FESE

FESE position paper on the Listing Act proposal

28th April 2023, Brussels

FESE supports the European Commission's review of the European Union (EU) legislative framework for primary markets and its focus on strengthening capital markets.

We recall that the European IPO Task Force[1], Oxera[2], and the technical expert stakeholder group (TESG) on SMEs[3] found that European IPO markets continue to face several obstacles. Joint efforts from policymakers and the industry are needed to reverse the decline in listing and the recent delisting trend, in particular on the equity front. While a combination of factors, such as M&A activities and the development of private equity markets, are behind the decline in listings, the EU regulatory and compliance costs are also often cited as another major disincentive to go and remain public. The new Capital Markets Union (CMU) Action Plan[4] identified factors such as high administrative burden, high listing costs, and compliance with listing rules as discouraging many companies, especially SMEs, from accessing public markets.

Strong capital markets play a key role in economies as one of the most powerful drivers of growth and wealth creation. An important prerequisite for this is an attractive and vibrant listing ecosystem. In a scenario of high indebtedness, we support the Commission's efforts to incentivise equity-based financing. Economies where market-based funding plays a bigger role have greater environmental quality. Stock markets reallocate investment towards less polluting and more technology-intensive sectors[5]. However, deeper recessions and slower recoveries tend to follow credit-intensive expansions[6]. This makes public markets a cornerstone of the architecture of EU financial markets and underlines the importance of exchanges for the whole value chain.

We concur with the Commission that a good approach to reduce regulatory costs and administrative burden is a thorough review of the main existing primary market legislations (Prospectus Regulation, Market Abuse Regulation, and MiFID II/R). However, FESE believes that more can be done with the current proposal to aid the completion of the CMU project. Please see below an assessment of each section of the Commission proposal.

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[1] European IPO Report 2020, here.
[2] Oxera final report on "Primary and secondary equity markets in the EU", November 2020, here.
[3] "Empowering EU Capital Markets - Making listing cool again", Final report of the Technical Expert Stakeholder Group (TESG) on SMEs, here.
[4] European Commission, A Capital Markets Union for people and businesses-new action plan, click here.
[5] Ralph De Haas and Alexander Popov, "Finance and Carbon Emissions," ECB Working Paper Series (here)
[6] Òscar Jordà, Moritz Schularick, and Alan M. Taylor, "When Credit Bites Back," Journal of Money, Credit and Banking 45, no. 2 (December 1, 2013): 3-28 (here)

FESE's key messages on the Commission proposal

Prospectus Regulation

- FESE supports the standardisation of the prospectus for primary issuances. We are, in principle, in favour of introducing a page limit for equity prospectuses, and we support the option to publish a prospectus in English only (except for the summary) and in electronic format only. FESE also believes that the EU Growth Prospectus will benefit from further harmonisation and standardisation. We welcome the replacement of the existing Growth Prospectus with a new, standardised, EU Growth issuance document.
- We welcome the proposed additional exemptions for secondary issuances. We also welcome the proposed short summary document to be filed with the appropriate NCA for non-exempted secondary issuances. However, NCAs should not be allowed to ask for additional documentation.
- We support the proposed amendments to foster convergence of the scrutiny and approval process by NCAs, which are the appropriate authorities for this task.
- FESE suggests clarifying when and how an equivalence decision can be initiated and assessed for third-country issuers, avoiding a "race to the bottom".
- Any new disclosure documentation for debt securities which consider ESG factors or objectives should be viewed alongside the proposal for the EU Green Bond Standard.

Market Abuse Regulation (MAR)

- FESE is concerned about the possible negative implications of the establishment of a cross-market order book supervision (CMOBS) mechanism. The existing framework of ad hoc requests in cases of suspected market abuse seems appropriate and sufficient to achieve effective oversight. Furthermore, data from market participants in the bilateral trading space is not covered. Should the CMOBS mechanism be established, it should also apply to SIs and OTC transactions.
- FESE welcomes narrowing the definition of inside information as proposed. Furthermore, FESE believes that more concrete guidance from ESMA is needed. We believe the proposal on delaying the disclosure of inside information should increase consistency across the EU.
- We support the removal of the requirement for market operators to agree to the terms and conditions of liquidity contracts if they are not involved.
- FESE favours the proposal to raise the threshold for disclosure of managers' transactions to EUR 20,000 but suggests this should be harmonised at the EU level. Furthermore, we believe that only the minimum number of personal information fields necessary for supervisory purposes should be included in an insider list for SME GMs.

MiFID II

- Equity research is a necessary tool to increase the visibility of SMEs. FESE supports adjusting the threshold of companies' market capitalisation to coincide with a harmonised definition of an SME company, below which the unbundling rules do not apply.
- FESE proposes the minimum 10% free float requirement to apply only at the moment of listing of an issuer. We also propose there is room for flexibility (Art. 48(5) from the Listing Directive should be fully transposed into MiFID II).
- FESE proposes modifying article 33(7) of MiFID II to make it explicit that issuers admitted on an SME GM may only on their own request be admitted on another trading venue.

Multiple voting rights Directive

- FESE supports the Commission's proposed Directive on multiple voting rights and its de minimis approach at the EU level. We acknowledge that a multiple voting rights option would benefit SME companies. However, we also see merit in extending this option to regulated markets.

1. Prospectus Regulation

1.1. Simplification and harmonisation of the prospectus

In Europe, depending on the country of approval, the prospectus may not be easily accessible, particularly for non-local language speakers. The content is generally not available in English, except for the summary. The order and the wording of sections may vary, and the information is generally available in a non-machine-readable PDF format. Further, one corporate operation may give rise to multiple regulatory documents, fragmented into several PDFs (securities note, summary of the prospectus, registration document) that are disseminated on the website of the competent authority.

1.1.1. Standard prospectus

FESE welcomes the proposal of making more standardised and streamlined prospectuses for primary issuances. The inclusion of a clear unified format and sequencing will avoid further fragmentation by local disclosure regimes. We support the proposal to optionally publish a prospectus only in English (except for the summary), as the customary language in the sphere of international finance. The possibility to draft the prospectus in English would materially reduce the overall time that the company, the underwriters, and their respective counsels would need to prepare the offering documentation and permit focus on one document only, and, as a result, reduce the related costs for the issuers. Equally, we fully support the proposal to publish a prospectus only in electronic format, as long as the long-term availability of the text is ensured.

For an equity-focused prospectus, we are in principle in favour of introducing a page limit of 300 pages to avoid extra-length documents. However, we suggest there should also be a standard for content, layout, and font size. At the same time, we appreciate the Commission recognising the need for some flexibility on this limit for those complex businesses that might need to disclose more information. Equally, we also appreciate that this limit does not apply to non-equity prospectuses. Debt instruments possess different and more complex characteristics, for which a rigid page limit on the prospectus is not appropriate.

1.1.2. Growth Markets

SME Growth Markets (SME GMs) have the potential to develop an ecosystem across the EU that benefits smaller issuers, enabling them to raise money, grow, and create employment and wealth for investors and the wider society. While the intention behind creating SME GMs was to attract smaller companies to listing, feedback from FESE Members indicated that issuer interest in listing on an SME GM has not really increased compared to MTFs, as the requirements are only slightly different, making it difficult to see the added value and promote SME GMs. As for the standard prospectus, FESE also believes that the EU Growth Prospectus will benefit from further harmonisation and standardisation. We welcome the replacement of the existing Growth Prospectus with a new, standardised, EU Growth issuance document. We appreciate that it follows the same policy principles as the standard prospectus, with reduced disclosure requirements that better fit SME issuers.

1.2. Secondary issuances

FESE welcomes further exemptions for secondary issuances. This is especially the case for fungible securities that are already admitted to trading on a regulated market or on an SME GM. The exemption threshold of 40%, for both regulated markets and SME GMs, of the number of securities already admitted to trading on the same market is appropriate.

FESE voiced its support for policies that would allow an issuer whose securities are admitted to trading on a regulated market or an SME GM continuously for at least the last 18 months to benefit from a simplified prospectus when raising further issuances. Especially since listed companies already comply with transparency requirements providing the market with some

of the information incorporated in a prospectus: the financial information, the operating and financial review to the market on an ongoing basis. The preparation of a simplified disclosure in connection with a secondary issuance is less burdensome and would be sufficient from an investor protection perspective. We previously proposed that the Recovery Prospectus could be used for this purpose, as well as for those SME issuers ready to migrate from an SME GM to a regulated market. We nevertheless also welcome the proposed short summary document as drafted in Annex IX to be filed with the appropriate national competent authority (NCA). In this context, we believe that NCAs should not be allowed to ask for additional documentation, over and above what is required under the new proposed EU regime. Otherwise, some Members States will naturally tend to return to national disclosure cultures, nullifying the EU policy objective. We suggest there could be more clarity provided in relation to this provision. For example, there could be more detail on the statement of compliance and the role of NCAs. It may also be helpful if ESMA was empowered to issue guidance on the circumstances where this exemption will not apply, so as to ensure NCAs take the same approach.

Finally, we appreciate that additional safeguards are necessary for non-fungible securities follows on and other secondary issuances that do not fall under existing exemptions. FESE welcomes the new Follow-on Prospectus regime, which should simplify and standardise the existing secondary issuance regime.

1.3. Scrutiny and approval of the prospectus by NCAs

Overall, we believe in the primacy of the autonomy of NCAs, appropriately complemented with direction and oversight by ESMA. Peer reviews can be a helpful tool in identifying issues, and strengthening supervisory convergence. We nevertheless strongly advocate a harmonised approach to the specific documentation that is required by the Prospectus Regulation as we are aware that certain jurisdictions require additional burdensome information in certain cases. For these reasons, we support the proposed amendments aimed at fostering the convergence of and streamlining the scrutiny and approval process by NCAs (for example, by narrowly framing the ability of NCAs to request issuers to include additional information in the prospectus).

1.4. Equivalence regime for third-country issuers

The Commission is clarifying that, in the case of an admission to trading on a regulated market or an offer of securities to the public in the Union, equivalent third-country prospectuses that have already been approved by the third-country supervisory authority, are only to be filed with the competent authority of the home Member State in the Union. We would like to convey that the criteria for the establishment of equivalence should be well defined and balanced, to avoid a detrimental “race to the bottom” to the competitiveness of national jurisdictions and the CMU overall. On the other hand, we also recognise the amendments are aiming to make this regime more workable.

FESE suggests it could be beneficial to set out more detail on when and how an equivalence decision can be initiated and assessed, and the timeframe for such a decision to be made, to address some of the issues identified with the previous regime for third countries.

1.5. New ESG content requirements

According to the proposal, the Commission will be empowered to adopt delegated acts setting out prospectus content requirements (i.e. in the disclosure annexes) taking into account (i) (in case of a public offer or admission to trading on a regulated market of equity securities) whether the issuer is subject to the proposed Corporate Sustainability Reporting

Directive, and (ii) whether debt securities are advertised as taking into account ESG factors or pursuing ESG objectives. These developments need to be closely monitored, in particular for debt capital markets. We would ask for more detail on the intention of this proposal.

Any new disclosure documentation for debt securities which take into account ESG factors or pursue ESG objectives should be viewed alongside the proposal for the EU Green Bond Standard (which is currently being negotiated). Additional disclosures requirement should be subject to a detailed impact assessment to avoid detrimental and unintended consequences to the sustainable bond market and the sustainable agenda.

1.6. Other points

- FESE supports the harmonisation of the exemption threshold in Article 3(2) at EUR 12 million, below which offers of securities to the public do not require publishing a prospectus. We acknowledge the need for some flexibility at Member States to require, in these circumstances, other disclosure requirements at the national level. However, such requirements should not constitute a disproportionate or unnecessary burden to issuers. We appreciate the proposal recognises the issue, although further specific wording might be necessary. We see a concrete risk for Member States to fall back into national disclosure cultures, with significant fragmentation between the type and the depth of information requested by NCAs.
- FESE supports making permanent the exemption threshold in Article 1(4)(j) of EUR 150 million to exempt offers of non-equity securities issued in a continuous and repeated manner by credit institutions from the obligation to publish a prospectus.
- We propose to include subscription rights as one further exemption. Even though a subscription right is not of the same class as the share listed, it is closely connected to it with a right entitled to it. Hence, they are another example of where information on the issuer has already been disseminated and there should be no need to produce the same information again. An exemption for subscription rights would encourage issuers to arrange issuances targeted to all shareholders instead of a narrower group of professional/institutional investors.
- FESE supports the proposal to clarify that supplements are not required in the case of the publication of financial statements. However, as this has become common practice for most issuers, mainly for liability reasons, it remains to be seen if issuers will change their approach in the future. Furthermore, the removal of the obligation to have a materiality ranking of the risk factors should also simplify and streamline the drafting of prospectuses.

2. Market Abuse Regulation (MAR)

2.1. A proportionate MAR regime

FESE believes that the current MAR framework does not provide a sufficient level of legal certainty and does not always strike the right balance between the need to ensure market integrity and placing too onerous rules on issuers. In this context, FESE welcomes the measures proposed by the Commission to reduce the administrative burden for already listed issuers. However, FESE believes that there is scope for further alleviations, which would not come at the expense of market integrity and investor protection. This is the case, for example, of SMEs listed in GMs, where the regulatory burden could remain overwhelming in certain instances, making the overall market less competitive.

2.2. Cross-market order book supervision mechanism

FESE is concerned about the possible negative implications of the establishment of a cross-market order book supervision (CMOBS) mechanism. This proposal aims to allow NCAs to exchange order book data on an ongoing basis collected from trading venues to detect market abuse in a cross-border context. While FESE strongly supports the need for effective cross-market surveillance, these changes could entail significant efforts, costs, and uncertainties, and there is no solid evidence that these changes will be overweighed by the potential benefits. For instance, ESMA mentioned in its final MAR Report that mandatory reporting is not "a necessary step for the time being" and that it is not difficult for NCAs to request order book data[7]. In our view, the existing framework of ad hoc requests in cases of suspected market abuse seems appropriate and sufficient to achieve effective oversight. Therefore, we recommend that a comprehensive impact assessment, which takes due account of the broader impact on the industry, should be carried out.

With the current proposal, ESMA and NCAs would not have a complete picture of trading activities for the purpose of the CMOBS. Data from market participants in the bilateral trading space − Systematic Internalisers (SIs) and OTC deals − is not covered. All transactions, on multilateral and bilateral trading systems, can be negotiated based on non-equal manipulated terms (such as share prices), or be the result of potential insider trading. SIs and OTC nowadays represent a significant proportion of trading and they are often dependent on information from multilateral trading systems. Not requesting the same information from SIs and OTC as from regulated markets and MTFs poses a risk to market integrity. This calls the usefulness of the proposed mandatory reporting regime into question and appears to ignore that MAR does not differentiate between execution venues or the mode of execution but is activity-based by referring to concrete transactions or behaviours. In this respect, should the CMOBS mechanism be established, it should also apply to SIs and OTC transactions for the sake of effective market surveillance across different trading mechanisms and to avoid an unlevel playing field. FESE believes it would be appropriate to rather combine information from trading venues and OTC to pursue specific cases to better determine whether market manipulative behaviour can be identified, as targeted data which can be analysed in context can support monitoring efforts.

Finally, FESE agrees with the Commission that order book data formats could benefit from further standardisation. This will allow for more flexible amendment of information, easier validation by trading venues, and easier processing for regulators. However, it should be ensured that the design of these templates does not impose unnecessary burdens and costs on NCAs and trading venues. It will be important for ESMA to work closely with stakeholders on these developments to ensure that any proposed changes do not result in significant additional costs. We suggest this should be explicitly mentioned in the proposal. In addition, standardised pre-trade information requirements should apply to all execution venues, such as SIs, and a prolonged transition phase (at least 24 months) is essential to allow the market to develop and adapt to the new provisions.

2.3. Definition of inside information

FESE welcomes the Commission's efforts to narrow and clarify the definition of inside information, as previous feedback from issuers indicated that several aspects were subject to discussion and uncertainty. We hope that the content of the Commission's Delegated Act

[7] ESMA MAR Review report, 2020, click here.

with the non-exhaustive list of relevant information will ultimately assist issuers. Furthermore, FESE believes that more concrete guidance from ESMA is needed to further clarify the applicability of the definition of inside information.

Issuers would benefit from further clarification in the form of a technical standard or ESMA recommendations regarding the definition of inside information:

- Clarity on the meaning of "significant effect" and the "reasonable investor".
- Clarity on the likelihood of an event to consider the information to be of a "precise nature". It is challenging for issuers to assess how likely an event should be for the information to be of a "precise nature". More guidance on this notion would be helpful in harmonising the view of when information becomes inside information.
- Clarity on the "non-public" dimension, meaning that the information must be non-public to constitute inside information in relation to information that has been made public by someone else than the issuer.
- Clarity on how the definition of inside information - directly or indirectly related to an issuer – relates to the obligation under Art. 17 MAR to disclose inside information that directly concerns the issuer.
- Clarification of the maturity of the information to be able to identify the moment when the information becomes "inside information" to avoid the risk of publishing information which is not yet mature enough.
- As regards to issuer admitted to trading on an SME GM or MTF, it would be appropriate to revise the application of MAR from the first day of trading, instead of from the day on which the application for admission to trading is submitted.
- The disclosure of inside information in connection with financial (interim) reporting and outlooks. For example, preliminary figures from financial interim reporting can be inside information if they deviate significantly from either the published outlook, the market expectations or the previous year's figures.

2.4. Delay of disclosure of insider information

Regarding delayed disclosure, feedback from issuers indicates that it is also burdensome for them to assess the conditions to delay disclosure of inside information. We believe the Commission's proposals should hopefully increase consistency across the EU and avoid possible differences in interpretation. We also agree with the revised timing of notification to the NCA regarding the decision to delay the disclosure.

2.5. Liquidity contracts

We support the Commission's proposal to remove the requirement for market operators to agree to the terms and conditions of liquidity contracts if they are not involved. The issuer liquidity contract agreements are defined by issuers and investment firms, and while NCAs must be informed of their existence, trading venues are usually not involved.

2.6. Managers' transactions

FESE favours the Commission's proposal to raise the threshold for disclosure of managers' transactions from EUR 5,000 to EUR 20,000. However, we question the possibility for competent authorities to increase the threshold up to EUR 50,000. We believe the threshold should be harmonised across the EU both for Regulated Markets and SME GMs as these differences could ultimately act as barriers to cross-border financing activities.

2.7. Insider lists

FESE believes that the requirements of Art. 18 of MAR are an important instrument for preventing market abuse. However, the effort required to create an insider list can be cumbersome for small companies with limited resources. In our view, only the minimum number of personal information fields necessary for supervisory purposes should be included in an insider list for SME GMs (beyond Regulation (EU) No 2019/2115 on the promotion of SME GMs) as long as it is possible to conclusively identify a specific individual. For example, a national unique identifier such as social security number could be sufficient for the NCA to identify an individual. Fields such as professional and personal telephone number(s) (direct and mobile), and personal full home address could be removed. It could also be considered to remove the "expected disclosure" date requirement when disclosure is delayed as we are aware that many issuers find this confusing and difficult to estimate, and it may not hold much value to NCAs.

2.8. Other points

- FESE shares the views of the Commission on the importance of sound cooperation between competent authorities where there are concerns about market integrity or the smooth functioning of markets. However, the text of Art 25(b) on the collaboration platforms to be established by ESMA is unclear as to the practical implications for market participants such as trading venues. Further clarifications on these aspects would be welcome.

3. MiFID II

3.1. Equity research

We believe that equity research is a necessary tool to increase the visibility of SMEs and should therefore be promoted. ESMA also noted that SMEs continue to be characterised by a lower amount of analyst research, a higher probability of losing coverage, worse quality of research, and limited secondary market liquidity[8]. Hence, policies aimed at increasing equity research production for SMEs are welcome.

Since the application of MiFID II and its provision on the unbundling of research, a growing number of SMEs are paying independent research providers to produce research and are taking the initiative to approach investors directly. Some exchanges have also launched programmes sponsoring and enhancing SME research. Given these developments, we agree that a regulated EU label for “issuer-sponsored research” will bring fair and accurate information to investors.

FESE supports adjusting the threshold of companies’ market capitalisation to coincide with a harmonised definition of an SME company, below which the unbundling rules do not apply. This will ensure that only equity research on non-SME companies is captured by the unbundling rule. Harmonising the thresholds will increase the difference between an SME and a non-SME and thus the attractiveness for a company to be labelled as an SME.

[8] ESMA, MiFID II research unbundling: assessing the impact on SMEs, 2021, click here.

3.2. Free float

We agree that 10% may be an appropriate baseline for free float, but we propose there is room for flexibility both at the time of listing and later during a company's life on the public market.

In the broader context, the free float is not the only factor that matters for ensuring liquidity and it should not be over-emphasised. Liquidity is a fundamental condition for a company when being listed on a public market, ensuring that investors can buy and sell the shares at the correct price and supporting opportunities for secondary capital raisings. The free float is one of the measures among many to ensure liquidity. Other factors are the size of a company, the value of the free float, the number of shares and their distribution. Also, working with liquidity providers matters. In the overall decisions about listing a company, and maintaining the listing, a rigid minimum free float will not benefit the market.

A strict legislative percentage raises questions about the consequences of falling below the threshold. Consequences need to take into account the broader market functioning and in particular investor protection. An abrupt delisting, for instance, would damage investors and adds legal requirements and operational risk for the market operator. The proposal is not fully clear on the monitoring of the proposed 10% free float requirement and the consequences of falling below it. A framework which provides for additional flexibility including decisions to be taken by the market operator would allow actions relating to too low free float to be taken for each case, taking all factors into account, including importantly investor protection.

FESE proposes the minimum 10% free float requirement to apply only at the moment of listing of an issuer. We do not see which measures a trading venue can undertake in order to ensure the minimum free float percentage without incurring significant monitoring costs and compliance increases. Furthermore, the Listing Directive foresee an exception in Article 48(5) whereby the minimum free float requirement does not apply in case the market can operate properly with a lower free-float percentage. We agree with this level of flexibility and suggest transposing the same wording into MiFID II in Article 51a. In addition, we suggest further defining the phrase "held by the public" since it could be interpreted in various ways.

3.3. Secondary Listings outside of the primary market

SMEs are key drivers of economic growth, employment, innovation, and tax revenue in Europe and play a key role in the European economy. Financing via capital markets and IPOs contributes to supporting SMEs on their growth path. At the same time, SME shares are predominantly traded by retail investors located in the same geographical area.

Liquidity is a key factor for the successful use of capital markets for financing growth. Issuers, liquidity providers, market operators, etc., all aim to ensure that there is sufficient liquidity for each share on the market. Liquidity in regulated markets and SME GMs can range from very low to very high for different companies. Shares in SMEs are often illiquid by nature as they have a smaller market capitalisation and a lower trading volume. Issuers of an SME should always have the right to protect the order book from fragmentation of trading and thinner of the overall liquidity as a result of a dual listing. Thin liquidity leads to wider spreads and, as a result, to a deterioration of price formation. This, in turn, has a negative impact on companies' ability to raise capital, both for companies already listed on an SME GM and for those that intend to go public in the future. Furthermore, a secondary listing that reaches the same group of potential investors leads to other negative consequences for the functioning of the financial market in addition to thinning liquidity.

FESE believes that article 33(7) of MiFID II needs to be amended to make it explicit that issuers admitted to trading on an SME GM may only on their own request be admitted to trading on another SME GM, MTF, or regulated market. While this possibility should be

maintained, the explicit consent from the SME issuer is a further safeguard to protect order books for illiquid SME shares. ESMA has, after thorough consultation and analysis, concluded this amendment is necessary[9], while the Listing Act proposal omitted this important change without explanation.

4. Multiple voting rights Directive

To encourage companies to list without obliging owners to relinquish complete control of their companies, multiple voting rights shares have been used in several EU countries and have been highlighted as an efficient control-enhancing mechanism. For example, the Netherlands designed a national regime allowing multiple voting rights shares and, as a result, it became a more attractive listing destination. This did not seem to decrease the market's quality, corporate governance standards, or investor protection. In the Nordics, there are also long traditions, positively regarded, of multiple voting rights shares. They provided strong and stable ownership and efficient long-term planning of business development. They also facilitated access to finance for growth companies while allowing owners to retain some control. Nordic company law frameworks offer solid protection to investors not holding multiple voting rights shares and these capital markets are considered well-performing. Furthermore, many third countries, like the US and the UK, already permit such multiple vote share structures. Promoting the possibility to design multiple vote share structures across the EU could facilitate the transition of companies from private to public markets and is one step in an extensive process to make EU capital markets more competitive vis-à-vis other third countries.

FESE supports the Commission's proposed Directive on multiple voting rights, which will introduce provisions into EU law for issuers who wish to benefit from this option. As mentioned above, we acknowledge that some Member States already possess a mature multiple-voting share structure with different technical characteristics depending on the jurisdiction. For this reason, we agree on the *de minimis* approach and the incorporation of this EU initiative into a Directive, rather than a Regulation. Member States should adapt the EU regime to the needs of their local markets. This includes the option of providing further safeguards to ensure adequate investor protection.

From an investor protection angle, we understand that there are some concerns with this proposal, so it is important to ensure the voting right structure is framed appropriately and there are clear disclosures to the market. However, we also believe that installing an effective system of safeguards would prevent cemented management structures, internal abuse of power, and conflict of interests. Member States are the appropriate legislators to adapt a high-level EU system to their local market needs and investor protection practices. With the appropriate system and disclosures in place, investors (both retail and institutional) can freely decide whether a multiple voting right share is suitable for their investment strategies.

We acknowledge that a multiple voting rights option would benefit SME companies the most, whereby controlling shareholders can retain decision-making powers in the company founders after listing. However, we also see merit in extending this option to regulated

[9] ESMA, "MiFID II review report on the functioning of the regime for SME Growth Markets" (April 2021, here). ESMA argues that "Such extension, which would allow issuers who are already admitted to trading in an SME GM, to object to being traded on another trading venue, would be beneficial in reducing the risks of fragmentation of liquidity and provide the issuer with some control over the risk of split liquidity." (p. 24)

markets as well. No distinction should be made as to how or where the company is listed, and an issuer's decision for a certain type of venue for its listing should not be skewed by the (non-)availability of a multiple vote share regime. Furthermore, the current approach could create an unnecessary barrier to companies wishing to transfer from an SME GM to a regulated market or an MTF. It is unclear why the proposal only applies to SME GMs, excluding RMs. A system that limits these multiple vote structures to SME GMs only would discourage issuers with long-term growth strategies and increase legal uncertainties as to what would happen post-migration to the main market. Finally, we also suggest the transposition timeline should be reduced to 1 year. We do not see the need from a compliance or technical perspective to have a longer implementation timeline.

5. "Official listing" regime from the Listing Directive

Introduced in 2001, the Listing Directive (Directive 2001/34/EC) was the first step in harmonising rules in the EU concerning listing and admission to a stock exchange. The Directive was the legislation underpinning the "official listing" regime in European markets. It consolidated the measures concerning the conditions for the admission of securities to official stock exchange listing and the ongoing financial information that listed companies must make available to investors. Over the years, many of its provisions were transferred to newer Directives and Regulations. This is the case for the Prospectus Regulation, the Transparency Directive, MiFID II/R, and the Market Abuse Regulation. However, some other important functions are still used today, namely the minimum free float requirement, the minimum market capitalisation threshold for companies to go listed, and the official listing regime. While FESE supports the transposition of the first two provisions into MiFID II (i.e. the minimum free float requirement and the minimum market capitalisation threshold for companies to go listed), the use and functioning of the official listing regime has, due to minimum harmonisation, brought a variety of outcomes depending on the different EU jurisdictions and how this regime is transposed into national law.

The regime governing admission to the official listing (Title II Listing Directive) is different from the "admission to trading" defined in MiFID II. The national regime transposing the Listing Directive provides some flexibility that the admission to trading does not. Some jurisdictions still rely today on the legal basis of the Listing Directive for "listing" securities on their markets. This is particularly relevant in some instances for fixed-income markets in one of our jurisdictions, where the listing (only) of securities is an alternative for EU and non-EU issuers. In those jurisdictions, having an official listing concept, alongside admission to trading, helps to provide and enhance the opportunity for issuers to have visibility and promote access to capital markets. "Official listing" can also act as a gateway for innovation, centralising the documentation for security tokens where some securities cannot yet be admitted to trading from a legal or regulatory perspective, and for which investors may struggle to access information. Another point to consider is the costs and operational risks that trading venues, issuers, and investors, who currently rely on this regime, would have to bear in case of the repeal of the Listing Directive. The Impact Assessment prepared by the Commission is silent on the impact the proposed repeal could have on non-equity markets since, overall, it has a focus on equity markets. Thus, the proposal to repeal the Listing Directive should also be carefully assessed through a non-equity lens.

In contrast, other jurisdictions believe that the Listing Directive, in its current state and with the other pieces of legislation in place as mentioned above, does not achieve a sufficient level of harmonisation anymore and can bring legal confusion with the admission to trading from MiFID II. Member States transposed the "official listing" regime with different unharmonised provisions and, today, most countries do not rely on it anymore for admitting issuers on capital markets. Since the focus of EU legislation shifted to admission to trading for several years, rather than listing per se, the repeal of the "official listing" regime may

seem a natural approach to further harmonise and integrate European capital markets building on the CMU agenda.

Against this backdrop, given different jurisdictions currently take different approaches to the “official listing” regime, FESE is revising its previous statements on the matter and does not express a concluding position on the repeal of the “official listing” regime. However, we invite EU policymakers to carefully balance the pros and cons as explained in this section for their final decision.