AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

FRENCH AMF RESPONSE TO THE EUROPEAN COMMISSION TARGETED CONSULTATION "LISTING ACT"

February 2022

As part of its 2022 work program, the European Commission announced its intention to propose simplifications to listing requirements with a view to making public capital markets more attractive for EU companies.

The AMF fully supports this objective. Indeed access to capital market is an essential element to facilitate the financing of EU corporates. This is of particular importance for EU SMEs, for which access to capital markets is costly.

At the same time, it should be recalled that despite the costs and the administrative burden that they may entail to issuers, regulations that aim to ensure investors' information and market integrity are a necessary component of the attractiveness of the markets.

- In particular, drawing up a **prospectus** represents a cost for issuers but also carries with it a substantial benefit for the market, as it reduces the asymmetry of information between an issuer that seeks to finance itself through the market and potential investors, as well as between different categories of investors. It is also a powerful tool to hold the issuer accountable vis-à-vis the market as it crystallizes certain commitments of the issuer with regard to its financial objectives, its business strategies or the use of the offer proceeds. Due to the comprehensiveness of its content, the prospectus ensures **equal access of investors to relevant information** around an issuance and guarantees against the fragmentation of the information disclosed to the market on the occasion of an offering. In the absence of a comprehensive prospectus, there is always a risk that investors will request the information they no longer find in the prospectus directly from the issuer via parallel channels (e.g. during road shows).

- Similarly, on the **Market Abuse Regulation (MAR)**, keeping **insider lists** represents a burden for issuers, but insider lists are a powerful tool to preserve market integrity and protect investors. They are systematically used in the context of investigations as they enhance the ability to identify the persons who have access to inside information. In addition, the insider list requirement has "educational advantages" as it outlines a framework for the management of inside information by the issuer and ensures that the persons appearing on the list become aware of the meaning and consequences of having access to inside information. Therefore, introducing an outright exemption to the insider list requirement should be avoided regardless of the type of issuer.

In addition, fundamental concepts of the prospectus and market abuse regulations are well understood by market participants. Drastic changes to the basic concepts would therefore entail a high degree of uncertainty to market participants, along with new compliance costs.

- In particular, the **definition of "inside information"** has been at the core of the EU market abuse framework for nearly two decades and has been sufficiently clarified by case law. As a consequence, market participants benefit from legal stability and predictability with respect to this notion. Any change to such a fundamental concept, for instance by providing different definitions for the respective purposes of disclosure obligations and the prohibition of insider dealing, or for debt-only issuers; or modifying or deleting some of the conditions under which insider information is to be disclosed, etc. would be a source of legal complexity and uncertainty for market participants. It would also potentially create unforeseen loopholes or regulatory misalignments that could take years to detect and correct.

- Likewise, in the area of Prospectus, there is a strong rationale to tie in the **Home Member State (HMS)** with the place of incorporation of an issuer, especially for equity prospectuses. It aligns the HMS determination between the Prospectus Regulation and the Transparency Directive, creating synergies between prospectus approval and the supervision of financial reports, which are conducive to speedy approvals. Conversely, in the absence of centralized supervision at ESMA level, the free choice of HMS for equity prospectus approval would pave the ground to forum shopping and weaken the CMU, as it is fundamentally not a sane policy to let regulated entities choose which NCA will supervise them.

Other aspects of these regulations, however, have been introduced more recently following the latest reforms, with the very objectives to improving the regulatory framework and increasing its efficiency. Experience remains therefore limited on some other parts of the regulations, and sufficient time should be left to properly evaluate the regimes and the use of some of the newly designed tools or alleviations, before introducing structural changes or further simplifications.

- Specifically, in the prospectus field, the concept of the **Universal Registration Document (URD**) and shelf-registration system was introduced in 2019. One of the strengths of the URD is that it offers investors a consolidated version of the regulated information available from an issuer. It bundles together the annual financial report and the registration document into a single medium, to which a securities note and a summary may subsequently be added to form a prospectus. Other recent novelties introduced in the Prospectus regime are the additional **optional formats**, namely the EU Growth Prospectus in 2019 and the Recovery prospectus in 2021. Granting issuers with a choice of prospectus formats counts among the key components of the Prospectus regulation. The various formats currently proposed by the regulation serve as a toolkit that issuers can choose from depending on the circumstances of their offering or their own characteristics. In view of the variety of companies that produce prospectuses, the different levels of complexity of securities offered, and the diverse circumstances of such offerings, a one-size-fits-all approach (regarding formats, lengths, etc.) would undermine the efficiency of the regime and the quality of the information provided to investors. On such aspects of the new regime (URD, formats of prospectuses), it is still too early to draw definitive conclusions, as it takes time to change deeply-rooted practices.

- In the Market Abuse domain, alleviations in relation to the **insider lists** were recently introduced: issuers whose financial instruments are admitted to trading on an SME growth market have been allowed, since 1st January 2021, to include in their lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. Any further reduction of the content of insider lists should be carefully weighed against its potential adverse consequence for NCA's ability to tackle market abuse.

Overall, the AMF believes that the existing European regulatory framework is sound and robust and that a comprehensive and fundamental overhaul of pivotal regulations such as Prospectus and MAR would be detrimental to the very objective that the Commission tries to pursue and could present risks of destabilising the market. Moreover, there is a general aspiration for **regulatory stability** from market participants following recent reforms and other ongoing initiatives.

On the other hand, the AMF is of the view that **targeted adjustments** in particular to **facilitate SME's access to capital markets** would be useful:

1. Fostering access of SMEs to European Growth markets by alleviating the associated regulatory burden with respect to Prospectus. The AMF proposes to remove the obligation to draw up an EU Prospectus in case of offers of securities to the public, by companies whose securities are admitted to trading on **SME Growth markets** or seeking admission to such markets. Such offers are typically carried out nationally so that SMEs do not avail themselves of the passport associated with an EU prospectus. Instead, the AMF proposes to amend MiFID II to require issuers seeking to offer securities to the public in SME Growth Markets to publish an information document enabling investors to make an informed assessment of the financial position and prospects of the issuer, and the rights attaching to its securities.

The SME Growth Markets operators will define in their rulebook (which is reviewed by the competent authority), the content of such a document, and how such a document should be scrutinized.

In addition to reducing the costs and resources associated to the production of an offer prospectus, such an amendment would further differentiate the regulatory intensity between growth markets and regulated markets.

2. Boosting the number of SMEs benefiting from the SME Growth Market's framework by increasing the **market capitalisation threshold defining an SME in MiFID II**, from 200 M€ currently to, for example, 1 Bn€. An increased threshold would allow more mid-sized entities to be considered as SMEs, thus enlarging the population of companies benefitting from customized alleviations awarded to SME Growth Markets in EU law and encouraging the development of small listed issuers, as well as liquidity on such trading venues.

The AMF, furthermore, recommends a focused amendment to the Prospectus regulation to ease the fundraising process for all issuers including SMEs on regulated markets:

3. For primary offers to the public made on regulated markets, reducing execution risks and facilitating book-building processes by setting a **minimum offer period** instead of the current minimum number of 6 days between the publication of the prospectus and the closing of the offer. Such offer period should be set at a minimum of 3 working days in order to preserve investor protection.

Lastly, the AMF wishes to recall that promoting a **level playing field in terms of regulatory requirements between listed and non-listed undertakings** is paramount for an efficient capital markets union in the EU and should be an overarching principle guiding any future *Listing Act*. Except for obligations specifically related to the listing process itself, the AMF considers that EU law should, wherever possible, avoid introducing additional reporting requirements *only* for listed entities, as it is likely to discourage SMEs from seeking to list on public markets and to accelerate the de-listing trends that can be observed in the EU.