EC targeted consultation on the listing act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs

Summary of the reply of
Société Générale

(25th February 2022)

SG welcomes the opportunity to respond to this consultation on how to make public capital markets more attractive for EU companies and facilitating access to capital for SMEs. As one the leading European banks, we assist EU companies at all stages of their financing needs, whether they choose to raise capital or debt, either on a national or pan-European basis. In this capacity, we strive to help issuers establish a long-term relationship with markets and investors, well beyond their IPOs.

Société Générale shares the goals of the Capital Markets Union of promoting a resilient and green recovery together with a more accessible funding to EU companies. We also support its goal of fostering saving and long-term investment while furthering the integration of national capital markets into a genuine single market.

As regards the access to EU public capital markets, we think that ***a successful reform may only take place if one contemplates all aspects of the EU listing process***. This goes well beyond the regulatory framework whose consideration is not the primary driver in the decision to seek admission on EU markets, as rightly noted in the Oxera report on primary and secondary equity markets in the EU (2020).

We validate the report's a review of the markets' dynamics, notably in terms of valuation and liquidity, and of their broader tax and macro-economic environment. We also agree that due consideration should be paid to competition from alternative funding sources such as private equity and private debt.

In our view, this reflection should aim at securing a viable long-term involvement of both retail investors and institutional investors (such as ELTIFs, insurers and pension funds). This also involves a specific attention paid to cornerstone investors. Measures should be explored in order to encourage and protect these central players for the risk they assume and expertise they bring, greatly facilitating the initial stages of capital raising.

Despite its flaws, ***the current regulatory regime that is applicable to EU listings and to the continuing obligations of listed companies is now well assimilated by all stakeholders and benefits legitimate objectives of investor protection, transparency and market integrity***.

It is notably essential to ***maintain the requirement to file a prospectus in case of public offerings and admission to trading on regulated markets***. This regime may coexist with ***exemptions for admissions to trading that do not involve a public offering and concern securities that are fungible with those previously issued with a prospectus*** and represent less than 30 % of them.

As for SMEs, while we appreciate the crucial importance of a simplified, cost-efficient access to financial markets, we believe that minimum disclosure and abuse-prevention rules are nevertheless required in order to ensure investor protection at a level with the incurred. A proper balance should be struck when calibrating the content of such rules.

For all these reasons, we recommend regulatory stability and ***prefer targeted improvements over a fundamental change of the regulatory framework*** that would risk bringing undue uncertainty and involve considerable adaptation costs.

In terms of priorities, we believe ***a regulatory review should first aim at a reinforced harmonisation among the various set of rules – both at EU and at national levels***. Indeed, while most of the applicable requirements derive from EU regulations and should not give rise to diverging national interpretations, there are too frequent examples of regulatory disharmony in Europe (e.g. rules applying to market soundings).

Therefore, we recommend an enhanced cooperation and coordination among the various national competent authorities in their listing competences, with a more explicit mandate attributed to ESMA to foster such convergence among NCAs at an implementation level.

We have identified some areas where targeted changes would alleviate the constraints bearing on issuers, notably SMEs, without reducing the level of investor protection.

Our ***suggestions for targeted regulatory improvements*** include:

- ***Alleviate the Market Abuse Regulation (MAR) regime, notably the insider list reporting, especially for SMEs, ease and clarify market sounding rules and those applying to stabilization and deferred disclosure of inside information*** (see our reply to questions1, 5, 44a, 57).
- ***Allow prospectus exemptions for exemptions for admissions to trading that do not involve a public offering and concern securities that are fungible with those previously issued with a prospectus and represent less than 30 % of them*****.** (see our reply to question 12).
- ***Remove the minimum period between the publication of the prospectus and the end of an offer of shares in order to facilitate swift book-building*** **:** The current period of six working days is very ill-suited to situations of fast-moving markets Also, for IPOs that may not be completed and need a prompt relaunch, the current six-day minimum period may be a hindrance., it should be removed, or, at least shortened (e.g. three working days instead of the current six) (See our reply to question 33)
- ***Alleviate the burdensome requirements on supplementary prospectuses which remain very challenging despite the amendments contained in the Recovery package;*** the current regime is especially difficult to implement when distributors operate in an open architecture (i.e. with no connection with issuers that are responsible for the publication of the prospectus supplement). (See our reply to question 41.a)
- ***Reduce the free float requirement from the current 25% to 10% of the issued capital*****:** while the current rule may, in practice, give rise to waivers, granted by market operators, their existence may negatively influence issuers in choosing to issue outside of European markets (see our replies to questions 6, 96 and 102).
- ***Promoting financial research, including sponsored research***: financial research plays a pivotal role in helping investors choose and value the companies they want to invest in. It indirectly contributes to markets liquidity. The application of MIFID2 rules has challenged the economic model of research. As a result, several issuers have promoted sponsored research. This alternative model should be better acknowledged with rules guaranteeing the same level of investor protection as for non-sponsored research.
- ***Facilitate the listing of SPACs:*** Special Purpose Acquisition Companies (SPACs) are a useful investment vehicle that is meant to continue its development as an alternative to traditional IPOs. We believe the successful EU experiences, notably on the French, Dutch and German marketplaces illustrate the ability of this vehicle to provide an adequate answer to acquisition and listing projects with due protection of the investors notably through their ability to validate the de-Spacing in a General Assembly. We also believe that ensuring the perennity of SPAC listing is crucial for Europe sovereignty. Failing to have a developed SPAC market would expose Europe to the risk of such acquisitions to be organised totally outside of European authorities and markets with the related loss of control and liquidity and ultimately and loss of opportunity of EU investors (see our reply to questions 84 to 91)
- ***Allow multiple voting rights***: introducing this possibility – which is available in the US and UK markets through dual-class shares - would be especially useful for SMEs, notably the family-owned, and for technology companies. Without these rights, their founders, who often play a pivotal role in the management of the company, may be excessively diluted in the early stages of the

admission to the markets that generally coincide with a high growth and repeated capital increases. (see our reply to question 102)

Other areas of vigilance include:

- ***Preserve national regimes facilitating participation of retail investors in IPOs.***
- ***Maintain and develop the possibility to file Universal Registration Documents (URDs):*** URDs which are widely used in France offer a useful quasi-shelf registration possibility which enables issuers to quickly access markets when needed and when conditions are optimal. A wider adoption of the URDs in Europe – that should remain a voluntary option – is conditioned upon enhanced synergies and convergence between the prospectus and transparency disclosure regimes which should be further developed (in France, most frequent issuers issue URDs that are also their annual reports).

Other issues not addressed in the EC consultation that we would like to raise

- ***The need to ensure a harmonious interaction between the current prospectus and transparency requirements and the more recently adopted and still developing regulation of sustainable finance and its related ESG disclosure requirements***
- ***The usefulness of a recalibration of the Product Governance scope. Corporate shares and debt instruments are not "manufactured":*** *they are primarily issued to respond to funding needs of these companies. The application of product governance to these rather simple instruments is unduly burdensome. The alleviations introduced in the Recovery Package should be further extended to for these corporate funding issuances.*