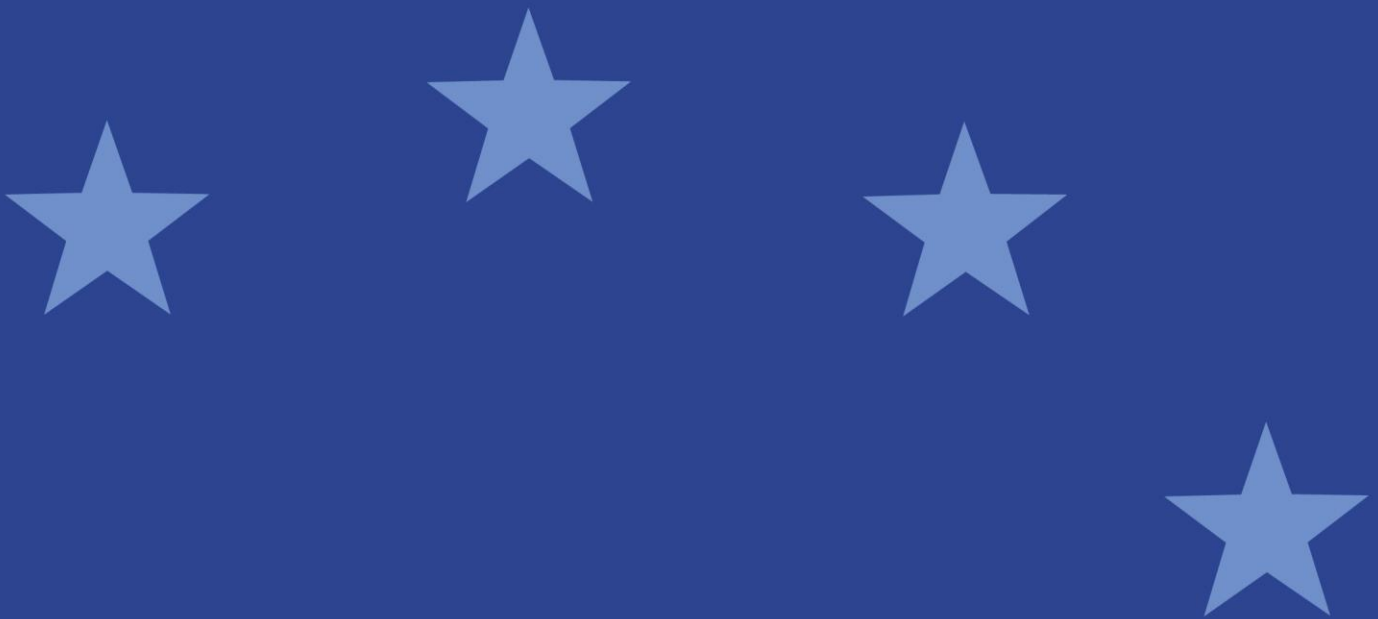


Reply form for the Consultation Paper on the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets.



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 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 under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	Assonime
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_SME_1>

Before answering to the questionnaire, we would like to make some general remarks.

In our answer to the EC consultation document on 2018 on the SME Law Package we expressed our view stating that its initiative could have been more ambitious, by:

- extending the scope of possible reforms to a wider set of targeted companies (enlarging the current definition of SMEs),*
- to all markets of listing (not only MTF but also regulated markets) and*
- to other areas of regulation (not only market abuse).*

Our goal was to alleviate pieces of legislation for all SMEs listed on MTFs and Regulated Markets in order to reduce the burdens and the costs for compliance. In this perspective, the SME Listing Package, despite being a first step in the right direction, was a missed opportunity under the flag of Capital Market Union.

We think that at present the problem of compliance costs and limited access of SMEs to capital markets is even more stringent after the COVID-19 outbreak where the purpose of simplification is a necessity underlined recently also by the EC which announced the release of several relief measures.

We welcome the present Consultation giving us the opportunity to make a more general reflection upon the whole European market infrastructure.

However, the Consultation Document assumes that sharpening the regulatory differentiations between trading venues and, at the same time, gathering homogeneous firms in the same trading venues can attract liquidity on securities listed therein. This assumption is at the basis of the whole idea of creating a label of quality for SME growth markets and attaches a set of facilitations to this label. In line with this assumption, the Consultation Document looks for suggestions to increase the number of the SMEs GM and their cross-border dimension.

However, we think that this assumption should indeed be challenged, and different approaches and strategies should be envisaged, i.e.:

- allowing also Regulated Markets to use the label of SMEs GM, also considering that with a different definition of SMEs – up to 1 billion, as suggested in CMU HLF Report - many EU companies should fall under this category.*
- modifying the quantitative criteria to be used to define a SME GM. as it would make more sense to identify as SME GM those trading venues that only let in companies below a given size in terms of capitalization at the time they are admitted to trading no matter how much they grow thereafter. Otherwise the paradox is that if a SME GM has success attracting SME GM which grow fast, the SME GM must deregister and loose the label¹.*
- promoting a centralized pan-European SME market by the EC under the model of Nasdaq USA²; or at least, encouraging the creation of a regional market to overcome the national dimension of current SME GM and eventually lead to a truly pan-European SME market.*

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<ESMA_COMMENT_CP_SME_1>

¹ See L. Enriques, *What should qualify as a “SME Growth market”*, 26 January 2018, Blog Oxford.

² See. A. Perrone, *Small and Medium Enterprises Growth Markets*, Capital Market Union in Europe, 2018, 2.

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

<ESMA_QUESTION_CP_SME_1>

The extension of MAR rules on MTFs discouraged SMEs to list on those markets. This extension has substantially increased the level of regulation for companies listed on these MTFs, as these companies now must compile insider lists, notify managers' transactions and comply with the duty to publish inside information. Many smaller companies entered those junior markets because they considered themselves not ready to cope with a more stringent regulatory environment yet and wanted to benefit from lighter and more proportionate rules.

This is true above all for MTFs for bonds; in some MTFs devoted to bonds, corporate bonds are offered mainly to professional investors and consequently the application of MAR rules has resulted as excessively burdensome.

While we recommend reconsidering the application of MAR rules for all MTFs, a first step could be to define a specific market abuse discipline for bond MTFs, avoiding insider list and managers' transactions rules and providing for a new specific definition of insider information to be disclosed.

We therefore fully support the High Level Forum Report on CMU which already recommends to narrow the definition of inside information for all companies.

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<ESMA_QUESTION_CP_SME_1>

Q2. 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 believe that, 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, we suggest 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. Therefore we suggest to give the issuer, also for equity offers, the possibility to choose as Home Member State that where the securities are offered to the public.

Also, we believe that the lack of other countries issuers is not only a matter of visibility; in order to overcome the national dimension, we support encouraging the aggregation of markets at a regional basis.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_SME_2>

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

<ESMA_QUESTION_CP_SME_3>

As a general approach, as pointed out in the introduction, we question the validity of the choice to impose by regulation the creation of markets exclusively or mainly dedicated to SMEs (see answer to question 1.2). In this perspective, where a threshold representing the proportion of SMEs on SME Growth Market should be defined, we believe it should be a minimum threshold in order to leave markets free to decide for different composition requirements and leave them more flexibility.

Therefore, we believe that the current threshold should not be raised. In the medium term, we 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.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_SME_3>

Q4. Do you consider that a further alignment of the definitions of an SME in different pieces of regulation with the MiFID II definition of SME would be helpful? Can you provide specifics of where alignment would be needed?

<ESMA_QUESTION_CP_SME_4>

We support the CMU HLF Recommendation on the definition of SME according to which: “An SMC³ should be defined as “all publicly listed companies on any type of market whose market capitalisation is lower than one billion euros”. The threshold should apply to companies, irrespectively of the market they are traded on”. Being 1 billion euros the cap, in our view however the MSs should have flexibilty in order to lower the threshold depending on the market structure.

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<ESMA_QUESTION_CP_SME_4>

Q5. Which are your views on the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments? Are there requirements which should be specified?

<ESMA_QUESTION_CP_SME_5>

We believe that SME GM 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

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_SME_5>

Q6. Do you think it could be beneficial to harmonise accounting standards used by issuers listed on SME GMs with the aim of increasing cross-border investment?

<ESMA_QUESTION_CP_SME_6>

We believe 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, we support keeping a flexible approach where issuers have the option to choose.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_SME_6>

Q7. Should ESMA propose to create homogeneous admission requirements for issuers admitted to trading on SME GMs? Should such requirements be tailored depending

³ Small and Medium Capitalisation Companies.

on the size of the issuer (e.g. providing less burdensome requirements for Micro-SMEs)?

<ESMA_QUESTION_CP_SME_7>

In general, we believe that SME GM should be offered maximum flexibility to adjust their rules to the specificity of their markets (see answer to Q5 above), including the possibility to tailor a simplified regime for micro-cap. 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.

However, we believe it would be more important to consider the possibility to tailor admission requirements in a simplified way for SME GM dedicated to professional investors (see also answer to Q10 below).

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<ESMA_QUESTION_CP_SME_7>

Q8. Should ESMA suggest an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration?

<ESMA_QUESTION_CP_SME_8>

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<ESMA_QUESTION_CP_SME_8>

Q9. Is there any other aspect of the SME GMs regime as envisaged under MiFID II that you think should be revisited? Would you consider it useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format?

<ESMA_QUESTION_CP_SME_9>

We suggest allowing also regulated markets (or their specialized segments) to be considered eligible for assuming the SMEs Growth Market status, once they meet the criteria currently established for MTFs only, and so allowing SMEs on regulated markets to benefit from the alleviations of the EU Growth Prospectus. As a matter of fact, while we recognize the positive experience of SMEs MTFs in some member countries, they do not necessarily represent the only or the favored solution for SMEs access to the equity market, in terms of liquidity of shares and visibility of companies listed, considering the obstacles institutional investors of third countries can have in investing in shares not listed in regulated markets.

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<ESMA_QUESTION_CP_SME_9>

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

<ESMA_QUESTION_CP_SME_10>

See our answer to Q7 above.

An alternative approach to the two-tier SME regime with additional alleviations for micro-SMEs could be to envisage a simplified regime for SME GM dedicated to professional investors, i.e. by exempting them from the application of MAR regime.

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<ESMA_QUESTION_CP_SME_10>

Q11. Do you think that requiring SME GMs to have in place mandatory liquidity provision schemes, designed in the spirit of what is envisaged in Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go public? Do you think that on balance such provision would increase costs for MTFs in a way which encompasses potential benefits, resulting in reducing the incentive to register as an SME GM?

<ESMA_QUESTION_CP_SME_11>

Firstly, we think that it is not clear when and at which conditions the liquidity contract, as proposed in the present Consultation Paper, may be used by the issuer if in its Member State a similar accepted market practice has already been recognised (this is the case of Italy); considering that in par. 87 ESMA states that the liquidity contracts will coexist with existing or future national AMPs on liquidity contracts it would be useful to clarify, on that regard, if it is up to the issuer to decide which scheme to adopt..

In Italy we have already in place an accepted market practice for liquidity providing which is available both for regulated markets and MTFs. Furthermore, in Italy the Regulation of AIM Italia requires the so-called specialist charged to improve the liquidity on the market at the conditions set forth in the Regulation and under the supervision of the trading venue. It is therefore important to understand the relationship among the different regulatory tools and to have clarifications on the fact that the choice between the AMP and the liquidity contract is of the issuer.

Generally speaking we think that an European mandatory liquidity provision scheme can improve the liquidity for SMEs above all listed in MSs where there is not an accepted market practice or cross-listed; this could ensure a level playing field, as stated in the ESMA CP (par. 94).

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_SME_11>

Q12. Do you think the requirement in Article 33(7) of MiFID II regarding the issuer non objection in case of instruments already admitted to trading on SME Growth Markets to be admitted to trading on another SME growth market should be extended to any trading venue? Should a specific time frame for non-objection be specified? If so which one?

<ESMA_QUESTION_CP_SME_12>

Yes, we agree that the issuer should not object.

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<ESMA_QUESTION_CP_SME_12>

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

<ESMA_QUESTION_CP_SME_13>

We think that the issuer, in case where he does not object to be admitted to trading on another SME GM, should not be subject to any obligation.

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<ESMA_QUESTION_CP_SME_13>

Q14. How do you think the availability of research on SMEs could be increased?

<ESMA_QUESTION_CP_SME_14>

The CMU HLF Recommends, in order to support brokers' produced research on SMEs, that brokers should be allowed to bundle execution commissions and research fees when it concerns SME stock listed on any trading venue; this could improve the research above all on SMEs which suffer of the lack of visibility on the market. The same reasoning is in the recent Mifid Review Consultation Document.

Regarding the obligation to produce and publish research on SMEs, we think that flexibility should be left to the trading venues in order to decide if to set forth an obligation. It could depend on the market.

We also support the recommendation of the High Level Forum Report on CMU according to which the creation of a single EU database that collects and allows free public access to information published by companies could help improving their visibility.

The database must be the collection point for information that are already published by companies and should not involve obligations to publish further information. Such a database should be put in place according to the principles already adopted by the EU regarding the System of interconnection of registers (art. 22 of the directive EU 2017/1132 and implementing regulation EU 2015/884). This would be a technological infrastructure linking the different systems already in place for the publication of information.

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<ESMA_QUESTION_CP_SME_14>

Q15. 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>

Q16. 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>

Q17. 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>

Q18. 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>

Q19. 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>

*The EU Regulation n. 2019/2115 (hereinafter “Reg. SME GM”) provided a slight simplification for the insider list for SMEs on SME GM requiring to draw up (only) a list of who, in the normal exercise of their duties, have “**regular access**” to inside information. However, MSs, according to the Reg. SME GM, can exercise the option to have a full insider list and ESMA is mandated to develop draft standards for the format of insider lists in the MSs opting for full insider lists.*

While we welcome the simplification set forth by the Reg. SME GM, it is important to avoid the exercise of the option to have full insider lists as this runs counter the goal of simplification of CMU, under which the Reg. SME GM has been released, and the recent CMU High Level Forum Recommendations on alleviations to MAR regime.

*Regarding the “regular access” required by the Reg. SME GM above mentioned we would like to remark the different formulation used in the Commission Delegated Regulation 2016/347 for the permanent insider list which refers to access “**at all times to all inside information**”; in our view, also considering what ESMA states at par. 128 of the CP, the permanent insider list of SMEs may include more people than the one of companies different from SMEs. A clarification on that regard would be useful.*

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<ESMA_QUESTION_CP_SME_19>

Q20. CBA: Can you identify any other costs and benefits? Please elaborate.

<ESMA_QUESTION_CP_SME_20>

As already illustrated in the answer to the Q&A 2. the main problem for SMEs and MTFs is the application of the MAR Rules which should be tackled under the MAR review.

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<ESMA_QUESTION_CP_SME_20>