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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion  
of the use of SME growth markets**

{COM(2018) 331 final} - {SEC(2018) 247 final} - {SWD(2018) 244 final}

# Table of Contents

Table of Figures.....	3
Glossary.....	4
1 Introduction: Political, legal and market context.....	5
1.1 Legal background .....	5
1.2 Policy context .....	7
1.3 Market context.....	10
1.3.1 A persistently low and concentrated SME IPO activity.....	10
1.3.2 Underdeveloped SME bond markets .....	11
2 Problem definition .....	11
2.1 What are the problems .....	12
2.1.1 Supply side: high compliance costs for listed SMEs .....	12
2.1.2 Demand side: Insufficient liquidity on SME-dedicated markets .....	13
2.2 What are the problem drivers?.....	15
2.2.1 Administrative and regulatory burden on SME issuers stemming from the application of MAR and the Prospectus Regulation.....	15
2.2.2 Inadequate definition of SME Growth Markets.....	18
2.2.3 Lack of schemes (mechanisms) to promote trading and liquidity on SME Growth Markets .....	20
2.2.4 Out-of-scope drivers.....	21
2.3 Consequences: less capital raised by SMEs on public markets.....	21
2.4 Wider consequences .....	23
2.5 How will the problem evolve?.....	25
3 Why should the EU act? .....	26
3.1 Legal basis .....	26
3.2 Subsidiarity: Necessity of action of the European Union.....	26
3.3 Subsidiarity: Added value of EU action .....	27
4 Objectives: What is to be achieved?.....	28
5 What are the available policy options?.....	28
5.1 What is the baseline from which options are assessed? .....	29
5.2 Policy options addressing administrative compliance costs.....	30
5.2.1 Options under the Market Abuse Regulation.....	30
5.2.2 Options under the Prospectus Regulation .....	32
5.3 Policy options concerning the SME Growth Market definition .....	32
5.3.1 Defining criteria and thresholds for equity and debt-only issuers .....	32
5.3.2 Half-yearly reports .....	33

5.4	Policy options to address liquidity on SME Growth Markets .....	33
5.5	Options discarded at an early stage .....	34
6	What are the impacts of the policy options?.....	34
6.1	Policy options addressing administrative compliance costs .....	34
6.1.1	Market Abuse Regulation .....	34
6.1.2	Prospectus/ transfer of listing from an SME Growth market to a regulated market .....	41
6.2	Policy options concerning the SME Growth Market concept .....	43
6.2.1	SME Growth Market defining criteria and thresholds .....	43
6.2.2	Half-yearly report.....	48
6.3	Policy options to address liquidity in SME Growth Markets .....	50
7	Preferred option .....	53
7.1	Overall impact of the preferred option .....	53
7.2	Macro-economic impacts .....	56
7.3	Small and medium-sized enterprises .....	57
7.4	UK leaving the EU .....	57
7.5	EU and Member State budgets .....	58
7.6	Social impacts.....	58
7.7	Impact on third countries .....	59
7.8	Environmental impacts .....	59
7.9	Impact on competitiveness .....	59
7.10	Coherence .....	59
7.11	REFIT (simplification and improved efficiency) .....	60
8	How will actual impacts be monitored and evaluated? .....	61
	Annex 1: Procedural information .....	63
	Annex 2: Stakeholder consultation.....	65
	Annex 3: Who is affected and how?.....	77
	Annex 4: Definitions .....	82
	Annex 5: Out-of-scope drivers .....	84
	Annex 6: Discarded options .....	87
	Annex 7: Additional Market Background .....	90
	Annex 8: The impact of developed SME Growth Markets on the whole funding escalator of companies.....	92
	Annex 9: business models of SME brokers and liquidity issue .....	95
	Annex 10: Implications of the European Tick Size Regime for liquidity on SME Growth Markets .....	96
	Annex 11: Market Abuse data received from National Competent Authorities .....	99
	Annex 12: Determining the appropriate debt issuance size to define an SME issuer on debt-only SME Growth Markets .....	100

Annex 13: Market Data collected from European MTFs .....	102
Annex 14: The current regulatory environment of 'SME Growth Markets' .....	110
Annex 15: EU Acts and alleviations granted to SME Growth markets issuers .....	112
Annex 16: Assessment of Policy Options - Synthesis Table .....	113
Annex 17: Explanatory graph on the extension of the time-period to disclose managers' transactions .....	114

## TABLE OF FIGURES

Figure 1 - Legislative scope of regulated markets vs. SME Growth Markets .....	8
Figure 2 – SME Listing Package actions and objectives .....	10
Figure 3 – IPO values, number of IPOs, average capitalisation and average number of listed companies on European junior markets.....	11
Figure 4 – Comparison of selected alternative markets: turnover ratio .....	14
Figure 5 – Comparison of selected regulated markets: turnover ratio .....	15
Figure 6 – Companies moving from SME-dedicated markets to regulated markets .....	18
Figure 7 – Average annual value of shares traded by market cap band, AIM .....	19
Figure 8 – Initial Public Offerings and Secondary Public Offerings by Growth Companies in Advanced economies (Billions, USD, 2014) .....	23
Figure 9 – Problem tree .....	26
Figure 10 – Average market capitalisation of companies listed on a selection of SME-dedicated MTFs.....	47
Figure 11 – Average value of outstanding issuances per issuer per year .....	48
Figure 12 – Summary of the preferred options .....	56
Figure 13 – Distribution of retail and institutional investors in selected EU MTFs vs. regulated markets .....	91
Figure 14 – Distribution of domestic and foreign investors in selected EU MTFs vs. regulated markets .....	91
Figure 15 – Free float requirement and minimum capitalisation on EU SME-dedicated MTFs .....	92
Figure 16 – Evolution of market capitalisation segments .....	94
Figure 17 – Average brokerage fees by market capitalisation .....	96
Figure 18 – Tick sizes mandated by Commission Delegated Regulation 2017/588 for liquidity bands and price ranges respectively.....	99

## GLOSSARY

<i>Acronym</i>	<i>Meaning or definition</i>
AMP	Accepted Market Practice
CEE	Central and Eastern Europe
CMU	Capital Markets Union
CRA	Credit Rating Agency
CSDR	Central Securities Depositories Regulation
EGESC	Expert Group of the European Securities Committee
ELTIFs	European long-term investment funds Regulation:
ESMA	European Securities and Markets Authority
EU	European Union
GAAP	Generally accepted accounting principles
HFT	High-Frequency Trading
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IBO	Initial Bond Offering
IFRS	International Financial Reporting Standards
IPO	Initial Public Offering
MAR/MAD	Market Abuse Regulation/Directive
MiFID II	Markets in Financial Instruments Directive II
MTF	Multilateral Trading Facility
NCA	National Competent Authority
OECD	The Organisation for Economic Co-operation and Development
PCA	Person Closely Associated
PDMR	Person Discharging Managerial Responsibilities
PE	Private Equity
PP	Private Placement
PR	Prospectus Regulation
RM	Regulated markets (also called 'main markets')
SME	Small and medium-sized enterprise
STOR	Suspicious Transaction and Order Reports
TFEU	Treaty on the Functioning of the European Union
VC	Venture Capital

## 1 INTRODUCTION: POLITICAL, LEGAL AND MARKET CONTEXT

The Capital Markets Union (CMU) initiative aims at diversifying sources of financing for European companies, in order to stimulate investment, economic growth, job creation and sustainable development. Through both the CMU Action Plan and CMU Mid-Term Review, the Commission adopted many proposals to foster corporates' access to capital in their early development stages, including the review of EU regulations on venture capital<sup>1</sup> and the proposals on crowdfunding<sup>2</sup>. In order to further ease companies' growth and scaling up, more needs to be done at the following stage, i.e. to raise capital on public markets. Although listing on a regulated market is more suitable for large firms, small and medium-sized enterprises (SMEs) can list their shares and bonds on so-called junior markets. These markets are important precisely as they make the link between private equity financing and the main public markets. Over the past decade, however, most of these junior markets in Europe have been struggling. Among other factors, the lack of SME visibility towards investors, low levels of liquidity, SMEs' insufficient knowledge of the listing process and high compliance costs can explain why few SMEs seek financing on public capital markets.

This Impact Assessment accompanies a proposal for a regulation and a Commission Delegated Regulation that would tackle certain regulatory impediments for issuers on junior capital markets. In particular, it examines a number of technical amendments aiming to reduce the regulatory burden on SMEs listed on public markets and to enhance the liquidity of these markets. These targeted changes will not fully revive junior markets in Europe on their own. Nevertheless, they address regulatory barriers flagged by stakeholders as inhibiting SME access to public markets. They do so whilst preserving the highest standards of investor protection and market integrity. Moreover, the adjustments should be considered to be only one part of a broader package of measures, the 'SME listing package'<sup>3</sup>, which also targets the remaining issues preventing SMEs from raising capital on public markets. Any changes proposed as a result of this analysis should therefore be understood as a first step in the right direction, and not as a single remedy in itself. While this impact assessment considers the problems that can be tackled through regulatory amendments, the other measures making up the SME listing package are non-regulatory.

### 1.1 Legal background

When companies choose to raise capital through the issuance of shares or bonds in the EU, they can do so either on regulated markets ('RMs', also called 'main markets') or on a Multilateral Trading Facility (MTF)<sup>4</sup>, both categories being defined by the Markets in Financial Instruments Directive II (MiFID II). While either type of market is accessible to companies of all sizes, regulated markets are generally more appropriate for large and mature businesses. Listing on these markets will provide access to deeper pools of capital and

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<sup>1</sup> Proposal 461/2016 of the European Commission for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds

<sup>2</sup> Proposal 113/2018 of the European Commission for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business and Proposal 99/2018 of the European Commission for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments

<sup>3</sup> Communication from the Commission on the mid-term review of the capital markets union action plan ({{SWD(2017) 224 final}} and {{SWD(2017) 225 final}} of 8 June 2017)

<sup>4</sup> A Multilateral Trading Facility (MTF) is a trading venue where companies may list their financial instruments, with lower regulatory requirements than on main regulated markets

liquidity, and companies will benefit from a higher public profile (media coverage, investment research, etc.). However, regulated markets require companies to comply with a wider range of EU regulations concerning initial and ongoing disclosure, market abuses, and accounting among others (such as the Transparency Directive<sup>5</sup>, the Shareholders' Rights Directive<sup>6</sup> and the Takeover Bid Directive<sup>7</sup>). This implies a significantly higher cost of listing. While the benefits will offset these costs for larger companies, smaller companies will usually reap fewer benefits from a regulated market listing and often lack the resources to meet the higher regulatory requirements.

MTFs are generally more appropriate for smaller, fast-growing companies, as issuers on these markets do not have to comply with all the European legislation applicable to companies listed on a regulated market. MTFs are usually regulated through the listing rules of the exchange. Across the European Union, a large number of regulated market operators also have alternative MTFs, targeting specifically smaller issuers. These 'junior markets' (also called alternative markets or trading platforms) *"offer more flexible listing criteria, eased disclosure requirements and comparatively low admission costs, so as to cater to SMEs' inherent characteristics"*<sup>8</sup>. According to Europe Economics, there were 40 MTFs dedicated to small and medium-sized enterprises across the European Union in February 2015<sup>9</sup>.

Since January 2018, the Markets in Financial Instruments Directive II has also introduced a new category of MTFs, the SME Growth Markets, to "make it attractive for investors, and provide a lessening of administrative burdens and further incentives for SMEs to access capital markets"<sup>10</sup>. For an MTF to qualify as an SME Growth Market, at least 50% of the issuers whose financial instruments are traded on the trading venue MTF need to be SMEs, defined by the Markets in Financial Instruments Directive II as companies with an average market capitalisation of less than EUR 200 million<sup>11</sup>. In order to guarantee investor confidence, the listing rules of SME Growth Markets must also satisfy certain quality standards, including an appropriate admission document (when a prospectus is not required) and periodic financial reporting. The SME Growth Market framework was developed to further acknowledge the special needs of SMEs entering the equity and bond markets for the first time. Several acts of the European Union already refer to this new form of trading venues, such as the recent Prospectus Regulation<sup>12</sup>, the European Venture Capital Fund Regulation<sup>13</sup> and the Central Securities Depositories Regulation<sup>14</sup> (see annex 14 for more details). As the cost of drawing up a prospectus can be disproportionately high for SMEs, the Prospectus Regulation has also introduced a reduced disclosure regime for SMEs which have no securities admitted to trading on a regulated market.

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<sup>5</sup> Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

<sup>6</sup> Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement

<sup>7</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

<sup>8</sup> OECD, Opportunities and Constraints of Market-based financing for SMEs, September 2015

<sup>9</sup> Europe Economics, Data Gathering and Cost analysis on Draft Technical Standards Relating to the Market Abuse Regulation (2015)

<sup>10</sup> MiFID II Recital 132

<sup>11</sup> On the basis of end-year quotes for the previous three calendar years

<sup>12</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

<sup>13</sup> Regulation (EU) 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013

<sup>14</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories

Since its entry into application on 1 July 2016, the Market Abuse Regulation<sup>15</sup> (MAR) has been extended to MTFs, including SME Growth Markets. It provides for two specific alleviations for SME Growth Market issuers (see below in the Section *Problem Drivers*). The Market Abuse Regulation is a comprehensive legislative framework that aims to increase investor confidence and market integrity, by prohibiting to (i) engage or attempt to engage in insider dealing; (ii) recommend that another person engage in insider dealing or induce another person to engage in insider dealing; (iii) unlawfully disclose inside information<sup>16</sup> or (iv) engage in or attempt to engage in market manipulation. Issuers are also subject to several disclosure and record-keeping obligations under the Market Abuse Regulation. Relevant issuers are notably under a general obligation to disclose inside information to the public as soon as possible.

Figure 1 - Legislative scope of regulated markets vs. SME Growth Markets

	Regulated Market	SME Growth Market
MIFID II	✓	✓
MAR	✓	✓
Prospectus Regulation	✓	✓ Only if there is offer of securities to the public
Transparency Directive	✓	✗
Takeover bid Directive	✓	✗
Shareholders' Rights Directive	✓	✗
Mandatory use of IFRS	✓	✗
Non-financial reporting Directive	✓	✗

Source: Commission services

## 1.2 Policy context

Newly listed SMEs are a key motor of new investment and job creation. Companies recently listed often outstrip their privately-owned counterparts in terms of annual growth and workforce increase<sup>17</sup>. The benefits of listing include a reduced dependency on bank financing, a higher degree of diversification of investors, easier access to additional equity capital and debt finance (through secondary offers) and higher public profile and brand recognition. From the investors' angle, companies with a small market capitalisation (small caps) have, on average, a higher risk-return profile than large companies<sup>18</sup>.

In order to support jobs and growth in the EU, facilitating access to finance for SMEs has been a key goal of the Capital Markets Union (CMU) from the outset. Since the publication of the Capital Markets Union Action Plan in 2015, some targeted actions were taken to develop adequate sources of funding for SMEs through all their stages of development. Among others, the Commission has taken forward a comprehensive package of legislative and non-legislative measures to scale up Venture Capital (VC) financing in Europe, including the creation of a Venture Capital fund-of-funds supported by the EU budget and the review of regulation on European Venture Capital and European Social Entrepreneurship funds.

<sup>15</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)

<sup>16</sup> This arises if any natural or legal person discloses inside information in a situation other than the normal course of their employment, profession or duties

<sup>17</sup> For example, during the period 2006-2012, the annual turnover of companies listed on NASDAQ OMX's junior market - First North - grew by 25 %, compared to 10 % for private companies in the Nordics.

<sup>18</sup> European Issuers, FESE and EVCA, *EU IPO Report*, 23 March 2015; FESE, *A blueprint for European Capital Markets*, 2014; MiddleNext and La Financière de l'Echiquier, *The 2016 European Small and Mid Cap Outlook*, 2016

In its Mid-term Review of the Capital Markets Union Action Plan<sup>19</sup> published in June 2017, the Commission chose to raise its level of ambition and strengthened its focus on SME access to public markets. Importantly, the Commission also recognised that there was no *'silver bullet'* to restore the markets of SME initial public offerings (IPO) across the EU.

The Commission has therefore decided to set in motion **several non-legislative actions aimed at reviving the public markets for SMEs**. First, building on the conclusions of the Call for Evidence<sup>20</sup>, the Commission committed to assessing the impact of Markets in Financial Instruments Directive II (MiFID II) level 2 rules, requiring the unbundling of research from trading commissions, on SME equity and bond research coverage. Second, the Commission will identify and share best practices of financial schemes set up by national promotional banks that help SMEs bear initial public offering costs. Third, the Commission will explore how an EU financial support can help SMEs at the stage of an initial public offering. Fourth, the Commission will continue working with the International Accounting Standard Board (IASB) and all interested stakeholders to improve International Financial Reporting Standards (IFRS) acceptance by developing an application toolbox and by clarifying disclosures for SMEs through the IASB's Disclosure Initiative. Although still in discussion, these various measures will mostly aim at improving the visibility and attractiveness of SME securities towards investors, and at reviving the ecosystem of SME-specialised intermediaries that intervene in the listing process (cf. figure 2).

Last but not least, the Commission has committed to publishing *'an impact assessment that will explore whether targeted amendments to relevant EU legislation could deliver a more proportionate regulatory environment to support SME listing on public markets'*. This measure constitutes the regulatory part of the SME listing package announced in the Mid-Term Review of the CMU Action Plan. Progress has already been made in the context of CMU to make it easier and cheaper for smaller companies to access public markets, notably with the creation of the alleviated 'EU Growth Prospectus' through the revised Prospectus Regulation. Nevertheless, stakeholders expressed through various dialogues<sup>21</sup> and previous public consultations (such as the CMU public consultation<sup>22</sup>, the Call for evidence on the EU regulatory framework for financial services<sup>23</sup> and the CMU Mid-Term Review public consultation<sup>24</sup>), that more needed to be done on the regulatory side to ensure that SMEs could reap the full benefits of public markets.

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<sup>19</sup> Communication from the Commission on the mid-term review of the capital markets union action plan ({SWD(2017) 224 final} and {SWD(2017) 225 final} – 8 June 2017)

[https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf)

<sup>20</sup> Communication from the Commission – Call for evidence on the EU framework for financial services ({SWD(2016) 359 final} - 23 November 2016)

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0855&from=EN>

<sup>21</sup> Technical workshops on 'Barriers to Listing for SMEs' held by the Commission on 7 October and 8 December 2016

<sup>22</sup> Green Paper on *Building a Capital Markets Union*

[http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm)

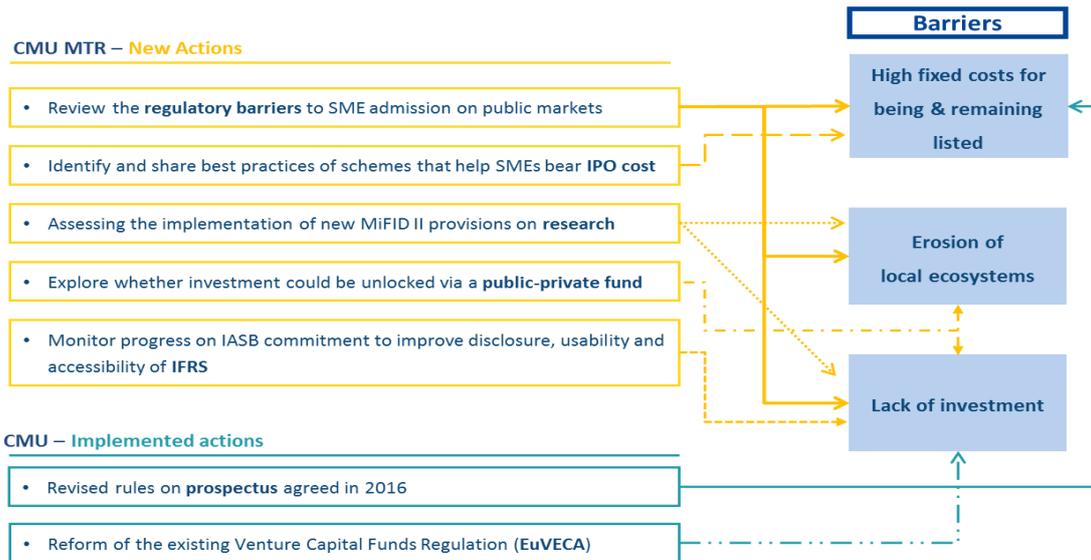
<sup>23</sup> Call evidence on the EU regulatory framework for financial services

[http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)

<sup>24</sup> Public consultation on the Capital Markets Union Mid-term Review 2017

[https://ec.europa.eu/info/consultations/public-consultation-capital-markets-union-mid-term-review-2017\\_en](https://ec.europa.eu/info/consultations/public-consultation-capital-markets-union-mid-term-review-2017_en)

Figure 2 – SME Listing Package actions and objectives



Source: European Commission services

On 29 June 2017, the Council underlined that it 'welcome[d] the Commission's commitment to deliver a more proportionate regulatory environment to support SME listing on public markets, which – coupled with related non legislative actions – would further promote the development of equity capital markets across all Member States'<sup>25</sup>.

While conducting this proportionate review of regulatory barriers to SME listing, the Commission has decided to follow two guiding principles. First, this review should make sure that no proposed change undermines investor protection and market integrity or weakens core principles of acts of the European Union that were crucial in restoring confidence in financial markets (such as the Market Abuse Regulation). Second, the Commission considers that SMEs listed on regulated markets should remain outside the scope of this exercise. Requirements imposed on regulated market issuers should apply in a similar way regardless of the size of the company, so that investors on regulated markets feel confident that issuers are subject to one single set of rules. Different requirements for SMEs compared to large capitalisations on those trading venues are likely to confuse stakeholders, and in particular investors. Therefore, this review will not interfere with the rulebook of the European Union applicable to regulated market issuers. It will be strictly confined to SME Growth Markets and companies listed on those trading venues, a position also in line with a resolution adopted on 19 January 2016, by the European Parliament, which called on the Commission and the Member States "to make active use of the SME Growth Market category in future financial services regulation". As a result, only legal texts applicable to SME Growth Markets are considered in the context of this initiative (i.e. Market Abuse Regulation, Prospectus Regulation and the MiFID II – see figure 1 for more details).

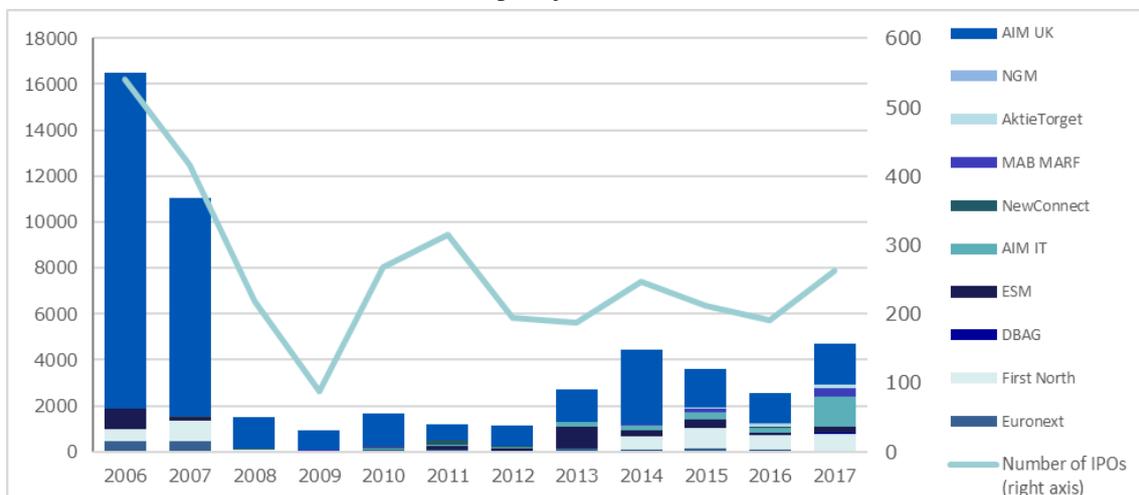
<sup>25</sup> Council conclusions on the Commission Communication on the mid-term review of the Capital Markets Union Action Plan (11 July 2017) (<http://www.consilium.europa.eu/en/press/press-releases/2017/07/11-conclusions-mid-term-review-capital-markets-union-action-plan/>)

### 1.3 Market context

#### 1.3.1 A persistently low and concentrated SME IPO activity

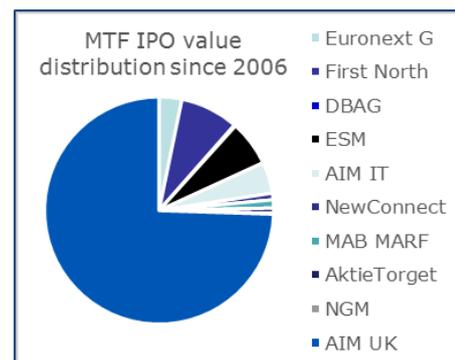
Despite the benefits of stock exchange listings, European public markets for SMEs are struggling to attract issuers. The **number of initial public offerings on SME-dedicated markets steeply declined in the European Union in the wake of the crisis**, and did not significantly pick up since. As a result, Europe is producing only half of the SME initial public offerings that it generated before the financial crisis (478 initial public offerings on average per year in 2006-2007 vs. 218 between 2009 and 2017 on EU SME MTFs). Between 2006 and 2007, an average of EUR 13.8 billion was raised annually on European SME-dedicated MTFs through initial public offerings. This amount fell to EUR 2.55 billion on average from 2009 to 2017. While IPO markets continue to function well for larger companies, they may have become less accessible to smaller companies<sup>26</sup>.

Figure 3 – IPO values, number of IPOs, average capitalisation and average number of listed companies on European junior markets

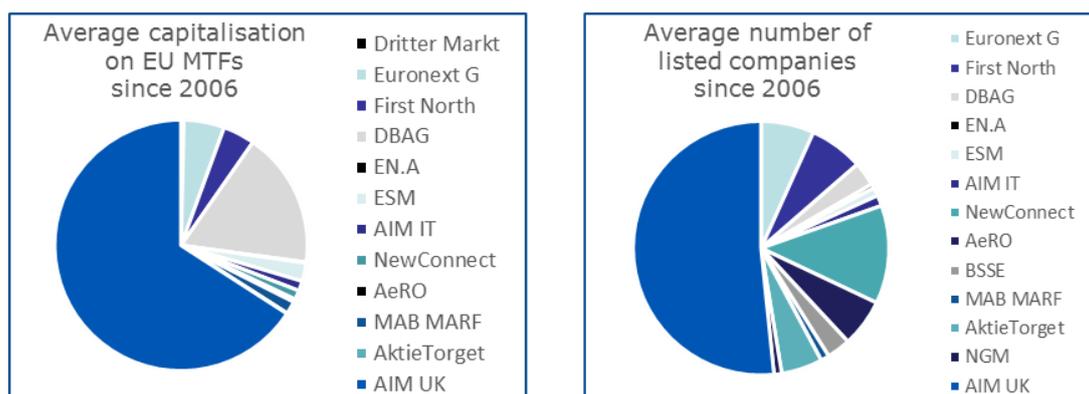


Source: Commission data on European SME-dedicated MTFs collected directly from securities exchanges

Importantly, one MTF – AIM in the UK – has been responsible for the bulk of the activity between 2006 and 2017 (74% of the total proceeds). Although this proportion has decreased over time, it still represented more than half of all IPO values conducted on EU SME markets in 2016. This fact highlights a second important issue in the European SME IPO landscape: the activity remains **highly concentrated in the UK**, leaving other markets virtually inactive in comparison.



<sup>26</sup>AFME, *The shortage of Risk Capital for Europe's High Growth Businesses*, 2017



Source: Commission data on European SME-dedicated MTFs collected directly from securities exchanges

In addition, the fact that 18 European SMEs carried out their initial public offerings in the US between October 2012 and March 2014, raising a total of EUR 1,156 million of capital, further illustrates the fact that EU IPO markets may not always suit the needs of European SMEs<sup>27</sup>.

### 1.3.2 Underdeveloped SME bond markets

The situation on debt markets is also particularly worrying. As highlighted by a dedicated Commission Expert Group, **bond markets remain largely untapped by European SMEs**, despite the creation of specialised platforms in Europe with simpler, less costly processes and requirements<sup>28,29</sup>. This situation is clearly reflected in the low number of companies issuing bonds on SME-dedicated markets: out of the approximately 35,000 companies eligible to issue mini-bonds in Italy<sup>30</sup>, only 222 companies did so from 2012 to 2016<sup>31</sup>. Similarly, 800 Spanish SMEs are believed to be eligible to issue bonds on the Spanish SME-dedicated debt market (MARF)<sup>32</sup>, while there have been only 41 five issuers of debt on the market since 2013<sup>33</sup>.

## 2 PROBLEM DEFINITION

To create viable public markets for small and mid-capitalisation companies, SMEs must be willing to issue securities (supply) and investors must be willing to invest in this asset class (demand)<sup>34</sup>. Furthermore, public markets for SMEs need to be supported by healthy local ecosystems (i.e. a network of brokers, equity analysts, credit rating agencies, investors specialised in SMEs, etc.) that help smaller firms both pre- and post-IPO, connect listed SMEs with investors, and that (indirectly) ensure a sufficient level of liquidity. All these elements are also influenced by the way regulations have been designed. In this regulatory

<sup>27</sup> Dealogic and AFME analysis, 2016; as the data do not explicitly identify SMEs but instead distinguish issuers based on IPO values (below EUR 100 million, below EUR 1 billion...), the 18 companies considered here are those having raised less than EUR 100 million at the time of IPO, which typically should only cover small and midcaps.

<sup>28</sup> "Improving European Corporate Bond Markets", Report from the Commission Expert Group on Corporate Bonds, November 2017

<sup>29</sup> OECD, *Opportunities and constraints of market-based financing for SMEs*, September 2015

<sup>30</sup> Cerved Group, *Is there a market for mini-bonds in Italy? A snapshot of unlisted companies*, October 2013

<sup>31</sup> Background document on (Italian) mini-bonds - FeBAF-VOEB event on "New Financial Instruments: the Experience of *Schuldscheindarlehen in Germany and the Comparison with Mini-Bonds in Italy*", 2017

<sup>32</sup> Data from Gabinete de estudios economicos Axesor, July 2013

<sup>33</sup> Data collected by Commission services from European exchanges

<sup>34</sup> EuropeanIssuers, EVCA and FESE, EU IPO Report, March 2015

perspective, the challenges that SME-dedicated markets are currently facing can be categorised into two groups: (i) on the supply side, issuers have to face high compliance costs to be able to list; (ii) on the demand side, insufficient liquidity can affect issuers, investors as well as market intermediaries.

## 2.1 What are the problems

### 2.1.1 Supply side: high compliance costs for listed SMEs

Two categories of costs are incurred by SMEs when tapping public markets: (i) the direct costs of becoming (at the Initial Public Offering or IBO<sup>35</sup> stage) and remaining publicly listed, through fees paid to several services providers (such as the underwriting banks, auditors, legal advisors, communication specialists...); and (ii) the indirect ongoing compliance costs to meet regulatory requirements. While making a decision on whether or not to list, companies weigh expected benefits against the costs. If costs are higher than benefits or if alternative sources of financing propose a better ratio, companies will not seek a listing of their shares or an issuance of bonds on a public market<sup>36</sup>. The focus of this impact assessment will be on the indirect costs associated with requirements laid down in European legislation.

Heavy reporting requirements are considered an indirect cost of remaining public<sup>37</sup>, as additional staff is needed to assist the issuer in complying with regulatory requirements. The problem is magnified by the fact that EU legislation is very technical<sup>38</sup>, that SMEs may therefore not have the expertise or experience needed to understand and meet their obligations (giving rise to compliance issues), and may not be prepared to obtain external legal advice due to associated costs<sup>39</sup>. In general, SMEs hold the view that fund-raising through capital markets imposes a large administrative burden, which is considered one of the main hurdles to going public. A study from the World Federation of Exchanges<sup>40</sup> has asked listed SMEs to compare their experience of listing with their prior expectations. The areas where listed SMEs' experience was most out of line with expectations were *'time and costs of meeting listing requirements'*, *'time and costs of reforming the corporate governance structure'* and *'time and cost of aligning financial statements'*. Among other things, the majority of unlisted SMEs mentioned that *'the ongoing cost of compliance was too high'*, *'the listing requirement entailed changing too many requirements within the firm'* and that they were *'concerned about heavy and cumbersome requirements'*. These responses confirm that SMEs not only perceive capital-raising on public markets as burdensome, costly and time consuming – a perception that may discourage them from listing – but actually experience it as such. High compliance costs and management time spent to comply with the regulatory burden can also lead companies listed on junior markets to cancel their admission to trading<sup>41</sup>.

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<sup>35</sup> IBO stands for Initial Bond Offering

<sup>36</sup> EuropeanIssuers, EVCA and FESE, *EU IPO Report*

<sup>37</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>38</sup> EuropeanIssuers, EVCA and FESE, *EU IPO Report*, March 2015

<sup>39</sup> OICV, *SME Financing through capital markets*, July 2015

<sup>40</sup> World Federation of Exchanges, *SME Financing and Equity Markets*, 2017

<sup>41</sup> See the delisting of Norcon from AIM UK on 31 May 2016: one of the key factors mentioned for delisting was 'the considerable cost, management time and the legal and regulatory burden associated with maintaining the Company's admission to trading on AIM', considered disproportionate compared to the benefits. See also DDD Group that delisted on

The inherent small size of SMEs often makes compliance costs disproportionate<sup>42</sup>. As the costs associated with some requirements are largely fixed, economies of scale imply that a disproportionately large burden is placed on smaller firms, either in terms of staff to mobilise or actual monetary costs<sup>43</sup>. In 2010, the total ongoing costs of remaining listed (direct and indirect) in France were estimated to lie between EUR 150,000 to EUR 500,000 per year for equity issuers with less than EUR 150 million of capitalization<sup>44</sup>. One UK stakeholder mentioned that the direct and indirect costs of having shares admitted to trading on AIM (the London Stock Exchange SME Growth Market in the UK) are considered to be around EUR 325,000 per year<sup>45</sup>. In the UK, complying with the Market Abuse Regulation would result in additional costs estimated at EUR 58,000 per year and per company listed on AIM<sup>46</sup>. In Italy, the costs due to application of the Market Abuse Regulation to bond issuers on EXTRA-MOT-PRO (an SME-dedicated MTF specialised in bonds) are estimated at EUR 25,000 for the first year and between EUR 5,000 and EUR 10,000 per year for ongoing compliance. Some companies across the EU were also reported to have delisted because of the cost and compliance burden stemming from the Market Abuse Regulation<sup>47</sup>.

### 2.1.2 Demand side: Insufficient liquidity on SME-dedicated markets

**SME markets and small cap companies traded on them tend to suffer from lower levels of liquidity<sup>48</sup> than their larger counterparts<sup>49</sup>.** As shown in the table below, the turnover ratio<sup>50</sup> of all the SME-dedicated MTFs is typically lower than the turnover of corresponding regulated markets in the same Member State<sup>51</sup>. Some SME-dedicated MTFs have very low liquidity, with a turnover ratio between 0 and 5%.

Figure 4 – Comparison of selected alternative markets: turnover ratio

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>First North (Nordics)</b>	113%	85%	60%	58%	56%	56%	126%	84%	82%	58%	53%	60%
<b>EN.A (EL)</b>	N/A	N/A	1%	2%	2%	1%	1%	1%	0%	0%	2%	2%
<b>ESM (IE)</b>	124%	126%	195%	133%	64%	4,6%	4,2%	2,9%	5,6%	7,9%	5,7%	13%
<b>AIM (IT)</b>	N/A	N/A	N/A	2,4%	13%	7,6%	9,3%	17%	20%	30%	11%	47%
<b>NewConnect (PL)</b>	N/A	44%	36%	42%	62%	40%	20%	14%	20%	31%	23%	24%
<b>AeRO (RO)</b>	N/A	2%	5%	3%								
<b>MAB (ES)</b>	N/A	N/A	N/A	18%	10%	10%	10%	15%	123%	17%	5%	4%
<b>AIM (UK)</b>	77%	77%	62%	59%	60%	67%	78%	58%	77%	58%	57%	72%

Source: Commission data on European SME-dedicated MTFs collected directly from exchanges

23 May 2016, mentioning the costs associated with trading on AIM as the main reason for delisting, and stating that the Company would have otherwise saved more than GBP 250,000 per year.

<sup>42</sup> Kaousar Nassr, Iota and Gert Wehinger, “Opportunities and limitations of public equity markets for SMEs”, *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>43</sup> C Leuz and P Wysocki, *Economic consequence of Financial Reporting and Disclosure Regulation: A Review and Suggestions for Future Research*, Working paper, University of Chicago and MIT, 2008

<sup>44</sup> *An EU-listing small Business Act*, Report by Fabrice Demarigny, March 2010

<sup>45</sup> Note from the Quoted Companies Alliance, 3 June 2016

<sup>46</sup> Ongoing legal fees resulting from the MAR application is around EUR 15,000 per year. Regarding the insider list system costs, companies could incur one-time fee of EUR 4,500 for the setting up of the new system, with an added EUR 13,000 annual fee for the licence to this system. Company would also need to employ a new member of administrative staff at least part-time, which adds the annual costs salary of approximately at EUR 30,000. Source: QCA Letter to the European Commission

<sup>47</sup> See the three companies Mydentist, Takko and Lincoln Financing as well as the delistings of bonds by larger US issuers on EU markets such as Microsoft Corporation and Freddie Mac

<sup>48</sup> According to Keynes (1930), ‘a market is liquid if trades can quickly buy or sell large numbers of shares without large price effects’

<sup>49</sup> World Federation of Exchanges, *SME Financing and Equity Markets*, 2017

<sup>50</sup> Turnover ratio is the annual turnover value to the capitalisation of companies listed on the market.

<sup>51</sup> Association for Financial Markets in Europe (AFME), *Equity Primary Market and Trading Report*, Q4 2015

Figure 5 – Comparison of selected regulated markets: turnover ratio

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Nasdaq OMX (Nordics)</b>	132%	134%	135%	109%	88%	89%	69%	64%	64%	68%	64%	61%
<b>ATHEX (EL)</b>	0	0	0%	0%	0%	0%	0%	0%	25%	45%	51%	48%
<b>Irish SE (IE)</b>	13%	20%	63%	36%	23%	42%	40%	66%	59%	44%	50%	27%
<b>Borsa Italiana (IT)</b>	154%	204%	185%	158%	163%	179%	138%	128%	153%	153%	114%	108%
<b>Warsaw SE (PL)</b>	24%	22%	44%	58%	45%	42%	41%	42%	36%	36%	38%	38%
<b>Bucharest SE (RO)</b>	15%	17%	12%	15%	13%	22%	15%	17%	17%	11%	11%	14%
<b>BME (ES)</b>	114%	135%	183%	90%	119%	117%	93%	87%	108%	134%	98%	88%
<b>LSEG (UK)</b>	N/A											

Source: Commission data on European SME-dedicated MTFs collected directly from exchanges

**Low levels of liquidity act as one of the most important deterrents to investments in SME financial instruments, and especially in shares**<sup>52</sup>. Investors (institutional and retail) overall prefer liquid stocks (and markets) for their investments<sup>53</sup>. A study has shown that both retail and institutional investors consider that more liquidity in SME stocks is the main factor that would increase their confidence in listed SMEs<sup>54</sup>. Without liquidity, professional investors face increased risks ('liquidity risk') and tend to shift their assets away from SMEs into larger capitalisation companies<sup>55</sup>. Liquidity remains the precondition for an exit from an investment. With insufficient liquidity, it might take several months for an investor to sell off their holdings in a company. When liquidity is constrained, professional investors cannot get the shares required to fulfil their portfolio requirements, deterring their participations in such markets<sup>56</sup>.

**Low liquidity on SME-dedicated markets is an important variable for issuers.** Low liquidity increases the equity cost of capital<sup>57</sup> and increases the likelihood that an initial public offering could be under-priced<sup>58</sup> compared to the actual fundamentals of the company, as investors price in the liquidity risk. In addition, lack of liquidity may be an important driver of delistings. If a stock is not liquid, it may be priced at a discount, which implies lower advantages of being listed. This could imply that companies with more concentrated ownership (less free float), less traded stocks and operating in less liquid national stock markets will be more inclined to go private.

**The lack of liquidity is also a source of concern for market intermediaries.** A study has shown that market intermediaries consider a mechanism enhancing liquidity of SME stocks' to be the most important factor for the health of the SME ecosystem<sup>59</sup>. Interestingly, this result holds across all types of intermediaries, as financial institutions supplying financial services to SMEs usually provide more than one service, several of which requiring market liquidity (such as underwriting, brokerage or market-making services)<sup>60</sup>. Liquidity is key in the business model of brokers<sup>61</sup>, especially on segments where trading volumes are thin, like on SME segments. Evidence suggests that revenues from the fees generated by smaller

<sup>52</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016; For instance, a survey has shown that 74% of investors considered the lack of liquidity of SME shares as a barrier that impacts investor interest (CFA Institute, Issue brief: Investors and SME Funding, 2013).

<sup>53</sup> G. Wuyts, *Stock Market Liquidity: Determinants and Implications*, *Tidjschrift voor Economie en Management*, 2007

<sup>54</sup> World Federation of Exchanges, *SME Financing and Equity Markets*, 2017

<sup>55</sup> OECD, *Opportunities and Constraints of Market-Based Financing for SMEs*, September 2015

<sup>56</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>57</sup> G. Wuyts, *Stock Market Liquidity: Determinants and Implications*, *Tidjschrift voor Economie en Management*, 2007

<sup>58</sup> Ellul A. and Pagano M., IPO Underpricing and After-Market Liquidity, *Review of Financial Studies*, p.348-421 (2006).

<sup>59</sup> For instance, a provider of legal services should not necessarily care about liquidity

<sup>60</sup> World Federation of Exchanges, *SME Financing and Equity Markets*, 2017

<sup>61</sup> See annex 9 for more details on the business model of brokers

trading segments are insufficient to remunerate brokers, who bear high fixed costs and are often locally-based<sup>62</sup>. Due to this lack of liquidity, services providers are not incentivised to support smaller listed companies because it is economically less attractive for them to do so<sup>63</sup>. This lack of profitability potentially creates problems in ensuring the existence of a sufficiently vibrant and motivated ecosystem to support small and mid-caps. Such ecosystems consist of investment banks specialised in SMEs, brokers, market-makers and other third party advisors specialised in SMEs. The erosion<sup>64</sup> or disappearance<sup>65</sup> of the local and regional ecosystems in Europe is cited as a major contributor to the low levels of initial public offerings on SME markets<sup>66</sup>.

## 2.2 What are the problem drivers?

While there are many factors driving SMEs' decision to go public and investors' decisions to invest in SME financial instruments, this impact assessment focuses on selected drivers related to specific barriers in the regulatory framework. The other 'out-of-scope' drivers are described in Annex 5.

### 2.2.1 Administrative and regulatory burden on SME issuers stemming from the application of MAR and the Prospectus Regulation

The Market Abuse Regulation has extended the scope of its obligations to issuers whose financial instruments have been admitted to trading on an MTF (including SME Growth Markets). In doing so, the Market Abuse Regulation has created a *'one-size-fits-all'* regulatory environment by making all its requirements applicable (except two minor alleviations discussed below) in the same manner to all issuers, irrespective of their size or the trading venue where their shares or bonds are admitted to trading. In the context of the Call for Evidence on the EU regulatory framework for financial services, *'several respondents argued that the market abuse regime places a high burden on issuers listed on SME markets, which may ultimately result in less activity and thus reduced financing for SMEs'*<sup>67</sup>.

**Some MTF issuers notably consider their obligation resulting from the Market Abuse Regulation to notify managers' transactions as burdensome**<sup>68</sup>. Notifications by managers of transactions carried out in relation to securities of companies they manage are informative for price formation (market signalling): by providing the market with this notification, managers indicate to investors their perception of the issuers' future prospects<sup>69</sup>. The obligation to disclose a manager's transaction applies once these transactions have reached a cumulative amount of EUR 5,000 within a calendar year (with no netting). To reduce the number of declared transactions and associated costs, a national competent authority may decide to increase the threshold to EUR 20,000, but only four of them have decided to use

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<sup>62</sup> MiddleNext and La Financière de l'Echiquier, *The 2016 European Small and Mid Cap Outlook*, 2016

<sup>63</sup> World Federation of Exchanges, *SME Financing and Equity Markets*, 2017

<sup>64</sup> European Issuers, FESE and EVCA, *EU IPO Report*, 23 March 2015

<sup>65</sup> FESE, *A blueprint for European Capital Markets*, 2014

<sup>66</sup> The need to re-build ecosystems was highlighted in the 2013 report from the Economic and Financial Committee's High level Expert Group, which called on Member States to *'investigate (and report on) as a matter of urgency what is required in their market to (re)build an ecosystem comprised of dedicated analysts, brokers, market makers, ratings, etc...that can both advise and support issuers and investors, and foster liquidity of equity growth markets.'*

<sup>67</sup> European Commission Staff Working Document, Call for Evidence - EU regulatory framework for financial services, SWD(2016) 359 final

<sup>68</sup> Feedback received during workshops organised by Commission services on regulatory barriers to SME listing; Call for evidence; Public consultation "Building a proportionate regulatory environment to support SME listing"

<sup>69</sup> ESME Report on the Market Abuse Directive, 2007

this option<sup>70</sup>. Some stakeholders consider that this threshold is too low, making this requirement not only burdensome for managers and issuers but also poorly informative for the market<sup>71</sup>. The persons caught by the managers' transactions regime (either the Persons Discharging Managerial Responsibilities – PDMRs - or the Persons Closely Associated to PDMRs - PCAs) shall notify the issuers within three working days as of the transaction date, while SME issuers are obliged to disclose those managers' dealings within the same three-day period. As the settlement of a transaction takes at least two working days and can lead to a late notification, the current three working-day rule may not allow issuers to have sufficient time to disclose the transactions to the market, while they face potential sanctions in case of non-compliance with this requirement<sup>72</sup>. This timeframe will still be particularly challenging when the issuer is seeking legal advice about whether a specific transaction should be disclosed or not<sup>73</sup>.

**Another administrative burden stems from the obligation to justify the reasons why the disclosure of inside information has been delayed.** The issuer can delay such disclosure in certain cases to avoid harming its legitimate interests and provided that it would not prove misleading for the public. However, once it has decided to delay the disclosure, the issuer must inform its national competent authority and justify the delay. The written explanation should be provided in all circumstances or only when the national competent authority requests it (but only seven Member States have chosen this second option<sup>74</sup>). An implementing regulation<sup>75</sup> provides that companies must record and document in writing a long list of information (*'disclosure record'*)<sup>76</sup>. This requirement can be burdensome for SMEs that already struggle with defining what constitutes inside information. In some cases, SMEs can also be tempted to disclose inside information earlier than they wanted (and thus harming its legitimate interests) to avoid time-consuming justifications to the national competent authority<sup>77</sup>.

**The private placement of SME bonds with institutional investors<sup>78</sup> is also constrained by the Market Abuse Regulation market sounding regime<sup>79</sup>.** The Market Abuse

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<sup>70</sup> FI, FR, IT, NL

<sup>71</sup> Feedback received from stakeholders during technical workshops organised by the Commission on regulatory barriers to SME listing and Public consultation on SME listing

<sup>72</sup> For an infringement of Article 19, NCAs have the power to impose a sanction of up to EUR 500,000 (Art. 30 MAR).

<sup>73</sup> Public consultation "Building a proportionate regulatory environment to support SME listing"

<sup>74</sup> BG, DK, EL, NL, AT, FI and UK

<sup>75</sup> Implementing Regulation (EU) 2016/1055 of 29 June 2016

<sup>76</sup> This includes among others the time and date when such information came to exist, when the decision was taken to delay its disclosure, the identity of the persons who adopted the decision and are responsible for constantly monitoring the conditions of the delay, and the manner in which the prerequisite conditions for such delay were met.

<sup>77</sup> Feedback received from stakeholders during technical workshops organised by Commission services on regulatory barriers to SME listing

<sup>78</sup> There are several markets for negotiated privately placed bonds in the EU. Private placement transactions of debt instruments can sometimes take the form of listed bonds. This is the case notably in France, Spain and Italy. For instance, in 2016, the Euro-PP market (essentially in France) recorded 68 deals for a total amount of EUR 4.5 billion. The number of listed Euro-PP transactions can vary from one year to another and in general between 25 and 70% of the transactions are listed. In Italy, the Mini-bond market is a market of debt instruments especially designed for unlisted companies. The number of mini-bonds issued in 2016 increased to 106 and for a total volume of EUR 3.57 billion. Most of those transactions were listed on the Extra-Mot Pro (an Italian MTF for corporate bonds and restricted to institutional investors). In Spain, EUR 2.28 billion was raised on the Mercado Alternativo de Renta Fija in 2016, a MTF which targets medium-sized firms and professional investors (Source: BCG and Linklaters, Study on Identifying the market and regulatory Obstacles to the Development of Private Placements of Debt instruments in the EU, 2017, Background Document on mini-bonds, FeBAF-VOEB event on 'New Financial Instruments: the Experience of Schuldscheindarlehen in Germany and the Comparison with mini-bonds in Italy', 2017)

Regulation provides for a prescriptive regime, which introduces obligations on issuers (or investment firms acting on their behalf) carrying out soundings as well as on investors who are sounded out. The heavy obligations imposed have a deterring effect on both potential issuers and investors that might otherwise have been interested in entering into a negotiation process with the issuer to concluding such a transaction<sup>80</sup>.

**Furthermore, the Market Abuse Regulation does not go far enough in differentiating requirements for SME Growth Market issuers compared to companies listed on regulated markets<sup>81</sup>.** The Market Abuse Regulation has made only two limited concessions to SME Growth Market issuers. First, those issuers can disclose inside information on the trading venue's website (rather on their own website). In practice, this concession has been considered to be of limited value<sup>82</sup>, as SMEs can also be required to maintain a website for regulatory or other commercial purposes. Second, SME Growth Market issuers are also exempted from maintaining 'insider lists' (i.e. a list of all persons who have access to inside information) on an ongoing basis, as long as the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the regulatory duties which follow and the issuer is able to provide the national competent authority, on request, with the insider list. This exemption does not amount to a real alleviation. In practice, it can be difficult to draw up an insider list *ex-post* several months after the events that gave rise to inside information. There is also still a need for such issuers to have adequate systems and procedures in place to produce an insider list if requested by the national competent authority. This may lead such issuers to establish costly internal systems or processes, which increase the administrative burden they are under.

**Finally, it appears that very few companies listed on SME-dedicated markets actually graduate to the European main (regulated) markets,** while those trading venues allow successful companies to benefit from greater liquidity and a larger investor pool<sup>83</sup>. Stakeholders indicated that one regulatory impediment to such a graduation on main markets is the obligation to draft a full prospectus when the shares are admitted to trading on a regulated market<sup>84</sup>.

Figure 6 – Companies moving from SME-dedicated markets to regulated markets

	Dritter Markt (AT)	Euronext G (FR, BE, NL, PT)	START (CZ)	First North (Nordics)	ESM (IE)	AIM (IT)	New Connect (PL)	MAB (ES)	Aktie Torget (SE)	NGM (SE)	AIM (UK)
Total of listings from the SME-dedicated MTF to the regulated market	0	8	0	61	3	3	62	1	6	1	74
Total number of listed companies since 2006 or the creation of the SME MTF	4	276	1	426	32	120	646	93	258	83	2251
% over total number of companies listed on market	0%	3%	0%	14%	9%	3%	10%	1%	2%	1%	3%

Source: European Commission calculations based on data collected directly from European securities exchanges

<sup>79</sup> According to Article 11 of MAR, market soundings are defined as a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors.

<sup>80</sup> Public consultation, 2017 (AMAFI and ICMA's replies)

<sup>81</sup> Feedback received from stakeholders during technical workshops organised by Commission services on regulatory barriers to SME listing

<sup>82</sup> N. Moloney, *EU Securities and Financial Markets Regulation*, 2014

<sup>83</sup> World Bank Group, *SME Exchanges in Emerging Market Economies*, A Harwood, T Konidaris, 2015

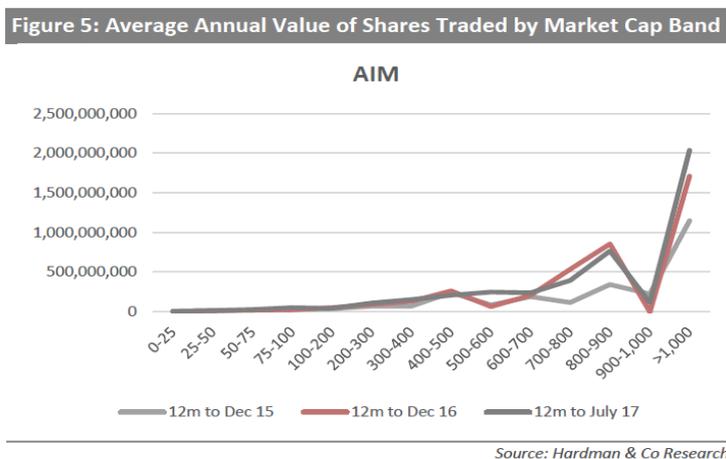
<sup>84</sup> The Impact Assessment of the 2015 Prospectus Regulation (SWD(2015)255) estimates that the minimum cost of an equity prospectus range from EUR 1000 to EUR 3 million with an average of almost EUR 700,000. The maximum amount ranges between EUR 10 000 and EUR 4 million, averaging at EUR 1.3 million

## 2.2.2 Inadequate definition of SME Growth Markets

Europe Economics has identified around 40 potential candidates for the SME Growth Market label among the EU MTFs<sup>85</sup>. Among those 40 SME-dedicated MTFs, only three have been registered as SME Growth Markets so far<sup>86</sup>.

As mentioned above, an SME Growth Market is currently defined as an MTF on which at least '50% of issuers are SMEs'. SMEs are defined by Markets in Financial Instruments Directive II as companies with a market capitalisation below EUR 200 million. This definition does not prevent SME-dedicated MTFs specialised in shares to register as SME Growth Markets, as the vast majority of their issuers do not reach this EUR 200 million market capitalisation threshold<sup>87</sup>. However, as the market capitalisation threshold is set at a rather low level, this can 'adversely impact investor perception of the SME markets as they would be regarded as only accommodating micro-cap, illiquid companies'<sup>88</sup>. Indeed the definition of SMEs included in Markets in Financial Instruments Directive II does not correspond to those used in indices or by asset managers specialised in small caps<sup>89</sup>. Some European regulations already grant regulatory incentives to companies that have a larger market capitalisation than the MiFID II SME definition<sup>90</sup>. Finally, it appears that companies with a higher market capitalisation than EUR 200 million can also suffer from liquidity issues, thus attracting lower investor interest and making the listing less attractive. The figure below shows that liquidity really kicks in for companies listed on AIM, when their market capitalisation exceeds GBP 1 billion.

Figure 7 – Average annual value of shares traded by market cap band, AIM



<sup>85</sup> Europe Economics, *Data Gathering and Cost analysis on Draft Technical Standards Relating to the Market Abuse Regulation*, 2015

<sup>86</sup> AIM (UK), AIM Italy (IT) and NEX (UK)

<sup>87</sup> Data provided by EU exchanges show that issuers listed on SME MTFs have a very low market capitalisation, with many markets having an average market cap below EUR 10 or even EUR 5 million (see Figure 11 and annex 13)

<sup>88</sup> ESMA Securities and Markets Stakeholder Group, *Report on Helping Small and Medium Sized Companies Access Funding*, 12 October 2012

<sup>89</sup> The European MSCI (Morgan Stanley Capital International) indices are sub-divided into 4 market capitalisation sections: large caps (with a median capitalisation of EUR 10.8 billion), midcaps (EUR 6.4 billion), small caps (EUR 1 billion) and micro caps (EUR 100 million). EFAMA (the EU fund & asset management association) runs a fund classification system, which is used by many EU fund managers to describe the nature of their funds e.g. Small-Cap funds. A fund will be considered a small-cap fund if at least 80% of its assets are invested in small caps defined as companies with a market capitalisation below EUR 3 billion.

<sup>90</sup> For instance, the alleviated 'EU Growth Prospectus', created by the revised Prospectus Regulation, is available (beyond SMEs) to companies listed on an SME Growth Market with a market capitalisation up to EUR 500 million. The European Long-Term Investment Funds Regulation allows those funds to invest into companies listed on a MTF (including SME Growth Markets) with a market capitalisation up to EUR 500 million.

Another regulatory issue arises from the fact that the level 1 of MiFID II only refers to equity issuers. To determine whether an SME Growth Market has at least 50% of SME issuers, the level 2 of MiFID II<sup>91</sup> provides for a complementary approach to capture SME debt issuers on SME Growth Markets. The level 2 states that issuers with no equity instrument traded on any trading venue shall be deemed an SME provided that, according to its last annual or consolidated accounts, it meets at least two of the following three criteria: (i) an average number of employees during the financial year of less than 250; (ii) a total balance sheet not exceeding EUR 43 million and (iii) an annual net turnover not exceeding EUR 50 million. This definition refers to the EU 2003 Recommendation defining an SME<sup>92</sup>, which is not fully adapted to companies willing to issue bonds on SME-dedicated MTFs. As the OECD puts it, the SME bond market is '*suited mostly to the upper segment of the SME size spectrum*'<sup>93</sup>. The typical issuance size ranges between EUR 20 and 80 million on the *Mercado Alternativo de Renta Fija* in Spain<sup>94</sup> and EUR 30 million on Extra-MOT Pro<sup>95</sup> in Italy. Therefore, after the issuance, some SME bond issuers may not meet the balance sheet threshold (especially when they return to the market for follow-up bond issuances). Second, in order to repay a debt of such scale, SME bond issuers need to have stable cash-flows with a turnover prospectively higher than EUR 50 million<sup>96</sup>.

If the definition of SME bond-only issuers is not well-calibrated, the SME-dedicated MTFs specialised in bond issuances and those that allow both equity and bond issuances by SMEs<sup>97</sup> may face challenges in registering as SME Growth Markets. In turn, if the SME Growth Market framework is not used by market operators, their issuers will not be able to benefit from regulatory alleviations, thus increasing their compliance burden.

Beyond the SME non-equity issuer definition, another requirement may hinder the take-up of the SME Growth Market concept. The level 2 of MiFID II also imposes periodic disclosure requirements on SME Growth Market issuers, by requiring half-yearly and annual reports. Financial reporting provided on a half-yearly basis is usually welcomed by investors and contributes to attracting interest in the company. However, some market participants have indicated that the publication of such half-yearly information can also represent a time-consuming and costly obligation for SMEs. The absence of flexibility left to the market operators as regards the possibility to require or not a half-yearly report can discourage some MTFs from seeking a registration as an SME Growth Market, because they cannot tailor their listing rules to local conditions<sup>98</sup>.

Finally, the take-up of the SME Growth Market 'brand' is also constrained by the fact that only few alleviations or benefits are currently foreseen in the EU legislation for the issuers

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<sup>91</sup> Art. 77 of the Commission Delegated Regulation (EU) 2017/565

<sup>92</sup> Art. 2 of the Commission Recommendation C(2003) 1422 (2003/361/EC) of 6 May 2003 defines Small and Medium-sized Enterprises (SMEs) as "enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million."

<sup>93</sup> OECD, *Opportunities and Constraints of Market-Based Financing for SMEs*, September 2015

<sup>94</sup> Pablo Guijarro and Pablo Mañueco, MARF: Perspectives and risks for Spain's new alternative fixed income market

<sup>95</sup> AFME, *Raising Finance for Europe's Small & medium-sized businesses*, 2015); Response of LSEG to the Public consultation on SME Listing: 70% of issuers on EXTRA-MOT Pro in Italy raise an amount below EUR 70 million.

<sup>96</sup> In the public consultation, the Spanish stock exchange (BME) indicated that the typical issue size on MARF is between EUR 20 -80 million. The issuers have a typical a balance sheet ranging between EUR 60 and 100 million and a turnover around EUR 200 million.

<sup>97</sup> Such as Euronext Growth in FR, BE and PT and First North in SE, DK, FI, EE, LA, LV.

<sup>98</sup> Several MTFs do not require half-yearly reports for equity issuers (such as Dritter Markt, BSSE MTF). Other MTFs do not require such reports for non-equity issuers (such as Euronext Growth, Extra-MOT Pro or MARF).

listed on this new type of trading venues (See Annex 14). Some market operators and stakeholders<sup>99</sup> consider that the legal framework applying to SME Growth Markets does not differentiate them much from MTFs (in terms of regulatory benefits) or regulated markets (in terms of alleviations), making the concept insufficiently attractive.

### 2.2.3 *Lack of schemes (mechanisms) to promote trading and liquidity on SME Growth Markets*

The limited liquidity on SME equity markets can be explained by a number of factors<sup>100</sup>. While SMEs tend to overlook the importance of liquidity, investors favour mechanisms that promote trading of SME stocks<sup>101</sup>.

There are different mechanisms through which liquidity can usually be enhanced. Market-making (under a contract with a trading venue) is probably the most traditional system<sup>102</sup>. Some market operators have encouraged the development of market-making (by putting in place some attractive fee trading schemes in return for minimum requirements to build deeper markets). The remuneration of the market-maker typically comes from the spread (the difference between buy and sell prices). However, these types of arrangements also rely on the existence of market-makers that are willing to commit capital and run a market risk. Market-making activities would currently be challenged by both regulatory reforms<sup>103</sup> and new technology developments<sup>104</sup>.

Another mechanism is the liquidity provision contract, which '*consists in an issuer entering into an agreement with a financial intermediary that is entrusted with the task of enhancing the liquidity of the issuer's financial instruments*'. Liquidity providers play the same role as market-makers but they do not act with their own account. Several studies show that liquidity contracts can improve liquidity, that this improvement is particularly significant for less liquid shares and that they help reduce liquidity risk<sup>105</sup>. When SME issuers are allowed to enter into a liquidity contract, be it market making or liquidity provision, they seem to largely use this possibility<sup>106</sup>. However, in order to be allowed by a competent authority, the liquidity

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<sup>99</sup> One market operator has for instance indicated that the SME GM regime did not offer sufficient benefits at this time to merit registration. Another Market operator also indicated that quantifiable benefits for issuers and investors, legal and administrative facilities offered by the SME GM regime were rather light (Source: Data from securities-exchanges received by COM). See also: Lucas Enriques, '*What should qualify as a 'SME Growth Market'?*', 2018 'This new label, reserved to multilateral trading facilities in which more than half of issuers qualify as SMEs, has not so far delivered much in terms of alleviation of regulatory burdens.

<sup>100</sup> It has been argued that the fragmentation of the trading landscape induced by MiFID, has resulted in increased competition and pressures on the business model of trading venues, encouraging some of them to focus on most profitable segments such as blue-chips trading at the expense of other less profitable segments, such as SMEs. Technological changes, such as the entry of high frequency traders, tend to reinforce the attractiveness of blue-chips at the expense of SMEs in terms of trading.

<sup>101</sup> World Federation of Exchanges, *SME Financing and Equity Market*, 2017

<sup>102</sup> ESMA Opinion on an AMP on liquidity contracts notified by the CNMV, December 2016

<sup>103</sup> OECD, *Opportunities and Constraints of Market-based financing for SMEs*, September 2015

<sup>104</sup> Technology developments (such as the emergence of high frequency trading) and other low trading techniques have also curbed the economic incentives for market-making in the most liquid stock. Market-making in liquid shares is also necessary to subsidise and sustain this activity for small and illiquid shares (OECD, *Opportunities and limitations of public equity markets for SMEs*, 2016).

<sup>105</sup> Nimalendran and Petrella, '*Do thinly-traded stocks benefit from specialist intervention*', *Journal of Banking and Finance*, 2003; Venkataraman and Waisburd, '*The value of the designated market maker*', *Journal of Financial and Quantitative Analysis*, 2007; Anand, Tanggaard, and Weaver, '*Paying for market quality*', *Journal of Financial and Quantitative Analysis*, 2009; Menkveld and Wang, '*How do designated market makers create value for small-cap stocks*', *Journal of Financial Markets*, 2013; H. Bessembinder, J. Hao, K. Zheng, '*Liquidity Provision Contract and Market Quality*', 2017

<sup>106</sup> In 2015, 116 out of 175 companies (i.e. 66%) listed on Alternext (that became Euronext Growth) had a liquidity contract. In 2017, all the issuers (88 companies) have a liquidity provision contract.

provision practice must be recognised as an accepted market practice (AMP) under the Market Abuse Regulation. For an accepted market practice to be established a national competent authority must notify the European Securities and Markets Authority and other national regulators of its intention, and the European Securities and Markets Authority must issue an opinion that (i) assesses the compatibility of the accepted market practice with the Market Abuse Regulation and the related regulatory technical standard on accepted market practices, and (ii) considers whether the accepted market practice would threaten market confidence in the European financial markets. For the time being, only four Member States<sup>107</sup> authorise liquidity provision contracts. This means that in 24 Member States, SME issuers do not have the possibility to enter into a liquidity contract, but have to rely on market makers (provided they exist).

Finally, another technique consists in requiring a minimum free float (i.e. a minimum amount of capital in the public's hands and that can be freely traded) when an SME seeks to list its shares on an SME-dedicated market. The relative low volume of shares traded on SME-dedicated markets is often attributed to the small sizes and limited free float that small caps regularly offer<sup>108</sup>. It is likely that there will be a much smaller percentage of the shares of an SME in public hands, as the founders of the company will probably want to hold on to a significant stake in the ownership of the company<sup>109</sup>. The Markets in Financial Instruments Directive II does not prescribe any free float or minimum capitalisation requirement when a company seeks the admission of its shares to trading on an SME Growth Market. Some SME-dedicated MTFs<sup>110</sup> have no requirement in terms of free float or initial minimum number of shareholders. Other trading venues require a minimum number of shareholders (from 50 to 300) or a threshold varying from 10 to 20% of the shares (see Annex 7). Finally, most of the SME MTFs do not set a minimum capitalisation threshold. Given this absence of free float at the initial public offering stage, liquidity in the secondary market is insufficiently stimulated, carrying the risk of reduced capitalisation (to reflect liquidity risk) and higher capital costs on these markets.

#### 2.2.4 *Out-of-scope drivers*

Beyond the drivers listed above, the demand for SME financial instruments is also constrained by additional factors, such as the lack of visibility of SMEs towards institutional and foreign investors, or the tax treatment of investments in the various Member States. The supply of SME financial instruments is also hindered by SMEs' lack of business education. These and other out-of-scope drivers are not addressed in the current initiative focusing on targeted technical amendments, but are being considered in the wider plan to facilitate SME access to public markets (see section on policy context, i.e. CMU). For more details on out-of-scope drivers, please refer to annex 5.

### 2.3 **Consequences: less capital raised by SMEs on public markets**

SMEs will opt in favour of (or against) a public listing of their shares/bonds by weighing the costs and benefits of such a decision. Although it would be exaggerated to claim that low SME listing levels are the direct consequence of the regulatory issues described above, the

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<sup>107</sup> ESMA has issued a positive opinion on the SP and PT AMPs; FR and IT are working on their notifications.

<sup>108</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>109</sup> City of London, the City's Role in providing for the Public Equity Financing of UK SMEs, March 2010, p.73

<sup>110</sup> Dritter Markt (AT), START (CZ), ESM (IE), the MTF operated by the BSSE and AIM (UK)

latter do contribute to **reducing the relative attractiveness of public markets for SMEs**: they increase the regulatory burden imposed on SMEs when listing on public markets, and they limit the liquidity of listed SMEs.

The regulatory barriers considered in this impact assessment are part of a wider problem preventing SMEs from accessing the advantages of public issuances of shares and bonds. Concerning public equity markets, one of the main advantages lies in the ability for SMEs to raise permanent risk capital, i.e. capital that does not have to be paid back to investors within a given time limit<sup>111</sup>. In addition to serving as a direct source for financing new investments, listed shares also provide the corporation with its own currency, which may be used to finance acquisitions<sup>112</sup>. Concerning bond markets, the main advantages for companies stem from the flexibility of the instrument (the terms of the issuance can be fully customised to fit a company's needs) and its agility (bond markets can offer quicker access and implementation than bank or equity funding)<sup>113</sup>.

In addition, limited access to public markets further reduces SMEs' ability to raise funding by preventing them from resorting to **secondary raisings**. Going public for a company is not only a one-off opportunity to raise capital, but offers the possibility, for both equity and bonds, to make subsequent issuances over time and raise money again from its share- and bondholders. The amount of equity raised through secondary or follow-on offerings is by no means marginal or negligible. Such offerings can be made several years after the initial public offering, in order to finance, for example, a new phase of expansion. The figure below illustrates the total public equity financing of growth companies with an initial public offering of less than USD 100 million in advanced economies. In every year shown in the figure, equity proceeds through secondary public offerings of companies exceed initial public offerings proceeds<sup>114</sup>.

Figure 8 – Initial Public Offerings and Secondary Public Offerings by Growth Companies in Advanced economies (Billions, USD, 2014)



Source: OECD

Moreover, public equity and debt markets enable SMEs to raise large amounts more easily than they could through other means. Eventually, going public could also bring SMEs other

<sup>111</sup> European Issuers, EVCA and FESE, *EU IPO Report* by the European IPO Task Force, March 2015

<sup>112</sup> OECD, *Growth companies, Access to Capital Markets and Corporate Governance*, 2015

<sup>113</sup> Analysis of European Corporate Bond Markets, Analytical report supporting the main report from the Commission Expert Group, November 2017, p.7

<sup>114</sup> OECD, *Growth companies, Access to Capital Markets and Corporate Governance*, 2015

more intangible benefits, such as **increased visibility and brand recognition** for potential suppliers and customers<sup>115</sup>.

Reduced SME access to public equity and bond markets also results in limited opportunities for European companies to diversify their sources of funding and reduce their overreliance on bank loans. This is all the more relevant as studies have shown that the development of public equity markets may also foster SME access to the bond market, by increasing the availability of, and improve conditions for, subsequent debt financing<sup>116</sup>. A study from the OECD has notably found a strong positive relationship between a company's public listing and its issuing of corporate bonds<sup>117</sup>. A number of explanations have been offered to explain why **being listed could help companies access the corporate bond market**<sup>118,119</sup>. There is also evidence to suggest that the same **positive relationship holds for listing, bank credits and syndicated loans**<sup>120</sup>.

In addition to the complementarity between equity and bond financing, more dynamic public equity markets can also foster the development of private equity and venture capital financing. **Healthy public equity markets can stimulate private equity and venture capital activity** by providing smooth exit opportunities<sup>121</sup>. However, the European SME-dedicated markets do not currently provide a stable exit mechanism for venture capitalists and private equity funds<sup>122</sup>. Similarly, public equity markets for SMEs could also stimulate equity **crowdfunding** investments. However, at present, there is no real secondary market for crowdfunding exits<sup>123</sup>. As a consequence, a limited SME access to public markets has repercussions not only on capital-raising through IPOs, but throughout the funding escalator of companies (see annex 8 for more details).

## 2.4 Wider consequences

Lower capital raising activity by SMEs on public markets can translate into significant missed opportunities for the European economy, in terms of economic growth, job creation and innovation. A significant amount of research has documented the **links between vibrant public markets and economic growth**<sup>124</sup>. Ensuring the development of SME-dedicated

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<sup>115</sup> FESE, European Issuers, *Guide to Going Public*, 2015

<sup>116</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>117</sup> OECD, *Growth companies, Access to Capital Markets and Corporate Governance*, 2015

<sup>118</sup> A. Eisele, E. Nowak, *(Non-Bank) Financing of SMEs in Light of Crisis and New Regulation – Do Innovations in Market Financing have a real Impact?*, 2016

<sup>119</sup> Faulkender M. and M.A. Petersen, "Does the Source of Capital affect Capital Structure?", *Review of Financial Studies*, Vol. 19, n°1, 2006. First, as public companies already publish their financial statements in accordance with regulatory requirements, the reproduction of these statements for the bond prospectus and the following periodic disclosure do not constitute an additional cost. Likewise, management's prior experience with public securities offering is likely to reduce the preparation time to offer bonds. Moreover, listed companies are typically subject to stricter corporate governance requirements, which, in the eyes of investors, make them less prone to the classical debt-related moral hazard. Last, the fact that the company's shares are already publicly traded makes it less costly for underwriters to get investor attention.

<sup>120</sup> Pagano M., Panetta F. and Zingales L., 'Why do Companies Go Public? An Empirical Analysis', *Journal of Finance*, Vol.53, N. 1; Saunders A. and Steffen S., 'The Costs of Being Private: Evidence from the Loan Market', *Review of Financial Studies*, Vol. 24, n°12

<sup>121</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>122</sup> InvestEurope, *2016 European Private Equity Activity* – See annex 8 for more details

<sup>123</sup> AFME, *The Shortage of Risk Capital for Europe's High Growth Businesses*, 2017

<sup>124</sup> See for instance "Stock Markets, Banks and Economic Growth", Ross Levine and Sara Zervos, *The American Economic Review*, June 1998, p.554; "Opportunities and limitations of public equity markets for SMEs", Kaousar Nassr, Iota and Gert Wehinger (), *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016p.55; "Capital Market Imperfections, High-Tech Investment, and New Equity Financing", R. Carpenter and B. Petersen, *The Economic Journal*, 112 (February), 2012, F56

public markets is key in fostering growth, as they appear most suited to the needs of high-growth, innovative SMEs, which would otherwise struggle to find adequate sources of funding<sup>125,126</sup>. Data showed that junior trading venues can significantly boost the activity of fast-growing SMEs, as companies choosing to list on an SME-dedicated MTF have shown very significant growth rates in their post-IPO phase<sup>127</sup>.

Similarly, as underdeveloped public markets do not enable high-growth companies to grow and reach their full potential, they also prevent them from recruiting and **creating jobs**. Studies have highlighted that job creations by SMEs tend to accelerate after the initial public offerings<sup>128</sup>.

Eventually, underdeveloped SME-dedicated public markets prevent fast-growing firms from exploiting their **innovation potential**<sup>129</sup>. As explained in a study on the economic impact of the London Stock Exchange's junior market AIM, equity capital is most suitable for technology firms and fast-growing companies needing to make upfront investments with no immediate or steady revenues. If such companies do not have access to funding under appropriate conditions such as those offered by public equity markets, they are less likely to invest in research and innovate<sup>130</sup>.

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<sup>125</sup> AFME Paper, Raising finance for Europe's small and medium-sized businesses, p.6, p.20

<sup>126</sup> World Bank Policy Research Working paper 3892, April 2006, p.3

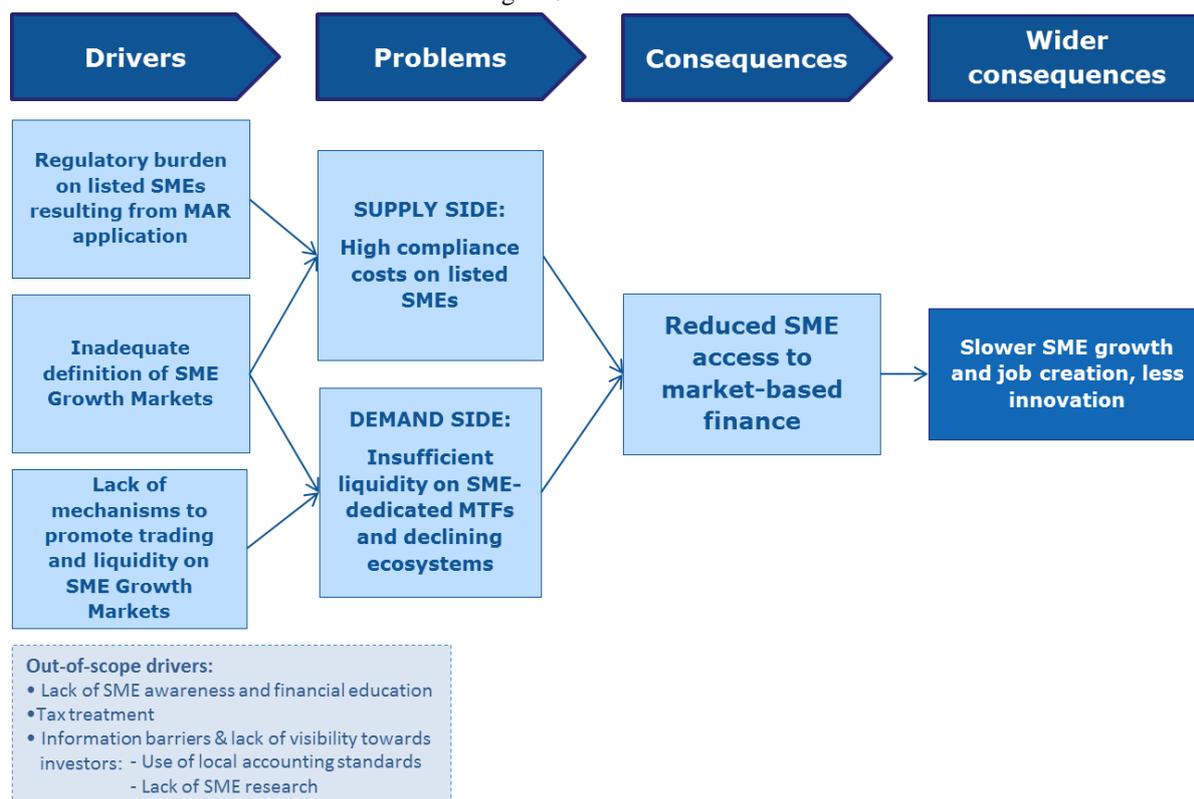
<sup>127</sup> The annual turnover of companies listed on NASDAQ OMX's junior market First North grew by 25% per year on average over the 2006-2012 period, and by 22.6% in 2014. In comparison, the average turnover increase for non-listed companies was of 10% per year during the 2006-2012 period, and of 7.6% in 2014. Similarly, companies listed on the London Stock Exchange Group's SME-dedicated market AIM have had an average turnover growth of almost 45% in the first year immediately after listing, followed by an average yearly turnover growth between 20% and 30% in the second to fifth year after initial listing. See *Capital Markets Union: The Road to Sustainable Growth in Europe*, Nasdaq publication, 2016, p.9-10; Grand Thornton, *Economic Impact of AIM*, April 2015, p.5

<sup>128</sup> Companies listed on London Stock Exchange's junior market have seen their employment grow on average by 35% in the first year immediately after listing, followed by an average yearly employment growth of 20% in the second year, and around 15% in the third to fifth after listing. Companies listed on Nasdaq First North saw their employment grow by 17.3% annually during the period 2006-2012 and by 4.7% in 2014. By comparison, non-listed companies saw an average annual increase in their employment of 5% over the 2006-2012 period, and of 2.7% in 2014. This trend is even more visible for smaller businesses, as companies with a turnover below GBP 5 million grew by more than 100% in employment in their first year post-admission on AIM. See Grand Thornton, *Economic Impact of AIM*, April 2015, p.5-6; *Capital Markets Union: The Road to Sustainable Growth in Europe*, Nasdaq publication, 2016, p.9-10

<sup>129</sup> OECD, *Opportunities and constraints of market-based financing for SMEs*, September 2015

<sup>130</sup> Grant Thornton, *Economic Impact of AIM*, April 2015, p.5-7; the study moreover illustrated the role of the UK's SME-dedicated market in spurring innovation by highlighting the correlation between the location of AIM companies in the UK and areas with high levels of UK patents granted.

Figure 9 – Problem tree



## 2.5 How will the problem evolve?

If no action is taken, existing market and regulatory failures would remain, SME access to public capital markets would be impeded, and small companies would continue to be largely dependent on bank financing. Market developments, such as the emergence of Fintech in the financial services industry, is not expected to substantially improve the situation regarding the particular problems at hand. What is more, in certain areas further deterioration is likely. Considering that the majority of the European SME initial public offering activity has been carried out in the UK for the past twelve years (see section on Market context), the departure of the UK from the European Union is expected to reduce the opportunities for growth companies in continental Europe to list and raise capital on European public markets.

It should also be kept in mind that low activity on SME MTFs has repercussions on the whole funding escalator: in the longer run, less developed junior markets also means less exit opportunities for investors at the Venture Capital and Private Equity stage, and less companies able to move on to the regulated market (see Annex 8 for more details).

In this context, action needs to be taken swiftly. The work conducted in this impact assessment is all the more urgent as it aims to address issues that have been repeatedly highlighted by stakeholders over the past four years as holding back SME access to public markets (see annex 2 on stakeholder consultation for more details). In the public consultation on “*Building a proportionate regulatory environment to support SME listing*”, high compliance costs were rated the highest by respondents to explain the low number of SME initial public offerings. Although the regulatory impediments presented in the previous sections do not explain on their own the low levels of SME IPO activity in the European Union, they further dis-incentivise smaller companies to raise capital on public markets and exacerbate unfavourable market conditions. These detrimental impacts are unlikely to

decrease in magnitude without further regulatory changes. So far, they have instead increased with the entry into application of the Market Abuse Regulation in 2016, which imposed stricter requirements to all issuers regardless of their size. Being a regulation, it also left little flexibility to Member States to adapt the rules.

It is also important to note that waiting longer before taking action would be highly unlikely to bring further insight. As currently framed in MiFID II, the SME Growth Market concept remains an “empty shell” with only little difference compared to the general MTF framework. As a consequence, a significant number of market operators have highlighted that they saw limited benefits to registering their MTFs as SME Growth Markets. In some instances, they even described the current framework as unfit for purpose (especially for debt-only issuers). In this context, the resolution of the European Parliament, which called on making “active use of the SME Growth Market category in future financial services regulation”, should be taken up.

### **3 WHY SHOULD THE EU ACT?**

#### **3.1 Legal basis**

The legal basis of the Market Abuse Regulation and the Prospectus Regulation (PR) is Article 114 of the Treaty on the Functioning of the European Union (TFEU) which confers to the European institutions the competence to lay down appropriate provisions that have as their objective the establishment and functioning of the single market. The legal basis of the Markets in Financial Instruments Directive II is Article 53(1)<sup>131</sup>. Under Article 4 of TFEU, EU action for completing the internal market has to be appraised in light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union. According to the principle of subsidiarity, action on European level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus mandate action at European level.

#### **3.2 Subsidiarity: Necessity of action of the European Union**

It has to be assessed whether the issues at stake have transnational aspects and whether the objectives of the proposed actions cannot be sufficiently achieved by Member States in the framework of their national constitutional system (the so-called 'necessity test'). In this regard, it should be noted that even if they are more local in nature compared to regulated markets, SME-dedicated MTFs (and potential SME Growth markets) have a clear cross-border dimension, in terms of investors who invest outside their Member States of origin (see Annex 7) as well as in terms of issuers that often list their shares or bonds on a trading venue located in another Member State<sup>132</sup>.

The first objective of this initiative is to remove undue administrative burden and ease SME access to public markets for shares and bonds, in order to diversify their sources of capital

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<sup>131</sup> Directives designed to coordinate Member States' rules on the taking up and pursuit of activities as self-employed persons and the provision of services

<sup>132</sup> In 2017, out of 209 issuers listed on Euronext Growth, 14 are foreign issuers (6.7% of the total). On NewConnect, out of 406 issuers listed on NewConnect in Poland, 9 were not Polish companies (2.2%). Out of 1107 companies listed on AIM UK in 2012, 213 were not UK companies (19.1%).

from anywhere within the European Union. The second objective consists in increasing the liquidity in financial instruments issued by SME Growth Market issuers, especially shares.

Administrative burden placed on SMEs results from the application of MiFID II, the Market Abuse Regulation and Prospectus Regulation. The latter two items of legislation have direct binding legal force on all Member States. Those rulebooks leave almost no flexibility for Member States to adapt the rules to local conditions or to the size of issuers or investments firms. Likewise, MiFID II does not provide Member States with sufficient flexibility to address the problems identified. As such, the problems arising from those provisions can only be effectively addressed via legislative amendments tabled at the European level<sup>133</sup>. The possible alternatives, i.e. non-legislative action at Union level (e.g. guidelines by ESMA, and action at Member State level) could not sufficiently and effectively achieve the objective as they could not amend the provisions of the Regulations. Therefore, any improvement of these rules to make the EU framework for SME Growth Markets issuers more proportionate requires a legislative action at EU level.

The liquidity of SME shares on the MTFs that could register as SME Growth Markets is also hindered by regulatory shortcomings stemming from the Market Abuse Regulation and MiFID II. Member States may adopt accepted market practice on liquidity contracts but only four have done so. This means that in 24 Member States, the potential SME Growth Market issuers are deprived from the right to enter into liquidity contracts. This situation creates a fragmentation of the Single Market and creates a distortion of competition between issuers that have the right to enter into a liquidity contract (and therefore ensure liquidity, lower their cost of capital...) and those which do not have this possibility. Limited trading due to the absence of free float on admission may cause investors to have a negative perception of the liquidity of securities listed on SME Growth Markets. As the EU label will be shared by different MTFs across the EU, this lack of liquidity on the secondary market could impair the credibility and attractiveness of those newly-created trading venues. Action is needed at European level to ensure that the identified regulatory shortcomings resulting from European rules are adequately tackled and that minimum liquidity can be ensured on those markets.

### **3.3 Subsidiarity: Added value of EU action**

It has to be considered whether the objectives would be better achieved by action at EU level (the so-called 'test of European added-value'). As there is almost no flexibility to adapt the Markets in Financial Instruments Directive II, the Market Abuse Regulation and Prospectus Regulation to local conditions, a legislative action at EU level is absolutely needed in order to reduce the administrative burden placed on SME Growth Market issuers. By its scale, EU action could reduce the administrative burden for SME issuers while at the same time safeguarding a high level of market integrity and investor protection (thus ensuring a level-playing field among issuers and avoiding any distortions of competition among 'SME Growth Markets').

Furthermore, as regards the regulatory obstacles impairing liquidity provision, action at national level can even increase legal fragmentation and may lead to distortions in competition of SME Growth Markets across EU Member States. Action at the European level

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<sup>133</sup> Vodafone case C-58/08: 'Where an act based on Article 95 EC has already removed any obstacle to trade in the area that it harmonises, the Community legislature cannot be denied the possibility of adapting that act to any change in circumstances or development of knowledge having regard to its task of safeguarding the general interests recognised by the Treaty'

is better suited to ensure uniformity, and legal certainty. This will help to efficiently achieve the objectives of the Markets in Financial Instruments Directive II (and notably the creation of SME Growth Markets) and will better facilitate cross-border investments and competition between exchanges while safeguarding the orderly functioning of markets.

The options proposed respect the principle of proportionality, are adequate for reaching the objectives and do not go beyond what is necessary, striking a balance between establishing pan-European standards while at the same time leaving sufficient flexibility to both Member States and market operators/investment firms to adapt their SME Growth Markets to local conditions.

#### **4 OBJECTIVES: WHAT IS TO BE ACHIEVED?**

The general objective of the proposal would be to make technical amendments to the current regulatory requirements in order to facilitate capital-raising by SMEs on public markets through shares or bonds issuances. This should help to increase investment, economic growth, job creation and innovation in the EU.

Specific objectives would therefore be: 1) to reduce the regulatory compliance costs faced by SME issuers when their shares or bonds are admitted to trading on SME Growth Markets; 2) to increase the liquidity of equity instruments on SME Growth Markets; and 3) to ensure a high level of investor protection and market integrity<sup>134</sup>.

#### **5 WHAT ARE THE AVAILABLE POLICY OPTIONS?**

The policy options described and analysed in this impact assessment have been regrouped into three topics: administrative compliance costs, SME Growth Market concept, and liquidity. For each topic, several provisions have been analysed in parallel following a given logic of intervention (essentially by degree of alleviation or harmonisation). This grouping was done notably to better highlight the collective impact of all the proposed change on one given regulation or one set of issues. Presenting all changes separately could have made it more difficult to perceive the actual cumulative impact of the adjustments. Each change, however, was also assessed individually, as presented in section 6.

The set of provisions analysed are those for which there was sufficient evidence of a need for action. Commission services initially considered a much broader set of potential changes, which emerged from the various consultation exercises, seminars organised with stakeholders and meetings with Member State representatives. Many were however discarded after a preliminary analysis, either due to market integrity risks, political feasibility, or lack of evidence. For more details, please refer to annex 6 on discarded options and annex 16 on the synthesis table of the initial options.

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<sup>134</sup> A study from IOSCO there is no available data on the difference between market abuse cases for SMEs and larger companies. In some developed markets where information is available, the incidences or reports of market manipulation appear to be higher in the SME market than in the senior market. This appears to be related to a number of circumstances including greater likelihood that the float is controlled by insiders and illiquidity of the market. IOSCO, *SME Financing through Capital Markets*, July 2015

## 5.1 What is the baseline from which options are assessed?

Under the baseline scenario no action would be taken beyond the non-legislative measures that the Commission services have already committed to (see section 1.2). While recent legislative actions such as the creation of an alleviated 'EU Growth Prospectus' will reduce the costs of listing for SMEs, other administrative compliance costs would remain in place. This includes in particular the costs arising from the obligations in the Market Abuse Regulation and the financial reporting obligations in the Markets in Financial Instruments Directive II. These obligations would continue to place a disproportionately high burden on SME issuers, thereby dis-incentivising smaller companies to raise capital on public markets.

The SME Growth Market definition, and in particular the definition of a debt-only issuer, would remain overly restrictive, thereby preventing most European MTFs (either specialised in SME bonds or in SME bonds and shares) to register as SME Growth Markets. This, in turn, would make it impossible for issuers on these markets to benefit from the regulatory alleviations and potential other benefits that legislators envisioned for SME Growth Markets.

Investors would also remain reluctant to invest in SME shares given excessively high liquidity risks in many small and micro-cap shares. While SME issuers have always attracted lower levels of investor interests and thus trading activity and liquidity, certain regulatory restrictions would continue to exacerbate this unfavourable market condition. These barriers include in particular, the unavailability of liquidity contracts in most Member States. Given the self-reinforcing nature of liquidity it is expected that liquidity levels will remain low without such initial stimuli. Moreover, minimal free float percentages would continue to restrict the total amount of shares available for trading.

As a result, SMEs would continue to face significant hurdles and disincentives to tap public markets for capital. While recent trends indicate that the dependence of European companies on bank loans has decreased overall, SMEs have remained largely dependent on bank financing<sup>135</sup>. If no further regulatory efforts are made to alleviate this dependence, SMEs will continue to exhibit a large exposure to banking sector shocks, thereby increasing potential contagion effects on the real economy. SMEs would also remain less flexible in their financing decisions overall, which would impede growth especially for rapidly expanding companies. It would also prevent SMEs from optimising their capital structure, thereby giving rise to competitive disadvantages vis-à-vis larger companies.

These detrimental impacts are unlikely to decrease in magnitude without further regulatory changes that are part of a wider plan to enhance SME access to public capital markets. On the contrary, market developments such as the overwhelming dominance of alternative liquidity provision via high frequency trading (HFT) strategies are likely to intensify liquidity issues in SME values. It is generally not possible to apply HFT market making strategies in illiquid financial assets, especially in the absence of efficient hedging markets. HFTs have pushed most traditional market makers out of liquid large and mid-caps. Traditional market makers that may also provide quotes in illiquid SME values are thus facing reduced revenues. This has already forced some of them to exit the market. Meanwhile, the administrative costs of listing for SMEs will remain the same. Ultimately, the disincentives of listing are expected to increase while there is no foreseeable increase in incentives.

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<sup>135</sup> Indicated by the fact that "only credit constraints in bank financing have a significant effect" on the investment decision of SMEs – See 'Credit constraints, firm investment and growth: evidence from survey data' – ECB, Feb. 2018

## 5.2 Policy options addressing administrative compliance costs

### 5.2.1 Options under the Market Abuse Regulation

	Management Transactions		Insider Lists	Delay in disclosing inside information	Market soundings
<b>Option 1.</b> Light-touch alleviations strictly confined to the procedures	Extend to 5 days the deadline for PDMRs to report transactions to issuers and NCA and for issuers to publicly disclose these transactions	Replace the fixed threshold for transactions requiring disclosure by a relative threshold based on the issuer's market capitalisation (e.g. 0.02%)	SME GM issuers only need to provide a list of insiders upon NCA request	Justifications for delaying the disclosure of inside information only need to be issued upon NCA request	Exempt private placement of bonds from the market sounding regime when the investors enter directly in the negotiations phase (with an alternative wall-crossing procedure is in place)
<b>Option 2.</b> Relief limited to the scope, disclosure and record-keeping obligations.	Adopt a new deadline for issuers to publicly disclose transactions relative to the notification by PDMRs and extend the overall deadline to 5 days	Raise the threshold for transactions required to be disclosed to EUR 20,000	SME GM issuers only need to maintain a list of 'permanent insiders'	Justification only upon NCA request + no need to keep a disclosure record.	
<b>Option 3.</b> Partial exemption from certain regulatory requirements	Issuers are exempt from the responsibility to disclose managers' transaction to the public. The responsibility is placed on NCAs instead [supplementary to changing thresholds]		Exempt SME issuers from maintaining an insider list	Exempt SME issuers from notifying a delay to disclose inside information to the NCA.	Exempt all private placements of bonds from the market sounding regime

The policy options regarding the Market Abuse Regulation aim to reduce the administrative compliance costs for SME issuers and to make obligations placed on them more proportionate. There are three potential approaches under the Market Abuse Regulation that could be adopted. These approaches differ in the degree of alleviation that they apply to MAR provisions: from light-touch to more far-reaching alleviations, and finally exemptions from the various obligations analysed. It should be understood that the Market Abuse Regulation provisions analysed here are those for which adjustments can be made without decreasing investor confidence or market integrity. Other changes or provisions could have been considered in addition to the ones outlined in the table here-above, but were discarded up front because of their risks towards market integrity (see annexes 6 on discarded options and 16 on the synthesis table of the initial options). The purpose of the present initiative is in no way to deconstruct the market abuse regime. Adjustments shall only focus on simplifying procedures for issuers and redistributing the burden between issuers and National Competent Authorities.

Option 1 would foresee to extend the deadline for Persons Discharging Managerial Responsibilities (PDMRs) and Persons Closely Associated (PCAs) to them to report transactions to issuers and the national competent authority to 5 days. The same deadline would apply for SME GM issuers to publicly disclose these transactions. PDMR transactions would furthermore only be captured by the disclosure requirement once they breach an annual threshold set in relative terms to the respective issuer's market capitalisation (e.g. 0.02% as computed at the end of the previous calendar year). As concerns the delayed disclosure of insider information, issuers would only need to notify the national competent authority. A full justification for such delays would only be required upon explicit request

from the national competent authority. Option 1 would also exempt the private placements of bonds from the market sounding rules, provided that institutional investors are involved in the negotiations and when an adequate wall-crossing<sup>136</sup> procedure is in place (such as the signature of a non-disclosure agreement recalling the obligations in case of disclosure of inside information). In terms of the requirement for maintaining insider lists, no changes would apply compared to the baseline, as the current regime for insider lists applying to SME Growth Market issuers is already alleviated.

Option 2 would provide more far-reaching alleviations from the current requirements under the Market Abuse Regulation than option 1. It would not extend the deadline for PDMRs to report transactions. Issuers however would receive additional time to publicly disclose these transactions after the PDMR reports them (e.g. to disclose within 2 days following the notification from the PDMR – see annex 17 for more details). Furthermore, the threshold for the disclosure requirement of PDMR transactions would be increased to EUR 20,000 on a fixed basis. Option 2 would also lower the requirements for SME Growth Market issuers to maintain an insider list. Instead of an obligation to provide a full list of insiders to the national competent authority on-demand, as required under the baseline, issuers would only have to maintain a list of 'permanent insiders'<sup>137</sup>. This list would only capture managers and employees that have regular access to inside information and would be updated on a continuous basis. Persons that are infrequently exposed to single sets of inside information would not be included. As under option 1, a full justification for the delayed disclosure of inside information would only be required on request of the NCA. In addition, SME Growth Market issuers would be exempt from the requirement to keep a record of delayed disclosures. As regards private placements of bonds by SME issuers, option 2 would foresee no changes compared to option 1.

Option 3 would envision exempting SME Growth Market issuers from the current the Market Abuse Regulation requirements in the areas specified. Issuers would no longer be required to publicly disclose manager transactions. National competent authorities would be responsible for the publication instead. This could be coupled with an increase in the threshold for transactions requiring disclosure as per option 1 or 2. SME Growth Market issuers would furthermore be exempted from both the obligation to maintain an insider list and notifying the delay in disclosing inside information to their national competent authorities. The option would also exempt all private placements of bonds from the market sounding regime, without requiring an alternative wall-crossing procedure.

### Scope of the Options under the Market Abuse Regulation

	Type of issuers
<b>Option 1.</b> Restricted scope for alleviations under MAR	SME listed on SME Growth Companies
<b>Option 2.</b> Extended scope for alleviations under MAR	All SME Growth Market issuers

Under **Option 1**, only SMEs (defined as equity issuers with a market capitalisation below EUR 200 million or debt-only issuers meeting two of the three criteria set by the 2003 Recommendation on the definition of SMEs) listed on an SME Growth Market would be able to benefit from the above-mentioned targeted alleviations under the Market Abuse Regulation.

<sup>136</sup> Wall crossing is the act of making a person an “insider” by providing them with inside information

<sup>137</sup> This list could be equivalent to the list of PDMRs

Under **Option 2**, all the SME Growth Market issuers (irrespective of their size) would benefit from the potential alleviations under the Market Abuse Regulation.

### 5.2.2 Options under the Prospectus Regulation

	<b>Requirements to transfer from an SME Growth Market to a regulated market</b>
<b>Option 1.</b> Partial alleviation	Create a lighter "transfer prospectus" for issuers having been listed for a certain amount of time on an SME Growth Market (e.g. 3 years)
<b>Option 2.</b> Admission document	Require an admission document (no approval by an NCA) instead of a full prospectus for companies that have been listed on an SME Growth Market for a certain amount of time (e.g. 3 years)

The two options aim at reducing the administrative burden imposed by the publication of a full prospectus in case of a transfer to a regulated market for issuers already listed on an SME Growth Market for a certain amount of time. Under Option 1, this alleviation would take the form of a new lightened prospectus ('a transfer prospectus'). Option 2 would exempt the issuers from the prospectus publication obligation, provided that an admission document is produced in accordance with the regulated market's listing rules.

## 5.3 Policy options concerning the SME Growth Market definition

### 5.3.1 Defining criteria and thresholds for equity and debt-only issuers

	<b>Definition of SME Growth Market</b>		
	<b>Definition of SME debt-only issuers</b>	<b>Definition of SME equity issuers</b>	<b>Proportion of SMEs</b>
<b>Option 1.</b> Unique definition of SMEs	Increase the thresholds of the 2003 recommendation definition to match the profile of SMEs today		Left unchanged (at least 50%)
<b>Option 2.</b> Market definition for debt issuers, raised threshold for equity issuer and raised SME proportion	Define an SME debt issuer based on the value of the issuance (50 million over one year)	Raising the market capitalisation threshold for equity issuers from EUR 200 to EUR 500 million	Raised to 75% (at least)
<b>Option 3.</b> Alternative market definition for debt issuer and raised threshold for equity issuer	Define an SME debt issuer based on the value of its outstanding bonds (EUR 150 million)		Left unchanged (at least 50%)

**Option 1** would consist in creating a single definition for SMEs (either equity issuer or debt-only issuer) listed on an SME Growth Market. This definition would be based on the criteria from the 2003 Recommendation on SME definition<sup>138</sup> while raising the thresholds it sets. Under this Option, an issuer would be deemed an SME if it meets two of the three following criteria: (i) an annual turnover below EUR 200 million, (ii) a total balance sheet below EUR 200 million and (iii) a number of employees up to 499. Under this option, the proportion of SMEs would be left unchanged compared to the baseline (at least 50%).

**Option 2** would amend the definition of an SME debt-only issuer based on the value of the issuance. The threshold for qualifying as an SME debt-only issuer would be set at EUR 50 million over a period of 12 months. As regards the equity issuer definition, the market

<sup>138</sup>Under the 2003 Recommendation, two of the three criteria should be met: number of employees below 250, annual turnover below EUR 50 million and size of balance sheet below EUR 43 million)

capitalisation threshold would be raised from EUR 200 to EUR 500 million. Finally, at least 75% of SMEs would be required on an SME Growth Market.

**Option 3** would define an SME debt issuer on the basis of an issuer’s total nominal value of outstanding bonds. The threshold would be set at EUR 150 million. Like option 2, the market capitalisation threshold defining an SME would be raised to EUR 500 million. However, the proportion of SMEs would be left unchanged compared to the baseline (at least 50%).

### 5.3.2 Half-yearly reports

	<b>Half yearly reports</b>
<b>Option 1.</b> Exemption for non-equity issuers	Allow SME Growth Market operators to decide whether or not to apply an obligation for half-yearly reports to non-equity issuers
<b>Option 2.</b> Exemption for equity and non-equity issuers	Allow SME Growth Market operators to decide whether or not to apply an obligation for half-yearly reports to equity and non-equity issuers

**Option 1** would remove the obligation for non-equity issuers to publish half-yearly reports when their bonds are listed on an SME Growth Market. Market operators could however decide to impose half-yearly reports as part of their internal listing rules.

Like option 1, **option 2** would remove the obligation for non-equity issuers to publish half-yearly reports but it would also exempt equity issuers from this requirement. Discretion would be left to market operators to impose half-yearly reports on equity and/or non-equity issuers through their listing rules.

## 5.4 Policy options to address liquidity on SME Growth Markets

	<b>Liquidity contracts</b>	<b>Free float requirements</b>
<b>Option 1.</b> 29 <sup>th</sup> regime + free float	Create a European regime for liquidity contracts, while authorising NCAs to submit an AMP and develop a parallel regime tailored to local conditions.	Oblige SME GMs to impose a free float requirement but provide flexibility on exact criteria
<b>Option 2.</b> Full harmonisation	Create a fully harmonised EU liquidity provision scheme with all conditions set out at EU level, without the possibility for NCAs to submit an AMP tailored to local conditions.	Impose precise free float criteria for SME GMs

**Option 1** would consist in imposing a minimum free float requirement on issuers’ capital at the time of admission to trading, and in authorising liquidity contracts in all Member States through the creation of a dedicated EU legal framework (a 29<sup>th</sup> regime) on liquidity contracts. This option would allow for some flexibility. National regulators would still be allowed to establish in parallel an accepted market practice (AMP) on liquidity contracts in order to better adapt such contracts to their local markets. Concerning free float, the value and nature of the required minimum would be set by each market operator to fit their local contexts.

**Option 2** would also require all SME Growth Market operators to impose a minimum free float at admission, and authorise liquidity contracts in all Member States. However, as opposed to option 1, no deviation from the European standard would be possible: the free float requirement (including its criteria) would be set at EU level, and national authorities would not be allowed to establish accepted market practices to deviate from the EU liquidity contract regime.

## 5.5 Options discarded at an early stage

Several potential adjustments, initially included in the public consultation "Building a proportionate regulatory environment to support SME listing", have been discarded after preliminary analyses, due to either lack of evidence, lack of overall support, market integrity risks or potential additional costs to issuers. These options include requiring key advisers, harmonising delisting rules on SME Growth Markets, simplifying transfers of listing from a regulated to an SME Growth Market, reducing disclosure requirements of inside information by SME Growth Market bond issuers, and amending the tick-size regime applicable to equity instruments listed on SME Growth Markets. For more details, please refer to annex 6.

## 6 WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

### 6.1 Policy options addressing administrative compliance costs

#### 6.1.1 Market Abuse Regulation

	Management Transactions		Insider Lists	Delay in disclosing inside information	Market soundings
<b>Option 1.</b> Light-touch alleviations strictly confined to the procedures	Extend to 5 days the deadline for PDMRs to report transactions to issuers and NCA and for issuers to publicly disclose these transactions	Replace the fixed threshold for transactions requiring disclosure by a relative threshold based on the issuer's market capitalisation (e.g. 0.02%)	SME GM issuers only need to provide a list of insiders upon NCA request	Justifications for delaying the disclosure of inside information only need to be issued upon NCA request	Exempt private placement of bonds from the market sounding regime when the investors enter directly in the negotiation phase (with an alternative wall-crossing procedure is in place)
<b>Option 2.</b> Relief limited to the scope, disclosure and record-keeping obligations.	Adopt a new deadline for issuers to publicly disclose transactions relative to the notification by PDMRs and extend the overall deadline to 5 days	Raise the threshold for transactions required to be disclosed to EUR 20,000	SME GM issuers only need to maintain a list of 'permanent insiders'	Justification only upon NCA request + no need to keep a disclosure record.	
<b>Option 3.</b> Partial exemption from certain regulatory requirements	Issuers are exempt from the responsibility to disclose managers' transaction to the public. The responsibility is placed on NCAs instead [supplementary to changing thresholds]		Exempt SME issuers from maintaining an insider list	Exempt SME issuers from notifying a delay to disclose inside information to the NCA.	Exempt all private placements of bonds from the market sounding regime

#### ***Option 1: Light-touch alleviations strictly confined to the procedures***

Option 1 would provide additional time for the disclosure of management transaction and would re-calibrate the threshold above which transactions need to be notified on a relative basis compared to the respective issuer's market capitalisation (e.g. 0.02%)<sup>139</sup>. For investors, this solution would mean that the managers' transactions that are the most informative for the market (as they exceed a certain percentage of the market capitalisation) would be disclosed. For managers and issuers, the use of a market capitalisation criterion would not necessarily

<sup>139</sup> An EU small Business Act (report by F Demarigny), 2009

translate into fewer transactions to be notified and disclosed. As shown in the Table below, with a relative threshold set at 0.02% of market capitalisation, the alleviation compared to the current threshold of EUR 5,000 would only kick in for companies with a market capitalisation above EUR 25 million. Furthermore, some stakeholders have underlined that it can be challenging for managers and closely associated persons to keep track of the current EUR 5,000 threshold<sup>140</sup>. Their task would be made even more complex by a threshold expressed in a market capitalisation percentage.

<b>Issuer's capitalisation</b>	EUR 10 million	EUR 25 million	EUR 50 million	EUR 100 million	EUR 200 million	EUR 500 Million	EUR 1 billion
<b>Threshold of notification</b>	EUR 2,000	EUR 5,000	EUR 10,000	EUR 20,000	EUR 40,000	EUR 100,000	EUR 200,000

Under this Option, the additional time for the notification would provide both managers and issuers with greater flexibility, thus further reducing their administrative burden<sup>141</sup>. However, this extension of delay would not solve one difficulty frequently mentioned by respondents to the public consultation: the transactions are sometimes notified to the issuer lately, which often leaves little to no time at all to disclose those transactions to the market. Both amendments on managers' transactions would have little to no impact on market integrity. This extension of delay would mean that investors would still be informed of managers' transactions (five days after the transaction instead of three days<sup>142</sup>). While increasing the threshold may have a marginal impact on the ability of national competent authorities to detect insider trading, other supervisory tools (e.g. suspicious transactions reports) would similarly trigger alerts which could then be further investigated.

The envisioned change to provide a justification for the delay of disclosing insider information only upon request of the responsible national competent authority would similarly reduce administrative burden for issuers while incurring a minimal impact on the ability of national competent authorities to monitor the lawful disclosure of such information. Since issuers would still notify the national competent authority when there is a delay in the disclosure of information, any suspicion of irregularities could be directly examined by issuing a respective request for justification. However, the burden alleviation for issuers would have a limited impact, as the issuer would still be obliged to keep 'a disclosure record' to provide the national competent authorities with the necessary justifications when requested.

Option 1 would bring legal clarification by exempting private placements of bonds issued by SME Growth Market issuers from the market sounding regime under the the Market Abuse Regulation. This would reduce the administrative burden on issuers and those acting on their behalf (such as the arranger banks). By lightening the administrative constraints on prospective investors that could participate in the structuring of private placement transactions, this would also facilitate debt issuances by SMEs. Such a modification would also better reflect the nature of private placements of bonds, where *'investor contacts form*

<sup>140</sup> Public consultation on SME listing (responses from Swedish Securities Dealer Association, Nordic Growth Market, AktieTorget and QCA)

<sup>141</sup> One way to reduce the administrative burden placed on SMEs is to give them more time than large companies to fulfil their obligations (See: European Commission, 'Models to reduce the disproportionate burden on SMEs, 2009).

<sup>142</sup> This would correspond to the market standard before the entry into application of the Market Abuse Regulation in July 2016. Under MAD, 22 Member States (AT, BE, BG, CZ, DE, EE, ES, FR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SI) required that the notification of managers' transactions shall be made within five working days (Source: CESR/09-1120).

*part of an inherent process of negotiations with the entire set of potential investors with whom a transaction might occur, rather than a (helpful, though not inherently necessary) mean to test an offering's viability before presentation to a wider group of investors*<sup>143</sup>. Under this Option, both issuers and those acting on their behalf would have to apply an adequate wall-crossing procedure, as negotiated private placements may give rise to disclosure of inside information (e.g. on the issuer's creditworthiness). This wall-crossing procedure could take the form of the mandatory signature of a non-disclosure agreement between institutional investors involved in the subsequent negotiations with the issuer and/or its arranger, which would make sure that all parties are aware of their obligations regarding inside information disclosure<sup>144</sup>. The signature of a non-disclosure agreement (that corresponds to current market practice) would help preserve market integrity, while placing a less significant burden on issuers that would not deter them from negotiating a private placement.

### ***Option 2. Relief limited to the scope, disclosure and record-keeping obligations***

Similar to option 1, option 2 foresees targeted amendments to the current requirements that would lower the administrative compliance costs for SME Growth Market issuers. The amendments under option 2 would however imply more far-reaching alleviations.

In terms of the requirements to disclose managers' transactions, option 2 provides the benefit of setting the deadline for the public disclosure in relation to the timing of the PDMR notification. This would ensure that the issuer always has sufficient time for the disclosure process and provides issuers with additional temporal flexibility (see annex 17 for more details). Meanwhile, the increase of the disclosure threshold on fixed terms (from EUR 5,000 to EUR 20,000) would equally reduce the cost burden for issuers. In relative terms, smaller issuers would be alleviated slightly more strongly, as the EUR 20,000 threshold would reflect a larger percentage of their overall market capitalisation. A higher fixed threshold also implies that fewer transactions would be disclosed. Ultimately though, as is also the case for option 1, other supervisory tools would still trigger alerts regardless of whether a transaction is captured by mandatory disclosure. Changing the maximum delay or threshold should thus bear little to no impact on market integrity. From an investor perspective, this option would entail no change, as investors would still be informed of managers' transactions (five days maximum after the transactions). The situation would be further improved as small managers' transactions that carry less market signalling information (below EUR 20,000) would not be disclosed to the market.

Option 2 would also include a change in terms of the obligation to maintain an insider list. Producing an insider list upon request from a national competent authority (as under the baseline and option 1) entails no real cost savings as inside information and persons having access to such information still need to be monitored on an on-going basis for the issuer to be able to draw up an insider list if requested by the national competent authority. Issuers have

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<sup>143</sup> Cleary Gottlieb, *Market abuse Regulation: A Balanced Approach to the Market Sounding Regime's Applicability in Capital Markets Transactions*, June 2017

<sup>144</sup> Some industry organisations already recommend the signature of such an agreement when parties are entering into negotiations for a private placement of bonds. Both the *European Corporate Debt Private Placement Market Guide* (2016) of the International Capital Markets Associations and the Euro-PP Charter recommend the signature of a non-disclosure agreement. In those non-disclosure agreement template, there is a provision on 'inside information' stating that *'The Recipient agrees and acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and the Recipient undertakes not to use such Confidential Information for any unlawful purpose in contravention of such legislation'*

to produce *ad hoc* lists of insiders several times a year for each piece of inside information<sup>145</sup>. Option 2 therefore foresees to require only one list of 'permanent insiders' (i.e. only capturing managers and staff that have regular access to inside information) in order to avoid the costs of on-going monitoring and tracking<sup>146</sup>. The impact that this would have on the capacity of national competent authorities to detect insider trading would be minimal, as (i) national competent authorities rarely rely on insider lists for the identification of insider trading<sup>147</sup>, and (ii) not everyone having access to a particular set of inside information would necessarily be captured by an on-going insider list in any case<sup>148</sup>. However, a list of permanent insiders can raise another issue, namely that it does not provide real guidance as to whether a particular person has in fact received a particular piece of information<sup>149</sup>.

As concerns the delayed disclosure of inside information, option 2 would also exempt issuers from maintaining a disclosure record, beyond placing the justification delay on an 'on-request' basis. This would lower the administrative costs significantly more. In addition, this would enable to preserve the issuers' legitimate interests, as anecdotal evidence suggests that issuers are currently incentivised to disclose inside information earlier than necessary to avoid recoding cumbersome justifications for the delay in disclosure<sup>150</sup>. At the same time, national competent authorities could keep an internal record of delayed disclosures, if deemed necessary, as notification of delays would still apply. As national competent authorities would still be able to request a justification for the delay (prepared ex-post by the issuer), the impact on market integrity would be minimal. As regards private placements of bonds by SME issuers, option 2 would foresee no changes compared to option 1.

### ***Option 3: Partial exemption from certain regulatory requirements***

Option 3 would grant SME issuers a range of exemptions from current requirements. This would have a greater positive impact on the administrative compliance costs faced by SME Growth Market issuers.

Under this option, national competent authorities would be responsible for disclosing managers' transactions to the public, thus discharging issuers from this obligation. This would merely shift costs from issuers to national competent authorities without any detrimental impacts on market integrity. National competent authorities would have to bear the administrative burden (and potential liability risks) associated with disseminating the information related to managers' transactions to the market. For investors, the situation would not be changed or would be slightly improved, as all managers' transactions on SME financial instruments would be accessible through one single national data-entry point. Some European national competent authorities have already decided to use this method and taken the initiative to discharge issuers from the obligation to disclose managers' transactions to the public. Stakeholders generally admit that such system proves extremely efficient, although

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<sup>145</sup> Anecdotal evidence shows that issuers on AIM Italy disclosed 33 pieces of inside information (and therefore 33 insider lists) on average in 2017 (Source: IR Top Consulting, Osservatorio Aim di IR Top: analisi Internal Dealing, January 2018)

<sup>146</sup> Evidence from the Polish market shows that 71% of NewConnect issuers keep updated a permanent insider section in their insider lists. Moreover, this permanent section seems to be easier to establish as it includes 7 people on average.

<sup>147</sup> The Commission has obtained data from 17 NCAs on the number of insider lists requested from MTF issuers in 2017. It appeared that 11 NCAs requested no insider list, 4 NCAs requested 1 insider lists and 2 NCA have requested 5 or 6 insider lists. See annex 11 for more details

<sup>148</sup> For instance, if an issuer is the target of an unsolicited/hostile takeover, the potential buyer (especially if it is a private company) is not required to produce an insider list.

<sup>149</sup> ESME Report, *Market Abuse EU legal framework and its implementation by Member States: a first evaluation*, June 2007

<sup>150</sup> Technical workshop organised with EU securities exchanges on 14 November 2017

not all European national competent authorities would have the resources both in terms of IT and budget.

Under this option, SME Growth Market issuers would also be exempted from maintaining insider lists and justifying delays in disclosing inside information. This solution would be justified as the usefulness of insider lists for insider dealing investigations has been questioned several times<sup>151</sup>. As the flow of insider information generated by SMEs is significantly lower and concentrated on few managers<sup>152</sup>, national competent authorities could easily identify insiders (and potential insider dealings) through other investigation techniques. While reducing administrative costs more significantly than options 1 or 2, there are potential market integrity risks that could arise from this amendment. In addition to facilitating insider dealing investigations, the insider list requirement has also an educational impact by ensuring that people featured on the list understand the meaning and consequences of having access to inside information.

Under Option 3, SME issuers would not be required to inform the national competent authority in the event of delayed disclosure (but would still be required to provide a justification ex-post when requested by the national competent authority). This solution would further reduce the administrative burden on SME issuers. While the absence of insider lists could be compensated for, as under options 1 and 2, by other supervisory tools, not notifying national competent authorities about delays of disclosure of inside information would undermine the ability of national competent authorities to monitor the timely and accurate disclosure. Delayed disclosure of inside information increases the risk of information leaks and, as a consequence, the risk of insider trading. Knowing that disclosure has been delayed enables targeted monitoring of relevant issuers and allows national competent authorities to intensify their surveillance of anomalous price movements before important announcements. As there would be no direct means to verify whether disclosure has been delayed, there would be risks that some issuers exploit this exemption, to withhold negative news.

Similar to Option 2, option 3 would exempt SME Growth Market issuers, those acting on their behalf, and investors from the market sounding rules foreseen by the Market Abuse Regulation. In addition, the parties to the negotiated private placement transaction would not have to put in place a wall-crossing procedure to avoid any disclosure of inside information. This option would alleviate the burden and would make the private placements of bonds more attractive for both issuers and investors. The absence of a wall-crossing procedure would also be justified by the fact that negotiated private placements takes place with institutional investors who are more familiar with duties as regards inside information. In the past, one Member State already adopted a market practice on market soundings by excluding private placement transactions without requiring an alternative wall-crossing procedure (such as the signature of a non-disclosure agreement)<sup>153</sup>. This option would finally put the European private placement markets using a bond format (such as the Euro-PP in France and the mini-bonds market in Italy and in Spain) on an equal footing with other private placement markets using loans that are not considered financial instruments under the Markets in Financial

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<sup>151</sup> Carmine Di Noia, *Pending Issues in the review of the European market abuses rules*, ECMI Policy brief, February 2012; ESME Report, *Market Abuse EU legal framework and its implementation by Member States: a first evaluation*, June 2007

<sup>152</sup> Fabrice Demarigny, *An EU Small Business Act*, 2009

<sup>153</sup> 'Norme professionnelle AMAFI relative aux sondages de marché et aux tests investisseur' in France

Instruments Directive II and fall outside the scope of the Market Abuse Regulation and the market sounding regime<sup>154</sup>.

<i>Objectives</i>	<i>EFFECTIVENESS</i>			<i>EFFICIENCY</i> (cost-effectiveness)	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i> <i>Reduce compliance costs for SMEs</i>	<i>Objective 2</i> <i>Enhance liquidity</i>	<i>Objective 3</i> <i>Maintain market integrity</i>			
<i>Policy option</i>						
Baseline scenario	0	0	0	0	0	0
<b>Option 1.</b> Light-touch alleviations strictly confined to the procedures	+	≈	≈	≈ or -	+	<b>1.5</b>
<b>Option 2.</b> Relief limited to the scope, disclosure and record-keeping obligations.	++	≈	≈ or -	+	++	<b>4.5</b>
<b>Option 3.</b> Partial exemption from certain regulatory requirements	++	≈	-	+	-	<b>1</b>

*Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable*

### **Impact on Stakeholders**

	<b>Issuers</b>	<b>Investors</b>	<b>Intermediaries / Market Makers</b>	<b>Exchanges</b>	<b>NCA/s/ Supervisors</b>
1. Baseline scenario	0	0	0	0	0
<b>Option 1.</b> Light-touch alleviations strictly confined to the procedures	↑	≈ or ↑	≈	≈	≈
<b>Option 2.</b> Relief limited to the scope, disclosure and record-keeping obligations.	↑ or ↑↑	≈ or ↑	≈	≈	≈ or ↓
<b>Option 3.</b> Partial exemption from certain regulatory requirements	↑↑	≈ or ↓	≈	≈	↓↓

**Overall, given the respective impacts of the options considered, the preferred approach would be option 2 (except for the threshold triggering the disclosure of managers' transaction).** This option would maximise the administrative cost savings for SME Growth Market issuers while minimising potential detrimental impacts on market integrity. national competent authorities would essentially have the same ability to monitor insider trading activities as under the baseline. The increase in the maximum delay for disclosure and the creation of a permanent list of insiders would equally result in little to no detrimental impacts on supervisory activities, while decreasing the administrative burden and compliance costs for issuers. Lastly, the exemption for private placements of bonds would ensure that there is legal clarity on this matter and would facilitate such transactions, while ensuring that all

<sup>154</sup> For instance, the German private placement market (called 'Schuldschein') relies on a loan format. The market participants in the French Euro-PP market can use both a loan and a bond format.

parties are informed of their obligations as regards the misuse of inside information. However, as there is no convincing evidence that raising the threshold triggering the publication of managers' transaction would substantially lower the burden on SME issuers, this aspect of Option 2 should not be considered. Furthermore, the Member States still have the option under the Market Abuse Regulation to raise this threshold up to EUR 20,000.

### Scope of the Options under the Market Abuse Regulation

	Type of issuers
Option 1. Restricted scope for alleviations under MAR	SME listed on SME Growth Companies
Option 2. Extended scope for alleviations under MAR	All SME Growth Market issuers

Option 1 would restrict the alleviations to SMEs and would not allow larger issuers on an SME Growth market to benefit from potential alleviations under the Market Abuse Regulation. A differentiated and proportionate regulatory treatment seems to be justified only when a company is small and cannot cope with its regulatory requirements, due to its small size and small financial resources. When a company ceases to be considered an SME under the Markets in Financial Instruments Directive II, it would be justified that the company should be obliged to follow the same rules as any other issuers. Limiting the alleviations to SMEs would also minimise the risk of regulatory arbitrage by larger companies (above EUR 200 million) that could be tempted to list their securities on an SME Growth markets to profit from targeted alleviations. This solution would also create a level-playing field between non-SME issuers and companies listed on regulated markets. However, in practice, this solution could create a series of issues. From an investor perspective, the creation of two sets of rules applying to issuers listed on the same type of trading venues is likely to cause confusion. Furthermore, depending on the volatility of the markets, some companies could exceed or drop below the EUR 200 million market capitalisation threshold, which would affect their SME status. For those companies, this would imply changing their internal procedures to meet lighter (or stricter) requirements, which could be costly and burdensome for issuers and misleading for investors. Finally, it should be noted that MiFID II creates three types of trading venues with different regulatory requirements (i.e. regulated markets, MTFs and SME Growth markets). This complex segmentation could be made even more complex and confusing for investors if a subset of issuers on SME Growth Markets would be subject to a special treatment.

Under Option 2, all issuers on SME Growth Markets would comply with the same set of rules under the Market Abuse Regulation, including the potential alleviations. This solution would be simpler to understand by both issuers and investors (who rely on the fact the companies of the same trading venues comply with the same set of requirements). The application of uniform rules would also make SME Growth issuers attractive for larger companies that would otherwise have no reason to choose this form of trading venues. Uniform requirements would enable SME Growth Markets to attract a sufficient number of non-SMEs, thus fostering liquidity and profitability of the platform. The risk of regulatory arbitrage is very limited as the number of non-SMEs on the current SME-dedicated markets is very low and likely to remain so. Large companies that are able to cope with the more stringent requirements imposed on regulated markets would prefer a listing on that type of trading venues, for liquidity reasons and to attract other types of investors. Applying the same set of rules to issuers would also ensure that companies are not penalised because they are growing and their market capitalisation has exceeded EUR 200 million. This solution would also be consistent with the regime applying to regulated market issuers: on those trading venues, the

requirement apply to issuers, irrespective of their size and even if they could fall into the MiFID II SME definition. This solution would also ensure consistency between rules applying to SME Growth Market issuers in general: while all the SME Growth Market issuers would be subject to the same admission rules and periodic information requirements (under MiFID II), they would also receive the same treatment as regards market abuse rules.

<i>Objectives</i>	<i>EFFECTIVENESS</i>			<i>EFFICIENCY</i>  (cost-effectiveness)	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i>  <i>Reduce compliance costs for SMEs</i>	<i>Objective 2</i>  <i>Enhance liquidity</i>	<i>Objective 3</i>  <i>Maintain market integrity</i>			
<i>Policy option</i>						
Baseline scenario	0	0	0	0	0	0
<b>Option 1.</b> Restricted scope for alleviations under MAR	+	≈	+	+	-	2
<b>Option 2.</b> Extended scope for alleviations under MAR	+	+	≈	+	+	4

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

### Impact on Stakeholders

	<b>Issuers</b>	<b>Investors</b>	<b>Intermediaries / Market Makers</b>	<b>Exchanges</b>	<b>NCA/s Supervisors</b>
1. Baseline scenario	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>Option 1.</b> Restricted scope for alleviations under MAR	↑	↓	≈	↓	≈ or ↓
<b>Option 2.</b> Extended scope for alleviations under MAR	↑↑	↑	≈	↑	≈ or ↑

For the sake of market consistency, simplicity and comprehensibility for both investors and issuers and due to the possible volatility of market capitalisation (and its impact on the issuer's qualification as an SME or not), **the preferred option is option 2.**

#### *6.1.2 Prospectus/ transfer of listing from an SME Growth market to a regulated market*

	<b>Requirements to transfer from an SME Growth Market to a regulated market</b>
<b>Option 1.</b> Partial alleviation	Create a lighter "transfer prospectus" for issuers having been listed a certain amount of time on an SME Growth Market (e.g. 3 years)
<b>Option 2.</b> Admission document	Require an admission document (not approved by NCAs) instead of a prospectus for companies that have been listed on an SME Growth Market for a certain amount of time (e.g. 3 years),

Under Option 1, the issuers seeking to graduate from an SME Growth Market to the regulated market would have to produce an alleviated prospectus, compared to the normal regime where they have to prepare a full prospectus and incur all the costs this entails. The 'transfer' prospectus would be available for use in cases of transfer from an SME Growth Market to a regulated market and its content would be alleviated compared to the normal prospectus. It would be based on the existing schedule set up for the simplified prospectus for secondary

issuances under the Prospectus Regulation. This would present several advantages compared to the current situation: (i) it would significantly reduce the amount of time and the costs for issuers, including external advisers' fees; (ii) it would thereby facilitate the transition from an SME Growth Market to a regulated market, allowing growing companies to access greater liquidity and gain enhanced visibility towards investors associated with the EU main markets; (iii) it would also help to make the 'SME Growth Market' brand more attractive for both issuers and stock-exchanges. An alleviated 'transfer' prospectus would facilitate the upgrade to regulated markets by companies that have exceeded the market capitalisation threshold of EUR 200 million and address the risk for the trading venue to lose its certification as an SME Growth Market (in case more than 50% of listed companies would exceed the EUR 200 million threshold). Nevertheless, from an investor point of view, it could cause confusion that some issuers admitted to trading on a regulated market for the first time have to produce a full prospectus while SMEs can publish an alleviated prospectus. This is why a condition to access to this 'transfer' prospectus would require issuers to have been admitted to trading on an SME Growth Market for at least 3 years. Indeed, it has been observed that SMEs generally move on to the regulated markets after a period of three years<sup>155</sup>. The alleviated prospectus would only apply after a period of three years to leave sufficient time for issuers to provide the market with information on their past financial performance and meet the reporting requirements under the rules of an SME Growth Market (MiFID II level 2). The cornerstone principle under the Prospectus regulation, according to which a prospectus has to be published when securities are offered to the public or admitted to trading on a regulated market, would therefore still be respected. Furthermore, this alleviated prospectus schedule would remain a 'niche' product, as the number of companies that currently graduate from SME-dedicated MTFs to the regulated market is relatively low<sup>156</sup>.

Under Option 2, the issuer will not be obliged to issue a prospectus, but would instead be required to draw up an admission document in accordance with the regulated market's listing rules. This document would not constitute a prospectus and would not be approved by a national competent authority. The regulated market rules would determine its content, as for existing admission documents. This option would present the same advantages as Option 1 and would further reduce the costs faced when moving to the main market. However, the core principle of the Prospectus Regulation (according to which the prospectus publication obligation is triggered when securities are offered to the public or admitted to trading on a regulated market) would not be respected. More significantly, the lack of approval by a national competent authority of this document and the lack of harmonisation of its content could cause investor confusion and damage the trust in the regulated market 'brand', as there would be no prospectus available for some issuers. Finally, the admission to trading on a regulated market imposes the obligation on issuers to produce financial statements according to IFRS. Except in few cases<sup>157</sup>, the listing rules of SME-dedicated MTFs do not require the mandatory publication of financial statements in IFRS, which means that a large number of potential SME Growth Market issuers do not use IFRS<sup>158</sup>. The absence of a prospectus by

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<sup>155</sup> Except on AIM Italy where the graduation takes place on average after 25 months, such a move to the main market usually take place after three years (First North: 3 years; NewConnect: 3.17 years; MAB: 5 years, ESM: more than 5 years; AktieTorget: 8 years).

<sup>156</sup> Since 2006, there has been on average per year 19 issuers moving from SME-dedicated MTFs to EU regulated markets. Since 2016, there have been 226 companies graduating from the SME-dedicated MTFs to EU regulated markets. (Source: Data received from EU Securities exchanges and Commission data analysis – The MTFs included in this sample are: Dritter Markt, Euronext Growth, First North, Scale, EN.A, ESM, AIM Italy, AIM UK, NewConnect, AeRO, BSSE MTF, MAB, AktieTorget).

<sup>157</sup> Two SME-dedicated markets impose the use of IFRS: AIM in the UK and the Emerging Companies Market in Cyprus

<sup>158</sup> Feedback received during workshops organised by Commission services on barriers to SME listing in 2016

issuers for which no financial statement in IFRS was available would likely increase investors' confusion.

Given the impact on the different stakeholders and the coherence with the Prospectus Regulation, **the preferred option is Option 1.**

<i>Objectives</i>	<i>EFFECTIVENESS</i>			<i>EFFICIENCY</i> (cost-effectiveness)	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i>	<i>Objective 2</i>	<i>Objective 3</i>			
<i>Policy option</i>	<i>Reduce compliance costs for SMEs</i>	<i>Enhance liquidity</i>	<i>Maintain market integrity</i>			
1. Baseline scenario	0	0	0	0	0	0
<b>Option 1.</b> Partial alleviation	+	≈	≈	+	++	<b>4</b>
<b>Option 2.</b> Admission document	++	≈	-	+	-	<b>1</b>

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

### **Impact on Stakeholders**

	<b>Issuers</b>	<b>Investors</b>	<b>Intermediaries / Market Makers</b>	<b>Exchanges</b>	<b>NCA's / Supervisors</b>
1. Baseline scenario	0	0	0	0	<b>0</b>
<b>Option 1.</b> Partial alleviation	↑	≈	≈	≈ or ↑	≈ or ↑
<b>Option 2.</b> Admission document	↑↑	↓	≈ or ↓	≈ or ↑	↓

## **6.2 Policy options concerning the SME Growth Market concept**

### *6.2.1 SME Growth Market defining criteria and thresholds*

	<b>SME Growth Market Definition</b>		
	<b>Definition of SME debt-only issuers</b>	<b>Definition of SME equity issuers</b>	<b>Proportion of SMEs</b>
<b>Option 1.</b> Unique definition of SMEs	Increase the thresholds of the 2003 recommendation definition to match the profile of SMEs today		Left unchanged (at least 50%)
<b>Option 2.</b> Debt issuer market definition, raised threshold for equity issuers and raised SME proportion	Define an SME debt-only issuer based on the value of the issuance (EUR 50 million over one year)	Raising the market capitalisation threshold for equity issuers from EUR 200 to EUR 500 million	Raised to 75% (at least)
<b>Option 3.</b> Alternative debt issuer market definition and raised threshold for equity issuers	Define an SME debt issuer based on the value of its outstanding bond issued (EUR 150 million)		Left unchanged (at least 50%)

Option 1 would create a single definition for SME issuers by keeping the criteria from the 2003 Recommendation definition while raising the thresholds it sets. While the number of

employees could be set at 499 by reference to other sectorial legislation<sup>159</sup>, setting an average turnover<sup>160</sup> and a balance sheet<sup>161</sup> set at EUR 200 million would be likely to capture all the issuers currently listed on the SME-dedicated MTFs. A single definition would make SME Growth Markets more understandable for investors, as they could rely on the fact that SMEs (either issuing debt or equity) on those trading venues meet the same set of criteria. In principle, this modification of the SME definition should facilitate the registration of MTFs as SME Growth Markets. As the problem of the current definition for debt-only issuers lies in a too narrow coverage of too small companies, raising the thresholds would logically include more SMEs and should be more reflective of the actual market situation. For equity issuers, criteria based on the number of employees, total balance sheet and turnover are less likely to fluctuate greatly compared to a market capitalisation criterion. This approach was put forward by a number of respondents to the public consultation. Nevertheless, there are several downsides to this option. First of all, it would be very difficult to evaluate the right balance sheet and turnover thresholds and their cumulative effects. This difficulty stands out very clearly from the responses to the public consultation. Some stakeholders suggested raising the turnover or balance sheet thresholds to EUR 150 million, while others were in favour of going as far as EUR 500 million. Furthermore, the three criteria can vary considerably, depending on the industry in which the issuer operates. For exchanges, keeping track of those different thresholds would require a deeper analysis compared to a market capitalisation criterion. Work is currently being led by the Commission to revisit the 2003 Recommendation, and setting new thresholds that would be adapted to SME access to public markets could conflict with the broader, ongoing work on what an SME is. This is all the more true as the purpose of a new definition with regard to SME Growth Markets should be to target specifically the relevant population of SMEs, i.e. those in a position to access public markets and which should be incentivised. The need to adopt a well-calibrated approach specifically for market access purposes pleads in favour of a market-based definition. Under this option, the proportion of SMEs on SME Growth Markets (at least 50%) would remain similar to the baseline.

Option 2 would modify both the SME equity and debt-only issuer definitions, as those two types of issuers present very specific features and would require separate consideration. For SME debt-only issuers, the current definition would be replaced by a definition based on the value of issuances (EUR 50 million) over a period of 12 months. As for option 1, this would allow companies to qualify as SME debt-only issuers despite breaching the current thresholds in terms of total number of employees (250), annual turnover (EUR 50 million) and, most importantly, size of balance sheet (EUR 43 million). As a result, an increased number of debt issuers would qualify as SMEs. In turn, this would enable more bond markets to qualify as SME Growth Markets and issuers on these markets to benefit from the alleviated regulatory requirements. It would thus help to lower the administrative compliance costs faced by SME debt issuers. The threshold based on issuance size would be calibrated to ensure that only smaller issuers would qualify. An appropriate threshold, based on common issuance sizes of

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<sup>159</sup> For instance, the EU Growth Prospectus is available to unlisted companies issuing less than EUR 20 million and with an average number of employees of 499. Likewise, the Commission Guidelines on State aid to promote risk finance investments (SWD(2014)6 and SWD(2014)7) define a midcap as *'an undertaking whose number of employees does not exceed 499'*.

<sup>160</sup> The average turnover of companies listed on the EU SME MTF is the following: EN.A (135K€), NewConnect (800K€), MAB (EUR 9 million), Euronext Growth (EUR 20 million), First North (EUR 25 million), Scale (EUR 39 million) and ESM (EUR 126 million) (Source: *Growth Markets in Europe – An overview of what is on offer*)

<sup>161</sup> Anecdotal evidence from the Spanish Market shows that the typical SME issuer raises between EUR 20 and 80 million on MARF. On average, such capital-raising requires a balance sheet of EUR 60-100 million and a turnover of EUR 200 million (Public consultation SME listing)

SMEs and stakeholders' feedback, appears to be around EUR 50 million over a period of 12 months (see annex 12 for more details). Given the costs of issuances<sup>162</sup>, larger companies would generally look to issue considerably larger sized bond packages. Also, they will often be publicly listed companies for which the debt-only issuer definition does not apply. As such, there is little scope for regulatory arbitrage.

Under option 2, the market capitalisation threshold for equity issuers would be raised from EUR 200 million to EUR 500 million<sup>163</sup>. This would be combined with a higher SME percentage requirement (at least 75%) for the trading venue to qualify as an SME Growth Market. This approach would align the SME Growth Market definition with other EU regulations (the ELTIFs regulation<sup>164</sup> and the Prospectus Regulation<sup>165</sup>) that grant benefits to issuers with a market capitalisation below EUR 500 million. A raised threshold would also better reflect market realities, as issuers with a market capitalisation below EUR 500 million also experience liquidity issues<sup>166</sup> and can face difficulty in complying with regulatory requirements. Some respondents also mentioned that an issuer can easily exceed the EUR 200 million threshold, as a result of subsequent fund raising, acquisitions or organic growth. While valuation of SME issuers can change quickly (due to innovative technologies or commercial breakthroughs), companies can still find themselves in a growth stage, requiring more flexible access to capital provided for under the SME Growth Market framework. Raising the threshold would also enable SME Growth Markets to attract more and larger companies, with the potential to increase liquidity on those markets (due to larger free floats). Larger issuers would also increase institutional investors' interest in SME Growth Market shares. Under this option, the required proportion of SMEs would be raised to 75%. If the market capitalisation threshold was raised to EUR 500 million, the proportion of SMEs could also be raised to avoid any regulatory arbitrage by non-SME issuers. For investors, this higher proportion would also assert their image of SME Growth Market as 'SME growers', by allowing less non-SMEs to list. Raising the current 50% threshold also means that, as SMEs get bigger, fewer of them will be able to continue to be traded on SME Growth Market over time, incentivising some of the largest issuers to move to regulated markets<sup>167</sup>.

However, raising the market capitalisation threshold is not fully justified at the current juncture: First, MTFs that are seeking a registration as an SME Growth Market are not struggling with the current definition. Indeed, the vast majority of MTFs targeting SMEs have issuers with an average market capitalisation far below EUR 200 million (see Figure 10 below). This means that raising this threshold to EUR 500 million would not allow more MTFs to register as SME Growth Markets, as all the MTF markets across the EU can currently fit into this definition<sup>168</sup>.

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<sup>162</sup> The costs of an initial bond offering of less than EUR 10 million on Euronext Growth are estimated at between 2 and 5% of the proceeds (Source: Magazine des Directeurs Administratifs et financiers (July-August 2013); In the technical workshop on 'barriers on listing for SMEs' on 7/10/2016 and 08/12/2016, participants indicated that the costs of an SME bond issuance represents 2% of the proceeds.

<sup>163</sup> A third of the respondents to the public consultation were in favour of raising the threshold from EUR 200 to EUR 500 million.

<sup>164</sup> The recent European Long-Term Investment Funds (ELTIFs) shall invest at least 70% of their money in certain type of assets among which SMEs listed on regulated market or MTFs and with a market capitalisation below EUR 500 million.

<sup>165</sup> The alleviated 'EU Growth Prospectus', created by the revised Prospectus Regulation, is available (beyond SMEs) to companies listed on an SME Growth Market with a market capitalisation up to EUR 500 million.

<sup>166</sup> Hardman & Co, "While AIM companies management ignore retail investors at their peril", 2015

<sup>167</sup> Public consultation SME listing; Public Consultation, SME Listing, Department of Legal Studies, Bocconi University

<sup>168</sup> Even for the Enterprises Securities Market (ESM) where the average capitalisation of issuers is above EUR 200 million, the current definition is not a problem as out of the 22 companies listed on this trading venue, 12 of them (i.e. more than 50%) have a market capitalisation below EUR 200 million.

Figure 10 – Average market capitalisation of companies listed on a selection of SME-dedicated MTFs

	Dritter Markt (AT)	Euronext (FR, BE, PT)	Start (CZ)	First North (DK, EE, FI, LV, LT, SE)	Scale (DE)	EN.A (EL)	ESM (IE)	AIM (IT)	New Connect (PL)	AeRO (RO)	MAB (ES)	Aktie Torget (SE)	AIM (UK)
2017 Average market cap (m€)	44,9	65,1	21,9	49,7	146,5	8,4	227,3	58,7	5,7	4,4	103	0,9	125,8

Source: Data received from securities exchanges and Commission calculations

Raising the threshold up to EUR 500 million would not allow more SME Growth Market issuers to benefit from alleviations/benefits associated with the SME Growth Market status. The current benefits/alleviations provided by the Market Abuse Regulation and by CSDR are available for all SME Growth Market issuers, irrespective of their size and the EU Growth Prospectus is already available for SME Growth Market issuers with a market capitalisation threshold up to EUR 500 million. Therefore, raising the threshold to this amount would not extend the possibility to use this alleviated prospectus schedule to more companies. The only impact of a raised threshold would be for EuVECA funds (normally dedicated to start-ups and unlisted companies) that are only allowed to invest in SMEs listed on SME Growth Markets (see annex 15). Likewise, raising the proportion of SMEs to 75% could have some downside effects. Reduced access to SME Growth Markets for larger issuers could be detrimental to market liquidity and for the profitability of the trading venues. A higher threshold would also reduce the flexibility granted to companies (when they cease to be SMEs) to remain listed on an SME Growth Market.

Under Option 3, the market capitalisation threshold for equity issuers would be raised to EUR 500 million, like under option 2, while the proportion of SMEs needed for the market to qualify as an SME Growth Market would be unchanged (at 50%) compared to the baseline. A capitalisation threshold of EUR 500 million would better reflect the situation of European SMEs (especially in the larger Member States) and future growth prospects of companies listed on those trading venues, while granting larger companies access to SME Growth Markets (up to 49%) might be beneficial for the liquidity and profitability of the trading venues. Option 3 would base the definition of debt-only issuers on the total value of outstanding debt. A non-equity issuer would qualify as SMEs provided that the outstanding nominal value of its debt securities does not exceed EUR 150 million. This threshold seems to be appropriate, considering the average nominal value of outstanding bond issuance per issuer (See figure 11). This solution was not mentioned by respondents to the public consultation but was considered by ESMA when producing its final report on MiFID II level 2<sup>169</sup>. Compared to option 2, this solution would have the merit of strictly limiting the SME debt-only issuer definition: under this option, an issuer could not be considered an SME if it returns to the market several times and raises debt capital through secondary issuances. A criterion based on outstanding debt issued would also draw a parallel with the criterion based on market capitalisation used for SME equity issuers. However, this option presents a drawback. SMEs in financial distress may exceed the threshold involuntarily<sup>170</sup>. Although their business should qualify as an SME, they would drop outside of the definition scope when their debt levels increase. Should this happen to more companies on the market, the

<sup>169</sup> ESMA's Technical Advice to the Commission on MiFID II and MiFIR – Final Report

<sup>170</sup> Distress of several SME bond issuers at the same time has already been observed on the German SME bond Market. Source: OECD, *Growth companies, Access to Capital Markets and Corporate Governance*, 2015; Scope Ratings, *Lessons Learned in the German SME Bond Market* (April 2015); Scope Ratings, *Scale Replaces Entry Standard, Will this Rehabilitate SME Bond Financing?* (2017)

markets could lose their SME Growth Market status, thus limiting regulatory alleviations for their companies.

Figure 11 – Average value of outstanding issuances per issuer per year

	2012	2013	2014	2015	2016	2017
Euronext (FR,BE)	14.4	27.1	32.9	44.6	75.4	85.9
First North (Nordics, Baltics)		18.4	25.1	22.7	26.9	16.7
Scale (DE)						64.3
Stuttgart B (DE)	72.7	73.9	73.3	75.0	90.0	102.0
EN.A (EL)						10.0
AeRO (RO)				0.9	0.9	0.8
MARF (ES)		50.0	45.5	49.0	55.5	53.5
<b>Total</b>	<b>38.6</b>	<b>40.9</b>	<b>39.5</b>	<b>43.0</b>	<b>57.0</b>	<b>57.0</b>

<i>Objectives</i>	<i>EFFECTIVENESS</i>			<i>EFFICIENCY</i>  (cost-effectiveness)	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i>  <i>Reduce compliance costs for SMEs</i>	<i>Objective 2</i>  <i>Enhance liquidity</i>	<i>Objective 3</i>  <i>Maintain market integrity</i>			
<i>Policy option</i>						
Baseline scenario	0	0	0	0	0	0
<b>Option 1.</b> Unique definition of SMEs	+	≈	≈	+	≈ or -	<b>1.5</b>
<b>Option 2.</b> Debt issuer Market definition, raised threshold for equity issuer and raised SME proportion	+	≈ or -	≈ or +	+	+	<b>3</b>
<b>Option 3.</b> Alternative debt issuer market definition and raised threshold for equity issuers	+	≈	≈	+	≈ or +	<b>2.5</b>

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

### **Impact on Stakeholders**

	<b>Issuers</b>	<b>Investors</b>	<b>Intermediaries / Market Makers</b>	<b>Exchanges</b>	<b>NCAs / Supervisors</b>
1. Baseline scenario	0	0	0	0	
Option 1 Unique definition of SMEs	↑	↑	≈	≈ or ↑	≈
Option 2. Debt issuer Market definition, raised threshold for equity issuer and raised SME proportion	↑	↑	≈	≈ or ↓	≈ or ↑
Option 3. Alternative debt issuer market definition and raised threshold for equity issuers	↑	↑	≈	≈ or ↑	≈

Evidence shows that the current SME debt-only issuer definition based on the 2003 Recommendation is not adapted to smaller companies issuing bonds. Raising the thresholds of the criteria set by this Recommendation would lead to a further fragmentation of the SME definition across EU legislation. A market-oriented definition based on an issuance size criterion (EUR 50 million over a period of 12 months) would be better adapted to the

situation of small bond issuers and is supported by a significant number of stakeholders. However, as regards equity issuers, raising the threshold up to EUR 500 million would have little impact in the medium term. It would not allow more MTFs to register as SME Growth Markets and hence not extend the potential benefits associated with the SME Growth Market issuer status to more companies. As this change would not bring clear benefits in the short run, the *status quo* seems a suitable option. **Therefore, the preferred option is option 2 as regards the debt issuer definition. The other aspects of this option (higher market capitalisation threshold and higher proportion of SMEs) should be discarded.**

### 6.2.2 Half-yearly report

	<b>Half yearly reports</b>
Option 1. Flexibility as regards non-equity issuers	Allow SME Growth market operators to decide whether or not to apply an obligation for half-yearly reports to non-equity issuers
Option 2. Flexibility as regards non-equity and equity issuers	Allow SME Growth market operators to decide whether or not to apply an obligation for half-yearly reports to equity and non-equity issuers

Under Option 1, non-equity SME Growth Markets issuers could be exempted by their market operators from the obligation to produce a half-yearly report. Some stakeholders have mentioned that the costs and constraints associated with the preparation and the publication of half-yearly reports can deter issuers from joining public markets. In some cases, they also face fees paid to accountants and auditors to fulfil this regulatory requirement. Furthermore, SME Growth Market non-equity issuers would be set at a disadvantage compared to non-equity issuers on a regulated market. Indeed, wholesale debt issuers (i.e. companies issuing bonds with a denomination per unit above EUR 100,000 that targets professional investors) on regulated markets are already exempted from publishing half-yearly reports (under the Transparency Directive)<sup>171</sup>. Therefore, it can seem paradoxical to impose more stringent requirements on SME Growth Market non-equity issuers than on those listed on a regulated market<sup>172</sup>. This requirement can also deter some SME-dedicated MTFs specialised in bond issuances to seek a registration as an SME Growth Market<sup>173</sup>. Mandatory half-yearly reporting for non-equity issuers is seen as an obstacle to the take-up of the SME Growth Market label, as in some cases it might impose additional requirements on issuers instead of alleviating their regulatory burden<sup>174</sup>. As a consequence, more discretion regarding half-yearly reports for non-equity issuers can allow market operators to better adapt their listing rules to local conditions. However, less frequent periodic information can also create less investors' interest in SME bond issuances and generate less liquidity – even if liquidity is a less important consideration for SME bond issuances, as such bonds are usually bought by institutional investors following a 'buy-and-hold strategy' until maturity.

Under Option 2, the market operators of SME Growth Markets would have the possibility to exempt both equity issuers and non-equity from the obligation to publish half-yearly reports. Equity issuers spend time and money to prepare and publish half-yearly reports. This reporting in semi-annual intervals is burdensome for issuers and can also create an inclination

<sup>171</sup> Under Article 8(1)(b) of the Transparency Directive 2004/109/EC, issuers of wholesale debt securities (with a denomination per unit above EUR 100,000) that are admitted to a EU regulated market are exempt from the obligation to publish annual and half-yearly reports.

<sup>172</sup> Recital 112 of the Delegated Regulation 2017/565 provides that '*In any case, an SME Growth market should not have rules that impose greater burdens on issuers than those applicable to issuers on regulated markets*'.

<sup>173</sup> This argument was mentioned by two exchanges during the Commission technical workshop held on 14 November 2017

<sup>174</sup> For instance, two SME-dedicated markets (EXTRA-MOT PRO in IT and MARF in ES) specialised in bonds and three SME-dedicated markets (Euronext Growth in BE, FR and PT) specialised both in bonds and shares do not require half-yearly reports for non-equity issuers.

of investors towards short-termism. The requirement for equity issuers to produce half-yearly reports could also prevent some SME-dedicated MTFs from seeking a registration as SME Growth Markets, as some of them do not currently impose such a requirement<sup>175</sup>. Flexibility for market operators to impose or not a half-yearly report would also help them to tailor listing rules to local investors' and issuers' needs. However, many respondents have indicated that the publication of financial results by equity issuers is the main driver of investors' decisions. The timely issuance of financial reports would be fundamental to foster investor confidence and to attract investors (especially institutional investors) and financial analysts' interest. The publication of half-yearly report can also enhance the liquidity of SME shares. The absence of frequent financial reporting is also likely to increase the risks of insider trading.

<i>Objectives</i>	<i>EFFECTIVENESS</i>			<i>EFFICIENCY</i> (cost-effectiveness)	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i> <i>Reduce compliance costs for SMEs</i>	<i>Objective 2</i> <i>Enhance liquidity</i>	<i>Objective 3</i> <i>Maintain market integrity</i>			
1. Baseline scenario	0	0	0	0	0	0
Option 1. Flexibility as regards non-equity issuers	+	≈	≈	+	++	4
Option 2. Flexibility as regards non-equity and equity issuers	++	-	-	++	-	1

*Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable*

### **Impact on Stakeholders**

	<b>Issuers</b>	<b>Investors</b>	<b>Intermediaries / Market Makers</b>	<b>Exchanges</b>	<b>NCAs / Supervisors</b>
1. Baseline scenario	0	0	0	0	0
Option 1. Flexibility as regards non-equity issuers	↑	≈ or ↓	≈	↑	≈
Option 2. Flexibility as regards non-equity and equity issuers	↑	↓↓	≈ or ↓	↑	≈

As the obligation to produce a half-yearly report would impose a more stringent requirement on SME Growth Market non-equity issuers compared to non-equity issuers on regulated markets, it seems justified to leave the flexibility to market operators whether to require or not the publication of such reports. However, half-yearly report provides a valuable insight into the performance of equity issuers and the removal of this requirement may deter investors from investing in SME Growth Market issuers due to the lack of sufficiently detailed and fresh financial data. It could also have a downward impact on liquidity. As a consequence, the obligation of half-yearly reports for equity issuers should not be left to the discretion of the trading venue. **Therefore, the preferred approach is option 1.**

<sup>175</sup> For example, Dritter Market (AT) and the MTF operated by the Bratislava Stock Exchange do not require the publication of a half-yearly report by equity issuers.

### 6.3 Policy options to address liquidity in SME Growth Markets

	Liquidity contracts	Free float requirements
<b>Option 1.</b> 29 <sup>th</sup> regime + free float	Create a European regime for liquidity contracts, while authorising NCAs to submit an AMP and develop a parallel regime tailored to local conditions.	Oblige SME GMs to impose a free float requirement but provide flexibility on exact criteria
<b>Option 2.</b> Full harmonisation	Create a fully harmonised EU liquidity provision scheme with all conditions set out at EU level, without the possibility for NCAs to submit an AMP tailored to local conditions.	Impose precise free float criteria for SME GMs

Both option 1 and 2 would seek to increase liquidity on SME Growth Markets, by introducing a more harmonised EU approach towards on the one hand, liquidity contracts, and on the other, free float requirements. Authorising liquidity contracts in all Member States, together with setting a minimum free float (thereby sending to investors the signal that SME GM shares are not illiquid on admission), can be expected to have a cumulative positive effect, with the two measures reinforcing each other in stimulating liquidity on SME Growth Markets.

Both options would create a European regime for SME Growth Markets that would set out the conditions that these contracts need to fulfil. This would enable SME Growth Market issuers to enter into liquidity contracts in all Member States, regardless of whether their national competent authority has established an accepted market practice. As under current accepted market practice regimes, the European regime would be carefully designed so as to prevent the liquidity provider from giving any false or misleading signal to the market or distort the pricing of the respective share. Several respondents to the public consultation also highlighted that authorising liquidity contracts across the EU would align market conditions and opportunities in all Member States, thus also contributing to fair competition between markets. Liquidity contracts provide an attractive alternative given the absence of such schemes. Research has shown that liquidity contracts have a direct positive impact on liquidity<sup>176</sup> and that higher liquidity lowers the cost of capital for issuers<sup>177</sup>. Furthermore, a study of French liquidity contracts specifically showed that volatility is reduced by more than 25% for companies with free floats of less than EUR 200 million and 10% for free floats between EUR 200 million and EUR 5 billion<sup>178</sup>. This increased liquidity and lower volatility would ultimately benefit investors: it would increase the value of a company's stock<sup>179</sup>, reduce transaction costs and enable investors to trade in and out of their positions more easily<sup>180</sup>. Although the Netherlands abandoned their accepted market practice on liquidity contracts due to low uptake<sup>181</sup>, other Member States have seen a significant interest from issuers (e.g. France where two-thirds of the 175 companies listed on Euronext's SME MTF in 2015 had signed a liquidity contract<sup>182</sup>).

Turning to free float, both options would impose some form of minimum requirement. A minimum free float would have a positive impact on the level of liquidity, especially at the

<sup>176</sup> Why do firms pay for liquidity provision in limit order markets?, J. Skjeltorp, B. A. Ødegaard, April 2010

<sup>177</sup> See for instance the literature review presented in *Why do listed firms pay for market making in their own stock?*, J. Skjeltorp, B. A. Ødegaard, March 2013

<sup>178</sup> AMAFI, Mise en œuvre de MAR, Révision de la pratique de marché admise AMF concernant les contrats de liquidité, 23 August 2017

<sup>179</sup> Why do firms pay for liquidity provision in limit order markets?, J. Skjeltorp, B. A. Ødegaard, April 2010

<sup>180</sup> ESMA Opinion On Intended Accepted Market Practice on liquidity contracts notified by the Comisión Nacional del Mercado de Valores, ESMA/2016/1663, December 2016

<sup>181</sup> AFM Website: <https://www.afm.nl/nl-nl/nieuws/2017/sep/beeindigen-amp>

<sup>182</sup> Rapport annuel 2015, Observatoire du financement des entreprises par le marché, p.23

admission stage. There are some indications of a positive correlation between the level of free float and liquidity, as well as that a higher free float percentage can help to mitigate acute liquidity shortages<sup>183</sup>. A minimum level of free float would ensure that a certain amount of shares will be held by retail investors who play a crucial role in providing daily liquidity<sup>184</sup>. In addition, some investor representatives mentioned in the public consultation that too low levels of free float prevented most institutional investors from investing in certain asset classes. It should be noted, however, that a minimum free float requirement may also hold potential downsides. In particular, it is possible that some SMEs may become more reluctant to raise capital via public share offerings<sup>185</sup> as it implies that the owners will need to sell at least this minimum percentage to the public. This can raise fears for the initial owners that they may lose control of the business to new shareholders<sup>186</sup>. Nevertheless, the purpose of public markets should not be to list illiquid issuers on admission. In addition, the large majority of SME Growth Markets already impose some form of minimum free float requirements, while those that currently do not impose any free float requirements have on average relatively high levels of free float, again implying that only few issuers would be affected by minimum requirements.

### ***Option 1: 29th regime + free float***

Concerning liquidity contracts, option 1 would create a European regime (a ‘29<sup>th</sup> regime’) but would still allow national competent authorities to establish accepted market practices<sup>187</sup>. Likewise, already-approved accepted market practices could be maintained after the new regime is established. This approach would provide national competent authorities with enough flexibility to tailor liquidity contracts to local conditions and market specificities (e.g. extension of the scope to illiquid shares on a regulated market). This reflects the responses of the majority of participants to the public consultation, who argued greatly in favour of enabling liquidity contracts while ensuring some flexibility at national level. In addition, it would limit the costs arising for both issuers and national competent authorities, as already-adopted accepted market practices and liquidity contracts entered into could be preserved. Nevertheless, allowing divergences through national accepted market practices would also mean that some level of market fragmentation in the European Union would remain. Accepted market practices adopted beyond the European regime under option 1 may distort, to some extent, the respective attractiveness of listings in different Member States. However, given that ESMA would still need to approve any accepted market practice submitted by national competent authorities, measures could be taken at this level to avoid any disruptive effect.

On free float, option 1 would grant market operators the flexibility to freely decide on the level and nature of the requirement that they wish to impose. Approximately half of the stakeholders who expressed an opinion on free float through to the public consultation favoured this flexible approach. As could be expected, issuer representatives were against any rule on free float, while investor representatives were all in favour of imposing a minimum to be defined by local markets<sup>188</sup>. As there would be full flexibility as to the level imposed, nothing would change for the companies listed on the exchanges already requiring a free

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<sup>183</sup> X. Ding, Y. Ni, L.Zhong, *Free float and market liquidity around the world*, *Journal of Empirical Finance*, 2015

<sup>184</sup> Hardman & Co, "While AIM companies management ignore retail investors at their peril", 2015

<sup>185</sup> This view was conveyed in the public consultation by several issuer representatives

<sup>186</sup> OECD, *New Approaches to SME and Entrepreneurship financing: Broadening the range of Instruments*, p.99

<sup>187</sup> For instance, NCAs will have the possibility to adopt an AMP on liquidity contracts for companies that are not listed on an SME Growth Market.

<sup>188</sup> Other types of stakeholders (exchanges, public authorities, industry associations) had split views on the issue.

float, or for the market operators. As pointed out in a few responses to the public consultation, another advantage to leaving flexibility to market operators lies in the fact that free float can be defined and measured differently in different Member States<sup>189</sup>. However, a fully flexible approach runs the risk that market operators set a very low free float requirement which may not bring any real positive impacts. To mitigate this issue, national competent authorities would need to verify that market operators have not imposed excessively low thresholds.

### **Option 2: full harmonisation**

In difference to option 1, option 2 would adopt a maximum harmonisation approach. A fully harmonised European liquidity provision framework would be created, without allowing national competent authorities to establish further accepted market practices. This would increase the legal certainty for both issuers and financial intermediaries responsible for providing liquidity compared to option 1, especially in terms of the set limitations to their contractual relationship. As all requirements would be fully harmonised, liquidity could be provided across all exchanges without regard for potential national divergences<sup>190</sup>, thus preventing any potential fragmentation across Member States in terms of the allowed practices.

With regard to the free float requirement, option 2 would set the minimum level in EU law. As pointed out by some stakeholders through the public consultation, this would send a clear signal to investors that SME Growth Markets aspire to be liquid markets, and would contribute to increasing investor confidence more strongly.

However, it should be noted that this maximal approach of setting uniform, more rigid requirements may not necessarily be suitable for every SME Growth Market. The characteristics of liquidity provision or minimum free float could not be further calibrated to best suit local conditions. This may work to the detriment of Member States with less developed capital markets in particular. Given even more pronounced issues of liquidity in these Member States, they may notably want to adopt accepted market practices to further facilitate liquidity contracts. Regarding free float, while investor confidence may be boosted more clearly than under option 1, there may be certain unforeseen impacts depending on the respective nature of SME Growth Markets, their ecosystem, and the national definition of free float. These potentially significant shortcomings were clearly reflected in the public consultation, as almost none of the respondents favoured setting the characteristics of free float requirements or liquidity contracts at EU level.

<i>Objectives</i>	<i>EFFECTIVENESS</i>			<i>EFFICIENCY</i> <i>(cost-effectiveness)</i>	<i>Coherence</i>	<i>SCORE</i>
	<i>Objective 1</i> <i>Reduce compliance costs for SMEs</i>	<i>Objective 2</i> <i>Enhance liquidity</i>	<i>Objective 3</i> <i>Maintain market integrity</i>			
Baseline scenario	0	0	0	0	0	0
Option 1. 29 <sup>th</sup> regime + free float	≈	++	≈	≈	≈	2

<sup>189</sup> For instance, free float can be expressed as a percentage of an issuer's total capital, a fixed amount of capital, a number of shareholders or an absolute monetary value.

<sup>190</sup> It should be noted though that the same would be possible under option 1, provided that the actors rely on the European regime.

Option 2. Full harmonisation	≈	++	≈	≈ or -	≈	1.5
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Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; -- strongly negative; - negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

## **Impact on Stakeholders**

	Issuers	Investors	Intermediaries / Market Makers	Exchanges	NCA/s/ Supervisors
Baseline scenario	0	0	0	0	0
Option 1. 29 <sup>th</sup> regime + free float	↑	↑/↑↑	↑/↑↑	≈	≈
Option 2. Full harmonisation	≈ or ↑	↑/↑↑	↑/↑↑	≈ or ↓	≈

Given that option 1 would couple the benefits of enabling all European SME Growth Market issuers to enter into liquidity contracts, while minimising cost implications for issuers, intermediaries and national competent authorities, and guaranteeing greater impact through more tailored regimes, this option represents the preferred approach. This also reflects the responses of the majority of participants to the public consultation. Any potential issues of market fragmentation that may arise under option 1 could furthermore be tackled by respective guidelines and decisions taken by ESMA.

## **7 PREFERRED OPTION**

### **7.1 Overall impact of the preferred option**

The preferred option (summarised in the table below) will contribute to the overarching Capital Markets Union goal to facilitate a better access to capital markets for companies and reduce the reliance on bank financing. In particular, they will support companies listed on SME Growth Markets by reducing their administrative burdens, re-aligning the definition of SME debt issuers with current market practices and enabling improved liquidity provision.

It should be noted that, taken together, the regulatory measures included in this initiative may not have an overwhelming impact on the situation of small issuers or SMEs considering a listing. However, this proposal will create a more conducive regulatory environment for small companies, by making the SME Growth Market concept created by MiFID II more attractive, both for issuers and investors. It will complete the regulatory alleviations already provided for under the Prospectus Regulation (such as the alleviated EU Growth Prospectus and the alleviated prospectus schedule for secondary issuances) and the Central Securities Depositories Regulation (i.e. the extended buy-in periods for SME Growth Market financial instruments). This initiative should also be considered in a broader context. The Capital Markets Union Mid-term Review also includes non-legislative measures, such as the possibility to use EU public funds to catalyse private investments in SME Growth Market shares. The Commission has also committed to conducting a study analysing the impact of MiFID II research payment provisions on SME research coverage, which was perceived as a major regulatory obstacle to SME listing by a significant number of respondents to the public consultation.

The technical adjustments under the Market Abuse Regulation will reduce the administrative burden of listing on SME Growth Markets. This will initially benefit companies already listed on an SME Growth Market. It is estimated that the annual cost savings resulting from the envisioned adjustments under the Market Abuse Regulation will lie in the range of EUR 5.1 –

12.61 million<sup>191</sup>. Given the alleviated administrative burden and reduced costs (especially on-going costs), it will also contribute to making listings more attractive for companies considering that route. The regulatory adjustment to the market sounding regime for the private placements of bonds with institutional investors will also make this source of financing more enticing. The targeted changes to the Market Abuse Regulation framework for SME Growth Market issuers have been carefully considered in order to ensure a high level of investor confidence and market integrity. The preferred options hold the significant advantage of not reducing market integrity nor investor confidence. Investor confidence largely depends on the amount of information disclosed to the market. The preferred options have precisely no impact on the quantity (or quality) of information investors would have access to (except for the fact that debt-only issuers would be exempted from producing half-yearly reports, in order to level the playing-field with regulated markets where requirements are paradoxically less stringent). For instance, insider lists are not made public, and nor do investors know about delays in disclosing inside information. The proposed changes to the Market Abuse Regulation only concern administrative procedures and the distribution of burden between issuers and National Competent Authorities, and not the level of information transmitted to the market or the national competent authority. In addition, the preferred options do not limit the capacity of competent authorities to investigate or identify risks of market abuse. In short, none of the adjustments result in deconstructing the market abuse regime.

The alleviated transfer prospectus will lower the costs of moving from an SME Growth Market to a regulated market. Regulated markets provide a range of advantages, in particular increased liquidity and access to deeper capital pockets. However, high compliance costs to access those trading venues act as a deterrent to move to them. The 'transfer prospectus' will lower these cost barriers in the transition phase and encourage the graduation of issuers to regulated markets. Initial listings on SME Growth Markets will also become more attractive if there is a less costly growth path to the main markets. By allowing successful companies to graduate easily to the main markets, the transfer prospectus will also assert the image of SME Growth Markets as “SME-growers” (instead of being perceived as 'end-markets'). Given the current average number of uplistings per year, the transfer prospectus is estimated to bring about annual cost savings in the range of EUR 4.8 – 7.2 million.

Furthermore, the change of SME debt-only issuer definition as well as the related deletion of the requirement to publish half-yearly reports will enable a larger number of MTFs (specialised in bonds or having both bond and share offerings) to register as SME Growth Markets. As a result, issuers on these MTFs will benefit from the existing alleviations for Growth Market issuers as well as the additional ones envisaged under the preferred option.

Lastly, the envisioned measures on liquidity will aid both issuers and investors on SME Growth Markets. Creating a European regime for liquidity contracts will facilitate issuers to enter into such contracts. This will ensure a minimum level of liquidity in their shares, thereby increasing the attractiveness also for investors. In the absence of a minimum level of liquidity and free float, many investors may not even consider investing in SME shares and bonds. Minimum liquidity levels thereby not only help to reduce liquidity and volatility risks for investors but also to attract further liquidity. Issuers will also benefit from greater liquidity to the extent that it results in a higher pricing of their securities and increases their

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<sup>191</sup> These figures do not account for additional cost savings related to the extended deadline for issuers to publicly disclose transactions relative to the notification by PDMRs and PCA (see Annex 3)

capacity to raise capital in the future, by reducing the illiquidity premium they would have to pay otherwise.

However, the positive impacts of this initiative should not be overstated. Other factors such as the current state of the market (both the market(s) serviced as well as financial markets), monetary policy, tax treatment of debt and equity and general preferences of financing channels of companies will generally outweigh the impacts of the regulatory adjustments envisioned. As such, the preferred options are not expected to strongly impact the financing decision of businesses in the short run. Companies financing decisions are usually taken months in advance, meaning that the impacts will only manifest themselves over time and when combined with other measures to enhance SME access to public market funding. The wider set of measures will require time before the increased relative attractiveness of capital based financing is fully perceived by companies and the positive impacts fully unfold. In the long run, however, the adjustments are expected to produce noticeable benefits, in conjunction with other regulatory or non-regulatory actions foreseen.

Eventually, the risk that the proposed changes would disrupt the markets through too frequent regulatory changes should be limited. First of all, the preferred options improve the overall situation of market participants essentially through alleviations, which should be less disruptive than a situation where additional requirements are introduced. In addition, this initiative is the only regulatory one in the SME listing package. As such, no further legislative changes to the SME Growth Market will be proposed or implemented in the short - to medium-term. Without pre-empting the results of the MAR Review (scheduled for next year), the latter will be of a much broader scope and should not further amend the SME Growth Market framework. With regard to MiFID II and the Prospectus Regulation, their respective mandatory reviews are scheduled at a later stage (mid-2020 for MiFID II and July 2022 for the Prospectus Regulation). Only the study analysing the impact of the MiFID II level 2 on SME equity and bond research coverage could theoretically result in further regulatory changes to the SME Growth Market framework. However, even if legislative amendments were to be envisaged, such changes would not be proposed under the current Commission, as the call for tender will be launched in Q2 2018, for a deliverable expected in Q2 2019 at the earliest.

The preferred options are as follows:

Figure 12 – Summary of the preferred options

Problem drivers	Preferred option
Administrative burden placed on listed SMEs (Driver 1)	<b>Option 2 as regards MAR (with one limitation):</b> (i) Adoption of a new deadline to publicly disclose managers' transactions (2 days as of the manager's notification to the issuer); (ii) list of 'permanent insiders'; (iii) justification of delayed inside information only on request (plus no need to keep a disclosure record); (iv) Exemption of private placements of bonds from the market sounding regime if an alternative wall-crossing procedure is in place.
	<b>Option 2 as regards the scope of alleviations under MAR –</b> Alleviations under MAR are granted to all SME Growth Market issuers
	<b>Option 1 as regards the Prospectus Regulation/transfer of listing from an SME Growth Market to a regulated market -</b> Creation of a lighter 'transfer prospectus' for SME Growth Markets issuers listed for at least three years

<p>Inadequate SME Growth Market definition (Driver 2)</p>	<p><b>Option as regards the SME Growth Market definition:</b> Define an SME debt-only issuer based on the value of the issuance (50 million over one year)</p>
	<p><b>Option as regards half-yearly report</b> – Allow SME Growth Market operators to decide whether or not to apply an obligation for half-yearly reports to debt-only issuers</p>
<p>Lack of schemes (mechanisms) to promote trading and liquidity on SME Growth Markets (Driver 3)</p>	<p><b>Option 1:</b> (i) Creation of a European regime for liquidity contracts, while authorising NCAs to submit an AMP and develop a parallel regime tailored to local conditions; (ii) Oblige SME Growth Markets to impose a free float requirement but provide flexibility on exact criteria</p>

## 7.2 Macro-economic impacts

The initiative forms part of the wider Capital Markets Union programme aimed at facilitating a better access to capital markets for companies and reduce the reliance on bank financing. Various economic studies have shown that there is a positive association between access to capital markets and economic growth. More so, it has been demonstrated that this relationship is causal and that access to capital markets directly impacts the ability of an economy to generate economic growth<sup>192</sup>. Improved access not only increases the capacity of companies to raise finance resources but also increases the efficiency of capital markets. This improves the overall allocation of capital, which will foster economic growth by utilising the available capital resources more efficiently. For instance, companies that listed their shares on AIM in the UK (one of the few successful European junior markets for SMEs) show on average a turnover growth of 43% in the year after their IPO<sup>193</sup>.

More diversified funding sources also increase economic resilience. Greater access to capital markets will help to mitigate potential problems in the banking sector. The financial crisis demonstrated that an overly strong reliance on bank-based financing can severely undermine the potential for a quick recovery. The much more rapid economic recovery in the US compared the EU following the crisis is attributable, in part, to a greater proportion of capital market-based financing. As banks were hit by both an internal need to deleverage as well as increased regulatory constraints, their willingness to lend was strongly hampered. This made it very difficult for companies to raised financial resources, especially SMEs as they generally exhibit a higher exposure to risk for potential lenders.

SMEs form the backbone of the EU economy. Not only do they represent 99% of all EU businesses, but they also provide two-thirds of total private sector employment. As such, it is crucial for the overall health of the economy to enable these companies to access financial resources. While the latest two ECB Surveys on the Access to Finance of Enterprises (SAFE) indicate a higher willingness of banks to provide credit to SME's, they remain overly dependent on bank financing, especially from smaller domestic banks. This makes them considerably more vulnerable to economic shocks.

The measures put forward in the preferred option, in conjunction with other CMU measures, will aid SMEs to diversify their sources of funding and thereby increase the EU's economic resilience. In particular, it will help young innovative firms who play a critical role for

<sup>192</sup> See Kaserer & Rapp et al., 2014

<sup>193</sup> Grant Thornton, the Economic Impact of AIM, 2015, p.5

economic development. These companies are generally more dependent on equity financing as they often lack access to bank lending, given higher and less foreseeable risk factors. Overall, the initiative will help to facilitate stronger and more resilient economic growth, job creation as well as innovation.

### **7.3 Small and medium-sized enterprises**

The amendments considered in the preferred option have the objective of facilitating capital-raising by SMEs on public markets through shares or bonds issuances. The envisaged regulatory adjustments will reduce the administrative cost burden placed on SMEs when listing on SME Growth Markets. In addition, SMEs will benefit from improved liquidity levels in their shares. This will make investments in their shares more attractive, thus enabling them to raise more capital via secondary offerings. The amendments will initially benefit already listed SMEs. However, by lowering the cost barriers to access public markets, they will also benefit SMEs that seek to potentially list shares or issue bonds in the future. As the relative attractiveness of capital markets will be increased, the measures (in conjunction with other measures to support SME listing) may also have a small positive impact on bank based financing for SMEs, given competition between the two financing channels.

### **7.4 UK leaving the EU**

The prospective withdrawal of the UK from the European Union is likely to have an impact on the composition of EU capital markets, including SME focused MTFs. In terms of market capitalisation, the London Stock Exchange (LSE)'s Alternative Investment Market (AIM) represents more than 65% of the overall European market capitalisation of SME-focused MTFs. 74% of all proceeds on SME equity markets have been raised on AIM since 2006. In addition, two out of three MTFs registered as SME Growth Markets under the Markets in Financial Instruments Directive II are established in the UK (AIM and NEX).

The impact of the UK's withdrawal on SME markets should not be overstated. The SME market landscape is rather fragmented with almost one SME MTF per Member State. The majority of SME issuers are local in nature and are ill-equipped for a listing on a trading venue located outside their Member States of origin. Few companies are dual-listed due to the costs that such a decision may imply. In addition, few SMEs are producing their financial statements in IFRS, making them less attractive for both foreign investors and financial analysts (see Annex 5 on out-of-scope drivers).

AIM's higher level of liquidity (compared to the other EU SME markets except First North in the Nordics) could however attract some high-growth companies or some SMEs operating in specific sectors (such as biotech companies) that are better prepared for a listing outside their Member States and that are ready to produce their financial statements in IFRS (which is required by the AIM UK's listing rules). As issuers listed on MTFs (including SME Growth Markets) currently face the same regulatory environment (apart from some very minor exceptions) in all Member States, the attractiveness of AIM is notably due to tax incentives (i.e. AIM shares are eligible in the individual saving account -ISA) and non-regulatory drivers. Being based in London, AIM enjoys a much more developed market ecosystem and benefits from wider clustering effects which attract deeper pockets of capital. For instance, AIM issuers attract more institutional and foreign investors than any other SME-dedicated MTF in the EU (see Annex 7 on additional market background) and a significant number of

non-UK firms are listed on AIM<sup>194</sup>. In addition, the London Stock Exchange Group has set up the ELITE Programme, a two-year programme which prepares promising firms for external access to fund raising opportunities. Since its launch in 2012, this programme has enrolled more than 700 countries across 28 countries (including 19 EU Member States<sup>195</sup>) that are connected with more than 200 investors (large institutional investors and family offices). The ELITE Programme is presented as "capital neutral" as regards the different sources of financing it promotes (IPO, private equity, venture capital, debt products...). However, this programme could be a way to attract more IPOs and bond offerings<sup>196</sup> from EU firms in their expansion phase on the platforms operated by LSEG<sup>197</sup>. This would potentially have a downward impact on EU SME markets and their local ecosystems.

Eventually, some European firms in their expansion phase currently benefit from a healthy competition among trading venues (in terms of liquidity and cost of capital) that comply with the same European rulebook. After its withdrawal from the EU, the UK would enjoy increased regulatory flexibility to deviate from the European single rulebook to make listings on UK platforms more enticing in relative terms. It is therefore crucial to strengthen the European SME Growth Market concept in order to facilitate capital-raising by smaller businesses post-Brexit.

## **7.5 EU and Member State budgets**

The initiative is not expected to have any noteworthy impact on the European budget. National competent authorities will face a marginal increase in costs, mainly due to the envisioned changes under the Prospectus Regulation. The changes will require them to implement new procedures thus giving rise to small one-off costs. However, as the new transfer prospectus will represent a simplified version of the full prospectus, on-going costs are expected to decrease. National competent authorities will also require additional time to vet notifications of delays for disclosing insider information and to decide whether to request a full justification. Again, there may be small one-off costs that arise from the initial change of procedure while on-going costs are reduced given a lower number of justifications overall.

## **7.6 Social impacts**

The initiative is not expected to have any direct social impacts. SMEs however form the backbone of the EU economy and provide two-thirds of total private sector employment. The significance of SMEs in terms of employment has increased even further since the financial crisis, with SMEs being responsible for creating around 85% of new jobs over the last 5 years. Provided that the initiative achieves its objectives to contribute to a more conducive environment for SME listing and improving the access to finance for SMEs, these companies will be able to grow at a faster pace, with positive implications for employment. The few well-functioning SME markets in the EU already make a huge contribution to local job markets. For instance, in 2013, the UK companies listed on AIM directly supported more than 430,000 jobs<sup>198</sup>. Between 2006 and 2012, companies listed on First North Stockholm increased their workforce by 17% annually after the IPO, compared to an annual growth of

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<sup>194</sup> Out of 1107 companies listed on AIM UK in 2012, 213 were not UK companies (19.1%)

<sup>195</sup> EU Member States: IT, UK, ES, RO, EL, FR, LU PL, NL, IE, SI, PT, HR, FI, SK, CZ, IE,

<sup>196</sup> 28 ELITE companies issued bonds, raising a total of EUR 860 million.

<sup>197</sup> To date, 13 ELITE companies have raised capital through an IPO for EUR 240 million raised.

<sup>198</sup> Grant Thornton, *The Economic Impact of AIM*, 2015

5% for all private companies in Sweden<sup>199</sup>. By strengthening the SME-dedicated markets across the EU, the initiative could therefore enhance job growth. As such, it is expected that the measures, as part of a wider package to facilitate SME access to capital market finance, will positively impact the EU labour market and increase economic cohesion.

### **7.7 Impact on third countries**

The initiative is not expected to have any significant direct impacts on third countries. If the initiative (in conjunction with other CMU measures) is successful in increasing the overall attractiveness of SME Growth Markets, it may lead to fewer companies opting for listings in other countries, in particular the US.

### **7.8 Environmental impacts**

The initiative is not expected to have any direct environmental impacts. A significant number of companies listed on SME Growth Markets, however, engage in the development and innovation process of new environmental-friendly technologies. A better access to finance will allow these companies to grow at a more rapid pace and allocate more financial resources to respective R&D programmes. The initiative will notably create a more conducive environment for the private placement of bonds with institutional investors, including 'green' private placements<sup>200</sup>. As such, it is foreseeable that there will be a small positive indirect impact on the environment. There is, however, no reliable data available to quantify this impact with any reasonable accuracy.

### **7.9 Impact on competitiveness**

Improved access to capital markets for SMEs will enable them to better balance their sources of finance. This will benefit these companies, especially in times of restricted access to bank loans. It may also have a small positive impact on their overall ability to raise capital. These factors will aid SMEs to compete both amongst themselves as well as with larger competitors.

### **7.10 Coherence**

The preferred options are coherent with the existing legal framework. Recitals 6 and 55 of the Market Abuse Regulation explicitly call for administrative costs alleviations for SMEs and financial instruments admitted to trading on SME Growth Markets. It is furthermore noted that any alleviations should however avoid potential detrimental impacts on market integrity. The technical adjustments envisaged meet both of these requests. Similarly, recital 132 of the Markets in Financial Instruments Directive II notes that administrative burdens on SMEs should be reduced and that incentives should be provided for SMEs to access capital markets through SME Growth markets. The recitals of MiFID II level 2 also indicate that '*SME growth markets should not have rules that impose greater burdens on issuers than those*

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<sup>199</sup> NASDAQ, *Capital Markets Union: The Road to sustainable growth in Europe*, 2016

<sup>200</sup> Green PPs have been issued in the Euro-PP market. These issuances must adhere to sustainability standards that have to be certified by a third party. Moreover, the issuer needs to regularly demonstrate that the proceeds from the promissory note are used for sustainable projects. Green PPs increase access to private placements as they open the investor base to ESG investors. So far, all green issuances have experienced strong demand and exceeded expectations. It is important to add, however, that SSDs and Euro-PPs in general have experienced strong demand in the past and Green PPs tend to be perceived as niche products. (BCG and Linklaters, *Study on Identifying the market and regulatory Obstacles to the Development of Private Placements of Debt instruments in the EU*, 2017)

applicable to regulated markets<sup>201</sup>. The adjustments are also in line with the objectives of the Prospectus Regulation which aims to reduce the costs of listing for SMEs.

### 7.11 REFIT (simplification and improved efficiency)

The initiative aims, in part, to reduce regulatory costs for issuers on SME Growth Markets. This is particularly the case for the amendments envisioned with regard to the Market Abuse Regulation. The below table summarises the regulatory cost reductions of the preferred options and quantifies these reductions to the extent possible.

<i>REFIT Cost Savings – Preferred Option(s)</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Reduction of the number of insider lists (permanent lists)	EUR 2.54 – 4.99 million <sup>202</sup>  (on average EUR 2,222 per issuer per year <sup>203</sup> )	The cost reduction estimate is based on the fact that issuers on SME GMs will only need to compile one permanent insider list per annum. The lower estimate represents a scenario whereby no new markets register as SME GMs. The upper estimate represents the case where all SME MTFs that have indicated an ambition to register as SME GMs actually do so.
Justification for the delay of insider information	Lower bound: EUR 830,000 – 2.49 million  Upper bound: EUR 1.64 – 4.92 million  (EUR 731 – 2,193 per issuer per year <sup>204</sup> )	The cost reduction arises from the envisioned approach that would require issuers to only justify delayed disclosures on the request of the NCA. Issuers will therefore (usually) only need to notify NCAs. Full justifications are assumed to require 40 work hours on average <sup>205</sup> , while a mere notification would only take 1 hour (estimated).  Lower and upper bound figures represent cases of an average of 0.25 delays per issuer per year and 0.75 delays per issuer per year respectively <sup>206</sup> .
Explicit exemption from the market soundings regime for private	EUR 1.8 – 2.7 million	An explicit exemption will remove the legal uncertainty regarding whether the market sounding regime is applicable to private placements of bonds. This will save issuers, investors and involved intermediaries the costs of applying the Market Abuse Regulation market sounding regime.  The estimated cost figures represent estimates based on the overall costs arising from the application of the market sounding regime <sup>207</sup> .

<sup>201</sup> Delegated Regulation 2017/65

<sup>202</sup> The estimates are based on the average number of insider lists per issuer (available for AIM IT and New Connect), number of listings per venue (direct input from exchanges), the total amount of work-hours spent per list (based on figures in EMI, *Effects of possible changes to the Market Abuse Directive*, 2011) and assuming an average hourly rate of EUR 75.

<sup>203</sup> This figure represents approximately 4.9 – 7.4% of the overall cost impact on SME GM issuers arising from MAR (estimated total costs lie in the range of EUR 30,000 – 45,000)

<sup>204</sup> This figure represents approximately 4.8 – 7.3% of the overall cost impact on SME GM issuers arising from MAR (estimated total costs lie in the range of EUR 30,000 – 45,000)

<sup>205</sup> EMI, *Effects of possible changes to the Market Abuse Directive*, 2011

<sup>206</sup> Respective estimates on occurrence of delays based on (i) EMI - 'Effects of possible changes to the Market Abuse Directive' (2011) and (ii) input from Polish FSA.

placement of bonds		
Transfer Prospectus	EUR 4.8 – 7.2 million	The application of an alleviated Prospectus for a move from MTFs to RMs would save issuers costs in the range of EUR 200,000 – 300,000 <sup>208</sup> . The figures presented reflect a scenario of 24 transfers from MTFs to RMs per year on average <sup>209</sup>

## 8 HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the regulatory actions undertaken are effective in achieving their respective objectives and that market participants comply with them. The Commission should therefore establish a detailed programme for monitoring the outputs, results and impacts of this initiative. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence will be collected. It shall also specify the action to be taken by the Commission, by the Member States and by the ESAs in collecting and analysing the data and other evidence.

As part of a wider effort to monitor SME access to capital market financing, the Commission services would monitor the effects of the preferred policy options on the basis of the following non-exhaustive list of indicators:

1. Impacts on SME Growth Market issuers and market operators
  - i. Number of registered SME Growth Market
  - ii. Number of listings and market capitalisation across SME Growth Market
  - iii. Number and size of IPOs and IBOs on SME Growth Market
  - iv. Number and size of European SME IPOs and IBOs in third countries
  - v. Ratio of bank based vs. capital market based external financing of SMEs
  - vi. Number and volume of private placements of bonds
  - vii. Number of 'transfer prospectuses'
  
2. Impacts on liquidity on SME GMs
  - i. Number of liquidity contracts entered into by issuers
  - ii. Transaction volumes (calibrated against the number of listings per venue)
  - iii. Average free float
  - iv. Average bid-ask spreads of listings
  - v. Average liquidity at touch
  - vi. Average market book depth
  - vii. Average time to execution of orders

<sup>207</sup> Based on cost calculation in Europe Economics "Data Gathering and Cost Analysis on Draft Technical Standards Relating to the Market Abuse Regulation" (2015) – The estimates provided assume that 70% of total costs set out in the study relate to the private placement of debt (see "qualitative evidence.. suggests that much of the costs could accrue to the debt side")

<sup>208</sup> Estimate based on the Prospectus Regulation Impact Assessment and stakeholder input; Costs would reduce by around 25 – 28.5% compared to the costs for a full Prospectus

<sup>209</sup> Figures based on statistics provided by MTF operators during the stakeholder consultation and direct data requests. The average provided reflects the years 2013-2017 (insufficient data for prior years).

#### viii. Average daily volatility

The regulatory aspects addressed by this initiative are only one factor that will affect the above indicators. As explained in sections 2.2 and Annex 5, there are a range of out of scope drivers that are likely to have a greater impact on the listing behaviour and liquidity on SME Growth Markets than the envisaged technical amendments. As such, it does not appear appropriate to set out concrete objectives in quantitative terms. The success of the initiative should rather be gauged by the direction in which the respective indicators move. The initiative aims, for example, to increase indicators 1 (i), (ii), (iii), (vi) and (vii) while indicators 1 (iv) and (v) should ideally decrease. The same logic applies to indicators in section 2. The initiative intends to enhance liquidity meaning that indicators 2(i), (ii), (iii), (v), (vi) should increase while (iv) and (vii) should decrease.

Moreover, the above list of indicators is designed to not only monitor the specific impacts of the regulatory adjustments put forward in this initiative but also to observe the developments on SME Growth Markets more widely. This will help to also evaluate the impact of the regulatory and non-regulatory measures that form the overall 'SME listing package'<sup>210</sup>.

While the Commission will be in charge of monitoring the take up of the legislation according to EU law, many of the indicators set out would require the help of Member States, national competent authorities, the European Securities and Markets Authority and market operators. This is particularly the case for the indicators in point 2. The data requirements for these indicators can only be fully met via respective input from national competent authorities and market operators. While the Commission may be able to collect parts of the data via public sources and licenced databases, these are unlikely to satisfy the requirements and will not provide a full coverage of all EU SME Growth Markets. In addition, the data required for the calculation of indicator 1(v) will be partly based on input from the ECB which regularly assesses the access to finance of EU SMEs.

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<sup>210</sup> Communication from the Commission on the mid-term review of the capital markets union action plan ({SWD(2017) 224 final} and {SWD(2017) 225 final} – 8 June 2017)

## **ANNEX 1: PROCEDURAL INFORMATION**

### **1. Lead DG, Decide Planning/CWP references**

This Impact Assessment was prepared by Directorate C "Financial markets" of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union" (DG FISMA).

The Decide Planning reference of the file entitled "Building a proportionate regulatory environment to support SME listing" is PLAN/2017/1686

The amendments to existing legislation supported by this impact assessment have been announced in the Commission Communication on the Mid-Term Review of the Capital Markets Union Action Plan (08.06.2017).

### **2. Organisation and timing**

Several services of the Commission with an interest in the assessment of this initiative have been associated in the development of this analysis.

Four Inter-Service Steering Group (ISSG) meetings, consisting of representatives from various Directorates-General of the Commission, were held in 2017 and 2018.

The first meeting took place on 9 November 2017 and gathered representatives from DG COMP, ECFIN, GROW, LS and the Secretariat General (SG).

The second meeting was held on 8 December 2017, with representatives from DG COMP, LS and the Secretariat General (SG).

The third meeting was held on 2 March 2018. Representatives from DG COMP, GROW, JUST, LS and the Secretariat General (SG) participated.

The fourth meeting was held on 13 March 2018. Representatives from DG COMP, JUST, LS and the Secretariat General (SG) participated. This was the last meeting of the ISSG before the submission to the Regulatory Scrutiny Board on 16 March 2018.

### **3. Consultation of the RSB**

A draft of the impact assessment was submitted to the Regulatory Scrutiny Board (RSB) on 19 March 2018 and presented during a dedicated meeting on 20 April 2018. The Regulatory Scrutiny Board delivered a positive opinion with reservations on the draft on 22 April 2018. The comments formulated by the Board were addressed and integrated in the final version of the impact assessment.

### **4. Evidence, sources and quality**

For the purpose of the impact assessment, Commission services collected a significant amount of data directly from securities exchanges and National Competent Authorities. The data collected include statistics on the activity and characteristics of the different SME-dedicated MTFs in the EU, and on the monitoring activity of national regulators on market abuse. Summaries of these data can be found in annex 11 and 13.

DG FISMA also organised two series of technical workshops with industry stakeholders, specifically discussing barriers to listing for SMEs. These workshops were held on 7 October 2016, 8 December 2016, 14 November 2017 and 28 November 2017.

The impact assessment was conducted based on extensive qualitative and quantitative evidence from the following consultations:

- Public consultation on Building a Capital Markets Union (18.02.2015-13.05.2015)
- Public consultation on the Capital Markets Union Mid-Term Review 2017 (20.01.2017-17.03.2017)
- Call for Evidence: EU regulatory framework for financial services (30.09.2015-31.01.2016)
- Public consultation on Building a proportionate regulatory environment to support SME listing (18.12.2017-26.02.2018)

Other sources used included extensive academic literature and research, notably from the OECD, the World Bank, and various industry associations (AFME, FESE, World Federation of Exchanges...)

## ANNEX 2: STAKEHOLDER CONSULTATION

Over the Commission's current mandate, SME access to public markets has been continuously monitored, being part of four public consultations. Issues related to regulatory burden on SMEs when accessing public markets were raised in the context of the Call for Evidence, the CMU Action Plan and the CMU Mid-Term Review. In addition, a consultation solely dedicated to building a proportionate regulatory environment to SME listing was launched at the end of 2017. As it built upon extensive consultation already conducted on the subject with stakeholders, this targeted consultation remained open for a period of 10 weeks only. Commission services also organised two series of technical workshops with industry stakeholders in 2016 and 2017. Eventually, the initiative was discussed with Member State representatives during a meeting of the Expert Group of the European Securities Committee (EGESC) in November 2017.

### **1. 2017 public consultation on Building a proportionate regulatory environment to support SME listing**

On 18 December 2017, Commission services launched a public consultation on SME listing. It focused on three main areas: (1.) how to complement the SME Growth Market concept created by MiFID II; (2.) how to alleviate the burden on companies listed on SME Growth Markets; and (3.) how to foster the ecosystems surrounding local stock exchanges, in particular with a view to improving liquidity of shares listed on those trading venues. The Commission received 71 responses, sent by stakeholders from 18 Member States and Norway<sup>211</sup>.

#### *Questions on challenges faced by public markets for SMEs*

When describing why few SMEs seek a listing on EU public markets, many stakeholders mentioned the administrative burden placed on SMEs by market abuse, transparency and disclosure rules. The Market Abuse Regulation was described as difficult to interpret, thus hindering SMEs' compliance to EU legislation. Costs associated with becoming and remaining listed, loss of privacy, independence, as well as lack of general SME awareness and education were also highlighted. Only very few respondents considered that no alleviation to the current regulatory framework on SME listing should be granted. It was highlighted that medium companies tend to prefer private equity investments, strategic partnerships and M&A while small firms often choose business angels or venture capital, possibly also because of the low number of investment banks willing to support SMEs IPOs. Eventually, the Markets in Financial Instruments Directive II rules on research unbundling were mentioned as one of the causes for the low number of SMEs listing across European junior markets.

Concerning factors inhibiting institutional and retail investment in SME securities, respondents highlighted (i) the lack of reliable periodical financial information and independent investment research, which reduce the visibility of SMEs towards investors as well as their liquidity; (ii) the low market capitalisation on SME markets, described as

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<sup>211</sup> 6 public authorities (2 ministries of finance, 4 NCAs); 18 exchanges; 35 industry associations (6 for brokers, 14 for investment managers/investment banks, 4 for insurers, 3 for accounting/audit, 2 for CRAs, 4 for issuers, 1 for pension provision), 2 NGOs, 2 consultancy/law firms, 2 promotional banks, 1 academic institution; ESMA Securities Market Stakeholders Group and the Financial Services User Group. Those stakeholders come from 18 Member States: AT, BE, CZ, DE, DK, EE, EL, ES, FI, FR, HR, IE, IT, LV, NL, PL SE, UK.

unattractive to investors; (iii) the absence of an equity culture in Europe; and (iv) the lack of appropriate tax incentive schemes.

To explain the decline of ecosystems surrounding local exchanges, respondents emphasised the small market-size for SME related services, the lower liquidity of smaller companies coupled with regulatory changes (such as MiFID II), as well as the cost needed to train staff in order to meet regulatory requirements.

#### *Questions on specific regulatory barriers*

Overall, a majority of respondents were in favour of changing the criteria used to define an SME Growth Market, be it for equity issuers (through the market cap or the proportion of SME criterion) or for debt-only issuers. Most stakeholders also identified the managers' transactions regime as very burdensome and costly, arguing in favour of extending the delay to notify transactions, increasing the threshold after which transactions need to be notified, and putting the responsibility to disclose managers' transactions to the public on their National Competent Authority. On the approach towards insider lists, the vast majority of the respondents agreed that the requirement was onerous and burdensome – albeit necessary. On average, they were in favour of requiring issuers either to submit insider lists only upon request by the NCA, or to only maintain a list of 'permanent insiders'. Only a small minority argued in favour of fully exempting SME Growth Market issuers from keeping insider lists. Out of the few stakeholders who expressed an opinion on the justification of the delay to communicate inside information, a majority were in favour of requiring issuers to submit the justification only upon request by the NCA, and to exempt them from the obligation of keeping a disclosure record. Again only considering those having expressed an opinion, a clear majority of stakeholders were in favour of exempting private placement of bonds on SME Growth Markets from market sounding rules when investors are involved in the negotiations of the issuance. Eventually, a vast majority of respondents were in favour of keeping half-yearly report obligations mandatory for SME Growth Market equity issuers. Concerning debt issuers, the views were more evenly split between stakeholders in favour of keeping the half-yearly report requirement mandatory and those in favour of letting the trading venues decide whether they wished to require such reports. Only a few stakeholders were in favour of removing the obligation altogether.

On the other hand, stakeholders were split with regard to imposing key advisers to SME Growth Market issuers, or minimum requirements at EU level for the delisting from SME Growth Markets. While most stakeholders believed that SME Growth Market issuers only issuing plain vanilla bonds should disclose only information that is likely to impair their ability to repay their debt, NCAs were essentially against the creation of a lighter disclosure regime for SME Growth Market issuers only issuer plain vanilla bonds.

Among those who expressed an opinion, a large majority of respondents believed that alleviations should be granted to all companies listed on SME Growth Markets. It was argued that the “one market, one uniform set of rules” principle was necessary to ensure clarity and take-up for investors, issuers and financial intermediaries alike. Nevertheless, a few trading venues and issuer representatives argued that regulatory alleviations should be granted to all SMEs, regardless of whether they are listed on a multilateral trading facility or a regulated market.

A majority of stakeholders were against setting rules on a mandatory transfer of issuers from an SME Growth Market to a regulated market, arguing instead that the transfer to a regulated market should always be left to the discretion of the issuer. Nevertheless, a few believed that transfers of listing should be facilitated through appropriate regulatory incentives, aimed at reducing the administrative burden and cost of listing on a regulated market. Various stakeholders mentioned that such an incentive could take the form of a prospectus exemption or an alleviated prospectus when an issuer moves from an SME Growth Market to a regulated market.

#### *Questions on fostering the local ecosystem for SME Growth Markets and enhancing liquidity*

Market participants widely acknowledged the benefits and usefulness of liquidity contracts. Among the stakeholders who expressed an opinion, a larger number agreed that there would be merits in creating an EU framework, although many insisted on the need to maintain flexibility to allow such contracts to be tailored to local conditions. A few National Competent Authorities feared that such practices could give rise to manipulative pricing behaviours. Other NCAs however saw no ground for concerns, as long as the framework would be calibrated to prevent manipulative behaviours as under currently existing accepted market practices. A majority of respondents also hinted at prudential requirements hindering institutional investment into SME shares and bonds.

Few stakeholders expressed views on ways to facilitate SME bond issuances, and proved rather cautious with regard to unsolicited credit ratings. On setting minimum free float requirements, stakeholders were mostly split between (i) introducing a minimum free float requirement at EU level while leaving the thresholds to the discretion of market operators, and (ii) not imposing any rule in the EU legislation. Only two respondents were in favour of setting a minimum free float and its threshold at EU level.

Regarding the issue of low institutional investment in SMEs, several stakeholders referred to prudential requirements as being a hindrance. Others stressed that national regulations can limit institutional investors' ability to invest in companies that are not listed on regulated markets. Low levels of liquidity were also repeatedly mentioned.

Few stakeholders expressed interest in changing the tick size regime applicable to SME Growth Markets. Many pointed out that it was too early to draw conclusions, considering the recent enforcement of the Markets in Financial Instruments Directive II and the short period of application of the new regime. Respondents, mostly those representing stock exchanges, provided preliminary and diverging analyses of the new regime's impact. While some contended that the impact would be neutral, others assessed that it could lead to a decrease in shares' liquidity and spreads. On the contrary, a third category argued that liquidity and/or spreads could increase as a result of the new regime.

#### *Other barriers identified by stakeholders*

The consultation gave stakeholders the possibility to mention other areas of action that would not have already been covered by the current initiative.

Many stakeholders conveyed the idea that the current initiative could be more ambitious in terms of scope. This could be achieved by changing the defining criteria of SME Growth Markets, or by considering also SMEs on regulated markets.

Among the most cited topics, a significant number of respondents stressed their serious concern over the impact of the Markets in Financial Instruments Directive II on SME research coverage. Prospectus was also repeatedly mentioned by stakeholders, questioning the effects of the new regime and insisting on the need to have lighter requirements for SMEs. As regards the Market Abuse Regulation, some of the respondents mentioned that sanctions were not adjusted to the issuer size. Other stakeholders also mentioned that issuer that the notion of inside information creates legal uncertainty and that small issuers were facing difficulty in identifying what actually constitutes a piece of inside information.

Respondents also referred to a number of other legislations that would need consideration to further alleviate burden on SMEs. A couple of respondents mentioned the application of CSDR as potentially problematic. When considering more specifically SMEs listed on regulated markets, the shareholders rights' directive, take-over bid directive and transparency directive (notably on major shareholding) were put forward as good candidates to ease burden on smaller issuers. Concerning bond issuances, the impact of PRIIPS has been considered as a potential show-stopper.

The issue of taxation was raised by several stakeholders, covering various topics such as Member State tax incentives and state aid, tax barriers to cross-border investment, barriers related to taxation of listed company versus non-listed enterprise, and the need to conduct an impact assessment on the cost of capital arising from the current tax bias against equity investments.

## **2. Other public consultations**

### *2.1. Building a Capital Markets Union*

On 18 February 2015, Commission services launched a public consultation on the basis of the Green Paper "Building a Capital Markets Union"(CMU).

When discussing measures to support a deeper market in SME and start-up finance, and a wider investor base, respondents underlined the importance of avoiding any disproportionate burden and cost on SMEs, for example by imposing new disclosure requirements and/or additional *ad hoc* financial standards to all SMEs. It was also deemed crucial to ensure that SMEs are not overburdened by the level of data they have to provide and to limit the disclosure requirements to the most crucial information to increase their possibilities of getting funding on European capital markets. A differentiated approach should be adopted based on the size of a company; disclosure requirements should be minimal in early stages.

In addition, several respondents strongly encouraged the Commission to ensure that Level 2 provisions of MiFID II would not negatively impact **financial research coverage of SMEs**.

The consultation also asked a question on the need to develop a common **EU-level accounting standard for small and medium-sized companies** listed on MTF or SME Growth Markets. Some respondents considered that the current situation is appropriate and should not be changed. Currently, SMEs listed on most MTFs prepare their financial reports according to national accounting standards, although there are already MTFs that require SMEs to apply the International Financial Reporting Standards (IFRS). Most respondents considered, however, that some kind of initiative or incentive, legislative or other, is needed to render EU SMEs listed on MTFs more attractive to European and international investors through enhanced transparency and comparability of relevant financial information. Rather than a full application of the IFRS or use of the IFRS for SMEs, many respondents suggested

that a pragmatic IFRS-based solution be found in order to deliver for SMEs listed on MTFs the advantages of a high-quality, comparable, international set of accounting rules, whilst avoiding excessive administrative burden and costs, particularly in relation to disclosure.

## 2.2. CMU Mid-term Review

On 20 January 2017, Commission services launched a public consultation on the Capital Markets Union Mid-term Review.

The public consultation notably raised a question on potential new actions to make it easier for companies to enter and raise capital on public markets. Many respondents called for a **proportionate review of the different obligations placed on non-financial issuers**, especially SMEs. Those obligations were considered potentially too burdensome and could deter these issuers from seeking a listing. One stakeholder also underlined that delisting from a public market should be made easier in order to avoid dissuading new issuers that often consider public markets as a 'one-way-ticket'.

As regards the legal framework applying to quoted companies, respondents criticised different aspects of the **Market Abuse Regulation (MAR)**. For instance, rules concerning managers' transactions as well as insider lists were criticised for being too burdensome for companies listed on MTFs. The definition of inside information was considered too complex and would lead to the risk of an anticipated and premature disclosure of information by listed issuers. One respondent indicated that with respect to the disclosure of price-sensitive information under the Market Abuse Regulation, equity markets should be distinguished from bond markets: in equity markets prices of financial instruments are more exposed to the influence of company-specific information, while in bond markets prices are less subject to volatility and a function of the financial variables existing within the instruments themselves. Some respondents considered that the scope of 'market soundings' rules under the Market Abuse Regulation was too wide and that many market participants would be reluctant to be tested in the context of a market sounding due to the legal risk they could bear. Other respondents considered that the extension of the Market Abuse Regulation to companies listed on multilateral trading facilities (MTFs) made access to public markets more expensive, because of the direct costs of monitoring and disseminating inside information.

Taking the view that brokers cannot make enough money to maintain equity research coverage, some respondents recommended that the 'after-market incentives' for brokers be improved, such as a pilot programme for tick sizes designed to take into account the needs of smaller companies. Some respondents therefore raised concerns about the impact of MiFID II level 2 rules on the **provision of SME research**, as they would make it very difficult to spread the cost of research across large companies and mid-caps/small companies. Those respondents called for an assessment and a potential review of those rules. Other respondents considered that the Commission should create incentives for financial analysts to cover smaller IPOs. Other respondents mentioned that including equity research within the scope of fiscal incentives applying to industrial research would encourage SME admission on public markets. Finally, some respondents considered that research on fixed-income products should not be in the scope of MiFID II.

Several stakeholders recommended the introduction of a "**growth company**" concept that would be linked both to the size and period of listing. Those "growth companies" would benefit from a simplified and transitional regime applicable for a definite period of time.

Eventually, respondents emphasised the importance of decreasing the regulatory burden for local **investment firms** offering their services to SMEs (referring to MiFID II, the Market Abuse Regulation, the fourth Anti-Money Laundering Directive, the Capital Requirements Directive IV, etc.).

### *2.3. Call for Evidence: EU regulatory framework for financial services*

On 30 September 2015, Commission services launched a Call for Evidence aimed at improving the quality of the current regulatory framework in financial services, including those that would be directly impacted by CMU actions. It was thus meant to verify that financial reforms do not unduly burden access to finance and that they are consistent across financial sectors and coherent in a way that major regulatory gaps are addressed. To address barriers to finance and unintended consequences, the call for evidence supported CMU actions with additional input to make appropriate adjustments to the regulatory framework.

In the Call for Evidence, respondents broadly supported the reforms to capital market regulation. They however expressed concerns about how the market abuse, prospectus and securities market legislation affects market financing of SMEs.

Concerning **Market abuse regime and SME Growth Markets**, some respondents argued that the market abuse regime placed a high burden on issuers in SME growth markets, which might ultimately result in less activity and thus reduced financing for SMEs. Particular concerns related to the widening of scope of issuers' duties under the Market Abuse Directive and Market Abuse Regulation (MAD/R) regime to companies listed on Multilateral Trading Facilities (MTFs), such as providing insider lists and notifying managers' transactions.

With regard to **Prospectus Directive**, stakeholders argued that the prospectus requirements for issuers were too burdensome and raised the cost of access to capital markets, in particular for smaller companies.

Some respondents also argued that the new **MiFID II inducement rules** would impede the provision of research, especially in the area of SMEs. Furthermore, it was claimed that the price of SME research would increase, as it would have to be budgeted independently.

## **3. Technical workshops with stakeholders**

### *3.1. 2017 Technical workshops with securities exchanges on barriers to listing for SMEs*

On 14 November 2017, Commission services organised a technical workshop with approximately 25 securities exchange representatives, from 27 Member States. The aim of the workshop was to discuss technical provisions and potential alleviations to the regulatory framework on SME access to public markets, in preparation of the 2017 public consultation on "Building a proportionate regulatory environment to support SME listing".

**The first main topic of discussion concerned ways to make a success of the SME Growth Market brand.** Many stakeholders implied that the market capitalisation was not always a good criterion to determine what an SME is, as it can vary a lot depending on the evolutions of stock markets. Other criteria were put forward, such as the number of employees. A quarter of the participants, considered the EUR 200 million market capitalisation threshold to proportionate, while a few argued that raising the threshold could be an option, as some EU regulations (ELTIFs, EU Growth Prospectus) already refer to companies with a market capitalisation higher than EUR 200 million. Several representatives of central and Eastern-

European exchanges stated that the market capitalisation threshold was already high with regard to both their companies listed on regulated market and on their MTFs. On the definition of non-equity issuers, many respondents agreed that the reference to the 2003 EU Recommendation was too narrow: the definition of SME bond issuers should rather take into account the size of the issuance (and not the size of the issuer). By these means, debt issuers would be allowed to get access to SME Growth Markets dedicated to bonds.

Many stakeholders agreed that provisions requiring key advisers on SME-dedicated market should not be imposed, notably as it would imply an additional cost for SMEs. Nevertheless, some respondents did recognize that such key advisors could also add value to listed companies. A majority of stakeholders also agreed that no mandatory rule should be set on the transfer of listing from an SME Growth Market to a regulated market, while some of them further complained that more should be done to incentivise companies to graduate to the main market. Few participants stated that minimum rules on delistings should be added to the current legal framework to protect investors. Finally, certain stakeholders pointed out that the number of investors is decreasing and the ecosystems surrounding the exchange venues are as well declining.

**The second session discussed potential alleviations to the administrative burden on SME Growth Market issuers.** A majority of participants contended that MAR had created costly obligations for SME issuers and imposed stringent requirements - despite, as some of them mentioned, the important role it plays towards investor confidence. Respondents cited the nature of inside information and the level of detail required to disclose such information as reasons to this burden. The difficulty to clearly identify what to consider inside information was mentioned as problematic by some participants. Few other stakeholders criticised that sanctions applicable under the Market Abuse Regulation were not proportionate to the companies listed on MTFs, which often have a market capitalization of less than EUR 10 million. On insider lists, a couple of participants highlighted that the exemption introduced for SME Growth Markets was not meaningful, as issuers would still be required to provide insider lists ex-post and have processes in place to do so. Many stakeholders complained about the strict deadlines given to managers to notify their transactions, arguing that the three-day timeframe should be extended to five days or that two extra days should be granted to the issuers to disclose such information. Some of them also explained that managers' transactions should only be notified when significant, i.e. with a value higher than EUR 50.000 or 100.000. Three trading venues also agreed that MAR rules should not apply equally to equity issuers and to the ones issuing only debt instruments. Finally, a participant explained that, as most SME bonds are privately placed, the exemption from rules on market soundings for private placements would represent a real alleviation.

**The third and final topic of the workshop explored ways to foster the local ecosystems surrounding SME Growth Markets and enhance liquidity.** It was mentioned that market participants would welcome more clarity on liquidity provision contracts, considering their importance for both brokers and companies. A few stakeholders explained that Accepted Market Practices on liquidity provision should not be removed, advocating for legal certainty on the issue. Several exchanges also agreed that there should be a minimum amount of free float, in the interest of investors. Free float should be defined, according to them, either in terms of percentage of the issuers' market capitalisation or in terms of a fixed amount. However, they concluded that the free float requirement should be determined locally by the market itself. A stakeholder asked about the economic viability of unsolicited credit rating by market players different from CRAs. In response, another participant explained that shadow rating were a very useful practice in Nordic countries before the practice was banned by ESMA. Finally, a

participant criticized the “one-size-fits-all” requirements prescribed on capital requirements imposed on institutional investors, especially with regard to their investments policies in SME, as well as the lack of tax incentives applicable to investments in small- and mid-caps.

### *3.2. 2017 Technical workshops with other market participants on barriers to listing for SMEs*

On 28 November 2017, Commission services organised a technical workshop gathering approximately 30 representatives of issuers, investors, brokers and other financial intermediaries. As for the previous workshop with exchanges, the aim of the day was to discuss technical provisions and potential alleviations to the regulatory framework on SME access to public markets, in preparation of the 2017 public consultation on "Building a proportionate regulatory environment to support SME listing".

**The first discussion of the day explored ways to make a success of the SME Growth Market brand.** On the definition of an SME, many participants agreed on the necessity to do away with the 2003 Recommendation definition. In particular, it was argued that the current threshold of EUR 200 million was too low and would need to be increased to least to EUR 500 million. On the definition of SME bonds issuers, some stakeholders stressed that the rules applying to corporate bonds cannot be the same as the ones applying to equity instruments. Many participants also argued that the SME Growth Market status should also be open to regulated markets. A few participants also expressed concern on ESMA's regulation concerning SME Growth Markets and the admission document required to access them, stressing the price difference in drawing up a full prospectus and an admission document.

**The second session discussed potential alleviations to the administrative burden on SME Growth Market issuers.** The great majority of stakeholders agreed that the expenses derived from the application of MAR are remarkable for SMEs. Some of them suggested that MAR should be abandoned altogether on SME-dedicated markets, or that legislation should go back to the previous MAR regime, as the new regime often leads to companies trying to delist their shares from the market. Stakeholders remarked that the exemption provided by MAR from keeping and updating an insider list was not compelling, as a company could be still asked by the NCA to provide an overwhelming quantity of information hardly manageable for smaller issuers. Some participants did point out that insider trading was a great risk potentially detrimental to investor confidence. Therefore maintaining at least the permanent section of the insider list could appear as a balanced approach. With regard to managers' transactions, it was stated by many that extending the three day timeframe to notify the market would not endanger investor protection. Few stakeholders stated that EUR 20.000 would represent a more proportionate threshold for the disclosure of managers' transactions, although it could be increased even further without compromising market integrity. Others argued that requiring the NCA to make managers' transaction public would reduce the burden placed on issuers. Few stakeholders expressed concerns with regard to the level of sanctions, which in some countries are particularly disproportionate compared to the market capitalization of the issuers. Some participants argued that transfers of listing from an SME Growth Market to a regulated market should be incentivised through a less burdensome prospectus. Eventually, while many stakeholders highlighted the important role played authorised advisers, a significant number of participants also underlined that a statutory requirement on such advisers should be left to the discretion of the exchanges themselves.

**The third and final topic of the workshop explored ways to foster the local ecosystems surrounding SME Growth Markets and enhance liquidity.** Many participants expressed

concerns about the impact of MIFID II rules on research (especially for the coverage of small and midcaps). Another problem arises from Solvency II, which restricts insurance companies' investment in equity, especially for shares listed on an MTF. Other issues raised included the scarcity of tax incentives and the illiquidity of SME-dedicated MTFs.

### *3.3. 2016 Commission workshops on barriers to listing for SMEs*

The 2016 Commission workshops on "barriers to listing for SMEs" were held on 7/10/2016 and 08/12/2016. They brought together around 80 securities exchanges, issuers, investors, brokers, accounting firms, credit rating agencies, authorised advisers, associations and public institutions to assess the functioning of public markets for SMEs. The aim was to have a constructive forward-looking discussion and to generate practical insights on how the situation of EU SME-dedicated markets can be improved. Discussion was held under Chatham House rules.

Some workshop participants reckoned that the "SME Growth Market" brand – created by MiFID II - was an opportunity to raise awareness on the value of long-term equity capital in Europe. SME markets are a crucial point of the financial ladder for SMEs. However, to make the "SME Growth Market" concept successful, the discussions showed that three main challenges needed to be overcome:

**The first identified challenge was the lack of well-prepared companies for IPOs. This situation stems from various factors.** SMEs often exhibit a low interest in equity capital. Furthermore, as stock exchanges do not work in isolation, alternative sources of funding (such as venture capital and private equity markets) are needed to finance small companies prior to the IPO stage. To tackle this resistance to equity capital as well as the shortage of financing at the pre-IPO stage, several European stock exchanges have created incubators that bring together innovative companies, providers of alternative sources of financing and market professionals specialised in SMEs.

Workshop participants considered that it was important to limit the costs and administrative burden borne by SMEs to avoid deterring them from joining public markets. Several workshop participants suggested that public schemes should help to reduce the costs incurred by SMEs when preparing for IPOs. The lighter "EU Growth Prospectus" (as envisaged by the prospectus regulation) was also described by some workshop participants as a tool to encourage market financing. To limit costs, different workshop participants also indicated that SME issuers should always have the choice to use either IFRS or national GAAPs in the preparation of financial statements. When companies wish to attract a pool of foreign investors and opt for the use of IFRS, some workshop participants indicated that a users' guide or a toolbox on IFRS (that could be developed by the Commission in close cooperation with IASB) would facilitate the shift to IFRS.

In addition, it was underlined that investors need to have confidence in the corporate governance of the SMEs that join the market. One usual measure to mitigate the risk of low corporate governance is the requirement for companies to appoint an authorised advisor that help companies to comply with their obligations before the IPO and after the listing of shares. Other exchanges are also taking additional measures such as the publication of a corporate governance code.

**The second challenge to be identified was the disappearance of the ecosystem surrounding local stock exchanges (i.e. a network of brokers, equity analysts, credit rating agencies, lawyers, accountants focusing on local SMEs) able to support**

**companies at the IPO stage.** One consequence of this decline in local ecosystems is the rise in the costs of SME IPOs. Costs are amplified as SMEs are compelled to rely on large banks' services when going public. The decline of ecosystems is particularly acute for equity brokers specialising in SMEs. Due to regulatory and technological changes, equity trading is focusing on large caps, thus leading to a decline in the liquidity of SME shares. This low liquidity can deter institutional investors from investing in SME shares. As liquidity is weak, brokers specialised in SMEs also experience a decline in their brokerage fees. As a consequence, those brokers are not incentivised anymore to provide equity research on SMEs, which in turn has a downward impact on liquidity. Despite the different initiatives taken by some stock exchanges to improve liquidity or to ensure a minimum research coverage on the SME shares listed on their trading venues, some workshop participants considered that some regulatory changes were necessary (such as the modifications of the MiFID II rules on the unbundling of research and trading fees; the "tick size" regime under MiFID II). Several workshop participants indicated that, more generally, there was a need for a proportionate regime for issuers (notably under the Market Abuse Regulation), investors and investment service providers on the SME dedicated markets.

**The third identified challenge was the low investment flows into SME shares, as there is currently a mismatch between capital demand and capital supply for listed SMEs.** Many workshop participants notably recognised the need for more institutional investors investing in SME shares and underlined that pension funds could be natural investors in SME stocks. Some workshop participants reckoned that there was a need for anchor (public) investors, who could attract other institutional investors, and suggested the creation of a public fund that could invest in SME shares. Other workshop participants also expressed the view that state aids as well as promotional banks could also play a greater role to support investments in listed SMEs.

Some workshop participants also underscored the fact that investment in SME shares by insurance companies was currently impeded by the capital charges under Solvency II. They also indicated that the success of European Long-Term Investment Funds (ELTIFs) would be limited if ELTIFs do not receive a more favourable tax treatment available to other funds. Other workshop participants also mentioned that they were working on the development of listed funds that would invest both in quoted and unquoted SMEs. Those listed funds could be used as a bridge between quoted SMEs and retail investors.

**Some workshop participants also stressed the need for retail investors.** They notably considered that retail investors could be important to create liquidity on SME markets (while institutional investors' investments are usually illiquid). Some workshop participants considered that retail participation could be incentivised notably through tax incentives. Nevertheless, many workshop participants considered that retail investors suffered from a low level of financial literacy. Another workshop participant stressed that SME stocks remained a high risk asset class not always suitable for retail investors.

#### **4. Minutes of the EGESC meeting of 10 November 2017 on Regulatory barriers to SME listing**

*The Expert Group of the European Securities Committee is a consultative entity set up by the Commission Services in order to provide advice and expertise, in the area of the securities law, to the Commission and its services. Member States were provided with a document summarising the main elements of the open public consultation on SME listing that was launched in December 2017.*

**FR:** FR is very supportive of the initiative. Europe has a weak IPO landscape. FR agrees with the scope, i.e. SME Growth Markets. FR is in favour of raising the threshold defining an SME under MiFID II (i.e. Market cap under EUR 200 million). FR is also in favour of: (i) excluding private placement of debt instruments from the market sounding rules under MAR; (ii) key advisor requirement on SME GM and (iii) creating a EU framework for liquidity contract and (iv) transfer of listing from regulated markets (RM) to SME GM. FR has already put in place a framework for such transfer from RM to MTF since 2009. For the ecosystems, MiFID II research payment provisions are an issue for research on SMEs.

**IT:** IT appreciates very much this initiative. As regards the scope of this exercise, IT would be very open and would also include SMEs listed on RM. IT already tries to accommodate the situation of SMEs on RM, by using different thresholds under different texts (shareholdings notifications, public offers, related-party transactions...). The lack of liquidity and the limited information on SMEs are the main concerns. IT is sceptical whether unsolicited ratings are sufficient to compensate this lack of available information. IT concludes that tax incentives also matters.

**DE:** DE welcomes this initiative. It's a valuable approach, i.e. striking the right balance between alleviating the administrative burden while maintaining investor protection. DE agrees with the scope (i.e. SME GM) strongly supports the view that requirements for SMEs on RM should apply in the same way. As regards the voluntary transfer of listings from RM to SME GM, DE underlines that this question does not involve only the SME issuers but also other market participants, such as investors. In term of alleviations under MAR, a cautious approach is needed. DE appreciates that the extension of MAR to MTFs will not be modified. As regards the alleviations proposed, a cautious 'cost-benefits approach' should be carried out. DE underlined that Deutsche Börse has set up a new segment for SMEs (Scale). SMEs on Scale shall have a Capital Market Partner. The exchange also finances research on issuers.

**LV:** The IPO pipeline is broken in LV, while the bond market is developing. LV has started some work with the Commission's Structural Reform Support Service. As regards the threshold defining an SME (EUR 200 million), this is already very high for LV market. This point was already raised by several other Member States in the past.

**CZ:** CZ considered this workstream as very important for us. On our RM, a lot of companies could be considered as SMEs under MiFID II and our RM could even be considered as an SME GM. Some of the measures proposed in the discussion paper presented by COM are too intrusive (such as the transfer from RM to SME GM). SMEs are small and the liquidity is low. Costs of SME IPOs or bond issuances are high (e.g. ratings for bonds are not required but expected by investors). CZ is looking at how to use structural funds in order to finance IPO costs (several MS – such as PL – are following this path). The Prague Stock Exchange has created a SME-dedicated MTF, START. One important feature is that companies on this trading venue do not need to use IFRS. As regards alleviations under MAR, the concept of SME GM was already known when the proposal was discussed. There are already some exemptions for SME GM issuers under MAR. CZ is sceptical about how further exemptions could be granted for those issuers. Investors have some expectations in terms of market integrity. Investor confidence should not be undermined. For the liquidity provision contract, it's an accepted market practice in five MS. It could be recognised as an AMP at EU level.

**ES:** ES strongly support this initiative. SMEs play a central role in ES economy. ES agrees with the scope of this initiative (SME GM vs. RM). The mandatory transfer from SME GM

to RM is a requirement that is too stringent. As regards the costs, ES recalled that the biggest cost stems from the preparation of the admission document.

**NL:** NL supports this exercise. NL understands the focus on SME GM but underlines that many SMEs are listed on RM. The proposal envisages modifying some points of MiFID II – this is a little bit too premature, as MiFID II enters into application in January 2018. NL underscores that the prudential requirements of MTFs are a big issue and COM should also look at this problem.

**PT:** PT agrees with the scope and considers that issuers on RM should not be covered. COM should be cautious and should not undermine investor protection and market stability. The flow of information towards supervisors should not be impaired by the proposal. The current definition of SMEs under MiFID II (market cap. under EUR 200 million) is quite high. However, a new threshold could be the one used in the Prospectus Regulation (EUR 500 million). As managers' transactions and insider lists, the obligations placed on SME GM issuers should not be reduced. For bond issuers, all inside information should be disclosed. PT welcomes some proposals: the definition of a liquidity provision contract at the EU level would be useful. The harmonisation of delisting regime is also an interesting point.

**LU:** LU welcomes this initiative. The transfer from a SME GM to a RM can raise some issues. LU underlines that this proposal should not undermine investor protection.

**DK:** DK is very supportive of this initiative. The scope is right: this work should be limited to SME GM. DK is more cautious on the alleviations. Investor protection and trust of investors in those SME GMs should be preserved. The changes to the EU rulebook should be carefully done.

**BG:** BG is very supportive of this initiative. In BU, the market capitalisation and turnover/liquidity on shares are very low. On the BU RM, there are only 4 big companies. Pension funds' investment is inexistent. COM should be more ambitious and includes SMEs listed on RM in its initiative. BG supports several potential proposals such as the alleviations for SME GM as regards insider lists and management' transactions and the transfer from RM to SME GM. As regards SME bond information, BG disagrees with a potential proposal that would allow ratings provided by entities not registered as CRA.

**CY:** The current trend is not to be traded on SME GM but on RM. Another trend is the initial coins offering (ICOs). As regards alleviations under MAR, CY is very cautious. Market abuses are committed even by SMEs.

**UK:** UK supports this initiative very strongly. UK underlines that there is a lack of knowledge about the different sources of financing for SMEs. UK recommends a cautious approach on the use of structural funds to finance the IPO costs. The approach of the COM on this file is sensible.

## **ANNEX 3: WHO IS AFFECTED AND HOW?**

### **1. Practical implications of the initiative**

The envisioned regulatory adjustments will benefit existing SME Growth Market issuers by applying a more proportionate approach as regards their obligations under MAR and the Prospectus Regulation. This will reduce their on-going administrative costs. Issuer will also profit from the ability to enter into liquidity contracts in order to ensure a minimum level of liquidity in the trading of their shares. This will make respective investments more attractive thus enhancing the companies' ability to raise equity capital in secondary offerings.

SME debt issuers will furthermore benefit from the re-calibration of corresponding definition as well as the disapplication of mandatory half-yearly reports under MiFID II. These amendments will facilitate MTFs specialising in bonds or in bonds and shares to register as SME Growth Markets. SME debt issuer will thereby benefit from the regulatory alleviations for this market category envisioned by this initiative as well as those already implemented. In addition, the legal clarification concerning the non-application of the market sounding regime to the private placement of bonds will lower the administrative and legal costs of these debt issuances.

Investors will also benefit from the mechanisms envisaged by this initiative and aimed at enhancing liquidity, such as the free float requirement (when a company is seeking a listing), as well as the European regime of liquidity provision contract. Both modifications should contribute to ensuring a minimum level of liquidity on SME shares.

Both sets of regulatory adjustments will enhance the relative attractiveness of listings on public capital markets and public debt issuances in comparison to bank based funding sources respectively. This will facilitate SMEs to diversify their sources of funding and thereby make them more resilient to economic shocks. This effect will be further enhanced by the already implemented amendments as regards SME Growth Markets under the Prospectus Regulation and CSDR.

In addition, market operators will benefit in the long run by increased levels of public issuances of equity and debt compared to the baseline scenario. The envisioned adjustments may also improve the profitability of liquidity providers in SME shares.

On the cost side, the initiative implies only a marginal burden on NCA budgets. Supervisors will need to stem minor one-off costs in order to adjust to the new regulatory framework. On-going costs should not increase given an approximate balance between additions and reductions of costs. Market operators could also face minimal costs in order to adapt their exchange rules.

### **2. Summary of costs and benefits**

The below table provides a summary of the expected benefits arising from the preferred option. It should be noted that the quantification of benefits is based on annual costs savings and takes in account only the current number of issuers on SME GMs (or SME focused MTFs; see comments). Future costs savings are expected to be higher given the assumption that the number of listings and bond issuances on SME GMs will increase.

<b>I. Overview of Benefits – Preferred Option</b>		
<b>Description</b>	<b>Amount</b>	<b>Comments</b>
<b>Direct benefits</b>		
Extended deadline for issuers to publicly disclose transactions relative to the notification by PDMRs and PCAs	N/A	There is insufficient data to estimate the benefit of the technical adjustment with reasonable accuracy. The overall costs of disclosure will ultimately remain the same, although small costs savings are foreseeable given increased temporal flexibility. Benefits arise mainly due to the avoidance of legal liability in the case of late disclosure from PDMRs.
Permanent List of insiders	EUR 2.54 – 4.99 million <sup>212</sup>	The costs reduction is based on the fact that issuers on SME GMs will only need to compile one permanent insider list per annum. The lower estimate represents a scenario whereby no new markets register as SME GMs. The upper estimate represents the case wherein all SME MTFs that have indicated an ambition to register as SME GMs actually do so.
Justification of delayed disclosure of insider information only on request of NCA	Lower bound: EUR 830,000 – 2.49 million  Upper bound: EUR 1.64 – 4.92 million	The cost reduction arises from the envisioned approach that would require issuers to only justify delayed disclosures on the request of the NCA. Issuers will therefore (usually) only need to notify NCAs. Full justifications are assumed to require 40 workhours on average <sup>213</sup> , while a mere notification would only take 1 hour (estimated).  Lower and upper bound figures represent cases of an average of 0.25 delays per issuer per year and 0.75 delays per issuer per year respectively <sup>214</sup> .
Explicit exemption from the market soundings regime for private placement of bonds	EUR 1.8 – 2.7 million	An explicit exemption will remove the legal uncertainty regarding whether the market sounding regime is applicable to private placements of bonds. This will save issuers, investors and involved

<sup>212</sup> The estimates are based on the average number of insider lists per issuer (available for AIM IT and New Connect), number of listings per venue (direct input from exchanges), the total amount of work-hours spent per list (based on figures in EMI, *Effects of possible changes to the Market Abuse Directive*, 2011) and assuming an average hourly rate of EUR 75.

<sup>213</sup> EMI, *Effects of possible changes to the Market Abuse Directive*, 2011

<sup>214</sup> Estimate based on EMI, *Effects of possible changes to the Market Abuse Directive* (2011) and input from Polish FSA.

		<p>intermediaries the costs of applying the Market Abuse Regulation market sounding regime.</p> <p>The estimated cost figures represent estimates based on the overall costs arising from the application of the market sounding regime<sup>215</sup>.</p>
Lighter "transfer prospectus" for issuers moving from SME GMs to RMs	EUR 4.8 – 7.2 million	<p>The application of an alleviated Prospectus for a move from MTFs to RMs would save issuers costs in the range of EUR 200,000 – 300,000<sup>216</sup>. The figures presented reflect a scenario of 24 transfers from MTFs to RMs per year on average<sup>217</sup></p> <p>It is also expected that NCAs will face lower costs as the transfer prospectus will require less workhours to validate (cost saving not quantified given lack of data).</p>
<b>Indirect benefits</b>		
Define an SME debt issuer based on the value of the issuance	N/A	Re-calibrating the definition of SME debt issuer will increase the number of MTFs that can apply for the SME GM status. This will benefit the issuers on these markets given the existing alleviations as well as those envisaged by this initiative
No mandatory half-yearly reports for non-equity issuers	N/A	There are currently no bond MTFs that have registered as an SME GM. This is partially due to the current obligation for issuers to publish half-yearly report. As such, there are no direct benefits. The envisaged amendment should be viewed in conjunction with the re-calibration of the definition of SME debt issuer (see above). Once bond MTFs register as SME GMS, issuers will save the costs of publishing half-yearly reports.
European regime for liquidity contracts	The European regime for liquidity contracts will enable all issuers on SME GMs to engage in such	The effect on primary offerings is more limited as liquidity risks can only be gauged once respective shares are actually

<sup>215</sup> Based on cost calculation in Europe Economics "Data Gathering and Cost Analysis on Draft Technical Standards Relating to the Market Abuse Regulation" (2015) – The estimates provided assume that 70% of total costs set out in the study relate to the private placement of debt (see "qualitative evidence.. suggests that much of the costs could accrue to the debt side")

<sup>216</sup> Estimate based on the Prospectus Regulation Impact Assessment and stakeholder input.

<sup>217</sup> Figures based on statistics provided by MTF operators during the stakeholder consultation and direct data requests. The average provided reflects the years 2013-2017 (insufficient data for prior years)

	contracts. It is unclear, however, how many issuers will take up this possibility. More so, there are no direct benefits of such contracts. However, the increased liquidity resulting from such contract will reduce liquidity and volatility risks for investors. In turn, valuations of issuers will increase. This will increase the capital that businesses can raise both via secondary offerings (and to a more limited extend primary offerings).	trading. Nevertheless, primary offerings will benefit from the investors' expectation of higher liquidity if the issuer enters into a liquidity contract.
Requirement for SME GMs to impose a free float requirement	N/A	Minimum free float requirements aim at increasing liquidity, especially in the early stages following primary offerings. The same reasoning applies as for liquidity contract in that it will lower risks to investors and thus ultimately enable companies to raise more capital.

<b>II. Overview of costs – Preferred option</b>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Justification of delayed disclosure of insider information only on request of NCA	Direct costs	None	None	None	None	NCAs will be required to change internal procedures and establish a mechanism to decide when to request full justifications. This will give rise to marginal one-off costs	None (recurrent costs will be lower than status quo as NCAs will need to vet fewer justifications)
	Indirect costs	None	None	None	None	None	None

Lighter "transfer prospectus" for issuers moving from SMEs to GMs to RMs	Direct costs	None	None	None	None (lower costs than status quo of issuing a full prospectus)	The establishment of a transfer prospectus will impose minor one-off costs on NCAs given required changes to internal procedures.	
	Indirect costs	None	None	None	None		

## ANNEX 4: DEFINITIONS

Accepted Market Practice	For the purposes of the market abuse regime, a practice that is reasonably expected in one or financial markets and is accepted by the relevant national competent authority of a member state. Such practices provide a defence against the market abuse behaviour of manipulating transactions where there is also a legitimate reason for the trading.
Blue-chip company	A large and highly liquid company listed on a regulated market
Commission Expert Group on Corporate Bonds	The Expert Group on European Corporate Bond Markets, which was established by the European Commission to provide a cross-market analysis of corporate bond markets and recommendations on how to improve their functioning.
ELTIFs Regulation	Regulation (EU) No 2015/760 of the European Parliament and of the Council on European long-term investment funds European long-term investment funds
EU Growth Prospectus	A proportionate prospectus regime for SMEs required by Regulation no. (EU) 2017/1129 in case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market of (i) an SME as defined in the Prospectus Regulation; (ii) a non-SME with an average market capitalization of less than EUR 500 million based on the 3 previous calendar years and whose securities are to be traded on an SME growth market; and (iii) any issuer not listed on an MTF, having a maximum average of 499 employees and wishing to make an offer to the public for a total consideration of less than EUR 20 million calculated on a 12 month period.
Fintech	Financial technology and technological innovation in the financial sector.
Free float	The amount of capital in the public's hands and that can be freely traded
High-Frequency Trading	A type of electronic trading often characterised by holding positions very briefly in order to profit from short term opportunities. High frequency traders use algorithmic trading to conduct their business.
Insider dealing	Insider dealing arises when a person in possession of inside information uses it to deal, to attempt to deal, or to recommend or induce another to do so. Dealing includes acquiring or disposing of financial instruments to which the inside information relates, as well as to cancelling or amending an order concerning such a financial instrument.
Inside information	Information of a precise nature, which has not been made public, relating directly or indirectly to one or more issuers or to one or more financial instruments; and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
Insider list	List drawn up by issuers indicating all persons having access to its inside information
Key adviser	An adviser for companies applying for or admitted to trading on an MTF, as required by certain stock exchanges across the EU
Liquidity contract	A contract stipulated between an issuer and a financial intermediary, a credit institution or an investment company in force of which an issuer places a certain amount of own shares or a certain sum at the disposal of the financial intermediary in order for the latter to carry out purchase and sale operations on the issuer's behalf.
Market Abuse Regulation	Regulation (EU) No 596/2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.
Market sounding	According to Article 11 of MAR, market soundings are defined as a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size or pricing, to one or more potential investors.
MiFID II	Directive (EU) 2014/65 on markets in financial instruments and amending Directive 2002/92/EC and Directive (EU) 2011/61.
MTF	A multilateral Trading facility is a trading venue where companies may list their financial instruments, with lower regulatory requirements than on main regulated markets
Person Closely Associated (PCA)	Persons closely associated with managers include: a) a spouse, or a partner considered to be equivalent to a spouse in accordance with national law; b) a dependent child, in accordance with national law; c) a relative who has shared the same household for at least one year on the date of the transaction concerned; d) a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point a), b) or c) above or which is directly or indirectly controlled by such a person or which is set up for the benefit of such a person or the economic interests of which are substantially equivalent to those of such

	a person.
Person Discharging Managerial Responsibilities (PDMR)	A person discharging managerial responsibilities refers to a person within an issuer who is a) a member of the administrative, management or supervisory body of that entity; b) a senior executive who is not a member of the bodies referred to in point a), but who has regular access to inside information relating directly or indirectly to that entity and who has power to take managerial decisions affecting the future developments and business prospects of that entity
Prospectus Regulation	Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.
Small and medium-sized enterprises	Under MiFID II, any company having an average market capitalisation of less than EUR 200.000.000 on the basis of end-year quotes for the previous three calendar years.
SME debt issuer	Under Commission Delegated Regulation (EU) 2017/565, issuers of debt instruments only which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: (i) an average number of employees during the financial year of less than 250; (ii) a total balance sheet not exceeding EUR 43 million; and (iii) an annual net turnover not exceeding EUR 50 million.
SME Growth Market	An MTF where at least 50% of the issuers whose financial instruments are traded on it are SMEs (defined as companies with a market capitalisation below EUR 200 million) and that has registered as an SME Growth Market.
SME-dedicated MTF	Multilateral trading facility dedicated to small and medium enterprises but not registered as an SME Growth Market
Tick size	Smallest increment in price that an exchange-traded instrument is permitted to move
Turnover ratio	Total trading volume on a market divided by total market capitalisation
Wall crossing	The act of making a person an “insider” by providing them with inside information

## ANNEX 5: OUT-OF-SCOPE DRIVERS

Beyond the drivers identified in the problem definition, the demand for SME financial instruments is also constrained by additional factors, such as the lack of visibility of SMEs towards institutional and foreign investors, or the tax treatment of investments in the various Member States. The supply of SME financial instruments is also constrained for instance by SMEs' lack of business education. These and other out-of-scope drivers are not addressed in the current initiative focusing on targeted technical amendments, but are considered progressively in the wider plan to facilitate SME access to public markets (see section on policy context, i.e. CMU).

### 1. DEMAND SIDE

#### 1.1. Lack of visibility of SMEs towards institutional and foreign investors

The visibility of SMEs is constrained by both the lack of financial research coverage on SMEs, and the use of local financial reporting standards.

##### 1.1.1 SME research

Research plays a key role in equity markets, assisting investors in making informed investment choices, providing absolute and relevant evaluation of the attractiveness of an individual stock or a whole industry or market, and of the expected performance of the underlying company. Equity research is of particular importance in the case of small high-growth companies where information is scarce and harder to assess<sup>218</sup>. A large part of professional investors would not engage in a trade on either primary or secondary markets without relevant research being available. There is also a causal link between the liquidity of SME shares and equity research coverage. For instance, a Peel Hunt and Extel Survey published in 2015 found that 78% of quoted companies responding see a correlation between the number of analysts writing on their company and the liquidity of their shares<sup>219</sup>.

The weak provision of equity research<sup>220</sup> on small and mid-sized companies (but also across the board) reduces their visibility and attractiveness among professional investors<sup>221</sup>. In addition, stakeholders have repeatedly flagged – notably through various public consultations and workshops – that the recent MiFID II level 2 rules requiring the unbundling of research from trading commissions could have further detrimental effects on the financial research coverage of SMEs. The Commission has already committed to assessing the impact of the new rules on SME research through a dedicated study, to be launched in the second half of 2018.

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<sup>218</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>219</sup> A Peel Hunt and Extel Survey published in 2015 found that 78% of quoted companies responding see a correlation between the number of analysts writing on their company and the liquidity of their shares

<sup>220</sup> For instance, 50% of companies listed on Euronext Amsterdam, Brussels, Paris and Lisbon in 2015 (with a market capitalisation below EUR 1 billion) did not benefit from any financial research and 16% only had one analyst<sup>220</sup>. On First North Sweden, only 10% of listed companies were covered by financial analysis in 2013<sup>220</sup>. On AIM UK, 65% of the companies have zero or only one analyst's live opinion<sup>220</sup>. (Sources: Public consultation on CMU (Q2-AFG); Improving the Market Performance of business information services regarding SMEs, ECSIP Consortium, 2013; HM Treasury – Consultation on Financing Growth in innovative firms, August 2017)

<sup>221</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

### 1.1.2. The use of national accounting standards vs IFRS

Except in few cases<sup>222</sup>, the listing rules of SME-dedicated MTFs do not impose the publication of financial statements in International Financial Reporting Standards (IFRS). The vast majority of SME-dedicated markets offer a choice: companies can either use national GAAPs or IFRS for their financial statements. If SMEs want to stay local, they can use national GAAPs. On the contrary, companies that seek foreign capital often opt for IFRS. Currently, only the minority of SME issuers have adopted the IFRS<sup>223</sup>.

However, the publication of financial statements in IFRS can be a powerful tool to attract foreign investors. The willingness of investors to conduct research on small issuers may be low, especially concerning smaller Member States, if such work requires comparison of multiple national GAAPs<sup>224</sup>. The use of national GAAPs by listed SMEs for financial reporting also complicates financial analysis, since financial analysts need to familiarise themselves with all the details of national GAAPs<sup>225</sup>. A wider use of IFRS by smaller issuers might enable investors and financial analysts to compare cross-border information more easily. On the other hand, making the use of IFRS compulsory would place an enormous burden on issuers listed on SME-dedicated markets (especially in the smallest Member States). Without prior experience of capital markets, IFRS can be a hurdle too difficult to overcome for small companies, as the costs of auditing IFRS-prepared financial statements would be twice as high as the costs for auditing financial statements under national GAAPs<sup>226</sup>.

In the context of the CMU mid-term review, the Commission has committed to continuing working with the International Accounting Standard Board (IASB) and all interested stakeholders to improve International Financial Reporting Standards (IFRS) acceptance by developing an application toolbox and by clarifying disclosures for SMEs through the IASB's Disclosure Initiative.

## 1.2. Tax treatment

**Tax considerations play an important role in retail investors' portfolio allocation and can foster retail participation in listed SME financial instruments.** Several Member States (such as Sweden, France, UK and Italy) have implemented tax incentives to encourage savings in equity, by providing tax reliefs on capital gains. Tax incentives in the UK, through the eligibility of AIM shares for inclusion in the ISA (Investor Saving Account), had a direct effect in freeing up more than GBP 4.5 billion into those financial instruments<sup>227</sup>. This extension of the ISA tax relief in August 2013 was designed to *'stimulate investment in*

<sup>222</sup> Three SME-dedicated markets impose the use of IFRS: AIM in the UK, Malta and Cyprus

<sup>223</sup> In 2016, one issuer out of the seven companies listed on First North Baltics had voluntarily opted for IFRS. In 2016, on Deutsche Börse's Entry Standard, 35% of issuers used IFRS while 65% of them used national GAAPs. On the German SME bond market, half of the issuers reported under IFRS (Source: Minutes of the European Commission workshops on 'Barriers to Listing for SMEs' (7 October and 8 December 2016))

<sup>224</sup> European Issuers, EVCA and FESE, *EU IPO Report*, 23 March 2015

<sup>225</sup> FESE, *A blueprint for European Capital Markets*, 2014

<sup>226</sup> Minutes of the European Commission workshops on 'Barriers to Listing for SMEs' (7 October and 8 December 2016). The conversion of financial statements from national GAAPs to IFRS requires comfort letters from auditors that can cost from EUR 80,000 to EUR 200,000. Source: Panu Pikkanen, *An Analysis of Aggregate Listing Costs on NASDAQ OMX Helsinki* (2014)

<sup>227</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

*smaller companies'* and provide a bigger pool of funding for the growing businesses that are expected to drive economic recovery. Since 2017, Italy has implemented an individual saving account (*piani individuali di risparmio*), where 21% of the total assets should be invested in instruments issued by companies not included in the main Italian or EU indices. In France, the tax incentive to invest in quoted SMEs (the so-called "PEA-PME") would not be a complete success, despite the 500,000 accounts currently opened as of 2016. The PEA-PME would suffer from a lack of clarity as regards the definition of issuers that can fall under the scope of the PEA-PME, making the work of the asset manager difficult<sup>228</sup>. Many stakeholders confirmed that such schemes are scarce in other Member States<sup>229</sup>.

## **2. SUPPLY SIDE: LACK OF SME AWARENESS AND BUSINESS EDUCATION ON PUBLIC MARKETS**

**SMEs are faced with a prominent educational gap when it comes to issuing bonds, privately placing debt or tapping the equity markets**<sup>230</sup>. This lack of education constrains the supply of companies seeking a listing in several ways. First, too few companies that have the potential to access capital markets appear to be aware of the short and long term benefits (and costs) of a listing of their shares or bonds<sup>231</sup>. It is not only a matter of limited awareness and understanding about individual instruments (listed shares and bonds) but also a lack of knowledge on how those different funding options can serve different financing needs at specific stages of the business cycle. Lack of education around the process of listing and life after an IPO or an IBO are important reasons for SMEs' reluctance to join capital markets.

Second, many SMEs and their managers are not equipped with the skills required to face the process of issuance on public markets. When going public or issuing bonds, SMEs need a skillset that will allow them to assess the appropriateness of equity vs. debt finance for their business model, evaluate their options and respond to market and regulatory requirements. The necessary skillset consists of accounting, financial reporting, business planning, forecasting, budgeting, investor relation capabilities, tax planning, and knowledge of the regulatory environment<sup>232</sup>.

Third, in addition to education and awareness limitations, the reluctance of some SMEs to raise public financing can be linked to the fear of losing control of the business to shareholders, the fear of being exposed to share price volatility, or to the aversion to sharing sensitive information. Limited understanding, incomplete preparation as well as lack of confidence to go through the offering process results in SMEs not envisaging or being prepared to issue shares or bonds, driving down the supply of such instruments<sup>233</sup>.

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<sup>228</sup> Workshops organised by the Commission on barriers to SME listing (2016)

<sup>229</sup> Feedback received from stakeholders through the public consultation as well as during technical workshops organised by the Commission on regulatory barriers to SME listing

<sup>230</sup> OECD, *Opportunities and Constraints of Market-based financing for SMEs*, September 2015

<sup>231</sup> OECD, *New Approaches to SME and Entrepreneurship financing: Broadening the range of Instruments*, 2015

<sup>232</sup> OECD, *Opportunities and Constraints of Market-based financing for SMEs*, September 2015

<sup>233</sup> OECD, *New Approaches to SME and Entrepreneurship financing: Broadening the range of Instruments*, 2015

## ANNEX 6: DISCARDED OPTIONS

Several potential adjustments, initially included in the public consultation "Building a proportionate regulatory environment to support SME listing", have been discarded after preliminary analyses, due to either lack of evidence, lack of overall support, market integrity risks or potential additional costs to issuers. These options include requiring key advisers, harmonising delisting rules on SME Growth Markets, simplifying transfers of listing from a regulated to an SME Growth Market, reducing disclosure requirements of inside information by SME Growth Market bond issuers, and amending the tick-size regime applicable to securities listed on SME Growth Markets.

### 1. Requiring a key adviser for equity issuers on SME Growth Markets

Key advisers play a prominent role by assessing the company's suitability for the market, bridging the information gap between quoted SMEs and investors and upholding the reputation of the market. One option could have been to require a key advisor, notably for equity issuers for a limited period of time. Half of the respondents to the public consultation considered that such a key advisor should be imposed while the others were opposed to such an obligation. The majority of respondents also considered that the missions and obligations of key advisers should be determined by local listing rules rather than EU law. Finally, even if the vast majority of SME markets already require such a key adviser for equity issuers, this measure could be seen as adding a (significant) cost on SME Growth Market issuers and therefore, clearly contradicting one of the objectives of the proposal, i.e. to alleviate the burden on SMEs.

### 2. Delisting rules on SME Growth Markets

Investors can be deterred from investing in the first place (especially in a cross-border context) because they might face difficulty to gain full control of a listed SME and delist its shares. Likewise, some companies can be deterred from going public because they consider that a listing of their shares is a *'one way ticket'* and cannot come back to their previous (unlisted) situation. The rules on delisting are not harmonised at EU level and the situation of minority shareholders can be weakened in case of voluntary delisting<sup>234</sup>.

One option could have been to propose minimum harmonised rules on voluntary delistings. However, the public consultation has not shown any market failure as regards delisting rules that would require EU action. The respondents were split over this question, some of them underlining that there was no clear benefit for a harmonised framework; (ii) the replies to the public consultation do not provide with a lot of insights on how a harmonised framework should be built.

### 3. Transfer of listings from regulated markets to SME Growth Markets

One option could have been to create a framework facilitating the transfers from regulated markets to SME Growth Markets. Such a harmonised EU framework could in principle (i) reduce the administrative burden on SMEs listed on regulated markets by making it easier for them to move to a trading venue with lighter requirements; (ii) safeguard investors' interests;

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<sup>234</sup> For instance, some institutional investors may be prohibited from holding unquoted shares. A delisting also changes the way a company is run as going private implies a lower level of regulatory requirements. When the delisting decision is announced, shareholders may try to sell their shares as soon as possible, which can result in a decline in share price.

and (iii) enhance the competition between exchanges (as in general, the existing rules on transfer of listing facilitate the transfer of listing between trading venues operated by the same market operator). However, respondents to the public consultation were split over the opportunity to create rules on transfers, some of them arguing that such rules should be left to the discretion of Member States and local exchanges. No regulatory or market failure was identified in terms of downward transfers, as there have been 177 transfers of listings from the regulated markets to SME Growth Markets since 2006<sup>235</sup> and none of the stakeholders have raised any concerns as regards such transfers.

#### **4. Disclosure of inside information by SME Growth Market bond issuers**

In the past, some stakeholders argued that the disclosure of all inside information (either positive or negative) by debt issuers would only be burdensome while not justified, as plain vanilla bonds are less exposed to risks of market abuse due to the nature of the instrument. While the prices of equity financial instruments can be influenced by the publication of (negative or positive) inside information about the firm, the key variables that would impact the price of plain vanilla bonds would be market risk, liquidity risk and credit risk. Bondholders would not be able to act on those variables while the only factor that could be influenced by the issuer is the likelihood of default. The public consultation raised a question on whether or not the disclosure of information by debt-only issuers should be limited to information likely to impair their ability to repay their debt (rather than all inside information). A majority of respondents that replied to this question were in favour of this solution. However, given the definition of inside information provided by MAR, debt issuers can already limit their disclosure of information to those likely to have an impact on the price of its financial instruments<sup>236</sup>. In no ways, they have the duty to disclose all information. Moreover, some studies showed that positive inside information (such as a takeover announcement<sup>237</sup> or the upgrade of a rating<sup>238</sup>) can have an effect on bond price. As a consequence, it does not seem advisable to limit the disclosure to information likely to impair the ability of a non-equity issuer to repay its debt.

#### **5. Tick size regime for SME Growth Markets**

While lower tick sizes would contribute to the reduction in trading costs, tick sizes also have an impact on the spread between sellers and buyers of securities and consequently may influence the incentives of intermediaries (brokers) to trade those instruments and earn income from their activity. The public consultation raised a question about the impact of the EU minimum regime on tick sizes on the liquidity and spreads of SME Growth Market shares. A significant number of respondents refrained from expressing an opinion. A thin majority of those who expressed an opinion considered that the EU minimum tick size regime leads to a decline in liquidity and spreads but cautioned against a revision of the tick size regime until further evidence is available. A thin majority of those who expressed an opinion

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<sup>235</sup> Since 2006, there have been 177 transfers of listings from the regulated markets to SME Growth Markets (Source: Data from Securities Exchanges – Commission analysis).

<sup>236</sup> Article 7 of MAR defines an inside information as *'information of precise nature, which has not been made public, relating, directly or indirectly, to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices to those financial instruments or on the prices of those financial instruments or on the price of related derivative financial instruments'*.

<sup>237</sup> S. Kedia and X. Zhou, *Insider Trading and Conflicts of Interest: Evidence from Corporate Bonds, 2009*. The authors have found that *'target bonds rated below the acquirer's earn significant positive returns while those rated no lower than the acquirer's experience significant negative returns'*. Finally,

<sup>238</sup> Commission Technical workshop on 'regulatory barriers to SME listing', 28 November 2017

indicated that more flexibility should be given as regards the tick size regime applying to SME Growth Market issuers.

At the current juncture, the modification of the tick size regime for SME Growth Markets (either by raising the tick size for SME shares or by exempting them from the MiFID II harmonised regime) cannot be envisaged as a policy option: (i) few months after the entry into application of MiFID II, there is a lack of evidence on the potential consequences of the tick size regime on shares' liquidity. Some stock-exchanges said that it led to a decrease in liquidity while others expressed the opinion that the framework led to a slight increase; (ii) the current MiFID II regime only imposes a minimum tick size regime, meaning that SME Growth Market operators still have the possibility to raise tick sizes if they consider the current levels too low and impairing liquidity provision.

*For more details on tick size, please refer to annex 9.*

## ANNEX 7: ADDITIONAL MARKET BACKGROUND

Although the distribution varies among the different SME equity markets across the EU, it is widely viewed that retail investors account for a much higher share of the investor base in companies listed on SME-dedicated MTFs than in those on regulated markets<sup>239</sup>. The table below provides a comparison between a selection of SME equity markets and main markets in the EU:

Figure 13 – Distribution of retail and institutional investors in selected EU MTFs vs. regulated markets

Type of Market	Name of the Market	Retail investors	Institutional investors
SME Market	AIM (UK)	50%	50%
SME Market	New Connect (PL)	95%	5%
SME Market	First North (SE)	81%	19%
SME Market	EN.A (EL)	78%	22%
Main Market	Warsaw Stock Exchange (PL)	10%	90%
Main Market	NASDAQ OMX (SE)	45%	55%
Main Market	ATHEX (EL)	36%	64%

Source: ECSIP Consortium, Improving the market performance of business information services regarding listed SMEs (2013); OICV, SME Financing through capital markets (2015)

There is also a lack of cross-border investments in SME-dedicated markets. Domestic investors are usually the ones who invest in SMEs<sup>240</sup>. SME-dedicated markets present a strong home-bias, compared to main markets, as highlighted by the table below:

Figure 14 – Distribution of domestic and foreign investors in selected EU MTFs vs. regulated markets

Name of the Market	Type of Market	Domestic Investors	Foreign Investors
AIM (UK)	SME Market	58%	43%
New Connect (PL)	SME Market	93%	7%
First North (Nordics)	SME Market	84%	16%
MAB (ES)	SME Market	89%	11%
EN.A (EL)	SME Market	91%	9%
LSEG (UK)	Main Market	44%	56%
Warsaw Stock Exchange (PL)	Main market	48%	52%
NASDAQ OMX (SE)	Main Market	30%	70%
BME (ES)	Main Market	57%	43%
ATHEX (EL)	Main market	36%	64%

Source: European Commission data collected from securities exchanges, 2017

<sup>239</sup> ECSIP Consortium, Improving the market performance of business information services regarding listed SMEs (2013)

<sup>240</sup> European Issuers, FESE and EVCA, *EU IPO Report*, March 2015

Figure 15 – Free float requirement and minimum capitalisation on EU SME-dedicated MTFs

<b>Name of the Market</b>	<b>Free float requirement</b>
<b>Dritter Market (AT)</b>	No minimum free float
<b>Marché Libre (FR)</b>	No minimum free float
<b>Cyprus Emerging Companies Market (CY)</b>	No minimum free float
<b>Progress (HR, SI)</b>	10 per cent
<b>Prague Stock Exchange – START (CZ)</b>	No minimum free float
<b>ATHEX EN.A (EL)</b>	Free float at 10 per cent (provided at least 50 people).
<b>AIM Italia (IT)</b>	10 per cent
<b>Irish Stock Exchange IEX (Enterprise Securities Market) (IE)</b>	No minimum free float but minimum capitalisation at EUR 5 million
<b>NewConnect (PL)</b>	15 per cent
<b>Mercado Alternativo Bursatil (ES)</b>	At least EUR 2 million free float.
<b>NASDAQ OMX/First North (DK, EE, FI, LT, LV, SE)</b>	10 per cent of shares in public hands, or an assigned Liquidity Provider.
<b>AIM (UK)</b>	No minimum requirement.
<b>Aktietorget AB (SE)</b>	At least 200 shareholders with at least 10 per cent of shares in public hands.
<b>Nordic Growth Market (SE)</b>	At least 300 shareholders; at least 10 per cent of shares and 10 per cent of votes in public hands. Minimum share capital of not less than EUR 730,000.
<b>Euronext Growth (BE, FR, PT)</b>	EUR 2.5 million
<b>Scale (DE)</b>	20 per cent or EUR 1 million
<b>AeRO (RO)</b>	10 per cent

## ANNEX 8: THE IMPACT OF DEVELOPED SME GROWTH MARKETS ON THE WHOLE FUNDING ESCALATOR OF COMPANIES

- **Vibrant SME Growth Markets as a condition to developed Private Equity, Venture Capital and Crowdfunding financing**

Dynamic public equity markets can foster the development of private equity and venture capital financing. **Healthy public equity markets can stimulate private equity and venture capital activity by providing smooth exit opportunities**<sup>241</sup>. Venture capital and private equity funds have a fixed term mandate for the assets they manage and typically do not pay dividends during the investment lifecycle<sup>242</sup>. The capital they offer to growth companies must ultimately be turned into cash or into a currency such as publicly traded equity that can ultimately be sold for cash<sup>243</sup>. Without this possibility to exit, VC and PE funds are less willing to lock-in their money and time during the critical growth period of the enterprise. The money they receive through the exit may be used to invest in other high growth businesses<sup>244</sup>. Some studies have shown that private equity financing cannot thrive in the absence of a *'well-developed stock market that permits venture capitalists to exit through an initial public offering'*<sup>245</sup> and that a venture capital industry and stock market development are positively correlated<sup>246</sup>.

**However, currently, the EU SME-dedicated markets do not provide a stable exit mechanism for venture capitalists and private equity funds.** In 2016, venture capital and private equity funds in the EU disinvested from 1,295 early stage companies representing EUR 2.4 billion of divestment. The most common exit route was a trade sale (i.e. the sales of a company's shares to industrial investors - 27% of transactions) while 17% of transactions were written-off (i.e. the value of the investment is eliminated and the return to investors is zero or negative). Only 7.5% of the exits were through the public markets. In 2016, buy-out funds disinvested from 790 more mature and less risky companies representing EUR 28.1 billion. Those companies were sold to another private equity fund (31%) and or divestments went through trade sales (28%). Only 11% of those companies were brought to the public markets. Even in the cases where a trade sale is favoured over an IPO, the value of a company would be enhanced if the venture capital and private equity funds would be provided with an alternative credible solution to sell their stakes in a VC-backed company<sup>247</sup>. In most cases, the possibility of listing shares on an SME-dedicated market may not be sufficient: venture capitalists also need active trading of SMEs shares, as liquidity is critical

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<sup>241</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>242</sup> Felice B. Friedman and Claire Grose, Promoting Access to Primary Equity Markets A Legal and Regulatory Approach, World Bank Policy Research Working Paper 3892, 2006

<sup>243</sup> European Private Equity and Venture Capital Association, Fulfilling the Promise of Venture-Backed High Potential Companies, p.3

<sup>244</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>245</sup> Black, B.S., and R.J.Gilson, Venture capital and the structure of capital markets: Banks versus stock markets (1997)

<sup>246</sup> Felice B. Friedman and Claire Grose, Promoting Access to Primary Equity Markets A Legal and Regulatory Approach, World Bank Policy Research Working Paper 3892 (2006), p. 29

<sup>247</sup> (InvestEurope, 2016 European Private Equity Activity)

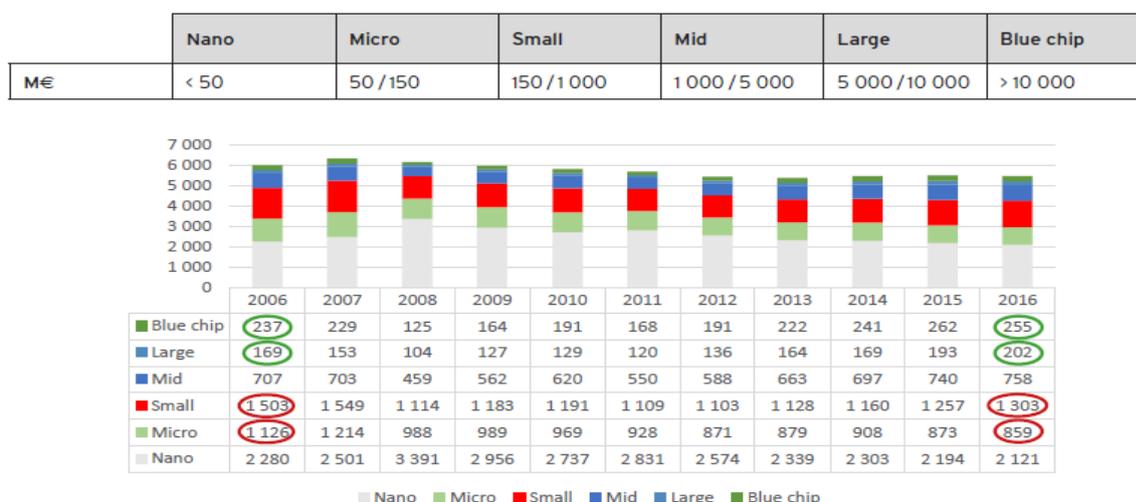
to enable investors to come out of investment positions without significantly impacting the stock price<sup>248</sup>.

Public equity markets for SMEs could also stimulate equity crowdfunding investments. Like venture capitalists, equity crowdfunding investors also seek an exit for their investment and therefore require well-functioning and liquid equity markets to be used as exit routes for the growth companies they back<sup>249</sup>. However, at present, there is no real secondary market for crowdfunding exits<sup>250</sup>. Only a couple of crowdfunding transactions in the EU have ended up in IPOs on SME-markets<sup>251</sup>. As a consequence, a limited SME access to public markets has repercussions not only on capital-raising through IPOs, but throughout the funding escalator of companies.

- **Ripple effect on regulated markets**

**A weak pipeline of SME IPOs also raises issues in terms of market structure of the European Markets.** The chart below represents changes observed in the number of listed companies (either on a regulated market or on a SME-MTF) by market capitalisation segment from 2006 to 2016, based on the following segmentation in several EU jurisdictions<sup>252</sup>:

Figure 16 – Evolution of market capitalisation segments



Source: The 2017 Small & Mid-Cap Outlook, Middlednext & Financière de l'Echiquier

This chart shows that the number of listed European companies peaked in 2007 and the lowest point was recorded in 2013. Although this may come as no surprise in the crisis context, this development has been accompanied by structural changes. Since 2007, the three smallest segments (Nano caps: -15%; Micro: -29%; Small: -16%) have contracted whereas the three largest have increased (Midcaps: +8%; Large: +32% and blue chips: +11%). While the mid and large caps segments continue to receive a boost from the strong growth in the

<sup>248</sup> European Private Equity and Venture Capital Association, *Fulfilling the Promise of Venture-Backed High Potential Companies*, 2005

<sup>249</sup> OECD, "Opportunities and limitations of public equity markets for SMEs", *OECD Journal: Financial Market Trends*, Vol. 2015/1, 2016

<sup>250</sup> AFME, *The Shortage of Risk Capital for Europe's High Growth Businesses*, 2017

<sup>251</sup> Two examples of successful exit is the IPO of Free Agents Holdings on the London Stock Exchange's AIM in November 2016 and the IPO of Heeros Oyj on First North Helsinki (November 2016).

<sup>252</sup> UK, Germany, Italy, Spain, Belgium, Netherlands, Belgium, Luxembourg, Switzerland, Austria, Spain, Portugal

micro/small caps segments in the 2000s, the micro-caps segment which depends exclusively on IPOs is continuing to contract due to a larger number of delistings whether linked to mergers and acquisitions activity or the companies' growth resulting in the transfer to the small cap segment. Therefore, European listed companies have continued to age since 2007, a phenomenon that is reflected by the growth of the mid and large capitalisation segments that have reached a peak, fuelled by the transfer from one segment to another<sup>253</sup>. **Thus, the narrowing base of the pyramid (micro/small cap) that has been witnessed since 2007 could have an impact on the top of the pyramid (mid/large) in the longer run.** The reduction in the pipeline of potential growth success stories (i.e. nano/micro capitalisation segments) could lead to the stagnation, followed by a contraction of the large and blue-chips segments. In the long run, any durable contraction in these segments could be problematic for market intermediaries, whose business models are highly dependent on trading volumes of the large and blue-chips segments and have a major impact on the financial industry.

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<sup>253</sup> MiddleNext and La Financière de l'Echiquier, *The 2016 European Small and Mid Cap Outlook*, 2016

## ANNEX 9: BUSINESS MODELS OF SME BROKERS AND LIQUIDITY ISSUE

Brokers have a business model based on traded volumes. Each time an investment management company places an order, the broker charges an average percentage commission of 0.1-0.15% for the provision of this service. As SMEs trade in very thin volumes, smaller capitalisation segments pose an economic issue for the brokers. The tables below demonstrate that over the period 2006-2016, a nano-cap (an issuer whose market capitalisation is below EUR 50 million) and a micro-cap (an issuer whose market capitalisation ranges between EUR 50 and 150 million) generated on average EUR 1,000 and EUR 6,600 in brokerage fees over one year for all the brokers (buy and sell trades), compared to EUR 4.25 million for a blue-chip. The fees generated by the smaller trading segments are therefore insufficient to remunerate brokers specialised in SMEs that bear fixed high costs and are often locally-based<sup>254</sup>.

Figure 17 – Average brokerage fees by market capitalisation

### Median annual volumes by segment (2006-2016)

M€	Nano	Micro	Small	Mid	Large	Blue chip
2006	6.0	30.3	141.7	1 491.7	7 611.8	20 169.9
2007	5.7	31.5	181.1	2 300.1	9 036.8	28 236.6
2008	3.5	26.9	216.2	2 988.9	12 213.0	34 331.4
2009	2.1	15.6	88.3	1 277.5	5 880.1	18 316.4
2010	2.3	15.8	91.0	1 210.9	5 874.2	18 706.0
2011	2.5	18.3	115.3	1 421.5	6 528.0	21 007.1
2012	2.0	15.0	78.4	1 207.9	5 845.1	17 750.8
2013	2.6	15.7	85.9	996.6	5 277.8	16 411.1
2014	2.9	18.5	109.2	1 039.5	5 460.8	18 586.3
2015	3.1	17.4	97.4	1 103.0	6 473.4	21 316.0
2016	3.0	15.4	80.7	1 021.0	6 248.1	19 162.1

### Median annual volumes by segment (2006-2016)

K€	Nano	Micro	Small	Mid	Large	Blue chip
Commission rate <sup>9</sup>	0.015%	0.015%	0.015%	0.010%	0.010%	0.010%
2006	1.8	9.1	42.5	298.3	1 522.4	4 034.0
2007	1.7	9.4	54.3	460.0	1 807.4	5 647.3
2008	1.0	8.1	64.8	597.8	2 442.6	6 866.3
2009	0.6	4.7	26.5	255.5	1 176.0	3 663.3
2010	0.7	4.7	27.3	242.2	1 174.8	3 741.2
2011	0.8	5.5	34.6	284.3	1 305.6	4 201.4
2012	0.6	4.5	23.5	241.6	1 169.0	3 550.2
2013	0.8	4.7	25.8	199.3	1 055.6	3 282.2
2014	0.9	5.6	32.8	207.9	1 092.2	3 717.3
2015	0.9	5.2	29.2	220.6	1 294.7	4 263.2
2016	0.9	4.6	24.2	204.2	1 249.6	3 832.4
Average	1.0	6.0	35.0	292.0	1 390.0	4 254.4

<sup>254</sup> MiddleNext and La Financière de l'Echiquier, The 2016 European Small and Mid Cap Outlook, 2016

## **ANNEX 10: IMPLICATIONS OF THE EUROPEAN TICK SIZE REGIME FOR LIQUIDITY ON SME GROWTH MARKETS**

Tick size refers to the smallest increment in price that an exchange-traded instrument is permitted to move. As the determinant of the granularity of price changes, it directly affects the price discovery process and holds wider implications for both market quality and market structure. In particular, tick sizes have been demonstrated to impact liquidity, volatility and trading costs. As such, they are an important factor impacting the attractiveness of SME growth shares, which generally suffer from lower liquidity levels, and higher trading costs and volatility compared to large caps.

While attracting little attention before the advent of electronic trading, tick sizes have become a hotly debated topic since the early 2000's, especially in the context of liquidity provision via high frequency trading (HFT) strategies. Prior to the application of MiFID II, European exchanges were allowed to freely calibrate their tick size. As smaller tick sizes were seen to lead to a decline in quoted spreads and attract HFT trading flow there has been a continuous trend of ever-declining tick sizes over the last two decades<sup>255</sup>. In order to put a halt to this 'race to the bottom' the European Parliament's ECON Committee report on MiFID II introduced an additional Article<sup>256</sup> to establish mandatory tick-sizes across all European exchanges. This Article was maintained in the co-legislative procedure and required the Commission to specify a minimum tick size regime via a Delegated Regulation<sup>257</sup> (see figure 18 for current calibration). This regime is intended to create a level-playing field between the different trading venues and ensure the orderly functioning of the market.

Given that the tick size regime was not part of the MiFID II / MiFIR Commission proposal, no prior assessment was carried out to analyse the impact and effectiveness of this measure. In particular, it remains unclear to date whether the mandatory tick sizes have been adequately calibrated to best suit the liquidity levels of traded shares<sup>258</sup>. This is especially true for less liquid shares, such as the vast majority of SME shares.

For liquid instruments, a smaller tick size generally enhances the prices discovery process. The increased price granularity allows market makers to set their bid-ask spreads more precisely according to perceived risks. This process is mainly driven by HFTs that are able to update their quotes at an extremely high pace and leads to a decline in quoted spreads and thus transaction costs<sup>259</sup>.

For illiquid financial instruments, such as most SME shares, this principle does not hold. Liquidity provision in these shares is mainly driven by genuine investor interest and specialised or dedicated market makers rather than HFTs. Since there is little trading activity

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<sup>255</sup> While the Federation of European Securities Exchanges (FESE) sets out a self-regulatory tick size regime, this regime was not binding and not all FESE members followed it fully across the different markets they operated.

<sup>256</sup> See Article 49 MiFID II

<sup>257</sup> See Commission Delegated Regulation 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council

<sup>258</sup> While ESMA consulted on RTS 11 and carried out extensive calculations to calibrate the tick sizes across the different liquidity bands, it is extremely difficult to accurately predict what effect they will have based on theoretic models.

<sup>259</sup> It should be noted that a law of diminishing return applies to this concept. Ever decreasing tick sizes will lead to smaller and smaller improvements in quoted spreads. At the same time, the order messaging rate will tend to increase exponentially with potential detrimental impacts on the stability of data connections and matching engines of market operators.

overall and volatility tends to be higher, market makers generally require larger margins in order to make their quoting activity economical. This leads to higher spreads and increased trading costs. While a smaller tick size should equally enhance the price discovery process, the additional price points made available will do little to impact spreads as they are significantly larger than the tick size. In addition, a smaller tick size may reduce the profitability of market makers if they are unable to provide competitive quotes at more granular price points. In effect, liquidity may actually decrease.

The stakeholder consultation to this initiative also asked respondents to comment on the effect of the European tick size regime. In particular, respondents were asked whether increased or more flexible tick sizes on SME GMs could enhance liquidity. The replies to these questions did not result in any conclusive result. While some respondents noted that they expect the European tick size regime to have a negative impact on liquidity, others commented that smaller tick sizes lead to narrower spreads and decreased trading costs. One stakeholder expressed the observation that smaller tick sizes in fact increase liquidity at the touch but that this was only due to the reduced number of possible price points which concentrate volumes at the best bid and offer. Overall however, market book depth decreased. The majority of respondents stated that the effects are currently unclear given the recent introduction of the regime.

Since there is no conclusive evidence on the effects at this stage, it appears prudent to build any assessment on a longer observation period. The tick size regime is ultimately a calibration issue and it will require time before the effects of its implementation become fully visible. Too small tick sizes will make the costs of overbidding best bid/offers insignificant and will thus create excessive noise in the order book. Likewise, too large tick sizes will increase the viscosity of the order book which can discourage the placing of passive orders and increase the costs of aggressive ones. A balanced and well-calibrated approach is therefore needed.

Increasing the tick size for SME GMs at the current stage also appears inappropriate given the wider regulatory framework. As systematic internalisers (SIs) are currently not covered by the MiFID II tick size regime, operators are able to price improve within the tick in order to attract trading flows. This effect would be even more pronounced if larger tick sizes were implemented on other markets and SIs would be able to attract even more transactions<sup>260</sup>. This would undermine a primary objective of MiFID II given that the bilateral trades on SIs are less transparent than lit multilateral public markets. Any regulatory measures in relation to the tick size regime should therefore also establish a level playing field across all types of execution venues.

Given the current lack of evidence on the impact of the tick size regime and the considerations of the wider regulatory framework, it was decided that it would be premature to propose any changes to the regime at the current point in time. Commission services will however continue to monitor the impacts in order to propose regulatory amendments if and where necessary in the future.

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<sup>260</sup> Trading flows have already increased by more than 100% in the first two months of 2018, compared to the average in Q4 2017 (Source: Fidessa)

Figure 18 – Tick sizes mandated by Commission Delegated Regulation 2017/588 for liquidity bands and price ranges respectively

Liquidity bands						
Price ranges	0 ≤ Average daily number of transactions < 10	10 ≤ Average daily number of transactions < 80	80 ≤ Average daily number of transactions < 600	600 ≤ Average daily number of transactions < 2 000	2 000 ≤ Average daily number of transactions < 9 000	9 000 ≤ Average daily number of transactions
0 ≤ price < 0,1	0,0005	0,0002	0,0001	0,0001	0,0001	0,0001
0,1 ≤ price < 0,2	0,001	0,0005	0,0002	0,0001	0,0001	0,0001
0,2 ≤ price < 0,5	0,002	0,001	0,0005	0,0002	0,0001	0,0001
0,5 ≤ price < 1	0,005	0,002	0,001	0,0005	0,0002	0,0001
1 ≤ price < 2	0,01	0,005	0,002	0,001	0,0005	0,0002
2 ≤ price < 5	0,02	0,01	0,005	0,002	0,001	0,0005
5 ≤ price < 10	0,05	0,02	0,01	0,005	0,002	0,001
10 ≤ price < 20	0,1	0,05	0,02	0,01	0,005	0,002
20 ≤ price < 50	0,2	0,1	0,05	0,02	0,01	0,005
50 ≤ price < 100	0,5	0,2	0,1	0,05	0,02	0,01
100 ≤ price < 200	1	0,5	0,2	0,1	0,05	0,02
200 ≤ price < 500	2	1	0,5	0,2	0,1	0,05
500 ≤ price < 1 000	5	2	1	0,5	0,2	0,1
1 000 ≤ price < 2 000	10	5	2	1	0,5	0,2
2 000 ≤ price < 5 000	20	10	5	2	1	0,5
5 000 ≤ price < 10 000	50	20	10	5	2	1
10 000 ≤ price < 20 000	100	50	20	10	5	2
20 000 ≤ price < 50 000	200	100	50	20	10	5
50 000 ≤ price	500	200	100	50	20	10

**ANNEX 11: MARKET ABUSE DATA RECEIVED FROM NATIONAL COMPETENT AUTHORITIES**

	FMA (AT)	FSMA (BE)	HANFA (HR)	CySec (CY)	CNB (CZ)	Finans tilsynet (DK)	FIN-FSA (FI)	Bafin (DE)	HCMC (EL)	MNB (HU)	Consob (IT)	Finanstilsynet (NO)	CMV M (PT)	FSA (RO)	NBS (SK)	SMA (SI)	Finans inspektionen (SE)	CNMV (ES)	FCA (UK)
Number of MTFs / MTF issuers in your jurisdiction as of 31 December 2017	1 / 130	7 / 24	1 / 22	1 / 65	1 / 1	1 / 14	1 / 27	10 / ≈950	1 / 12	1 / 21	11 / 1529	1 / 17	2 / 34	1 / 301	1 / 53	n/a	3 / 724	4 / 153	54 / 247
<b>MAR Article 16</b> : number of STORs received in 2017 concerning specifically financial instruments of issuers on MTFs	24	3	0	0	0	3	5	694	1	0	52	7	1	4	0	n/a	412	18	440 – 500
<b>MAR Article 17(4)</b> : number of notifications to delay the disclosure of inside information received in 2017 originating specifically from issuers on MTFs	1	1	0	0	0	0	24	104	0	0	46	15	0	0	0	n/a	1800	0	164
<b>MAR Article 18</b> : number of requests to receive insider lists addressed by the national competent authority specifically to issuers on MTFs in 2017.	1	1	0	0	0	0	0	appro ≈5	0	0	1	1	0	6	0	n/a	0	0	n/a
<b>MAR Article 19</b> : <u>total</u> number of managers' transactions notifications received in 2017 (from all issuers)	538	1635	253	3	104	1337	1840	2757	N/A	203	1276	2645	5656	350	1	n/a	11186	1117	39655
<b>MAR Article 19</b> : number of managers' transactions notifications received in 2017 originating specifically from issuers on MTFs	40	16	0	0	0	6	260	543	71	0	369	38	0	90	0	n/a	3207	193	4084

## ANNEX 12: DETERMINING THE APPROPRIATE DEBT ISSUANCE SIZE TO DEFINE AN SME ISSUER ON DEBT-ONLY SME GROWTH MARKETS

The purpose of adjusting the SME debt issuer definition is to enable exchanges to register their junior debt markets as SME Growth Markets. As the current criteria are too restrictive to be representative of the companies actually using these markets, many exchanges mentioned through the public consultation (and during dedicated workshops organised by DG FISMA) that they did not wish to register their junior bond segments as SME Growth Markets under the current definition. As a result, debt-only issuers cannot benefit from the alleviations we are trying to put in place. In this respect, looking at the current average on SME debt markets makes sense from a market access perspective.

In order to better assess the situation of MTFs dedicated to small and mid-caps in the EU, Commission services collected data directly from European securities exchanges on their SME-dedicated segments. Based on the number of issuances and total nominal value of debt issuances, the average issuance size could be calculated for several SME-dedicated bond MTFs as follows:

- Average new single issuance value per year (EUR million):

	2012	2013	2014	2015	2016	2017
<b>Euronext (FR,BE)</b>	5,8	36,3	31,8	56,6	117	109
<b>First North (Nordics)</b>	N/A	3,2	14,5	2,	4,6	2,6
<b>DBAG (DE)</b>	N/A	29,8	37,5	38,9	28,7	50
<b>EN.A (EL)</b>	N/A	N/A	N/A	N/A	4	6
<b>AIM (IT)</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>NewConnect (PL)</b>	N/A	N/A	N/A	N/A	16,8	20,5
<b>AeRO (RO)</b>	N/A	N/A	N/A	0,9	0,8	0,7
<b>MARF (ES)</b>	N/A	50	14	16,3	9,6	12,4
<b>Total</b>	<b>5,8</b>	<b>24,4</b>	<b>20,2</b>	<b>12,3</b>	<b>14,4</b>	<b>15,3</b>

- Average number of issuances per issuer per year:

	2012	2013	2014	2015	2016	2017
<b>Euronext (FR,BE)</b>	1,1	1,3	1,3	1,4	1,5	1,4
<b>First North (Nordics)</b>	N/A	1,3	1,2	1,1	1,2	7,2
<b>DBAG (DE)</b>	N/A	N/A	N/A	N/A	N/A	1,4
<b>EN.A (EL)</b>	N/A	N/A	N/A	N/A	1,0	2,0
<b>AIM (IT)</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>NewConnect (PL)</b>	N/A	N/A	N/A	N/A	2,4	2,8
<b>AeRO (RO)</b>	N/A	N/A	N/A	0,0	0,0	0,0
<b>MARF (ES)</b>	1,1	1,0	2,2	2,0	2,2	2,5
<b>Total</b>	<b>1,1</b>	<b>1,3</b>	<b>1,4</b>	<b>1,4</b>	<b>2,0</b>	<b>4,0</b>

- Average value of total issuances per issuer per year (EUR million):

	2012	2013	2014	2015	2016	2017
<b>Euronext (FR,BE)</b>	6,5	46,3	42,9	76,6	171,2	157,2
<b>First North (Nordics)</b>	N/A	4,0	16,6	2,1	5,7	18,9
<b>DBAG (DE)</b>	N/A	N/A	N/A	N/A	N/A	68,2
<b>EN.A (EL)</b>	N/A	N/A	N/A	N/A	4,0	12,0
<b>AIM (IT)</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>NewConnect (PL)</b>	N/A	N/A	N/A	N/A	40,2	58,2
<b>AeRO (RO)</b>	N/A	N/A	N/A	0,0	0,0	0,0
<b>MARF (ES)</b>	N/A	50,0	30,5	33,4	20,9	30,5
<b>Total</b>	<b>6,5</b>	<b>30,9</b>	<b>28,6</b>	<b>17,5</b>	<b>28,5</b>	<b>61,2</b>

For 2017, the average total issuance value per issuer per year on a sample of European SME-dedicated exchanges was above EUR 61 million. The average per market varied significantly, ranging from EUR 12 million on the Greek SME-dedicated bond market to EUR 157 million on the French and Belgian SME-dedicated bond market.

It should be noted that data were unfortunately not provided for the Italian mini-bond market ExtraMOT-Pro. However, data from the Italian banking Insurance and Finance Federation highlighted that since 2012, 83% of all issuances on ExtraMOT Pro had a value below EUR 50 million<sup>261</sup>.

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<sup>261</sup> FeBAF/VOEB Event, "New Financial Instruments: the Experience of Schuldscheindarlehen in Germany and the Comparison with Mini-Bonds in Italy", June 2017

## ANNEX 13: MARKET DATA COLLECTED FROM EUROPEAN MTFs

For the purpose of the Impact Assessment, Commission services sent requests for data directly to most securities exchanges. The data collected and compiled cover the level of activity and characteristics of the different SME-dedicated MTFs in the EU, when relevant in comparison to activity on European main regulated markets.

### 1. General data on SME equity markets

#### 1.1. Total number of listed companies

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	N/A	1	1	1	4	3	4	4	4	5	3	4
<b>Euronext G</b>	73	118	127	125	155	181	178	184	191	200	197	196
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0	0	1	1
<b>First North</b>	81	126	132	129	124	133	125	135	172	213	258	323
<b>DBAG/Scale</b>	0	0	0	0	0	0	178	189	168	158	138	48
<b>EN.A</b>	N/A	N/A	9	12	14	14	14	14	14	14	14	12
<b>ESM</b>	23	30	27	25	23	25	23	25	26	27	25	22
<b>AIM IT</b>	0	0	0	5	11	14	18	36	57	74	77	95
<b>NewConnect</b>	n/a	24	84	107	185	351	429	445	431	418	406	408
<b>AeRO</b>	N/A	N/A	N/A	N/A	N/A	N/A	1	3	5	280	277	301
<b>BSSE</b>	N/A	N/A	79	75	86	77	79	71	71	65	62	53
<b>MAB MARF</b>	0	0	0	2	12	17	22	25	29	45	67	88
<b>AktieTorget</b>	N/A	65	88	114	127	137	132	123	127	136	154	163
<b>NGM</b>	12	28	26	21	18	19	17	14	15	19	34	55
<b>AIM UK</b>	1,634	1,694	1,550	1,293	1,195	1,143	1,096	1,087	1,104	1,044	982	960
<b>TOTAL</b>	<b>1,823</b>	<b>2,086</b>	<b>2,123</b>	<b>1,909</b>	<b>1,954</b>	<b>2,114</b>	<b>2,316</b>	<b>2,355</b>	<b>2,414</b>	<b>2,698</b>	<b>2,695</b>	<b>2,729</b>

#### 1.2. Total capitalisation of listed companies (EUR million)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	N/A	31	51	32	189	183	721	864	1,630	1,549	163	180
<b>Euronext G</b>	3,324	5,621	3,173	4,105	4,938	5,428	6,040	8,229	8,409	13,350	13,054	12,754
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0	0	11	22
<b>First North</b>	4,654	4,214	1,557	2,414	2,917	2,568	3,215	3,994	5,406	9,658	13,202	16,040
<b>DBAG/Scale</b>	0	0	0	0	0	0	0	0	35,480	27,486	29,413	7,032
<b>EN.A</b>	N/A	N/A	227	229	187	165	140	143	142	118	105	101
<b>ESM</b>	2,400	3,000	964	1,600	2,000	2,400	3,200	4,700	5,600	5,000	4,400	5,000
<b>AIM IT</b>	0	0	0	474	357	349	475	1,183	2,052	2,925	2,873	5,579
<b>NewConnect</b>	n/a	329	345	622	1,297	1,922	2,721	2,657	2,115	2,042	2,215	2,306
<b>AeRO</b>	N/A	N/A	N/A	N/A	N/A	N/A	0	41	41	851	934	1,334
<b>BSSE</b>	N/A	N/A	N/A	N/A								
<b>MAB MARF</b>	0	0	0	129	257	382	518	1,802	1,365	2,670	4,898	9,081
<b>AktieTorget</b>	N/A	48	58	75	102	153						
<b>NGM</b>	0	0	0	0	0	0	0	0	0	0	0	0

<b>AIM UK</b>	133,280	140,488	46,033	63,428	92,921	72,167	75,950	89,596	89,268	100,846	96,977	120,777
<b>TOTAL</b>	<b>143,658</b>	<b>153,682</b>	<b>52,349</b>	<b>73,031</b>	<b>105,062</b>	<b>85,563</b>	<b>92,980</b>	<b>113,256</b>	<b>151,565</b>	<b>166,571</b>	<b>168,347</b>	<b>180,358</b>

### 1.3. Number of IPOs

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	N/A	0	0	0	0	0	0	0	0	0	0	0
<b>Euronext G</b>	54	46	12	4	37	33	12	11	19	20	12	11
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0	0	0	0
<b>First North</b>	20	39	9	-	3	2	3	6	32	51	42	65
<b>DBAG/Scale</b>	0	0	0	0	0	0	0	0	1	0	2	4
<b>EN.A</b>	N/A	N/A	-	-	-	-	-	-	-	-	-	-
<b>ESM</b>	4	4	0	0	0	1	1	3	2	2	1	1
<b>AIM IT</b>	0	0	0	4	6	4	3	14	21	19	11	24
<b>NewConnect</b>	n/a	24	61	26	86	172	89	42	22	19	16	19
<b>AeRO</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>BSSE</b>	N/A	N/A	0	0	0	0	0	0	0	0	0	0
<b>MAB MARF</b>	0	0	0	2	10	4	5	1	5	10	7	12
<b>AktieTorget</b>	N/A	16	17	15	23	6	8	10	26	28	24	27
<b>NGM</b>	0	4	6	0	0	3	1	1	1	1	12	20
<b>AIM UK</b>	462	284	114	36	102	90	73	99	118	61	64	80
<b>TOTAL</b>	<b>540</b>	<b>417</b>	<b>219</b>	<b>87</b>	<b>267</b>	<b>315</b>	<b>195</b>	<b>187</b>	<b>247</b>	<b>211</b>	<b>191</b>	<b>263</b>

### 1.4. Total value of IPOs (EUR million)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	N/A	0	0	0	0	0	0	0	0	0	0	0
<b>Euronext G</b>	462	446	47	10	94	91	37	118	100	121	91	55
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0	0	0	0
<b>First North</b>	512	887	57	-	10	3	3	27	545	909	626	707
<b>DBAG/Scale</b>	0	0	0	0	0	0	0	0	2	0	26	67
<b>EN.A</b>	N/A	N/A	-	-	-	-	-	-	-	-	-	-
<b>ESM</b>	907	183	0	0	0	167	124	959	283	372	102	270
<b>AIM IT</b>	0	0	0	32	35	59	10	165	209	317	208	1,285
<b>NewConnect</b>	n/a	43	46	13	60	165	55	25	11	18	11	37
<b>AeRO</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>BSSE</b>	N/A	N/A	0	0	0	0	0	0	0	0	0	0
<b>MAB MARF</b>	0	0	0	17	47	13	8	2	20	132	35	339
<b>AktieTorget</b>	N/A	16	12	9	14	3	9	8	34	39	104	139
<b>NGM</b>	0	0	0	0	0	0	0	1	1	1	20	30
<b>AIM UK</b>	14,617	9,477	1,352	829	1,405	712	876	1,405	3,255	1,711	1,324	1,792
<b>TOTAL</b>	<b>16,498</b>	<b>11,052</b>	<b>1,514</b>	<b>910</b>	<b>1,665</b>	<b>1,213</b>	<b>1,122</b>	<b>2,709</b>	<b>4,460</b>	<b>3,620</b>	<b>2,547</b>	<b>4,721</b>

### 1.5. Number of pure listings

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	N/A	0	0	0	1	0	0	0	0	0	0	1
<b>Euronext G</b>	0	1	2	0	2	0	0	0	0	0	0	0
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0	0	1	0
<b>First North</b>	25	16	8	5	6	16	6	12	17	10	19	14
<b>DBAG/Scale</b>	0	0	0	0	0	0	0	1	4	4	4	1
<b>EN.A</b>	N/A	N/A	-	-	-	-	-	-	-	-	-	-
<b>ESM</b>	3	5	1	2	0	1	0	0	0	0	1	0
<b>AIM IT</b>	0	0	0	1	0	0	2	5	1	2	2	1
<b>NewConnect</b>	n/a	5	6	4	11	8	8	3	7	8	6	4
<b>AeRO</b>	N/A	N/A	N/A	N/A	N/A	N/A	1	2	2	276	3	30
<b>BSSE</b>	N/A											
<b>MAB MARF</b>	0	0	0	0	0	1	0	2	1	7	16	10
<b>AktieTorget</b>	N/A	10	13	4	2	8	7	8	6	0	0	0
<b>NGM</b>	0	4	6	0	0	3	1	1	1	4	11	3
<b>AIM UK</b>	184	102	76	23	55	45	30	35	38	28	22	30
<b>TOTAL</b>	212	143	112	39	77	82	55	69	77	339	85	94

## 1.6. Share of domestic and foreign investors

		Euronext BE	First North	Euronext FR	EN.A	NewConnect	Euronext PT	MAB	AIM UK
MTF	Domestic investors	38%	84%	46%	91%	93%	60%	89%	57%
	Foreign investors	62%	16%	54%	9%	7%	40%	11%	43%
Main market	Domestic investors	N/A	30%	N/A	36%	48%	N/A	57%	44%
	Foreign investors	N/A	70%	N/A	64%	52%	N/A	43%	56%

## 1.7. Number of voluntary and mandatory delistings since 2006

	Dritter Markt	Euronext	First North	DBAG	EN.A	ESM	AIM IT	NewConnect	BSSE	MAB	Aktie Torget	NGM	AIM UK
Mandatory delisting	2	30	8	0	1	0	20	81	76	3	25	8	128
Voluntary delisting	1		93	90	1	25	11	88	0	1	127	9	465

## 1.8. Evolution of voluntary delistings since 2006

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of voluntary delisting	3	10	17	20	60	77	85	85	140	132	108

## 1.9. Transfers of listing between market segments since 2013

	Dritter Markt	Euronext	First North	DBAG	EN.A	ESM	AIM IT	NewConnect	BSSE	MAB	Aktie Torget	NGM	AIM UK	Avg /year
From RM to SME MTF	0	43	13	21	0	1	0	0	0	0	4	5	90	15

From SME MTF to RM		4	34	7		3	3	44		1	5	1	19	24
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### 1.10. Evolution of turnover ratio on EU SME MTFs

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	no data	5%	2%	1%	5%	7%	1%	1%	1%	1%	10%	5%
<b>Euronext G BE</b>	0	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	0%	0%	0%	0%	1%	1%
<b>First North</b>	113%	85%	60%	58%	56%	56%	126%	84%	82%	58%	53%	60%
<b>Euronext G FR</b>	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>DBAG</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>EN.A</b>	N/A	N/A	1%	2%	2%	1%	1%	1%	0%	0%	2%	2%
<b>ESM</b>	124%	126%	195%	133%	64%	5%	4%	3%	6%	8%	6%	13%
<b>AIM IT</b>	0%	0%	0%	2%	12%	8%	9%	17%	20%	31%	11%	47%
<b>NewConnect</b>	n/a	43.6%	35.5%	42%	61.6%	39.9%	19.8%	14%	19.8%	31.2%	23.1%	24%
<b>Euronext G PT</b>	0	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>AeRO</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2%	5%	3%
<b>MAB MARF</b>	0	0%	0%	18%	10%	10%	10%	15%	123%	17%	5%	4%
<b>AIM UK</b>	77%	77%	62%	59%	60%	67%	78%	58%	77%	58%	57%	72%

### 1.11. Evolution of turnover ratio on EU main markets

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Dritter Markt</b>	no data	134%	289%	99%	84%	100%	49%	49%	66%	73%	63%	56%
<b>Start</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	16%	11%
<b>Progress Mkt</b>	9%	6%	13%	5%	4%	4%	2%	3%	2%	2%	2%	2%
<b>First North</b>	132%	134%	135%	109%	88%	89%	69%	64%	64%	68%	64%	61%
<b>DBAG</b>	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>EN.A</b>	0%	0%	0%	0%	0%	0%	0%	0%	25%	45%	51%	48%
<b>ESM</b>	13%	20%	63%	36%	23%	42%	40%	66%	59%	44%	50%	27%
<b>AIM IT</b>	154%	204%	185%	158%	163%	179%	138%	128%	153%	153%	114%	108%
<b>NewConnect</b>	23.5%	22.4%	44.2%	58.4%	45.3%	42.2%	40.6%	41.8%	35.7%	36.1%	37.8%	37.6%
<b>AeRO</b>	15%	17%	12%	15%	13%	22%	15%	17%	17%	11%	11%	14%
<b>MAB MARF</b>	114%	135%	183%	90%	119%	117%	93%	87%	108%	134%	98%	88%
<b>AIM UK</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

### 1.12. Deviation from the minimum tick size regime

	Dritter Markt	Euronext G	First North	DBAG FSE	EN.A	ESM	AIM IT	NewConnect	AeRO	BSSE	MAB	Aktie Torget	NGM	AIM UK
MTF	No	No	No	No	No	No	no	0.01	No	N/A	NO	No	No	No
Main market	No	No	No	No	No	No	no	0.01	No	0.01	NO	N/A	No	No

### 1.13. Number of dual listings of companies listed on EU MTFs

Dritter Markt	Euro next G BE	Start	First North	Euro next G FR	DBAG FSE	EN.A	ESM	AIM IT	NewConnect	Euro next G PT	AeRO	BSSE	MAB	Aktie Torget	NGM	AIM UK
1	1	1	3	1	1	0	20	0	0	0	N/A	0	0	1	1	N/A

#### 1.14. Free float requirement and actual level

	Dritter Markt	Euro next G BE	Progress Mkt	Start	First North	Euro Next G FR	DBAG FSE	EN.A	ESM	AIM IT	New Connect	AeRO	BSSE	MAB	AIM UK
Requirement on MTF	No	EUR 2,5 m	10%	No	10%	EUR 2,5 million	20% or 1 mio. pcs.	10%	No	10%	15%	10%	No	EUR2m	No
Free float on MTF	N/A	55%	N/A	15%	87%	50%	44%	18%	73.18%	33%	25%	N/A	N/A	46%	48%
Free float on RM	N/A	65%	24%	35%	60%	67%	61%	47%	68.28%	45%	49%	36%	N/A	58%	68%

## 2. General data on SME bond markets

### 2.1. Number of new bond issuers per year

	2013	2014	2015	2016	2017
<b>Euronext G</b>	10	9	10	11	9
<b>First North</b>	14	10	15	25	17
<b>DBAG/Scale</b>	25	9	5	6	2
<b>EN.A</b>	0	0	0	1	1
<b>AIM IT</b>	N/A	N/A	N/A	N/A	N/A
<b>NewConnect</b>	N/A	N/A	N/A	17	18
<b>AeRO</b>	N/A	N/A	1	3	3
<b>MAB MARF</b>	1	10	10	8	12
<b>TOTAL</b>	50	38	41	71	62

### 2.2. Outstanding number of issuers per year

	2013	2014	2015	2016	2017
<b>Euronext G</b>	36	43	51	56	61
<b>First North</b>	12	20	24	30	37
<b>DBAG/Scale</b>	0	0	0	0	11
<b>EN.A</b>	0	0	0	1	1
<b>AIM IT</b>	N/A	N/A	N/A	N/A	N/A
<b>NewConnect</b>	N/A	N/A	N/A	129	122
<b>AeRO</b>	N/A	N/A	1	4	7
<b>MAB MARF</b>	1	11	21	29	41
<b>Stuttgart B</b>	23	15	10	6	5
<b>TOTAL</b>	72	89	107	255	285

### 2.3. Number of bond issuances during the year

	2013	2014	2015	2016	2017
<b>Euronext G</b>	17	14	16	17	11
<b>First North</b>	17	18	100	95	74
<b>DBAG/Scale</b>	25	9	5	7	2
<b>EN.A</b>	0	0	0	1	1
<b>AIM IT</b>	N/A	N/A	N/A	N/A	N/A
<b>NewConnect</b>	N/A	N/A	N/A	116	162
<b>AeRO</b>	N/A	N/A	1	3	3
<b>MAB MARF</b>	1	35	51	237	318
<b>TOTAL</b>	60	76	173	476	571

#### 2.4. Outstanding number of bond issuances

	2013	2014	2015	2016	2017
<b>Euronext G</b>	46	58	69	82	88
<b>First North</b>	15	23	26	37	267
<b>DBAG/Scale</b>	0	0	0	0	15
<b>EN.A</b>	0	0	0	1	2
<b>AIM IT</b>	N/A	N/A	N/A	N/A	298
<b>NewConnect</b>	N/A	N/A	N/A	309	346
<b>AeRO</b>	N/A	0	0	0	0
<b>MAB MARF</b>	1	24	43	63	101
<b>TOTAL</b>	62	105	138	492	1117

#### 2.5. Nominal value of new bond issuances during the year (EUR million)

	2013	2014	2015	2016	2017
<b>Euronext G</b>	616	446	906	1 988	1 199
<b>First North</b>	54	261	198	437	194
<b>DBAG/Scale</b>	746	338	194	201	100
<b>EN.A</b>	0	0	0	4	6
<b>AIM IT</b>	N/A	N/A	N/A	N/A	N/A
<b>NewConnect</b>	nda	nda	nda	1 947	3 325
<b>AeRO</b>	N/A	N/A	1	3	2
<b>MAB MARF</b>	50	489	831	2 280	3 932
<b>TOTAL</b>	1 467	1 533	2 130	6 860	8 758

#### 2.6. Average issuance value per the year (EUR million)

	2013	2014	2015	2016	2017
<b>Euronext G BE</b>	60	29	55	73	59.5
<b>First North</b>	13.5	15.3	2	4.9	2.7
<b>Euronext G FR</b>	23	37	62	443	604
<b>DBAG/Scale</b>	0	0	0	0	0

<b>EN.A</b>	0	0	0	4	6
<b>AIM IT</b>	N/A	N/A	N/A	N/A	N/A
<b>NewConnect</b>	nda	nda	nda	16.7	29.1
<b>AeRO</b>	N/A	N/A	0.9	0.8	0.7
<b>MAB MARF</b>	50	14	16.3	9.6	12.3
<b>TOTAL</b>	24.4	20.2	12.3	14.4	89.3

## 2.7. Outstanding nominal value of bond issuances (EUR million)

	2013	2014	2015	2016	2017
<b>Euronext G</b>	975.7	1,416.7	2,274.3	4,221.4	5,240.7
<b>First North</b>	220.7	502.3	544.4	806.5	617.5
<b>DBAG</b>	0.0	0.0	0.0	0.0	707.0
<b>EN.A</b>	0.0	0.0	0.0	4.0	10.0
<b>AIM IT</b>	N/A	N/A	N/A	N/A	N/A
<b>NewConnect</b>	N/A	N/A	N/A	6,500	8,970
<b>AeRO</b>	N/A	N/A	0.9	3.4	5.6
<b>MAB MARF</b>	50	500.0	1,029	1,608	2,195
<b>Stuttgart Börse</b>	1,700	1,100	750	540	510
<b>TOTAL</b>	2,946.5	3,518.9	4,598.7	13,683.6	18,255.4

## 2.8. Annual volume of transactions on EU SME MTFs (EUR million)

	2013	2014	2015	2016	2017
<b>Euronext G</b>	16	25	19	14	26
<b>First North</b>	3	1	50	569	808
<b>AIM IT</b>	0	0	0	0	0
<b>NewConnect</b>	2	3	2	2	2
<b>AeRO</b>	N/A	N/A	4.3	7.5	7
<b>MAB MARF</b>	0	0	0	0	0
<b>TOTAL</b>	21	29	72	586	835

## 2.9. Annual volume of transactions on EU regulated markets (EUR million)

	2013	2014	2015	2016	2017
<b>Euronext G</b>	53	81	60	43	77
<b>Progress Mkt</b>	0	0	0	0	0
<b>First North</b>	10811654	7668240	7422150	5998351	7101432
<b>DBAG</b>	0	0	0	0	0
<b>EN.A</b>	0	0	0	0	0
<b>AIM IT</b>	0	0	0	0	0
<b>NewConnect</b>	4	4	4	5	6
<b>AeRO</b>	1396	956	2843	1345	1569
<b>MAB MARF</b>	1	1	1	0	0
<b>TOTAL</b>	10813108	7669281	7425058	5999744	7103084

### 3. Various requirements on SME-dedicated MTFs

	Dritter Markt	Euro next	Progress Mkt	First North	DBAG	EN.A	ESM	AIM IT	New Connect	AeRO	BSSE	MAB MARF	Aktie Target	NGM	AIM UK
Key advisers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	Yes	Yes
Half-yearly reports on equity mkt	no	Yes	yes	Yes	Yes	Yes	Yes	YES	Yes	Yes	No	Yes	quarterly reports	Yes	Yes
Half-yearly reports on bond mkt	N/A	No	yes	Yes	Yes	Yes	N/A	n/a	Yes	Yes	N/A	No	N/A	N/A	N/A

### 4. MTFs wishing to register or not as an SME Growth Market

	Dritter Markt	Euro next	Progress Mkt	First North	DBAG	EN.A	Xtend	ESM	AIM IT	New Connect	AeRO	BSSE	MAB MARF	Aktie Target	NGM	AIM UK
For SME equity market	No	Yes	Yes	Yes	Yes	Not decided yet	Yes	No	Already registered	Yes	No	No	Yes	No	No	Already registered
For SME bond market	N/A	No	Yes	No	Yes	Not decided yet	N/A	N/A	Not decided yet (EXTRA-MOT PRO)	Yes	No	No	Not decided yet	N/A	No	N/A

## **ANNEX 14: THE CURRENT REGULATORY ENVIRONMENT OF 'SME GROWTH MARKETS'**

MiFID II provides for a new category of MTFs, the SME Growth Markets. Registration as an SME Growth Markets will be voluntary and will be available as of January 2018. The recitals of MiFID II indicate that attention should be focused on how future regulation should further foster and promote the use of that market so as to make it attractive for investors, and provide a lessening of administrative burdens and further incentives for SMEs to access capital markets through SME growth markets. Therefore, beyond MiFID II, several EU Acts refer to this new type of trading venues.

### **1. MiFID II**

According to MiFID II, a SME Growth Markets is a MTF, where at least 50% of the issuers whose financial instruments are traded on are SMEs. SMEs are defined as companies that have an average market capitalisation of less than EUR 200 million. An Issuer that only issues non-equity instruments can also be considered as SMEs if, according to its last annual or consolidated accounts, they meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 million and an annual net turnover not exceeding EUR 50 million.

The level 2 of MiFID grants SME Growth Markets flexibility in evaluating the appropriateness of issuers for admissions on their venue. For instance, an SME Growth Markets only needs to determine in their rulebook a regime of objective admission criteria (including a statement on the sufficiency of working capital) for issuers seeking the listing of their shares. When a prospectus is not needed, the admission document is drawn up under the responsibility of the issuer and clearly states whether or not it has been approved and reviewed and by whom.

The SME Growth Markets shall also impose on issuers admitted on their venue ongoing financial disclosure obligations. They shall require the issuers to publish annual financial reports within 6 months after the end of each financial year and half yearly financial reports within 4 months after the end of the first 6 months of each financial year.

### **2. Market Abuse Regulation**

The Market Abuse Regulation (MAR) is applicable to MTFs, including the SME Growth Markets. However, this regulation includes two specific alleviations for SMEs whose shares are admitted to trading on SME Growth Markets. First, it exempts issuers from producing insider lists on an ongoing basis. MAR also intends to limit the burden for SME growth market issuers by allowing the posting of inside information on the SME growth market trading venue instead of the issuers' own websites.

### **3. Prospectus Regulation**

The prospectus Regulation has created an alleviated 'EU Growth Prospectus'. This 'EU Growth prospectus' will be available for the following entities provided they have no

securities admitted to trading on a regulated market: (i) SMEs<sup>262</sup>; (ii) non-SMEs traded on an SME growth market with a market capitalisation of less than EUR 500,000,000; and (iii) issuers of securities with a public offer of less than EUR 20,000,000 whose securities are not traded on an MTF and with up to 499 employees.

In addition, issuers that have had securities already admitted to trading on an SME growth market (or a regulated market) continuously for at least the last 18 months will be able to benefit from a short form disclosure regime for secondary issuances.

#### **4. Central Securities Depositories Regulation**

The Central Securities Depository Regulation ('CSDR') was adopted in July 2014. CSDR imposes a mandatory buy-in process on any financial instrument which has not been delivered within a set period from the intended settlement date (i.e. two days after trading, so called 'T+2' rule). This buy-in process is triggered after a period whose length is dependent on the asset type and liquidity of the relevant financial instruments i.e. up to four days for liquid securities, seven days for illiquid securities and up to 15 days for transactions on SME growth markets. The transitional provisions provide that multilateral trading facilities that fulfil the requirements for being qualified as SME Growth markets can benefit from this specific rule (i) until – upon their application – they are registered as such in accordance with conditions of MiFID II or (ii) until 13 June 2018, if they decide not to apply for such registration.

#### **5. The Review of the European Venture Capital Fund (EuVECA) Regulation**

The revised EuVECA regulation (approved by the European Parliament on 14 September 2017 and by the Council on 9 October 2017) will allow investment in SMEs listed on a SME growth market as defined by MiFID II, to allow growth stage entities that have already access to other sources of financing to also receive capital from EuVECA funds. This means that SMEs, listed on SME Growth Markets, with an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years will be eligible for investments by EuVECA funds. The revised Regulation also permits follow-on investments in a given undertaking which after the first investment does not meet the definition of the qualifying portfolio undertaking any more.

#### **6. Other texts that apply to MTFs including to SME Growth Markets**

The recently created European Long-Term Investment Funds (ELTIFs) shall invest at least 70% of their money in certain types of assets, such as companies listed on regulated market or MTFs and with a market capitalisation below EUR 500 million. The amendments to the Solvency II Delegated Act that came into force in March 2016 grants ELTIF shares and equities traded on MTFs (including the future SME Growth Markets) the same capital charge as equities traded on regulated markets.

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<sup>262</sup> Under the Prospectus Regulation, SMEs are (i) either defined as entities meeting at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 million and an annual net turnover not exceeding EUR 50 million, or (ii) defined in accordance with MiFID (ie average market capitalisation of less than EUR 200 million).

**ANNEX 15: EU ACTS AND ALLEVIATIONS GRANTED TO SME GROWTH MARKETS ISSUERS**

<b>EU Act</b>	<b>Current alleviations/benefits foreseen by EU law</b>	<b>Who can benefit from those alleviations/benefits?</b>	<b>Would a threshold raised to EUR 500 million extend those alleviations/benefits?</b>
<b>MAR</b>	Alleviation in terms of insider lists	<ul style="list-style-type: none"> <li>All SME GM issuers</li> </ul>	<p><b>×</b></p> <p>No. All the SME GM irrespective of their size can benefit from MAR alleviations</p>
<b>Prospectus</b>	Alleviated EU Growth Prospectus	<ul style="list-style-type: none"> <li>SMEs as defined by MiFID II (i.e. market cap</li> <li>Non-SME issuers listed on an SME GM with a market cap up to EUR 500 million</li> </ul>	<p>No. The EU Growth Prospectus is already available for all SME GM issuers with a market cap up to EUR 500 million</p>
<b>Prospectus</b>	Alleviated prospectus for secondary issuances	<ul style="list-style-type: none"> <li>All SME GM issuers listed for at least 18 months</li> </ul>	<p>No. All the SME GM irrespective of their size can benefit from MAR alleviations</p>
<b>EuVECA</b>	Investments by EuVECA funds in SMEs	<ul style="list-style-type: none"> <li>SME listed on an SME Growth Market issuers</li> </ul>	<p>Yes. A raised threshold would allow EuVECA funds to invest into SMEs with a market cap up to EUR 500 million.</p>
<b>ELTIFs</b>	Investments by ELTIFs in SMEs	<ul style="list-style-type: none"> <li>MTFs or regulated market issuers with a market cap up to EUR 500 million</li> </ul>	<p>No. SME GM issuers are by definition MTF issuers. A change in the threshold would not change their situation.</p>

**ANNEX 16: ASSESSMENT OF POLICY OPTIONS - SYNTHESIS TABLE**

Policy Options	Legal basis	Impact on issuers	Impact on investors	Impact on exchanges	Impact on intermed.	Impact on NCAs	Evidence	Political feasibility	Opinion
<b>1 – Create strong and attractive SME Growth Markets</b>									
1.1 Definition of debt-only issuers on SME GM	MiFID II level 2	++	≈	++	≈	≈	***	++	
1.2 Liquidity contracts	MAR level 1	++	++	+	+	-	***	+	
1.3 Transfer Prospectus	PR level 1	++	≈ or -	≈	≈	≈	***	+	
1.4 Free-float criterion	MiFID II level 2	≈ or -	+	≈	+	≈	**	+	
1.5 Definition of SME Growth Markets for equity	MiFID II level 1	+	+	≈	≈	≈	**	--	
1.6 Transfer of listings from regulated market to SME GM	MiFID II level 1 & other	+	+	-	≈	≈	**	--	
1.7 Delisting rules	MiFID II level 1 & other	+	+	-	≈	≈	**	--	
1.8 Key advisers for first-time equity issuers	MiFID II level 1	≈ or -	++	-	≈	≈	**	--	
1.9 Tick size regime	MiFID II level 1	?	?	?	?	?	*	--	
1.10 Credit rating	CRAR level 1	≈ or +	≈ or +	≈	-	--	*	--	
<b>2 – Alleviate the administrative burden for issuers on SME Growth Markets</b>									
2.1 Half-yearly reports for debt-only issuers	MiFID II level 2	+	≈ or -	+	≈	≈	**	++	
2.2 Exemption from market sounding regime for private placements of bonds	MAR level 1	+	+	≈	+	≈	***	+	
2.3 List of insiders	MAR level 1	++	≈	≈	≈	-	***	+	
2.4 Justification to delay the public disclosure of inside information	MAR level 1	++	≈	≈	≈	-	***	+	
2.5 Extended deadline for notification of managers' transactions	MAR level 1	+	≈	≈	≈	≈	**	+	
2.6 Public disclosure of managers' transactions by the NCA		++	≈	≈	≈	--	**	-	
2.7 Threshold for notification of managers' transactions		+	≈ or +	≈	≈	≈ or -	*	-	
2.8 Disclosure of inside information by debt-only issuers	MAR level 1	+	-	≈	≈	--	*	--	

Favourable opinion  
 Not recommended – due to limited evidence, political sensitivity, and/or market integrity risks

**ANNEX 17: EXPLANATORY GRAPH ON THE EXTENSION OF THE TIME-PERIOD TO DISCLOSE MANAGERS' TRANSACTIONS**

