

Reply of Deutsches Aktieninstitut to ESMA Consultation on SME Growth Markets:

Further regulatory alleviations needed

Response to the ESMA Consultation “On the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets”, 15 July 2020

Answers to selected Questions

Q2. In your view, how could the visibility of SME GMs be further developed, e.g. to attract the issuers from other members states than the country of the trading venue?

The visibility and attractiveness of SME GMs is strongly interlinked with the general intensity of compliance duties for companies stemming from various levels of EU capital markets regulation. In this context, the requirements of MAR have proven to be particularly cumbersome for issuers. We believe that further alleviations from the MAR requirements for issuers of all sizes would also be of benefit for SME GMs, thereby increasing the visibility and attractiveness of SME GMs.

Therefore, MAR should be further adjusted with regard to:

- disclosure requirements, notably around information dissemination;
- the duty to react on rumours related to inside information;
- the level of detail of insider lists;
- requirements in relation to managers' transaction reporting;
- the interpretation of the necessary speed around an ad hoc announcement, depending on the actual announcement;
- and the very high level of sanctions.

Q4. Do you consider that a further alignment of the definitions of an SME in different pieces of regulation with the MiFID II definition of SME would be helpful? Can you provide specifics of where alignment would be needed?

Yes, to align the definition among different regulations on EU-level is helpful. Furthermore, the definition should reflect legislation in other jurisdictions, especially the US JOBS Act, which sets a higher threshold of approximately EUR 1 bn. The High Level Forum on the Capital Market Union also proposes this in its final report. It could also be worth to consider an automatically inflation adjustment of the threshold.

Q5. Which are your views on the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments? Are there requirements which should be specified?

No, we do not think that the admission regime should be harmonized or specified. The requirements should be left to the discretion of the exchange providers as they could best assess the right balance between market liquidity and the difficulties to comply with such requirements.

Q6. Do you think it could be beneficial to harmonise accounting standards used by issuers listed on SME GMs with the aim of increasing cross-border investment?

After the extension of the scope of MAR to MTF issuers on SME GM were already faced by a huge additional regulatory burden. In view of the high costs associated with IFRS, the option provided by many market operators to use national GAAP must be retained in any case. Accounting according to GAAP is justified especially for those issuers addressing domestic investors, which are the vast majority. The “GAAP-option” should still be possible in any case. IFRS as proposed above should not be compulsory.

Q8. Should ESMA suggest an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration?

There should not be an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration.

For most of the SME GMs, the provision of historical financial data is already included in the listing requirements, the prospectus or the Registration document. The ESMA proposal would thus create double reporting.

Q9. Is there any other aspect of the SME GMs regime as envisaged under MiFID II that you think should be revisited? Would you consider it useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format?

Having to make periodic financial information available in a more standardized format could significantly reduce attractiveness for SMEs to list. Especially for smaller SMEs, complying with specific standardized format requirements is likely to be burdensome. In general, transparency requirements should not be more wide-ranging for issuers on SME GMs than for issuers on regulated markets.

In order to give companies more visibility, we encourage any measures facilitating sharing of company information and provision of information to investors. To boost cross-border investment, access to company information in other Member states should be facilitated.

With respect to recent policy proposals on the potential creation of a European harmonised data repository for company reporting, a so-called EU Single Access Point, we suggest that information disclosed by companies listed on Regulated Markets as well as SME Growth Markets should be accessible through such access point. This could enhance the SMEs' visibility and therefore reduce barriers to access capital, overall improving their competitiveness. Furthermore, a European database for SME-research could easily build on a Single Access Point.

Q12. Do you think the requirement in Article 33(7) of MiFID II regarding the issuer non objection in case of instruments already admitted to trading on SME Growth Markets to be admitted to trading on another SME growth market should be extended to any trading venue? Should a specific time frame for non-objection be specified? If so which one?

We do not support the proposal to extend the 'issuer non-objection requirement for admission to trading' of SMEs to Regulated Markets and MTFs. Share trading would be further fragmented, and the issuer would not have any influence on the inclusion.

Q14. How do you think the availability of research on SMEs could be increased?

The problem of research availability closely relates to the introduction of the unbundling rules under MiFID II, which increased the cost pressure among brokers followed by a significant staff reduction. Inevitably, the quantity of research declined. This is especially a problem for SMEs. Today, after the introduction of the unbundling rules, SMEs have much more difficulties to obtain broker-coverage than before. Compared to larger stock-listed companies, where research is provided by brokers and thus largely available, many SMEs have to purchase research, a trend, which is significantly reinforced by the unbundling rules.

The introduction of an exemption of SMEs from the unbundling requirements should help the respective companies to extend their coverage on a "pre-MiFID-level". We propose to define a SME (or Small Cap) being a company having a market capitalization up to 1 bn. Euro. Obviously, these companies are most affected by the unbundling rules.

Q16. Do you agree with the proposed limits on volumes or would you propose different ones? If so, please provide a justification of the alternative proposed parameters.

Yes, we agree with the proposed limits.

Q19. Do you agree with the proposal described above regarding the template for the insider list to be submitted by issuers on SME GMs? If not, please elaborate.

First of all ESMA's analysis shows that the regime on the provision of insider lists on EU Growth markets is complex. Though by the start of the year 2021 issuers on growth markets will basically be allowed to provide only a list of insider only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information, member states may opt for stricter requirements. If opted in that way, the data to be provided should nevertheless be less burdensome for issuers on Growth markets than for any other issuers in scope of MAR.

ESMA's proposal for amending the respective ITS only partially reduces the burden and, thus, should go further. It appears disproportionate and an unjustified intrusion into the privacy of the individuals entered into the insider list to require by default the entry of the private phone numbers. This information is simply not necessary to identify the relevant individuals. In the case of an actual suspicion, NCAs may easily ask for more specific data in case of an examination.

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