

## EPFSF Briefing Paper on

# “Destination CMU: Creating an attractive listing environment in the EU”

## Introduction

Creating an attractive listing environment and broadening access to market-based sources of finance for European companies at each stage of their development is at the heart of the capital markets union. In recent years, the EU’s equity markets have shown slow progress, falling behind in global terms.<sup>1</sup> EU’s domestic market capitalization of listed shares accounted for just 10% of the world’s total in 2022, declining from 18% in 2000. There has been a trend of company de-listings and fewer IPOs in the EU in recent years (from an annual average of 370 listings in 2000–6 to an expected 100 in 2022).<sup>2</sup> While a combination of factors is behind the decline in listings, aspects of the EU regulatory and compliance framework are also often cited as another major disincentive to go and remain public.

To address the decline in public markets’ attractiveness, the EU aimed to improve their access and reform the listing environment, incorporating this objective under Action 2 of the European Commission’s Capital Markets Union 2020 Action Plan.<sup>3</sup> The European Commission also established a Technical Expert Stakeholder Group on SMEs that brought together relevant stakeholders to monitor and assess the functioning of SME growth markets as well as provide expertise and input on other relevant areas of SME access to public markets. Their work culminated with a final report in May 2021.<sup>4</sup> On the basis of recommendations in this report and building on the measures adopted by co-legislators as part of the Capital Market Recovery package, the Commission tabled a package of legislative proposals known as the Listing Act in December 2022. The package puts forward a broad range of legislative changes that, according to the Commission, aim “at cutting red tape for companies, in particular SMEs, wanting to raise funds on EU public markets, while preserving market integrity and investor protection.”<sup>5</sup>

This event will discuss the proposed changes introduced in the Listing Act and the likely impacts they will have on the Listing environment for companies of all sizes throughout the EU.

## Amendments to the Prospectus Regulation (PR)

The Commission has proposed a wide range of reforms to the prospectus regulation:

<sup>1</sup> Oxera Consulting LLP, Primary and secondary equity markets in the EU. Final Report, November 2020, <https://www.oxera.com/wpcontent/uploads/2020/11/Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf>.

<sup>2</sup> Association for Financial Markets in Europe, Capital Markets Union Key Performance Indicators – Fifth Edition, November 2022. (Cosigned by the Alternative Credit Council, Business Angels Europe, Climate Bonds Initiative, eban, Eurocrowd, EFAMA, EuropeanIssuers, European Investors, FESE, and Invest Europe)

<sup>3</sup> [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan_en)

<sup>4</sup> [https://finance.ec.europa.eu/system/files/2021-05/210525-report-tesg-cmu-smes\\_en.pdf](https://finance.ec.europa.eu/system/files/2021-05/210525-report-tesg-cmu-smes_en.pdf)

<sup>5</sup> [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan/action-2-supporting-access-public-markets\\_en#tesg](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan/action-2-supporting-access-public-markets_en#tesg)

- The threshold for the requirement to publish a prospectus would be harmonised at the EU level and increase to €12 million.
- The content and format of a base prospectus and its summary would be standardised, and a page limit for equity issuances of 300 pages would be introduced to avoid overly lengthy prospectuses for companies that do not have a complex financial history.
- Certain information will be subject to a mandatory requirement to incorporate by reference.
- Exemptions from the obligation to publish a prospectus for secondary issuances would be increased, from a threshold of 20% of fungible securities already admitted to trading to 40%.
- A new EU Follow-on prospectus, with a maximum of 50 pages, would replace the simplified prospectus.
- A new EU Growth Issuance document with a maximum of 75 pages would replace the EU growth prospectus.

The proposed targeted amendments to the PR aim to make it easier and cheaper for issuers to draw up a prospectus, while enabling investors to make the right investment decision by providing comprehensible, easy to analyse, and concise information. Requirements under the PR are intended to ensure that prospective investors receive sufficient high-quality information on companies seeking to raise funds in public markets. While the Commission has estimated that the simpler prospectus rules will save companies €67 million a year<sup>6</sup>, impacts on disclosures for investor protection and market integrity are important aspects for consideration.

### Amendments to the Investment Research Regime (MiFID II)

Since 3 January 2018, entities which provide both research and brokerage and other investment related services to investment firms must separate the cost of the research they provide from the other services. Due to declining research coverage, particularly for SME's, a "quick fix" came into force on 28 February 2022 allowing for an exemption from these rules for firms valued at under €1 billion. In the Listing Act, the Commission proposed to extend this exemption to all firms valued at €10 billion (effectively covering 96.5% of EU27 listed companies). Some stakeholders have voiced that the MiFID research unbundling rules may have led to diminished availability of research, especially for SMEs. On the other hand, ESMA's report on Risks, Trends and Vulnerabilities<sup>7</sup> did not find material evidence of harmful effects on research coverage from the MiFID unbundling rules. As such, the impact of the MiFID research unbundling rules on SME research coverage is subject to debate.

Any changes to these requirements will have significant consequences on the wider market, affecting existing arrangements between entities providing research and those consuming research. These provisions, therefore, should also be considered from a market perspective, taking into consideration the interaction between EU requirements and the regimes in third-country jurisdictions (e.g. the US).

### Directive on Multiple-Vote Right Share Structures

<sup>6</sup> European Commission, Impact assessment accompanying the proposals on listing, December 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022SC0762>

<sup>7</sup> [https://www.esma.europa.eu/sites/default/files/library/esma\\_50-165-1287\\_report\\_on\\_trends\\_risks\\_and\\_vulnerabilities\\_no.2\\_2020.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1287_report_on_trends_risks_and_vulnerabilities_no.2_2020.pdf)

The Commission has proposed a Directive to allow, at a minimum, company owners to list on SME growth markets using multiple vote right share structures. Owners will be able to retain sufficient control of their company after listing, while safeguards will protect the rights of all other shareholders. These will, among others, prevent minority shareholders from being consistently outvoted by controlling shareholders.

Multiple vote right share structures have proven to be especially popular among high-tech companies according to the Commission, with 46% of US tech companies choosing this structure for their IPOs in 2021. These structures are already allowed in most of the largest financial centres (e.g. the US, China/Hong Kong, the UK, and Singapore) and may apply beyond SME markets (like in the US).

### Amendments to the Market Abuse Regulation (MAR)

In the Commission's view, there is currently a lack of legal clarity in the Level 1 text of MAR concerning inside information, a core concept of the market abuse framework. The Commission proposals seek to provide greater legal clarity about what information needs to be disclosed by companies, and reinforce supervisory cooperation between market authorities with a new cross-border supervisory mechanism. The proposal also includes changes to the insider lists and the delayed disclosure of inside information. The latter include a new requirement to inform the national competent authority of the decision to delay disclosure immediately after the decision is made, rather than when the information is published.

### Conclusion

The Listing Act proposals seek to make the EU capital markets more attractive to companies, making the listing process more affordable and straightforward. Strong capital markets play a key role in economies as one of the most powerful drivers of growth and wealth creation. An important prerequisite for this is an attractive and vibrant listing ecosystem. At the same time, the regulatory framework needs to uphold sufficient investor protection and sufficient disclosure requirements to make informed investment decisions. As the proposals are discussed by co-legislators, it will be important to assess how well this balance is struck, and to what extent the proposals are likely to succeed in revitalising the EU's capital markets.

### Questions

1. Do the Listing Act Proposals strike the right balance between simplifying listing requirements and making rules more attractive for potential issuers, and ensuring investor protection is not undermined?
2. Why do prospectuses diverge in their content and length between Member States?
3. What are the potential advantages and disadvantages of introducing limits to the number of pages in a prospectus or broadening certain exemptions from the perspective of issuers, investors, advisors/underwriters, brokers, and regulators? Which proposals should be considered further by the co-legislators?
4. What are the factors influencing the research coverage of SMEs? Will the reforms proposed by the Commission to the MiFID Investment Research regime successfully increase SME research coverage? Or should the unbundling rule be scrapped?
5. Do the tabled reforms to MAR succeed in eliminating the lack of legal clarity on inside information?

6. Should the MAR regime be further adjusted to SME Growth Markets?
7. What are the advantages and disadvantages of introducing multiple-vote share structures for SME Growth Markets only? Should the European regime extend this possibility to regulated markets?
8. Do the Commission's proposals go far enough in their aim of revitalising the EU's capital markets? What other factors influence the decision of companies to list in the EU vs other jurisdictions? What is needed to further enhance the competitiveness of EU markets for company listings?