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EuropeanIssuers' Position Paper on the European Commission's Market Infrastructure Package

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EuropeanIssuers is the pan-European organisation strategically positioned to represent the interests of publicly quoted companies across Europe to the EU institutions. We aim to ensure that EU policy creates an environment in which companies of all sizes- from emerging growth companies to the large blue-chip companies - can easily raise capital through the public markets and deliver growth over the longer term.

Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth €12.4 trillion in market capitalisation with approximately 6,000 companies.

EuropeanIssuers welcomes the opportunity to comment on the European Commission's proposal for a Market Integration Package.

As already stated in the preparatory consultations leading up to this proposal, Europe must become more competitive and innovative to remain economically successful, keep pace with the USA and China, and preserve its strategic autonomy.

Deep and liquid capital markets are a key driver of competitiveness. They mobilise financial resources, channel them into innovative activities and allow European society to participate in European success stories resulting from innovation. Furthermore, developed capital markets directly support strategic autonomy as they reduce dependencies on non-European capital sources.

Unfortunately, the EU lags behind other regions of the world in many respects such as the number and volume of IPOs, the number of unicorns and listed companies, the size and number of pension assets and it faces a suboptimal structure of people's financial assets.

EuropeanIssuers thus fully supports the Savings and Investments Union (SIU) project and has steadily called for a consistent and broad approach to address these deficits. We therefore broadly welcome the significant efforts by the European Commission behind the Market Integration Package.

The proposal mainly aims at better connecting existing capital pools in Europe and enhancing EU supervision and, thereby, using capital pools more efficiently across borders. This is most welcome as it strengthens the opportunities for companies to finance innovation, growth and employment through the capital markets.

However, the proposed measures operate mainly indirectly and, on their own, will not be sufficient to achieve the intended strengthening of European capital markets. They therefore need to be complemented by additional measures as part of a coherent overall strategy. In particular, the following measures should be pursued in parallel:

- Strengthened simplification efforts: The multitude of bureaucratic requirements for listed companies reduces the attractiveness of IPOs and stock market listings, as reflected in the well-documented loss of competitiveness of the European capital market vis-à-vis the United States and increasingly Asia. Beyond the package, a significant reduction in bureaucracy for listed companies must therefore be given priority in order to increase IPOs on EU regulated markets. The outcomes of the discussion about simplifying the European Sustainability Reporting Standards (ESRS) shows that there is a wide gap between aspiration and reality in this regard. Several regulatory requirements could be removed without jeopardizing market integrity. One example is the costly and disproportionate obligation to electronically tag annual financial statements using iXBRL in accordance with the ESEF format. Given the current capabilities of Large Language Models (LLMs) to analyse raw financial reports, the marginal value added of iXBRL tagging no longer justifies its exorbitant cost and administrative burden. In practice, the iXBRL requirement has also created a dependency on a limited number of service providers, often at significant cost. At least in some countries these providers are also predominantly non-European which runs counter to the objective of strengthening digital sovereignty. Similarly, the legal acts addressed in the package also offer opportunities for reducing bureaucracy. In particular, the revision of the regulation on OTC derivatives, central counterparties and trade repositories (EMIR) could be used to remove the obligation for non-financial companies to report internal derivative transactions. Reporting such transactions offers no added value for risk assessment by supervisory authorities, but at the same time is costly for companies.

- 28th Regime for the legal integration of capital markets: As an important element of the SIU, we also support the work on a 28th regime with the aim of creating a harmonised legal framework for companies that complements the corresponding legal frameworks of the 27 Member States. The 28th regime should become a genuine European corporate form that reduces legal uncertainty, facilitates cross-border scale-up, and increases predictability for investors. A 28th regime, if designed properly, will indeed allow companies operating in Europe to benefit from a single, harmonised set of EU-wide rules wherever they invest and operate. The legal form of the 28th regime should be open to companies of all sizes, sectors and types and should consider the whole lifecycle of a company, including scaling up and the decision to go public and be listed, or to issue securities, including bonds, to finance its growth.

- Development of a strong European investor base: We have always encouraged co-legislators to adopt measures to incentivise capital market savings in Europe and capital market-orientated pension systems, as well as to develop incentives to use financial market instruments, in particular shares, for private wealth building. We therefore support the European Commission's recommendation on Investment Savings Accounts as well as the efforts to simplify the rules for the Pan-European Pension Product (PEPP). We also support any Member State initiatives that help re-channel savings into the capital market to the benefit of European people and in order to improve capital supply. However, the EU still lacks an initiative to foster employee share ownership in cross-border situations. Developing more uniform requirements for implementing employee share ownership across the EU - or, as a first step, encouraging mutual recognition mechanisms and ensuring minimal harmonisation of certain essential rules for companies - would help facilitate and promote cross-border offerings.

Against this background we comment on the package as follows:

1. **Uniform supervisory practices must be embedded in a competitiveness mandate and check**

One focus of the proposal is the future supervisory structure in the EU.

In general, issuers are interested in a uniform and workable implementation of rules. Greater supervisory convergence is a prerequisite for reducing market fragmentation. We therefore support measures that lead to a more uniform application of common rules through new areas for ESMA supervision and ESMA supervisory convergence tools.

A stronger role of ESMA has the potential to work in this direction. At the same time, the discussion about the future role of ESMA cannot be conducted independently of a target vision on how existing and future capital market regulation is designed and what the mindset of supervisory action is in general. When developing regulatory technical standards, implementing technical standards or guidelines, and in ongoing supervisory practice, interpretations of the EU regulatory framework that place an undue burden on market participants must be avoided. Otherwise, centralisation could backfire and harm market efficiency and development.

Against this background, we take a differentiated view of the proposal to revise the ESMA Regulation.

On the one hand, it contains elements that could accelerate the process of defining standards and improve convergence on specific supervisory issues, which we therefore support. These include more flexible Level 2 processes (Articles 10 and 15 of the ESMA Regulation), expanded options to issue "*no action letters*" (Article 9a (1)), the newly introduced duty to cooperate (Article 8a) and the collaboration platform (Article 19a), greater independence in ESMA's governance structure (i.e. Articles 40, 44a, 46a) as well as direct supervisory responsibilities for ESMA for certain significant and cross-border entities, provided that these direct supervisory responsibilities replace national supervision and do not create an additional layer in addition to national supervision.

On the other hand, the proposal contains elements that could reduce the effectiveness of supervision and/or even lead to a higher supervisory burden at the expense of market participants. More specifically:

- ESMA's mandate (proposals on Article 1(5) of the ESMA Regulation, Article 1(1) of the Master Regulation of the Infrastructure Package): Although ESMA's mandate is extended to include Article 1(5)(h) to "*supporting market integration in the Union and innovation in the financial sector*", this remains insufficient. The mandate still lacks an important obligation to consider the effects of supervisory action on the competitiveness and growth of the EU economy. Such a mandate exists, for example, for the UK FCA. EuropeanIssuers therefore supports introducing an objective 'to facilitate the international competitiveness and growth of the EU economy in the medium to long term', including an obligation for ESMA to report on the measures implemented to achieve this objective. In addition to the inclusion of a 'competitiveness' mandate, we call for the introduction of a formal, ex-ante 'Competitiveness Check'. This mechanism would require ESMA to systematically demonstrate, prior to the publication of any final report on new Regulatory Technical Standards (RTS), Implementing Technical Standards (ITS) and/or Guidelines, that the proposed measures do not put European issuers at a competitive disadvantage compared to their global peers.

- The proposal deletes Article 16b of the ESMA Regulation (Article 1 (11) of the Master Regulation), which gives ESMA the opportunity to issue non-binding Q&As on questions requiring interpretation. We question this deletion, as Q&As help market participants to align their compliance practices with the expectations of the supervisory authorities. The need for supervisory guidance will continue to exist or even increase against the backdrop of the goal of increased supervisory convergence. A more robust alternative could draw on tax law principles, such as the French 'BOFIP' doctrine, applying a 'comply-and-be-safe' approach: Q&As would be binding on the regulator, effectively creating a safe harbour for participants who follow the guidance, while issuers would retain the flexibility to adopt a different interpretation if it can be legally justified. This approach would reinforce legal certainty and support consistent application of rules across the EU.

- Finally, unlike the US Securities and Exchange Commission, which can issue 'no-action letters' providing ex-ante assurance that the regulator will not pursue enforcement for specific conduct, ESMA lacks an equivalent formal instrument. EuropeanIssuers believes that ESMA should be granted a similar no-action power, at least in the perimeter of its direct supervision.

ESMA's expanded powers and rights of intervention vis-à-vis national authorities are also ambivalent. On the one hand, they have the potential to simplify matters, provided there is a clear allocation of competences for each relevant supervisory issue, thereby avoiding duplicate supervisory action. On the other hand, they can have adverse effects if they result in duplicate structures, reduce legal certainty regarding NCAs' decisions, or even cause an overhaul of existing efficient supervisory practices, such as those developed by some NCAs for the approval process of prospectuses for corporate bonds. Such adverse effects must be avoided at all costs, otherwise, ESMA's expanded

powers could harm competitiveness, which is why we call for a this clarification to be reflected in the mandate (see above). Hence, we recommend a clear delineation of supervisory responsibilities to avoid duplication, delays, or legal uncertainty for issuers. Similarly, ESMA intervention powers themselves should be defined clearly so that room for overly extensive interventions is minimised.

EuropeanIssuers supports the creation of an executive board. However, members of the executive board should not be selected only based on their experience in the area of supervision of financial markets but, more generally, based on their experience in financial markets and services.

Finally, it is right that ESMA is currently subject to mixed financing and that this is underlined by Article 62 of the ESMA Regulation. However, and in contrast to this, the European Commission's proposal provides for full financing by the market participants for supervisory tasks related to supervised entities directly supervised by ESMA (Article 39n of the ESMA Regulation). Even though limited to directly supervised entities, we oppose this since ensuring market integrity is generally a public good that should therefore be financed at least in part by public funds. If ESMA's task with regard to direct supervision is 100% funded by fees, this creates a disincentive to reduce bureaucracy and simplify matters. Maintaining public funding also with respect to directly supervised entities ensures that ESMA's funding is consistent with the funding models of other EU bodies such as EASA, EMA, and the ECB, which are not fully funded by the entities they supervise. Thus, a system of mixed finance should also apply to the market participants directly supervised by ESMA, while fee duplication should be prevented, and any future increases in fees should be properly justified. This approach supports the overall objectives of simplification and harmonisation that underpin the proposed supervisory changes.

2. Market structure, market integration and technology: much remains to be addressed

Regarding market structure, issuers' key interest is that markets for all sizes of issuers are sufficiently liquid and transparent so that the existing investor base can be fully leveraged, all services and processes along the entire value chain work effectively, smoothly and at the lowest possible cost and risk, and new technological developments that could increase efficiency can be explored.

Against this background, we particularly support the following:

- Currently, the UCITS diversification rules are an example of regulation that disadvantages European companies and makes suboptimal use of existing capital pools. Raising the investment caps in individual shares for actively managed funds from 10 to 20 per cent as proposed by the Commission (Article 53 UCITS Directive) puts actively managed funds on an equal footing with passively managed funds and facilitates investment in particularly fast-growing companies, which could otherwise face unnecessary selling pressures. EuropeanIssuers, therefore supports the proposal of the European Commission.

- The proposal makes the DLT pilot regime more flexible. In particular, it raises the volume limits and enlarges the scope to include further financial instruments and thus facilitates the adoption of new technologies (Article 3 of the DLT Pilot Regime). However, the use of new technologies could and should be further supported by also opening other

regulations such as the CSDR or MiFID/MiFIR to these new technologies. This would allow for testing and implementation of new technologies, also for existing larger market players within their current regulatory environment. In the end European legislation should provide both incentives for innovation and a level playing field between those who wish to innovate.

While we support the positive elements outlined above, there are also aspects of the proposal that we do not endorse and consider to be in need of revision.

- In the proposed revision of Article 49 CSDR, the sentence stating that the corporate or similar law of the Member State under which the securities are constituted shall continue to apply is deleted. While we support the freedom of issuance, without further explanation we do not fully understand the rationale behind this proposal and would like to point to a potentially negative side effect that should be considered and avoided: Generally, the deletion could result in legal uncertainties as to which law is applicable for processes originally initiated by issuers and therefore governed by the issuer's corporate law. At least as long as these processes are not fully harmonised, the corporate laws of the issuer are essential for regulating how a company is formed, structured, and managed, including shareholder rights, board responsibilities, and internal governance. This also holds true should a 28th regime be established. While the underlying obligations of the law of the issuer would remain, removing the above-mentioned sentence could create legal uncertainty for market participants and could lead to conflicts between the law of the issuer's home market, the CSD, and intermediaries as to which law applies. It should therefore be avoided that the revision unintentionally undermines critical shareholder rights, such as the maintenance, reporting, and inspection of the register of shareholders, the ability of investors to have their names recorded, and the definition of shareholders, which may affect quorum and disclosure obligations. Overall, removing this provision risks reducing legal certainty about processes that are essential for the effective functioning of European capital markets. Furthermore, maintaining the provision is fully compatible with the simplified passport under the new notification procedure in Article 23, which we support.

Furthermore, two major shortcomings of the European capital market remain unaddressed by the proposal, both of which have a direct impact on the attractiveness of listing in the EU.

Firstly, the Commission's proposals to reverse the trend of liquidity fragmentation are not sufficient. More concrete measures are necessary. In the current environment, liquidity in a single share is spread across multiple trading and execution venues, thereby adding to the fragmentation of the European market. For issuers, this results in a higher degree of opacity regarding trading activities and a greater risk of inefficient price formation, which we believe should be addressed as a matter of priority.

Secondly, there is still a lack of proposals to address the remaining differences in technical, legal, and tax conditions that shape the current framework for post-trading processes, despite intensive efforts by the EU and market participants to overcome these barriers. It is precisely these differences that make cross-border trading in shares and other securities, as well as cross-border settlement, complex

and therefore expensive. Furthermore, they hinder market-driven consolidation of trading and settlement infrastructures, which in turn prevents the more effective pooling of liquidity. We therefore believe that overcoming these barriers should play a key role in the debate on market fragmentation.

Conclusion

In conclusion, this package is a necessary step, but it is not sufficient to address Europe's structural competitiveness gap. Europe needs a coherent and long-term strategy for capital markets competitiveness, combining (1) regulatory simplification, (2) investor base development and liquidity building, (3) technological modernisation, and (4) deeper supervisory convergence built on proportionality and competitiveness.

EuropeanIssuers would like to reiterate its appreciation for the European Commission's substantial efforts in relation to the Market Integration Package and will be pleased to further discuss this proposal with both the European Commission and the co-legislators.