Minister Elisabeth Svantesson
President, Economic and
Financial Affairs Council
Council of the European Union

Irene Tinagli
Chair of the Committee on
Economic and Monetary Affairs
European Parliament

Ref: Listing Act legislative proposal – Insider List Regime

Dear Ms Svantesson, dear Ms Tinagli,

On 8 December 2022, the European Commission published its Listing Act proposal, which aims to alleviate the administrative burden for companies of all sizes so that they can better access public funding by listing on stock exchanges.

Overall, ESMA welcomes this proposal, which aims to deliver on the 2020 CMU Action Plan's commitment to simplify EU listing rules. The proposal reflects a number of recommendations which ESMA has previously provided to the European Commission, both in response to the Listings Act public consultation, and in our advice on the Market Abuse Regulation review[1] [2]. However, following discussion within the ESMA Board of Supervisors, I would like to share our views regarding one specific element of the proposal on which we, collectively as EU securities regulators, have substantial concerns.

The proposal amends Article 18 of MAR, stipulating that an issuer's insider list would no longer be event-based and would only need to include those persons that have regular access to inside information (so called "permanent insiders"). We believe that this proposal may have two significant detrimental effects.

The first one concerns National Competent Authorities' (NCAs) ability to enforce against market abuse.

Under the proposal, the new insider lists will not cover those persons working for the issuer who have irregular access to inside information and thus limiting the ability of NCAs to quickly identify non-permanent insiders. Moreover, NCAs will not be able to use the list to assess which permanent insider accessed each piece of inside information and when. As a result, the

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[1] esma24-436-1152_letter_to_ec_on_listings_act_consultation.pdf (europa.eu)
[2] esma70-156-2391_final_report_-_mar_review.pdf (europa.eu)

identification of insiders will be a lengthy and difficult process that National Competent Authorities will have to carry out from zero when investigating potential insider dealing ex-post.

Additionally, while the proposal will not directly impact the insider list drawn up by advisors and consultants, their ability to produce their insider list in a timely manner will be affected as they will no longer be added to the issuer's list and therefore will not receive the relevant notification. Furthermore, NCAs will not be aware of the access of such advisors and consultants to the issuer's inside information.

The second significant detrimental effect would be on issuers, as they use insider lists to manage inside information, thus protecting both themselves and their staff/third parties. For example, the new regime would diminish awareness by all insiders, as they will no longer be notified that they are in possession of inside information and be informed about the relevant obligations and prohibitions. Not only will this lack of awareness increase the risk of unintended insider dealing, but it will also weaken the issuers' control of the flow of inside information.

We would appreciate it if you could take these concerns, expressed by the securities supervisors that are responsible for maintaining orderly and fair European markets, into consideration during the course of your legislative discussions.

Should you or your staff require any further information please do not hesitate to contact me or Carsten Ostermann, Acting Head of the Market and Digital Innovation Department (carsten.ostermann@esma.europa.eu)

Yours sincerely,

[signed]

Verena Ross

cc: John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Thérèse Blanchet, Secretary-General of the Council of the European Union

Claudia Lindemann, Head of the Secretariat of the Committee on Economic and Monetary Affairs, European Parliament

Alfred Sant, MEP, ECON rapporteur