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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 2020ESMA70-156-2803:  |

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 | ZAGREB STOCK EXCHANGE |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |[ ]
| Country/Region | Croatia |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_SME\_1>

ZAGREB STOCK EXCHANGE LTD operates two markets: regulated market (divided into three segments) and MTF registered as SME Growth Market. The business strategy includes regional cooperation and business expansion, so in the last decade, ZSE leads the regional development of the capital markets. The main goal was to grow in two directions: to establish regional cooperation with other Exchanges and capital markets stakeholders and to expand and develop through acquisitions or joint ventures. Together with Bulgarian and Macedonian stock exchanges, Zagreb Stock Exchange has established the SEE LINK company in 2104, with the objective of creating a regional infrastructure. Further development included acquisitions, so in 2015 Zagreb Stock Exchange acquired 100% ownership of Ljubljana Stock Exchange, and in 2020 Zagreb Stock Exchange acquired 5.3% shares of the Macedonian Stock Exchange.

Furthermore, for a small market, it is important to be up-to-date with new trends and technologies in order to provide innovative solutions to the local capital market. In 2016 Zagreb Stock Exchange launched a partnership project with Estonian Funderbeam. New global fundraising and trading platform based on blockchain technology, provides early-stage companies new financing solutions, and for the Exchange way to create a pipeline of new issuers. Although stock markets in transition economies are generally underdeveloped, with low market capitalization and turnover, principal objective is to create positive investment environment and bridge between the European Union and the rest of the region.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

Taking into account that smaller markets are underdeveloped, primarily due to increased debt financing and the SME’s lack of trust in equity financing, we consider that 50 % is an appropriate threshold to ensure the success of the SME GM. Exchanges must have the opportunity to use SME GM as a pipeline for new issuers. Furthermore, some industries/sectors (manufacturing/construction industry) have difficulties following at least two of the three (EU) 2017/565 criteria, either because of the number of employees or the total balance sheet. Although interested in the capital markets these “large” companies are usually not yet ready to enter a regulated market, and a threshold above 50% will force SME GM to refuse potential issuers. Following (EU) 2019/2115 SME GM should not be perceived as a final step in the scaling up of issuers. SME GM should enable successful companies to grow and move one day to regulated markets, in order to benefit from greater liquidity and a larger ‘investors pool’. Allowing 50% threshold, gives SME GM’s possibility to prepare and “transfer” these companies to the regulated market.

<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>

SME definition must consider sector-based inputs, whereas knowledge-based industries differ from labor-intensive industries by type of resources, especially the number of employees and assets. High-growth firms, as measured by employment expansion rates, account for a significant share of jobs created and are key players in economic growth. Some industries (manufacturing, retail, agriculture) are closely linked to “manpower” and SME expansion depends on the number of employees. Alignment should be made in terms of (EU) 2017/565 criteria. We recommend amendments to the “headcount” definition (max 250) to make it more relevant for high-growth enterprises.

<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>

TYPE YOUR TEXT HERE

<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>

Harmonization of accounting standards only for SME GM issuers can be burdensome and could operate in a discriminatory manner. Today, non-listed SMEs are subject to national accounting rules based on the EU Accounting Directives, which sets common basic principles that Member States have to apply when designing their national accounting frameworks for SMEs. Harmonization of accounting standards could lead to setting new accounting rules for listed SME’s or “future SME GM issuers” and could ultimately result in a new administrative burden. Furthermore, SME’s would have to adapt existing accounting IT-systems to new requirements, which would result in higher costs and more administrative burden.

<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>

No, admission requirements should be left to SME GM (MTF) operators. Markets, investor and legal requirements, differ from state to state and there is large difference between markets and investors in EU states. In particular, article 33(3) of MiFID II ensures all SME GM have effective rules, systems and procedures.

<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>

Standardised format for financial reports could operate in a discriminatory manner for SME GM issuers. Today, non-listed SMEs are subject to national accounting rules based on the EU Accounting Directives, which sets common basic principles that Member States have to apply when designing their national accounting frameworks for SMEs. Each national authority (and thus EU member state), set national rules for financial reporting and “one-size-fits-all” standardization could ultimately result in a new administrative burden. Furthermore, (same as ad Q6) SME’s would have to adapt existing accounting IT-systems to new requirements, which would result in higher costs and compliance burden.

<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>

Equity investments in start-ups/micro SMEs have been intensified through private-equity/crowdfunding or VC investments in past years, but the fact is that such investors favor investments in certain “high-growth” industries such as IT or Fintech. Micro SMEs from other labor-intense industries (manufacturing, agriculture, transport etc) could also benefit from equity financing but are unable to offer to investors high returns to capital in a short time. Micro-SMEs are often heavily reliant on traditional debt to fulfill their cash flow and investment needs, and that makes them vulnerable and less resilient in times of crisis. The recent crisis has shown us that it is important to foster traditional industries (like agriculture and manufacturing) within EU members. Capital markets will play a crucial role in the EU members' recovery and harmonized approaches of all EU members could encourage investments in “non-attractive” and traditional industries.

Encouraging micro-SMEs to enter capital markets should be considered in a broader context: tax alleviations, administrative support, listing alleviations through easier listing requirements and covered listing costs. Although crowdfunding platforms are great alternative for raising additional capital, only capital markets can offer transparency and investor protection. The measures proposed for micro-SME are set out under three areas: MAR proportionately lower fines (compared to issuers on a regulated market), Tax incentives for the SME listed on SME GM (reduced corporate income tax for the first 3 years after going public) and Tax incentives for investors (reduced tax on capital income for investments in SME) and financial support measures (pre-listing programmes, subsidise/cover listing fees or direct running costs of the selected SMEs. Great example is tax relief for R&D (research and development) projects and feasibility studies (income tax base reduction), where each EU member state applied EU policies on a national level.

<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>

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<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>

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<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>

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<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 times of high market volatility, the availability of reliable information and research coverage is crucial to make informed investment decisions. When there is no information or insufficient information about SME’s there is always great risk to invest. Lack of information and high-quality reports about SME, reject potential investors because costs (analysis) are disproportionate to benefits (revenue). SME Growth Markets could benefit from the establishment of a special rating-agency for SME analyses and investment research. The research results would be a great benefit for brokerage houses, stock exchange, regulator, investors, and other stakeholders willing to invest.

<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_SME\_19>

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

<ESMA\_QUESTION\_CP\_SME\_20>

**(a)Proportional administrative sanctions (MAR):** The Market Abuse Regulation has extended the scope of its obligations to issuers whose financial instruments have been admitted to trading on an MTF (including SME Growth Markets). In doing so, the Market Abuse Regulation has created a 'one-size-fits-all' regulatory environment by making all its requirements applicable in the same manner to all issuers. SME GM aims to encourage small and medium companies to enter capital markets, to accept investors and equity financing and overcome the basics of corporate governance. Considering administrative and therefore financial requirements, entering capital markets can be great challenge for SME’s. In terms of investor protection it is important to deliver a proportionate regulatory framework, but for smaller markets and SME issuers, the regulatory burden can be sometimes overwhelming. Even for large companies, with corporate governance and in-house attorneys, MAR compliance can be overwhelming, but minimum (or maximum) penalties (fines) would not jeopardise the future of the large company. On the contrary “one-size-fits-all” model, mostly used in the context of EU level legislative frameworks, is less proportional for smaller markets and brings disproportionate administrative and therefore financial requirements for SME GM issuers. Afraid that high penalties (fines) could jeopardise the company’s survival, SME’s prefer to de-list and to resort to private equity. In order to promote SME GM, we propose substantially lower sanctions for SME GM issuers. For issuers on SME GM markets, penalties should be proportionately lower compared to issuers on a regulated market. Proposal goes towards adjusting the amount of the minimum penalty and the penalties determined on the basis of total revenues for SME GM issuers.

**(b)New deadline to publicly disclose managers' transactions (MAR art 19 (3))**

Taking into account that most SMEs have no” in-house” legal support, and “timeframe” to send notification can be particularly challenging when the issuer is seeking legal advice about whether a specific transaction should be disclosed or not. Current “three working-day rule” may not allow issuers to have sufficient time to disclose the transactions to the market, while they face potential sanctions in case of non-compliance with this requirement. Following Regulation (EU) 2019/2115 preamble (12) and Article 1 (5) amending Regulation (EU) No 596/2014, whereas emission allowance market participants are allowed to disclose transactions within two business days of receipt of notification of those transactions by the PDMRs or the PCA, same should apply for SME GM issuers in order to promote SME GM and alleviate the administrative burden for SME GM issuers. As the settlement of a transaction takes at least two working days and can lead to late notification, the current three working-day rule may not allow issuers to have sufficient time to disclose the transactions to the market, while they face potential sanctions in case of non-compliance with this requirement. It is important that the two-business day timeline applies from the point the issuer was notified as opposed to when the transaction took place as this will allow sufficient time for issuers to notify the market accordingly.

(c)**Foster financial education:**

Foster financial education, for both investors and entrepreneurs, especially on markets with “over-debt SME” and weak equity culture. Promotion of SME GM markets must go hand in hand with measures to sustain confidence in markets, so it is important to elaborate CMU strategy EU-wide and/or through EU-funded national educational campaigns.

(**d)Undo the tax bias toward debt**

We encourage EU policy-makers to consider the different characteristics of public equity and debt markets when undertaking capital markets regulatory initiatives. In particular, some of the current fiscal arrangements in place act as a barrier to the development of public capital markets in Europe. We understand that taxation is the competence of the Members States. Nonetheless, Member States should be encouraged to use tax policies to stimulate long-term investing of listed equity of smaller companies and to ensure the fair treatment of debt and equity financing. We encourage Member States to review fiscal incentives against equity financing in Europe given the high potential positive impact such changes could deliver for the overall attractiveness of European public capital markets. Currently, in many European countries, we either observe a lack of positive tax incentives, or the presence of significant disincentives, whereby the tax system is more favorable to debt issuance than to equity. To orient, more investor flows into listed equity, bond and derivatives instruments, new or existing tax and regulatory disincentives that suppress investor demand should be avoided. And tax exemptions for any type of longer-term investment products should be encouraged.

**(e)Foster equity investment through IPO fund**

Smaller markets are suffering from low-liquidity and lack of investors willing to invest in SME. VC/Private equity funds are bypassing stock exchanges and looking for majority ownership and direct investments in specialized industries/sectors. Pension funds could play a significant role in SME equity financing, but they still consider they take a big risk and maximum exposure for minimum gain. Therefore, the creation of an ‘IPO Fund’ could tackle SME investment gap and boost liquidity on SME GM.

<ESMA\_QUESTION\_CP\_SME\_20>