

## FESE Response to the European Commission's Regulatory Initiative to Promote SME Growth Markets

### Introduction

FESE Members welcome the measures proposed by the European Commission to support small and medium-sized enterprises (SMEs)' access to financing through public markets and to promote the use of SME Growth Markets.

We fully support the work of policy makers in the context of the Capital Markets Union Agenda and their goal to strengthen the European economy and ensure easier access to markets for all companies, including growth companies which are the backbone and engine of the economy.

In this regard, we fully endorse both the Level I measures presented by the Commission to encourage SMEs listings and the Level II amendments to the Delegated Regulation under MiFID II. SMEs are critical to European economic recovery and to accomplishing the EU's goals of job creation, competitiveness and growth. As the basis for these goals, SMEs require a favourable environment, which allows them to meet their financing needs, in particular when accessing markets. Therefore, we support the work of EU decision-makers to ensure a comprehensive strategy on how to boost equity and non-equity financing at all stages of the funding escalator.

Many FESE Members organise specialised markets that allow SMEs across Europe to access capital markets. At the end of June 2018, 1,355 companies were listed in these specialised markets/segments, increasing choice for investors and issuers. On these markets, there is a continuous dialogue among various participants in the ecosystem about improving the listing rules, always with the aim of finding the best balance to maintain a liquid and trusted market for all with reduced burdens for issuers and adequate levels of investors protection. For these reasons, the experience of FESE Members is that more **flexibility** on listing rules supports the better functioning and the integrity of the market

### Comments to the Delegated Regulation (EU 2017/565) Bringing Technical Adjustments to MiFID II

#### ***Definition of an SME debt-only issuer (Art. 77(2))***

With regard to the definition of an SME Growth Market non-equity issuer, FESE Members **support the proposal** to include a cumulative issuance criterion not exceeding EUR 50 million over a period of 12 months. There should be further clarification on the methods and means of measuring each debt issuance of non-equity issuers on all European SME Growth Market because currently there are no public measures to collect such information easily.

#### ***Publication of half yearly financial reports on SME debt-only issuers (Art. 78 (2) (g))***

FESE Members support the Commission proposal to give **flexibility to MTF operators** to decide on whether or not to exempt debt issuers from the requirement to publish half-yearly financial reports. This requirement can be burdensome for non-equity issuers while flexibility enables adaptation to what best supports the development of more liquid bond markets in each local market.

#### ***Flexibility with regard to have free-float requirement (Art. 78 (2) (j))***

FESE Members welcome the Commission's proposals for the market operators to establish the threshold of issuers' free float requirement. It is important to maintain flexibility for the market operator to decide the free-float requirement.

Most growth markets have a free-float requirement in the issuer rules. **These rules may include certain flexibility or margin, in order to accommodate for specific situations or specific issuers** who wish to use the public route to financing in an early stage of growth, when there is no or very limited free-float. For instance, this is the case in the Baltic markets, where Nasdaq's First North markets do not require a free-

float. This has led to a few companies being able to use the First North market to access finance, without a given minimum free-float.

## **Comments to the Proposal for a Regulation Amending the Prospectus Regulation**

### ***Clarifying the definition of non-equity SME***

We would like to take this opportunity **to ask for a clarification on the articulation between the SMEs definitions under the Prospectus Regulation vis-à-vis this new amended definition of non-equity SMEs under MiFID II Level II**. Indeed, we welcome the Commission's intent to facilitate the registration of SME Growth Markets specialised in bonds, however we question whether the SME definition in the Prospectus Regulation referring to MiFID II Level I, automatically encompass the new definition of a non-equity SME in MiFID II Level II, as proposed by the Commission.

To avoid legal uncertainty, in Art. 2 (f)(ii) of the Prospectus Regulation should be made fully clear that the reference to the SME definition as referred to Art. 4(13) of MiFID II also incorporates the related definitions distinguishing equity and non-equity as set out in Art. 77 of MiFID II Level II (Delegated Regulation EU 2017/565 – now being amended by the Commission).

This would eliminate the risk of non-equity SME issuers (meeting the revised definitions under MiFID II) not being able to avail themselves of the EU Growth Prospectus under the Prospectus Regulation. Otherwise, there is a potential risk that issuers of non-equity that meet the new definition in MiFID II (where the total size of debt issuances does not exceed EUR 50 million over a period of 12 months) will not be able to avail of the EU Growth Prospectus regime as set out in the Prospectus Regulation.

### ***Creation of a 'Transfer Prospectus' (Art. 14)***

FESE Members welcome the proposal to establish a less burdensome 'Transfer Prospectus' for SME Growth Market issuers listed for at least three years when seeking a graduation to the Regulated Market.

We believe that this measure will be beneficial for companies wanting to 'up-list' and will reduce some of the administrative barriers to do so. However, we would like to highlight the fact that a three-year timeframe might be too long, and companies may wish to 'up-list' prior to this.

Therefore, we would suggest to policy makers **an alternative solution** when companies wish to do a technical transfer with no capital increase, they would either have:

- (i) No requirement to produce a new prospectus; or,
- (ii) The requirement to produce a lighter version, which excludes the requirement for a working capital statement as this is currently required for secondary issuances and is deemed very onerous by issuers.

Only companies wanting to 'up-list' before having been on the Growth Market for three years should be required to produce a 'Transfer Prospectus'.

## **Comments to the Proposal for a Regulation Amending the Market Abuse Regulation**

### ***New deadline to publicly disclose managers' transactions (Art. 19 (3))***

FESE Members welcome the adoption of a new deadline to publicly disclose managers' transactions. It is important that the two-business day timeline applies from the point the issuer was notified as opposed to when the transaction took place as this will allow sufficient time for issuers to notify the market accordingly.

On this matter, we would like to raise the attention of policy makers on the threshold to which the notification becomes obligatory. We believe that this **threshold**, currently setting a total amount of EUR

5,000 reached within a calendar year (Art. 19 (8) and (9)), **should be raised at European level** and not be left to Member States' discretion.

***Limitations to the obligation to produce Insiders' Lists (Art. 18 (6))***

FESE Members support the intent of the European Commission to alleviate the administrative burden on SME by allowing them to only have to produce lists of a more limited group of people having regular access to inside information ('permanent insiders'). At the same time, it is important to strike the right balance between reducing such burdens and maintaining market integrity.

We would, however, encourage policy makers to be more ambitious in the alleviation of requirements in this area and to produce clear guidelines for companies to follow to meet these requirements.

***Justification of delayed inside information to be made only on request (Art. 17(4))***

FESE Members support the proposal made by the Commission to require SME Growth Market issuers to justify a notification of a delay to the relevant NCA only upon request. We believe that this proposal will be beneficial for SME Growth Markets' issuers.

However, while it is positive that explanations will only have to be provided upon the request of the NCA following issuer notification, it is important that the explanations are not required to be too detailed nor overly prescriptive.

Nevertheless, issuers cannot be sure when and how long the competent national authority is able to request additional reasoning afterwards and how extensive they have to reply to the request. Hence, we ask to provide clear guidance in that regard.

***Disclosure of inside information for issuers of bonds only***

FESE believes amendments should also be made to MAR Art. 17 to tailor the inside information disclosure requirements for SME Growth Market issuers of bonds with an aim to make them more appropriate to such issuances.

Indeed, these requirements give rise to unnecessary administration and legal costs and are perceived, particularly by non-EU issuers, as being an obstacle to the listing of debt securities on EU markets. Specifically, we believe that, for debt securities, it is appropriate to only require disclosure of material information relating specifically to an issuer's capacity to meet its payment obligations under the bond. In our view, such a change would not compromise investor protection.

***Creation of a European regime for liquidity provision contracts for SME Growth Market equity issuers (Art. 13 (12) and (13))***

We welcome the Commission's initiative to propose a measure to increase liquidity and reduce volatility of SME shares. It is important to increase the attractiveness of SME Growth Markets for investors, intermediaries and exchanges.

We recognise the usefulness of optional liquidity contracts, which are frequently used in some countries (e.g. France). We see merits in having liquidity contracts recognised as Accepted Market Practices. Nevertheless, we urge the Commission to recognise and support the diversity of market making practices in the Member States where markets provide for other solutions.

In supporting this amendment, it is important that the Level II measures specifying the contractual template to be used for liquidity contracts provides sufficient flexibility to the market operator to be able to determine the precise elements of the contract. A restrictive template would limit the benefits issuers and intermediaries would gain from their liquidity provision contracts.

### ***Exemption from the market sounding regime for private placements of bonds with qualified investors (Art. 11 (1) (a))***

In principle, we support the goal of these amendments to facilitate the process of identifying potential investors. In particular given that it is intended to replace the current national exemptions, under MAR Accepted Market Practices, which already exempt private placement of bonds from the market sounding rules with an EU framework.

However, we wish to state that for smaller issuers there is normally an outsourcing of these obligations to third parties, as the issuer itself does not have enough resources to comply. Therefore, this would place into question whether the issuer is truly alleviated of these burdens.

### **Additional Measures for Policy Makers to Consider**

Overall, we believe that the measures proposed by the European Commission are welcome steps in the right direction and we encourage European as well as national institutions to continue working towards creating the best opportunities for making the SME Growth Markets successful as a place for companies to access capital and create growth.

We would like to take this opportunity to highlight some additional measures for regulators to consider.

### ***Definition of an SME Growth Market Equity Issuer***

Policy makers should further consider the definition of an SME Growth Market equity issuer. Although we agree that the market capitalisation is the most appropriate criterion to use to define SME issuers, we would argue that **the qualifying threshold for SMEs should be increased from EUR 200 million to EUR 1 billion** as the threshold is too low and only takes into consideration small enterprises and not mid-caps. **Alternatively, the threshold could be set at EUR 500 million to be in line with the ELTIF Regulation (EU) 2015/760** definition of an SME equity issuer, and would help contribute to a strengthening of SME Growth Markets' ability to attract more companies, with the potential to increase liquidity on these markets.

Furthermore, in regard to public offers by SMEs, immediately followed by an initial admission to trading on an MTF or SME Growth Market, we believe it should be possible to consider including a tentative market capitalisation criterion for these prospective new issuers in line with the SME market capitalisation threshold established under the Prospectus Regulation. This is necessary to ensure that such firms can benefit from the alleviated prospectus requirements. Without such an approach, there is a risk that such companies will not match with the alternative functional definition of SMEs under the Prospectus Regulation<sup>1</sup>.

### ***Alleviations for investors in SMEs***

From our perspective, we believe that it is also necessary to create alleviations and incentives for investors at the same time as for issuers. As investing in SMEs is considered to be high-risk business, there are severe restrictions for institutional investors (10% limits and other specific limits for pension funds) which should be reduced to raise investment opportunities and therefore increase the attractiveness on the investor's side.

### ***Clarification of the need of an additional authorisation for MTF***

There should be further consideration as to whether an already authorised MTF operator could accommodate an SME Growth Market under the same authorisation. There are concerns for smaller markets on the burden and process needed to be authorised and licenced for both having an MTF and an SME Growth Market.

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<sup>1</sup> Prospectus Regulation Art 2(f)(i): average number of employees during the financial year of less than 250; a total balance sheet not exceeding €43m; and an annual net turnover not exceeding €50m.

We believe that there should be further consideration on how such a potentially burdensome and costly authorisation process could discourage licence requests and greatly hinder the Commission's goal of launching a vibrant SME Growth Market environment in Europe.

***Consideration to the unintended consequences of equity-related rules being applied to non-equity markets***

We would take this opportunity to urge the Commission to assess the impacts of MAR on MTF focused on non-equity, i.e. to tackle the specificities of the non-equity MTF markets (not necessarily SMEs Growth Markets) and (re)assess the impacts that MAR brought since 2016 on those MTFs.