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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 | Warsaw Stock Exchange |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Poland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_SME\_1>

The Warsaw Stock Exchange (WSE) welcomes the possibility to respond to the ESMA 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.

The Warsaw Stock Exchange is a leading financial instruments exchange in Central and Eastern Europe (CEE). FTSE Russell announced the upgrade of Poland from Emerging Markets to Developed Markets on 29 September 2017. The decision took effect on 24 September 2018. WSE uses a state-of-the-art trading system and its listed companies meet the highest standards of corporate governance and disclosure requirements.

The markets operated by WSE list stocks and bonds of nearly a thousand local and international issuers. The Exchange also offers trade in derivatives and structured products, as well as information services.

More than 25 years of experience, high safety of trading, operational excellence and a broad range of products make WSE one of the most recognized Polish financial institutions in the world.

Since 9 November 2010, WSE is a public company listed on Warsaw Stock Exchange

Since 26 July 2019, WSE operates NEWCONNECT MTF and CATALYST MTF as SME GM.

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| **Trading venue name** | **MIC** | **Country** | **Number of SME issuers -shares** | **% of SME issuers -shares** | **Number of SME issuers -bonds** | **% of SME issuers -bonds** | **Date of registration as SME GM** |
| NEWCONNECT MTF (WSE) | XNCO | POLAND | 375 | 100%\* |  |  | 26 July 2019 |
| CATALYST MTF (WSE) | WMTF | POLAND |  |  | 48 | 47%\* | 26 July 2019 |

\*We would like to point out that the entire Alternative Trading System operated by the Warsaw Stock Exchange was registered as an SME GM covering NEWCONNECT (shares) and CATALYST MTF (bonds).

The value for the entire MTF registered as SME GM (NEWCONNECT and CATALYST) at the end of December 2019 is 88% and was calculated as follows:

Number of SME issuers – shares and bonds - (NEWCONNECT + CATALYST): 418

Total number of issuers (NEWCONNECT + CATALYST): 473

418/473=88%

<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>

From the Polish perspective, SMEs activity in bonds is currently limited mostly due to strong competition from the bank loans. Due to the low interest rates environment, SME’s financing by bank loans is cheaper and more efficient in comparison to financing by bond issues.

The second reason is connected with a very low liquidity on secondary market for corporate bonds. Therefore, the Polish institutional investors (investment funds and pension funds), which could have some exposure on corporate bonds, have to be guided by the principle of maintaining the fund's liquidity. In consequence the demand for corporate bonds from above-mentioned Polish institutional investors is relatively limited.

The third reason is the lack of ratings issued by independent rating agencies for corporate bonds issued by the Polish companies. The reason is that the cost of ratings from top agencies (Standard&Poors, Moody’s, Fitch) is too high in relation to the value of most common bond issues (EUR 1-5m).

<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>

We think that the real challenge, at this stage, is to attract more companies to the public market, including SME GM, regardless of their location. To do so, further amendments to the regulatory frameworks should be introduced, since the current regulations are perceived as too excessive and expensive by most of the issuers, both large and small companies, including SMEs. Hence, we would support any measures which might bring real benefits and improve attractiveness of being listed on public market, especially SME GM.

We do not see, at this point, the need for European regulations to focus on facilitating the cross-border listing, but on introducing such facilitations that would really encourage companies, including the small ones, to seek financing on the public markets, especially SME GMs, instead at banks. We believe that, at least at the beginning of their presence on the public market, it is an advantage for SMEs to be listed on the local market, which gives them the possibility to target investors, to disclose information or to contact competent authority in their native language.

Referring to the visibility of SME GMs we think that it could partially be developed by improving facilitation of research coverage for SMEs, alleviation of some MAR requirements as well as providing financing for SMEs by announced pan-European “IPO Fund”. We strongly support the need to introduce real benefits for issuers to be listed on SME GMs compared to “regular” MTF. There are currently no real differences as to the regime applicable to these platforms, which make it quite difficult to promote SME GMs

<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>

In our opinion the 50% threshold set in Article 33(3)(a) of MIFID II is still appropriate for the time being as a criterion for an MTF to qualify as an SME GM. Since the registration of MTFs as an SME GM began relatively recently, it is difficult to assess and justify the need for creation of a more specialised SME GMs regime. WSE is of the opinion that there is no need to change the above-mentioned provision.

<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>

From the legal point of view, it is always desirable to have consistent definition of an SME in all regulations. However, we believe that the definition foreseen in MIFiD II qualifying as an SME an entity with a capitalization of up to EUR 200 million is appropriate for the needs of SME GMs, especially if a requirement for an MTF to be registered as an SME GM is limited to 50% of issuers to qualify as SMEs. We do not consider it appropriate to change this threshold in the short to medium term.

WSE also supports ESMAs proposal to increase the legal certainty that the operator of an MTF can apply for a segment of the MTF to be registered as an SME GM. ESMA has clarified that in a Q&A (Q&A 8 of section 5 of the ESMA MiFID Q&As on market structure topics). However we agree that it will be useful to include this clarification directly in Level 1 text.

<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>

WSE is of the opinion that the current regime regarding the initial and ongoing admission to trading of financial instruments is adequate for SME GMs. In our opinion there is no need to impose further harmonised requirements because the market operator should dispose some flexibility to apply rules suited to local market conditions.

WSE while creating MTF adapted the admission criteria to the reality of the local market, and thanks to flexible provisions has the right to adapt them to the changing market environment, which has already happened (for example at the explicit request of the investors and analysts, WSE SME GM issuers are required to publish their quarterly financial reports). WSE admission to trading criteria are strictly defined and include requirements suitable for local small companies regarding i.a.: minimum free float, minimum equity capital, financial statements standards and obligation on further disclosure of information to the public.

<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>

WSE believes that one of the key advantages to be listed on an SME GM is the possibility to apply national accounting standards and harmonisation of accounting standards across the UE will lead to higher costs and effort for issuers, even though a harmonisation itself might improve cross-border interest.

Taking this into consideration WSE supports harmonisation of accounting standards for issuers on SME GMs provided that they would be voluntary for issuers to opt in to use this standard. WSE is of the view that it is important to maintain flexibility in this area.

It is worth noticing that in accordance with Article 5 of the IAS Regulation Member State can decide to extend the application of IFRS to individual annual financial statements and consolidated financial statements of companies that are not listed on regulated markets. The use of the options in Article 5 of the IAS Regulation is different in each by Member States. For example, in Poland issuers whose securities are admitted to trading only on MTF (including SME GMs) cannot prepare their consolidated accounts and/or their annual accounts in conformity with the international accounting standards (IAS).

We consider that issuers whose securities are admitted to trading on SME GMs should have the right, but not the obligation, to prepare their consolidated accounts and/or their annual accounts in conformity with the IAS.

<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>

WSE is of the opinion that there is no need to create homogeneous admission requirements for issuers admitted to trading on SME GMs.

In our opinion the market operator should dispose some flexibility to apply rules suited to local market conditions.

WSE while creating MTF adapted the admission criteria to the reality of the local market, and thanks to flexible provisions  has the right to adapt them to the changing market environment, which has already happened (for example at the explicit request of investors and analysts, WSE SME GM issuers are required to publish their quarterly financial reports). WSE admission to trading criteria are  strictly defined and include requirements suitable for local small companies regarding i.a.: minimum free float, minimum equity capital, financial statements standards and obligation on further disclosure of information to the public.

<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 think that there is no need to introduce 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. We believe that the market operator should dispose certain range of flexibility to apply rules suited to local market conditions. Introducing such an amendment would prevent the market operator from responding to changing market circumstances, which are often specific only to the local 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>

The requirement under Article 33.3 point e of MIFID is not very clear. That article states that member states shall ensure that MTFs are subject to effective rules, systems and procedures which ensure that the following is complied with, in relation to point e: *“issuers on the market as defined in point (21) of Article 3(1) of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in point (25) of Article 3(1) of Regulation (EU) No 596/2014 and persons closely associated with them as defined in point (26) of Article 3(1) of Regulation (EU) No 596/2014 comply with relevant requirements applicable to them under Regulation (EU) No 596/2014”.* We believe that it is not a competence of the operator of MTF to literally ensure the compliance of MAR by the issuers.

WSE is of the opinion that there is no need tomake the periodic financial information under Article 33(3)(d) available in a more standardised format. We think the market operator should dispose some flexibility to in this matter.

<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 do not believe that a separate regime for micro-SMEs would be a good solution. Instead of focusing on creation of two different regimes within the SME GMs, efforts should be put on introducing real benefits and facilitations to help SME issuers to choose financing on SME GMs.

One regime applicable to all issuers within the SME GMs would be beneficial for investors as regards to clarity of requirements which apply on SME GMs compared to MTFs and regulated markets, as well as for the market operator and the competent authority in terms of supervisory activities.

<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>

We think thatrequiring SME GMs to have in place mandatory liquidity provision schemes will neither reduce costs for SME issuers nor increase costs for SME GMs. We believe, the market operator itself should decide about having in place any mandatory liquidity provision schemes according to local regulations, market size and market capitalisation of listed companies.

<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>

WSE supports ESMA’s proposal that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another trading venue (regulated market or ordinary MTF) only where the issuer has been informed and has not objected. This should ensure that the issuer of financial instruments admitted to trading on SME GMs maintains some kind of control on new admissions to trading to avoid nascent liquidity being split between too many venues.

<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>

No, WSE is of the view that there should not be an amendment requiring SME growth market issuers to be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market.

<ESMA\_QUESTION\_CP\_SME\_13>

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

<ESMA\_QUESTION\_CP\_SME\_14>

We believe research incentive schemes implemented by trading venues are a step in the right direction. However, to really increase research coverage, support from public finances might be appropriate. All market participants will benefit: SMEs, investors, liquidity providers and trading venues. Criteria should target SMEs with little/no research coverage and be based on company’s market cap.

<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>

We believe the market operator should decide about mandatory liquidity provision schemes according to local regulations, market size and market capitalisation of listed companies. However, we agree with the proposed limits.

<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>

We believe the market operator should decide about mandatory liquidity provision schemes according to local regulations, market size and market capitalisation of listed companies. However, we agree with the proposed limits.

<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>

N/A

<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>

N/A

<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>

WSE agrees with the proposal regarding the template for the insider list to be submitted by issuers on SME GMs in general. However, WSE would recommend removing personal telephone numbers from the list and adding personal full home address due to the principle of written form established in Polish Administrative Procedure Code and that many actions established in Polish Code of Criminal Procedure are taken in writing.

WSE find it useful to keep insider’s personal full home address to conduct criminal or administrative proceeding.  Moreover, some insiders do not own private phones due to the fact that employers provide employees with company mobile phones that can be used for private purposes.

<ESMA\_QUESTION\_CP\_SME\_19>

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

<ESMA\_QUESTION\_CP\_SME\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_SME\_20>