FESE response ESMA consultation on SME Growth Markets

Brussels, 14th July 2020

1. Introductory remarks

On SME Growth Markets (SME GMs) there is a continuous dialogue among various participants within the ecosystem about improving the rules tailored to local needs. It is important to keep the aim of finding the best balance between maintaining a liquid and trusted market with reduced burdens for issuers and adequate levels of investor protection. These markets, for those reasons, should retain a certain level of flexibility whilst ensuring efficiency and integrity. EU policies can make a difference in preventing a further loss of the local and regional ecosystems by sustaining the full spectrum of players serving smaller companies and their investors. They also need to deliver a comprehensive strategy on how to boost equity and non-equity financing at all stages of the funding escalator. SME GMs have the potential to develop an ecosystem across the EU that benefits smaller issuers, enabling them to raise money, grow, create employment and wealth for investors and wider society.

SME GM is a category of a multilateral trading facility created under MiFID II/MiFIR to facilitate access to capital for SMEs. In May 2018, the Commission proposed to adopt more proportionate rules for SME GMs. The initiative included amendments to the Market Abuse and Prospectus Regulation and a MiFID II delegated regulation. The new rules aim to:

- reduce the administrative burden and high compliance costs faced by SME GM issuers while ensuring a high level of market integrity and investor protection
- foster the liquidity of publicly-listed SME shares to make these markets more attractive for investors, issuers and intermediaries
- facilitate the registration of multilateral trading facilities as SME GMs.

These rules were agreed by the co-legislator in 2019 and apply as of 31st December 2019. However, Article 1 (amending the Market Abuse Regulation) shall apply from 1st January 2021.

FESE considers that these changes are a step in the right direction but that more tangible benefits should be created to promote the use of SME GMs. The revision of the prospectus rules was a very important step to reduce costs and burdens for companies whilst improving their access to financing. We especially welcome the amendment that allows issuers listed on SME GM for at least two years who intend to transfer quotations to the Regulated Market, to only have to produce a simplified prospectus. This will be very beneficial for smaller companies in earlier stages of growth, that are more dependent on local investors for financing.

While the intention behind creating SME GMs was to attract smaller companies to listing, feedback from FESE members indicate that there is no real increased interest from issuers to list on an SME GM compared to MTFs, since the difference in requirements is limited, making it hard to make the distinction and promote SME GMs. To deliver on the policy objective, we consider that there should be further benefits for the SME GM label. We believe it is important to find a balance between maintaining a liquid and trusted market with reduced burdens for issuers and adequate levels of investor protection. SME GMs should retain a certain level of flexibility whilst ensuring efficiency and integrity. It is important to attract SMEs to the

market by both supporting local eco-systems that generate conditions for listing of companies and enable cross-border listings for issuers where this provide further opportunities.

2. Overview of the current state of play of the SME GMs regime

Q1 - Do you have any views on why the SME activity in bonds is limited? If so, do you see any potential improvements in the regime which could create an incentive to develop those markets?

In FESE's view, there are a number of reasons why SME activity in bonds may be limited.

Firstly, SMEs generally have smaller size financing needs compared with bigger corporates, and therefore their capacity to gain financing from the banking channels is easier, faster and cheaper. They are closely connected with bank managers and do not normally know the capital market dynamics.

When this is combined with SMEs' concerns with the cost of a capital market transaction and the post-listing publicity that it brings, it is often the case that bank financing is seen as a much more preferable option. If an SME can secure bank financing, they only have to disclose their books to the bank. For smaller entities, who are not so used to public transparency and reporting, this element is extremely important.

It should also be highlighted that continuing obligations that apply post-listing on the capital market side are very intrusive and costly. For example, the requirement to publish regular market announcements and disclose financial statements are often disincentives to issue bonds and are often a key reason why issuers choose not to list on a public market. While it is important that certain requirements apply to ensure investor protection, the more regulation that is applied to them (both with the initial listing and on continuing obligations), the more cumbersome it is to issue a bond and potentially makes bonds less competitive from a cost perspective versus bank financing. We suggest a better balance needs to be reached between ensuring integrity of the market and investor protection and reducing the regulatory costs for issuers on SME GMs. In particular, the Market Abuse Regulation (MAR) regime is particularly onerous and cumbersome for SMEs. SMEs often have few employees which makes it even more challenging to meet the regulatory requirements and alleviations still remain quite poor for the SME GM from an issuer's perspective. It is often considered that the legal costs in preparing the bond documentation and carrying out the required due diligence for listing on a public market are prohibitive. Contractual documentation in private placements is standardised and perceived as much more cost effective.

FESE would have the following proposals to improve activity on SME GMs for debt trading.

The MAR provisions, in general, are deemed to be onerous for issuers of bonds as they are not sufficiently tailored to the characteristics of debt securities. We, therefore, urge ESMA and the European Commission to undertake further analysis to make this regime more appropriate for fixed income.

We support the proposal to include a cumulative issuance criterion not exceeding EUR 50 million over a period of 12 months. However, it is difficult for a market operator to verify if an issuer of bonds is or is not an SME because they do not have (full) access to the nominal value of the debt issuances of an issuer on all trading venues across the EU so suggest this should be undertaken by ESMA.

Moreover, the possibility for market operators to exempt issuers of bonds with a denomination of at least EUR 100 000 from the requirement to publish half-yearly financial reports should be extended to annual financial reports - otherwise, the SME GM regime continues to be stricter for these bond issuers, than the Regulated Market regime, which goes against recital (112) of the Commission Delegated Regulation (EU) 2017/565.

Issuers of bonds should not be required to make a statement on working capital in the admission document (Article 78 (2) (e) of Regulation 2017/565) – notably because issuers of

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80

bonds are not required to mention this information in a prospectus pursuant to the prospectus regime.

As a more general point on SMEs, if there were more arranging banks for SMEs, there would be more competition between them and better pricing for the placement.

In addition, potentially there could be some tax incentives created to stimulate SME activity.

One final technical point to note regarding SME GMs for fixed income is that article 90(2) B) of Regulation 2017/565 should not refer to "*OTF registered as a SME Growth Market*" (given that the label is reserved for MTFs).

Q2 - In your view, how could the visibility of SME GMs be further developed, e.g. to attract the issuers from other members states than the country of the trading venue?

FESE appreciates the amendments to the Market Abuse and Prospectus Regulation and the MiFID II Delegated Regulation that were recently adopted to facilitate access to capital for SMEs by introducing more proportionate rules for SME GMs. In particular, the revision of the prospectus rules was a very important step to reduce costs and burdens for companies whilst improving their access to financing. We especially welcome the amendment that allows issuers listed on SME GMs for at least two years who intend to transfer quotations to the Regulated Market, to only have to produce a simplified prospectus. This will be very beneficial for smaller companies in earlier stages of growth that are more dependent on local investors for financing.

However, while the intention behind creating SME GMs was to attract smaller companies to listing, feedback from FESE members indicate that there is no real increased interest from issuers to list on an SME GM compared to MTFs, since the difference in requirements is limited, making it hard to make the distinction and promote SME GMs. To deliver on the policy objective, we therefore consider that there should be further benefits for the SME GM label. We believe it is important to find a balance between **maintaining a liquid and trusted market with reduced burdens for issuers and adequate levels of investor protection**. SME GMs should retain a certain level of flexibility whilst ensuring efficiency and integrity. Overall, we think it is necessary to further enhance the attractiveness of capital market financing in certified growth markets for small and medium-sized enterprises. Therefore, it is appropriate to further simplify access to the capital market for SMEs and, as a result, to make technical adjustments to the European regulatory framework. We consider the conceptual implementation/execution - namely to reduce administrative and legal burdens as well as to reduce costs for the issuers and to increase the liquidity of equity instruments in SME GMs without endangering market integrity or investor protection – reasonable and expedient. However, the alleviations introduced in the recent legislation remain behind what we believe is necessary to strengthen the attractiveness of the SME GMs.

Our proposals for further alleviations and areas where further clarity would be beneficial are set out below and throughout this response.

Market Abuse Regulation (MAR)

We consider the alleviations available to issuers through amendments to MAR, to be of limited or marginal advantage to issuers. We believe that more significant alleviations are required to achieve the intended effects.

MAR obliges all issuers of financial instruments to notify the market of inside information. A more proportionate approach may be needed going forward as SMEs may be disincentivised by the comparatively high regulatory burden. Therefore, MAR should be further adjusted to allow for greater differentiation for SME GMs, including:

- the disclosure requirements, notably around information dissemination;
- the duty to react on rumours related to inside information;

- the level of detail of insider lists;
- requirements in relation to managers' transaction reporting;
- the interpretation of the necessary speed around an ad hoc announcement, depending on the actual announcement; and
- the very high level of sanctions.

It is also essential to differentiate between trading prohibitions and disclosure requirements.

In addition, the requirement under Article 33.3 of MIFID is not very clear where it states that member states shall ensure that MTFs are subject to effective rules, systems and procedures which ensure that the following is complied with, in particular in relation to point (e):

"issuers on the market as defined in point (21) of Article 3(1) of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in point (25) of Article 3(1) of Regulation (EU) No 596/2014 and persons closely associated with them as defined in point (26) of Article 3(1) of Regulation (EU) No 596/2014 comply with relevant requirements applicable to them under Regulation (EU) No 596/2014".

We consider that this can be misunderstood, as the surveillance of market abuse is a direct competence of the national regulators and not the operator of the MTF; for an MTF it is impossible to have *systems and procedures* which literally "ensure" the compliance of MAR by the issuers.

Prospectus

We welcome the provision to allow an issuer whose securities are admitted to trading on an SME GM continuously for at least the last 18 months to benefit from a simplified prospectus when raising further issuances. We suggest to clarify that this is calculated as of when the issuer was admitted to trading on the MTF (even without SME GM label at that time) rather than from the moment that the MTF obtains the SME GM label, as this will ensure issuers that meet this criteria can benefit from this provision as soon as possible.

SME Research

FESE also considers more work is required in the area of SME Research that will help improve the profiles of SMEs and the visibility of SME GMs in general, as set out in our response to Q 14.

3. Criteria for the percentage of issuers that should qualify as SMEs at the time of MTF registration as SME GM (Article 33(3)(a) of MiFID II)

Q3 - In your view does the 50% threshold set in Article 33(3)(a) of MIFID II remain appropriate for the time being as a criterion for an MTF to qualify as an SME GM? Do you think that a medium-term increase of the threshold and the creation of a more specialised SME GMs regime would be appropriate?

Yes, FESE believes the 50% threshold as set out in Article 33(3)(a) of MiFID II remains appropriate. We do not see the need for this threshold to increase in the medium-term as we do not believe the threshold is an issue. In addition, we do not support the idea of creating a different, more specialised SME GM regime – instead, we think further work is required to be undertaken with respect to the current SME GM regime and the specific alleviations that apply so that it becomes a more attractive proposition for SME issuers.

We would support further alleviations for SME GMs by raising the threshold for companies qualifying from an average market capitalisation of EUR 200 million to EUR 500 million. The current qualifying threshold for SMEs of EUR 200 million is too low as it only takes into consideration small enterprises and not mid-caps. This would help contribute to a strengthening of SME GM's ability to attract more companies, with the potential to increase liquidity on these markets.

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80

Q4 - Do you consider that a further alignment of the definitions of an SME in different pieces of regulation with the MiFID II definition of SME would be helpful? Can you provide specifics of where alignment would be needed?

Overall a consistent approach to the SME definition within EU legislation would be welcome. There are existing definition of an SME in MiFID II, the Prospectus Regulation and the ELTIF Regulation.

As mentioned above, we would support further alleviations for SME GMs by raising the threshold for companies qualifying from an average market capitalisation of EUR 200 million to EUR 500 million. The current qualifying threshold for SMEs of EUR 200 million is too low as it only takes into consideration small enterprises and not mid-caps. This would help contribute to a strengthening of SME GM's ability to attract more companies, with the potential to increase liquidity on these markets.

4. Criteria for initial and ongoing admission to trading of financial instruments of issuers on the market (Article 33(3)(b) of MiFID II)

Q5 - Which are your views on the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments? Are there requirements which should be specified?

FESE does not consider that the SME GM regime should be amended to introduce further harmonised requirements in relation to the requirements for initial and ongoing admission to trading. Exchanges should retain some flexibility to apply rules suited to local market conditions. Should this be harmonised, the intended proportionality SME GMs seek to provide for smaller issuers would suffer and it could result in increased costs for issuers.

It is important to consider that the local dimension, especially for smaller markets, is essential to cater for the specific needs of companies which are mostly SMEs. Moreover, regional Exchanges across Europe host a larger share of IPOs for smaller companies as these companies are likely to be local and seek investors more familiar with their business.

In relation to bond issuers, there are a few amendments to the requirements that we propose should be made, as set out in our response to Q1.

Q6 - Do you think it could be beneficial to harmonise accounting standards used by issuers listed on SME GMs with the aim of increasing cross-border investment?

Should accounting standards for issuers on SME GMs be harmonised, it is important that this is done in a proportionate manner to not disincentivise listing and that it remains voluntary for issuers to opt in to use this standard.

We would suggest that it is important to maintain flexibility in this area, so that should issuers seek cross-border listings, they can choose to adhere to the more harmonised standards. However, many SME issuers will always remain local and should still be allowed to apply the local national accounting standards if they wish to do so.

5. Criteria for the disclosure of appropriate information to the public (Article 33(3)(c), (d) and (f) of MiFID II)

Q7 - Should ESMA propose to create homogeneous admission requirements for issuers admitted to trading on SME GMs? Should such requirements be tailored depending on the size of the issuer (e.g. providing less burdensome requirements for Micro-SMEs)?

FESE does not consider that the SME GM regime should be amended to create homogenous admission requirements for trading. Exchanges should retain some flexibility to apply rules suited to local market conditions. Should these requirements be harmonised, the intended proportionality SME GMs seek to provide for smaller issuers would suffer and could increase costs for issuers.

It is important to consider that the local dimension, especially for smaller markets, is essential to cater for the specific needs of companies which are mostly SMEs. Moreover, regional exchanges across Europe host a larger share of IPOs for smaller companies as these companies are likely to be local and seek investors more familiar with their business.

Regarding the proposal to tailor the requirements for micro-SMEs, we suggest that this could over-complicate the current regime and that the focus should be on applying the most appropriate alleviations to make the current regime a more attractive one for SME issuers.

Q8 - Should ESMA suggest an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration?

No, FESE is of the view that there should not be an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration.

It should be noted that financial reports covering two years before, when available, is already included in the admission requirements, the prospectus or the registration document requested by most of the SME GM.

A more general point in relation to registering MTFs is that FESE members have had different experiences in terms of registering their SME GMs. While some members faced little difficulties, others indicated that it was a quite protracted process and that understanding certain requirements was difficult, for instance regarding the possibility to classify certain segments of an MTF as an SME GM, resulting in different interpretations and difficulties in implementation.

Our suggestion to facilitate registration would be to have a simplified process in place in cases where the entity applying for authorisation to register an SME GM is already operating a Regulated Market and/or and MTF. In those cases, a notification process to the competent authority should be sufficient.

In addition, one FESE member has experienced an issue as their SME GM received approval by the national competent authority and is operating but has not been listed in the ESMA database. FESE also notes that the ESMA database does not distinguish between MTFs and SME GMs.

Q9 - Is there any other aspect of the SME GMs regime as envisaged under MiFID II that you think should be revisited? Would you consider it useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format?

FESE does not consider that proposals for making periodic financial information available in a more standardised format would favour listing of SMEs. We share ESMA's assessment that this could represent a burden for smaller SMEs.

It is important to consider that the local dimension, especially for smaller markets, is essential to cater for the specific needs of companies which are mostly SMEs. Moreover, regional exchanges across Europe host a larger share of IPOs for smaller companies as these companies are likely to be local and seek investors more familiar with their business.

FESE supports measures facilitating sharing of company information, provision of information to investors, and that give companies visibility on a European basis. By facilitating access to information about companies in other Member States or regions, more cross-border investments could potentially be encouraged.

In the context of recent policy proposals on the potential creation of a European harmonised data repository for company reporting, a so-called EU Single Access Point, FESE considers that such an Access Point should include information disclosed by companies listed on Regulated Markets and SME GMs. The Single Access Point would facilitate access and availability of data about companies and as such serve as a basis for investors' assessments,

potentially informing their decisions. SMEs would benefit from pooling the information they disclose at a one-stop-shop: The SMEs' visibility would be increased and barriers to access capital reduced, overall ensuring and increasing their competitiveness. A Single Access Point could also serve as a starting point for the establishment of a European database for SME-research.

To increase integration but keep the project, efficient and manageable in terms of the administrative burden of data processing, the scope should be limited to disclosures stemming from the Transparency Directive for issuers listed on Regulated Markets or, in the case of issuers on SME GMs, the relevant disclosure documentation required. Should it extend to other requirements, it is important to consider that, depending on how it is implemented, this may introduce considerable extra costs for listed companies compared to non-listed ones as many reporting obligations do not apply to private companies and this would be a concern.

It will be important to ensure that any reporting requirement targets information that is useful. This is key to ensure there is an added value and that new reporting requirements do not simply come on top of currently existing ones but rather replace requirements currently in place i.e. to avoid gold plating, as we want to avoid any unnecessary additional costs. In parallel to establishing a Single Access Point, the Commission should take this opportunity to clarify certain disclosure requirements. The costs linked to a lack of clarity in the regulation should not be underestimated as risk-averse issuers (in particular SMEs) will consider the regulatory risks in choosing their financing options.

While some harmonisation of information may be required, this should be done in a proportional manner that does not negatively impact issuers, in particular SMEs, which may lack resources to report according to certain standards. It should, therefore, be considered that there is value added in pooling information in one place, even when the information may not be exactly the same. A differentiation between SME GM and Regulated Market issuers will be necessary, where, while they are both required to disclose similar information, they are still subject to different requirements. We would not support issuers on SME GMs being subject to the same requirements as issuers on Regulated Markets under the Transparency Directive. The approach needs to be tailored to the different markets.

In terms of approach, we suggest that a federal model would be best whereby ESMA maintains the central database but the information is still filed locally and flows through to the ESMA database. This way ESMA can set the requirements for reporting to become more standardised so that the data can easily flow through to the central database, while ensuring the local NCAs continue to be involved which is important for the local ecosystem. The responsibility for ensuring the new requirements are complied with should be made clear.

In view of fostering supervisory convergence and genuinely integrated capital markets, FESE considers that ESMA should be entrusted with the supervision and maintenance of such a database. However, supervision of reporting requirements should be performed by the respective NCAs. Different or even conflicting supervisory practices overall constitute barriers to cross-border operations and do not accelerate market integration.

6. Other measures to promote the growth of the SME GMs regime in the EU

Q10 - Do you think that in the medium term a two-tier SME regime with additional alleviations for micro-SMEs could incentivise such issuers to seek funding from capital markets? If so, which type of alleviations could be envisaged for micro-SMEs?

Instead of trying to create a two-tier SME regime, we suggest the focus should be on creating one regime with the most appropriate alleviations for all SMEs so that the current regime can be developed into a more attractive proposition for SME issuers.

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80

7. Other possible amendments to the SME GMs regime

Q11 - Do you think that requiring SME GMs to have in place mandatory liquidity provision schemes, designed in the spirit of what is envisaged in Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go public? Do you think that on balance such provision would increase costs for MTFs in a way which encompasses potential benefits, resulting in reducing the incentive to register as an SME GM?

While we fully support the objective of increasing liquidity in trading in SME securities, we do not believe there should be a mandatory liquidity provision scheme that is required to be implemented by the market operator. We believe it should be for the operator of the SME GM to determine the most appropriate scheme for its market.

Mandatory liquidity provision would mean an extra and significant cost for the MTF. This may also represent a serious difficulty for countries with no tradition of market making nor firms specialised in it. Alternatively, the issuer liquidity contract is an adequate tool to improve liquidity.

In addition, we welcome the new regime for issuer liquidity contracts on SME Growth Markets introduced in the Market Abuse Regulation as this is another element which should contribute to supporting and increasing liquidity for SME trading.

Q12 - Do you think the requirement in Article 33(7) of MiFID II regarding the issuer non objection in case of instruments already admitted to trading on SME Growth Markets to be admitted to trading on another SME growth market should be extended to any trading venue? Should a specific time frame for non-objection be specified? If so which one?

FESE supports the proposal to extend the 'issuer non-objection requirement for admission to trading' of SMEs to Regulated Markets and MTFs.

MiFID created unintended consequences for SMEs in terms of market fragmentation and fragmented liquidity. To address this, an SME issuer asking for the admission of its shares to the licensed public market should have the right to choose where to be traded to avoid fragmentation of already low liquidity, i.e. to limit the trading of its stock outside its primary market.

Q13 - Do you think that it should be specified that obligations relating to corporate governance or initial, ongoing or ad hoc disclosure should still hold in case of admission to trading in multiple jurisdiction?

Yes, we agree that this should be specified.

Q14 - How do you think the availability of research on SMEs could be increased?

FESE considers that measures should be taken to improve access to equity research on SMEs. Pre-MiFID II, research was supplied as part of a bundled service, paid by execution fees. Research post-MiFID II is required to be unbundled and priced separately from execution of trading of financial instruments.

A growing number of SMEs are paying independent research providers to write research and take the initiative in approaching investors directly. However, this is challenging due to potential conflict of interests and a lack of recognition and coverage limitations due to budget constraints. Some Exchanges have launched programs to cover the costs of SME research coverage and the first results suggest that it can create additional liquidity for listed SMEs.

A Pan-European program should be launched to cover the costs of research coverage based on the lessons learnt from these pilot programs. A possible additional way to improve the liquidity of SME shares would be to establish user-friendly platforms for analysts to share their reports on. Retail investors should also have access to such a platform.

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80

As a result of unbundling rules, fund managers are prevented from accepting research on small companies provided by brokers for free. The rules should be amended to allow brokers to send SME-research reports to fund managers without having to establish a research contract with them. In doing so, a threshold could be established for what should be considered an SME.

Access to equity research on SMEs could be improved by:

- Launching a Pan-European program to cover the costs of research coverage.
- Establish user-friendly platforms for analysts to share their reports on.
- Amend unbundling rules to allow brokers to send SME-research reports to fund managers.

Authorising the bundling of SME research would be the fastest way to increase production and distribution of independent reports and may have the biggest effect on the liquidity of SMEs.

8. RTS on liquidity contracts

Q15 - Do you agree with the proposed limits on resources or would you propose different ones? If so, please provide a justification.

The limits on the resources that issuers may make available to a liquidity provider are stated in Article 5 of the draft RTS on liquidity contracts and are based on the Points of Convergence document that ESMA published in 2017. The Points of Convergence establish that the maximum limit for illiquid securities can be 500% of the average volume traded in a certain period, or 1% of the capitalisation the day before the signing of the contract, both with the limit of EUR 1 million. However, the document under consultation (in the draft contract proposal) does not consider the second possibility (1% of capitalisation) but only the first (500% of the average daily volume). In our opinion, the draft contract proposal should also incorporate the possibility of 1% of capitalisation. We agree with the rest of the limits set out in Article 5 of the draft RTS.

On a general note, FESE considers that it should be the responsibility of the competent authority and not the market operator to monitor that the liquidity provider complies with its requirements. We would like to provide an overview of the current existing framework, explain the issue with some proposals and propose some potential solutions.

Existing practices: Liquidity Contracts / Market Making Agreements

The liquidity contracts referenced in MAR are signed between an issuer and an investment firm (issuer liquidity contracts) with the investment firm agreeing to provide liquidity for that specific issuer. The trading venue is not involved in the agreement of the issuer liquidity contract and National Competent Authorities (NCAs), not trading venues, have to be informed of the existence of these issuer liquidity contracts.
In contrast, market making agreements or liquidity provision contracts signed between trading venues and investment firms set out obligations for trading members to provide liquidity in the markets and a continued presence during the trading day. These agreements are focused on ensuring the continued liquidity in the market operated by the trading venue.

MAR requirement and the role of the market operator

The new MAR provisions, aimed at promoting the use of SME GM, stipulate that an issuer admitted to trading on an SME GM may enter into a liquidity contract for its financial instruments if a certain set of conditions are met. One of these conditions is that the market operator (operating the SME GM) acknowledges in writing to the issuer that it has received a copy of the liquidity contract and agrees to that contract's terms and conditions. FESE questions the legal basis for this requirement given the fact that the market operator is not a party to the issuer liquidity contract: it is unclear how regulatory compliance with the condition for market operators to *agree to the contracts' terms and conditions* can be delivered. While trading venues have a responsibility to ensure fair and orderly markets and they continuously monitor the quality and liquidity of its market; this does not involve

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80

agreeing to any commercial contracts between issuers and investment firms. Moreover, the market operator supervises the issuer of the SME GM concerning the conditions for inclusion and follow up on inclusion obligations but it is not part of the market operator's duties to supervise such issuers about its compliance with MAR. In fact, monitoring issuers with regard to MAR is the responsibility of the NCA.

Clarification on the role of market operators

We believe clarity is required on this provision and would welcome consideration of our view that the obligation on the trading venue only relates to the trading venue ensuring that the issuer liquidity contract would not impede the orderly functioning of the market.

Alternatively, if there is a need for the market operator to undertake any type of review of the provisions, market operators could only envisage ensuring that the contracts meet the specific template defined by ESMA in the related RTS. The market operator cannot be expected to give any consent to any (commercial) provisions added by the issuer and the broker that are not within the scope of the legislation.

MAR Accepted Market Practice Regime

We also believe it would be helpful to provide further clarity on how the new regime interacts with the current Accepted Market Practices regime already in place that will continue to exist under MAR. We would welcome clarification that:

- An issuer traded on an SME GM should still be able to benefit from a liquidity contract under an Accepted Market Practice and that, in such cases, the issuer should not be covered by the obligation of the new legislation;

Given many issuers traded on SME GMs have already signed a liquidity contract with investment firms and these contracts are known by the relevant NCA, it should be clarified that these can continue to be accepted under this new regime. These issuers should not be required to replace the existing contract by a "new contract" as this would lead to increased costs and burdens for issuers on SME GMs.

Q16 - Do you agree with the proposed limits on volumes or would you propose different ones? If so, please provide a justification of the alternative proposed parameters.

Yes, we consider that the proposed limits are adequate.

Q17 - Do you think that specific conditions should be added as regards trading during periodic auctions? For SME GMs following different trading protocols, are there criteria or safeguards which should be considered in order to make sure that the liquidity contract does not result in a manipulative impact on the shares' price?

Regarding the behaviour of liquidity providers during auction periods, we believe that a distinction should be made between liquid and illiquid securities. It cannot be the same limit for both. For very illiquid securities it may be that the amount that the liquidity provider puts up for in the auction makes the most part, even 100% on one of the sides. We, therefore, suggest putting a limit (of 20%, for example) for liquid values and a higher limit, 50% or even no limit for illiquid values.

Q18 - Do you agree with ESMA's view that the liquidity contract may cover large orders only in limited circumstances as described in paragraph 118?

We fully agree that block trades can benefit from the safe port provided by the liquidity contract, given that they are made through the market and comply with the limits established by the trading rules for this type of transactions.

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80

9. ITS on insider lists

Q19 - Do you agree with the proposal described above regarding the template for the insider list to be submitted by issuers on SME GMs? If not, please elaborate.

We support the proposed approach by ESMA for reducing the information required on insider lists. MAR obliges all issuers of financial instruments to notify the market of inside information. A more proportionate approach in terms of the level of detail of insider lists may be needed going forward as SMEs may be disincentivised by the comparatively high regulatory burden.

10. Preliminary high-level cost-benefit analysis, ITS on Insider List

CBA Q1 - Can you identify any other costs and benefits? Please elaborate.

N/A

FESE Avenue de Cortenbergh, 116, 1000 Brussels — info@fese.eu — +32 2 551 01 80