CITI RESPONSE TO EUROPEAN COMMISSION TARGETED CONSULTATION

LISTING ACT: MAKING PUBLIC CAPITAL MARKETS MORE ATTRACTIVE FOR EU COMPANIES AND FACILITATING ACCESS TO CAPITAL FOR SMES

Citi is a European financial services provider with operations in 20 of the EU's 27 Member States and clients throughout the region. Our European bank is headquartered in Dublin, while our investment firm is based in Frankfurt. Citi provides a broad range of cross-border banking, payment and capital market services for clients, including raising money through private and public equity, trade finance and supply chain finance for small and medium-sized enterprises. In addition, Citi works with governments and supra-national agencies around the world on project and infrastructure finance.

Citi has contributed to the submissions of the Association for Financial Markets in Europe and the International Capital Market Association.

We have analysed the opportunities for change primarily through the lens of what our clients, both issuers and investors, would like to see.

We have focused on Q6 because we believe that providing flexibility for issuers is the single most important change that could be made to increase EU companies' propensity to access public markets. While it is important to acknowledge that Listing Rules are not the major determinant in a decision by a company to IPO, they can:

1. influence the decision on whether to go public (versus other options), as well as the location of the IPO; and
2. impact the risk of execution i.e. whether an IPO succeeds or fails. Reducing the risk of execution could reduce the number of IPOs withdrawn or postponed.

Question 6. In your view, would the below measures, aimed at improving the flexibility for issuers, increase EU companies' propensity to access public markets?

1. Allow issuers to use multiple voting right share structures when going public
2. Clarify conditions around dual listing
3. Lower minimum free float requirements
4. Eliminate minimum free float requirements
5. Other (please specify below)

Please explain your reasoning: [4000 character(s) maximum]

<u>ANSWERS</u>

1. YES

We believe that allowing companies the choice to opt for dual-class shares with variable voting rights when going public would be beneficial.

Why is it important? As is well documented, Europe has lagged other jurisdictions in several emerging high growth sectors, notably information technology. These high growth companies are often founder led and their need for external funding at an early stage means that the founders have had to dilute themselves to grow the business, creating a preference for differentiated share class structures. While some mechanisms, embedded in individual Member State laws, provide for double voting rights or a differentiated number of votes / rights per share, we believe there is a case for allowing the same level of flexibility throughout the EU.

However, it is important to ensure this does not lead to governance issues (conflicts of interest, protection of minority shareholders) and does not disincentivise investors from investing in companies at IPO. The use of certain conditions, such as a sunset clause on the dual-share structure, would ameliorate this problem.

We note that the possibility of dual-class shares is typically part of the corporate law of Member States.

2. YES

Dual listings are not very common (except in certain sectors, such as biotech) and have historically often had the inconvenience of the majority of the secondary market trading of the stock migrate to a single location. An important element that could help solve that issue is full fungibility of shares across the relevant trading venues. We have seen some examples of that elsewhere, like the LSE-HKEX connect, but not often within the EU or between the EU and third countries.

3. YES / 4. NO

The purpose of the minimum free float requirement is to ensure that there is sufficient liquidity in the secondary market after an IPO. Yet it is value traded that matters, not the percent free float. A more flexible regime focused on an assessment of the expected secondary market liquidity, with the safeguard of certain size thresholds being met, such as a minimum EUR 100m free float at IPO for mid to large cap companies, would improve the flexibility for issuers and increase the propensity to IPO. For small cap companies, this limit could go as low as EUR 5m as is currently the case in some European jurisdictions e.g. Netherlands, Belgium and France. There is currently a lack of harmonization regarding free float requirements across European exchanges.

We do not believe that there should be a legislative/regulatory prescription on minimum free float, but a framework to allow for greater flexibility. Some exchanges provide for the possibility of derogations, which could be generalised.

5. Other

- The ability to provide guidance and forecasts, following a precise scheme, is a well-established practice in some European markets e.g. France, but not allowed, or allowed with significant limitations, in other countries. A harmonization of this would allow all issuers to provide to the market forward looking elements that can allow investors to better assess the real value of the company. This is particularly true for high growth companies.
- Greater flexibility on the price range and deal size, including the removal of 48 hour withdrawal rights where the price or size change is not significantly altering the fundamentals (balance sheet) of the company post-IPO. A price range and the number of securities to be offered are provided by the issuer to potential investors at the launch of an

offering. In some cases, the price that could ultimately be achieved will be above or below that range, or the number of securities to be offered may be increased or reduced. In these cases, IPOs could get withdrawn under current regulations because of the necessary regulatory hurdles to restructure the transaction (while, for example, in the US there is much more flexibility to pricing below / above the initial price range). The inclusion of prospective retail investors imposes a non-flexible price range in the offer prospectus, and an obligation to provide a supplementary prospectus and withdrawal rights if the offer price is set outside the initial range. Many issuers/sellers prefer avoiding retail offers because of this inflexibility on pricing and burden on IPO execution risk. This disadvantages retail investors at a time when many EU economies need savers to become investors. Ultimately, it should be real demand from investors that sets price and volume for the new equity capital.

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