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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 | Nasdaq |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_SME\_1>

Nasdaq operates regulated markets and MTFs in Europe in Iceland, Estonia, Latvia, Lithuania, Denmark, Finland and Sweden. The growth market MTFs have since long been operated under the brand name First North. In Sweden, Denmark and Finland, the MTFs focused on growth companies have been converted to SME Growth Markets in accordance with MiFID.

Relative to other regions across Europe, the growth markets in the Nordics, especially Sweden, are very successful. At the end of 2019, 360 companies were listed on First North across the Nordics. 25+ of those were non-Nordic companies. The market value of First North listed companies were 25bn EUR. In 2019 there were 40 new listings on First North Nordics and the total capital raised (incl. both IPO and secondaires) were 2.1bn EUR. The range of each capital raising varied from 0.8 to 39million EUR.

Many of the topics for discussion in this consultation paper are at the core of the broad considerations Nasdaq has been engaging in during a long time, and especially since the growth markets were introduced over 10 years ago. A few important principles have emerged over those years:

A successful growth market is dependent on a well functioning ecosystem. Many components are important beyond only the market infrastructure as such and the issuers, such as investors of all kinds (small and big), advisors, research and analysis, media and intermediaries of various types.

The whole funding escalator needs to be in place, from start-up funding to large cap secondary capital raising and everything in between.

Each country/region is different, so there needs to be flexibility in the framework around SMEs.

A clear observation is that retail investors and other small investors are key for making growth markets a success. On the First North Nordics more than 50% of the trading is from retail investors, compared to ca 10% on the main market. Financial regulation needs to further facilitate for retail and other smaller investors to participate in the SME Growth Markets. It helps the SMEs but it also allows for the general public to take part of the growth that SMEs generate. An example of an opportunity to further explore for smaller investors is SME bond markets, see Q 1.

<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>

Nasdaq believes bonds would be an appropriate source for financing for SMEs, and equally a suitable type of investment for investors in SMEs. We agree and regret that SME activity in bonds is limited and we believe there is an important opportunity to explore, especially in segments for smaller issuers and smaller investors. This needs to be done in a way as to not deteriorate the wholesale segment.

A first measure should be to adapt the Prospectus Regulation so that it does not disincentivise the issuance of bonds with smaller denominations. Today, the 100’ Euro threshold allows issuers to draw up a simpler prospectus when issuing bonds with those high denominations for the wholesale market. This threshold steers the whole financial ecosystem away from smaller denominations which would indeed be more suitable for SMEs and smaller investors.

Overall, we also believe financial legislation should be reviewed from the perspective of bond instruments only. There is room for simplification in for instance MAR, the Prospectus Regulation and Transparency Directive in order to review unnecessary costs for bond issuers. Legislation currently applicable to bonds has often been developed by adapting legislation originally drawn up for equity instruments. Relevant but small adaptations have been made. A more tailored regime overall should better support activities in bond markets for SMEs, thereby contributing to SMEs’ access to finance and creation of growth.

We want to especially underline that the regulatory framework should allow SMEs as well as smaller investors to be a part of the growth of the green bond segment. In the Nordic countries especially the green bond market is growing exponentially. Demand for sustainable investments is high from many investors, not least retail investors. The green bond segment presents an immense opportunity for Europe to engage retail investors. The regulatory framework should be calibrated to embrace this opportunity, not to disincentivise it.

<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 our experience, issuers, investors and other stakeholders within a financial ecosystem are attracted by a viable and liquid market. It is important to build this locally first.

One obstacle for cross-border transactions is in the post-trade and settlement part of the chain. We encourage a review of CSDR as regards what improvements in the rules as such and also in the implementation of CSDR can be made, in order to reduce friction in the transaction chain especially in cross-border contexts.

It should also be explored how market operators could be allowed under MiFID to operate listing venues across borders via branches. Currently, for instance investment firms can operate via branches, and so can CSDs, but not exchanges. For instance in the three Baltic countries one CSD now serves all three countries, which has been a key factor for launching the Pan-Baltic Capital Market initiative. This is an example of how scale can be created across a region where each capital market is relatively small. However, the exchange cannot take the same steps as CSD and create the same scale on the listing side.

<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>

The current threshold is appropriate.

<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>

Alignment would contribute to simplification and would be welcome.

<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>

In general, the current minimum requirements are relevant, as they allow for tailoring of the specific rules according to what is preferable in each financial ecosystem. The market operator can maintain a dialogue with issuers, investors, advisors and other stakeholders, in order to continuously make adaptations as necessary. We strongly support allowing issuers listed on SME Growth Markets to apply local rules for corporate governance, accounting, etc. Please note that this still allows issuers to opt in to more standardised or stricter rules on a voluntary basis.

However, we want to make a comment about the free-float requirement. The main reason why the Nasdaq MTFs operated in the Baltic countries have not opted to become SME Growth Markets, is the free-float requirement. The Baltic capital markets are relatively small, in terms of market cap and number of listed companies, but also in terms of other stakeholders which are fundamental for the financial ecosystem, such as investors, advisors and intermediaries. It sometimes takes quite an effort for a company to build an investor base large enough to fulfil the free-float requirement and qualify for an IPO at all. A useful alternative has however developed, in that companies do a technical listing, i.e. the shares are listed but still held by a limited number of owners. From the position of being listed, the company then works on visibility, builds up confidence from complying with the listing rules and from this position it is easier to build up an investor base and achieve free float. We recognise this solution as one way of climbing up the funding escalator. This model allows smaller companies in smaller markets to tap the capital markets in a way which is adapted to the local financial ecosystem. We believe abolishing the free-float requirement would be an appropriate adaptation of the EU legislative framework to local conditions, which are crucial when it comes to growth of smaller companies especially in smaller markets.

<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>

Using a harmonised accounting standard instead of local GAAP should remain optional for issuers listed on an SME Growth Market. It would be beneficial if there was an easy to use harmonised accounting standard for SMEs available. This way each issuer can decide if or when the time is right to opt in. Some issuers will always remain local and for these issuers it is more cost-efficient to use local GAAP. However, other issuers have a more international outlook/business/investor base, and for these issuers a harmonised regime may be more useful.

In Nasdaq’s growth markets only a few companies have opted to use IFRS. In the “Premier Segment”, which companies can opt in to and which in practice functions as a stepping stone on the way to switching to the main market, IFRS applies according to the listing rules. We are convinced that if IFRS was mandated for all issuers on the SME Growth Market it would be a clear deterrent to using the capital markets for accessing finance.

According to our observations, investors in the Nordics do invest in other countries too and local accounting standard is not considered a major obstacle for this.

Time-to-market is often a parameter for an SME in a listing process. If a new accounting standard is required that will not be in favor for raising money on a public market. On the contrary, it would function as a disincentive at that point. It is preferable that the company can voluntarily opt in to another standard once listed, as part of a growth journey.

<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>

We do not see benefits in layering rules according to sizes of SMEs. Creating further complexities risk creating frictions for many stakeholders in the financial ecosystem. Also, it would create additional complications as companies grow and change category.

Microcaps are already listed in the Nordics. A microcap segment with lower listing requirement may imply substantially higher risk which would reduce the trust in SME GMs. We see a risk that such a situation would not support the broader use of public markets and of equity financing.

Rather, the focus should be to ensure appropriate rules for smaller companies. This does not preclude the listing venue in cooperation with the broader financial ecosystem to introduce stricter rules via the listing agreement/rules, or via opt-in. For example, the First North ‘Premier’ segment allow issuers on the SME Growth Market to opt into a stricter layer of rules, such as IFRS. In practice, this segment is used as a stepping-stone towards a switch to the main market.

<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>

We do not believe such an amendment would add value. From our experiences of developing growth markets across seven jurisdictions during more than a decade, we believe some room in this regard needs to be left for adaptation to the local ecosystem, close to the smaller companies.

In Nasdaq’s growth markets, apart from the already existing requirement in the Prospectus Regulation to include historical financial information, the below requirements in the listing rules are relevant:

The Nasdaq SME GM listing rules require an issuer who falls outside the scope of the Prospectus Regulation to draw up a so called Company Description instead. The Company Description also requires historical financial information. Nasdaq requires the Company Description to be published on the company’s website.

Further, Nasdaq also requires any company coming to the SME GM to prepare one financial report before listing (in addition to annual financial reports), in order to ensure the company is capable of fulfilling such requirements once listed.

We believe these requirements are working well, but we also recognise that other similar but slightly different solutions may be more suitable elsewhere.

Please also note that a requirement to publish financial reports from 1 year prior to the listing also means the companies have to have an operating history of more than 1 year, which is not required on Nasdaq’s First North markets currently and would hinder some companies from raising money on the public market.

<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>

As regards standardised formats, we strongly recommend to not mandate certain formats but to allow companies to voluntarily decide if/when to opt-in to certain standardised formats.

In some markets where Nasdaq operates, there is a wide and affordable choice of formats available to issuers, and many companies are indeed already very digitalised and open for using standardised formats, such as XBRL. For many companies, this is already standard practice by choice.

However, in other markets, the situation is different. For instance in the Baltic countries XBRL providers are not offering services. As a result, companies listed on the regulated market and who thus have to comply with the ESEF rules, have to purchase very expensive XBRL licenses themselves, for a cost of up to 30’-100’ Euros. For smaller companies, this has a very deterring effect when it comes to using the capital markets for accessing finance. We believe that in the current Covid-19 situation, the implementation of the ESEF should be delayed, in order to avoid adding further financial burden to SMEs.

We believe the decision of if/when to use certain standardised formats should be left for the companies themselves. This is especially true for SMEs. If/when they see standardised formats will add value in terms of visibility towards investors, analysts, etc., a company can switch optionally.

In relation to ongoing considerations about developing a European Single Access Point, and if/how to expand it to issuers listed on MTFs, we believe such a central access point would be valuable. We also believe it is doable – and would still add value – to include various types of information which is not (yet) standardised as to the format. For instance, a central point linking to further information is significantly more than what exists today. This should be pursued as a first step, and then standardised formats can follow later, or in an optional solution.

<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>

We believe there is room to find alleviations for all SMEs listed on an SME Growth Market, not only for micro-sized SMEs. Adding another regulatory layer of micro-SMEs will make the regulatory framework more complicated, including caused by the fact that companies grow and would change category, and also investors would have a more complicated picture. This would not benefit the ecosystem as a whole. Rather, there is a risk for adding unnecessary costs with a more complex regulatory framework. For instance, other stakeholders in the ecosystems, such as intermediaries, may need to make adaptations in their systems which are not considered cost-efficient, thereby risking having a counterproductive effect by instead deterring activity around SMEs.

Further, there is a risk that a micro-segment would be perceived as overly risky and would rather have a deterring effect on the trust in the markets.

<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>

No, we do not support a requirement for SME GMs to have in place mandatory liquidity provision schemes.

Liquidity provision schemes often have a positive effect on liquidity and Nasdaq indeed works with issuers to ensure there are liquidity providers available. However, there is no guarantee and multiple factors impact the liquidity situation. Having in place mandatory liquidity provision schemes adds cost, but there is a risk it does not lead to the intended benefit. It is better to leave liquidity provision schemes optional, for the stakeholders in the local ecosystem to develop the best solutions for each SME capital market.

Yes, there is a risk such a requirement may in the end have a disincentivising effect.

It is also worth noting that in the Nordics the contractual relationship is between the issuer and the liquidity provider, thus the issuer does not pay the market operator for a liquidity provider.

<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>

<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>

The original obligations should hold for the issuer, no obligations from another jurisdiction should be added. This is especially true if/when the issuer has not actively sought to be traded on a secondary venue.

It should however be clear to any investor which obligations an issuer need to comply with, especially in cases of multiple jurisdiction trading.

<ESMA\_QUESTION\_CP\_SME\_13>

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

<ESMA\_QUESTION\_CP\_SME\_14>

The availability of research on SMEs is alarmingly low. When bundling was still allowed by MiFID, it was already too low. When unbundling was required, many firms no longer saw a business case to continue SME coverage. However so called paid-for research developed a little, however still at too low levels. We recognise various types of models for financing research may raise different concerns as to conflicts of interests. However, we strongly prefer these different types of models to all be allowed, as long as there is transparency on potential conflicts of interests. This is a much preferred situation compared to limiting research to only certain models, especially in a situation where need for more research coverage is very strong.

A suggested way forward would be to allow bundling for research on SMEs listed on an SME Growth Market.

<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>

As already mentioned earlier in this consultation paper, liquidity providers are active in the markets which Nasdaq operates in the Nordics. Often, liquidity providers do contribute to liquidity positively, but there is no guarantee of this. There is no requirement on the issuers to have a liquidity provider, and when they do, the contractual relationship is between the issuer and the liquidity provider, not the market operator such as Nasdaq.

The liquidity provider schemes in the Nordic markets however function differently from what is developed in ESMA’s consultation paper. The main difference is that in the Nordics, the liquidity provider does not trade with the issuer’s money, but with their own.

From Nasdaq’s point of view, we strongly prefer the current practices to continue to be allowed going forward. It is important that if new/other models are developed, the models that have developed and is functioning satisfactorily in the Nordics, are not prohibited.

As regards the proposed model, we are not convinced it would be attractive to all issuers to first pay a fee to the liquidity provider, and in addition provide an amount to be risked for trading. We see a risk it would be more costly and complex for the issuer. We are not convinced this model would provide more benefits than the model currently in use in the Nordics.

<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>

See Q15.

<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>

See Q15.

<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>

See Q15.

<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>

As we operate markets in multiple jurisdictions, we note that these proposals will have different impacts in different countries, given different interpretations and implementations of the MAR. This illustrates the need for clarification and simplification across the EU. Different rules in this regard is a clear disincentive for owners to decide to take their companies public, and especially for investors to be active across borders. We underline that simplification and harmonisation as regards the application of MAR should be a priority.

<ESMA\_QUESTION\_CP\_SME\_19>

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

<ESMA\_QUESTION\_CP\_SME\_20>

We want to take the opportunity to underline that the factors impacting how well functioning or successful an SME Growth Market is, are not only found in MiFID. The SME GM as such is an infrastructure, but its attractiveness is impacted by other regulatory frameworks at EU level as well as nationally. Examples are obviously tax regimes but also other regimes impacting possibilities and interests for investors to allocate more capital to financing issuers listing on SME Growth Markets.

A specific aspect is to involve retail investors. Smaller issuers tend to be attractive for smaller investors and we acknowledge that retail investors have played a crucial role in the development of the now successful growth markets in the Nordics. Finding appropriate investor protection rules for more experienced retail investors is a measure which we believe will benefit especially the further development of SME Growth Markets.

Another comment is to ensure that sustainable finance frameworks, including non-financial disclosure rules, are developed specifically with SMEs in mind. Nasdaq works very closely with the financial ecosystem to develop products and services responding to demands from both issuers and investors. The best way forward would be to develop frameworks which are perceived as useful for SMEs, so that the incentive to opt-in to these rules are clear.

We encourage further engagement and cooperation with EU institutions as well as national legislators, supervisors and other stakeholders, in order to find best ways forward, including on sharing best practices.

<ESMA\_QUESTION\_CP\_SME\_20>