, have been a major challenge for smaller companies on SME-dedicated markets and may be one of key deterrents for entering such markets.

From different markets we hear about delistings, in some cases higher than new listings (e.g. in Poland in 2017 only 15 companies came to the market, while 20 left).

2. Many publicly listed small and mid-cap companies suffer from insufficient interest of institutional investors in their shares. This is in addition to the already low number of analysts covering them and low share turnovers (low liquidity). This leads to a vicious circle as many institutional investors are often focused on high liquidity shares. It is feared that the MiFID II provisions will exacerbate the situation, as advisors, brokers and banks may be reluctant to encourage their clients to buy SME shares due to their liability.

Therefore, it is necessary to strengthen capital markets especially regarding retirement plans' provisions, enabling big institutional investors to have the capacity to invest also in smaller companies' shares on a diversified basis. For that reason, we welcome the Commission's efforts to strengthen capital markets regarding retirement plans' provision.

3. The reputation of capital markets is also important. We hear that some small and mid-cap companies / SMEs – especially those who are family owned – refrain from capital markets due to its variable reputation. Therefore, alongside designing an appropriate regulatory framework, which includes tangible incentives for companies to join capital markets, the promotion of capital markets by politicians and regulators would be helpful. Although the Capital Markets Union project is an important step in the right direction, we feel that the needs of companies using capital markets for financing purposes could be better and more effectively reflected.

4. Another important factor not mentioned in the list above, could be the change of focus of stock exchange business models. We have observed that following the privatisation of stock exchanges, much of their focus and support has shifted from small and mid-caps to large companies. This has not only affected smaller companies' ability to join the market, but also impacted their liquidity. Nowadays, stock exchanges obtain their fee revenue mostly on trading, data and listing fees from large companies, with fewer incentives to support IPOs and listing of small and mid-caps. Nevertheless, we acknowledge that this phenomenon varies from one market to another and has been changing with time.

We understand that some stock exchanges have been helpful in encouraging small company listings and trying to create and influence favourable regulatory environment for them (for example, through the creation of specific market segments designed especially for smaller companies, providing research centrally or improving the conditions of pre-IPO-financing).

We have also observed some changes in the behaviour of stock exchanges over time. We would welcome an initiative by the Commission to examine cases where stock exchange business models have been favourable to the small and mid-cap ecosystem. Broader reflection on the current corporate governance of stock exchanges and an assessment of whether there is room for improvement would also be welcome. We also recommend that the Commission monitors the effects of the MiFID II provisions on capital markets and investment into small and mid-cap companies.

Question 2. What are the main factors that can explain the low number of SMEs seeking an admission of their shares or bonds to trading on EU public markets?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant" (also possible to mark Don't know / no opinion / not relevant):

- Availability of alternative sources of financing for SMEs (including bank finance) **for equity: 4**
- Availability of alternative sources of financing for SMEs (including bank finance) **for bonds: 4**
- Lack of awareness of SMEs on the benefits of public markets **for equity: 4**
- Lack of awareness of SMEs on the benefits of public markets **for bonds**: **2**
- High (admission and ongoing) compliance costs due to regulatory constraints **for equity: 5**

- High (admission and ongoing) compliance costs due to regulatory constraints **for bonds: 4**
- Lack of preparation from companies' management as regards the implication of a listing **for equity: 3**
- Lack of preparation from companies' management as regards the implication of a listing **for bonds: 3**
- Reluctance of SMEs' owners to relinquish a stake in the capital of their company (for equity): **3**
- Other (please specify below): **5**

Please specify what other factor(s) can explain the low number of SMEs seeking an admission of their shares or bonds to trading on EU public markets:

The biggest problem is the disproportionate regulatory regime; salient examples of this are the ever increasing and stringent requirements and the high sanctions (e.g. MAR) compared to low benefits of listing for smaller companies.

See also our response to question 1.2 regarding stock exchanges business models, insufficient interest of institutional investors in smaller companies and capital markets' reputation.

Question 3. What are the main factors that inhibit institutional and retail investments in SME shares and bonds?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant" (also possible to mark Don't know / no opinion / not relevant):

- Lack of visibility of SMEs (including lack of financial research and credit information) towards investors **for equity: 5**
- Lack of visibility of SMEs (including lack of financial research and credit information) towards investors **for bonds: 5**
- Differences in local accounting standards hindering cross-border investments: **2**
- Regulatory constraints on investors as regards investments in SMEs: **4**
- Lack of liquidity on SME shares and bond markets for equity: **4**
- Lack of liquidity on SME shares and bond markets for bonds: **4**
- Lack of investor confidence in listed SMEs: **2**
- Lack of tax incentives: **5**
- Other (please specify below): **N/A**

3.1 **Please illustrate by providing evidence from your own jurisdiction:**

We often hear that the regulatory framework for investors is not incentivising investments into smaller companies. In fact, it can sometimes create barriers. See also our response to question 1.2.

Question 4. In your opinion, what participants of the ecosystems surrounding local exchanges for SMEs are declining the most?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant" (also possible to mark Don't know / no opinion / not relevant). Some options might not be mutually exclusive.

- Brokers, market-makers, liquidity suppliers: **5**
- Financial research providers: **4**

- Credit Rating Agencies: **1**
- Investor base: **4**
- Investment banks: **1**
- Boutiques specialised in SMEs and offering several services (brokerage, research, underwriting…): **5**
- Legal and tax advisers: **1**
- Accountants: **1**
- Others (please specify below): **5**

Please specify what other participants of the ecosystems surrounding local exchanges for SMEs are declining the most:

The issues are not only about which participants of the ecosystems surrounding local exchanges for SMEs are declining, but which products and / or services are declining, or are absent.

For instance, we have seen no decline of CRAs. However, there is a general lack of credit rating agencies for smaller companies.

Regarding financial research providers, there had been indeed a decline in the number of those market participants, although the real issue is that overall there had been very little analyst research coverage of small and mid-caps. The unbundling provisions of MiFID II, which are expected to reduce demand for equity research, especially for SMEs, will reinforce this development.

We have not seen a decline in the presence of investment banks, although such banks do not really provide services that meet the needs or requirements of small and mid-cap companies. Rather, they provide services that are only affordable to big corporates.

There has similarly not been an obvious decline in the number of boutiques specialised in SMEs, although with the application of MiFID II rules on research unbundling and some other provisions, we believe that there may be a decline in the presence of such market participants within a year or so. Otherwise, they may be forced to change their business model and stop or reduce significantly their services to small and mid-caps to ensure profitability.

Question 5. What are the main reasons behind the decline of the ecosystems surrounding the local exchanges?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant" (also possible to mark Don't know / no opinion / not relevant):

- Impact of low level of liquidity on brokers' business models **for equity: 4**
- Impact of low level of liquidity on brokers' business models **for bonds: 2**
- Impact of low level of investors' appetite for SME instruments **for equity: 4**
- Impact of low level of investors' appetite for SME instruments **for bonds: 3**
- Regulatory constraints on investment services providers specialised in SMEs: **5**
- Lack of profitability of the SME segment **for equity: 4**
- Lack of profitability of the SME segment **for bonds: 4**
- Other (please specify below): **5**

Please specify what are the other reasons behind the decline of the ecosystems surrounding the local exchanges:

One of the reasons for the decline of the SME ecosystem is the declining number of IPOs. IPOs are the main source of income for many entities (lawyers, advisors, accountants, auditors and investment firms) and imply further income by other market participants (investors, investment firms, asset managers, exchanges and depositories). The declining number of IPOs and, with it, declining number of listed companies (also due to delistings) are a clear signal for many service providers, that it will be extremely difficult in the nearest future to generate profits on bringing smaller companies to public market.

SECTION II. QUESTIONS ON SPECIFIC REGULATORY BARRIERS

A. Making a success of the 'SME Growth Market' concept

Criteria and requirements in relation to the 'SME Growth Market' should be set in a way that makes this segment attractive for issuers, investors and stock exchanges, while ensuring investor protection and market integrity. The Commission is seeking views to assess whether MiFID II rules on SME Growth Markets as currently framed are sufficiently well-calibrated to achieve their intended objectives.

1. Definition of an SME Growth Market and SME Growth Market issuer (MiFID II – Articles 4 and 33)

The criteria defining an SME Growth Market should be well-calibrated in order to facilitate the registration of SME-dedicated MTFs as SME Growth Markets. In turn, if the SME Growth Market framework is widely used, this will allow many SMEs across the EU to benefit from the regulatory incentives embedded in the EU legislation for those issuers and the potential further alleviations envisaged in this document (see sub-section B. below).

An 'SME Growth Market' is currently defined as an MTF, where at least 50% of the issuers whose financial instruments are traded on the MTF are SMEs. MiFID defines an SME as a company that 'had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years'.

As regards the size threshold (i.e. EUR 200 million of market capitalisation), it should be noted that some EU Acts currently grant regulatory incentives to companies with a higher market capitalisation[15]. Furthermore, the definition of an SME under MiFID II does not correspond to the definition of small and midcaps used by asset managers of equity funds and in indexes. If the market capitalisation threshold is set at a too low level, the SME Growth Markets risk capturing only smaller companies and this could reduce the interest of institutional investors in the shares traded on those trading venues. On the contrary, if the threshold is set at a too high level, this could create regulatory arbitrage opportunities for larger companies.

As regards the requirement of having at least 50% of SME issuers, it can be important to ensure that a proportion of large companies can be admitted to trading on SME Growth Markets so that a sufficient level of liquidity and profitability of those platforms is ensured. This allows successful companies that were SMEs at the time of the IPO but whose market capitalisation has increased beyond the EUR 200 million threshold to remain listed on an SME Growth Market. However, if the market capitalisation threshold (i.e. EUR 200 million) was raised to a significant extent, the question would arise whether the proportion of SMEs (at least 50%) should also be raised to avoid any regulatory arbitrage by non-SME issuers.

Question 6. Given the considerations mentioned above, do you consider that the criteria used to define an SME Growth Market should be modified?

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

6.1 Please explain your reasoning:

As rightly pointed out by the Commission, the definition of an SME under MiFID II does not reflect the market reality and does not really capture the small and mid-cap companies, which SME Growth Markets should also cater for. To achieve a well-functioning Capital Markets Union, it is important to recognise the different needs and constraints of companies at different stages of growth. While we appreciate the focus and attention that SMEs have received in the regulatory debate in recent years, we would like to highlight that there is a bigger variety of companies than simply SMEs and large companies.

We often hear that companies which are no longer SMEs, but are also not yet large companies, struggle with access to capital markets. Small and mid-cap companies have the most difficulties complying with overly burdensome regulation. In Europe, the regulatory focus is too often concentrated on the largest of companies, which represent 20% of the market share and approximately 80% of the total market capitalisation, at the expense of smaller companies. This deters many of these growing companies to seek or maintain a listing on a public market. This is particularly the case with regards to the costs of listing, which are disproportionate for smaller companies.

To facilitate healthy and thriving public capital markets, it is important to recognise the diverse nature of companies on these markets and ensure that the rules applying to smaller companies are appropriate for their size. In that respect, consideration should be given to **developing a definition of small and mid-cap companies and calibrating SME Growth Market rules contained within MiFID II, to ensure that such markets cater for the needs of small and mid-cap companies.** This would be in line with the new EU Prospectus rules which recognised that EU Growth Prospectus should not only be available to SMEs, but also to other growth companies and small and mid-caps.

We agree with the Commission that if the market capitalisation threshold is set at a too low level, then SME Growth Markets risk capturing only smaller companies which would reduce the interest of institutional investors in the shares traded on those trading venues. Also, that could go against the objective of a well-functioning funding escalator, ensuring that companies can grow smoothly and tap different types of financing.

Question 7. Should the market capitalisation threshold of EUR 200 million defining SMEs under MiFID II be:

- (•) raised (please specify an appropriate market capitalisation threshold)
- ( ) decreased (please specify an appropriate market capitalisation threshold)

- left unchanged
- replaced by another criterion (Please specify below – e.g. turnover, number of employees…)
- Other (please specify below)
- Don't know / no opinion / not relevant

7.1 Please explain your reasoning. Where relevant, please specify appropriate market capitalisation thresholds or criteria to define an SME for the purpose of SME Growth Markets:

A definition of small and mid-cap companies – that goes alongside with the definition of SMEs - is required to enable focussed and proportionate regulations. Small and mid-cap companies are fundamentally different from large blue-chip companies, as well as from SMEs (in terms of their growth potential, size, turnover, job creation, percentage shareholding of investors, and types of investors, among other things). As such, they require a different regulatory and market ecosystem. However, since no definition exists, there are no appropriate, tailored rules for these companies' growth needs.

It is not clear whether a single definition would work for all EU countries, so some flexibility with an upper limit might need to be left to individual Member States. However, as a starting point, **consideration should be given to the adoption of a new category of Small and Mid-Cap Company** which would be linked to the size. This would allow such companies to benefit from a simplified regime that would gradually encourage them to grow. In line with the US JOBS Act, we would propose an **upper market capitalisation threshold of €1bn[1].** Compared with the industry small-cap fund definitions which range from €1bn to 7bn,[2] such a threshold is rather modest. To reflect the diversity of EU markets, **certain flexibility for Member States could be permitted to adjust this threshold to local market realities**. **All companies below this threshold should be exempted from certain EU disclosure requirements** and should be allowed to access to the SME Growth Markets. It would be also useful to update the threshold after every two years to ensure it is in line with the market conditions.

Furthermore, we believe it would be useful to **update the current legal definition of an SME** to reflect current realities in different EU countries, as current figures reflect the realities of 14 years ago. To differentiate from small and mid-cap companies, **we suggest that the SME definition should apply to debt issuers, unlisted companies and other cases were appropriate**. This could be helpful for existing EU rules referring to the SME definition (for instance, the new Prospectus Regulation permits SMEs to draft an EU Growth prospectus).

We would recommend a revision of the definition of a **medium-sized company** to a staff headcount of 500 and either a turnover of less than or equal to €500m or balance sheet total of less than or equal to €500m to reflect the current economic realities.

[1] Under the Jumpstart Our Business Startups (JOBS) Act of 2012, an emerging growth company is a company with annual gross revenues of less than $1,070,000,000 -initially $1 billion, but adjusted for inflation in April 2017 - during its most recent fiscal year; we have translated it to an approximate market capitalisation value
[2] See Staff working paper to EU IPO Task Force report for more information.

Question 8. Bearing in mind your answer to the previous question, should the proportion of SMEs on SME Growth Markets (currently 50%) be:

- ○ Below 25%
- ○ Between 25%-49%
- ● Unchanged (50%)
- ○ Between 51%-74%
- ○ 75% or above
- ○ Don't know / no opinion / not relevant

8.1 Please explain your reasoning:

As explained in response to the question 6.1, it is important to differentiate between SMEs and small and mid-cap companies, whose needs SME Growth Markets should cater for. We have requested to raise the threshold to better reflect the market realities and we believe it will work well with retaining 50% threshold. But at the same time, we also believe that a **consideration should be given to allowing more flexibility to each market operator in setting an appropriate threshold that would reflect local market conditions**. Companies in different markets are of a different size. Furthermore, capital markets in different countries vary in terms of their maturity, and therefore may have a different supply of smaller companies coming to their capital markets, along with a different composition of such markets.

2. Definition of an SME debt issuer for the purpose of an SME Growth Market (MiFID II – Article 4)

There are several markets across the EU specialised in SME bonds[19]. SMEs tapping the bond markets have an annual turnover between EUR 19 million and EUR 400 million and the typical minimum issuance size is around EUR 17 million[20].

An issuer that has no equity instrument traded on any trading venue shall be deemed an SME according to level 2 of MiFID II[21] if it meets at least two of the following three criteria according to its last annual or consolidated account: (i) an average number of employees during the financial year of less than 250; (ii) a total balance sheet not exceeding EUR 43 million and (iii) an annual net turnover not exceeding EUR 50 million. Given these provisions, SME bond markets could face difficulty in registering as SME Growth Markets, as their issuers could most likely not meet the criteria set in MiFID II level 2, despite their relatively small size.

Question 9. Should the criteria used to define an SME Growth Market non-equity issuer be modified?

- ● Yes
- ○ No
- ○ Don't know / no opinion / not relevant

9.1 Please explain your reasoning.

If you answered affirmatively, please provide appropriate criteria (turnover, outstanding issues of debt securities, size of the bond issuance…) and thresholds to define an SME Growth Market debt issuer:

As rightly pointed out by the Commission, the SME definition in Article 77 of the Commission Delegated Regulation (EU) 2017/565 does not reflect the current market realities, including the corporate bond markets. We would recommend **a revision of this definition to a staff headcount of 500 and either a turnover of less than or equal to €500m or balance sheet total of less than or equal to €500m**. This could be done by amending the EU recommendation 2003/361[3], on which is based the definition in the Commission Delegated Regulation (EU) 2017/565, and by cross-referring to it.

3. Key adviser requirements

The vast majority of SME-dedicated MTFs across the EU require their issuers to be assisted by a key adviser[23], i.e. a market professional approved by the exchange. The key adviser plays a prominent role by assessing the company's suitability for the market, bridging the information gap between quoted SMEs and investors and upholding the reputation and integrity of the market. A 'key adviser' on SME Growth Markets could boost investor confidence in securities listed on those trading venues that have no such requirements at the moment.

However, the role of a key adviser can vary greatly from one SME-dedicated MTF to another. For instance, some markets do not require issuers to have a key adviser for SME listing (due to the costs of such advisers for SMEs).

Question 10. Please indicate whether or not you agree with the following statements regarding minimum requirements and obligations of key advisers for firms listed on SME Growth Markets:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree" (no opinion option also possible):

- A key adviser should be imposed for **equity issuers** on an SME Growth Market: **2**
- A key adviser should be imposed for **bond issuers** on an SME Growth Market: **2**
- A key adviser should be mandatory during the whole period an SME is listed: **1**
- A key adviser should only be mandatory during a limited period after the first listing of a firm (please specify below the relevant period (1 year, 3 years; ….): **2**
- Minimum requirements regarding the mission and obligations of key advisers on SME Growth Markets should be imposed at the EU level (Please specify): **2**
- Minimum requirements regarding the mission and obligations of key advisers on SME Growth Markets should be imposed by individual stock exchanges: **5**

10.1 Please explain your reasoning and provide supporting evidence on the costs associated with the appointment of a key adviser. If appropriate, please specify the mission and obligations that should be placed on key advisers at EU level:

While key advisers can indeed be very helpful to companies going through an IPO, seeking an admission to trading and faced with the new regulatory requirements during the first years of listing, **we feel that key advisers should not be mandatory**. We understand that the purpose of the Commission's initiative is to make

[3] 3 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN

SME Growth Markets more attractive to companies. Adding a requirement which in some markets would result in additional costs and would therefore be counterproductive. Furthermore, given that the role of a key adviser can vary greatly from one SME-dedicated MTF to another, it is best to leave this up to the local markets operators to decide what works best for their markets.

However, it would be highly advisable for the markets which do have a key advisor requirement, to consider shifting the responsibility for a pre-approval of EU Growth Prospectus / disclosure document from the NCA to the key advisor. This is already the case for many local markets where certified advisers or dedicated teams from market operators approve document admitting to trading on MTFs (e.g. AIM in UK or Italy), First North in Scandinavia, NewConnect in Poland[4]).

4. Delisting rules on SME Growth Markets

Delisting refers to cancelling a company's authorisation to be listed on a stock exchange. Delisting can be mandatory or voluntary. A mandatory delisting follows a decision of the stock exchange when the listing requirements are no longer met by a company. A voluntary delisting may be decided by a controlling shareholder, either after enhancement of control by a 'historical' controlling stakeholder or by a new owner after a takeover bid or a merger. In general, such delisting decisions usually give rise to a 'squeeze out' procedure. Voluntary delisting may also be decided by the management's company, and results in the company continuing as an unquoted company with the same shareholder register.

Voluntary delisting can be an important part of the regulatory landscape for investors and SMEs. The rules on delisting can vary from country to country or from market to market and investors can be deterred from investing in the first place (especially in a cross-border context) if they anticipate difficulties in gaining full control of a listed SME and in delisting its shares. Likewise, some companies can be deterred from going public because they consider a listing of their shares to be a 'one-way ticket' and that they cannot go back to their previous (unlisted) situation. However, even if a decision to delist taken by the management's company is based on sensible grounds, this raises some fundamental investor protection issues.

Question 11. In your opinion, are there merits in imposing minimum requirements at EU level for the delisting of SME Growth Market Issuers?

- ○ Completely disagree
- ○ Rather disagree
- ◉ Neutral
- ○ Rather agree
- ○ Fully agree
- ○ Don't know / no opinion / not relevant

[4] See references to authorised or certified advisers, NOMADs and sponsors in the Glossary to IPO Report.

11.1 Please explain your reasoning.

If you answered affirmatively, please indicate the scope (mandatory, voluntary delisting at the management's and/or controlling shareholders' initiative) and the features of such minimum requirements:

SME dedicated markets are different across Member States and have been regulated in different ways. This flexibility has often been the key to the success of those markets, which understand the specificities of the local companies and investors who are interested in them. We fear that harmonisation at EU level could result in rules which are not reflecting the needs of the local markets and the local companies.

However, we see merits in inserting **a principle in the EU law requiring the local market operators to provide for delisting rules ensuring that companies may easily move from one market to another including also choice of different financing options**.

5. Transfer of listings

Small caps listed on regulated markets can find it increasingly difficult to comply with some regulatory requirements (such as the Transparency Directive[27], the Shareholders Rights Directive[28]). Furthermore, many midcaps on regulated markets can feel that their market capitalisation makes them candidates for SME Growth Markets. In such a case, quoted SMEs may consider a voluntary transfer of their shares from a regulated market to a market with a lighter regulatory burden (i.e. the future SME Growth Markets). However, such transfers may imply some investor protection issues[29] and can be difficult to organise for SMEs. In addition, the legal framework of such transfers can vary from one Member State to another.

Question 12. In your opinion, are there merits in introducing harmonised rules at EU level on voluntary transfer of listing from a regulated market to an SME Growth Market?

- ○ Completely disagree
- ○ Rather disagree
- ● Neutral
- ○ Rather agree
- ○ Fully agree
- ○ Don't know / no opinion / not relevant

12.1 Please explain your reasoning.

If you answered affirmatively, please indicate examples of rules and their purpose:

While we believe that it is important that there are arrangements allowing for companies' smooth transfer from one market to another, we would like to see the flexibility left to the local market operators regarding those provisions. Therefore, rather than introducing harmonised rules on voluntary transfer of listing from a regulated market to an SME Growth Market at the EU level, we believe there should be an **overarching**

principle which ensures that all market operators of SME Growth Markets have appropriate arrangements to facilitate the transfer of listings.

On the other hand, SME Growth Markets should only be a step in the growth path of SMEs. When their capitalisation has grown, SME Growth Markets issuers should be encouraged to graduate to a main/regulated market, in order to benefit from greater liquidity, investor pool, and credibility. This would also help avoid situations of regulatory arbitrage where large corporates remain listed on SME-dedicated exchanges for the purpose of benefiting from exemptions. The question arises if the transfer of SME Growth Markets issuers to regulated markets should be required or incentivised (through regulatory measures) when those issuers have reached a certain size.

Question 13. In your opinion, should the transfer of issuers from an SME Growth Market to a regulated market be:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

- required when the issuer exceeds some thresholds (such as the market capitalisation): **1**
- incentivised through regulatory measures when they exceed some thresholds (such as the market capitalisation): **2**
- always left to the discretion of issuers and not required or incentivised by regulatory measures: **5**

13.1 Please explain your reasoning and supporting arguments/evidence. When relevant, please indicate appropriate thresholds or possible incentives for SME Growth Market issuers to move to a regulated market:

1. As companies and local capital markets vary in terms of size and maturity, there should be **maximum flexibility in determining when a company may choose to transfer from an SME Growth Market to a regulated market**. Setting a threshold, such as by market capitalisation, would be counter-productive and not beneficial for public markets.

2. At the same time, we believe that **clear and specific transitional arrangements for companies transitioning from SME Growth Markets to the regulated markets are needed to ensure continuous growth, but each local market should be allowed to develop its own set of rules**.

For instance, the new Prospectus Regulation is missing an important element to ensure that SMEs continue to grow – the ability to move easily from an SME Growth Market to a regulated market. Issuers on SME Growth Markets should not be required to produce a full prospectus when joining a regulated market (unless they fall into another regime or if there is an offer). **Transitional arrangements should be put in place to that effect but leaving flexibility to the national market operators to adapt the rules.**

These transitional/transfer arrangements would apply to issuers whose shares have been traded on a SME Growth Market for at least three years; these issuers would be allowed to join a regulated market by issuing an information document providing all the information required to be included in a prospectus that has not already been disseminated to the market and including a working capital statement. The National Competent Authority would have to approve that document, so that investors are protected and the standard of disclosure on regulated markets are met.

SME Growth Market issuers will already be compliant with ongoing disclosure obligations which are known to investors, analysts and regulators, and which are required by existing EU rules. The need to produce a full prospectus repeating that information when deciding to join a regulated market would result in unnecessary costs, deterring them from accessing further capital and restricting their growth.

3. Furthermore, a **transitional exemption of perhaps five years from some of the requirements provided for companies listed on a regulated market would support an SME moving from an SME Growth Market to a regulated market**. For instance, the alleviations might concern the Transparency Directive (i.e. raise the disclosure threshold for major shareholding; simplification of the corporate governance statement for example as to the description of internal control and risk management system), Shareholders Rights Directive II (i.e. exemption from the application of the rule on vote on the remuneration policy and from certain details to be published in the remuneration report; relax the rules on related party transactions). We strongly encourage the Commission and the Member States to consider such alleviations for smaller companies on regulated markets.

B. Alleviating the administrative burden on SME Growth Market issuers

Disclosure and transparency rules are the hallmarks of sound and fair market places. From the perspective of SMEs, those rules can be seen as burdensome and costly. It is critical to ensure that the benefits of being listed continue to outweigh the costs. If the standards are too strict, the resulting compliance costs may discourage listings by SMEs. On the contrary, if the standards are too lax, investor protection and confidence may be jeopardised and some investors might choose not to invest in SME securities. The objective of this sub-section B is to identify scope for reducing obligations placed on the future SME Growth Markets issuers while maintaining a high level of investor protection and market integrity on those markets.

Question 14. Please indicate whether you agree with the statements below:

Regulatory alleviations should be restricted to

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

Regulatory alleviations should be restricted to:

- SMEs listed on SME Growth Markets: **1**
- All SME Growth Markets issuers: **4**
- No regulatory alleviations should be granted for any kind of firm: **1**

14.1 Please explain your reasoning:

To fully maximise the potential of SME Growth Markets in the EU, we believe that there must be a clear, material advantage for both companies considering listing on such a market and for companies already listed. Nevertheless, we are strongly convinced that to ensure healthy and thriving capital markets, it would be best to **providing regulatory alleviations and incentives** to attract smaller companies to finance their growth and development **on any public capital market**, regardless of whether it has applied for SME Growth Market status.

Moreover, we believe it is important to recognize and provide for the legal definition of a small and mid-cap company, which is different from SMEs and large companies, and would also reflect the reality of companies on capital markets as opposed to private companies. Such a definition would help create a truly proportionate regime for smaller companies on capital markets.

Many MTFs have been already catering for the needs of smaller companies in many markets, and some of them have been very successful. Therefore, we would like to see **regulatory alleviations for companies not only on SME Growth Markets but also smaller companies on MTFs and also for smaller companies on the regulated markets**.

Following the 2008 financial crisis, listed companies have been subjected to a regulatory Tsunami. Unless the EU capital markets regulatory framework is improved, companies will go for other sources of funding, with less costly and burdensome requirements.

We also suggest certain transitional arrangements for newly quoted / listed companies (within five years of listing) allowing them to adapt to any new requirements. See our response to Q 13.1 for more explanations.

Question 15. For each of the provisions listed below, please indicate how burdensome the EU regulation associated with equity and bond listings on SME dedicated markets is:

Please rate each proposal from 1 to 5, 1 standing for "not burdensome at all" and 5 for "very burdensome".

- Management's transactions: **4**
- Insider lists: **3**
- Justification of the delay in disclosing inside information: **5**
- Market soundings: **4**
- Disclosure of inside information by non-equity issuers: **3**
- Half-yearly reports for SME Growth Market issuers: **2**
- Other (please specify below): **5**

Please specify for what other provisions the EU regulation associated with equity and bond listings on SME dedicated markets is somehow burdensome:

Prospectus Regulation

We have welcomed many aspects of the recently revised prospectus rules and believe they represent an improvement on the current regime. Certain regulatory details are still being decided at Level 2 by ESMA.[5]

Nonetheless, we would like to draw attention to some additional adjustments at Level 1 that could facilitate listing of smaller and mid-cap companies. We believe the European Commission should:

- **Provide for transitional arrangements for companies transferring from SME growth markets to regulated markets;**

We believe that the Prospectus Regulation is missing an important element to ensure that SMEs continue to grow – the ability to move easily from an SME growth market to a regulated market. Issuers on SME growth markets should not have to produce a full prospectus when joining a regulated market (unless they fall into another regime or if there is an offer). Transitional arrangements should be put in place to that effect.

[5] See our response to ESMA consultation on level II measures: http://www.europeanissuers.eu/position-papers

Transitional arrangements should be put in place to that effect but leaving flexibility to the national market operators to adapt the rules. For more see our response to Q 13.1 para 2.

- **Ensure that no pre-approval by NCA is required for companies issuing an EU Growth prospectus**

Lengthy procedures of prospectus pre-approval are one of the main barriers to access to public capital markets. IPO windows are short and business opportunities may be lost if process takes too much time. To ensure a truly proportionate regime for smaller companies and to make sure that this revision is truly ambitious, it is important to **abolish the pre-approval by a NCA for companies issuing an EU Growth prospectus**. Instead, certified advisers or dedicated teams within the market operators could be in charge of the pre-approval. It is already the case for many local markets where certified advisers or dedicated teams from market operators approve document admitting to trading on MTFs (e.g. AIM in UK or Italy), First North in Scandinavia, NewConnect in Poland[6].

15.1 Please explain your reasoning:

1. The Market Abuse Regulation, which took effect on 3 July 2016, has been very challenging for all companies of all sizes and on all markets. Smaller companies on MTFs, which have provided a simplified and more flexible regulatory framework, have been particularly affected. There have been substantial concerns regarding whether these companies will be able to cope with such stringent regulations in the long-term, thus casting doubt on the sustainability of MTFs themselves. We would therefore plead to **exempt companies on MTFs, including SME Growth Markets, from the general disclosure regime of Market Abuse Regulation.**

2. Alternatively, **we suggest replacing the current market abuse rules on MTFs** with disclosure obligations inspired by the **repealed directive on admission to listing (Directive 79/279/EEC)**. Compared to MAR, that directive did not mandate disclosure of prospective events, and therefore did not require issuers to gauge whether a significant development – besides being reasonably able to affect the price of the relevant financial instrument – was reasonably likely to occur. On the contrary, only major new developments in the issuer's sphere of activity would require disclosure, and only if a materiality test was passed. For shares, materiality would be reached if the substantial movements in the market prices were likely to occur due to those new developments on an issuers' assets and liabilities or financial position, or on the general course of an issuers' business. For bonds, a significant effect on an issuers' ability to meet their commitments would be required instead.

3. As a **minimum**, it is important that the Commission provides for the all alleviations related to MAR considered in this consultation for all companies on **SME Growth Markets, as well as for:**

3.1 Adjusting the amount of sanctions to the reality of smaller companies and local economic realities

Sanctions are too high and disproportionate for small companies and economic realities in many markets. We hear that in some markets, sanctions are higher than the market capitalisation of many companies (see e.g. response of SEG – Polish Issuers Association – for data). It is important to keep in mind that one size does not fit all and that capital markets are still quite fragmented in Europe.

[6] See references to authorised or certified advisers, NOMADs and sponsors in the Glossary to IPO Report.

New MAR provisions are also not helpful for investors as it will be them who will eventually pay for sanctions and procedures as increased company costs will result in worse company results and lower dividends. Moreover, MAR may lead to risk avoidance by companies which will in turn lead to lower returns for investors.

Therefore, we propose to provide for **substantially lower sanctions, especially for companies on SME Growth Markets, as well as small and mid-cap companies on both SME Growth Market and regulated markets**. These should be commensurate with the means and size of the company. Optionally, this could be a transitory measure foreseen for a certain period (e.g. within five years of listing) allowing companies time to adjust to the new rules.

We would like to point out that high sanctions are not only a problem for SMEs or companies on SME markets. Larger companies find many of MAR rules unclear and / or difficult to apply, increasing the risk of being listed and thus making listing less attractive compared to other sources of finance.

3.2 Simplified and clearer market abuse related disclosure obligations for SME Growth Markets' issuers

There are some **issues with the Market Abuse Regulation which affect all companies on all markets** (including regulated markets) but are particularly burdensome for smaller companies. For instance, it can be very difficult to decide whether information should be treated as inside information for the purposes of Art. 7. It is even more problematic in case of small and mid-cap companies for two reasons:

- they rarely have legal/compliance/investor relation departments and have limited resources to hire external advisors to support them.

- given their size, often any single business decision could be deemed important for investors. Yet it is impossible to constantly and on real-time basis update investors on issues affecting the business.

Therefore, companies on SME Growth Markets should be subject to **a different definition of inside information** and overall simplified disclosure rules.

3.3 It is important to exempt companies from drawing up and keeping lists of persons closely associated to PDMRs (Art. 19 of MAR) – see our response to Q 17(f)

4. We would like to point out that sanctions regime under MAR is very strenuous for larger companies also and should be revisited to increase attractiveness of listing.

For each of the following questions in sub-section B, you will be asked to provide cost estimates for the provisions you identified as burdensome, as well as estimate the reduction in costs for the alleviations you identified as meaningful.

1. Management's transactions (Market Abuse Regulation – Art. 19)

Under MAR, the Person Discharging Managerial Responsibilities (PDMR) or associated person must notify the issuer (either on a regulated market or an SME Growth Market) and the competent authority of every transaction conducted for their own account relating to those financial instruments, no later than three business days after the transaction. The obligation to disclose a manager's transaction only applies once the PDMR's transactions have reached a cumulative EUR 5,000 within a calendar year (with no netting). A national competent authority may decide to increase the threshold to EUR 20,000.

Issuers must ensure that transactions by PDMRs and persons closely associated with are publicly disclosed promptly and no later than three business days after the transaction. Alternatively, national laws may provide that a competent authority may itself make the information public.

Question 16. Does the management's transactions regime represent a significant administrative burden for SME Growth Markets issuers and their managers?

- ○ Completely disagree
- ○ Rather disagree
- ○ Neutral
- ○ Rather agree
- ◉ Fully agree
- ○ Don't know / no opinion / not relevant

16.1 Please explain your reasoning and provide supporting evidence, notably in terms of costs (one-off and ongoing costs)/time spent (number of hours)/number of people needed (in full-time equivalent)[7]:

This MAR requirement is difficult to comply with for all companies on all markets (including regulated markets) but is particularly burdensome to smaller companies. The problem of compliance with rules regarding managers' transactions is also connected to the list of closely associated persons. For instance, in Poland tens of thousands of people are now on such lists. **It is crucial to adjust the amount of sanctions to the reality of smaller companies and local economic realities** as pointed out in the response to question 15.1.

However, though we welcome that the Commission is targeting the bureaucracy created by the MAR, we would like to reiterate that bureaucracy should be reduced for all companies of all sizes.

Moreover, the applicability of rules on managers transaction to bond issuers should be reconsidered, taking into account that it is not usual for PDMRs to negotiate bonds whose denomination is often higher than EUR 100.000 (which means that are placed among professional investors); bond issuers, according to the rules in place, are in any case subject to the obligation to set forth a procedure for the compliance with managers transactions rules. This affects all bond issuers but is particularly burdensome for SMEs.

We hear, that one of the most burdensome requirement related to managers' transaction may be the necessity of creating and updating the list of closely related persons to PDMRs. Therefore, besides simplifying the management's transactions regime **it is also important to exempt companies on SME Growth Markets from drawing up and keeping lists of closely associated persons to PDMR (Art. 19)**. See our response to Q17(f) for explanations.

[7] In 2011, a study from EIM (Effects of possible changes to the Market Abuse Directive, p.39) estimated that for an SME, the annual average cost related to manager transaction reports was at EUR 135 per year (and 3 hours spent per issuer per year). In 2015, a study from Europe Economics (Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.59-60) estimated the one-off compliance costs for technical standards on management's transactions at between EUR 300 and EUR 500 for a small issuer and between EUR 3.400 and EUR 4.900 for a medium-sized issuer. The annual ongoing compliance costs were estimated at EUR 0 for a small issuer and at EUR 200 per year for a medium-sized issuer.

Regarding the costs, it is not easy to compile comparable data that could be split to specific MAR requirements, also given differences of costs and purchasing power of currency in different countries. To assist the Commission's analysis, we attach documents developed by SEG (Polish Issuers' Association) which describe detailed procedures and provide for estimates of extra personnel involvement needed which could help to calculate such costs.

Question 17. Please indicate if you would support the following changes or clarifications to the management's transactions regime for SME Growth Markets:

17 a) The time limit (i.e. currently 3 days) for PDMRs and person closely associated to notify their transactions to the issuer should be extended

- ○ I support
- ◉ I don't support
- ○ Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 a) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

While for the market integrity purposes, we are not asking for the extension of the deadline, we believe that **MAR rules regarding notification of managers' transactions should be adjusted**.

Although firms are obliged to publicise managers' dealings within three working days of the date of a trade, the persons caught by the regime also have the same three-day period to inform their firms (Article 19(1) and (3)). As a result, the current situation creates a lot of problems for issuers to meet this obligation. Therefore, we support the Commission's proposal in question 17 (e) that the time limit for issuers to make management's transactions public (or notify the NCA when the latter is made responsible for making the manager's transaction public) should start as of the date the transactions have been notified to issuers (and not as from the date of transactions). Such adjustment of this MAR provision would be a huge alleviation also for bigger companies having complex and time-consuming information structures in place.

17 b) The threshold (i.e. EUR 5,000) above which managers of SME Growth Markets Issuers should declare their transactions should be raised

- ◉ I support
- ○ I don't support
- ○ Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 b) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

Management's transactions regime under MAR requirement is very burdensome for all companies on all markets, therefore we would like to see the threshold for management transactions increased for all companies, including those on MTFs and regulated markets. While, for smaller companies it is even more difficult and such adjustment is a necessity.

17 c) The national competent authorities (NCA) should always be made responsible for making public the managers' transactions

- ○ I support
- ◉ **I don't support**
- ○ Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 c) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

The current rules provide for a flexibility whether such information shall be reported by the company or the NCA, which we support. Views of our members are diverging on this point as some may perceive the Commission's proposal as an alleviation of burdens for issuers, others fear that transferring the responsibility of notifications **always** to the NCA would amount to a major shift in the disclosure models that exists, that it would be undesirable. There are also fears about infringing PDMRs' data privacy. The rationale behind the latter is that if other entity than the issuer would be charged with the notifications, the lists of PDMRs' closely related persons would need to be transferred to that entity. Otherwise, this entity would have no possibility to verify if this is a real notification or an attempt to manipulate the market. While transferring such data (including a lot of details from personal life of managers and their families) could be perceived by some as a violation of privacy.

17 d) The trading venue should be made responsible for making public the managers' transaction

- ○ I support
- ○ I don't support
- ◉ **Don't know / no opinion / not relevant**

Please explain your reasoning for proposal 17 d) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

The current rules provide for a flexibility for such information to be reported by the company or the NCA, which we support. Views of our members are diverging on shifting the responsibility for disclosure of such

information to another entity. While in principles it could be perceived as an alleviation for the issuers, there are fears that transferring the responsibility of notifications to the trading venue would amount to such a shift in the disclosure models that exists, that it would be undesirable. There are also fears about infringing PDMRs' data privacy. See also our response to the question 17 (c) for more details.

17 e) The time limit for issuers to make management's transactions public (or notify the NCA when the latter is made responsible for making the manager's transaction public) should start as of the date the transactions have been notified to issuers (and not as from the date of transactions)

- (•) I support
- ( ) I don't support
- ( ) Don't know / no opinion / not relevant

Please indicate the appropriate time period length for proposal 17 e)

Three working days seems an appropriate deadline if the issuer is notified immediately by a PDMR. Therefore, we would ask that the provisions are restructured in a way that companies have at least 3 days to report the trade. It should be also clarified that the issuers are not responsible for any delay of reporting from the manager. Such adjustment of this MAR provision would be a huge alleviation also for bigger companies having complex and time-consuming information structures in place.

Please explain your reasoning for proposal 17 e) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

We very much support such an approach – see our response to question 17a.

17 f) Is there any other change or clarification to the management's transactions regime for SME Growth Markets that you would support?

Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

We believe it is also important to:

1. Exempt companies from drawing up and keeping lists of persons closely associated to PDMRs (Art. 19 of MAR)

Art. 19 of MAR requires companies to gather very sensitive information from PDMRs relating to their personal life and keep this information up-to-date which is also burdensome and, we hear, unnecessary from the investors' point of view. According to the data gathered by Polish NCA there are as many as 25,200 closely related persons. In the EU there are around 13,000 publicly listed companies (both on RM and MTFs). We can estimate that each listed company has on average 10 PDMRs and each of them as on average 3 family members. That means that there are approx. 520,000 natural persons, that could be toped up with approx. 100,000 legal persons that PDMRs may be associated to. While very few of those persons (ca. less than 1%)

enter into transactions related to the issuer's securities. While any infringement in the procedure is subject to a fine of up to EUR 0,5 million for any person in the chain (e.g. manager and his/her family members). Considering the size of companies and earnings of managers, especially in some countries, such sanctions are highly punitive. We attach infographics developed by SEG (Polish Issuers' Association) which describe how burdensome the administrative procedures that companies must apply to comply with MAR rules regarding Managers' Transactions.

To remedy this situation, we suggest reverting to the pre-MAR situation, meaning that **PMDRs would no longer be required to intermediate in transferring the information on the trades made by closely related persons to the issuer**. This way, issuers would not be obliged to keep the lists of PMDRs' closely related persons.

2. Provide clear guidance on what types of PDMR transactions do and do not need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction.

There should be clear guidance on what types of transaction do and do not need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction. We support the aggregation of transactions as a means of making the disclosure exercise as simple as possible. This should be continued and be on a same day basis with no netting, with only the highest and lowest prices (not the weighted average) disclosed. The timeframe of the executions would not be disclosed.

Regarding the guidance on what types of transaction need to be disclosed, it should be clarified that no notification duty is required for shares granted for free; the moment in which shares are granted for free to PDMRs should not be notified (there is no discretion by the PDMR and there is no signalling value for the market) while when the shares are sold there should be a notification. A different interpretation would imply a duplication of notifications, more work to be done by the personnel of the issuer and the increase of indirect costs for the personnel (more burdensome for SMEs). For phantom stock options, the notification duty should be excluded as the PDMR has only the right to receives cash.

Question 18. What is the impact of the alleviation provided by MAR for SME Growth Market issuers as regards insider lists? Please illustrate and quantify, notably in terms of reduction in costs (one-off and ongoing) /in time spent (number of hours)/in number of people needed (in full-time equivalent) resulting from the alleviation[8]:

Due to delay of MiFID II application until 3 January 2018, the SME Growth Market exemption in MAR was not applicable. For this reason, all companies on future SME Growth Markets had to introduce provisions concerning insider lists. For the moment, it remains difficult to evaluate precisely the cost saving due to this alleviation as companies on SME Growth Market did not have a chance to apply it yet.

[8] In 2011, a study from EIM (Effects of possible changes to the Market Abuse Directive, p.39) estimated that for an SME, the annual average cost related to insider lists was at EUR 945 per year (and 21 hours spent per issuer and per year). In 2015, a study from Europe Economics (Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.59-60) estimated the one-off compliance costs for technical standards on insider lists at between EUR 300 and EUR 600 for a small issuer and between EUR 3.300 and EUR 5.800 for a medium-sized issuer. The annual ongoing compliance costs were estimated at between EUR 600 and 800 for a small issuer and between EUR 3.300 and 5.500 per year for a medium-sized issuer.

Question 19. Please indicate whether you agree with the statements below:

SME Growth Market issuers should be:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

- Obliged to maintain insider lists on an ongoing basis: **1**
- Obliged to submit insider lists when requested by the NCA (as provided by MAR): **2**
- Obliged to maintain a list of ’permanent insiders’ (i.e. persons who have a ’regular access to insider information’): **3**
- Exempted from keeping insider lists: **5**

Would you have any other proposal as regards insider lists for SME Growth Market Issuers? N/A

19.1 Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

The requirement to create and keep an insider list in accordance with the provisions of Article 18 of MAR is onerous and burdensome for small and mid-cap companies given the level of resources available to such companies and the purpose for which insider lists are kept.

Although the SME Growth Market exemption in MAR allows for a more proportionate regime to apply, there still is, in practice, a need for such issuers to have sufficient systems and procedures in place to produce an insider list if requested by the competent authority. This may lead to the requirement for such issuers to establish costly internal systems and / or processes, which increases administrative burdens. Therefore, we believe that companies on SME Growth Markets **should be completely exempted from the requirement to create and maintain insider lists** which would reflect the level of resources available to small and mid-cap companies and how this will affect them as a result.

Nevertheless, we would like to point out that the obligation to draw up and maintain list of persons closely associated to PDMRs (Art. 19 of MAR) may be perceived by some as even much more burdensome than the requirement to maintain insider lists (see response to Q 15.1 and 17(f).

3. Justification of the delay in disclosing inside information (Market Abuse Regulation – Art.17)

An issuer shall disclose the inside information concerning its financial instruments as soon as possible. The issuer can delay the disclosure of this information in certain cases in order to avoid harming its legitimate interests. However, once it discloses inside information, it must inform its NCA and justify the delay. Depending on the option chosen by the Member State, this written explanation justifying the delay should be provided: (i) in all circumstances, or (ii) only when the national competent authority requests it. The implementing legislation of MAR[33] requires that issuers deciding to delay the announcement of inside information record and document in writing a list of information ('disclosure record'), including – amongst many other facts and figures – the time and date when such information came to exist, when the decision was taken to delay its disclosure, the identity of the persons who adopted the decision and are responsible for constantly monitoring the conditions of the delay, and the manner in which the prerequisite conditions for such delay were met.

Question 20. Please indicate whether you agree with the following statements:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

- The written explanation justifying the delay to communicate inside information by SME Growth Market issuers should be submitted only upon request from the NCA: **3**
- SME Growth Market issuers should be exempted from the obligation of keeping a 'disclosure record': **5**

20.1 Please explain your reasoning and illustrate the impact in terms of cost (one-off and ongoing costs)/time spent (number of hours)/number of people needed (in full-time equivalent)[9]:

Having to justify the delay in disclosing inside information and the associated record keeping creates an administrative burden which is particularly cumbersome for smaller companies. It is questionable whether the obligation to disclose such records only on request of the NCA would be helpful, as it would mean that all procedures would need to be in place anyway. Therefore, to truly alleviate the burden for companies on SME Growth Markets, **it is necessary to exempt them from such a requirement**.

Moreover, companies stress that **ambiguity regarding delaying disclosure of inside information** is among the major problems with new market abuse rules. ESMA's guidelines remain overly restrictive in relation to legitimate interests for delaying disclosure of information. The removal of "impending developments that could be jeopardised by premature disclosure" from the list of illustrative examples is unhelpful to issuers. As a result, issuers may assume that impending developments are incapable of constituting a legitimate interest justifying delayed disclosure. More clarity as to what constitutes a legitimate interest in delaying disclosure and a list of examples in which that delay in publication is not misleading the public are needed.

In short, **tailored, simplified and clearer rules on delaying the disclosure of inside information for companies on SME Growth Markets should be considered** to ensure the success of those markets.

4. Market soundings (Market Abuse Regulation – Art. 11)

Market soundings are a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors35.

The market sounding rules could raise issues for SME issuers, in particular when they issue some privately placed bonds. Private placement transactions of debt instruments can sometimes take the form of listed bonds. This is the case notably in France ('Euro-PP' when issued in a listed bond format), in Italy (the so-called 'Mini-bond' markets) and in Spain (on the Mercado Alternativo de Renta Fija – 'MARF'). In general, such transactions are not subject to a prospectus requirement because they rely on the 'qualified investors' or high denomination

[9] In 2011, a study from EIM (Effects of possible changes to the Market Abuse Directive, p.39) considered that, for an SME, the annual average costs related to administrative burdens related to reporting decision to delayed disclosure was estimated at EUR 1,755 per year (and 39 hours spent per issuer per year). For another cost estimate, see also: Europe Economics, Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.51.

bond exemptions. However, they do fall under the scope of market sounding rules as the privately placed bonds are admitted to trading on an MTF.

When a privately placed bond transaction is prepared, the goal is not to contact a few selected investors to identify certain specific terms of a transaction with a view to maximising its chances of success, but rather to identify potential investors with whom all the terms of the privately placed bond transaction (including contractual terms) will be negotiated. In the past, some Member States established an 'accepted market practice' (under the Market Abuse Directive) recognising that private placements of bonds were outside the scope of market sounding rules36.

Question 21. Should private placement of bonds on SME Growth Markets be exempted from market sounding rules when investors are involved in the negotiations of the issuance?

- ○ Completely disagree
- ○ Rather disagree
- ○ Neutral
- ○ Rather agree
- ◉ Fully agree
- ○ Don’t know / no opinion / not relevant

21.1 Please explain and illustrate your reasoning, notably in terms of costs (one-off and ongoing costs)/time spent (number of hours)/number of people needed (in full-time equivalent):

New market abuse rules impose very strict and burdensome requirements regarding market soundings. They include the establishment of procedures, the disclosure of standard information and an obligation to keep records. For instance, the person carrying out the sounding must assess whether the sounding involves inside information. The investors being sounded will also have to assess for themselves whether they are in possession of inside information or when they cease to be in possession of such information. Moreover, there are the risks and uncertainties linked to the implementation of these new rules and their interpretation by National Competent Authorities. As a result, we hear that market soundings are in decline, even though their function is quite important both for equity and bond issuances.

When a company decides to issue equity or a bond, the intermediary (a bank or broker) will communicate with potential investor(s), before the announcement of a transaction, to gauge interest in that issue and determine an appropriate price. If there is no interest, the issuing company may adjust the amount. This offers advantages compared to the costly and time-consuming road shows and book-building that new stock issues require. The requirements of MAR regarding market sounding are aimed at large, relatively liquid markets and do not take into account the specifics of more local, less liquid markets such as markets specialising in small and mid-cap companies and corporate bond markets. In these markets, implementing these rules significantly restricts the willingness of potential issuers to carry out new issuances, in particular for entities that do not fall into the "frequent issuers" category.

We therefore urge the Commission to exempt not only private placement of bonds but also other equity and bond **issuance by companies on SME Growth Markets from complying with market sounding rules when investors are involved in the negotiations of the issuance.** Strict requirements should be alleviated at least in relation to private placement of bonds. Standard rules preventing use of privileged information will suffice to ensure markets' integrity.

5. Disclosure of inside information for SME Growth Markets Issuers of bonds only

MAR has extended the scope of the market abuse regime to MTFs, including those where debt instruments are traded. Some market participants underline that plain vanilla bonds37 are less exposed to risks of market abuse due to the nature of the instrument. While the prices of equity financial instruments can be influenced by the publication of (negative or positive) inside information about the firm, the key variables that would impact the price of the plain vanilla bonds would be market risk, liquidity risk and credit risk. Bondholders would not be able to act on those variables while the only factor that could be influenced by the issuer is the likelihood of default. As a consequence, some stakeholders have argued that the disclosure of all inside information (either positive or negative) for debt issuers only would be burdensome and not justified.

Question 22. Please indicate whether you agree with the following statements:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

SME Growth markets issuers that only issue plain vanilla bonds should:

- have the same disclosure requirements as equity issuers on SME Growth markets: **2**
- disclose only information that is likely to impair their ability to repay their debt: **5**

22.1 Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce[10]:

We agree that the disclosure of all inside information (either positive or negative) for debt issuers is burdensome and not justified needs of investors on shares market and bonds market are very different and bonds are not really exposed to risks of market abuse due to the nature of the instrument. Therefore, for bonds, the information disclosed should be limited only to information important for assessing the possibility to repay debt. Disclosure should be required when a significant effect on issuers' ability to meet their commitments arises, as required by the repealed directive 79/279/EEC.

At the same time, new market abuse rules on disclosure of inside information have been a challenge for all companies (both equity and bond issuers), and in particular the smaller companies who have much more limited resources to deal with compliance. Moreover, due to their size and much smaller teams, much more developments can be price sensitive.

For instance, in a small company, a departure of one person can imply that an entire area of competence is endangered. Signing a contract with a supplier may also a relatively big change. As a result, that would mean that smaller companies would need to constantly report various information, which may not really be material

[10] See cost estimates on technical means for disclosure for public disclosure of inside information and delays (Europe Economics, Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.51 - https://www.esma.europa.eu/sites/default/files/library/2015/11/cost_analysis_u_for_final_report_on_mar_technical_standards_0.pdf).

to investors though, and could flood the market making it more difficult to notice information that really matters. That also means that smaller companies would need to bear relatively significant costs to ensure the compliance, e.g. employ one or more people only to deal with compliance: establish procedures and follow them, go to all the meetings (even with potential suppliers or customers) to ensure they can identify insider information, record information about all people attending the meetings, create and maintain insider lists, etc. Depending on a country, cost of employing such a person may be **around EUR 50.000 euro a year**.

Moreover, companies stress that major problems with new the market abuse rules are: **a lack of clarity on what constitutes inside information**, which makes it also more difficult to create and maintain the insiders' list, and **ambiguity regarding delaying disclosure of inside information** (see also our response to question 20.1).

Therefore, **tailored, simplified and clearer rules on the disclosure of inside information for SME Growth Markets Issuers (also equity issuers) should be considered** to ensure the success of SME Growth Markets.

6. Half-yearly reports for SME Growth Market Issuers

The level 2 of MiFID II39 requires SME Growth Markets issuers to publish annual financial reports within six months after the end of each financial year and half-yearly financial reports within four months after the end of the first six months of each financial year. MiFID II does not prescribe the form that such financial reporting should take. Financial reporting provided on a half-yearly basis is usually welcomed by investors and contributes to attracting interest in the company. In practice, the vast majority of SME-dedicated markets already ask for the publication of both annual and half-yearly reports. However, some market participants have indicated that the publication of such half-yearly information represents a time-consuming and costly obligation for SMEs.

Question 23. Should the obligation of SME Growth Market issuers to publish half-yearly report be? You may select several answers.

- ☐ Mandatory for SME Growth Markets equity issuers
- ☐ Mandatory for SME Growth Markets debt issuers
- ☑ Left to the discretion of the trading venue (through its listing rules) for SME Growth Markets equity issuers
- ☑ Left to the discretion of the trading venue (through its listing rules) for SME Growth Markets debt issuers
- ☐ Removed for all the SME Growth Market equity issuers
- ☐ Removed for all the SME Growth Market debt issuers
- ☐ Other (please specify below)
- ☐ Don't know / no opinion / not relevant

Please specify what other possibility you would see for the obligation of SME Growth Market issuers to publish half-yearly report:

23.1 Please explain and illustrate your reasoning, notably in terms of costs/time spent (number of hours)/number of people needed (in full-time equivalent):

N/A

C. FOSTERING THE LOCAL ECOSYSTEMS FOR SME GROWTH MARKETS AND ENHANCING LIQUIDITY

Public markets for SMEs need to be supported by a healthy ecosystem (i.e. a network of brokers, equity analysts, credit rating agencies, investors specialised in SMEs) that can bring small firms seeking a listing to the market and support them after the IPO. The decline of those local ecosystems that can cater to SMEs' specific needs impedes the functioning and deepening of public markets and reduces the willingness of SMEs to seek a listing. One reason behind this decline of ecosystems is often attributed to the low level of liquidity on SME-dedicated markets that can deter institutional investors from investing in SME shares and undermine the brokers' business model. As a consequence, this sub-section places a strong focus on how to foster liquidity on SME Growth Markets.

1. 'Tick size' regime of SME Growth Markets (Art. 49 – MiFID II)

MiFID II40 requires trading venues (including SME Growth Markets) to adopt minimum tick sizes (i.e. the minimum increment in which a security can be traded) in relation to equity and certain equity-like instruments, in order to ensure the orderly functioning of the markets and mitigate the risk of an ever-decreasing tick size. The level 2 of MiFID II specifies the minimum tick size regime which applies to those instruments depending on their liquidity and price level.

While lower tick sizes would contribute to the reduction in trading costs, tick sizes also have an impact on the spread between sellers and buyers of securities and consequently may influence the incentives of intermediaries (brokers) to trade those instruments and earn income from their activity. In the US, the low tick sizes are seen as a potential reason behind the erosion of the ecosystem for listing SMEs, since they allegedly undermined the business models of the mid-cap brokers. This is why a new pilot project of larger tick sizes for smaller caps has been introduced in the US41. Based on the preliminary results of this pilot programme, the US Treasury has recently recommended that the Securities Exchange Commission evaluate allowing issuers, in consultation with their listing exchange, to determine the tick size for trading of their stock across all exchanges42.

Question 24. Which of the following options best reflect your opinion on the impact that the minimum tick size regime provided by MiFID II would have on the liquidity and spreads of shares traded on SME Growth Markets:

- Impact of the minimum tick size regime on the **liquidity** of shares traded on SME Growth Markets: **lead to significant decrease**
- Impact of the minimum tick size regime on the **spreads** of shares traded on SME Growth Market: **No opinion**

24.1 Please explain your reasoning and provide supporting evidence:

We understand that the reduction in tick sizes, that has been an ongoing feature of equities trading over recent years, has been detrimental to the ecosystem required to support a healthy equity market in SME securities. On the other hand, we hear that the current MIFID II regime is too rigid for smaller companies' shares and has led to a significant decrease of their liquidity. Overall, it is a complex issue and it is difficult to gather comparable evidence.

As testified on 26 September 2017 by Jay Clayton Chairman, U.S. Securities and Exchange Commission, before the Committee on Banking, Housing and Urban Development United States Senate Testimony on "Oversight of the U.S. Securities and Exchange Commission": "*The Tick Size Pilot, which began in October 2016, is testing the impact of wider tick sizes on the trading of stocks of certain smaller capitalization companies. Preliminary analyses of the pilot data indicate that the impact of the wider tick sizes on market quality has been mixed. For many covered securities, quoted spreads and depth of book have increased, and volatility has decreased."*

We understand that so far, the US pilot study is not conclusive, but it highlights the relevance of market microstructures features for increasing SME shares' liquidity. We believe that **further consideration of how liquidity can be optimised in SME Growth markets should be a priority for the Commission**.

Meanwhile, we believe that we should avoid a 'one-size-fits-all' solution for the tick size regime so that the heterogeneous nature of SMEs is not compromised for the sake of cross-market harmonisation.

Question 25. Please indicate whether you agree with the following statements:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

- Market operators should be given the **flexibility not to apply** the minimum EU tick size regime on their SME Growth Markets: **5**
- Market operators should be given another form of flexibility as regards the EU minimum tick size regime on their SME Growth Markets: **no opinion**

2. Creating a liquidity provision contract available for all SME Growth Market Issuers across the EU (MAR - Accepted Market Practice – Art. 11)

MAR prohibits market manipulation. Some practices are not qualified as market abuses where the transaction, order or behaviour was carried out for legitimate reasons and in accordance with an accepted market practice ('AMP') formally established by a national regulator.

For an accepted market practice to be established a national regulator must notify ESMA. ESMA then issues an opinion assessing whether the AMP would threaten market confidence in the EU's financial market. For the time being, only five Member States have tried to make liquidity provision contract recognised as an AMP under MAR. It means that liquidity provision contracts can still be qualified as a manipulative practice by certain competent authorities in other Members States. As a result, in 23 Member States, some SME Growth Markets issuers are deprived from the possibility to establish a liquidity contract with an investment firm. However, this mechanism could improve the liquidity of SME shares and attract the interest of new investors for SME shares, while creating more business opportunities for midcaps brokers.

Question 26. Building on the ESMA's opinion ('Points for convergence in relation to MAR accepted market practices on liquidity contracts' in May 2017), would there be merits in creating an EU framework on liquidity contracts that would be available for all SME Growth Market issuers across the EU?

- Yes
- No
- Don't know / no opinion / not relevant
- **Other**

26.1 Please explain your reasoning and provide supporting arguments/evidence. If you answered affirmatively, please describe the conditions for such EU framework for liquidity contracts:

We recognise usefulness of liquidity contracts, which we hear are frequently used in some countries (e.g. France). We see merits in having liquidity contracts recognised as the Accepted Market Practice. Nevertheless, as pointed out before, the specificity of local SME markets should be kept untouched. Hence the less universal rules, the better. Therefore, the best solution in our view is to provide for a **principle at the EU level clearly allowing Member States to recognise liquidity contracts as Accepted Market Practice**, without creating an EU framework on liquidity contracts which we understand would result in much more harmonisation.

3. Free float requirement on SME Growth Markets

When an SME goes public, it is likely that there will be a low level of free float (i.e. the percentage of shares that can be freely traded)45. Limited free float may contribute to the low level of liquidity as it may limit the opportunities of day-to-day trading. To mitigate this risk, the listing rules of several SME-dedicated markets require companies to comply with free float requirements (expressed in a percentage of shares or in a fixed amount of capital, for instance) and/or a minimum capitalisation threshold before admitting SME shares to trading. Other SME-dedicated markets do not impose such requirements as this can make the listing unattractive for the company's owners. Currently MiFID II does not impose that SME Growth Markets impose a minimum free float (and/or a minimum capitalisation) criteria.

Question 27. Which of the following options best reflects your opinion on the application of a rule on minimum free float:

- ○ A rule on minimum free float should be introduced in the EU legislation with criteria and thresholds determined at EU level
- ○ A rule on minimum free float should be introduced by the EU legislation with criteria and thresholds left to the discretion of the SME Growth Market operator (through its listing rules)
- ◉ No rule on minimum free float should be introduced in the EU legislation
- ○ Other (please specify below)
- ○ Don't know / no opinion / not relevant

27.1 Please explain your reasoning, notably on the advantages and disadvantages of the introduction – at the EU level – of minimum free float requirements. Specify appropriate criteria and thresholds if you consider that such minimum free float rule should be introduced and determined at EU level:

As pointed out by the Commission, when an SME goes public, it is likely that there will be a low level of free float. Imposing free float requirements can make the listing unattractive for the company's owners. As the objective of the Commission's planned initiative is to make SME Growth Markets attractive and to facilitate

SME listings, we believe it is best not to impose any EU rules on minimum free float. It is best to leave such aspects for the local markets and discussions between investors and companies to sort out.

4. Institutional investors' participation in SME shares and bonds

There is a need to consider what can be done to diversify and grow the investor base for SME shares. The Commission has recently adopted regulatory initiatives to improve the ability of institutional investors to invest in SME shares. For example, the revised EuVECA regulation46 – recently approved by the co-legislators – allow EuVECA funds to invest in SMEs listed on an SME growth market. The recent European Long-Term Investment Funds (ELTIFs) shall invest at least 70% of their money in certain type of assets among which SMEs listed on regulated market or MTFs and with a market capitalisation below EUR 500 million. Finally, with regards to investments made by insurance companies, a recent amendment to the Solvency II Delegated Regulation47 (that came into force in March 2016) grants equities traded on MTFs (including the future SME Growth Markets) the same treatment as equities traded on regulated markets. However, some barriers to investment in SMEs may still exist.

Question 28. Please describe any regulatory barriers to institutional investments in SME shares or bonds listed on SME Growth Markets or MTFs:

We think that it is very important to mobilise capital for listed companies from retail investors by expanding capital market orientation of retirement provisions. It would be useful to draw on the US experience, where vehicles like pension funds have raised and invested capital in both IPOs, listed shares of SMEs and growth companies. While the specific features of the pension system are very much the competency of individual EU Member States, we welcome the European Commission's interest in this area in the context of the Capital Markets Union.

5. Credit assessments and ratings for SME bond issuers

Credit assessments and ratings can facilitate SME access to bond markets. They contain valuable information for participants in corporate bond markets, influencing profoundly investment decisions. They help investors assess credit risk and hence price in the probability of default. Therefore, many institutional investors have concentration limits in their portfolios based on credit assessments and ratings and require bonds to be rated, preferably by a Credit Rating Agency (CRA) – as regulated by the Credit Rating Agencies Regulation.

However, many SMEs seeking to issue bonds are not rated by CRAs. The costs SMEs have to bear for obtaining a rating from a CRA can be disproportionately high when compared to the average size of the issue. In the past, investment banks operating in some Member States used to issue "unsolicited ratings on SMEs". This practice increased the transparency and visibility of SMEs towards some institutional investors but was not compatible with the CRA regulation, as those investment banks were not registered as CRA. The Commission is seeking views on whether some market players should be allowed to publish "unsolicited credit ratings" on SME Growth Market issuers, provided that those ratings would not be used by institutional investors (such as insurance companies and credit institutions) for regulatory purposes.

Question 29. Which steps could be taken to facilitate SME bond issuances on SME Growth Markets without incurring high costs for assessing creditworthiness of issuers?

We agree with the proposal to allow some market players to publish "unsolicited credit ratings" on SME Growth Market issuers. We believe that banks and investment firms should be allowed to publish "unsolicited credit ratings" on SME Growth Market issuers. As these institutions are subject to strong regulation and supervision (in fact much stronger than CRAs themselves), there is very limited risk, they would do anything, that would harm the market. SMEs suffer from insufficient analyst coverage, meaning there is very little research on them available. Therefore, additional information published by credible institutions would be helpful for investors.

Question 30. What would be the risks associated with a more flexible approach to 'unsolicited credit ratings' by market players other than CRAs and what might be done to mitigate them?

In case the ratings are issued by regulated and supervised entities (banks and investments firms), the risks related to such ratings seem to be much lower than in case of ratings issued by CRAs, due to better regulation and supervision of banks and investment firms. We do not have data available, but – to better understand the risk – it could be appropriate to compare the accuracy of "unsolicited credit ratings" and ratings issued by CRAs in the past.

GENERAL QUESTIONS:

Question 31. Please indicate the areas and provisions where policy action would be most needed and have most impact to foster SME listings of shares and bonds on SME Growth Markets:

Please rate each proposal from 1 to 5, 1 standing for "no positive impact" and 5 for "very significant positive impact".

- Criteria to define an SME Growth Market: **4**
- Market capitalisation threshold defining an SME debt issuer: **4**
- Key adviser requirement: **2**
- Delisting rules on SME Growth Markets: **3**
- Transfer of listings from a regulated market to an SME Growth Markets: **4**
- Transfer of listings from an SME Growth Market to a regulated market: **4**
- Management's transactions: **5**
- Insider lists: **4**
- Justification of the delay in disclosing inside information: **5**
- Market soundings: **5**
- Disclosure of inside information for bond issuers: **5**
- Half-yearly reports for SME Growth Market issuers: **2**
- Tick size regime for SME Growth Markets: **4**
- Liquidity provision contracts: **3**
- Free float requirements: **1**
- Institutional investors' participation in SME shares and bonds: **4**
- Credit assessments and ratings for SME bond issuers: **4**

Question 32. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above. Please include examples and evidence:

To ensure a more proportionate regulatory environment to support SME listing, in addition to proposals covered by this consultation, it is important to:

1. Introduce a definition of a Small and Mid-Cap company to ensure that regulations can be focused and proportionate. Certain flexibility for Member States could be permitted to adjust this threshold to local market realities. See our response to Q 7.1

2. Consider transitional period exempting the newly listed smaller companies from some of the requirements for five years. See our response to Q 13.1

As a general principle we propose to provide for **transitional arrangements for newly listed smaller companies both on SME Growth Markets and regulated markets**. Companies qualifying as small and mid-cap companies, meeting requirements of the definition we propose, and **within the first five years of listing should be exempted from various requirements under different EU rules**. These alleviations would be temporary to allow newly listed smaller companies to adjust to a more stringent framework on regulated markets. We propose some examples of such alleviations for smaller companies on the Regulated Markets. But this list is not exhaustive.

<u>**2.1 Transparency Directive:**</u>

- Disclosure threshold for major shareholding for small and mid-cap companies on the regulated markets shall be raised

The duty to disclose information on shareholdings entails direct and indirect costs that may be particularly detrimental for small investment because of their fixed nature. Furthermore, the investment strategies of stocks, which are instead picked by funds specialized in replicating SME indexes. These stocks thus suffer from a structural weakness in attracting investment.

We therefore suggest raising the disclosure threshold for major shareholding for small and mid-cap companies. For example, in Italy, a differentiated regime for SMEs is in place with the initial threshold of 5% for SMEs and 3% for all other listed companies. It could be raised to 10% for instance.

- Introduce an optional regime for small and mid-cap companies on regulated markets that simplifies the corporate governance statement required under the Accounting Directive. For instance, the description of internal control and risk management systems does not seem to provide much added value for smaller firms, whose systems are likely to be organized in simplified way.

<u>**2.2 Shareholder Rights Directive II**</u>

2.2.1 Remuneration report

- Art. 9b para 4 allows Member States to provide that SMEs, as defined by Directive 2013/34/EU, may as an alternative to a vote, provide for the remuneration report to be submitted for discussion in AGM as a separate item of the agenda and that the company shall explain in the following remuneration report how the discussion has been considered. We suggest extending the scope of application of the provision also to small and mid-cap companies.

- We also suggest that small and mid-cap should be exempted from the application of Art. 9b para (b) requesting the disclosure of the annual change of remuneration, of the performance of the company, and of average remuneration on a full- time equivalent basis of employees of the company other than directors over at least the five most recent financial years, presented together in a manner which permits comparison.

2.2.2 Remuneration policy

We suggest applying the same simplification provided for smaller issuers as to the vote on remuneration report also to the remuneration policy. Member States should be allowed to provide that small and mid-cap companies may, as an alternative to a vote, provide for the remuneration policy to be submitted for discussion in AGM as a separate item of the agenda and that the company shall explain in the following remuneration report how the discussion has been considered.

2.2.3 Related Party Transactions

The rules on related party transactions for small and mid-cap companies on the regulated markets should be relaxed. These simplifications may be granted on an opt-out basis, to avoid the risk of tunnelling.

When small and mid-cap companies are concerned, where the shareholder vote on e.g. pay or related party transactions is required, it appears to be less informed, because of the lower presence of institutional investors and reduced "external" monitoring by analysts, proxy advisors and specialized press. In addition, small and mid-cap companies face higher costs for disclosure rules. Art. 9c para 4 provides that Member States shall ensure that material transactions with related parties are approved by the GM or by the administrative or supervisory body of the company according to procedures which prevent the related party from taking advantage of its position and provide adequate protection for the interests of the company and of the shareholders who are not a related party, including minority shareholders.

***

***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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