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Dear CMU High-Level Group Members,

I am writing to you on behalf of EuropeanIssuers, a pan-European organisation which represents the interests of publicly quoted companies from all sectors. Dedicated to serving our members from 15 countries across Europe, including Germany, France, the Netherlands, Italy, Poland and Spain, we aim to ensure that EU policy creates an environment in which companies of all sizes – from large blue-chip companies to small and mid-caps as well as emerging growth companies – can easily raise capital through the public markets and deliver growth over the longer term.

EuropeanIssuers very much welcomes the opportunity to provide input on the development of a functioning Capital Markets Union (CMU). Capital markets are essential for companies to enable investment in growth as well as for private households to build wealth, e.g. for retirement savings.

We encourage policy makers to approach future initiatives from a different angle: The creation of a CMU should focus much more on the company's perspective than before. The CMU is ultimately about financing projects undertaken by companies, which is why they should be put in the centre of any initiative.

EuropeanIssuers believes that recent political developments, creating more uncertainty, do not encourage companies to enter EU public markets nor to remain listed on those markets. Since the financial crisis, the regulatory burden to access and operate public markets has been constantly increasing. In addition, there is a large amount of funding available from private equity. Companies may prefer to turn to private equity to finance their operations, as public markets are over regulated. Those are among the reasons that explain the recent reduction of the number of potential IPOs. For more facts and figures showcasing the evolution of listed companies, market capitalization and new listings, I kindly invite you to explore Appendix 2 of our EuropeanIssuers Vision for 2019 – 2024, also accessible through our website.

The EU regulatory framework should strike a better balance between entrepreneurial freedom, investor protection and financial stability so that capital markets can be effectively used for the financing and risk management of European companies. Companies need more flexible access to capital markets depending on their size and fundraising ambitions.

The regulatory environment should be simplified. We observe too many new rules and stringent requirements. Administrative burdens on all companies must be reduced and reporting requirements simplified. We believe that through increased financial education of investors we would achieve the protection they need rather than by increasing disclosure requirements for companies.

To access sources of long-term finance, the development of cross-border market for investment funds and the promotion of the EU market for covered bonds is important. It will ease cross-border transactions and provide certainty on securities and claims. Investor protection in Europe has to be rebalanced: Instead of paternalism, investor protection should focus on enabling investors to make sound investment decisions in their own responsibility. Already now the various documentation duties as well as the liability issues arising from these obligations have the negative consequence of influencing those who provide investment advice to increasingly withdraw from the market. This development means that the capital markets are prone to less and less investment from (retail-) investors.

Below you will find more in detail specific points that deserve change in order to revitalise capital markets in Europe.

1. Regulation of Listed Companies

Companies are increasingly reluctant to enter or stay on regulated markets due to the high level of regulation, corresponding compliance costs and legal uncertainties.

1.1. Very detailed obligations of the Market Abuse Regulation (MAR) and extension of its scope

In general, the duties resulting from MAR have become too detailed and burdensome. Listed companies are still confronted with a high level of legal uncertainty, as e.g. central legal definitions remain unclear. This has been shown by a study conducted last year by our member Deutsches Aktieninstitut[1].

Moreover, the European Securities Markets Authority (ESMA) has interpreted the MAR duties extensively which further adds to the complexity. The problems arising thereof are aggravated by the fact that the level of sanctions has been increased dramatically so that listed companies are now confronted with higher sanctioning risks and less legal certainty at the same time. This generally makes public listing less attractive.

From EuropeanIssuers’ point of view, it is worthy to note that this development is not an exclusive problem for small and medium sized companies (SMEs), but for issuers of any size. It is therefore important to reduce the level of bureaucratic burden in general.

As regards to SMEs, an additional issue deserves attention: The scope of application of MAR has been extended to trading platforms beyond regulated markets. This has substantially increased complexity for SMEs, which are typically listed in the respective segments. They now must compile insider lists, notify managers’ transactions, and comply with the duty to publish inside information. Though this

[1] https://www.dai.de/files/dai_usercontent/dokumente/studien/181212%20Studie%202%20Jahre%20Marktmissbrauchsverordnung%20Web.pdf

has been justified with the argument of investor protection, it has nevertheless increased the hurdles for unlisted companies to access organised capital markets.

1.2. Prospectus Regime

The EU Commission has rightly identified the prospectus regime as an important element of the CMU project. A meaningful reform would have taken notice of the fact that the present regulatory requirements concerning prospectuses result in time-consuming and costly drafting for issuers, whilst at the same time investors are not able to read all the details of a typical prospectus. We do not see that this has been changed significantly by the revision of the prospectus regime.

In contrast, the result of the revision has fallen short of that very objective because it will increase bureaucracy instead and create legal uncertainties for companies. The obligation of a categorisation of risk factors and the restriction to provide only the fifteen most material risks in the summary should not have been adopted. A wrong categorisation or a wrong selection of the most material risk factors could be interpreted as being a misleading presentation triggering liability risks and lawsuits, thereby making capital markets less attractive and creating unnecessary burdens for companies. Furthermore, it should be made easier for companies to choose freely where they want to issue their shares. This can be achieved by removing the present constraint that the prospectus must be approved by the National Authority of the company's legal residence.

1.3. Use the Fitness Check on Public Reporting to adjust reporting requirements for listed companies

Issuers need to comply with various layers of reporting requirements, resulting in a patchwork of different, sometimes unconnected reports. Companies try to address the needs of stakeholders by producing different reports, which sometimes have overlapping scope and content. Unnecessary, inconsistent and overlapping reporting requirements should thus be abolished.

One example for additional unnecessary burden for companies is the obligation resulting from the Transparency Directive to provide financial statements in the electronic iXBRL format from the beginning of 2020. This will result in significant higher costs and potential higher legal risks for listed companies, although the benefits for investors are not obvious.

Our expectation towards the currently conducted EU Commission "Fitness Check on Public Reporting" is to send a strong signal to the market that aims at rebalancing reporting requirements and to reduce the information overload.

Last, we would regard it as highly critical if the outcome of the EU Commission Fitness Check was a European alteration of internationally accepted accounting and financial reporting standards. They are the basis for raising capital or attracting investors on a global basis, and any EU action in this regard would lead to confusion rather than to improvement.

2. Proportionate Approach to Corporate Social Responsibility (CSR) needed

Both Corporate Social Responsibility (CSR) and Sustainable Finance have emerged as crucial and irreversible developments for companies across Europe. Regulatory efforts in these fields should consider the existing strong commitment of European companies to sustainable business practices on a voluntary basis. The choice of CSR-strategy depends vastly on a company's business model. From this perspective, a high degree of flexibility is needed. Regulatory measures should only be considered, where self-regulation fails and should – where possible – set the focus on incentivising and strengthening existing voluntary activities. CSR regulation must not overburden companies and should strictly correspond to the true needs of investors. Mandatory CSR rules promoting a one-size-fits-all-solution must be avoided.

CSR and Sustainable Finance produce an entirely different dimension of the debate on the CMU. Whilst the key motive of launching the CMU in 2015 was to boost growth, jobs, and making companies more resilient to crisis-situations by creating alternatives to bank finance, regulatory sustainability-initiatives aim at a redirection of capital flows to sustainable investments and the integration of ESG-aspects in corporate decision-making processes. As corporates are vastly affected, especially by sustainable finance, they should be a vital part of the debate, which they previously were not.

In order to make sustainable finance an accepted approach shaped by consent within society, it is essential that all industries must be given the chance to switch to a sustainable business model. This might, however, take time as the transition-process to a low carbon and sustainable economy cannot happen overnight. Thus, the sustainable finance taxonomy should be designed in a flexible way, not per se excluding certain types of industries from conducting sustainable business activities. In order to accelerate the process to a carbon-neutral economy, transition technologies should be paid special attention to.

3. Refrain from initiatives running counter the objectives of the Capital Markets Union

From our point of view, it is key that the objectives of the CMU are consistently followed across regulation. Any regulation should thus be checked against whether it contradicts the CMU idea.

A perfect example of inconsistency is the proposal to introduce a Financial Transaction Tax (FTT). As frequently expressed over the past years, EuropeanIssuers rejects the initiative, as it will harm private households, companies and capital markets alike.

More concretely, the FTT in its current form, taxing acquisitions of shares of large companies, will have the following detrimental effects:

- The tax will affect millions of private investors across Europe who have invested their savings in shares for their wealth creation and retirement plans. It will certainly also reduce earnings from occupational pensions and employee shares schemes.
- In addition, there is clearly a risk that the FTT may discourage potential investors from investing in shares, thereby weakening capital markets.
- The same applies to the financing of investment and employment via the stock exchange. Markets are being deprived of liquidity, which makes capital markets become less attractive.

Against this background, we urge policy makers to once and for all abandon the idea that threatens to cause considerable damage to the creation of the CMU.

4. Promoting Employee Share Ownership in Europe

Employee share ownership not only improves both the motivation of the employee and their participation in the proceeds of growing business. It furthermore enhances the understanding of the functioning of capital markets. Employee share ownership should thus be part of CMU project.

As an element of creating an environment enabling private households to better use the opportunities offered by capital markets for private wealth building as well as retirement provisions, the EU should seek ways to promote the participation of the European population in the stock and capital markets.

It creates furthermore an incentive for employees to thoroughly inform themselves about capital markets and investment mechanisms.

We call for the EU Institutions and the Member States to take further action in order to encourage companies to offer employee share ownership plans and to remove legal and practical obstacles to create pan-European ownership plans.

5. Economic Literacy instead of Bureaucracy: Rebalancing Investor Protection in Europe

EuropeanIssuers urges to rebalance investor protection in Europe. From our point of view, investors must be enabled to make sound investment decisions in their own responsibility. Europe should undertake common efforts to improve economic literacy to reach this objective.

Investor protection is an important element of financial markets regulation. In our view, investor protection should correspond to the true needs of investors and take into account potential negative side effects.

Unfortunately, EuropeanIssuers' members have observed in the past decade that investor protection rules have become overwhelming, confusing and led to legal uncertainty- with detrimental effects on the promotion of capital markets.

Investment Advise under MiFID/MiFIR

One example are the rules governing investment advice of banks and other financial institutions under the revised MiFID II/MiFIR framework. Documentation duties of banks have been massively increased for investor protection reasons. EuropeanIssuers' member Deutsches Aktieninstitut has provided evidence that many German banks have consequently withdrawn from investment advice due to increased compliance costs and the large variety of new regulatory standards with which to comply.

This has exactly the contrary effect that was intended by the regulator. Many investors will remain without any advice and therefore refrain from investing or they invest without knowledge necessary to make a sound investment decision.

Legal uncertainty regarding corporate bonds

Another example is the uncertainty among corporate issuers whether regulators would regard certain corporate bonds as a Packaged Retail Investment and Insurance-Based Products (PRIIP). If so, issuers would have to condense 100 pages (often more) prospectus into a 3 pager Key Information Document (KID).

This has led corporate issuers to exclude retail investors of bonds that are likely to be considered a PRIIP, thus avoiding the question of whether it is necessary to prepare a KID or not. As a result, the European Supervisory Authorities state a 60 per cent reduction in the number and overall volume of low domination issuances in the first quarter of 2018 compared to the first quarter of 2017.

This limits the opportunities and investment scope of retail investors to invest directly and in a transparent, cost efficient way in investment grade corporate bonds. It hence thwarts the efforts of the European Commission as expressed in the CMU initiative.

Future efforts to reform the European framework for investor protection should rather focus on a widespread economic literacy as core element. The objective of promoting education in order to achieve an economy based on knowledge and innovation as contained in the EU 2020 Strategy are to include measures to improve financial and economic literacy.

Investors should be put in a position to evaluate and compare financial instruments and to make informed and sensible investment decisions. Those investors, which feel comfortable with that, should have the option to decide for its own and waive the documentation and information rights granted by the regulation.

6. Improve access to finance for SMEs and elaborate proportionate rules

EuropeanIssuers supports the objectives of the CMU Action Plan as it was aimed at breaking down barriers to cross-border investments in the EU, making it easier for smaller companies to get the finance they need, and fostering sustainable finance by directing investment to environmentally friendly projects. For example, the promotion of SME Growth Markets is a positive step in terms of reducing red-tape for small and mid-caps trying to access capital markets.

The European institutions are aware that EU public markets for SMEs are struggling. From 2005 to 2007, an average of EUR 11 billion was raised annually on European SME-dedicated Multilateral Trading Facilities (MTFs) through initial public offerings (IPOs). This fell to EUR 2.8 billion on average from 2008 to 2015[2]. Many SMEs consider that the burden of being listed (such as admission and ongoing compliance costs) outweighs the benefits and do not even consider the possibility of seeking a listing. As a small proportion of investment is effectively channelled into SME shares, there is little motivation for small companies to list their shares or bonds on a stock exchange. The lack of visibility of SMEs towards investors, lower investor interest in this asset class and lack of tax incentives have decreased the attractiveness of financial markets for EU SMEs in general.

EuropeanIssuers believes that successful firms need to access financing on attractive terms to scale up their business. However, the overall EU regulatory environment hinders such process; it is simply too costly and burdensome, particularly for SMEs. For example, prospectuses are onerous to produce and typically run to hundreds of pages. For investors, they are excessively complex, and critical information is too complicated to discern. As mentioned before, companies may prefer to turn to private equity to finance their operations, as public markets are overregulated.

[2] https://ec.europa.eu/info/sites/info/files/2017-barriers-listing-smes-consultation-document_en.pdf

The CMU should become a central element in strengthening the European single market. Nevertheless, further integration of the capital markets across the EU should not come at the expense of local capital market ecosystems for SMEs. Developing local capital markets requires complementary action at the national level, through national strategic plans for capital market development, improvement of the business environment, public support for access to finance, among many others. EuropeanIssuers believes that more can be done at the EU level to support local economic ecosystems.

it is essential that future legislative initiatives are proportionate, practicable and accommodate the needs of all market players, including SMEs. In view of the on-going High-Level Group's work on the future of capital markets in the European Union, the following points should be carefully addressed:

- **Acknowledge that the current regulatory environment hampers competitiveness**. Several pieces of legislation such as Market Abuse Regulation, MiFID II, Prospectus, XBRL or the Audit reform continue to be extremely burdensome for smaller corporates. Long management reports and IFRS have penalised listed enterprises. EuropeanIssuers defends carving out a regulatory space focused on streamlining legislation (Level 1 and 2) transversally in order to guarantee small and mid-caps' prospects of success – "**Small Business Act"**:
    - Shortened 80 pages' prospectus, with maximum 3 pages risk assessment, less detailed annexes of IFRS, relaxation of Solvency II rules to allow e.g. insurance companies to invest part of their resources on smaller companies;

- **Provide more capital to small caps by creating a "European Growth Fund"** which supports:
    - **Investment in a direct equity participation** (IPOs and secondary markets), as a joint investment effort to be done by the European Investment Bank together with fund managers, and
    - **An equity awareness marketing programme** (training for entrepreneurs, education, awareness and advertising on alternative sources of finance);

- **Work on a definition of small and mid-caps in EU law**, not only restricted to SME Growth Markets;

- **Support transition arrangements** – The bridge between growth markets and regulated markets should be shortened and the national competent authorities should not put obstacles (e.g. having a certain percentage of votes before changing venues);

- **Change state aid rules** to allow tax incentives and capital raising schemes;

- **Allow variable voting rights** – in the company's structure to increase attractivity in capital markets and IPOs and manage the change of control in a different way compared to today;

- **Support proportionate measures such as market-driven recommendations** stated in several national Corporate Governance Codes, as these are tools that help small and mid-caps in earning and keeping the confidence of shareholders and other stakeholders as they develop and mature;

- **Assess the creation of a Commission-sponsored SME Stakeholder group** that is not bound by time constraints, going further that the expert group created under the SME Growth Market proposal that will measure only the success of the SME growth markets;

- **Support the creation of a dedicated Unit for small and mid-sized enterprises within ESMA**, to support a balanced regulatory and supervisory convergence and while meeting the specific needs of small and mid-caps; and

- **Increase access to equity capital**, by supporting the local business ecosystems and market structures with special reference to SME Growth Markets. This will result in increased job growth, productivity and capital gains.

At a time when policymakers are focused on restoring growth in the EU, we firmly believe that the suggestions mentioned above would be economically beneficial to European small and mid-caps.

Yours sincerely,

Florence Bindelle

Secretary General