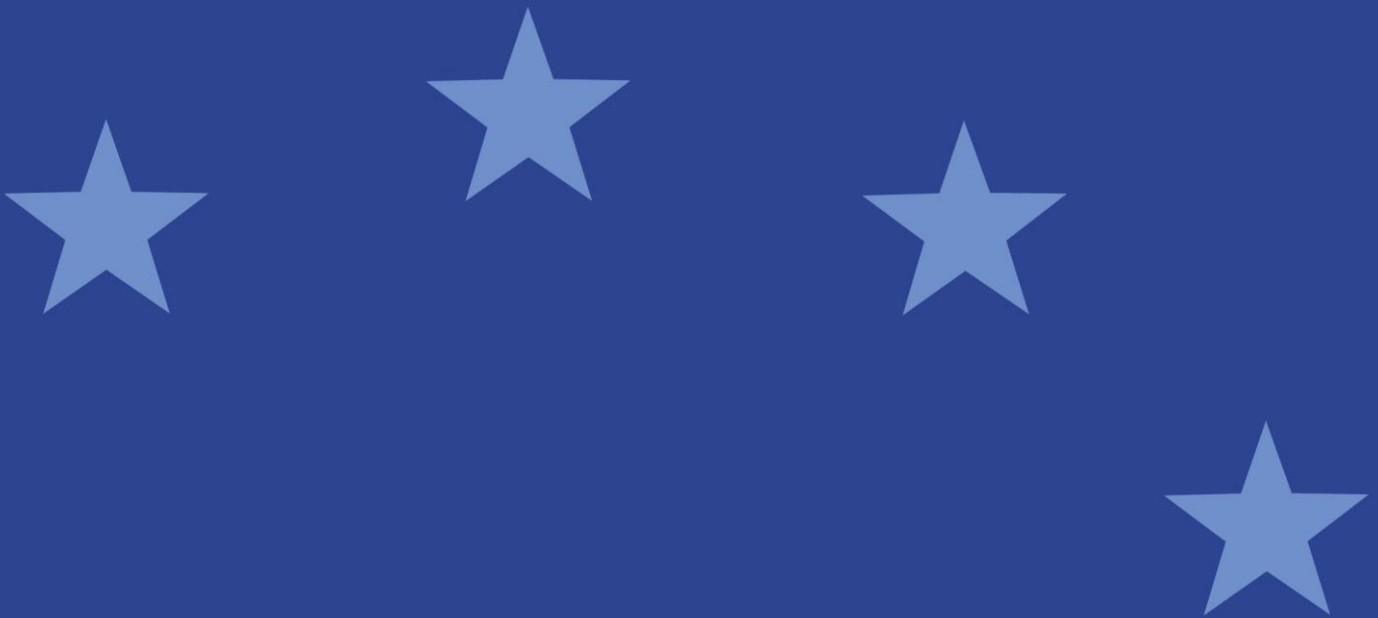




European Securities and  
Markets Authority

# MiFID II Review Report

**MiFID II review report on the functioning of the regime for SME Growth  
Markets**



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## Acronyms and definitions used

CDR 2017/565	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
CMU	Capital Markets Union
CP	Consultation Paper
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU).
EC	European Commission
ELTIF	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds
ESAP	European Single Access Point
ESMA	European Securities and Markets Authority
EU	European Union
FR	Final Report
GMs	Growth Markets
HLF	High Level Forum
IFRS	International Financial Reporting Standards
IPO	Initial Public Offering
ITS	Implementing Technical Standards
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

MTF	Multilateral Trading Facility
NCA	National Competent Authority
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC Text with EEA relevance.
Q&A	Question and Answer
RTS	Regulatory Technical Standards
RM	Regulated Markets
SME	smaller and medium-sized enterprise
SME GM	SME growth market
SME GMs Regulation	Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets
TESG	Technical Expert Stakeholder Group

# 1. Executive Summary

## Reasons for publication

Article 90(1)(b) of Directive 2014/65/EU<sup>1</sup> (MiFID II) mandates ESMA to submit a report to the European Commission (EC) to discuss and assess the functioning of the SME Growth Markets (SME GMs) regime in the EU.

A Consultation Paper (CP) presenting ESMA's analysis on the current state of play of SME GMs in the EU and suggested initiatives to improve the attractiveness of the SME GM regime from issuers', investors' and venues' perspectives was published on 6 May 2020. The consultation lasted until 15 July 2020.

The CP furthermore sought stakeholders' input and proposals on a draft ITS on the insider list and on a draft RTS on Liquidity contracts which ESMA has been mandated to draft under the MAR amendments introduced by Regulation (EU) 2019/2115<sup>2</sup> on the promotion of the use of SME growth markets. ESMA has published a Final Report presenting the proposed ITS and RTS<sup>3</sup>, which has been sent to the European Commission.

This final report follows up on the proposals included in the CP regarding the initiatives proposed to improve the attractiveness of the SME GM regime, presenting an assessment which considers the feedback received from stakeholders<sup>4</sup> on MiFID II topics.

## Contents

This final report aims at identifying solutions that should facilitate the functioning of SME GMs and foster investment in SME securities. The report suggests that the SME GMs regime in the EU, as it stands, has been relatively successful, with seventeen MTFs registering as SME GMs to date. Nevertheless, acknowledging that SMEs need further incentives to access capital markets, the report suggests targeted amendments to the SME GM regime in the MiFID II framework, aiming at simplifying investors' access to information and promoting concentration of liquidity on SME GMs. ESMA is aware of the wider ongoing discussion to make capital markets more efficient for SMEs in the context of the CMU and fully supports such initiative, standing ready to contribute to this wider discussion with technical input if and where needed.

The document is divided into 4 sections. Section 2 provides a general introduction. Section 3 presents a qualitative and quantitative analysis of the current state of play of SME GM in the EU. Section 4 presents for each topic subject to consultation the legal background, the indication of the feedback received to the consultation and ESMA's assessment and

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349-49)

<sup>2</sup> Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1–10)

<sup>3</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-156-3581\\_final\\_report\\_on\\_sme\\_gms\\_rts-its\\_under\\_mar\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-3581_final_report_on_sme_gms_rts-its_under_mar_0.pdf)

<sup>4</sup> ESMA received 25 replies to the SME GM CP, of which one confidential.

recommendations for the relevant proposal. The Annexes detail the relevant mandate and the summary of the responses received to questions included in the CP.

### **Next Steps**

This report is submitted to the European Commission and is expected to be taken into consideration by the European Commission for further legislative proposals on the MiFID II SME GM regime.

ESMA stands ready to provide any additional technical advice on the legislative amendments suggested in the report.

## 2. Introduction

1. With the application start date of MiFID II in January 2018, a new category of MTFs labelled SME Growth Markets (SME GMs) had been created. The creation of SME GMs under MiFID II envisaged to promote access to capital markets for small and medium-sized enterprises (SMEs) and to facilitate the further development of specialist markets that aim to cater for the needs of SMEs issuers. Since the creation of the SME GM label several initiatives have been undertaken to promote the development of such MTFs, with the ultimate goal of contributing to the development of an improved capital market for SMEs in the EU, acknowledging their key role in the economic growth of the Union.
2. It is a key objective of the Capital Markets Union (CMU) to facilitate access to diversified sources of financing for smaller businesses in the EU, making it cheaper and simpler for them to access public markets and ultimately reducing the dependence on bank funding and allowing a broader investor base and easier access to additional equity capital and debt finance.
3. In this Final Report (FR) ESMA is undertaking a review of the current state of play of the SME GMs regime in the EU, as prescribed by Article 90(1)(b) of MiFID II and is proposing changes and additional initiatives to better achieve the CMU objectives.

### **MiFID II review report**

4. Article 90(1)(b) of MiFID II, mandates the EC, after consulting ESMA, to present a report providing an overview of the functioning of the SME GMs regime in the Union and in particular assess whether the threshold in Article 33(3)(a) of MiFID II remains appropriate.

#### **Article 90 (1)(b) of MiFID II:**

*Before 3 March 2020 the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on:*

(a) [...]

(b) The functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present thereon, and relevant trading volumes;

*In particular, the report shall assess whether the threshold in point (a) of Article 33(3) remains an appropriate minimum to pursue the objectives for SME growth markets as stated in this Directive;*

[...]

5. The SME GMs regime is specified notably under Article 33 of MiFID II which sets out the minimum requirements an MTF should comply with to be registered as an SME GM. Those requirements have been further specified under Articles 77 to 79 of Commission

Delegated Regulation (EU) 2017/565 (CDR (EU) 2017/565)<sup>5</sup>. Considering their strong interconnection, it appears appropriate to review in this report predominantly the Level 1 provisions but to also consider whether any changes to Level 2 would appear appropriate.

### **3. The SME GMs regime: legislative background and current state of play**

#### **3.1 Legislative background**

6. Article 33 of MiFID II introduced the new category of MTFs labelled SME GM. Before the creation of this category, market operators had created trading venues specialised on targeting SMEs, mostly falling under the MTF category but, despite such venues, difficulties relating to SMEs issuers' access to capital markets materialised both from the demand and the supply side<sup>6</sup>.
7. Article 33(3) of MiFID II establishes the conditions which an MTF has to satisfy when applying to its NCA to be registered as an SME GM. They include a 50% threshold on the minimum number of SME issuers traded on the SME GM, appropriate criteria for initial and ongoing admission to trading, sufficient information published and appropriate ongoing financial reporting of issuers, dissemination of information to the public and compliance with systems and controls under the Market Abuse Regulation (MAR)<sup>7</sup>.
8. Articles 77 to 79 of CDR (EU) 2017/565 further specify the criteria to be used by MTFs to (i) identify companies that qualify as SMEs for the purpose of the SME GM label and, (ii) register/deregister as an SME GM. In particular, Article 77 of CDR 2017/565 defines an SME issuer as an issuer whose shares have been admitted to trading for less than three years with a market capitalisation below EUR 200 million. Further, Article 77 specifies that, for issuers that have no equity instruments traded on any trading venue to qualify as SME issuers, the nominal value of debt issuances over the previous calendar year, on all trading venues across the Union, shall not exceed EUR 50 million.
9. Specific provisions creating tailored requirements and incentives for SME issuers trading on SME GMs have been included in several regulations. As described above, recent amendments to MAR provide alleviations for the publication of insider lists for issuers on

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<sup>5</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1–83).

<sup>6</sup> Recital 132: "It is desirable to facilitate access to capital for smaller and medium-sized enterprises (SMEs) and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium-sized issuers. Those markets which are usually operated under this Directive as MTFs are commonly known as SME growth markets, growth markets or junior markets. The creation within the MTF category of a new sub-category of SME growth market and the registration of those markets should raise their visibility and profile and aid the development of common regulatory standards in the Union for those markets. Attention should be focused on how future regulation should further foster and promote the use of that market so as to make it attractive for investors and provide a lessening of administrative burdens and further incentives for SMEs to access capital markets through SME growth markets."

<sup>7</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1–61).



SME GMs and aim at facilitating the provision of liquidity for such issuers through the creation of an EU framework for liquidity contracts<sup>8</sup>.

10. The Prospectus Regulation<sup>9</sup> also offers some alleviation in terms of requirements for SME issuers. That Regulation establishes a proportionate EU growth prospectus tailored for SMEs and a simplified prospectus for use in case of secondary issuance for issuers whose securities are admitted to trading on a Regulated Market (RM) or an SME GM for at least 18 months. The EU Growth prospectus aims to drive down the costs of preparing a prospectus by smaller issuers, while at the same time providing investors with all the information that is material to assessing the offer and taking an investment decision. The Prospectus Regulation has recently been amended so that this simplified prospectus can be used by issuers listed on an SME GM to 'graduate' to trade on a regulated market.
11. The CSDR<sup>10</sup> and related Level 2 Regulations provide for less stringent settlement discipline measures regarding SME GM transactions (i.e. lower cash penalty rates for settlement fails, and the flexibility not to apply the buy-in process to settlement fails until up to 15 days after the intended settlement date). These are meant to provide incentives for timely settlement, without affecting the smooth and orderly functioning of such trading venues<sup>11</sup>.
12. In October 2019, to further contribute reaching the CMU objectives, the EC established a High Level Forum (HLF) composed of industry executives, experts and scholars which were mandated to propose policy recommendation for future CMU actions. The HLF published its final report<sup>12</sup> in June 2020, advising, among others, actions to be taken to foster the growth of SMEs and SME GMs. The proposals included the creation of a European Single Access Point (ESAP) to make issuers data, including SMEs, easily accessible and comparable for investors, proposals for amendments in European Long-Term Investment Fund (ELTIF), MAR and MiFID II in order to benefit SMEs and make public listing more attractive.
13. In September 2020 the EC published a Communication on the new action plan regarding the Capital Markets Union for people and businesses. Among the sixteen actions several are aimed at improving the access to public markets for SMEs, to encourage growth through solid market-based funding and offer support to SMEs to meet the objectives of the green and digital transition.
14. Additionally, in recent months the EC has established a Technical Expert Stakeholder Group (TESG) on SMEs. This group brings together relevant stakeholders with technical expertise to monitor and assess the functioning of SME Growth Markets, as well as provide expertise and possible input on other relevant areas of SME access to public markets. The topics dealt with by the TESG overlap to an extent with the issues addressed

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<sup>8</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-156-3581\\_final\\_report\\_on\\_sme\\_gms\\_rts-its\\_under\\_mar\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-3581_final_report_on_sme_gms_rts-its_under_mar_0.pdf)

<sup>9</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC Text with EEA relevance.

<sup>10</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU).

<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN>

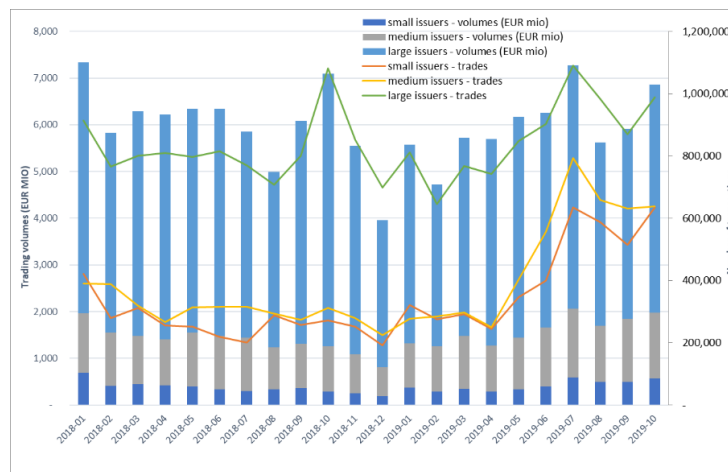
<sup>12</sup> [https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report\\_en](https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en)

in the context of this FR, but the TESG work has a wider scope, including other legislative frameworks than MiFID.

### 3.2 Overview of the current state of play of the SME GM regime

15. In the EU, 20 MTFs<sup>13</sup> have been granted the SME GM status so far. There are also around 15 MTFs which target financing of SMEs but decided not to apply for the SME GM status. The total trading volumes on MTFs offering SME shares have been stable during the period of January 2018 to October 2019 and amounted to EUR 2 bn as of late 2019.

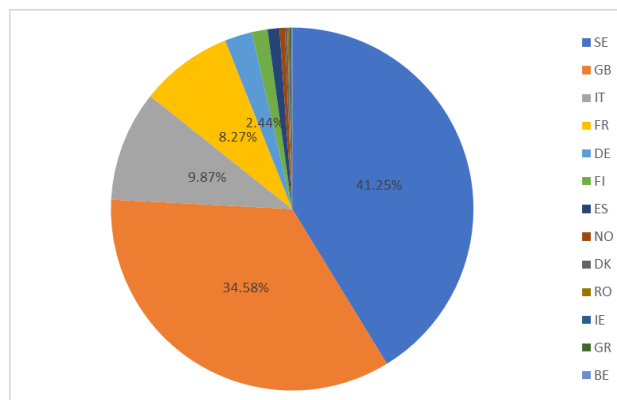
FIGURE 1 TOTAL VOLUMES AND NUMBER OF TRADES IN SHARES ON MTFs FINANCING SMEs



Source: FITRS, ESMA. Small issuers have been defined by market capitalisation not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes include SME GM and other MTFs targeting SME issuers.

16. Figure 2 provides details about the geographical breakdown of trading volumes in the EU in the period between July and October 2019. Sweden is the largest SME market, followed by the UK, Italy and France.

FIGURE 2 DISTRIBUTION OF SME TRADING VOLUMES BASED ON TV'S LOCATION (JUL-OCT 2019)

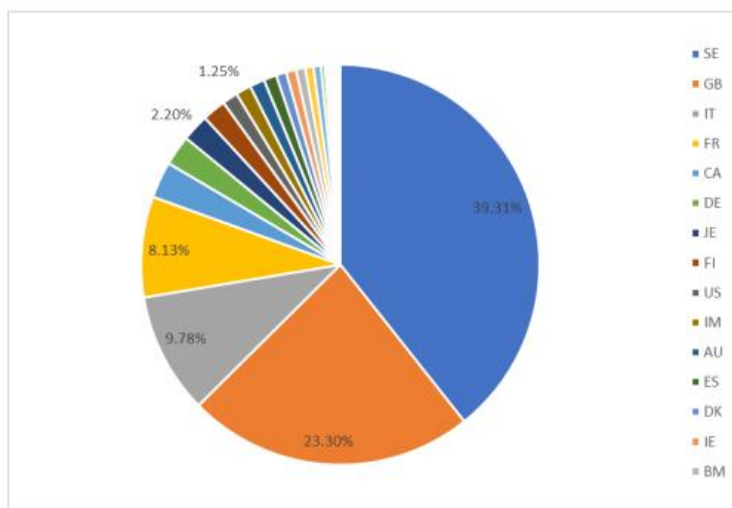


Source: FITRS, ESMA. Small issuers have been defined by market capitalisation not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes include SME GM and other MTFs targeting SME issuers.

<sup>13</sup> Due to technical issues two of those MTFs are currently not included in ESMA registers.

17. A similar geographical breakdown displaying trading volumes of issuers based in a specific Member State is presented in Figure 3. From further analysis it appears that most trading venues located in the EU report trading of SME issuers from the same country: for example 95% of SME activity in Sweden concerns Swedish issuers, 99% and 98% in case of Italy and France respectively.

**FIGURE 3 DISTRIBUTION OF SME TRADING VOLUMES BASED ON ISSUER'S LOCATION (JUL-OCT 2019)**



Source: FITRS, ESMA. Small issuers have been defined by market capitalisation not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes include SME GM and other MTFs targeting SME issuers.

### 3.2.1 Feedback to the consultation

18. Based on the findings of its empirical analysis in the CP, ESMA raised a question on the reasons for a rather limited activity on SME GMs regarding bonds, and how the visibility of SME GM could be further improved, in particular in order to attract issuers from Member States other than the country of the trading venue.
19. Respondents indicated a variety of reasons for this limited activity, including other forms of financing being more adapted to the needs of SME issuers, inflexible regulatory requirements, insufficient research coverage of those entities and the relatively high costs for issuances of SME bonds.
20. As potential regulatory improvements, a large number of respondents indicated that MAR requirements should be alleviated for SME bond issuers, in particular with regards to the insider list and the duty to notify transactions carried out by persons with managerial responsibilities.
21. Some respondents suggested alleviations regarding the publication documents for SME issuers, such as annual financial reports required under Article 33(3)(d) of MIFID II<sup>14</sup>, explaining that this would be in line with recital 112<sup>15</sup> of the CDR (EU) 2017/565. Others

<sup>14</sup> in case of bond issuers with a denomination of at least EUR 100,000

<sup>15</sup> "Given the diversity in operating models of existing MTFs with a focus on SMEs in the Union, and to ensure the success of the new category of SME growth market, it is appropriate to grant SME growth markets an appropriate degree of flexibility in evaluating the appropriateness of issuers for admission on their venue. In any case, an SME growth market should not have rules that impose greater burdens on issuers than those applicable to issuers on regulated markets."

suggested alleviating the requirement in Article 78(2)(e) of CDR (EU) 2017/565 which prescribes bond issuers to state in the admission document whether their working capital is sufficient.

22. Other proposals suggested that ESMA should publish data on SME bond issuances aggregated at EU level, to facilitate MTFs' checking if an SME bond issuer complies with the definition of Article 77(2) of CDR (EU) 2017/565.
23. A few responses suggested that creating a single point of information about upcoming public offers of bonds or alternatively a single access point intended as a direct channel for investor to buy bonds on primary markets could foster bond issuances and promote liquidity. Respondents also mentioned tax benefits as a measure that could create strong incentives for investors. Finally, some respondents suggested that the procedures of admission to trading and regulatory disclosures should be streamlined by trading venues, and the costs for SME issuers should be reduced.

### **3.2.2 ESMA's assessment and recommendation**

24. ESMA acknowledges that there are several determinants for the limited amount of bond issuances by SMEs. Nevertheless, many aspects raised by respondents are not in the remit of this report or more generally not in ESMA's remit.
25. Regarding potential alleviation of MAR provisions for SME issuers, ESMA notes that MAR establishes a minimum set of requirements to ensure the integrity of the markets and, in very specific cases, also envisages exceptions (e.g. accepted market practices, buy-back programmes or stabilisation). However, ESMA notes that the recent amendments to MAR introduced by the SME GM Regulation envisage specific MAR alleviations for SMEs and that the discussion on possible further alleviations to MAR requirements specifically targeting SMEs is currently ongoing at the EC level. Considering that such provisions go beyond the remit of this FR, ESMA decided not to tackle this topic in this context.
26. ESMA considered the requests from stakeholders for specific alleviations of the information to be disclosed at issuance, and specifically the abolition of the requirement regarding the annual financial reports or statements of working capital. ESMA believes that such proposal could lead to weakened investor protection and may have counterproductive effects on investment. Some alleviations could however be considered if the specific market segments would be accessible by professional investors only and will be considered hereafter in the report.
27. Regarding the proposal of ESMA publishing information on overall SME bond issuance at EU level, ESMA reminds stakeholders that in the Financial Instruments Reference Data System<sup>16</sup> there is information about "Total issued nominal amount" which is reported in case of bond instruments.
28. Finally, other proposals mentioned by respondents will be discussed in more detail in the other sections of this report.

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<sup>16</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds)

## 4. ESMA's review of the SME GM regime under MiFID II

29. Article 33(3) of MiFID II establishes a number of requirements for MTFs who wish to register as SME GMs relating to (i) the minimum proportion of issuers admitted to trading that qualify as SMEs, (ii) the criteria established for the initial and ongoing admission to trading, (iii) the provision of appropriate information and, (iv) the systems and controls to be set in place to detect and prevent market abuse.
30. Following ESMA's technical advice<sup>17</sup>, the Commission has specified those requirements in Article 78 of CDR (EU) 2017/565. Those Level 2 provisions try to strike a balance between the importance of leaving sufficient flexibility to MTFs registered as SME GMs and the necessity to ensure appropriate and harmonised investor protection. This approach is reflected in Recital 112 of CDR (EU) 2017/565: "Given the diversity in operating models of existing MTFs with a focus on SMEs in the Union, and to ensure the success of the new category of SME growth market, it is appropriate to grant SME growth markets an appropriate degree of flexibility in evaluating the appropriateness of issuers for admission on their venue. In any case, an SME growth market should not have rules that impose greater burdens on issuers than those applicable to issuers on regulated markets."
31. In the CP ESMA has analysed the current Level 1 and Level 2 provisions, without changing fundamentally the approach described above but rather to see whether adjustments should be introduced either in Level 1 or Level 2 to further incentivise the emergence of MTFs registered as SME GMs, to further increase investors' confidence in those markets and to, more generally, build a more harmonised framework and stronger identity. The sections below discuss the proposals to stakeholders and suggest a way forward based on their feedback.

### 4.1 Criteria for the percentage of issuers that should qualify as SMEs at the time of MTF registration as SME GM (Article 33(3)(a) of MiFID II)

#### 4.1.1 Legal background

32. Article 33(3)(a) of MiFID II specifies that for an MTF to apply to be registered as an SME GM, at least 50% of the issuers whose financial instruments are admitted to trading on the MTF should be SMEs at the time when the MTF is registered as an SME GM, and in any calendar year thereafter.
33. This provision has been further specified in Articles 77, 78 and 79 of CDR (EU) 2017/565:
  - a. Article 77 clarifies the definition of SMEs setting in particular a EUR 200 million market capitalisation threshold for issuers with shares trading on the MTF;
  - b. Article 78 specifies the methodology to determine whether the MTF complies with the 50% threshold, which should be assessed on the basis of the number of

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<sup>17</sup> Final Report ESMA/2014/1569, December 2014.

issuers only, disregarding other factors (e.g. the turnover of SME shares vs non-SME shares);

- c. Article 79 determines that the MTF is required to be deregistered as an SME GM if the proportion of SME issuers falls below 50% for three consecutive years.
34. Regarding MTFs that have sought registration as SME GMs, ESMA registers' entries show that two MTFs were registered as SME GM at the end of 2018, further fourteen were added in 2019 and one in 2020. It can also be noted that most of them have been granted the SME GM label in the second quarter of 2019 suggesting that the on-boarding of MTFs with an SME focus is still an ongoing process.
  35. Furthermore, ESMA has clarified in a Q&A<sup>18</sup> that "the operator of an MTF can apply for a segment of the MTF to be registered as an SME growth market when the requirements and criteria set out in Article 33 of MiFID II and Articles 77 and 78 of the Commission Delegated Regulation 2017/565 are met in respect of that segment".
  36. This clarification has proven useful for market participants based on feedback ESMA received and has incentivised some MTFs to seek for registration as SME GMs just for a market segment and not for the entire MTF. Nevertheless, in order to increase the legal certainty, ESMA considers it useful to include this clarification directly in the Level 1 text.

#### **4.1.2 Feedback to the consultation**

##### **4.1.2.1 The threshold for an MTF to register as an SME GM, Article 33(3)(a) of MiFID II**

37. In the CP ESMA expressed the view that the 50% threshold remains appropriate at the current stage, considering that the SME GM regime in the EU is not yet mature but rather still growing and settling-in. ESMA suggested that it could be counterproductive to increase the threshold at the current stage and welcomed views regarding a possible review of such threshold in the medium term with the aim of creating more targeted markets.
38. The vast majority of respondents agreed that the 50% thresholds remains appropriate for the time being and should not be revised. Some respondents proposed that amending it in the future could be left for each trading venue to decide, which would allow them to adapt to local market conditions. Some respondents suggested that the market capitalisation threshold of EUR 200 Mio for classification as an SME should be increased to EUR 500 Mio, allowing more mid-size firms to be classified as SMEs, and increasing liquidity on SME GMs. In the future, some respondents suggested that such threshold could be even increased to EUR 1 billion. Such point was also raised by a large number of respondents in the question regarding the alignment of the SME definition across legislations.
39. One respondent proposed that the possibility to have an SME GM segment should be also contemplated for regulated markets.

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<sup>18</sup> Q&A 8 of section 5 of ESMA Q&As on MiFID II and marker structure topics, ref. ESMA70-872942901-38, [https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38\\_qas\\_markets\\_structures\\_issues.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_qas_markets_structures_issues.pdf).



#### 4.1.2.2 Potential alignment of the SME GM definition across legislations

40. In the CP, ESMA included a question regarding the possible need for harmonisation of the definition of SME in different pieces of legislation applicable in the EU. In particular, the market capitalisation threshold defined under Article 77 of CDR (EU) 2017/565 (EUR 200 Million) is not aligned with the definition or the criteria used in other EU acts and regulations, such as the European Long-Term Investment Fund (ELTIF)<sup>19</sup>.
41. The large majority of respondents consider it appropriate that the definition of SME is aligned across different EU legislations. In particular, several respondents indicated the SME capitalisation threshold of EUR 500 Million, stemming from the ELTIF Regulation, could also be used in MIFID II.
42. Furthermore, two respondents suggested that the definition should allow for some flexibility among Member States, since local conditions differ substantially, and that any amendment should not lead to stricter rules in certain areas.
43. There was also a suggestion that third-country rules in similar areas should be taken into account, e.g. the US Jobs Act which defines an emerging growth company as a company with less than USD 1 billion in total gross revenues. Other responses suggested that the current threshold of total bonds issued should be increased to EUR 100 Million.

#### 4.1.3 ESMA's assessment and recommendations

44. ESMA has considered stakeholders proposals regarding an increase of the market capitalization threshold currently set at EUR 200 Million in Article 4(13) of MiFID II and a potential alignment with the ELTIF market capitalization threshold set at EUR 500 Million. Furthermore, a possible increase of the threshold up to EUR 1 Billion as suggested by some respondents in light of the HLF recommendations has been taken into consideration.
45. To evaluate such proposals, ESMA has undertaken an analysis of what would be the impact of such changes based on the data available. Table 1 below, provides an overview of how an increase in the market capitalization threshold up to EUR 500 Million and 1 Billion for the definition of an SME would impact the classification of EU issuers on a country-by-country basis. It should be noted that the data is limited to only those ISINs for which a valid LEI code was reported. As a result of this requirement around 2500 ISINs overall were excluded from the analysis.

**TABLE 1 NUMBER OF EEA SHARES AVAILABLE FOR TRADING PER MARKET CAPITALISATION, PER COUNTRY**

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<sup>19</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds OJ L 123, 19.5.2015, p. 98–121

Country	SME (0.2 bn EUR)	%	SME+	%	SME' (0.5 bn EUR)	%	Mid-large	SME'' (1 bn EUR)	%	Large	Very large	Total
AT	41	47%	11	13%	52	59%	6	58	66%	30	0	88
BE	145	65%	20	9%	165	74%	15	180	80%	42	2	224
BG	281	98%	6	2%	287	100%	0	287	100%	1	0	288
CY	110	92%	6	5%	116	97%	2	118	98%	2	0	120
CZ	31	76%	3	7%	34	83%	0	34	83%	7	0	41
DE	587	64%	81	9%	668	73%	62	730	80%	150	35	915
DK	134	67%	16	8%	150	75%	7	157	79%	38	4	199
EE	16	76%	3	14%	19	90%	2	21	100%	0	0	21
ES	209	63%	25	8%	234	71%	24	258	78%	62	10	330
FI	116	58%	28	14%	144	72%	17	161	81%	34	4	199
FR	607	66%	72	8%	679	74%	54	733	80%	152	34	919
GR	194	83%	14	6%	208	89%	13	221	94%	14	0	235
HR	103	84%	10	8%	113	93%	5	118	97%	4	0	122
HU	39	78%	4	8%	43	86%	3	46	92%	4	0	50
IE	35	39%	10	11%	45	50%	14	59	66%	22	9	90
IS	12	48%	9	36%	21	84%	1	22	88%	3	0	25
IT	306	66%	54	12%	360	78%	28	388	84%	69	6	463
LI	0	0%	0	0%	0	0%	1	1	50%	1	0	2
LT	26	84%	3	10%	29	94%	2	31	100%	0	0	31
LU	37	46%	14	17%	51	63%	5	56	69%	24	1	81
LV	27	96%	1	4%	28	100%	0	28	100%	0	0	28
MT	26	70%	8	22%	34	92%	3	37	100%	0	0	37
NL	69	41%	14	8%	83	49%	17	100	60%	52	16	168
NO	106	52%	38	19%	144	71%	20	164	81%	35	3	202
PL*	700	91%	NA	NA	700	91%	NA	700	91%	NA	NA	767
PT	47	73%	4	6%	51	80%	2	53	83%	11	0	64
RO	354	95%	8	2%	362	98%	4	366	99%	5	0	371
SE	1,112	81%	92	7%	1,204	87%	66	1,270	92%	100	9	1,379
SI	82	91%	4	4%	86	96%	2	88	98%	2	0	90
SK	72	91%	4	5%	76	96%	1	77	97%	2	0	79
<b>Total</b>	<b>5,624</b>	<b>74%</b>	<b>562</b>	<b>7%</b>	<b>6,186</b>	<b>81%</b>	<b>376</b>	<b>6,562</b>	<b>86%</b>	<b>866</b>	<b>133</b>	<b>7,628</b>

Source: ESMA FITRS and FIRDS systems; analysis provides number of EEA shares available for trading, by market capitalisation: SME: up to 200 mio EUR, SME+: 200-500 mio EUR, Mid-large: 0.5-1 bn EUR, Large: 1-20 bn EUR, Very large: >20 bn EUR; \* data provided in the consultation paper; NA - not available

46. ESMA, at this stage, does not recommend an increase of the current EUR 200 Million threshold to define an SME.
47. Based on the current threshold of EUR 200 Million, already 74% of the companies traded on EU trading venues are classified as SMEs. ESMA therefore considers that a large proportion of issuers is eligible to trade on SME GMs so that there is ample room for SME GMs to grow and to better facilitate access of SMEs to capital markets.
48. An increase of the threshold to EUR 500 Million or 1 Billion as considered in responses to the consultation paper, would lead to an even larger proportion of issuers across the EU and specifically in some Member States to be considered as SMEs (e.g. with a threshold of EUR 500 Million, 81% of the issuers at EU level would qualify as SMEs and more than 90% in various Member States).
49. Furthermore, an increase of the threshold could also incentivise more mature issuers, currently trading on regulated markets, to seek admission on SME GMs to benefit from a lighter regulatory regime.
50. Such a potential move away from regulated markets which have the most stringent quality standards and the highest level of investor protection is not considered to be desirable by ESMA.



51. The unchanged definition of SMEs would also result in an unchanged 50% threshold for equity issuers on SME GMs.

## **4.2 Criteria for initial and ongoing admission to trading of financial instruments of issuers on the market (Article 33(3)(b) of MiFID II)**

### **4.2.1 Legal framework**

52. Article 33(3)(b) of MiFID II requires SME GMs to have in place “appropriate criteria [...] for initial and ongoing admission to trading of financial instruments of issuers on the markets”. This provision has been further specified under Article 78 of CDR (EU) 2017/565. Following ESMA’s advice, the Commission has adopted a principle-based standard that was meant to better fit the broad spectrum of approaches that co-existed, prior to the entry into application of MiFID II, in relation to the setting and application of issuer admission amongst markets with a focus on SMEs.
53. Article 78(2)(a) of CRD (EU) 2017/565 requires SME GMs to have “an operating model which is appropriate for the performance of its functions and ensures the maintenance of fair and orderly trading in the financial instruments admitted to trading on its venue”. This requirement leaves enough leeway to SME GMs to preserve the existing diversity of models in respect to their admission to trading requirements.
54. Similarly, Article 78(2)(g) of CDR (EU) 2017/565 remains open regarding the exact financial reporting standard to be used by SME issuers.

### **4.2.2 Feedback to the Consultation**

55. In the CP, ESMA acknowledged that the flexibility offered to SME GMs has proven useful. Hence, ESMA did not consider it necessary to change the approach regarding the criteria to be used by MTFs registered as SME GMs for initial and ongoing admission to trading of financial instruments of issuers on the market. Nevertheless, ESMA asked for market participants’ views to understand whether it could be appropriate to set out more stringent criteria in this respect and whether it would be beneficial to propose a harmonised approach amongst SME GMs in the EU vis-à-vis their admission to trading conditions.
56. Furthermore, ESMA sought views on the possible harmonisation of accounting standards used by SME GM issuers.
57. Respondents to the CP expressed the view that the current regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments is appropriate and should not be changed. Respondents further commented that each trading venue should have the ability to set requirements as those markets are characterised by a local dimension where trading venues are best placed to design admission regime requirements and ensure local market liquidity. Some respondents noted that a possible harmonisation of such requirements would possibly increase costs.
58. A small number of respondents noted that if any change is needed it should be on the free-float requirement. These respondents are of the view that such requirement should be eliminated as it is too complex for small issuers to fulfil.

59. Finally, one respondent stated that it could be of help for SMEs to undertake regulatory/legal work on documentation templates which could be adopted in order to help SMEs more readily access these markets and reduce compliance costs.
60. With regards to the proposal to harmonise accounting standards, there was unanimity amongst respondents for not supporting this proposal. Although some respondents agreed that this harmonisation would be useful to increase cross border investments, they were also of the view that the negative impacts outweigh the potential benefits.
61. Respondents also highlighted that it should be a decision from the issuer to opt in to the use of International Financial Reporting Standards (IFRS).

### **4.2.3 ESMA's recommendation**

62. Taking into consideration the feedback received, ESMA is not proposing any legislative amendments in respect of the initial and ongoing admission to trading of financial instruments or on the possible harmonisation of accounting standards used by issuers listed on SME GMs.
63. ESMA understands that at this stage of development of the SME GM regime, a certain level of flexibility should be maintained and that the benefits in proposing a harmonisation in the requirements would not outweigh the additional costs. Especially in relation to the possible harmonisation of accounting standards, which would entail the use of IFRS from SME GM issuers, ESMA understands that costs for market participants in order to comply with such requirement could be too high and possibly become prohibitive for smaller SMEs. Given the current circumstances ESMA believes that it would not be beneficial at the current stage to impose such harmonisation as it could have the effect of encouraging SMEs to look for sources of funding in alternative to public markets.
64. With regards to the minimum free-float requirement, ESMA acknowledges that it can prove difficult for small issuers to build a large enough investor base to fulfil a specific free-float requirement. However, it should be noted that the requirement in Article 78(2)(j) of CDR 2017/565 demands a minimum free-float to be set by the MTF operator, without specifying a specific threshold. ESMA therefore believes that sufficient leeway is given to trading venues to set any free-float they deem appropriate and well suited for their market and does not see a case to abolish this requirement.

## **4.3 Criteria for the disclosure of appropriate information to the public (Article 33(3)(c), (d) and (f) of MiFID II)**

### **4.3.1 Legal framework**

65. The provisions under Article 33(3)(c), (d) and (f) of MiFID II establish a number of requirements for an SME GM with regards to the disclosure of information.
66. In particular, Article 33(3)(c) of MiFID II establishes that an SME GM has to ensure that, on admission to trading, "there is sufficient information published to enable investors to make an informed judgement on whether or not to invest in the financial instrument" where the requirements to publish a prospectus under the Prospectus Regulation are not

applicable. Article 78(2)(d) of CDR (EU) 2017/565 further specifies that the admission document should include sufficient information to be provided to enable investors to make an informed assessment of the issuer's financial position and the rights attached to its securities.

67. Under Article 33(3)(d) of MiFID II, SME GMs are required to ensure there is "appropriate ongoing periodic financial reporting" by issuers. The requirements concerning appropriate ongoing reporting on regulated markets are established in the Transparency Directive<sup>20</sup>.
68. Finally, Article 33(f) of MiFID II requires that SME GMs store and disseminate to the public regulatory information concerning the issuers trading on the MTF. This provision is further specified in Article 78(2)(h) and (i) of CDR (EU) 2017/565 which requires that information to be made available on the website of the trading venue or through a direct link to the page of the issuer's website where that information is available. Furthermore, all regulatory information should be available for a period of at least five years.

### **4.3.2 Feedback to the consultation**

#### **4.3.2.1 Homogeneous admission requirements**

69. ESMA noted that the requirement in Article 33(3)(c) of MiFID II and Article 78(2)(d) of CDR (EU) 2017/565, aims to foster investor confidence. ESMA asked in the CP whether creating homogeneous admission requirements for issuers admitted to trading on SME GMs, eventually tailoring them to the size of the issuer, could lower the barriers for cross border listings and cross border investments.
70. All respondents except one stated that they were not in favour of such harmonisation of admission requirements. In particular, respondents stressed that each jurisdiction should keep some flexibility, setting standards based on the sophistication of local markets and risk appetite of their investors. Some respondents argued that standardisation could potentially increase costs for issuers.
71. A number of respondents despite not being in favour of the creation of a harmonised regime, would support ESMA establishing maximum admission requirements (to avoid overregulation limiting the access to funding by SMEs), which could be tailored by market operators depending on the specifics of each market.
72. Regarding micro SMEs, most respondents expressed the view that it would over complicate the regime to create tailored requirements and therefore such a proposal should not be pursued at this stage.

#### **4.3.2.2 Backward looking disclosure of information**

73. As per Article 78(2)(h) of CDR (EU) 2017/565, financial reports regarding the issuers admitted to trading on an SME GM, among other information, should be made available by the SME GM operator. Article 78(2)(i) requires that such information is available for at

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<sup>20</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

least 5 years. Considering such requirement, ESMA proposed in the CP an amendment requiring an MTF registering as SME GM to make financial reports concerning the issuers admitted to trading on the SME GM publicly available up to one year before such issuers are admitted to trading.

74. Most respondents did not support ESMA's proposal, explaining that such information, where available, can in most of the cases be found in several documents, such as listing requirements, the prospectus or the registration document requested by most of the SME GM, hence respondents explained that in their view requiring such information would create double reporting.
75. Furthermore, respondents argued that such provision could discourage companies to resort to SME GMs, and rather opt for private equity. In addition, they pointed out that, from a practical perspective, a company may not be planning an IPO one year in advance and such information might be missing.
76. The few respondents that supported the proposal, stated that although this could be beneficial, micro-SMEs should be exempted as they might not have historical financial reports.
77. Three of the respondents argued that it would be beneficial to have a simplified process in place in cases where the entity applying for authorisation to register an SME GM is already operating a Regulated Market and/or an MTF. In those cases, in the respondents' view, a notification process to the competent authority rather than a formal authorisation in order to register as an SME GM should be sufficient.

#### 4.3.2.3 Standardization of periodic financial information

78. ESMA considered to standardize the format of the periodic financial information which SME GM issuers are due to disclose under Article 33(3)(d) of MiFID II.
79. All respondents were against this measure. The majority of respondents argued that such standardisation would likely represent a burden for SMEs and would not increase benefits. In the respondent's view SME GMs are likely to remain a local reality: investment in SME securities is related to local information and direct knowledge of the company. Furthermore, some respondents argued that a harmonization process which is not tailored to local markets conditions would not be beneficial.
80. A few respondents suggested that it could be beneficial to select some relevant key performance indicators and collect and publish these numbers in a standardised format in order not to harm local markets that already function well.
81. Some respondents further suggested that the creation of a single access point would facilitate access and availability of data about SME companies. It would also serve as a basis for investors' decisions and SMEs would benefit from pooling the information they disclose at a one-stop-shop. Furthermore, such access point could also serve as a starting point for the establishment of a European database for SME research. The respondents suggested that a federal model would be best whereby ESMA maintains the central database, but the information is still filed locally and flows through to the ESMA database.

### 4.3.3 ESMA assessment and recommendation

#### 4.3.3.1 Homogeneous admission requirements

82. ESMA acknowledges that the majority of respondents does not support the creation of a harmonised regime in terms of admission requirements, as this could potentially increase costs for issuers. Nevertheless, ESMA believes that in the medium-term standardising requirements across the EU could incentivise the growth of SME GMs and foster cross border investment.
83. Accordingly, ESMA does not recommend an immediate Level 1 amendment, but nevertheless encourages the EC to take into account a potential harmonisation of requirements for SME issuers in the context of the discussion on the establishment of the ESAP as recommended by the High Level Forum. ESMA believes that it would be beneficial for SMEs to use the ESAP to disseminate information in a standardised format and in order to provide investors with information which is easily accessible across the EU.

#### 4.3.3.2 Backward looking disclosure of information

84. ESMA acknowledges that the majority of respondents did not support the proposal to make available the information requested in Article 78(2)(h) of CDR (EU) 2017/565 for issuers admitted to trading on an SME GM up to one year before such admission to trading takes place. Respondents explained that such information might be gathered from other sources and such requirement could create double reporting.
85. Nevertheless, ESMA believes that an amendment of Article 78(2)(h) of CDR (EU) 2017/565 requiring to make financial reports in the year prior to admission to trading public where available, could help investors to retrieve helpful information. ESMA acknowledges that the information could be retrieved from other documents, but nevertheless where standalone financial reports are available, ESMA does not see harm in making them public. To the contrary, the publication of such information could foster investor confidence and promote liquidity in such securities, hence it could be in the self-interest of the issuer to provide it where available.

#### 4.3.3.3 Standardization of periodic financial information

86. In line with the assessment ESMA has carried out with regards to the proposal to have homogeneous admission requirements (Article 78(2)(d) of CDR (EU) 2017/565), ESMA understands that the standardisation of periodic financial information could be burdensome for SMEs across the EU.
87. Nevertheless, ESMA believes that in the long term this could be beneficial and suggests such proposal could be considered in the context of the ongoing discussion on the ESAP in the same line with the considerations made regarding the creation of homogeneous admission requirements. In this respect ESMA believes that, if such initiative is undertaken, it could be beneficial to set a list of key performance indicators that SMEs could disclose to the public. Such measures could help investors to rely on homogeneous and easily accessible statistics.

#### **4.4 MAR provisions and system and controls to detect market abuse (Article 33(3)(e), (g) of MiFID II)**

88. Article 33(3)(e) of MiFID II requires that issuers on an SME GM, persons discharging managerial responsibilities and persons closely associated with them as defined in MAR should comply with the relevant requirements applicable to them under MAR. Article 33(g) of MiFID II requires an MTF seeking registration as an SME GM to have in place effective systems and controls aiming to prevent and detect market abuse as required under MAR.
89. ESMA believes that such requirements should not be subject to review in this FR as the European Commission has undertaken a review of MAR requirements for SME GM in the context of the amendments to MAR under the SME GMs Regulation.

#### **4.5 Other measures to promote the growth of the SME GM regime in the EU**

90. ESMA did not recommend a fundamental review of the existing provisions on SME GMs in the CP. Rather the CP sought views from market participants on whether further regulatory amendments could be introduced to facilitate the access to SME GMs, for both issuers and investors, and to further promote MTFs registering as SME GMs. The sections below present the feedback received and ESMA's proposed way forward on the specific topics on which ESMA consulted.

##### **4.5.1 Feedback to the consultation**

###### **4.5.1.1 Creating a two-tier regime for Small and Medium size SMEs**

91. ESMA sought views about the possible creation of a two-tier regime for SME GMs with further regulatory alleviations for micro SMEs. ESMA further asked stakeholders where the threshold to define a micro SME should be set if such proposal was to be considered.
92. The majority of respondents did not support the introduction of a two-tier regime, stating that it would be best to envisage a less restrictive regime for all SME issuers trying to ensure flexibility of requirements. In the view of several respondents further fragmentation would not necessarily prove beneficial as a "micro SME segment" could be perceived as overly risky with lower liquidity and higher risks of price manipulation. Those elements could have a negative effect on investors' trust in SME markets.
93. Those respondents who supported the proposal stated that currently SME GMs do not adequately cater for the needs of smaller companies which, as a result, look for alternative sources of funding. For those smaller companies additional alleviations of some MAR requirements was proposed, for example relating to the timing of disclosure of insider information (i.e. not requiring disclosure on weekends, but rather in advance of the opening of the stock exchange).



94. Two respondents, one supporting the proposal and one not, argued that it would be beneficial to create an SME segment dedicated to professional investors only. In such segment some MAR requirements could be lifted (e.g. examination of the merits of an exemption to establish and maintain an insider list, exemption for issuers from the requirement to notify transactions carried out by persons discharging managerial responsibilities (PDMRs) transactions or increase of the threshold for disclosure of PDMR transactions to at least EUR 150,000).

#### 4.5.1.2 Mandatory liquidity provision schemes

95. In the CP, ESMA proposed the creation of an obligation for SME GMs to ensure effective provision of liquidity through the mandatory presence of market makers in their markets in the spirit of Article 48(2) and (3) of MiFID II.
96. Concurrently, ESMA solicited views on whether the mandatory liquidity provision schemes could stimulate interest of SMEs to go public or, in contrast, reduce it due to a possible increase in costs.
97. Respondents unanimously did not support the proposal of introducing mandatory liquidity provision schemes. Despite acknowledging the benefits of liquidity provision schemes respondents stressed that it should be left to the market operator to decide whether to put in place liquidity provisions schemes depending on local market specificities.
98. Furthermore, respondents noticed that although liquidity provision schemes could alleviate SMEs costs providing an incentive to go public, there could be the risk that part of the costs associated to liquidity provision would finally be borne by the SME issuers.

#### 4.5.1.3 Issuer non-objection

99. In the CP, ESMA enquired if the issuer non-objection requirement in the first part of Article 33(7) of MiFID II should be extended to any trading venue. Furthermore, ESMA also surveyed whether any time frame should be applicable for the non-objection obligation and, if so, which one.
100. The vast majority of respondents agreed with ESMA's proposal to extend the issuer non-objection requirement regarding the admission to trading of an instrument already admitted on SME GM in Article 33(7) of MiFID II to any other trading venue, and not only SME GMs. Respondents argued that such amendment would ensure that the issuer of financial instruments admitted to trading on SME GMs maintains control of new admissions to trading to avoid fragmentation of the liquidity – which may already be very low for SME issuers. Regarding the time-frame, one respondent suggested that 10 business days for non-objection would be enough.
101. Those respondents who did not support the proposal considered that such a provision is not necessary as in cases where there is insufficient liquidity other venues would not trade SME shares or when trading is liquid enough to be split among venues, there would be easy ways to circumvent this regulation.

#### 4.5.1.4 Obligations in case of admission to trading in multiple jurisdictions

102. Article 33(7) of MiFID II requires that where an issuer is admitted to trading on one SME GM and is further admitted on another SME GM “[...] the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market”. In the CP, ESMA sought views on what might be the implications of cases where the latter trading venue is in a different jurisdiction of the SME GM where there has been the initial admission to trading.
103. The large majority of respondents stated that SMEs should only be required to comply with the requirements in their own jurisdiction. In fact, respondents considered it to be an additional burden for the SME issuers to produce more documentation and information in multiple languages.
104. One respondent stated that in circumstances where the on-going obligations of the first market of admission are below those of the second market of admission, there could be merits in the issuer having to comply with the additional obligations prescribed in the second market of admission.

#### 4.5.1.5 Research

105. In the CP, ESMA asked for suggestions on possible ways to increase research coverage for SME issuers as some market participants believe that availability of research in SMEs is an issue. Insufficient research coverage might be especially detrimental for SMEs due to the lack of publicly available information on such companies which in turn affects the possibility for investors to form their investment decisions.
106. All but two respondents expressed the view that the unbundling rules in MiFID II represent a major hurdle for the production of research on SME issuers. According to the respondents, the unbundling rules have harmed the already constrained SME research disproportionately. The respondents considered that SME issuers should be exempted from unbundling rules. The suggested threshold for a company to be exempted from unbundling rules was heterogenous among respondents. Several respondents mentioned a market capitalization of 1bn as an appropriate requirement.
107. A handful of respondents stated that a pan-European programme at EU level should fund or organize SME equity research. About as many respondents also suggest that an information database, established in conjuncture with the European single access point could benefit SME research: the creation of such a database could provide an opportunity for independent analysts to share the research material produced and could possibly be combined with licensing of independent analysts.

### 4.5.2 ESMA assessment and recommendation

#### 4.5.2.1 Creating a two-tier regime for Small and Medium SME

108. ESMA, taking into account the feedback received to the consultation, does not believe that it is effective to propose the creation of a two-tier regime for SMEs. ESMA



understands that the creation of a targeted regime / targeted segments for micro SMEs could lead to a lack of investment in those segments, illiquidity and consequently lower the incentive for those companies to go public.

109. With respect to the creation of segments targeting micro SMEs which would be accessible only to professional investors and entailing some possible legislative alleviations, ESMA could see merits in investigating further if such initiative could foster micro SMEs interest in public markets. In fact, such segments could provide funding to micro SMEs until companies reach a level of maturity suitable for an SME GM. Nevertheless, ESMA believes such initiative should be cautiously weighted taking into account shortcomings that could arise from disapplication of selected provisions regarding market abuse or investor protection.

#### 4.5.2.2 Mandatory liquidity provision schemes

110. ESMA believes that liquidity provision schemes introduced by venues can support liquidity for SME issuers, but ESMA acknowledges respondents' views that the cost of such schemes might be incurred by issuers themselves. Based on the views provided by respondents, ESMA is not suggesting the introduction of mandatory liquidity provision schemes.
111. ESMA nevertheless believes that incentivising more liquidity to be provided on those SMG GMs and, more generally, for SME shares, remains a key challenge and objective. ESMA notes the efforts made through the recent amendments to MAR regulation introduced in December 2019 and the RTS on liquidity contracts delivered in October 2020 to the EC, which gives the possibility to SME issuers to enter into liquidity contracts in absence of an accepted market practice at the national level when further liquidity provision is needed.

#### 4.5.2.3 Issuer non-objection

112. ESMA, as proposed in the CP and based on the feedback received, believes that it would be beneficial to extend the issuer non-objection requirement in the first part of Article 33(7) of MiFID II concerning the admission to trading of an instrument already admitted on SME GMs to any trading venue. Such extension, which would allow issuers who are already admitted to trading on an SME GM, to object to being traded on another trading venue, would be beneficial in reducing the risks of fragmentation of liquidity and provide the issuer with some control over the risk of split liquidity.
113. ESMA takes note of the arguments made by some respondents that in case of low liquidity other venues would not be interested in admitting SMEs shares to trading. Nevertheless, ESMA believes that the issuer non-objection rule would not pose further concerns in such scenario, while limiting fragmentation of liquidity in other cases. Overall, in ESMA's view a change of such provision would be desirable and proposes a Level 1 amendment, specifying that if an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on any other Trading Venue, only where the issuer has been informed and has not objected, and complies with any further regulatory requirement compulsory on the second trading trading venue.

#### 4.5.2.4 Obligations in case of admission to trading in multiple jurisdictions

114. ESMA takes into account the input received in the consultation and the consideration that producing additional documentations when admitted to trading in further jurisdictions could be burdensome for SME issuers.
115. That being said, ESMA believes that it is necessary to ensure European investors are provided with sufficient information to allow an informed judgment about whether or not to invest in the financial instruments as per Article 33(3)(c) of MiFID II. Hence, despite concerns from stakeholders, ESMA believes that there is merit in proposing that relevant documents are made available in the language of the second jurisdiction or in English, limiting this obligation to cases where an issuer seeks actively listing in another jurisdiction than the one of the SME GM where he was initially admitted to trading. ESMA would recommend this to be specified as a Level 1 amendment in Article 33(7) of MiFID II.

#### 4.5.2.5 Research

116. Respondents identify a wide variety of proposals to address the lack of availability of investment research on SMEs. These include, amongst others: exempting investment research on SMEs, defined as companies with a market capitalisation threshold of less than EUR 1bn, from the MiFID II unbundling requirements; facilitating the provision of issuer-sponsored research, for instance by clarifying that issuer-sponsored research qualify as investment research rather than marketing communication, provided that it complies with relevant requirements such as those on addressing conflicts of interests; and facilitating access to investment research on SMEs by creating an EU SME research database.
117. In this context ESMA is aware that the Recovery Package<sup>21</sup>, among other recovery measures linked to the COVID-19 pandemic, has introduced a 'narrowly defined exception' for investment research on SMEs from the MiFID II unbundling regime. SMEs would be defined as companies that do not exceed a market capitalisation threshold of EUR 1 billion. This would allow investment firms, under certain conditions, to make joint payments for executions services and research on SMEs.
118. Considering the ongoing discussion in the MiFID II context on such matter, ESMA has decided not to tackle this topic in the context of this FR. Furthermore, regarding the proposal for the creation of an EU SME research database, ESMA reiterates that this option should be evaluated in the context of the project for the creation of the ESAP.
119. ESMA sees merit in assessing the possibility of developing a pan-European Program or programs at the level of trading venues that could participate to the funding of research. This assessment should consider similar systems already adopted by some market operators and, in this respect, understand if such systems have provided a positive outcome for issuers. If so, ESMA would suggest evaluating if SME GMs could benefit from establishing similar programs, and eventually proceed to a Level 1 amendment.

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<sup>21</sup> The Recovery Package has been published on the 26 of February 2021 in the OJ.  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2021:068:TOC>



European Securities and  
Markets Authority

## 4.6 Summary of the ESMA's proposals and recommendation

120. This section offers a high-level summary of the proposals which have been discussed in this FR, and which ESMA thinks should be brought forward and considered as possible legislative changes. A review of such proposals follows.

- (i) Include in Level 1 the clarification which ESMA has provided through a Q&A<sup>22</sup> that “the operator of an MTF can apply for a segment of the MTF to be registered as an SME growth market when the requirements and criteria set out in Article 33 of MiFID II and Articles 77 and 78 of the Commission Delegated Regulation 2017/565 are met in respect of that segment”.
- (ii) Homogeneous admission requirements (Article 33(3)(c) of MiFID II and Article 78(2)(d) of CDR (EU) 2017/565): ESMA does not recommend an immediate Level 1 amendment, but nevertheless encourages the EC to take into account a potential harmonisation of requirements for SME issuers in the context of the discussion on the establishment of the ESAP as recommended by the High Level Forum. ESMA believes that it would be beneficial for SMEs to use the ESAP to disseminate information in a standardised format and in order to provide investors with information which is easily accessible across the EU.
- (iii) Backward looking disclosure of information (Article 33(3)(f) of MiFID II and Article 78(2)(h) of CDR (EU) 2017/565): ESMA believes that an amendment of Article 78(2)(h) of CDR (EU) 2017/565 requiring to make financial reports in the year prior to admission to trading public where available, could help investors to retrieve helpful information. ESMA acknowledges that the information could be retrieved from other documents, but nevertheless where standalone financial reports are available, ESMA does not see harm in making them public. To the contrary, the publication of such information could foster investors' confidence and promote liquidity in such securities, hence it could be in the self-interest of the issuer to provide it where available.
- (iv) Standardization of periodic financial information (Article 78(2)(d) of CDR (EU) 2017/565): ESMA understands that the standardisation of periodic financial information could be burdensome for SMEs across the EU. Nevertheless, ESMA believes that in the long term this could be beneficial and would recommend considering a harmonization of financial information disseminated through the ESAP in the same line with the considerations made regarding the creation of homogeneous admission requirements.
- (v) Issuer non objection (Article 33(7) of MiFID II): ESMA believes that it would be beneficial to extend the issuer non-objection requirement in the first part of Article 33(7) of MiFID II concerning the admission to trading of an instrument already admitted on SME GMs to any trading venue. Such extension would be beneficial in reducing the risks of fragmentation of liquidity.

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<sup>22</sup> Q&A 8 of section 5 of ESMA Q&As on MiFID II and marker structure topics, ref. ESMA70-872942901-38, [https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38\\_qas\\_markets\\_structures\\_issues.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_qas_markets_structures_issues.pdf).

- (vi) Obligations in case of admission to trading in multiple jurisdictions (Article 33(7) of MiFID II): ESMA believes that it is necessary to ensure European investors are provided with sufficient information to allow an informed judgment about whether or not to invest in the financial instruments as per Article 33(3)(c) of MiFID II. Hence, ESMA suggests that when an issuer seeks listing actively in other jurisdictions than the one of the initial SME GM, there is merit in proposing that relevant documents are made available in the language of the second jurisdiction or in English. ESMA would recommend this to be specified as a Level 1 amendment in Article 33(7) of MiFID II.
- (vii) In respect of the suggestion received from some respondents regarding the creation of segments targeting micro SMEs which would be accessible only to professional investors and entailing some possible legislative alleviations, ESMA could see merit in investigating further if such initiative could foster micro SMEs interest in public markets. Nevertheless, ESMA believes such initiative should be cautiously weighted taking into account shortcomings that could arise from disapplication of selected provisions regarding market abuse or investor protection.

## 5. Annexes

### Annex I - Feedback statement to the consultation paper (Questions 1 to 14 of the CP)

**Q1: Do you have any views on why the SME activity in bonds is limited? If so, do you see any potential improvements in the regime which could create an incentive to develop those markets?**

ESMA received 17 responses to this question.

The respondents indicated the following reasons for limited activity in SMEs bonds markets:

- The bond issuances are relatively expensive for SMEs, and there are transparency requirements attached to it, which discourage smaller firms from participating in bond markets.
- The other sources of financing are more adapted for SMEs. The main source of financing are bank loans and credit lines, which are easier, faster and cheaper for SMEs to access. Also, equity is preferred to debt, as SMEs are usually fast-growing companies, and the potential higher returns of equity are more appealing for investors.
- The bond market is dominated by long-term institutional investors, for whom SME bond issuances are not particularly attractive, as they are characterised by limited issuance amounts, relatively high risk, limited liquidity and limited information about credit ratings.
- There is a limited number of banks which arrange transactions for smaller bond issuances.
- The regulatory framework is not sufficiently flexible.

The following proposals were put forward by the respondents, to incentivise SME bond markets' development:

- The MAR requirements are too strict and burdensome and should be relaxed for SME issuers, in particular for the markets which are only accessed by professional investors. The insider list should not be required from SME investors, and there should be a materiality threshold for the notifications of transactions carried out by persons with managerial responsibilities.
- Many respondents indicated that the verification of whether a bond issuer is an SME is currently burdensome, due to lack of available information about the cumulative issuance amount across the EU. It was suggested that ESMA should make such verification and inform the markets about this classification.
- The transparency requirements for SMEs should be relaxed. In particular, some publications could be limited to qualified investors, the publication of admission documents could be waived for issuances of certain sizes, or certain bond issuers could be exempted from the publication of financial statements. Finally, the transparency requirements should be better adapted for bonds instruments as

opposed to equities and focus on issuer creditworthiness. Some respondents suggested that SME bond issuers should not be required to make a statement about their working capital in admission document, required by the Article 78(2)(e) of CDR 2017/565.

- Few responses suggested a creation of a single point of information about available bond issuances and trading interests, which would facilitate liquidity.
- Few respondents suggested that the Article 90(2)(b) of CDR 2017/565 should not refer to OTFs as a venue with a SME label, so that it is reserved for MTFs only.

There should be more arranging banks for SME issuers, and tax incentives for SME issuers.

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

ESMA received 19 responses to this question.

The following proposals were made which could facilitate development of SME GM, in particular by attracting issuers from other member states

With regards to alleviating certain regulatory requirements:

- in general, there should be less regulatory obligations for SME GM as opposed to standard MTFs, which will reduce compliance costs and increase their attractiveness; in particular, MAR requirements for SMEs are perceived as overly burdensome and not proportionate, including inside information, certain transparency requirements and too high sanctions;
- the requirements regarding bond issuers should be more tailored to this type of instruments, currently they are drafted on the basis of equity instruments which are not adequate;
- simplified prospectus allowed for issuers being listed on SME GM for at least 18 months, should be counted also before the SME GM label was given to the venue; and the passporting process of prospectus compliance among member states could be simplified;
- the requirements under Article 33(3) of MIFID II for MTFs should be further clarified;
- the discrepancies among national legislations should be eliminated;
- there should be more incentives for institutional and retail investors to buy SME shares, including fiscal ones; and the EU restrictions regarding state aid support for SMEs could be alleviated

With regards to the SME GM operators:

- the procedures for admission to trading and for regulatory disclosures should be streamlined
- venues should ensure a large investor base to ensure sufficient liquidity



- the issuance costs should be reduced for SME issuers

Other proposals:

- there is a need for more research coverage of SMEs;
- more EU-wide communication regarding SME GMs, focusing on common requirements, regulatory alleviations, statistics etc, including by ESMA;
- creating single information point about SMEs would be helpful;
- there should be more support from the national banks for SMEs, and more funds investing in SMEs should be created, at both local and EU level
- further improvements in cross-border post-trade and settlement processes would help develop cross-border transactions; and facilitating venues to operate across-borders e.g. via branches;

**Q3: In your view does the 50% threshold set in Article 33(3)(a) of MIFID II remain appropriate for the time being as a criterion for an MTF to qualify as an SME GM? Do you think that a medium-term increase of the threshold and the creation of a more specialised SME GMs regime would be appropriate?**

ESMA received 21 responses to this question, of which 19 were supporting ESMA's proposal and only 2 were against.

The vast majority of respondents believe that the 50% thresholds remains appropriate for the time being. Some respondents proposed that amending the 50 % threshold in the future could be left to decide for each trading venue, since this approach would allow to adapt to local market conditions.

Many respondents suggested instead that the market capitalisation threshold of EUR 200 mio for classification as an SME should be increased to EUR 500 mio, allowing more mid-size firms to be classified as SMEs, and increasing liquidity on SME GMs. Further in the future, this threshold could be even increased further to EUR 1 billion.

**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?**

ESMA received 23 responses to this question.

Majority of respondents consider it appropriate that the definition of SME is aligned across different EU legislations. In particular, respondents indicated the SME capitalisation threshold of the EUR 500 mio, stemming from the ELTIF Regulation (European long-term investment funds), which could also be used in MIFID II. Some other proposals were put forward in the replies:



- Few responses suggested that the definition should allow for some flexibility among Member States, since the local conditions differ substantially, and that any amendment should not lead to stricter rules in certain areas.
- Some other respondents suggested that the headcount condition should be reviewed, and be increased.
- There was as well a suggestion that third country rules in similar areas should be taken into account.
- Other response suggested that the current threshold of total bond issued should be increased to EUR 100 mio.

**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?**

ESMA received 22 responses to this question.

Respondents to the CP are of the view that the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments is appropriate and should not be changed. Respondents note that:

- Each Trading Venue should retain the ability to set their own requirements;
- Harmonisation would increase costs for issuers;
- The local dimension is important and therefore it is essential to cater for the specific needs of the SMEs in smaller markets;
- Trading Venues should have discretion to find the right balance between market liquidity and the difficulty to comply with the admission regime requirements.

A small number of respondents noted that if any change is needed it should be on the free-float requirement. These respondents are of the view that such requirement should be eliminated as it is too complex for small issuers to fulfil this requirement.

One respondent stated that it could be of help for SMEs to undertake regulatory/legal work on documentation templates which could be adopted in order to help SMEs more readily access these markets and reduce compliance costs.

**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?**

ESMA received 23 responses to this question.

There was unanimity from respondents for not supporting an harmonisation of accounting standards to be used by issuers. Although some respondent agree that this harmonisation would be useful to increase cross border investments, they are also of the view that the negative impacts outweigh the potential benefits. The main arguments for respondents not to agree with the harmonisation of accounting standards are:

- The ability to apply national accounting standards is seen as one of the key advantages of listing on an SME GM;
- Unnecessary burden put on small issuers;
- Important for SME GM to maintain flexibility;
- Significant and disproportionate impact on smaller quoted companies;
- Decision to harmonise accounting standards should be driven by issuers and not mandated in the regulation.

Most of respondents highlighted that should be a decision from the issuer to opt in for the use of IFRS.

Some respondents stated that it could be beneficial to harmonise minimum account requirements but this should be done ensuring that an extra burden is not applied to SMEs.

**Q7: Should ESMA propose to create homogeneous admission requirements for issuers admitted to trading on SME GMs? Should such requirements be tailored depending on the size of the issuer (e.g. providing less burdensome requirements for Micro-SMEs)?**

ESMA received 22 responses to this question.

Only one respondent supported a standardization of the admission requirements for issuers admitted to trading on SME GMs with less stringent and formal requirements, in particular for micro SMEs.

All other respondents that provided feedback to this question are not in favour of harmonising the admission requirement for trading. In particular, the respondents are of the view that jurisdictions should set their own standards based on the sophistication of local markets and risk appetite of their investors. Respondents believe that markets should keep some flexibility to apply rules that are suited to their local markets. Some respondents argued that a standardisation could even increase costs for issuers.

A number of respondents despite not supporting the creation of an harmonised regime, would be in favour of ESMA establishing a maximum admission requirement (to avoid overregulation limiting the access to funding by SMEs), which could be tailored by particular market operators depending on the market structure in the context of size of issuers.

In relation to tailoring some requirements for micro SMEs, most respondents are of the view that it would over complicate the regime and therefore should not be pursued at this stage.

**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?**

ESMA received 20 responses to this question.

The large majority of respondents did not support ESMA's proposal.

Among those who supported the proposal, one respondent stated that although this could be beneficial, micro-SMEs should be exempted as they might not have historical financial reports.

Several of those respondents who did not support such requirement explained that such information, where available, can be already found in other documents, e.g. listing requirements, the prospectus or the registration document requested by most of the SME GM. Even where a prospectus is not available, market operators might require a specific document with financial information. Hence in the respondent's view requiring such information to be disclosed would create double reporting.

Respondents also raised the following concerns:

- such provision would be counterproductive as it would unlevel the playing field between the financial markets and the private equity, and discourage companies from resorting to SME GMs for financing.
- Although it is reasonable to require historic accounts, it would be best to leave to the market operator the choice to do so depending on the specificities of each market.
- It should be taken into account that, from a practical perspective, a company may not be planning an IPO for a year in advance and financials may have to be converted to IFRS as part of the preparation process.
- there are cases where corporates do not have financial reports for the years preceding a listing. Introducing a formal requirement could therefore lead to such corporates being unable to list and as a result in fewer listings.

Three respondent raised a point not directly related to the question stating that it would be beneficial to have a simplified process in place in cases where the entity applying for authorisation to register an SME GM is already operating a Regulated Market and/or an MTF. In those cases, in the respondents' view, a notification process to the competent authority should be sufficient.

**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?**

ESMA received 20 responses to this question.

Regarding the question asked by ESMA to make the periodic financial information under Article 33(3)(d) available in a more standardised format, all respondents (except two who do not provide a view) are against the measure. The majority of respondents argue that such standardization would likely represent a burden for SMEs and would not increase benefits as most likely they would continue to remain a local reality. Furthermore, some respondents

argue that an harmonization process which is not tailored to local markets condition would not be beneficial.

Few respondents suggest that it could be beneficial to select some relevant key performance indicators and collect and publish these numbers in a standardised format in order not to harm local markets that already function well.

Five respondents further suggested that in their view the Single Access Point would facilitate access and availability of data about companies and serve as a basis for investors' decisions and SMEs would benefit from pooling the information they disclose at a one-stop-shop. Further such access Point could also serve as a starting point for the establishment of a European database for SME-research. The respondents suggested that a federal model would be best whereby ESMA maintains the central database, but the information is still filed locally and flows through to the ESMA database. It is important that requirements under the Transparency directive shall be tailored to the type of market (SME GM vs RM).

Those respondents also mentioned that in parallel to establishing a Single Access Point, the Commission should take this opportunity to clarify certain disclosure requirements as lack of clarity might influence risk-averse issuers in choosing their financing options.

Overall respondents also raised the following points as aspects of the SME GM regime which should be revisited:

- the requirement to draw up lists of closely associated persons (CAP) in MAR art. 19.5: the requirement to keep CAP lists should be abolished, since it is not important for proper market supervision.
- IPOs: regulatory flexibility regarding IPOs should be considered for SMEs
- ESEF: in the current Covid-19 situation, the implementation of the ESEF should be delayed.
- ESMA should advocate for lower fees for SME issuers requiring documents to be reviewed by the relevant NCAs. Further than this, the introduction of explicit amendments to the Prospectus Regulation broadening the exemptions for SMEs undertaking an initial raise on an SME GM.
- many SMEs raise money via private placements which then change hands on bulletin boards. Given the goal of MiFID II to promote on venue trading, and the EC's SME strategy generally it would be prudent to further define the bulletin board/multilateral system perimeter
- Finally, all access barriers to MTF operated SME GMs should be removed. Examples here being non-investment firms being able to become direct members of MTFs, and some pension funds are limited to only transacting on Regulated Markets.

**Q10: Do you think that in the medium term a two-tier SME regime with additional alleviations for micro-SMEs could incentivise such issuers to seek funding from capital markets? If so, which type of alleviations could be envisaged for micro-SMEs?**

ESMA received a total of 20 responses to this question.

Six respondents supported the proposal to create a two tier regime for micro-SMEs, while 14 were against. One respondent was neutral.

Those who supported the proposal stated that the SME Growth Markets does not adequately cater for the needs of the smallest companies, and as a result, many of these companies look for alternative sources of funding. Few respondents stressed that it would be ideal to have lighter requirements in terms of MAR for those companies as the burden of complying with regulatory requirements is too high compared to the abilities of such companies to raise capital. One respondent argued that a micro-segment should be introduced which can operate outside of the MiFID II regime. One respondent noted that as companies are allowed to raise as much as EUR 1 million annually using crowdfunding without any regulatory obligations, Micro-SMEs (e.g. with capitalization up to EUR 5 million) should be allowed to be listed in equally light regime. One respondent argued that tailored measures could be introduced to make the market safer for investors.

The majority of those who did not support the proposal stated that it would be best to have an harmonised and less restrictive regime for all issuers making general requirements as flexible as possible. Several respondents argued that further fragmentation is not necessarily beneficial and one respondent noted it could also increase costs for issuers, investment firms and exchanges. Few respondents noted that such a micro-segment could be perceived as overly risky, with low liquidity, increased risk of price manipulation and potentially have a deterring effect on the trust in the markets.

Two respondents argue that in order to alleviate the requirements for SME issuers would be ideal to alleviate requirements on public disclosure of inside information (i.e. not necessary to require that inside information is disclosed on weekends, but rather in advance of the opening of the stock exchange)

Two respondents, one supporting the proposal and one not, argued that it would be beneficial to create a segment dedicated to professional investors only. One respondent argues that this could allow SMEs to gain visibility among investors and could bring together a network of domestic and international intermediaries. The respondent suggested that such professional only segment should be subject to lighter requirements in terms of:

- Introducing a waiver on free float: the market operator should have discretion to impose free float requirements
- specific reliefs should be also introduced with respect to MAR obligations (examination of the merits of an exemption concerning the requirement to establish and maintain an insiders list, as well as an exemption for issuers from the requirement to notify transactions carried out by PDMRs or increase the threshold for disclosure of PDMR transactions to at least EUR 150,000.)

**Q11: Do you think that requiring SME GMs to have in place mandatory liquidity provision schemes, designed in the spirit of what is envisaged in Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go**

**public? Do you think that on balance such provision would increase costs for MTFs in a way which encompasses potential benefits, resulting in reducing the incentive to register as an SME GM?**

ESMA received 23 responses to this question.

All the respondents did not support the ESMA proposal on the introduction of mandatory liquidity provision schemes.

Several explained that there is mixed evidence on the effectiveness of introducing mandatory liquidity provision schemes, with the efficacy of these schemes being dependent on the nature of the market they are implemented on.

Many respondents were favourable to the existence of liquidity provision schemes, and recognised its benefits, but also stated that it should be the market operator itself to decide about having in place any mandatory liquidity provision schemes according to local regulations, market size and market capitalisation of listed companies.

Two of the respondents proposed that to ensure a level of playing field, a European mandatory liquidity provision scheme should be used to improve the liquidity for SMEs but only in MSs where there is not an accepted market practice or cross-listed.

Another respondent proposed some other measures, which would stimulate higher liquidity, such as:

- Entry requirements on dissemination of shares
- Easy and cheap trading – customer experience should be at the level of forex platforms
- Lower fees from issuers in case of higher liquidity – issuers would be stimulated to enhanced communication with investors
- It is possible to save price formation mechanism despite low liquidity by aggregating trading orders and executing all of them in single quotation system – eg. once a day or once a week. Good price formation mechanism should attract more investors and should build higher liquidity over time.

Regarding the costs, most of the respondents agreed that that liquidity provision schemes could alleviate SMEs costs and provide them with an incentive to go public. However, a mandatory liquidity scheme would lead to an overall increase in the cost of being public, since the liquidity provider's service must be paid for. In these terms, almost all the respondents agreed that there is a potential risk that part of the costs will be incurred by the issuer or increase costs for MTFs.

**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?**

ESMA received 22 responses to this question.

The vast majority of the respondents agreed on ESMA proposal to extend the issuer non objection requirement regarding the admission to trading of an instrument already admitted on SME Growth Market in Article 33(7) of MiFID II on any other trading venue.

Most of the respondents argued that this should ensure that the issuer of financial instruments admitted to trading on SME GMs maintains control on new admissions to trading to avoid fragmentation of the liquidity – which may already be very low in SME-issuers.

Regarding the time frame, one respondent suggested that 10 business days for non-objection would be enough.

The few respondents that did not support the proposal considered that such a provision is not necessary. One respondent argued that from a liquidity point of view in the majority of cases the second market will not be interested in trading in shares of SMEs, since splitting the liquidity would make fees from trading too small to earn on them, whereas in these rare cases, when trading is huge enough to split, there would be easy ways to circumvent this regulation.

**Q13: Do you think that it should be specified that obligations relating to corporate governance or initial, ongoing or ad hoc disclosure should still hold in case of admission to trading in multiple jurisdiction?**

ESMA received 19 responses to this question.

The large majority of respondents stated that SMEs should only be required to comply with the requirements in their own jurisdiction.

They explained that if an SME issuer does not object to admission of its financial instruments to trading on another SME GM, it should not be subject to any obligation relating to corporate governance or any type of disclosure to the latter SME GM. The only admitted exception, as per several respondents, is of the circumstance when an issuer formally agrees to observe additional disclosures.

Many of the respondents considered it to be an additional burden for the SME issuers to produce more documentation and information in multiple languages. In fact, most also added that if shares are admitted to trading in other jurisdictions by non-objection it should not impose additional requirements on the primary market.



The only one respondent that stated to not consider that SMEs should only be required to comply with the requirements in their own jurisdiction stated that it's only in cases where the on-going obligations of the primary market are below those of the secondary.

#### **Q14: How do you think the availability of research on SMEs could be increased?**

For this question ESMA received 22 responses.

Twenty respondents to the CP (all but two) view the unbundling rules in MiFID II as a major hurdle for more research on SME issuers and most of these respondents view this as the most important focus point. According to the respondents, the unbundling rules have harmed the already constrained SME research disproportionately. They propose the SME issuers should be exempt from the unbundling rules. By alleviating the unbundling rules, the SME research coverage would increase, and this would have a positive impact on liquidity. The threshold for qualifying as an SME vary by respondents but the vast majority mention a market capitalization below €1 bn as an appropriate requirement. Many of the stakeholders in favour of amending the unbundling rules also suggest facilitation of issuer sponsored research through regulatory changes. The approaches to how this should be done vary significantly across respondents. However, three respondents think that the issuer sponsored research is troublesome and should be replaced with an EU-wide funding program for SME research.

In addition, a handful respondents state that a pan-European program at EU level should fund or organize SME research. A few respondents have also called for public financing of SME equity research. About as many respondents also suggest that an information database, in conjunction with the creation of a single access point (ESAP) would benefit SME research. The creation of such a database would facilitate for independent analysts to share their material and may also be combined with licensing of independent analysts. A database would also improve the access to information for retail investors. Two respondents suggest that issuers or advisors to issuers should be obliged to guarantee research coverage for a certain time period post-listing. Another suggestion is lowering fees for issuers who have contributed to research coverage.

Other suggestions supported by individual stakeholders are:

- Creation of a special rating agency for SME research.
- Credit reliefs to SMEs for costs related to sponsored independent research.
- Amendment of rules for trial periods on research.
- As already occurs in some regimes, exchanges should consider using part of the listing fee acquired from the issuer to pay for research.
- Requiring market operators to fund one piece of research per year for the companies that reside on its market.



The establishment of a code of conduct, as currently being considered by the French regulator, would encourage sponsored research

## 5.1 Annex II-Legislative mandates

### **Article 90 (1)(b) of MiFID II:**

*Before 3 March 2020 the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on:*

- (a) [...]
- (b) The functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present thereon, and relevant trading volumes;

*In particular, the report shall assess whether the threshold in point (a) of Article 33(3) remains an appropriate minimum to pursue the objectives for SME growth markets as stated in this Directive;*

[...]