

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

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**AFTI, FBF & AMAFI's introduction**

**The French Association of Securities Professionals (AFTI)** is the leading association for post-market activities in France and in Europe. AFTI is made up of over 80 members and covers a wide range of activities including market infrastructures, custodians and depositories, securities services providers, issuers and report/data providers. AFTI represents a total of nearly 28,000 employees in Europe, including 16,000 in France. Active members represent 26% of the European custody business, with €55.6 trillion in assets under custody and 25-30% of the European fund depositories and fund administrators. In 2017, French market infrastructures settled 29 million instructions (CSD) and cleared 730 million transactions (CCP).

**The Fédération bancaire française (FBF)** has for mission to promote the banking and financial industry in France, Europe and around the world. It determines the profession's positions and makes proposals to public authorities and economic/financial authorities. FBF has 337 member banks including 115 foreign banks. Regardless of their size and status, credit institutions licensed as banks and the branch offices of credit institutions in the European Economic Area can, if they wish, become fully-fledged members of the FBF. The central bodies of cooperative or mutual banking groups are also fully-fledged members. The FBF is member of the European Banking Federation (EBF).

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AFTI, FBF & AMAFI welcome 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. These matters are of importance for the Capital Markets Union which we are in favour of.

### KEY MESSAGES

1. It is essential that the financing of the European economy makes use of all available sources of funds at a time when the EU is facing major financing challenges (transformation to a sustainable economy, ageing of the population and industrial change towards a digital economy). AMAFI agrees that unlike in the United States, companies in the European Union rely too much on bank credit, which could seem paradoxical at a time when the strengthening of the prudential framework of banks creates important constraints.

Encouraging the European economy's financing model to evolve towards greater use of the financial markets, both for equity and debt, is therefore of the utmost importance to increase EU companies' access to funding.

2. As legislative inflation has a cost and generates a legal risk, any new intervention must be strictly calibrated to the objectives pursued. Although legislation would gain quality through simplification where it is overly burdensome, including by reducing its length and avoiding circular cross-references between regulations, legislative stability is needed. Unpredictability of legislation is likewise detrimental to the attractiveness of capital markets for companies.

Any change to the legislation requires adaptation by multiple market participants of their processes, procedures, IT systems, service providers, legal arrangements, and sometimes business model at a cost which is often not a one-off but a recurring one.

3. Overall, our findings are that the barriers to increasing market financing may consist to a limited extent in the administrative burdens or costs related to listing (they are high but not disproportionate) and to a greater extent in the consciousness by SMEs founders/shareholders that they can have only limited ambitions with regard to the market valuation their company is likely to reach. The question therefore is as much how to increase the benefits of being listed in terms of cost of capital and easiness of funding. It is also important to debate as to how we should create a level-playing field in terms of disclosure and ESG requirements between private and public companies given the rise of private equity markets. This imbalance should be reduced for the benefit of all investors and for the good of the public interest.

Promoting investor participation in IPOs is also essential. The Commission's work around Solvency 2 is important as the share of insurance companies in the capital of listed companies has shrunk significantly over the last 10 years. Encouraging cornerstone investors is also a key topic and there is certainly a key role to be played at the EU level by the European investment bank (EIB) and by State stakeholders such as KfW in Germany, CDC/ BPI in France and CDP in Italy who could coordinate their policies and actions.

4. The rules on product governance are unsuited to securities issued for funding purposes and to the investment service provider's activity as an advisor to the issuer. We welcomed the alleviation of the product governance requirements for corporate bonds with no other embedded derivative than a make-whole clause and for bonds for eligible counterparties (Quick-fix dispositions) but we consider that all "funding securities" including ordinary shares and plain vanilla bonds issuance are similarly important for the financing of companies and should be exempted as well based on the following arguments:
  - a. these securities are not issued to serve retail investors' needs and objectives or address particular risk profiles unlike structured products for instance that offer solutions that are specifically designed to meet the needs of investors, particularly in terms of strategy, risk/return profile, maturity or nominal invested.
  - b. the role of the investment firm in a capital market transaction is not to design an investment product that will meet the objectives and investment needs of targeted clients/investors. For instance, in an IPO, the investment firm is rather to assist the issuer in structuring the transaction (size, primary/secondary components, timetable...) and to market the transaction and place the shares. The investment firm is not the issuer of the financial instrument, let alone its manufacturer;
  - c. the added value of product governance requirements in terms of investor protection for funding securities is very low or non-existent: for such transactions, investor protection is ensured by an adequate disclosure in the prospectus and the relevant MiFID suitability and/or appropriateness tests by financial intermediaries holding the investors' securities account.

This argument is all the more compelling today with the upcoming implementation of ESG provisions in product governance. If no change is made to the product governance requirements, investment firms will soon have to assess the ESG standing of ordinary shares with respect to the expectations of the final investors (target market), whereas such assessment requires specific expertise, generally offered by specialised firms and has nothing to do with the role the investment service provider plays in advising the IPO.

5. Technological development, and more precisely the dematerialisation of prospectuses, makes it possible to reinforce investor protection by offering more fluid and more rapidly accessible information. It is necessary to ensure that the information remains correct, clear and not misleading while promoting technological advances. Market practices and interpretation by national regulators should be further harmonised. ESMA should be given a mandate to set guidelines related to the intelligibility of prospectuses.

This is especially important, as EU markets cannot be considered in isolation. Post Brexit, the UK is making significant changes to its regulations on companies' listing raising the attractiveness of the City as a major financial center. The US markets are also very attractive for Tech and Biotech companies. Companies and investors have freedom as to where they go public/invest their money. Maintaining the competitiveness of European markets starts with the way companies and investors are catered for in the EU public capital markets.

6. One of the factors of insufficient valuation and capitalisation of European SMEs is the lack of liquidity of their securities due notably to their poor visibility amongst investors. Institutional investors struggle in building up large enough positions in SME securities. Often the liquidity is insufficient for those securities to be included in indexes to which investment funds are benchmarked. They also suffer from a lack of visibility notably due to a low coverage in financial analysis.

In AMAFI's view, the following would help promote better market valuation and higher capitalisation of SMEs:

- (i) Maintaining high standards of investor information;
  - (ii) Promoting financial research, including sponsored research;
  - (iii) Preserving liquidity contracts between issuers and market animators.
7. Maintaining high standards of investor information: access to sufficient and reliable investor information is key in building trust in the capital markets and enables investors to make informed investment decisions, especially in SMEs for which available information is scarcer. As a result:
  - (i) Our findings are that the prospectus is not a barrier to SMEs access to capital markets. It does not seem appropriate to extend the exemptions of issuance of a prospectus as proposed by the consultation paper, rather its content should be adjusted where necessary. The proportionality of the issuer's obligations to its size (which already exists) should not be at the expense of good investor information.
  - (ii) However, certain burdens and costs can be removed without harming appropriate investor information. We hence believe that no new prospectus should be required for secondary issuances.
8. Promoting financial research, including issuer-sponsored research: the availability of financial research is a key factor in attracting investors because it provides them with analyses developed by financial experts which can inform their decision process. The more numerous the research papers on an issuer, the more comparisons the investors can make.

While the economic model for research on SMEs is traditionally fragile, MiFID 2 rules have weakened it further by cutting the cross-subsidisation relation that used to exist between (i) execution and research and (ii) research on blue chips and research on SMEs. This has made SME research hardly viable in the many instances where potential investors are too scarce. An alternative model has thus gained some traction in the recent years, whereby the issuer participates in the financing of the research, aka issuer-sponsored research. EU regulation should promote the development of such research. The objective should be to enshrine in European law issuer-sponsored research that provides investors with guarantees equivalent to those provided by non-sponsored research. It is also important that new sources of revenues of research – including academic research- should find public funding through the EU to counterbalance, post Brexit, the weight of academic research around financial markets in the UK.

9. There are important involved costs to financial markets infrastructures. The principle of having markets that are tailored for SME's been translated in appropriate legislation for the trading, but not for clearing and settlement.

The Securities Trading Obligation (STO), the obligation to centrally clear and the obligation to admit listed securities to central securities depositories, as well as the obligation for central banks and central depositories to outsource settlement to T2 and T2S mean that only one model of financial market infrastructures exists in the EU whilst the issuers, markets, investors and inherent risks are very divergent. One size doesn't fit all. The intrinsic functioning of market infrastructures creates a very high hurdle for the smaller players (investors, intermediaries, issuers) for a modest hope of reaching an interesting market capitalisation. The very functioning of the infrastructures should be reviewed to lower the barrier to entry for new entrants. For example, underneath thresholds to be defined, the obligation to issue securities in a CSD when listed on certain markets should be alleviated as the obligations to settle in central bank money underneath higher thresholds.

10. The maintenance of insider lists and the conditions for delaying disclosure of inside information are a costly and burdensome administrative charge, especially disproportionate for SMEs and MTFs. This obligation makes supervisors' investigations easier but does not improve investors protection directly. It should be made proportionate to the market size of the issuers or should be alleviated for issuers on SME growth markets and MTFs. As a consequence: art. 18.6 of the Market Abuse Regulation should be extended to all MTFs, it being understood that art. 18.2 already requires issuers and their agents to that persons likely to hold insider information are aware of sanctions.
11. The rules on the prevention and sanctioning of market abuse are not administrative "burdens" as the consultation paper suggests. These rules have the important merit of contributing to confidence in the markets. AMAFI is not in favour of amending them, especially on regulated markets, except for:
  - the maintenance of insider lists as described above in point 10 above;
  - for the issuers of vanilla bonds only who should be exempt from the publication of inside information, since only information that jeopardises the issuer's ability to redeem the bonds can have an influence on these bonds.

