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FESE Position Paper on the Listing Act

18th May 2022, Brussels

FESE appreciates the European Commission's comprehensive review of the European Union (EU) legislative framework for primary markets and its focus on strengthening capital markets. As noted by the Commission in the public consultation on the Listing Act, EU capital markets are still underdeveloped by international standards, hindering the EU's growth potential and global competitiveness.

Strong capital markets play a key role in economies as one of the most powerful drivers of growth and wealth creation – and an important prerequisite for this is an attractive and vibrant listing ecosystem. Compared to privately-owned companies, listed companies in the years immediately following listing often outperform in annual growth and job creation. For example, between 2006 and 2012, companies that listed their shares on First North Stockholm increased their workforce by 17% annually after the initial public offering (IPO), compared to an annual growth of 5% for all private companies in Sweden.[1] **This makes exchanges a cornerstone of the future architecture of EU financial markets and underlines their importance for the whole value chain**. In an international comparison, however, EU markets cannot keep pace: in 2021, around 60% of the world's 2,682 IPOs took place in the United States (US) or China.[2] The figure for the EU is only around 12%.[3]

In today's challenging and uncertain times, this is a huge impediment for the EU, as public finances alone will not be sufficient to cope with this situation while ensuring the EU's viability, resilience, and competitive strength. Exchanges are critical in the mobilisation of funds, both on the listing side and regarding secondary market trading. It is important to highlight that the completion of the CMU project and a sustainable recovery from the recent Covid crisis are impossible without well-functioning secondary capital markets. Therefore, policymakers must be mindful of this when considering proposals to strengthen capital markets.

Against this background, we very much welcomed the opportunity earlier this year to provide feedback to the Commission on several pieces of legislation that together form the basis of the European listing regime. In this paper, we summarise FESE's input, highlighting the key changes that we believe would be most beneficial to the current legislative framework.

The European economy relies strongly on bank-based financing, but the 2008 financial crisis demonstrated the imperative of strengthening the equity capital of the corporate sector - something Europe has yet to accomplish. IPOs across the globe have been facing a structural decline over the past 20 years, be it by the number of corporate transactions, by amounts

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[1] Nasdaq, 'Ett förbättrat börsnoteringsklimat för Sveriges tillväxt – Problemanalys och förslag till åtgärder', 2013

[2] See PwC Global IPO Watch 2021(here)

[3] See PwC IPO Watch Europe 2021 (here)

raised or by market capitalisation. This is particularly true for smaller companies, for whom capital markets are becoming less and less attractive.[4]

Based on feedback received, issuers' legal advisers, auditors and banks charge very high fees for the tasks linked to preparing an IPO. Unsurprisingly, **the cost of going and being public is, therefore, a major cause for the decline in the popularity of equity markets**. In addition, companies must also factor in the complexity of the process and the time it requires from the management team. The overall cost associated with being listed varies considerably among companies and countries and depends significantly on the complexity of the business and the amount of capital it is proposing to raise as part of the IPO.[5]

Prior to a detailed assessment of each piece of legislation, FESE wishes to emphasise the importance of having **a common EU definition of SMEs**. SMEs are the backbone of the European economy, comprising the majority of EU businesses in absolute numbers. We believe therefore that a common definition, aligned (at least) across MiFID II[6], Prospectus Regulation[7], ELTIF Regulation[8], EuVECA Regulation[9], and Market Abuse Regulation (MAR)[10], would enhance SMEs' access to capital markets and should be introduced. We agree with the findings of the Technical Expert Stakeholder Group (TESG) Report on SMEs[11] and the conclusions of the CMU High-level Forum (CMU HLF)[12] that it should incorporate the concept of Small and Medium Capitalisation Companies (SMCs) as those that do not exceed **a market capitalisation threshold of EUR 1 billion over a 12-month period**.

We also believe that other projects such as the InvestEU IPO Initiative[13], implemented by the European Investment Fund (EIF), could be a valuable tool in supporting the listing of SMEs. Moreover, stock exchanges are leading by example and have developed their own programmes to better support SMEs in the pre-IPO phase. For example, targeted networks have been established to connect SMEs with potential investors. These programmes are unique in the EU and complement political efforts at EU and national level.

Finally, tax incentives are also an important element in increasing the attractiveness of public markets for SMEs. Therefore, targeted reviews of existing tax regimes should complement structural reforms to create a dynamic environment with mutually reinforcing regulatory and tax incentives.

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[4] See the European IPO Report 2020 (here).

[5] See also the Oxera study on Primary and Secondary Markets in the EU, which contains a section on direct and indirect costs of going/being public (here).

[6] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

[7] 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, and repealing Directive 2003/71/EC.

[8] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.

[9] Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds.

[10] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) 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.

[11] Final report of the Technical Expert Stakeholder Group (TESG) on SMEs, "Empowering EU capital markets: Making listing cool again", May 2021 (here).

[12] Final report of the High-Level Forum on the Capital Markets Union - A new vision for Europe's capital markets, click here.

[13] Please find more information here.

FESE's Key Messages

Prospectus Regulation

- FESE proposes further harmonising and simplifying the prospectus for equity instruments. The table of contents should be standardised. Issuers should have the possibility to publish a prospectus only in English and in electronic format. Henceforth, with a harmonised EU approach, NCAs should not require additional documentation and could introduce a flexible page limit on the overall prospectus.
- Make the Recovery Prospectus regime permanent and use it to replace the simplified disclosure regime for secondary issuances.
- Keep the threshold in Art.3(2) at EUR 8 million and harmonise across the EU.
- Retain the wholesale regime exemption for the offer of securities whose denomination per unit amounts to at least EUR 100 000.
- We believe in the primacy of the autonomy of NCAs for the scrutiny and approval of prospectuses, appropriately complemented with direction and oversight by ESMA.

Market Abuse Regulation

- More concrete guidelines from ESMA (Level 3) are necessary to further clarify the applicability of the definition of inside information. More concrete clarifications would also be welcomed from ESMA on the delay of disclosure of inside information.
- The EUR 5 000 threshold for disclosing managers' transactions should be raised to EUR 20 000 and harmonised across the EU.
- Insider lists, for issuers in SME GMs, should contain only the minimum number of personal information fields necessary for supervisory purposes.
- We recommend amending MAR and the ESMA draft RTS on liquidity contracts so that market operators are not required to "agree to the contracts' terms and conditions".
- Order book data formats could benefit from further standardisation. However, a thorough cost-benefit analysis should be carried out before any provision is introduced.

Listing Directive

- The Listing Directive should not be repealed.
- The Commission should amend this legislation, while maintaining it in the form of a Directive. FESE recommends preserving the established regulatory framework for "official listing", while adopting a more streamlined European approach on certain key topics.

Other points

- Provide legal clarity on the matter of dual listing by amending Art. 33(7) of MiFID II.
- Promote research coverage of SMEs beyond MiFID II cost re-bundling through additional measures to increase the production and distribution of research.
- The EU to support the SPACs listing process in its capital markets.
- Introduce in EU law an option for issuers to adopt multiple voting rights structures, leaving the technical details to be decided at national level.

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1. Prospectus Regulation

1.1. Simplification and harmonisation of the Prospectus for equity instruments

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

FESE welcomes the efforts made by policymakers in recent years to harmonise prospectuses across the EU, and we believe the Listing Act to be an opportunity to accelerate this process. Prospectuses need to be more standardised, shorter, and more reader-friendly. Our objective should be to have a document that looks the same, regardless of the issuer's country of origin. For example, in the US, companies carrying out an IPO must fill out an S1 form, which is identical in format regardless of the state of origin of the issuer. On the other hand, debt instruments possess different characteristics which often may be more complex, for which standardising the prospectus may be more challenging. Therefore, **our proposal below concerns prospectuses for equity instruments only** and while the focus is on the standard prospectus, other forms of prospectus would benefit greatly from incorporating many of these points where relevant.

- **English as the Prospectus language**. We support the proposal to publish a prospectus only in English, as the customary language in the sphere of international finance, though this should not be an obligation. This possibility should be left to the issuer, depending on the target audience of the operation. Thus, issuers who primarily target retail investors from a non-English-speaking country will be able to choose to publish their prospectus in the language of their target investors.
- **Prospectuses should also be written in plain English**. Although Article 6(2) of the Prospectus Regulation already requires the information to be easily analysable, concise, and comprehensible in practice many prospectuses are written in technical and legal language that makes them difficult for retail investors to understand. At the same time, we recognise that the Prospectus is a legal document with legal terminology that could be unfeasible to excessively simply. We believe National Competent Authorities (NCAs) should question the drafting style where appropriate (for example, the SEC published a guide[14] aimed at advising on how to draft regulatory filings in plain English). ESMA, at level 3, could take a similar approach, helping NCAs and market participants to harmonise the review and drafting of prospectuses, respectively. Finally, a more illustrative presentation of facts where suitable could further simplify the understanding of the Prospectus for retail investors.
- **Electronic format possibility**. We support the proposal to publish a prospectus only in electronic format, as long as the long-term availability of the text is ensured.
- **Page limit**. For this specific equity-focused prospectus proposal, we are in favour of introducing a page limit, for instance 300 pages, to avoid extra-lengthy documents. More generally, anything that does not relate to governance or accounting should be streamlined. At the same time, we recognise the need for some flexibility on this limit for those complex businesses that might need to disclose more information.
- **Prevent specific national divergences**. While we believe there has been general supervisory convergence in terms of supervision, there are still some divergent practices. We are aware that in some jurisdictions additional documentation may be required in

[14] SEC (1998), A Plain English Handbook - How to create clear SEC disclosure documents, click here.

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certain cases, particularly in respect of retail offers. The role of NCAs at a national level is important in terms of their assessment of domestic specificity but we strongly advocate for a harmonised approach to the specific documentation that is required in the Prospectus Regulation. We believe that NCAs should not be allowed to ask for additional documentation over and above what is required under the Prospectus Regulation.

- **Ease of accessibility**. We support that publicly available regulatory information of a European issuer, that is relevant and useful for investors, is made available through a single access point. For instance, in the US, all regulatory documentation related to one single company is available on the SEC database through the Central Index Key Search tool. In the EU, the European Single Access Point (ESAP) proposal from the Commission[15] could precisely serve this goal as it includes in its scope the Prospectus Regulation.
- **Standardisation of the table of content and headings wording**. The table of content should be standardised, including the wording of the headings, and provide hyperlinks facilitating the navigation. We believe this will enhance comparability. A Prospectus' table of content could be structured as follows:

CONTENTS

(A) Summary of the Prospectus

- Risk Factors
- Important Information
- Forward-Looking Statements
- Reasons for the Offering and Use of Proceeds
- Dividends and dividend Policy
- Capitalisation and Indebtedness
- Selected Financial Information
- Operating and Financial Review
- Profit Forecast
- Industry Overview
- Business Description
- Management, Employees and Corporate Governance
- Description of Share Capital
- Shareholders structure
- The Offering
- Plan of distribution
- Selling and transfer restrictions
- Dilution
- Taxation
- General Information on the Company
- Definitions and Glossary
- Historical Financial Information

1.2. EU Recovery Prospectus

Given the short-form EU Recovery Prospectus was developed more recently and provides for a simplified approach to raising equity capital, beneficial to both issuer and investor, FESE

[15] Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, click here.

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supports **making the Recovery Prospectus regime permanent, as recommended by the TESG on SMEs, and replacing the simplified disclosure regime for secondary issuances**.

Further, as issuers on an SME Growth Market (GM) already comply with transparency requirements, we would consider it reasonable to allow issuers, whose securities have been traded on an SME GM for a certain period and who have prepared an EU Growth Prospectus, to **be admitted to trading on a regulated market preparing a Recovery Prospectus** (instead of the simplified prospectus currently required). The preparation of such a prospectus is less burdensome and would be sufficient from an investor protection perspective.

1.3. Exemption thresholds

The exemption thresholds in Articles 1(3) and 3(2) are designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers for small offers. FESE agrees **to keep the threshold in Art.3(2) at EUR 8 million and suggests that it should be harmonised across the EU**, thereby making the EUR 1 million threshold in Art 1(3) redundant.

We also believe that the EUR 8 million threshold should not apply to further issuances undertaken by companies that already have securities admitted to a regulated market or SME GM. Instead, these companies should be allowed to make further issuances – up to a certain level (such as 30 – 40%) – without the requirement to publish a new prospectus. If this threshold were to be exceeded over a period of 12 months, Art. 1(5)(a) of the Prospectus Regulation would apply, and we suggest the Recovery Prospectus under the secondary issuance regime should then be required.

1.4. Wholesale regime

FESE is strongly in favour of **retaining the wholesale regime exemption for the offer of securities whose denomination per unit amounts to at least EUR 100 000**: the EU wholesale market is functioning well and there is no evidence of market participants requesting a change. Under the current regime, issuers choose freely whether to target wholesale or retail investors – this flexibility should be preserved to maintain Europe's competitiveness, coupled with a favourable investor approach.

1.5. Scrutiny and approval of the prospectus

The current system allows for strong coordination between NCAs under uniform rules with a broader level of supervision by ESMA. While we do appreciate that convergence is required and needs to be applied, we support the role of NCAs at a national level, not least because, to our knowledge, no significant issues with approaches taken by NCAs have been raised. Nevertheless, we are aware that in certain jurisdictions additional information may be required in certain cases, so we strongly advocate a harmonised approach to the specific documentation that is required by the Prospectus Regulation.

Overall, we believe in the primacy of the autonomy of NCAs, appropriately complemented with direction and oversight by ESMA. We believe that peer review can be a helpful tool in identifying issues, so helping to strengthen supervisory convergence.

1.6. Retail investors

FESE regards the balance between the regimes for non-equity applicable to retail and wholesale investors to be broadly appropriate, and we would not be in favour of further aligning the two. Retail investors, however, are not usually able to invest EUR 100 000 per

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security and are, on average, only able to access a smaller pool of potential investments, making their portfolios less diversified. We, therefore, believe **regulators should consider improvements to the current retail regime** to make it more attractive for issuers and allow retail to access the corporate bond market while, at the same time, keeping the wholesale regime competitive.

2. Market Abuse Regulation (MAR)

2.1. Costs of MAR

FESE is of the opinion that the current MAR framework does not provide a sufficient level of legal certainty and does not always strike the right balance between needing to ensure market integrity and placing too onerous rules on issuers.

For smaller markets, the regulatory burden can sometimes be overwhelming. Specifically, the "one-size-fits-all" model is not proportional for smaller markets and brings excessive requirements for service providers, thus making the overall market less competitive. The market feedback we received indicates a broad perception that, though a good starting point, the alleviations introduced for SME GMs are insufficient. We would propose a holistic differentiation for SME GMs with respect to other market segments in terms of disclosure requirements (e.g. dissemination of information).

It is also generally accepted that MAR was drafted and implemented with equity markets in mind. MAR applies the same rules on market abuse for debt as it does for equity instruments even though the potential risk of market abuse via debt instruments is far lower. This "one-size-fits-all" approach, along with the divergences of international rules, is driving debt issuers away from the EU, which is unlikely to suit the CMU Action Plan's ambitious objectives. As such, the "one-size-fits-all" model does not work for debt markets. FESE believes that the Listing Act is an opportunity to tailor the requirements to bond-only issuers, thereby making the EU bond markets more attractive and competitive internationally whilst still ensuring investor protection.

2.2. The definition of inside information

In our opinion, the definition of inside information is from an overall perspective adequate for the purpose of preventing market abuse. However, several additional aspects in connection with the definition are the subject of discussion and uncertainty. Feedback, not only from smaller issuers, suggests that it is still difficult to determine when information becomes inside information for the purposes of the MAR regime.

FESE believes that more concrete guidelines from ESMA are necessary to further clarify the applicability of the definition of inside information. This approach would be preferable to amendments to the Level 1 text of MAR, and we would not support the creation of a bifurcated definition as proposed by the TESG on SMEs. In any case, any future proposal going in that direction should carefully weigh the risks and effort involved against the potential benefits.

Having discussed this with issuers, we understand that they would appreciate further clarification regarding the following points: (i) meaning of "significant effect" and the "reasonable investor"; (ii) likelihood of an event to consider the information as of a "precise nature"; (iii) the "non-public" dimension when information has been made public by someone else than the issuer; (iv) how the definition of inside information - directly or indirectly related to an issuer - relates to the obligation under Art. 17 of MAR to disclose inside information that directly concerns the issuer; (v) an "intermediate step" cannot be classified as inside information as long as the final result cannot be reasonably expected to occur; and (vi) whether in the event that some, but not all, details relating to inside

information have been leaked, the issuer would still be obliged to disclose all inside information.

We suggest it could be considered by ESMA to review any guidance issued by local NCAs, where relevant, and also the conclusions of European Court of Justice rulings which may address some of the topics referred to above. ESMA could use these to draft scenarios as guidance for issuers to ensure a consistent approach is taken across the EU.

With respect to debt markets, the provisions related to inside information are, in the experience of bond-only issuers, overly detailed and prescriptive. The current test to determine the "significant effect on the prices of financial instruments" is very difficult to apply to the debt market, in contrast to the more liquid equity markets. Therefore, the information to be disclosed should be limited to that which would directly influence their ability to meet the repayment obligations of their debt issuances.

2.3. Delay of disclosure of inside information

As for the delay of disclosure of inside information, while FESE Members find the scheme well-functioning, feedback from issuers indicates that uncertainties arise particularly in connection with rumours without factual basis and behaviour with respect to rumours (of any kind) while in delay. Difficulties also seem to emerge when assessing whether an issuer could still have legitimate interests in delaying a disclosure even after the event is final, e.g. a contract being entered into and signed. Some other scenarios that would benefit from guidance include situations where the issuer is in difficulty or re-structuring or there is a takeover bid. Also, how draft financial reports should be treated as we understand these can be handled quite differently in different jurisdictions. The revised ESMA Guidelines on delay do not address these issues sufficiently and **more concrete clarifications would be welcome**.

2.4. Managers' transactions

We believe that the EUR 5 000 threshold for disclosing managers' transactions within a calendar year (Art. 19 (8) and (9) of MAR), should be **raised to EUR 20 000 and harmonised across the EU both for Regulated Markets and SME GMs**.

2.5. Insider lists

FESE believes that the requirements of Art. 18 of MAR are an important instrument for preventing market abuse. However, the amount of effort required to create an insider list can be cumbersome for small companies with limited resources. In our view, **only the minimum number of personal information fields necessary for supervisory purposes should be included in an insider list for SME GMs** (beyond Regulation (EU) No 2019/2115 on the promotion of SME GMs).

2.6. Market sounding

We would welcome further clarification on the scope and definition of market sounding activities. Market participants have specifically identified that there is limited or no guidance about the terms "transaction announcement", "acting on the issuer's behalf" and "gauging interest". These uncertainties in interpretation risk deterring intermediaries from performing market soundings. Consideration should also be given as to whether the requirement to monitor non-insider information is relevant.

In addition, feedback from smaller, less frequent issuers, including many high-yield bond issuers, indicates that they face significant administrative costs to comply with the market sounding regime and that the alleviations for SME GMs do not address the concerns of SMEs in this space. It would be important to amend the market sounding regime by providing a balanced solution to the need to simplify the burden and clarify the provisions while maintaining market integrity.

FESE would also suggest for the Commission to specify in the new provision introduced in Art. 11 MAR by the SME Growth Markets Regulation[16] that the simplified regime applies in the event of negotiation of the main terms of a transaction between issuer and qualified investors.

2.7. Liquidity contracts

We recommend **amending MAR and the ESMA draft Regulatory Technical Standards (RTS) on liquidity contracts so that market operators are not required to "agree to the contracts' terms and conditions"**, defined by issuers and investment firms. While NCAs must be informed of the existence of liquidity contracts, trading venues are not involved in any way in the issuer liquidity contract agreement. As we see from ESMA's recently published Opinion on the Commission's proposed amendments to ESMA's draft RTS on liquidity contracts for SME GM issuers[17], this does not seem to have been taken into account and we would therefore like to reiterate this point.

2.8. Standardisation and surveillance of order book data

In principle, **we believe that order book data formats could benefit from further standardisation**. This would allow for more flexible amendment of information, easier validation from trading venues, and easier processing for regulators. However, we suggest that a thorough cost-benefit analysis be carried out before any provision is introduced. This measure would result in additional costs for trading venues and for NCAs that could ultimately be passed on to market participants. Also, if introduced, requirements for standardised pre-trade information should apply to all execution venues, such as systematic internalisers (SIs), and a transition phase would be essential to allow the market to develop and adapt to the new provisions.

With respect to the current level of supervision of order books, Art. 25 of MiFIR[18] is intended to enable NCAs to monitor financial markets efficiently and effectively as regards suspicious behaviour and potential market abuse by market participants in concrete cases. In our view, this established framework of requesting data on an ad hoc basis in cases of suspected market abuse is appropriate and sufficient to achieve the intention of the law.

We would not see the need to establish, for example, a cross-market order book surveillance framework with compulsory order book reporting to NCAs, as assessed by ESMA in its consultation on the MAR review in 2019[19]. It remains unclear to us whether the idea of

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[16] Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets.

[17] ESMA Opinion on the European Commission's proposed amendments to ESMA's draft RTS on liquidity contracts for SME Growth Market Issuers adopted under MAR, May 2022, (here).

[18] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

[19] ESMA Consultation Paper on the MAR Review, October 2019, (here).

creating such a mechanism is based on identified gaps and what benefits are expected. In its consultation, ESMA did not provide any evidence of potential shortcomings or deficiencies in the existing regime. Indeed, ESMA mentions in its final MAR Report[20] that NCAs find that it is not difficult for them to request order book data. Therefore, in our view, ESMA's Report did not sufficiently detail how the current system of order book surveillance could be improved by introducing mandatory and continuous reporting of order book data to NCAs.

On the contrary, as ESMA also highlighted, such a measure would result in significant burdens and costs both for trading venues and NCAs[21]. In particular, NCAs would need to make significant investments in IT infrastructure and human resources before the data transfer could even begin, which could take years prior to its implementation. Unlike the transfer and processing of small amounts of data, the transfer of entire data sets is complex and slow. Thus, the underlying question is whether the potential advantages justify the efforts and uncertainties (such as challenges related to the technical implementation or potential unintended consequences for trading venues and investment firms) that might result from requiring regular reporting of all this data while providing little to no improvement on monitoring efforts. **Any proposal on this front should be preceded by an impact assessment, which should comprehensively consider the broader impact on the industry.**

We are also concerned that examining entire pools of data instead of only relevant data in concrete cases of potential market abuse may lead to erroneous conclusions because (i) trading venues' market models may be different (for example it is difficult to compare price determination in continuous trading with market models with specific market markers - e.g. specialist model at the Frankfurt Stock Exchange), (ii) products may be different, particularly in derivatives markets, and (iii) underlying rule sets may also diverge. Furthermore, the size of data pools could be so large that it is doubtful if it can be handled efficiently. Flooding NCAs with such large data pools may therefore rather lead to an illusion of transparency and improved surveillance, as analysing and evaluating suspicious behaviour of market participants in a concrete case might take longer than under the current ad hoc reporting system.

In addition, ESMA's proposal at the time only considered the creation of a framework for trading venues, but not for OTC and bilateral trading, such as systematic internalisation. We believe it would be useful to find ways to combine information from trading venues and OTC trading to track specific cases and better determine whether market manipulative behaviour is occurring. Targeted data analysis in the appropriate context may be able to support surveillance efforts.

3. MiFID II

3.1. Dual listing

FESE supports the recommendation from the TESG Report to provide legal clarity on the matter of dual listing by amending Art. 33(7) of MiFID II to make it explicit that **issuers admitted to trading on an SME GM may, at their own request, demand to be admitted to trading on another SME GM.**

[20] ESMA final MAR Review Report, September 2020, p.132, para. 567, (here).

[21] Op. cit., ESMA, 2019, p.81, para. 296.

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3.2. Equity research

Since the application of MiFID II and its provision on the unbundling of research, a growing number of SMEs are paying independent research providers to produce research and are taking the initiative to approach investors directly. Some exchanges have also launched programmes sponsoring and enhancing SME research.

We believe that equity research is a necessary tool to increase the visibility of SMEs and should therefore be promoted. To complement existing research channels, **FESE thinks that authorising the bundling of SME research with other services is likely to increase the production and distribution of research reports**. In addition, the Commission should consider enabling Member States to support SMEs by amending Art. 24(2) of the General Block Exemption Regulation (GBER) to clarify that aid for scouting costs can be extended to support SME investment research in unlisted SMEs. The access to equity research on SMEs could be further improved by:

- Launching a Pan-European programme to cover the costs of research coverage.
- Establishing user-friendly platforms for analysts to share their reports (for example using the ESAP platform).

4. Other points

4.1. Special Purpose Acquisition Companies (SPACs)

The re-emergence of SPACs has increased the overall number of listed companies and has proven beneficial to EU public markets by providing an attractive alternative to a traditional IPO, while also embedding investor protection features. If the EU is not in a position to attract the listing of SPACs on its capital markets there is a risk that non-EU SPACs listed on third-country capital markets could target and buy growing non-listed EU companies. **It is therefore important for the EU to support the SPACs listing process in its capital markets**.

4.2. Listing Directive

In general, we believe the Listing Directive[22] is achieving its objectives as it allows market operators to obtain additional comforts as appropriate for applications to its official list. The concept of "official listing" is an important aspect of public markets that needs to be maintained. Issuers may seek admission of their securities to official listing without being traded.

While the Listing Directive has been amended over the years and some of its functions have been transferred to or replaced by other regimes, in particular the Prospectus Regulation, the Transparency Directive, and MiFID II, there are still important elements that we consider crucial and should be retained. As pointed out in the FESE "non-paper" (here), the regime governing admission to the official listing (Title II Listing Directive) is fundamentally different from these other regimes. The national regime transposing the Listing Directive provides certain flexibility that, for example, the "admission to trading" regime under MiFID II does not provide. In particular, (i) the role as legal basis of the listing rules of exchanges, (ii) market acceptance of the Listing Directive's regime, (iii) the ease of dual-listing, and (iv) implications for investment mandates and taxation, still apply.

[22] Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities.

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We believe that the repeal of this Directive would not be in line with the objectives of the Capital Markets Union to enhance capital markets and improve access to finance for businesses. The Listing Directive is particularly important in those jurisdictions that apply it as the legal and legislative basis for "listing" securities on their markets. Although it may seem like a simple tidy up exercise, we have significant concerns that its possible repeal, or its transformation into a Regulation, would lead to unforeseen unintended consequences that could be damaging for EU markets and investors. At the same time, while FESE recognises the importance of the Listing Directive, it also recognises that, in certain cases, it can be improved by adopting a more streamlined European approach.

Therefore, **we would support amending this legislation, whilst maintaining it in the form of a Directive.** This exercise should **preserve its key sections mentioned above** (most of the currently applicable articles) to maintain the established regulatory framework, while taking the opportunity to **adopt a more streamlined and up to date European approach on certain key topics.** For example, the current minimum free float requirement of 25% should be reduced to 10%, and the geographical restriction to the EU/EEA should be removed (Art. 48(1) in conjunction with Art. 48(5) Listing Directive).

4.3. Shares with multiple voting rights

To encourage companies to list without obliging owners to relinquish complete control of their companies, multiple voting right shares have been used in several EU countries and have been highlighted as an efficient control-enhancing mechanism. Both the CMU HLF as well as the TESG stated that multiple voting right shares are a key ingredient for improving the attractiveness and competitiveness of European public market ecosystems. Promoting this possibility across the EU could facilitate the transition of companies from private to public markets.

FESE believes that voting rights should be retained to an extent to ensure a certain level of influence. FESE, therefore, **supports the introduction into EU law of an option for issuers to adopt multiple voting rights structures**, such as dual-class shares. We do not, however, see the need to establish a fixed ratio at the EU level. To be able to adapt to the local ecosystem, the construction of a detailed framework design should be done at the national level instead.