EuropeanIssuers Capital Markets Webinar Series 2023

Webinar Session 2: How to Reach CMU, Reviving Listings

19 September 2023, 11:00 – 12:00 CET

Moderator: Zelda Bank, *EU Liaison Office Policy Officer, Deutsches Aktieninstitut*

Speakers:

- **Alfred Sant**, *Member of the European Parliament*
- **Marcello Bianchi**, *Deputy Director General, Assonime - EuropeanIssuers' Board member*
- **Amalia Cordero Martinez**, *Assistant Director-General for Financial Legislation, Spanish Treasury, Ministry of Economy and Digitalization*
- **Adam Kostyál**, *Senior Vice President, Head of European Listing, Nasdaq*

Introduction

The establishment of the Capital Markets Union (CMU) stands out as a significant economic policy initiative following the Financial Crises. However, progress on the CMU has lagged behind the original timeline. The Listing Act aims to amend the Market Abuse Regulation (MAR) and Prospectus Regulation, and introduce the Multiple Voting Shares Structures (MVSS). It also addresses the trend of businesses increasingly turning to bank loans for financing rather than seeking listings. The Listing Act seeks to simplify issuance procedures, particularly for Small and Medium-sized Enterprises (SMEs), which require fresh capital for developing products in new technologies. The proposal also involves standardisation and the allocation of different voting powers to stakeholders through MVSS.

The European Parliament is committed to moving forward and reaching an agreement on the legislative package before the end of the legislative term. The Parliament seeks to conclude negotiations within the ECON Committee and secure the approval within the same timeframe. The success of the Act is a critical factor in achieving the aforementioned goals. While many issues within ECON are technical, some have political implications, making the process complex. MVSS aims to extend its application to all regulated markets to elevate the CMU's ambition level, although certain member states expressed doubts about its desirability.

As regards ESG-related legislation, ensuring compliance with the Paris Convention is paramount. The focus is on deregulating, simplifying, and standardising issuer procedures, particularly for SMEs. This process, though delicate, is a necessary step toward creating an integrated market horizontally. Encouraging cooperation while maintaining proportionality is essential. These objectives are not mutually exclusive.

Regarding Prospectus, there is a question of whether to include the ESG requirements, potentially adding complexity. It is essential to consider whether investors can access this information through other statements to avoid duplicating procedures. Including a brief ESG statement in the Prospectus, indicating the issuer's compliance with ESG and Paris requirements, could simplify the investor's assessment. This approach may make it easier for investors to verify the issuer's compliance directly in the Prospectus.

Tour de table and questions to panellists

A speaker mentioned that the Council of the EU agrees on the necessity for the Act, to promote listings, and to foster a willingness not to delist – amidst the trend of delisting ongoing since the past decade. It

increases firms' abilities to reach more investors and opens avenues for easier and better funding. Access to markets is also key for competitiveness.

A panellist specified that the decline in listings was not single-handedly due to over-regulation, but it can be solved through regulation. The listing process is cumbersome in Europe, which sets the need to streamline the process and reduce associated costs arising with a Public Offering. This shall, however, preserve transparency and investor protection.

On the negotiations for the Listing Act, the latter were carried out by two Working Parties (Corporate Governance and Financial). A general agreement was reached on both files. The council is thus ready to start negotiations with the European Parliament. It is expected that the adoption will occur in November 2023, which leaves little time for Spain's presidency to entertain Trilogues. Hopes are for the finalisation before EP's dissolution to occur at the April 2024 Plenary in Strasbourg.

An expert was asked by the Moderator to offer his perspectives on the potential encouragement of listing practices following the Listing Act. In his view, companies should have the ability to have control of their funding opportunities in the public market. The Listing Act would therefore strike a balance between owners and investors, ensuring flexibility. At the same time, impeding MVSS lowers the chances of receiving funding on the market. The example of Nordic countries is the way forward. The issuers shall manage responsibly relations with both majority and minority investors.

A further speaker replied to a question on the role of the European Supervisory and Market Authority in MVSS enforcement. He replied that a single Capital Market is far from reality, as markets are fragmented also in their rules. It is important not only to have interoperable rules but that implementation is harmonised. The latter is still fragmented amongst EU countries, also in the interpretation. For example, on Market Abuse, the Italian supervisor encourages companies to utilise the delay of information. But other authorities have different approaches to delay, which is an exception.

Enforcement is also fragmented, especially in its intensity character. This affects the implementation as well. A strong coordination role is expected from ESMA – which has provided positive signals. The current governance appears not to be optimal for endowing ESMA with such a role – as governance is based on national authorities.

One of the panellists then focused on Prospectus and the Council's position. The idea is that information was already published by the company based on obligations from other Regulations. The issuer elaborates and publishes a summary note, which is not subject to approval by the Authority. Threshold has increased from 20 to 30 percent, while the European Commission proposed it at 40 percent. new harmonised threshold for Small Security Offering includes an opt-out.

Prospectus is needed because companies are by nature called to inform investors. The Commission could be called to deliver a further Delegated Act. Some Member States raised questions on the differences in liability regimes that may deter listing: the Commission will examine this item and could provide a report by 2025. The moderator asked whether the opt-out on the threshold for smaller Member States (5 million against 12 million) could exacerbate fragmentation. A speaker replied that harmonisation is not as ambitious as originally planned by the Commission, but proportionality is cherished anyway.

One of the guests intervened on the issue of the desirable scope for the Prospectus Regulation. He mentioned that the workstream goes in the right direction, a step towards the goals mentioned by the EP. However, some points are still to be discussed. For the future, the regulatory approach on Prospectus shall be rethought. In terms of scope, rules are the same for very diversified instruments: IPOs, Secondary Issuances, etc. For different transactions, the same approval procedure is in place, which does not capture the different needs. The current Prospectus shall be maintained for IPOs, while other disclosure

instruments shall be prepared for Secondary Issuances. A further issue is to keep the same level of investor protection in place today while fostering the CMU.

A panellist reported on how the EU compares with other jurisdictions. He maintained that the Listing Act should represent a continuous platform to continue dialogue, and should not remain an isolated initiative. Companies should feel more comfortable in going public rather than staying private – to this, a less risk-averse stance is to be kept. Companies have also responsibilities – if they disclose, they should receive more opportunities, which is an incentive to go public for them. Like in the Nordics, there should be an overall understanding that risk comes with rewards in the stock market.

A further round of interventions was centered on the Market Abuse Regulation. One of the guests mentioned that at the Council, the aim is to introduce flexible measures for the provision of information when the company is listed. The obligation to communicate inside information in protracted processes was eliminated. A Delegated Act will be issued to help issuers identify situations in which they shall make information public. The Commission proposed the creation of insider lists, which was rejected by the Council. On the obligation for managers to communicate transactions, the threshold was raised to 50,000 euros.

As regards insider lists and manager transactions, an expert saw them as two relevant parts of MAR. For insider lists, they are rarely imposed outside the EU countries – a potential approach would be to delete them. The Commission proposed Permanent Lists, but these may not be useful. As regards Managers' Transactions, they can be relevant for investors. Disclosures shall be focused on transactions with higher thresholds, otherwise an excessive number of disclosures will be issued.

A further speaker added that MAR is interpreted in different ways across the EU, even under a single regulation. For example, it is unclear whether MAR is to be applied also in the IPO project – this could dissuade companies from listing and trigger an intra-EU competition between companies.

The last round of speakers' interventions focused on the perspectives for the future and the EU's standing vis à vis third countries. On MVSS, one guest mentioned that the latter addresses the needs of small companies, who fear dilution when becoming public. Until the end of Spain's presidency in December 2023, the key aim is to advance in all files, to complete CMU Action Plan.

Concerning the future of the CMU, a panellist argued that EU markets are lacking the retail layer: this investor category struggles in investing, and there is a lower incidence of investor culture, protection, and technology. In Nordic countries, tax structures contribute to building the capital market. A CMU in the EU will not be built from the top down: local institutions should liaise with local companies. The government should then incentivise such a commercial dialogue. Liquidity pools are to be harmonised.

On a concluding note, one of the panellists added that the experience of Nordic countries is relevant. However, it is hard to apply that model to the whole EU case. Moreover, having 28 different stock markets can be suboptimal: nevertheless, more markets can coexist, provided that they possess similar features.

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