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| 06 May 2020 | ESMA70-156-2803 |

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| Reply form for the Consultation Paper on the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets. |
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| Date: 06 May 2020  ESMA70-156-2803: |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_CP\_SME\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_CP\_MiFID\_EQT\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_CP\_SME\_ESMA\_REPLYFORM or

ESMA\_CP\_SME\_ANNEX1

***Deadline***

Responses must reach us by **15 July 2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | EuropeanIssuers |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_SME\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_CP\_SME\_1>

1. 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\_QUESTION\_CP\_SME\_1>

EuropeanIssuers believes that SME activity in bonds is limited for a host of reasons. For example, SMEs do not typically have fixed assets or working capital to provide traditional asset backing. In addition, many investors associate SME bonds with a high level of risk, and therefore, require a higher interest rate. For smaller companies, and in particular, those at an early stage of development, the more appropriate financing structure is equity.

Eventually, when a company enters a high growth phase in its development and needs continuing and regular capital injections, the presence of bonds on a company’s balance sheet ranking ahead of equity will likely increase the risk for equity investors and may make them less inclined to provide further investment without a debt restructuring. For rapidly growing companies, equity is generally considered to be a more appropriate type of capital than debt.

As such, in small, risky, early-stage companies, a bond may appear unappealing to investors as they are only compensated by interest payments and do not have the potential to share in the future success of the company through ownership and dividends. In addition to the above, bond investors typically have a very high preference for liquidity, with most unwilling to participate if an issue is smaller than £100 million/€100 million, which tends to be too large for SMEs.

There are a multitude of other reasons as to why SME activity in bonds is limited. In particular, we believe that there are four overarching causes for a lack of SME activity in these markets, most notably:

* The significant costs, both in terms of admission fees and the costs associated with ongoing compliance;
* Onerous and overly burdensome requirements to comply with market regulations;
* The availability of alternative sources of finance, such as bank finance; and
* A lack of awareness amongst SMEs of the benefits.

<ESMA\_QUESTION\_CP\_SME\_1>

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

<ESMA\_QUESTION\_CP\_SME\_2>

In order for the visibility of SME GMs to be further developed, there is a need for a more conducive and proportionate regulatory framework which supports and incentivises SMEs to use public markets to gain access to capital.

To this end, EuropeanIssuers suggests the revisiting of the Prospectus Regulation. At this moment, the Prospectus Regulation requires issuers’ prospectuses vetted by the National Competent Authority in their own Member State. In the case where issuers wish to have funds raised in another Member State, they are required to passport. This process creates additional costs during the IPO processes and minimises the likelihood of cross-border competition, leading to a limitation of the attraction of issuers from another Member State to other countries other than the country of the trading venue.

Furthermore, we believe that this is not only a matter of visibility, and in order to overcome the national dimension, we support encouraging the aggregation of markets at a regional basis.

In relation to corporate bonds markets exclusively, we have the following two proposals: National Promotional Banks should support SMEs to issue corporate bonds; and private placements of SMEs’ corporate bonds should be encouraged, in particular for SMEs.

<ESMA\_QUESTION\_CP\_SME\_2>

1. 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\_QUESTION\_CP\_SME\_3>

EuropeanIssuers believes that the 50% threshold should remain unchanged. It is important to differentiate between SMEs and small and midcap companies, whose needs the SME Growth Markets should cater for. We have requested to raise the threshold to better reflect the market realities and we believe it will work well with retaining 50% threshold. At the same time, we also believe that consideration should be given to allowing more flexibility to each market operator in setting an appropriate threshold that would reflect local market conditions. Companies in different markets are of a different size. Furthermore, capital markets in different countries vary in terms of their maturity, and therefore, may have a different supply of smaller companies coming to their capital markets, along with a different composition of such markets.

In relation to the specialised segment, we believe they should be allowed also in regulated markets.

<ESMA\_QUESTION\_CP\_SME\_3>

1. 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\_QUESTION\_CP\_SME\_4>

EuropeanIssuers has long advocated and pushed for the revision of the definition of the Small and Medium Capitalisation Companies (SMCs) in the context of the CMU HLF, and is of the opinion that the SME definition under the MiFID does not reflect the market reality and does not capture the small and mid-caps companies, which the SME Growth Market should also cater for. Therefore, consideration must be given to developing a definition for small and mid-cap companies and calibrating SME Growth Market rules contained within MiFID II, to ensure the catering of the markets to the needs of small and mid-cap companies. This would be in line with the new EU prospectus rules which recognise that EU Growth Prospectus should not be available to SMEs, but also to other growth companies and small and mid-caps.

<ESMA\_QUESTION\_CP\_SME\_4>

1. 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\_QUESTION\_CP\_SME\_5>

EuropeanIssuers believes that particular Growth Markets should be offered maximum flexibility to adjust their rules to the specificity of their markets. It is important that the requirements are left at the discretion of the exchange provides, as they are the ones to best assess the right balance between market liquidity and the difficulties to comply with such requirements.

<ESMA\_QUESTION\_CP\_SME\_5>

1. 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\_QUESTION\_CP\_SME\_6>

EuropeanIssuers believes that there is no harmonisation needed in relation to the accounting standards used by issuers listed on the SME Growth Markets, as the negative implications of harmonisation outweigh the benefits. Therefore, EuropeanIssuers supports keeping a flexible approach where issuers have the option to choose.

In view of the high costs associated with IFRS, the option provided by many market operators to use national GAAP must be retained in any case. Accounting according to GAAP is justified especially for those issuers addressing domestic investors, which are the vast majority. The “GAAP-option” should still be possible in any case. IFRS as proposed above should not be compulsory.

<ESMA\_QUESTION\_CP\_SME\_6>

1. 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\_QUESTION\_CP\_SME\_7>

There is no need to create homogenous admission requirements for issuers admitted to trading on the SME Growth Markets. However, there could be established maximum admission requirements (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.

Furthermore, there should be created special admission and disclosure requirements for Micro-SMEs.

<ESMA\_QUESTION\_CP\_SME\_7>

1. 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\_QUESTION\_CP\_SME\_8>

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<ESMA\_QUESTION\_CP\_SME\_8>

1. 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\_QUESTION\_CP\_SME\_9>

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<ESMA\_QUESTION\_CP\_SME\_9>

1. 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\_QUESTION\_CP\_SME\_10>

Yes, the two-tier SME regime should be introduced, allowing Micro-SMEs appropriate regulatory regime. EuropeanIssuers believes that, at the moment, the SME Growth Markets does not adequately cater for the needs of the smallest companies, and as a result, many of these companies are being pushed off the markets or unable to join these markets in the first place. Moreover, the burden and costs of complying with certain requirements are not commensurate to the ability of these small companies to raise sufficient capital, leading to these companies to look for alternative forms of funding.

In order to alleviate the burden on the small companies, the SME Growth Markets should establish a two-tier SME regime with the inclusion of a micro-segment where the market can operate outside of the MiFID II regime. A two-tier regime would imply that small companies will not be overburdened with requirements, and will lead to attracting more micro-issuers to the capital markets. Moreover, it could be envisaged the possibility to have a more simplified regime for SME Growth Markets dedicated to professional investors.

Since 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. In case Micro-SMEs were to undergo MAR provisions, it would be necessary to simplify at least the definition of inside information, since the general one cannot be applied in practice, because in case of start-ups any business decision could have important influence on the company, so theoretically any such decision should be reported. SMEs and in particular Micro-SMEs should have clear and simple catalogue of kinds of information required to be published.

<ESMA\_QUESTION\_CP\_SME\_10>

1. 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\_QUESTION\_CP\_SME\_11>

While we believe that increasing liquidity and enhancing the ability to execute a trade quickly and at a desirable price is essential for incentivising issuers to go public, we do not have concrete evidence that the introduction of mandatory liquidity provision schemes will achieve this goal. It is believed that mandatory liquidity provision schemes do not increase the trading volumes, but they generate additional costs. We support the idea of finding different ways of increasing liquidity, while reducing costs and, as a result, attracting more SMEs to the public markets. As such, we propose the following measures which we believe would stimulate higher liquidity:

* 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 – e.g. once a day or once a week. Good price formation mechanism should attract more investors and should build higher liquidity over time.

If there is any conflict between a liquidity contract and AMP, this should be left at the discretion of the market operator to decide how to operate.

<ESMA\_QUESTION\_CP\_SME\_11>

1. 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\_QUESTION\_CP\_SME\_12>

We believe that the issuers should have to provide for explicit consent to an SME Growth Market, or any other trading venue that wishes to trade its shares. In situations where approval has not been received, without the obligation of giving consent, it is possible that issuers may unknowingly become subject to certain requirements, have to comply with unfamiliar market practices, and/or make additional disclosures that they are not used to producing. Such a situation would lead to further overburdening the issuer, and would lead to an increase of costs and level of risk encountered by the issuers.

<ESMA\_QUESTION\_CP\_SME\_12>

1. 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\_QUESTION\_CP\_SME\_13>

Multiple jurisdictions requirements should not be applied to SMEs. They should undergo only the requirements of home market. An exception should be made in the case when an issuer formally agrees to observe additional disclosures

<ESMA\_QUESTION\_CP\_SME\_13>

1. How do you think the availability of research on SMEs could be increased?

<ESMA\_QUESTION\_CP\_SME\_14>

In relation to research availability on SMEs, the main problem identified is the introduction of the unbundling rules under MiFID II, which heightened the lack of availability of research on SMEs, and exacerbated the reduction in both the quantity and quality of investment research. This particularly affected the research on SMEs and small and mid-size quoted companies, which ultimately led to an adverse impact on liquidity in these securities. Therefore, we suggest that SMEs are exempted from the unbundling requirements, measure which should help the respective companies to extend their coverage on a ‘pre-MiFID-level’. As such, we believe that research for smaller quoted companies who do not cross a market capitalisation threshold of 1 bn Euros, should be exempted from the unbundling rules.

There are following possibilities of increasing the research on SMEs:

1. Retraction of MiFID provisions banning combining research with other services
2. Requiring advisors bringing companies to the market to ensure analytical coverage over given period (e.g. 1 year)
3. Lower fees from issuers in case they contribute to analytical coverage
4. Research can be provided by natural persons licensed by NCAs and creating a platform where all the published researches would be available. This would ensure transparency and it would allow for easier evaluation of the quality of research over time.

<ESMA\_QUESTION\_CP\_SME\_14>

1. Do you agree with the proposed limits on resources or would you propose different ones? If so, please provide a justification.

<ESMA\_QUESTION\_CP\_SME\_15>

TYPE YOUR TEXT HERE.

<ESMA\_QUESTION\_CP\_SME\_15>

1. Do you agree with the proposed limits on volumes or would you propose different ones? If so, please provide a justification of the alternative proposed parameters.

<ESMA\_QUESTION\_CP\_SME\_16>

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<ESMA\_QUESTION\_CP\_SME\_16>

1. Do you think that specific conditions should be added as regards trading during periodic auctions? For SME GMs following different trading protocols, are there criteria or safeguards which should be considered in order to make sure that the liquidity contract does not result in a manipulative impact on the shares’ price?

<ESMA\_QUESTION\_CP\_SME\_17>

We believe that there is no need for standardisation at the European level due to the unique nature of the specific markets.

<ESMA\_QUESTION\_CP\_SME\_17>

1. Do you agree with ESMA’s view that the liquidity contract may cover large orders only in limited circumstances as described in paragraph 118?

<ESMA\_QUESTION\_CP\_SME\_18>

We believe that there is no need for standardisation at the European level due to the unique nature of the specific markets.

<ESMA\_QUESTION\_CP\_SME\_18>

1. Do you agree with the proposal described above regarding the template for the insider list to be submitted by issuers on SME GMs? If not, please elaborate.

<ESMA\_QUESTION\_CP\_SME\_19>

We welcome the proposal to reduce the template for insider lists. However, it should be further reduced by deletion of the requirement to collect personal telephone numbers, since they are subject to strict data protection regulations. Moreover, from the supervisory perspective, the telephone numbers are not important any more, since there are many more convenient ways of communication by the persons engaged in insider trading. Nowadays telephone billings are not any longer effective supervisory or enforcement tool. Hence, the template should be further simplified by deleting the requirement to collect professional telephone numbers.

Furthermore, we would like to remind ESMA that the general problems related to the application of MAR to SMEs/MTFs should be tackled under the MAR Review. We also want to stress the importance that MSs will not opt for requiring full insiders lists (as set forth by Regulation 2019/2115 which amends Art. 18) for SMEs not to hamper simplifications of SMEs.

<ESMA\_QUESTION\_CP\_SME\_19>

1. CBA: Can you identify any other costs and benefits? Please elaborate.

<ESMA\_QUESTION\_CP\_SME\_20>

The CBA should also include analyses of huge costs of keeping lists of Closely Associated Persons required by MAR Art. 19.5 compared to very limited benefits – such lists include in vast majority of cases persons, who never enter into any transaction on the capital market. Keeping such lists, including very sensitive personal data on families of managers, is not necessary for proper supervision over market, which could be verified after 4 years or MAR operation.

The CBA should be also extended by analyses of cost and benefits related to meeting high regulatory standards by microcaps. Very small companies with capitalization e.g. below EUR 5 million have to meet almost the same regulatory standards required by MAR as the biggest companies listed on the biggest markets. Such an approach in case of microcaps requires too much resources devoted compliance rather than to making business, thus limiting the earnings of investors. There should be established special regulatory regime for microcaps preceded by careful analyses related to market integrity and comfort of investors.

<ESMA\_QUESTION\_CP\_SME\_20>