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Targeted consultation on the listing act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs

Fields marked with * are mandatory.

Introduction

Background for this consultation

EU capital markets remain underdeveloped in size, notably in comparison to capital markets in other major jurisdictions. In particular, EU companies make less use of capital markets for debt and equity financing than their peers in other jurisdictions around the world, with a negative impact on economic growth and macroeconomic resilience.

In recognition of these issues, the Commission's new capital markets union (CMU) action plan of September 2020 has as one of its main objectives to ensure that companies, and in particular small and medium-sized enterprises (SMEs), have unimpeded access to the most suitable form of financing. Given the underdevelopment of market-based finance in the EU, the Commission highlighted the need to support the access of businesses in particular to public markets. Specifically, in Action 2 of the action plan, the Commission announced that it will assess whether the rules governing companies' listing on public markets need to be further simplified. Furthermore, Commission President von der Leyen announced in her letter of intent addressed to Parliament and the Presidency of the Council on 15 September 2021 a legislative proposal for 2022 to facilitate SMEs' access to capital.

In order to inform its further initiatives in this area, the Commission has already taken a number of steps. The Commission has commissioned studies on the topic of how to improve the access to capital markets by companies in the EU and on the functioning of primary and secondary markets in the EU. Furthermore, in October 2020, the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs to monitor the functioning and success of SME growth markets. In May 2021, the TESG published their final report on the empowerment of EU capital markets for SMEs with twelve concrete recommendations to the Commission and Member States to help foster SMEs' access to public markets. They build on the work already undertaken by the High Level Forum on capital markets union (CMU HLF) and on ESMA's recently published MiFID II review report on the functioning of the regime for SME growth markets.

Structure of this consultation and how to respond

In line with the better regulation principles, the Commission is launching this targeted consultation to gather evidence in the form of stakeholders' views on the need to make listing on EU public markets more attractive for companies and on

ways of doing so. The Commission is also seeking views regarding specific ways of listing, including via Special Purpose Acquisition Companies (SPACs). A special focus is dedicated to SMEs and issuers listed on SME growth markets.

For the purposes of this consultation, the reference to SMEs should be understood as encompassing both SMEs as defined in the Commission Recommendation 2003/361 and SMEs as defined in Article 4(1)(13) of MiFID II. The Commission Recommendation 2003/361 classifies as SMEs companies that employ fewer than 250 people and have a turnover not exceeding EUR 50 million and/or a balance sheet not exceeding EUR 43 million. MiFID II classifies SMEs as companies that had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years. The concept of SME growth markets was introduced by MiFID II as a new category of multilateral trading facilities (MTFs) to facilitate high-growth SMEs' access to public markets and increase their funding opportunities. In order to be registered as an SME growth market, an MTF must comply with the requirements laid down in Article 33 of MiFID II, including the rule that at least *'50% of issuers are SMEs'*.

This targeted consultation is available in English only. It is split into two main sections. The first section contains general questions and aims at gathering views on stakeholders' experience with the current listing rules and the possible need to adapt those rules. The second section seeks views from stakeholders on various technical aspects of the current listing rules, with questions grouped according to the legal act that they pertain to.

In parallel to this targeted consultation, the Commission is launching an open public consultation which covers only general questions and is available in 23 official EU languages. As the general questions are asked in both questionnaires, we advise stakeholders to reply to only one of the two versions (either the targeted consultation or the open public consultation) to avoid unnecessary duplications. Please note that replies to both questionnaires will be equally considered.

Views are welcome from all stakeholders. You are invited to provide feedback on the questions raised in this online questionnaire. We invite you to add any documents and/or data that you would deem useful to accompany your replies at the end of this questionnaire, and only through the questionnaire. Please explain your responses and, as far as possible, illustrate them with concrete examples and substantiate them numerically with supporting data and empirical evidence. This will allow further analytical elaboration.

You are requested to read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

The consultation will be open for 12 weeks.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-listing-act@ec.europa.eu.

More information on

- this consultation
- the public consultation running in parallel
- the consultation document
- SME listing on public markets
- the protection of personal data regime for this consultation

About you

* Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ◉ English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○ Polish
- ○ Portuguese
- ○ Romanian
- ○ Slovak
- ○ Slovenian
- ○ Spanish
- ○ Swedish

* I am giving my contribution as

- ○ Academic/research institution
- ◉ Business association
- ○ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen

- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Urban

* Surname

Funered

* Email (this won't be published)

urban@svpm.se

* Organisation name

255 character(s) maximum

The Swedish Securities Markets Association (SSMA)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Djibouti
- Libya
- Saint Martin

- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- ( ) Cocos (Keeling) Islands
- ( ) Colombia
- ( ) Comoros
- ( ) Congo
- ( ) Cook Islands
- ( ) Costa Rica
- ( ) Côte d'Ivoire
- ( ) Croatia
- ( ) Cuba
- ( ) Curaçao
- ( ) Cyprus
- ( ) Czechia
- ( ) Democratic Republic of the Congo
- ( ) Denmark
- ( ) Japan
- ( ) Jersey
- ( ) Jordan
- ( ) Kazakhstan
- ( ) Kenya
- ( ) Kiribati
- ( ) Kosovo
- ( ) Kuwait
- ( ) Kyrgyzstan
- ( ) Laos
- ( ) Latvia
- ( ) Lebanon
- ( ) Lesotho
- ( ) Liberia
- ( ) Philippines
- ( ) Pitcairn Islands
- ( ) Poland
- ( ) Portugal
- ( ) Puerto Rico
- ( ) Qatar
- ( ) Réunion
- ( ) Romania
- ( ) Russia
- ( ) Rwanda
- ( ) Saint Barthélemy
- ( ) Saint Helena Ascension and Tristan da Cunha
- ( ) Saint Kitts and Nevis
- ( ) Saint Lucia
- ( ) United States Minor Outlying Islands
- ( ) Uruguay
- ( ) US Virgin Islands
- ( ) Uzbekistan
- ( ) Vanuatu
- ( ) Vatican City
- ( ) Venezuela
- ( ) Vietnam
- ( ) Wallis and Futuna
- ( ) Western Sahara
- ( ) Yemen
- ( ) Zambia
- ( ) Zimbabwe

* Field of activity or sector (if applicable)

- [ ] Operator of a trading venue (regulated market, MTF including SME growth markets, OTF)
- [ ] Operator of market infrastructure other than trading venue (clearing house, central security depositary, etc.)
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, pension funds)
- [x] Broker/market-maker/liquidity provider
- [ ] Financial research provider
- [x] Investment bank
- [ ] Accounting and auditing
- [ ] Insurance
- [ ] Credit rating agency

- ☐ Corporate, issuer
- ☐ Other
- ☐ Not applicable

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ○ **Anonymous**
  Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ◉ **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions

1. General questions on the overall functioning of the regulatory framework

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The current EU rules relevant for company listing consist of provisions contained in a number of legal acts, such as the Prospectus Regulation, the Market Abuse Regulation (MAR), the Market in Financial Instruments Directive (MiFID II), the Market in Financial Instruments Regulation (MiFIR) the Transparency Directive and the Listing Directive. These rules primarily aim at balancing the facilitation of companies' access to EU public markets with an adequate level of investor protection, while also pursuing a number of secondary or overarching objectives.

Question 1. In your view, has EU legislation relating to company listing been successful in achieving the following objectives?

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Ensuring adequate access to finance through EU capital markets	○	○	○	◉	○	○
Providing an adequate level of investor protection	○	○	○	◉	○	○
Creating markets that attract an adequate base of professional investors for companies listed in the EU	○	○	○	◉	○	○
Creating markets that attract an adequate base of retail investors for companies listed in the EU	○	○	○	○	◉	○
Providing a clear legal framework	○	○	◉	○	○	○
Integrating EU capital markets	○	◉	○	○	○	○

Please explain the reasoning of your answer to question 1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that while EU legislation relating to company listings may not have led to fully intregrated capital markets, they are in general functioning quite well. However, a challenge is that institutional and retail investors, with some exceptions, do not seem to have sufficient interest in investing in capital markets.

As noted by numerous stakeholders and recognised in the CMU action plan, public listing in the EU is currently too cumbersome and costly, especially for SMEs. The Oxera report on primary and secondary equity markets in the EU stated that the number of listings in the EU-28 declined by 12%, from 7,392 in 2010 to 6,538 in 2018, while GDP grew by 24% over the same period. As a corollary of this, EU public markets for capital remain depressed, notably in comparison to public markets in other jurisdictions with more developed financial markets overall. Weak EU capital markets negatively impact the funding structure and cost of capital of EU companies which currently over rely on credit when compared to other developed economies.

Question 2. In your opinion, how important are the below factors in explaining the lack of attractiveness of EU public markets?

a) Regulated markets:

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Excessive compliance costs linked to regulatory requirements	○	○	◉	○	○	○
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	○	○	○	◉	○	○
Lack of attractiveness of SMEs' securities	◉	○	○	○	○	○
Lack of liquidity of securities	○	◉	○	○	○	○
Other	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 2 a):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Statistics show that EU capital markets do not, in general, seem to be sufficiently attractive. This being said, the SSMA notes that this does not seem to apply to Swedish capital markets.

b) SME growth markets:

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Excessive compliance costs linked to regulatory requirements	○	○	◉	○	○	○
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	○	○	○	◉	○	○
Lack of attractiveness of SMEs' securities	○	◉	○	○	○	○
Lack of liquidity of securities	○	○	○	◉	○	○
Other	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 2 b):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Statistics show that EU capital markets do not, in general, seem to be sufficiently attractive. This being said, the SSMA notes that this does not seem to apply to Swedish capital markets.

c) Other markets (e.g. other MTFs, OTFs):

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Excessive compliance costs linked to regulatory requirements	○	○	○	○	○	◉
Lack of flexibility for issuers due to regulatory constraints around certain shareholding structures and listing options	○	○	○	○	○	◉
Lack of attractiveness of SMEs' securities	○	○	○	○	○	◉
Lack of liquidity of securities	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 2 c):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Companies, in particular SMEs, do not consider listing in the EU as an easy and affordable means of financing and may also find it difficult to stay listed due to on-going listing requirements and costs. More specifically, the new CMU action plan identified factors such as high administrative burden, high costs of listing and compliance with listing rules once listed as discouraging for many companies, especially SMEs, from accessing public markets. When taking a decision on whether or not to go public, companies weigh expected benefits against costs of listing. If costs are higher than benefits or if alternative sources of financing offer a less costly option, companies will not seek access to public markets. This *de facto* limits the range of available funding options for companies willing to scale up and grow.

Question 3. In your view, what is the relative importance of each of the below costs in respect to the overall cost of an initial public offering (IPO)?

a) Direct costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
Fees charged by the issuer's legal advisers for all tasks linked to the preparation of the IPO (e. g. drawing-up the prospectus, liaising with the relevant competent authorities and stock exchanges etc.)	○	○	○	○	○	◉

Fees charged by the issuer's auditors in connection with the IPO	○	○	○	○	○	◉
Fees and commissions charged by the banks for the coordination, book building, underwriting, placing, marketing and the roadshow	○	○	○	○	○	◉
Fees charged by the relevant stock exchange in connection with the IPO	○	○	○	○	○	◉
Fees charged by the competent authority approving the IPO prospectus	○	○	○	○	○	◉
Fees charged by the listing and paying agents	○	○	○	○	○	◉
Other direct costs	○	○	○	○	○	◉

b) Indirect costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
The potential underpricing of the shares during the IPO by investment banks	○	○	○	○	○	◉
Cost of efforts required to comply with the regulatory requirements associated with the listing process	○	○	○	○	○	◉
Other indirect costs	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 3:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA notes that it is hard to accurately rank the importance of different costs vis-a-vis the total cost. Answers may depend on who responds to the question and the IPO at hand. However, the SSMA believe that, in general, the fees charged by advisors (legal advisors, auditors, and banks) may be of higher importance than the other costs stated in the table.

After their initial listing, companies continue to incur a number of costs that derive from being listed. These costs can be both indirect such as those derived from compliance and regulation requirements and direct such as fees paid to the listing venue. In some cases companies may choose to voluntarily delist in order to avoid these costs which can be viewed as excessive, especially for SMEs.

Question 4. In your view, what is the relative importance of each of the below costs in respect to the overall costs that a company incurs while being listed?

a) Direct costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
Ongoing fees due by the issuer to the listing venue for the continued admission of its securities to trading on the listing venue	○	○	○	○	○	◉
Ongoing fees due by the issuer to its paying agent	○	○	○	○	○	◉
Ongoing legal fees due by the issuer to its legal advisors (if post-IPO external legal support is necessary to ensure compliance with listing regulations)	○	○	○	○	○	◉

Fees due by the issuer to auditors if post-IPO, extra auditor work is necessary to ensure compliance with listing regulation	○	○	○	○	○	◉
Corporate governance costs	○	○	○	○	○	◉
Other direct costs (e.g. costs for extra headcount, costs allocated to investors' relationships, development and maintenance of a website)	○	○	○	○	○	◉

b) Indirect costs:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
Increased risk of litigation due to investor base and increased scrutiny and supervision derived from being listed	○	○	○	○	○	◉

Other indirect costs	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 4:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA notes that it is hard to accurately rank the importance of different costs vis-a-vis the total cost. Answers may depend on who responds to the question and the IPO at hand.

In order to comply with all regulatory requirements such as those included in the MAR or the Prospectus Regulation, companies have to invest time and resources. This may be seen as a disproportionate burden compared to the advantages this may bring in terms of investors protection.

Question 5.1 In your view, does compliance with IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 5.1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the view that market manipulation is in effect not possible before the date that securities are admitted to trading. Risks of insider dealing and unlawful disclosure of insider data also limited before the first day of trading. Furthermore, it is very difficult for issuers, who have requested admission to trading of their securities, to determine what information should be considered as inside information before the securities have been admitted to trading. If MAR requirements start to apply before the date of admission to trading, this would entail practical consequences and difficulties for issuers to comply with the regulation. As an example, managers' transactions in unlisted securities, issued by an unlisted company, for which there is not yet any public offer or information regarding the upcoming admission to trading, would have to be notified and reported according to article 19 of MAR, and this before the company has had the chance to set up necessary routines to comply with MAR. Such a requirement would be odd and is likely to result in information about managers' transactions that is hard to understand and potentially misleading, while at the same time not really fulfilling any of the fundamental purposes of the regulation.

Question 5.2 In your view, does compliance with post-IPO listing requirements create a burden disproportionate with the investor protection objectives that these rules are meant to achieve?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 5.2:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Public markets are not flexible enough to accommodate companies’ financing needs. This lack of flexibility may be driven by regulatory constraints (e.g. concerning the ability of companies owners to retain control of their business when going public by issuing shares with multiple voting rights), as well as by the lack of legal clarity in relevant legislation (e.g. the conditions under which a company may seek dual listing). Regulatory constraints or legal uncertainty may discourage the use of public markets by firms that find requirements inadequate or unclear.

Question 6. In your view, would the below measures, aimed at improving the flexibility for issuers, increase EU companies’ propensity to access public markets?

	Yes	No	Don't know - No opinion - Not applicable
Allow issuers to use shares with multiple voting rights when going public	(●)	( )	( )
Clarify conditions around dual listing	( )	(●)	( )
Lower minimum free float requirements	(●)	( )	( )
Eliminate minimum free float requirements	( )	(●)	( )
Other	( )	( )	(●)

Please explain the reasoning of your answer to question 6:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA would like to refer to the recommendation set out in the Final report of the Technical Expert Stakeholder Group on SMEs(TESG): While there is a large variety of views in terms of the ideal proportion of voting rights in dual class share structures, the TESG recommends introducing the EU harmonised maximum 10:1 ratio, which has worked successfully for many years in Sweden and has been implemented by HKEX and SGX.

As regards the lowering of the minimum free float requirement, the SSMA considers this to be something that potentially could be evaluated in the future. From a business perspective, a slightly lower free float requirement could be beneficial. However, we do not consider this to be an important issue.

The lack of available company research and insufficient liquidity discourage investors from investing in some listed securities. Many securities issued by SMEs in the EU are characterised by lower liquidity and higher illiquidity premium, which may be the direct result of how these companies are perceived by investors, in particular institutional investors, who do not find them sufficiently attractive. Furthermore, institutional investors may fear reputational risk when investing in companies listed on multilateral trading facilities, including SME growth markets, given the lack of minimum corporate governance requirements for issuers on those venues.

Question 7. In your view, what are the main factors that explain why the level of institutional and retail investments in SME shares and bonds remains low in the EU?

	1 (not important)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
Lack of visibility and attractiveness of SMEs towards investors leading to a lack of liquidity for SME shares and bonds	○	○	◉	○	○	○
Lack of investor confidence in listed SMEs	○	○	○	◉	○	○
Lack of tax incentives	◉	○	○	○	○	○
Lack of retail participation in public capital markets (especially in SME growth markets)	○	◉	○	○	○	○
Other	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 7:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Swedish capital markets are functioning well, with a high level of institutional as well as retail participation in public capital markets. Swedish governments (socialist, conservative, and liberal governments alike) have throughout the years supported capital markets in different ways, e.g., by promoting individual ownership of shares in mutual funds, privatisation of state-owned enterprises through listings and promotion of digital literacy. Where tax-incentives have been involved, such incentives have not distinguished between investments in bonds or shares.

2. Specific questions on the existing regulatory framework

Please click on the button Next to respond to the rest of the questionnaire.

2.1 Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market)

The Prospectus Regulation (Regulation (EU) 2017/1129), which started applying in July 2019, lays down the rules governing the prospectus that must be made available to the public when a company makes an offer to the public or an admission to trading of transferable securities on a regulated market in the EU. The prospectus is a legal document that contains information about the issuer (e.g. main line of business, finances and shareholding structure) and the securities offered to the public or to be admitted to trading on a regulated market. A prospectus has to be approved by the competent authority of the home Member State before the beginning of the offer or the admission to trading of the securities.

The Prospectus Regulation has been subject to targeted amendments

i. at the end of 2019 under the SME Listing Act
ii. in 2020 under the Crowdfunding Regulation
iii. and in 2021 under the capital markets recovery package

However, the prospectus regime remains to be seen by some as burdensome and unfit for attracting companies, in particular SMEs, to public markets. Both the CMU High Level Forum (HLF) and the TESG have highlighted that the process of drawing up a prospectus and getting it approved by the relevant national competent authority is expensive, complex and time-consuming and that targeted yet ambitious simplification of prospectus rules could reduce significantly compliance costs for companies and lower obstacles to tapping public markets.

This section aims at gathering respondents' views on the costs stemming from the application of the prospectus regime as well as on which requirements are most burdensome and how it would be possible to alleviate them without

impairing investor protection and the overall transparency regime. Furthermore, this section aims to examine other aspects of the Prospectus Regulation, such as the functioning of the thresholds for exemptions from the obligation to publish a prospectus, the language regime and rules concerning the approval and publication of prospectuses.

2.1.1. Costs stemming from the drawing up of a prospectus

Analysis conducted by Oxera highlights that the efforts required to comply with the regulatory requirements associated with the listing process, and the litigation risk that could emerge, are often cited by industry practitioners as the most significant indirect costs of listing. In particular, many issuers stressed, as a high and growing cost to listing, the increased length and complexity of the prospectus documentation.

Question 8.1. As an issuer or an offeror, could you provide an estimation for the average cost of the prospectuses listed below (in EUR amount)? If necessary, please provide different estimations per type of prospectus (e.g. prospectus for an IPO, for a right issue, for a convertible bond, for a corporate bond, for an EMTN programme).

Prospectus Type	Estimation for the average cost in EUR
Standard prospectus for equity securities	100,000-300,000
Standard prospectus for non-equity securities	25,000-30,000
Base prospectus for non-equity securities	25,000-30,000
EU growth prospectus for equity securities	100,000-150,000
EU growth prospectus for non-equity securities	N/A
Simplified prospectus for secondary issuances of equity securities	100,000-200,000
Simplified prospectus for secondary issuances of non-equity securities	N/A
EU recovery prospectus (currently available for shares only)	N/A

Please explain the reasoning of your answer to question 8.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.2 Considering the total costs incurred by an issuer for the drawing up of a prospectus, please indicate what is the relative importance of each of the below costs in respect to the overall costs.

a) IPO prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	○	◉	○	○	○	○
Auditors costs	○	○	◉	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	◉	○
Competent authorities' fees	◉	○	○	○	○	○
Other costs	○	◉	○	○	○	○

Please specify to which costs you are referring to in your answer to question 8.2 a):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) Right issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	○	◉	○	○	○	○
Auditors costs	○	○	◉	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	◉	○
Competent authorities' fees	◉	○	○	○	○	○
Other costs	◉	○	○	○	○	○

Please specify to which costs you are referring to in your answer to question 8.2 b):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) Bond issue prospectus

	Less than or equal to 10% of total costs	Greater than 10% and less than or equal to 20% of total costs	Greater than 20% and less than or equal to 40% of total costs	Greater than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	◉	○	○	○	○	○
Auditors costs	◉	○	○	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	◉	○
Competent authorities' fees	◉	○	○	○	○	○
Other costs	◉	○	○	○	○	○

Please specify to which costs you are referring to in your answer to question 8.2 c):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

d) Convertible bond issue prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	◉	○	○	○	○	○

Auditors costs	◉	○	○	○	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	○	◉	○
Competent authorities' fees	◉	○	○	○	○	○
Other costs	◉	○	○	○	○	○

Please specify to which costs you are referring to in your answer to question 8.2 d):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

e) EMTN program prospectus

	Less than or equal to 10% of total costs	More than 10% and less than or equal to 20% of total costs	More than 20% and less than or equal to 40% of total costs	More than 40% and less than or equal to 50% of total costs	More than 50% of total costs	Don't know - No opinion - Not applicable
Issuer's internal costs	◉	○	○	○	○	○
Auditors costs	○	○	○	◉	○	○
Legal fees (including legal fees borne by underwriters for drawing-up the prospectus)	○	○	○	◉	○	○

Competent authorities' fees	◉	○	○	○	○	○
Other costs	◉	○	○	○	○	○

Please specify to which costs you are referring to in your answer to question 8.2 e):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain the reasoning of your answer to question 8.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The latter prospectus types (non-equity) are normally drafted by the legal advisor based on public information and contain much less financial information which needs to be reviewed by an auditor.

However, in addition to legal fees, in order to fulfil ICMA standards for EMTN prospectuses, a quite extensive review and comfort letters from auditors are required.

Question 9. What are the sections of a prospectus that you find the most cumbersome and costly to draft?

	1 (not burdensome at all)	2 (rather not burdensome at all)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
Summary	○	○	○	◉	○	○
Risk factors	○	○	○	◉	○	○
Business overview	○	○	◉	○	○	○
Operating and financial review	○	○	○	◉	○	○
Regulatory environment	○	○	◉	○	○	○
Trend information	○	○	◉	○	○	○
Profit forecasts or estimates	○	○	◉	○	○	○
Administrative, management and supervisory bodies and senior management	○	◉	○	○	○	○
Related party transactions	○	◉	○	○	○	○
Financial information concerning the issuer's assets and liabilities, financial position and profit and losses	○	○	◉	○	○	○
Working capital statement	○	○	◉	○	○	○
Statement of capitalisation and indebtedness	○	◉	○	○	○	○
Others	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 9:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Swedish prospectuses in general tend to be relatively short and to the point, on average ca 150 pages, as compared to other jurisdictions. Given the concise nature of a typical Swedish prospectus, a summary in the form prescribed in the prospectus regulation adds very little extra value. At the same time, the Prospectus regulation sets out quite detailed requirements regarding information that should be included in the summary. This renders the prospectus summary rather burdensome for Swedish issuers to draft, considering the limited added value. The SSMA would argue that it would be beneficial if the requirements regarding information that has to be provided in the prospectus summary were less detailed and prescriptive.

Question 10. As an issuer or an offeror, how much money do you consider saving with the EU growth prospectus compared to a standard prospectus (in percentage)?

	Less than or equal to 10%	More than 10% and less than or equal to 20%	More than 20% and less than or equal to 40%	More than 40% and less than or equal to 50%	More than 50%	Don't know - No opinion - Not applicable
EU growth prospectus for equity securities compared to a Standard prospectus for equity securities	○	○	◉	○	○	○
EU growth prospectus for non-equity securities compared to a Standard prospectus for non-equity securities	○	○	◉	○	○	○

Please explain the reasoning of your answer to question 10:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11. As an issuer or offeror, how much money do you consider saving with the EU recovery prospectus, currently available only for shares, compared to a standard prospectus and a simplified prospectus for secondary issuances of equity securities (in percentage)?

	Less than or equal to 10%	More than 10% and less than or equal to 20%	More than 20% and less than or equal to 40%	More than 40% and less than or equal to 50%	More than 50%	Don't know - No opinion - Not applicable
EU recovery prospectus compared to a standard prospectus for equity securities	○	○	○	○	○	◉
EU recovery prospectus compared to a simplified prospectus for secondary issuances of equity securities	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 11:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.2. Circumstances when a prospectus is not needed

The Prospectus Regulation currently lays down several exemptions for the offer of securities to the public (Article 1(4) and 3(2)) or the admission to trading of securities on a regulated market (Article 1(5)). Moreover, the Prospectus Regulation does not apply to offers of securities to the public below EUR 1 million, in accordance with the conditions laid down in Article 1(3).

Question 12.1 Would you be in favour of adjusting the current prospectus exemptions so that a larger number of offers can be carried out without a prospectus?

a) Exemptions for offers of securities to the public (Article 1(4) of the Prospectus Regulation):

Please select as many answers as you like

- ☐ i. An offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors (Article 1(4), point (b))
- ☐ ii. An offer of securities whose denomination per unit amounts to at least EUR 100 000 (Article 1(4), point (c))
- ☐ iii. An offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer (Article 1(4), point (d))
- ☐ iv. Other exemptions

b) Exemptions for the admission to trading on a regulated market (Article 1(5) of the Prospectus Regulation):

Please select as many answers as you like

- ☑ i. Securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market (Article 1(5), first subparagraph, point (a))
- ☑ ii. Shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph (Article 1(5), first subparagraph, point (b))
- ☐ iii. Other exemptions

Please specify what changes you would propose to the exemption listed in point i. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regarding point i above, the SSMA is uncertain about the basis for the current threshold, but would support increasing the threshold to 25%.

Please specify what changes you would propose to the exemption listed in point ii. and include, where relevant, your preferred threshold:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regarding point ii above, the SSMA is uncertain about the basis for the current threshold, but would support increasing the threshold to 25%.

c) Exemptions applicable to both the offer of securities to the public and admission to trading on a regulated market:

Please select as many answers as you like

- ☐ i. Non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2. do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (j) and Article 1(5), first subparagraph, point (i)).
- ☐ ii. From 18 March 2021 to 31 December 2022, non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities: 1. are not subordinated, convertible or exchangeable; and 2.do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument (Article 1(4), point (l), and Article 1(5), first subparagraph, point (k))

☐ iii. Other exemptions

Question 12.2 Would you consider that more clarity should be provided on the application of the various thresholds below which no prospectus is required under the Prospectus Regulation (e.g. on total consideration of the offer and calculation of the 12 month-period)?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Question 12.2.1 Please explain on which thresholds and on which elements more clarity is needed and explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that more clarity should be provided regarding the application of the thresholds for issuances in other currencies than Euro. Since the exchange rate between a national non-Euro currency (e. g. SEK) and the Euro changes from time to time, the threshold for when a prospectus is not required is affected by changes in the exchange rate. This might create practical problems, e.g. if a company wants to make a subsequent issue of fungible debt instruments and at the time of the subsequent issue is faced with additional prospectus requirements, due to movements in the exchange rate.

Question 12.3 Could any additional types of offers of securities to public and admissions to trading on a regulated market be carried out without a prospectus while maintaining adequate investor protection?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 12.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that the present rules strikes a good balance, and do not see any additional kinds of offers that could be made without a prospectus.

Question 13.1 The exemption thresholds in Articles 1(3) and 3(2) are designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers for small offers. If you consider that these thresholds should be adjusted so that a larger number of offers can be carried out without a prospectus, please indicate your preferred threshold in the table below.

Provision	Preferred Threshold
Article 1(3) of the Prospectus Regulation. Explanation: Offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months, are out of scope of the Prospectus Regulation. **Existing Threshold: EUR 1 000 000**	
Article 3(2) of the Prospectus Regulation. Explanation: Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided that such offers do not require notification (passporting) and the total consideration of each such offer in the Union is less than a monetary amount calculated over a period of 12 months which shall not exceed EUR 8 000 000. **Existing Threshold: EUR 8 000 000 (Upper threshold)**	

Please explain the reasoning of your answer to question 13.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 13.2 Do you agree with Member States exercising their discretion over the threshold set out in Article 3(2) of the Prospectus Regulation with a view to tailoring it to national specificities of their markets?

- Yes
- No
- Don't know / no opinion / not relevant

Question 13.2.1 Please make an alternative proposal to the Member States exercising their discretion over the threshold set out in Article 3(2) of the Prospectus Regulation:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the opinion that the threshold set out in Art. 3(2) should be fully harmonised throughout the EU, and would support the removal of the current possibility for member states to adjust this threshold .

Please explain the reasoning of your answer to question 13.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.3 The standard prospectus for offers of securities to the public or admission to trading of securities on a regulated market (primary issuances)

Several industry practitioners have stressed that the increasing length and complexity of the prospectus documentation is one of the most important costs associated to the listing process. According to a survey which analysed the average length of the IPO prospectus for the 10 most recent IPOs in the main EU markets as of March 2019, the median length

of an IPO prospectus was 400 pages in Europe, with significant divergence among countries, ranging from 250 pages in the Netherlands to over 800 pages in Italy.

The excessive length – and thus high cost – of a prospectus is deemed particularly challenging for smaller issuers of both equity and non-equity securities. Data show that there is currently little proportionality with respect to the length of the IPO prospectus based on the size of the issuer: the mean number of pages for issuers with a market capitalisation between EUR 150 million and EUR 1 billion is even higher than for issuers with a market capitalisation above EUR 1 billion (577 versus 514 pages, respectively).

General issues

Question 14.1 Do you think that the standard prospectus for an offer of securities to the public or an admission to trading of securities on a regulated market in its current form strikes an appropriate balance between effective investor protection and the proportionate administrative burden for issuers?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 15. Would you support introducing a maximum page limit to the standard prospectus?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 15:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Prospectus summary

The prospectus summary is one of the three components of a prospectus (alongside the registration document and the securities note). Its purpose is to provide, in a concise manner and in non-technical language, the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered to the public or admitted to trading on a regulated market. The prospectus summary is to be read together with the other parts of the prospectus, to aid investors, particularly retail investors, when considering whether to invest in such securities. Views are welcome as to whether room for improvement exists.

Question 16. Do you believe that the prospectus summary regime has achieved its objectives (i.e. make the summary short, simple, clear and easy for investors to understand)?

	Yes	No	Don't know - No opinion - Not applicable
Summary of the standard prospectus (Article 7 of the Prospectus Regulation, excluding paragraph 12a)	○	◉	○
Summary of the EU growth prospectus (Article 33 of Commission Delegated Regulation (EU) 2019/980)	○	◉	○
Summary of the EU recovery prospectus (Article 7(12a) of the Prospectus Regulation)	○	○	◉

Please explain how the summary of the standard prospectus could be further improved and explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Swedish prospectuses in general tend to be relatively short and to the point, on average ca 150 pages, as compared to other jurisdictions. Given the concise nature of a typical Swedish prospectus, a summary in the form prescribed in the prospectus regulation adds very little extra value. At the same time, the Prospectus regulation sets out quite detailed requirements regarding information that should be included in the summary. This renders the prospectus summary rather burdensome for Swedish issuers to draft, considering the limited added value. The SSMA would argue that it would be beneficial if the requirements regarding information that has to be provided in the prospectus summary were less detailed and prescriptive.

Concerning the language rules for prospectuses drawn up in another language than that of the home Member state, the SSMA does not think that a translation of the summary to the local language serves any purpose. If only the summary is translated to the local language, while the rest of the prospectus is drawn up e.g. in English as a customary language in the sphere of international finance, there is a risk of putting too much emphasis on the information in the summary, which does not necessarily contain all the relevant information available in other parts of the prospectus.

Please explain how the summary of the EU growth prospectus could be further improved and explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Swedish prospectuses in general tend to be relatively short and to the point, on average ca 150 pages, as compared to other jurisdictions. Given the concise nature of a typical Swedish prospectus, a summary in the form prescribed in the prospectus regulation adds very little extra value. At the same time, the Prospectus regulation sets out quite detailed requirements regarding information that should be included in the summary. This renders the prospectus summary rather burdensome for Swedish issuers to draft, considering the limited added value. The SSMA would argue that it would be beneficial if the requirements regarding information that has to be provided in the prospectus summary were less detailed and prescriptive.

Concerning the language rules for prospectuses drawn up in another language than that of the home Member state, the SSMA does not think that a translation of the summary to the local language serves any purpose. If only the summary is translated to the local language, when the rest of the prospectus is drawn up e.g., in English as a customary language in the sphere of international finance, there is a risk of putting too much emphasis on the information in the summary, which does not necessarily contain all the relevant information available in other parts of the prospectus.

Incorporation by reference

The “incorporation by reference” mechanism allows the information contained in one of the documents listed in Article 19(1) of the Prospectus Regulation to be incorporated into a prospectus by including a reference. However, this information must have already been previously or simultaneously published electronically and drawn up in a language fulfilling the language requirements laid down in Article 27 of the Prospectus Regulation. Incorporation by reference facilitates the procedure of drawing up a prospectus and lowers the costs for issuers.

Question 17. Would you suggest any improvement to the existing rules on incorporation by reference, including amending or expanding the list of information that can be incorporated by reference?

- (●) Yes
- ( ) No
- ( ) Don’t know/ no opinion / not relevant

Please explain the reasoning of your answer to question 17:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that the EU capital markets would benefit from a rule that stipulates that issuers are not required to draw up and publish a prospectus supplement for each of the issuer’s future financial reports, when the issuer is required by law or regulation to publish such financial reports, e.g., quarterly reports, and they do not contain anything unexpected. The current regime, where issuers are required to draft and have a prospectus supplement approved by the national competent authority before they can issue new securities under the prospectus, adds to the administrative burden, while also creating a funding gap for issuers that issue debt securities under base prospectuses.

The standard prospectus for non-equity securities

In the Prospectus Regulation non-equity securities are subject to specific rules, such as the possibility to draw up a base prospectus (normally for offering programs) and the dual regime for retail non-equity securities versus wholesale non-equity securities. The latter are non-equity securities that have a denomination per unit of at least EUR 100 000 or

that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in those securities. Wholesale non-equity securities are exempted from the prospectus for the offer to the public and are entitled to a lighter prospectus for the admission to trading on a regulated market (e.g. no prospectus summary, flexible language requirement, lighter disclosures), as set out in Commission Delegated Regulation (EU) 2019/980.

Question 18.1 Do you think that the prospectus (including the base prospectus) for non-equity securities, with differentiated rules for the admission to trading on a regulated market of retail and wholesale non-equity securities, has been successful in facilitating fundraising through capital markets?

- (●) Yes
- ( ) No
- ( ) Don't know/ no opinion / not relevant

Please explain the reasoning of your answer to question 18.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18.2 Would you be in favour of further aligning the prospectus for retail non-equity securities with the prospectus for wholesale non–equity securities, to make the retail prospectus lighter and easier to be read?

- (●) Yes
- ( ) No
- ( ) Don't know/ no opinion / not relevant

Please explain the reasoning of your answer to question 18.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While the SSMA is generally in favour of reducing the level of detail in the regulation to allow for lighter and easier to read prospectuses, we consider that it would be appropriate to make a distinction between large and well-known issuers and smaller, less known issuers. For well-known issuers such as banks, insurance companies and other large companies there is typically a large amount of information publicly available, which potential investors can study to make informed investment decisions. For less known issuers, including many SMEs, there is generally not as much information previously available, meaning that providing sufficient information in the prospectus might be more important from an investor protection point of view. In addition to how much readily available information there is about the company, the type of investors for which the offer is intended should be considered when determining what level of information a prospectus should contain. For offers intended for retail investors there is generally a greater need for comprehensive information in the prospectus, than for offers for qualified investors.

Question 18.3 Would you consider any other amendment to the existing rules?

- ○ Yes
- ○ No
- ◉ Don't know/ no opinion / not relevant

Please explain the reasoning of your answer to question 18.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.4. Prospectus for SMEs

SMEs and other categories of beneficiaries (e.g. mid-caps listed on an SME growth market) defined in Article 15(1) of the Prospectus Regulation, can choose to draw up an EU growth prospectus for offers of securities to the public, provided that they have no securities admitted to trading on a regulated market. The EU growth prospectus is more alleviated than a standard prospectus, as it contains less disclosures (e.g. board practices, employees, important events in the development of the issuer's business, operating and financial review) and in some cases more alleviated ones (e.g. principal activities, principal markets, organisational structure, investments, trend information, historical financial information, dividend policy). As this development is relatively recent, there is limited data available to assess whether the introduction of the EU growth prospectus has affected the average length of prospectuses for SMEs. However, feedback from market participants indicates that there has not been a substantial decrease in the length of documents submitted after July 2019.

Question 19. Do you believe that the EU growth prospectus strikes a proper balance between investor protection and the reduction of administrative burdens for SMEs?

- ○ Yes

- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 19:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, as regards all prospectus types, the SSMA considers that the balance is fairly good, and prospectuses contain the relevant information. However, we do consider that the regulatory framework is rather too detailed and prescriptive, which may act as a discouraging factor while adding to the administrative burden.

2.1.5. The format and language of the prospectus

Electronic Prospectus

The Prospectus Regulation sets out an obligation for issuers to provide a copy of the prospectus on either a durable medium or printed upon request of any potential investor. It has been noted that, due to the current prevalence of digital mediums, this may be an unnecessary cost and administrative burden for issuers.

Question 20. Do you agree that the above mentioned obligation should be deleted and that a prospectus should only be provided in an electronic format as long as it is published in accordance with Article 21 of the Prospectus Regulation?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 20:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Members of the SSMA experience that investors rarely ask for physical copies of prospectuses, and we would support a rule under which it would be sufficient to provide investors with prospectuses and other similar documents in an electronic format.

Language rules for the prospectus

The TESG in its final report argued that publishing a prospectus only in English, as the customary language in the sphere of international finance, independently from the official language of the home or host Member States could reduce the burden on companies offering securities in several Member States and contribute to creating a level playing field amongst market participants.

Question 21. Concerning the language rules laid down in Article 27 of the Prospectus Regulation, with which of the following statements do you agree?

- (●) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance
- ( ) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, except for the prospectus summary
- ( ) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State
- ( ) It should be allowed to publish a prospectus **only** in English, as the customary language in the sphere of international finance, for any cross-border offer or admission to trading on a regulated market, including when a security is offered/admitted to trading in the home Member State, except for the prospectus summary
- ( ) There is no need to change the current language rules laid down in Article 27 of the Prospectus Regulation
- ( ) Don't know/ no opinion / not relevant

2.1.6. The prospectus for secondary issuances of issuers already listed on a regulated market or an SME growth market and/or for transfer from a SME growth market to a regulated market

The Prospectus Regulation currently lays down a simplified regime for secondary issuances of companies whose securities have already been admitted to trading on a regulated market or on an SME growth market continuously and for at least the last 18 months. Such companies are already subject to periodic and ongoing disclosure requirements, such as under the Transparency Directive and the Market Abuse Regulation. It can therefore be argued that there is less of a need to require a prospectus for secondary issuances. A simplified prospectus for secondary issuances can also be used, in accordance with the conditions laid down in Article 14(1), point (d), of the Prospectus Regulation, to transfer from an SME growth market to a regulated market (aka "transfer prospectus").

Furthermore, the capital markets recovery package introduced the new EU recovery Prospectus regime (Article 14a of the Prospectus Regulation) to allow for a rapid re-capitalisation of EU companies affected by the economic shock of the COVID-19 pandemic. The EU recovery prospectus consists on a single document, of only 30 pages and includes a 2 page-summary (neither the summary nor the information incorporated by reference are taken into account to determine the page-size limit), focusing on essential information that investors need to make an informed decision. This new short-form prospectus is meant to be easy to produce for issuers, easy to read for investors and easy to scrutinise for national competent authorities. The EU recovery prospectus is only available for secondary issuances of shares of issuers listed on a regulated market or an SME growth market continuously and for at least the last 18 months. It is currently intended as a temporary regime.

The TESG in its final report highlighted the need to further simplify the prospectus burden for subsequent admissions to trading or offers of fungible securities and recommended that a new simplified prospectus (replacing the current

simplified prospectus for secondary issuances), similar in its form to the EU recovery prospectus, be adopted on a permanent basis for secondary issuances and for transfers from an SME growth market to a regulated market, provided that specific conditions are satisfied.

Question 22. Do you agree that, for issuers that have already been listed continuously and for at least the last 18 months on a regulated market or an SME growth market, the obligation to publish a prospectus could be lifted for any subsequent offer to the public and/or admission to trading of securities fungible with existing securities already issued (with a prospectus) without impairing investors' protection?

- Yes
- (●) No
- Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 22:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA would not support lifting this requirement as regards SMEs. This being said, it could be appropriate not to require a new prospectus or a prospectus supplement for subsequent issues of debt securities where the subsequently issued securities are fungible with the outstanding debt securities.

Question 22.1 Do you think that the regime for secondary issuances could nevertheless be simplified?

- i. The obligation to draw up a prospectus should, for both the offer to the public and the admission to trading on a regulated market of securities fungible with existing securities which have been previously issued, be replaced with the obligation to publish a statement confirming compliance with continuous disclosure and financial reporting obligations
- ii. The obligation to draw up a prospectus should, for both the offer to the public and the admission to trading on a regulated market of securities fungible with existing securities which have been previously issued, be replaced with the obligation to publish an alternative admission or listing document (content to be defined at EU level). Such document should only be filed with the relevant national competent authority (i.e. neither subject to the scrutiny nor to the approval of the latter)

- iii. The obligation to publish a prospectus should remain applicable (unless one of the existing exemptions apply) but only a prospectus significantly simplified and focusing on essential information should be required
- (•) iv. Other
- v. Don’t know/ no opinion / not relevant

Please specify what you mean by 'other' in your answer to question 22.1 and explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that for offers of securities to the public the obligation to publish a prospectus should remain applicable unless any of the existing exemptions apply. Such prospectuses could potentially be simplified to focus on essential information. For admission to trading on a regulated market of securities fungible with previously issued securities, the SSMA considers that the obligation to draw up a prospectus should be replaced with the obligation to publish information on the issuer’s website, confirming compliance with continuous disclosure and financial reporting obligations.

Question 23. Since the application of the capital markets recovery package, have you seen the uptake in the use of the EU recovery prospectus?

- Yes
- (•) No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 23:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 24. Do you think that the EU Recovery prospectus should:

	Yes	No	Don't know - No opinion - Not applicable
i. Be extended on a permanent basis for secondary issuances of shares	○	(•)	○

ii. Be introduced on a permanent basis for secondary issuances of all types of securities (both equity and non-equity securities)	○	◉	○
iii. Be used as a simplified prospectus for all cases set out in Article 14(1)	○	◉	○
iv. Other	○	○	◉

Please explain the reasoning of your answer to question 24:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA does not support extending or expanding the use of the EU recovery prospectus regime, as extending the EU recovery prospectus on a permanent basis would be too much of an infringement on investor protection.

2.1.7. Liability regime

The obligation to publish a prospectus entails a civil liability regime for issuers. Infringements to the provisions of the Prospectus Regulation may lead to administrative sanctions and other administrative measures, in accordance with Article 38 of that Regulation and, depending on national law, criminal sanctions. The prospectus is sometimes referred to as a document that serves to shield from liability issues (i.e. the more information the better) rather than to support investors in taking informed investment decisions.

Question 25. Do you think that the current punitive regime under the Prospectus Regulation is proportionate to the objectives sought by legislation as well as the type and size of entities potentially covered by that regime?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 25, notably in terms of costs:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 26. Do you believe that the current civil liability regime under the Prospectus Regulation is adequately calibrated?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Question 27. Do you consider that the liability of national competent authorities' (NCAs) in relation to the prospectus approval process is adequately calibrated and consistent throughout the EU?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Question 28. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 38(2) of the Prospectus Regulation) have a higher impact on an issuer's decision to list?

	Pecuniary sanctions in respect of natural persons	Pecuniary sanctions in respect of legal persons
Issuers listed on SME growth markets	○	○
Issuers listed on other markets	○	○

Please explain the reasoning of your answer to question 28:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 29.1 Do you think that the maximum administrative pecuniary sanction for infringements laid down in Article 38(2) of the Prospectus Regulation in respect of legal persons should be decreased?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	○	○	◉
Issuers listed on other markets	○	○	◉

Please explain the reasoning of your answer to question 29.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 29.2 Do you think that the maximum administrative pecuniary sanction for infringements laid down in Article 38(2) of the Prospectus Regulation in respect of natural persons should be decreased?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	○	○	◉
Issuers listed on other markets	○	○	◉

Please explain the reasoning of your answer to question 29.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 30. Do you think that the possibility of applying criminal sanctions in the case of non-compliance with any of the requirements specified in Article 38(1) of the Prospectus Regulation should be removed?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

2.1.8. Scrutiny and approval of the prospectus

Article 20 of the Prospectus Regulation lays down harmonised rules for the scrutiny and approval of the prospectus, with a view to fostering supervisory convergence throughout the EU. Article 20 also sets out the timelines for approving the prospectus, depending on the circumstances and type of document (e.g. prospectus for a first time offer of unlisted issuers, prospectus for issuers already listed or that have already offered securities to the public, EU recovery prospectus, prospectus which includes a URD). The criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus are further specified in Chapter V of Commission Delegated Regulation (EU) 2019/980.

Question 31. Do you consider that there is alignment in the way national competent authorities assess the completeness, comprehensibility and consistency of the draft prospectuses that are submitted to them for approval?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Question 31.1 Which material differences do you see across EU Member States (e.g. extra requirements and extra guidance being provided by certain national competent authorities)?

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA members experience a misalignment in the way national competent authorities assess draft prospectuses with regards to both the content of the prospectuses and how long it takes for the authorities to complete their approval process.

Question 32. Do you consider the timelines for approval of the prospectus as prescribed in Article 20 of the Prospectus Regulation adequate?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Question 32.1 Please provide concrete suggestions on how to improve the process:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the opinion that the practical process and the time required by the national competent authorities to approve the prospectuses, as well as the difficulty for the issuer to get information from the NCAs regarding when the approval process will be completed, pose large obstacles for issuers to plan and execute their issuances in an effective and timely way.

Additionally, the NCAs approval process for supplements to prospectuses is too time consuming. The time when the prospectus supplement is under scrutiny, creates a funding gap for issuers that issue debt securities under base prospectuses.

Question 33.1 In its June 2020 report, the CMU HLF suggested that prospectuses could be made available to the public closer to the offer (e.g. in three working days). Should the minimum period of six working days between the publication of the prospectus and the end of an offer of shares (Article 21(1) of the Prospectus Regulation) be relaxed in order to facilitate swift book-building processes?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 33.1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 33.2 Should a minimum period of days between the publication of a prospectus and the end of an offer be set out also for offer of non-equity securities, in particular to favour more retail participation?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 33.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Determination of the "Home Member State"

The Prospectus Regulation, Article 2(m), sets out rules for the determination of the home Member State. As a general rule, for issuers established in the EU, the home Member State corresponds to the Member State where the issue has its registered office. However, different rules apply for non-equity securities with a denomination per unit above EUR 1 000 and for certain non-equity hybrid securities for which the 'Home Member State' means the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

Equity issuers established in the EU are therefore currently not able to choose their home Member State, while non-equity issuers established in the EU are allowed to do so, subject to the conditions laid down in Article 2(m), point (iii), of the Prospectus Regulation.

Question 34. Should the dual regime for the determination of the home Member State for non-equity and equity securities featured in Article 2(m) of the Prospectus Regulation be amended?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 34:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.9. The Universal Registration Document (URD)

Effective as of 2019, the co-legislators introduced a URD in the Prospectus Regulation, in line with the shelf registration principles already well-established in other financial markets, particularly in the US. A URD is a document that, after being approved for two consecutive years, is only to be filed each year (i.e. kept 'in the shelf') by frequent issuers. A URD contains information about company's organisation, business, financial position, earnings, etc., and facilitates the approval process of prospectuses of these issuers (e.g. approval time reduced by half) by national competent authorities. As a URD can be used for offers of both equity and non-equity securities, it is currently built on the more comprehensive registration document for equity securities.

The TESG in their Final Report highlighted that the URD regime, as currently designed, does not deliver on its objective, as only a very low number of issuers, and mostly in one Member State, have resorted to it.

Question 35. In your view, what are the main reasons for the lack of use of the URD among issuers across the EU?

Please select as many answers as you like

- [ ] The time period necessary to benefit from the status of frequent issuer is too lengthy
- [ ] The URD supervisory approval process is too lengthy
- [ ] The costs of regularly updating, supplementing and filing the URD are not outweighed by its benefits
- [ ] The URD content requirements are too burdensome
- [ ] The URD is not suitable for non-equity securities as it is built on the more comprehensive registration document for equity securities
- [ ] The URD language requirements are too burdensome
- [ ] Other

Please explain the reasoning of your answer to question 35:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 36. As the URD can only be used by companies already listed, should its content be aligned to the level of disclosures for secondary issuances (instead of primary issuances as currently) to increase its take up by both equity and non-equity issuers?

- ( ) Yes
- ( ) No
- (•) Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 36:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 37. Should the approval of a URD be required only for the first year (with a filing every year after)?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 37:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 38. Should a URD that has been approved or filed with the national competent authority be exempted from the scrutiny and approval process of the latter when it is used as a constituent part of a prospectus (i.e. the scrutiny and approval should be limited to the securities note and the summary)?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 38:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 39. Should issuers be granted the possibility to draw up the URD only in English for passporting purposes, notwithstanding the specific language requirements of the relevant home Member State?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 39:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 40. How could the URD regime be further simplified to make it more attractive to issuers across the EU?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.1.10. Other possible areas for improvement

Supplements to the prospectus

Article 23 of the Prospectus Regulation lays down rules for the supplement to the prospectus. As part of the Capital Market Recovery Package, the new paragraphs (2a) and (3a) were introduced with a view to providing more clarity on the obligation for financial intermediary to contact investors when a supplement is published, to increase the time window to do so and also to increase the time window for investors to exercise their withdrawal rights, where applicable. These new rules are only temporary and due to expire on 31 December 2022.

Question 41.1 Has the temporary regime for supplements laid down in Articles 23(2a) and 23(3a) of the Prospectus Regulation provided additional clarity and flexibility to both financial intermediaries and investors and should it be made permanent?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 41:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA has not noticed that the temporary regime for supplements has been used and, therefore, does not think that this regime should be made permanent.

Question 41.2 Would you propose additional improvements?

Please explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Equivalence regime

Article 29 of the Prospectus Regulation enables third country issuers to offer securities to the public in the EU or seek admission to trading on an EU regulated market made under a prospectus drawn up in accordance with the laws of third country, subject to the approval of the national competent authority of the EU home Member State, and provided that

i. the information requirements imposed by those third country laws are equivalent to the requirements under the Prospectus Regulation

ii. and the competent authority of the home Member State has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

The Commission is empowered to adopt Delegated Acts to establish general equivalence criteria, based on the requirements laid down in Article 6, 7, 8 and 13 (essentially disclosure requirements only). The current rules are considered not workable, including the rules to adopt general equivalence criteria.

Question 42. Do you believe that the equivalence regime set out in Article 29 of the Prospectus Regulation, which is difficult to implement in its current version, should be amended to make it possible for the Commission to take

equivalence decisions in order to allow third country issuers to access EU markets more easily with a prospectus drawn up in accordance with the law of a third country?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Other

Question 43. Would you have any other suggestions on possible improvements to the current prospectus rules laid down in the Prospectus Regulation?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that it would be beneficial if all prospectuses could be published in English, regardless of where in the EU the securities are issued. This would alleviate the administrative burden on issuers and advisors, as they at present often have to draft prospectuses in different languages depending on where they securities are issued. A change in this regardwould lead to lower issuance costs in EU capital markets.

The SSMA would also like to emphasise that changes and amendments to the Prospectus Regulation often implicate increased costs and an administrative burden for issuers and advisors striving to remain compliant with the regulation. While the Prospectus Regulation, as all rules, will from time to time have to be updated, too frequent amendments and updates can become more of a hindrance than a help. The number of updates should thus be kept as low as possible.

2.2. Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse)

The Market Abuse Regulation ('MAR') entered into full application in 2016, it provides requirements for market participants to ensure the integrity of the financial markets.

In view of the periodic review of MAR, the European Commission, in March 2019, requested ESMA to provide a technical advice on the review of MAR on a number of topics (including the notion of inside information, the conditions for delaying the disclosure of inside information, insider lists, managers' transactions and sanctions). On 3 October 2019, ESMA publicly consulted the market on its preliminary view of the technical advice. The consultation ended on 29 November 2019 and received 97 responses. In September 2020, ESMA published its technical advice addressing all the topics on which the Commission asked advice on and identified several other provisions which were considered important to review in MAR ('ESMA TA'). According to ESMA, both the feedback to the consultation and NCAs experience indicate that, overall, the regime introduced by MAR works well. Accordingly, only a few targeted changes to the legislative framework have been recommended, sometimes to provide guidance at level 3 (e.g. on inside information and delayed disclosure of inside information). However, according to the CMU HLF and the TESG reports, there are a number of MAR provisions and requirements that may sometimes act as a disincentive for companies to list and remain listed on regulated markets and/or MTFs. The cost of complying with these requirements is deemed high, especially for SMEs. The legal uncertainty arising from certain provisions is indicated as an additional source of costs. Finally, the sanctioning regime is considered not proportionate and a discouraging factor for going and remaining public.

While the market abuse regime is crucial to safeguard market integrity and investor confidence, the Commission aims to assess if there is room for some targeted amendments and alleviations in the requirements laid down by MAR, in order to ensure proportionality and reduce burdens.

2.2.1. Costs and burden stemming from MAR

Question 44. For each of the MAR provisions listed below, please indicate how burdensome the EU regulation is for listed companies:

Definition of “inside information”:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Disclosure of inside information:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Conditions to delay disclosure of inside information:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Drawing up and maintaining insiders lists:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Market sounding:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Disclosure of managers' transactions:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

Enforcement:

	1 (not burdensome at all)	2 (rather not burdensome)	3 (neutral)	4 (rather burdensome)	5 (very burdensome)	Don't know - No opinion - Not applicable
For all companies	○	○	○	○	◉	○
For issuers listed on SME growth markets	○	○	○	○	◉	○

If there are other MAR provisions that you find burdensome for listed companies, please specify which ones and indicate to what extent they are burdensome for listed companies:

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain the reasoning of your answer to question 44, and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs):

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a general comment, market participants experience that it is difficult to know if their procedures and routines are sufficient to comply with the MAR provisions, due to questions of interpretation and uncertainties regarding what is expected in practice. This gives rise to legal and regulatory risks and burdensome administration for the company. Market participants in general wish to comply with the requirements – and make an effort to achieve this. The SSMA is of the opinion that it would be beneficial for the efficiency of the market to minimise such uncertainties and hence make it easier for market participants to know how to comply with the different provisions.

Regarding the definition of "inside information": The legal assessment of at what moment the information shall be deemed to be of a "precise nature" according to article 7 MAR can be problematic, especially in cases where the relevant circumstance or event is part of a protracted process which may result in a particular future event, but which is not within the control of the issuer (e.g., investigations or re-views by public authorities). Sometimes, the company even considers it necessary to set up a special committee in order to determine whether certain information is precise enough to constitute insider information, which is costly and burdensome.

Regarding market sounding: the discrepancy between ESMA's and markets participants' view of the MAR provisions regarding market sounding is troubling. The SSMA would like to reiterate that the purpose of the market sounding provisions in MAR, as set out in recital 35, was to provide a safe harbour and thereby to encourage market participants to adopt stringent processes for market sounding, largely in line with was already market practice in Europe before MAR.

The requirements regarding disclosure of managers' transactions require a lot of resources to handle for the company and is perceived to be burdensome.

2.2.2. Scope of application of MAR (Article 2)

According to Article 2(1)(b), MAR applies to financial instruments traded or admitted to trading on a multilateral trading facility (MTF) or for which a request for admission to trading on an MTF has been made. In the latter case, MAR would start to apply with respect to companies that have only submitted a request but are not yet trading on an MTF. Some stakeholders underline that, as securities are not yet traded at the moment of the submission of a request, investors cannot acquire them and hence the protections under MAR are not necessary.

Question 45. In your opinion, if MAR requirements started applying only as of the moment of trading, would there be potential cases of market abuse between the submission of the request for admission to trading and the actual first day of trading?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 45:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA believes that market manipulation is in effect not possible before the date that the securities are admitted to trading. The risks for insider dealing and unlawful disclosure of inside information are also very limited before the first day of trading. Furthermore, it is very difficult for issuers, that have requested admission to trading of their securities, to determine what information should be considered as inside information before the securities have been admitted to trading. If the MAR requirements start to apply before the date of admission to trading, this would entail practical consequences and difficulties for the issuer to comply with the regulation.

As an example, managers' transactions in unlisted securities, issued by an unlisted company, for which there is not yet any public offer or information regarding the upcoming admission to trading, would have to be notified and reported according to article 19 of MAR, and this before the company has had the chance to set up the necessary routines to comply with MAR. Such a requirement would in our view be very odd and is likely to result in information about managers' transactions that is hard to understand and potentially misleading, while at the same time not really fulfilling any of the fundamental purposes of the regulation.

Additionally, in the majority of instances where market participants have acted in violation of MAR, the SSMA believes that the issuers' violations were committed by mistake, simply due to the difficulties for issuers to know when the regulation becomes applicable to them.

2.2.3. The definition of "inside information" and the conditions to delay its disclosure

Currently the notion of inside information makes no distinction between its application in the context, on the one hand, of market abuse and, on the other hand, of the obligation to publicly disclose inside information. However, inside information can undergo different levels of maturity and degree of precision through its lifecycle and therefore it might be argued that in certain situations inside information is mature enough to trigger a prohibition of market abuse but insufficiently mature to be disclosed to the public.

According to stakeholders, the current definition of inside information may raise problems, notably (i) for the issuer, the problem of identification of when the information becomes "inside information" and (ii) for the market, the risk of relying on published information which is not yet mature enough to make investment decisions.

ESMA, however, considers that the current definition of inside information "*strikes a good balance between being sufficiently comprehensive to cater for a variety of market abuse behaviours, and sufficiently prescriptive to enable market participants, in most cases, to identify when information becomes inside information*" and recommended to leave the definition unchanged. ESMA however acknowledged that clarifications were sought by stakeholders both on

the general interpretation of certain paragraphs of Article 7 of MAR (for instance, as regards intermediate steps, or the level of certainty needed to consider the information as precise), and on concrete scenarios. Therefore, ESMA stands ready to issue guidance on the definition of inside information under MAR.

Question 46. Do you consider that clarifications provided by ESMA in the form of guidance would be sufficient to provide the necessary clarifications around the notion of inside information?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 46:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA believes that new ESMA guidance would not be enough. Amendments to current legislation are necessary. Issuers and market participants have become familiar with and established robust procedures for handling and disclosing inside information. Hence, the definition of inside information could be narrowed and made more stringent without losing efficiency.

Narrowing down and/or clarifying the definition could prove more effective in combatting market abuse. This is especially true in relation to Articles 7(2) to 7(4) which should be either clarified (by revising the text itself or by additional ESMA guidance or completely removed. In relation to article 7(2), the second part thereof (see quotation below) has proven particularly difficult to interpret and apply.

With respect to Article 7(3), if information of a part of a process constitutes inside information, we believe it is already captured by Article 7(1) and we question the need for this article and propose that it is removed.

Article 7(4) is a hypothetical test of what information a “reasonable investor” might use as a basis for his or her investment decision. Just as the concept of “bonus pater familias” in tort law (which has been heavily criticised in legal doctrine), it creates difficulties in practice since it requires a comparison between the reality and a fictional normative figure.

Question 46.1 Please indicate if you would support the following changes or clarifications to the current definition of “inside information” under MAR:

	I support	I do not support	Don't know - No opinion - Not applicable
MAR should distinguish between a definition of inside information for the purposes of market abuse prohibition and a notion of inside information triggering the disclosure obligation.	◉	○	○
The definition of inside information with a significant price effect should be refined to clarify that “significant price effect” shall mean “information a rational investor would be likely			

to consider relevant for the long-term fundamental value of the issuer and use as part of the basis of his or her investment decisions".	○	◉	○
It should be clarified that inside information relating to a multi-stage process need only be made public once the end stage is reached, unless a leakage has occurred.	◉	○	○
Other	○	○	◉

Please explain the reasoning of your answer to question 46.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

a) It could be useful to distinguish between a definition of inside information for the purposes of market abuse prohibition and a notion of inside information triggering the disclosure obligation. This could be a way to alleviate the burden for companies with regards to e.g. the preparation of quarterly financial reports, which today often is handled as if the reports contain insider information – with the administrative burden that entails – irrespective of whether the information actually constitutes inside information.

b) The SSMA considers that this clarification would not be beneficial and could lead to additional questions of interpretation, e.g. regarding what the long term fundamental value is. The SSMA is also hesitant as to why this proposed change only takes into account "information a rational investor would be likely to consider relevant for the long-term fundamental value…" This wording may cause legal risk and general confusion as regards whether information relevant to the fundamental value of an issuer in the short-term also would have a "significant price effect".

c) The SSMA supports the idea of only having to disclose inside information to the public once the end stage is reached. However, in order to avoid new questions of interpretation and legal risks for the companies, as well as avoiding that disclosure is delayed beyond what is reasonable, it needs to be clearly defined what constitutes "the end stage".

In some jurisdictions outside the EU, in addition to regulatory quarterly reports, issuers are only under the obligation to publicly disclose, on a rapid and current basis, information about material changes that might take place between quarterly reports, in relation to a pre-determined number of events. Those events are predefined and include the entry into (or termination of) a material definitive agreement, the issuer filing for bankruptcy or receivership, a material acquisition or disposition, a modification of the rights of security holders or the appointment or departure of directors or key managers. There may also be other types of inside information that the company would not be obliged to disclose publicly but may decide to do so nevertheless on a voluntary basis.

Question 47.1 Do you consider that a system relying on the concept of material events for the disclosure of inside information would provide more clarity?

- ○ Yes
- ○ No
- ◉

Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 47.1:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is hard to understand how such a system would pan out and what the effects of it would be.

Question 47.2 In your opinion, would such a system pose any challenge to the integrity of the market?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 47.2:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Article 17(4) of MAR allows, under specified conditions, to delay the disclosure of inside information. The regime of delayed disclosure of inside information is intimately interconnected with the definition of inside information. Any clarifications provided on delayed disclosures would thus have *de facto* an impact on when the information has to be considered as inside information.

Some stakeholders underline that there are currently interpretative challenges around the conditions to delay disclosure, especially in relation to when the delay is not likely to mislead the public. ESMA in its final report acknowledged the existence of interpretative challenges, but did not consider it necessary to amend the conditions for the application of the delay finding them reasonable and aligned with the overall market abuse regime. However ESMA engaged into revising its guidelines on delay in the disclosure of inside information.

Question 48. Do you consider that the revision of ESMA’s Guidelines on delay in the disclosure of inside information would be sufficient to provide the necessary clarifications?

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 48:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that there are currently issues as regards uncertainties in the application of MAR and the process of preparing quarterly report. These issues sometimes result in that the company deems it necessary to release a quarterly report – which was scheduled for release at a certain date – earlier, in order to comply with the MAR provisions. This could happen if the company, at some stage during the process of preparing the report, determines that some information that comes up could be considered to be inside information and, as such should be disclosed in order to comply with the MAR provisions.

It could be useful to distinguish between a definition of inside information for the purposes of market abuse prohibition and a notion of inside information triggering the disclosure obligation. This could be a way to alleviate the burden for companies with regards to e.g. the preparation of quarterly financial reports, which today often is handled as if the reports contain insider information – with the administrative burden that entails – irrespective of whether the information actually constitutes inside information.

It would also be helpful if it were clarified in the level 1 regulation that that it is compliant with the regulation to postpone quarterly reports to the date already communicated to the market, even if the information or parts of the information, during one or several stages during the process of preparing the quarterly reports, should fall with the definition of inside information.

The SSMA considers that additional ESMA guidelines, by themselves, would not be sufficient to provide the necessary clarifications. We do believe that it would be good if ESMA were to provide guidance for other types of ongoing supervisory discussions, similar to the guidelines ESMA recently has made public regarding the SREP process under CRD pillar II.

Question 48.1 Please indicate what changes you would propose to Article 17 (4) MAR and explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.4. Disclosure of inside information for issuers of bonds only

The TESG underlines that plain vanilla bonds are less exposed to risks of market abuse due to the nature of the instrument and, as a consequence, argues that the disclosure of all inside information for debt issuers (either positive or negative) only would be burdensome and not justified.

Question 49. Please specify whether you agree with the following statements:

Issuers that only issue plain vanilla bonds should:

	Yes	No	Don't know - No opinion - Not

			applicable
have the same disclosure requirements as equity issuers	◉	○	○
disclose only information that is likely to impair their ability to repay their debt	○	◉	○

Please explain the reasoning of your answer to question 49, notably in terms of costs (one-off and ongoing costs):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the opinion that issuers of plain vanilla debt securities should be subject to the same disclosure requirements as equity issuers. However, the SSMA would like to point out that, in practice, information which could have a significant price effect on issued shares, may not necessarily have a significant price effect on issued plain vanilla bonds, and vice versa. Hence, the company may determine that a certain event or information constitutes inside information due to expected price effects on its shares, while the same kind of event or information might not be determined to constitute inside information by a bond issuer, if no significant effect on the price of the bonds is expected. The SSMA considers that it is important that this distinction is kept in mind when potential legislative changes are proposed.

2.2.5. Managers' transactions

Under MAR, the Person Discharging Managerial Responsibilities (PDMR) or associated person must notify the issuer (either on a regulated market or a MTF, including SME growth market) and the competent authority of every transaction conducted for their own account relating to those financial instruments, no later than three business days after the transaction. The obligation to disclose a manager's transaction only applies once the PDMR's transactions have reached a cumulative EUR 5 000 within a calendar year (with no netting). A national competent authority may decide to increase the threshold to EUR 20 000. Issuers must ensure that transactions by PDMRs and persons closely associated with are publicly disclosed promptly and no later than two business days after the transaction.

Most respondents to the consultation launched by ESMA in the context of the technical advice for the Review of MAR (ESMA final report on MAR review, paragraph 8.2) considered that the current threshold (EUR 5 000) for managers' transaction is too low and that it could result in disclosing not meaningful transactions. Those respondents prefer a higher thresholds harmonised within the EU (possibly at the optional threshold of EUR 20 000). ESMA, however, recommended not to amend such requirement considering that the current threshold is appropriate in several Member States to provide for a fair picture of managers transactions. ESMA also recommended not to amend the reporting methodology for subsequent transactions or the regime for the disclosure of closely associated persons. On the contrary, both the TESG final report and the CMU HLF final report propose to increase the threshold for managers' transactions. Moreover, the TESG holds that the requirement to keep a list of closely associated persons should be repealed, as it entails costs that are disproportionate to the benefits offered.

In order for the Commission to strike the right balance between the burden associated with these requirements and the specific need for an efficient supervision of the integrity of the financial markets it is useful to gather quantitative data on how much those requirements weight on issuers.

Question 50. Do you believe that the minimum amount of EUR 5 000 provided in Article 19(8) MAR should be increased without harming the market integrity and investor confidence?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 50:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 50.1 Please specify to what level the minimum amount set out in Article 19(8) should be increased and for which groups of issuers:

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other	Don't know / No opinion / Not applicab
Issuers listed on SME growth markets	( )	( )	( )	( )	(●)	( )
Issuers listed on other markets	( )	( )	( )	( )	(●)	( )

Please specify to what level the minimum amount should be increased for issuers listed on SME growth markets:

1000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The reporting threshold should be increased to at least EUR 20,000 and this threshold should be made mandatory without an option for member states to opt for a lower threshold.

Please specify to what level the minimum amount should be increased for issuers listed on all markets:

1000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The reporting threshold should be increased to at least EUR 20,000 and this threshold should be made mandatory without an option for member states to opt for a lower threshold.

Question 51. Do you agree with maintaining the discretion for national competent authorities to increase the threshold set out in Article 19(8)?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 51:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 52.1 If you are an issuer to whom MAR applies or an NCA, please specify how many notifications you have received in the last 2 years according to Article 19(1):

	Threshold of EUR 5 000	Threshold of EUR 20 000
2019		
2020		

Question 52.2 How would the above figures change in case of an increased threshold under Article 19(8) of MAR?

(Percentages represent how many less notifications (in % terms) would you receive in case of an increased threshold under Article 19(8))

	EUR 10 000	EUR 15 000	EUR 20 000	EUR 50 000	Other	Don't know - No opinion - Not applicable
0% -10%	○	○	○	○	○	◉
11% -20%	○	○	○	○	○	◉
21% -35%	○	○	○	○	○	◉
36% -50%	○	○	○	○	○	◉
more than 50%	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 52.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 53.1 Please provide the approximate level of costs related to disclosure of managers' transactions in the last 2 years:

	Threshold of EUR 5 000	Threshold of EUR 20 000
2019		
2020		

Please explain the reasoning of your answer to question 53.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 53.2 Please provide the estimated level of cost savings (in % terms) in case of an increased threshold under Article 19(8):

(Percentages represent the estimated cost savings (in % terms) in case of an increased threshold in Article 19 (8))

	EUR 10 000	**EUR 15 000**	**EUR 20 000**	**EUR 50 000**	**Other**	Don't know - No opinion - Not applicable
0% -10%	○	○	○	○	○	◉
11% -20%	○	○	○	○	○	◉
21% -35%	○	○	○	○	○	◉
36% -50%	○	○	○	○	○	◉
more than 50%	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 53.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA Members that are issuers themselves have informed that they have received a large number of notifications of such transactions, regarding both the threshold of EUR 5,000 and that of EUR 20,000. To get a significant change in the number of notifications of such transactions, an increase to EUR 50,000 would probably be required.

Question 54. Would you consider that public disclosure of managers' transactions should always be done by:

- ○ Issuer
- ◉ National competent authority
- ○ Either by issuer or national competent authority, depending on national law (status quo)
- ○ Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 54:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the opinion that it would be most effective if the information were gathered in one place, preferably with the national competent authority.

Question 55. Do you consider that ESMA's proposed targeted amendments to Article 19(12) MAR are sufficient to alleviate the managers' transactions regime?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 55:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 55.1 Please indicate if you would support the following changes or clarifications to the managers' transactions regime:

	I support	I do not support	Don't know - No opinion - Not applicable

The thresholds should be applied in a non-cumulative way (i.e. each transaction is to be assessed against the threshold)	○	○	◉
Clear guidance should be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction, beyond the targeted amendments already proposed by ESMA	○	○	◉
The requirement of keeping a list of closely associated persons should be repealed	○	○	◉
Other	○	○	◉

2.2.6. Insider lists (Article 18)

While insider lists are supposed to assist NCAs in investigating cases of insider trading, stakeholders underline that the maintenance of insiders list require regular monitoring and adjustment and are particularly burdensome. As a result of the SME Listing Act, issuers whose financial instruments are admitted to trading on an SME growth market have been entitled to include in their lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. At the same time, Member States may opt out from such regime and require more information.

In light of the fact that national competent authorities consider the insider lists to be a key tool in market abuse investigations, in its final report on the review of the Market Abuse Regulation, ESMA did not suggest extensive alleviations to the insiders list rules, proposing only minor adaptations to the current regime.

The TESG however found the costs of the insiders list for smaller issuers too high and recommended to remove the obligation for issuers with a market capitalisation below EUR 1 billion to keep an insider list, and to further reduce and simplify the content of the insider list for other issuers.

Question 56. What is the impact (or if not available – expected impact) of the recent alleviations (under the SME Listing Act) for SME growth market issuers as regards insider lists?

Please illustrate and quantify, notably in terms of (expected) reduction in costs, and please explain your reasoning:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 57. Please indicate whether you agree with the statements below:

The insider list regime should…:

	Yes	No	Don't know - No opinion - Not applicable
be simplified for all issuers to ensure that only the most essential information for identification purposes is included	◉	○	○
be simplified further for issuers listed on SME growth markets	○	◉	○
be repealed for issuers listed on SME growth markets	○	◉	○
other	○	○	◉

Please explain the reasoning of your answer to question 57 and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that there is an urgent need to reduce the administrative burden for issuers regarding insider lists. One step to reduce the burden would be to clarify that the issuer should only include one contact person for each legal person acting on behalf of the issuer having access to inside information and each one of those legal persons should include, in their own insiders list, the natural or legal persons with access to that inside information working for them under a contract of employment or under any other type of arrangement with similar terms (i.e. one contact person per external provider).

Further measures should also be taken to reduce the burdens for issuers and others in line with the principle of proportionality. The SSMA is of the opinion that far too much information is required to be included in the insider list than necessary. The insider list should include information which identifies the person who has access to inside information and, the specific date and time when a piece of information became inside information and the date and time when the relevant persons gained access to it. However, the insider list requires the issuers to include a lot more information. The requirements to include date of birth, personal address and birth surname are excessive and do not fill a purpose. Therefore, these requirements should be deleted. It is enough to have the following fields: name, national ID, work phone, work e-mail, reason for becoming insider and time of becoming insider.

The SSMA is of the opinion that the list could be simplified and thereby reduce the administrative burden for issuers and others, without jeopardising the usefulness of the list as a tool for investigating potential market abuse.

2.2.7. Market sounding

Conducting market soundings may require disclosure to potential investors of inside information. However, market soundings are a highly valuable tool for the proper functioning of financial markets, and, as such, they should not be regarded as market abuse. The current regime requires the disclosing market participant, before engaging in a market sounding, to

i. assesses whether that market sounding involves the disclosure of inside information

ii. inform the person to whom the disclosure is made of the possibility of receiving inside information and of all the consequential requirements

iii. and maintain records of the disclosure

In the context of the public consultation launched in 2017 for the preparation of the SME Listing Act, several stakeholders described the requirements for conducting market sounding as burdensome, particularly in connection with private placements. Due to concerns on the risk of unlawful dissemination of inside information, market sounding rules were then only alleviated for private placements of debt instruments. The TESG, in its final report, however proposed to extend the exemption from market sounding rules to private equity placements.

The public consultation carried out by ESMA in 2020 for the MAR review final report confirmed stakeholders' concerns on the complexity of the market sounding regime and their request to reduce the scope of the market sounding regime. Nonetheless, ESMA recommended to keep the current scope of the market sounding regime unchanged and rather look into ways to simplify the market sounding procedures (ESMA final report paragraphs 6.3.3 and ff.).

Question 58. Do you consider that the ESMA's limited proposals to amend the market sounding procedure are sufficient, while providing a balanced solution to the need to simplify the burden and maintaining the market integrity?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

How would you further amend the market sounding regime?

Issuers listed on SME growth markets:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There seems to be a discrepancy between ESMA's and markets participants' view of the MAR provisions regarding market sounding, which is troubling. The SSMA would like to reiterate that the purpose of the market sounding provisions in MAR, as set out in recital 35, was to provide a safe harbour and thereby to encourage market participants to adopt stringent processes for market sounding, largely in line with was already market practice in Europe before MAR.

Because Article 11 of MAR is a safe harbour, not a stand-alone obligation, the highly formalised procedures prescribed in Article 11 are not necessarily problematic. However, understandably, some financial advisers frequently conducting market soundings on behalf of clients may wish to adopt a policy to the effect that Article 11 should always be strictly complied with so that the adviser always stays in the safe harbour. This causes an inflexible practice where the focus is on satisfying detailed formal requirements rather than applying sound judgement and due care. We believe MAR, one way or another, would benefit

from the inclusion of a clarification to the effect that market soundings carried out wholly or partly outside Article 11 are entirely permissible, but that a cautious and careful approach should of course always be taken when disclosing inside information so that the action taken does not amount to a breach of Article 10.

Issuers listed on regulated markets:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There seems to be a discrepancy between ESMA's and markets participants' view of the MAR provisions regarding market sounding, which is troubling. The SSMA would like to reiterate that the purpose of the market sounding provisions in MAR, as set out in recital 35, was to provide a safe harbour and thereby to encourage market participants to adopt stringent processes for market sounding, largely in line with was already market practice in Europe before MAR.

Because Article 11 of MAR is a safe harbour, not a stand-alone obligation, the highly formalised procedures prescribed in Article 11 are not necessarily problematic. However, understandably, some financial advisers frequently conducting market soundings on behalf of clients may wish to adopt a policy to the effect that Article 11 should always be strictly complied with so that the adviser always stays in the safe harbour. This causes an inflexible practice where the focus is on satisfying detailed formal requirements rather than applying sound judgement and due care. We believe MAR, one way or another, would benefit from the inclusion of a clarification to the effect that market soundings carried out wholly or partly outside Article 11 are entirely permissible, but that a cautious and careful approach should of course always be taken when disclosing inside information so that the action taken does not amount to a breach of Article 10.

Issuers on other markets (MTFs):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There seems to be a discrepancy between ESMA's and markets participants' view of the MAR provisions regarding market sounding, which is troubling. The SSMA would like to reiterate that the purpose of the market sounding provisions in MAR, as set out in recital 35, was to provide a safe harbour and thereby to encourage market participants to adopt stringent processes for market sounding, largely in line with was already market practice in Europe before MAR.

Because Article 11 of MAR is a safe harbour, not a stand-alone obligation, the highly formalised procedures prescribed in Article 11 are not necessarily problematic. However, understandably, some financial advisers frequently conducting market soundings on behalf of clients may wish to adopt a policy to the effect that Article 11 should always be strictly complied with so that the adviser always stays in the safe harbour. This causes an inflexible practice where the focus is on satisfying detailed formal requirements rather than applying sound judgement and due care. We believe MAR, one way or another, would benefit from the inclusion of a clarification to the effect that market soundings carried out wholly or partly outside Article 11 are entirely permissible, but that a cautious and careful approach should of course always be taken when disclosing inside information so that the action taken does not amount to a breach of Article 10.

Question 59. Do you agree with the TESG proposal to extend the exemption from market sounding rules to private equity placements for all issuers?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 59, notably in terms of costs:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 59.1 Would you agree to extend the exemption from market sounding rules to private equity placements for issuers on SME growth markets?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 59.1, notably in terms of costs:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.8. Administrative and criminal sanctions

Both the CMU HLF as well as the TESG share the view that in some cases sanctions for market abuse violations are disproportionate and that the risk of an inadvertent breach of MAR (notably in the case of missing deadlines for disclosure of information) and associated administrative sanctions are seen as an important factor that dissuades companies from listing. They both proposed to amend the current framework in order to establish a more proportionate punitive regime. Moreover, the TESG proposed to remove the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 17, 18 and 19, as administrative sanctions (including accessory sanctions and the confiscation of the profit made from the unlawful conduct) are sufficiently suitable for sanctioning MAR violations under those provisions.

At the same time, ESMA disagrees that the level of the MAR sanctions is tailored to large companies and stresses that MAR does not oblige NCAs to impose maximum administrative sanctions and, on the contrary, obliges NCAs to take into account all relevant circumstances when determining the type and level of administrative sanctions.

Question 60. Do you think that the current punitive regime (both administrative pecuniary sanctions and criminal sanctions) under MAR is proportionate to the objectives sought by legislation (i.e., to dissuade market abuse), as well as the type and size of entities potentially covered by that regime?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain and illustrate your reasoning of your answer to question 60, notably in terms of costs:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA notes that national competent authorities handle the enforcement of the MAR rules and the application of the punitive regime in different ways, and that the handling by some NCAs of this is not always proportionate.

Question 61. Do you think that the maximum administrative pecuniary sanctions (as prescribed in Article 30 MAR) are an important factor when making a decision by companies concerning potential listing?

	Yes, it has a significant impact	Yes, it has a medium impact	Yes, but it has a low impact	No, it is rather irrelevant	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	○	○	○	◉	○
Issuers listed on other markets	○	○	○	◉	○

Please explain the reasoning of your answer to question 61:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA thinks that most companies are probably not aware of the levels of potential sanctions. For example, they may not always be aware of the requirement for managers and persons closely related to them to notify and report their transactions of securities issued by the company and the potential sanctions that they may be faced with if they fail to be compliant with these notification and reporting requirements.

Question 62. According to your opinion, which administrative pecuniary sanctions (as prescribed in Article 30 MAR) have a higher impact on a company when making a decision concerning potential listing?

	Pecuniary sanctions in respect of **natural persons**	Pecuniary sanctions in respect of **legal persons**
Issuers listed on SME growth markets	○	○
Issuers listed on other markets	○	○

Please explain the reasoning of your answer to question 62:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 63. Do you think that the maximum administrative pecuniary sanction for infringements of Articles 16-19 (in respect of legal persons) should be decreased?

Issuers listed on SME growth markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	◉	○	○
Art. 17	◉	○	○
Art. 18	◉	○	○
Art. 19	◉	○	○

Issuers listed on other markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	◉	○	○
Art. 17	◉	○	○
Art. 18	◉	○	○
Art. 19	◉	○	○

For issuers listed on SME growth markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 of MAR:

	Art. 16	Art. 17
Current maximum sanction: 2 500 000 EUR or the corresponding value in the national currency on 2 July 2014		
Current maximum sanction: 2% of the total annual turnover according to the last available accounts approved by the management body		

For issuers listed on SME growth markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 of MAR:

	Art. 18	Art. 19
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

For issuers listed on other markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 of MAR:

	Art. 16	Art. 17
Current maximum sanction: 2 500 000 EUR or the corresponding value in the national currency on 2 July 2014		
Current maximum sanction: 2% of the total annual turnover according to the last available accounts approved by the management body		

For issuers listed on other markets: please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 of MAR:

	Art. 18	Art. 19
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

Question 64. Should the "total annual turnover according to the last available accounts approved by the management body" as a criterion to define the maximum administrative pecuniary sanctions be replaced with a different criterion?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Question 64.1 Please explain the reasoning of your answer to question 64:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 65. Do you think that the maximum administrative pecuniary sanction for infringements of Article 16-19 (in respect of natural persons) should be decreased?

Issuers listed on SME growth markets

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	◉	○	○
Art. 17	◉	○	○
Art. 18	◉	○	○
Art. 19	◉	○	○

Issuers listed on other markets

	Yes	No	Don't know - No opinion - Not applicable

Art. 16	◉	○	○
Art. 17	◉	○	○
Art. 18	◉	○	○
Art. 19	◉	○	○

Question 65.1 Please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 16 and 17 MAR:

	Art. 16	Art. 17
Current maximum sanction: 1 000 000 EUR or the corresponding value in the national currency on 2 July 2014		

Question 65.2 Please indicate the level of maximum administrative pecuniary sanction for infringements of Articles 18 and 19 MAR:

	Art. 18	Art. 19
Current maximum sanction: 500 000 EUR or the corresponding value in the national currency on 2 July 2014		

Question 66. Should the level of maximum administrative pecuniary sanctions with respect to natural persons be defined according to a different criterion?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Question 66.1 Please explain the reasoning of your answer to question 66:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 67. Should the maximum administrative pecuniary sanctions for the other infringements specified in article 30(1)(a) of MAR and different from the infringements of Articles 16, 17, 18 and 19, be decreased accordingly?

	Yes	No	Don't know - No opinion - Not applicable
Issuers listed on SME growth markets	○	○	◉
Issuers listed on other markets	○	○	◉

Please explain the reasoning of your answer to question 67:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 68. Do you think that the possibility of applying criminal sanctions in the case of noncompliance with the requirements set out in Articles 16, 17, 18, 19 and 30(1)(b) of MAR should be removed?

	Yes	No	Don't know - No opinion - Not applicable
Art. 16	○	○	◉
Art. 17	○	○	◉
Art. 18	○	○	◉
Art. 19	○	○	◉
Art. 30(1) first subpar. letter (b)	○	○	◉

Please explain the reasoning of your answer to question 68:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.9. Liquidity contracts

Liquidity in an issuer's shares can be achieved through liquidity mechanisms such as liquidity contracts concluded between an intermediary (dealer/broker) and an issuer to support liquidity in that issuer's securities on secondary markets.

The TESG recommended to remove the obligation on market operators to "*agree to the contracts' terms and conditions*" , defined by issuers and investments firms in liquidity contracts used on SME growth markets, given the fact that market operators are not a party to the issuer liquidity contract.

Question 69. Do you agree with the TESG proposal to remove the obligation on market operators to "agree to the contracts' terms and conditions", defined by issuers and investment firms in liquidity contracts used on SME growth markets?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 69:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA wants to point out that Sweden has a different system for Liquidity Providers which is very different from the Liquidity Contract set up in other countries. In Sweden Liquidity Providers trade on their own account under the Nasdaq member rules and the issuer pays the Liquidity Provider for this service. The SSMA believes that this system works well and does not see any need for changes. The SSMA understands the issues raised as regards liquidity contracts and has no opinion on changes to those, provided that any changes do not affect the Swedish Liquidity Provider system.

2.2.10. Disclosure obligation related to the presentation of recommendations under MAR

Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 lays down standards on the investment recommendations or other information recommending or suggesting an investment strategy. These standards aims at ensuring the objective, clear and accurate presentation of such information and the disclosure of interests and conflicts of interest. They should be complied with by persons producing or disseminating recommendations.

In order to boost research coverage on smaller issuers, the TESG in their final report argued that investment recommendations or other information recommending or suggesting an investment strategy should be exempted from the requirements laid down in Commission Delegated Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on a SME growth market, or at the least alleviated for such instruments.

Question 70. In your opinion, should investment recommendations or other information recommending or suggesting an investment strategy be exempted from the requirements laid down in Commission Delegated Regulation (EU) No. 2016/958 when they relate exclusively to instruments admitted to trading on a SME growth market?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 70:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.2.11. Other

Question 71. Would you have any other suggestions on possible improvements to the current rules laid down in the Market Abuse Regulation? Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA would like to highlight a regulatory conflict between MAR and reporting requirements in MiFIR, which should be addressed at EU-level. On EU capital markets, it is not unusual that investment firms help their clients with transfers of securities which legally can be classified as “transactions” but where there is no change of beneficial ownership. Typical situations are when large insurance companies, pension funds or other asset managers want to move assets from one portfolio to another within the same legal entity or get a market valuation on some of the assets within a portfolio.

There is currently a lot of legal uncertainty how to handle such transfers from a post trade transparency reporting perspective. As a general rule, transactions in financial instruments are subject to post trade transparency requirements in MiFIR, unless they are explicitly exempt. At the same time, MAR prohibits publication of misleading information to the market as well as clients trading with themselves (so-called wash trades).

In respect of a client’s transfer of financial instruments where there is no change in beneficial ownership, this puts investment firms in a difficult situation because compliance with MiFIR requirements (i.e. publication of post trade information) often mean that they are potentially acting in contravention of MAR (the information is misleading to the market).

In Sweden, the issue has become particularly problematic in relation to a popular retail insurance product (Sw: kapitalförsäkring). It is the insurance company that is the legal owner of the securities in the insurance product, but the client has a power of attorney and can make dispositions regarding the underlying securities within the insurance endowment. In order to be able to exit the insurance product, vote at the AGM or participate in some types of rights issues (for example), the retail client therefore needs to “move” these securities to a securities account held by the client. This transfer takes place over the market/SI and is considered a “transaction”. However, no real exchange of ownership takes place since the beneficial owner is the same. At present, due to the legal uncertainty surrounding the interpretation of MiFID 2 and fear of breaching MAR, investment firms are forced to refuse their clients to move securities in or out of this insurance product, which leads to negative consequences and lock-in effects for retail clients. The SSMA would like to reiterate a previous proposal that the list of non-price forming transactions in RTS 1 and 2 is amended to explicitly include transfers of financial instruments where there is no change of beneficial ownership. For the sake of clarity, the wording should be the same as in Appendix I.A.c) MAR. This would be helpful both to market participants (e.g. clients, asset managers etc.) and to supervisory authorities in order to get a more clear picture of the trading interests on the EU capital market.

Lastly, the SSMA wants to elaborate its answers to questions 63 and 65. Market participants experience that it is difficult to know if their procedures and routines are sufficient to comply with the MAR provisions, due to questions of interpretation and uncertainties regarding what is expected in practice. The SSMA’s experience is that market participants in general wish to comply with the requirements and we think that many infringements are actually not intentional, but rather a result of difficulties to interpret and apply the rules. Due to this, the SSMA believes that the maximum administrative pecuniary sanctions should be decreased.

2.3. MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments)

The Directive on Markets in Financial Instruments (MiFID II – Directive 2014/65/EU) is one the pillars of the EU regulation of financial markets. It promotes financial markets that are fair, transparent, efficient and integrated.

However, some stakeholders believe that there is room for targeted adjustments to this directive in order to ease and accommodate listing rules for EU entities. This is particularly true for the SMEs, according to the HLF, the TESG and ESMA's report on the functioning of the regime for SME growth markets that all bring up specific points within MiFID II that could be modified in order to incentivise listing. In some cases the ESMA's and stakeholder's suggestions were aimed at clarifying certain provisions within MiFID II while in others they sought to increase SMEs' visibility and attractiveness towards investors.

2.3.1. Registration of a segment of an MTF as SME growth market

ESMA in their Q&A provided a clarification setting out the conditions under which an operator of an MTF may register a segment of the MTF as SME growth market: "*the operator of an MTF can apply for a segment of the MTF to be registered as an SME growth market when the requirements and criteria set out in Article 33 of MiFID II and Articles 77 and 78 of the Commission Delegated Regulation 2017/565 are met in respect of that segment*". This clarification has proven useful to market participants based on feedback the ESMA received and has incentivised some MTFs to seek registration as SME growth markets only for a market segment and not for the entire MTF.

ESMA suggested that similar clarification in MiFID II level 1 would be beneficial as it could bring legal certainty and increase the number of registered SME growth markets.

Question 72. Would you see merit in including in MiFID II Level 1 the conditions under which an operator of an MTF may register a segment of the MTF as SME growth market?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 72:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.3.2. Dual listing

Article 33(7) of MiFID sets out provisions for dual listing and potential obligations for issuers. It has been argued that Article 33(7) is being interpreted by the NCAs in a way that company seeking a dual listing can do so only through a third party and not by themselves. Moreover, ESMA in its report on the SME growth market proposed to amend MIFID II to specify that if an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on any other trading venue (as opposed to only on another SME growth market as Article 33(7) of MiFID currently states). This can be done only where the issuer has been informed and has not objected, and complies with any further regulatory requirement compulsory on the second trading venue.

Question 73. Do you believe that Article 33(7) of MiFID II would benefit from further clarification in level 1 to ensure an interpretation whereby the issuers themselves can request a dual listing?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 73:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No opinion, the SSMA believes this question is more important for trading venues.

Question 74. Do you believe that, subject to the conditions set out in Article 33(7) of MiFID II, financial instruments of an issuer, admitted to trading on an SME growth market, could be traded on another venue (and not necessarily only on another SME growth market)?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 74:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA believes this would be possible. However dual listings could harm liquidity for less liquid shares in SMEs.

2.3.3. Equity Research coverage for SMEs

Public markets for SMEs need to be supported by a healthy ecosystem (i.e. a network of brokers, equity analysts, credit rating agencies, investors specialised in SMEs) that can bring small firms seeking a listing to the market and support them after the IPO. The absence or limited existence of those local ecosystems that can cater to SMEs' specific needs impedes the functioning and deepening of public markets and reduces the willingness of SMEs to seek a listing. Equity research is of particular importance for SMEs given that they have lower visibility than large cap firms and information is more opaque and scarce.

Today, equity research is produced by brokers on an un-sponsored (independent) as well as sponsored basis (company pays for the research), by independent research houses, and to a lesser extent also in house by fund managers. SMEs are, however, often not covered at all by research analysts as there is not enough market interest to justify the additional cost for the broker.

The capital markets recovery package has introduced a targeted exemption to allow investment firms to bundle research and execution costs when it comes to research on companies whose market capitalisation did not exceed Euro 1 billion for the period of 36 months preceding the provision of the research. This change is intended to increase research coverage for such issuers, and in particular for SMEs, thereby improving their access to capital market finance.

Question 75. Do you consider that the alleviation to the research regime introduced with the capital markets recovery package has effectively helped (or will help) to support SMEs' access to the capital markets?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 75:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA believes that the option to bundle research for smaller companies has not been used to any large extent since it only adds complexity to have different business models for different segments. The SSMA has therefore not yet seen any effect of the research regime introduced with the capital markets recovery package.

Question 76. Would you see merit in alleviating the MiFID II regime on research even further?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 76:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA has no strong opinion, but any changes must not add further complexity to the Mifid II research regime.

Question 76.2 Please indicate whether you consider that FICC (fixed income, currencies and commodities) research and research provided by independent research providers should be exempted from the unbundling regime introduced by MiFID II.

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 76.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 76.3 Please indicate whether you have any further concrete proposal, explaining your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 77. As an investor, what type(s) of research do you find useful for your investment decisions?

	Useful	Not useful	Don't know - No opinion - Not applicable
Independent research	◉	○	○
Venue-sponsored research	◉	○	○

Issuer-sponsored research	◉	○	○
Other	○	○	◉

Please explain the reasoning of your answer to question 77:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that all types of research are valuable and of interest. However, due to potential conflicts of interests, it must be made very clear to clients and the market which type of research it is so participants can evaluate the research correctly.

Question 78. How could the following types of research be supported through legislative and non-legislative measures?

	Legislative measures	Non-legislative measures	Don know opini no appli
Independent research	○	○	◉
Venue-sponsored research	○	○	◉
Issuer-sponsored research	○	○	◉
Other	○	○	◉

Please explain the reasoning of your answer to question 78:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the opinion that research coverage is mainly demand-driven by client needs and willingness to pay for research. This is difficult for regulators to have an influence on.

Question 79. In order to make the issuer-sponsored research more reliable and hence more attractive for investors, would you see merit in introducing rules on conflict of interest between the issuer and the research analyst?

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 79:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that the current disclaimers and information as regards potential conflicts of interest are sufficient to support investor protection.

Question 80. What should be done, in your opinion, to support more funding for SMEs research?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.3.4. Other

Question 81. Would you have any other suggestions on possible improvements to the current rules laid down in MiFID II to facilitate listing while assuring high standards of investor protection? Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA is if the view that further harmonisation of listing rules could improve cross border listing and trading. At present, equity markets are to a very large extent local, and further harmonisation could lead to more cross border activities with equal or higher investor protection.

2.4 Other possible areas for improvement

2.4.1 Transparency Directive (Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market)

Transparency of publicly traded companies' activities is essential for the proper functioning of capital markets. Investors need reliable and timely information about the business performance and assets of the companies they invest in and about their ownership.

The Transparency Directive (Directive 2004/109/EC) requires issuers of securities traded on EU regulated markets to make their activities transparent, by regularly publishing certain information. The information to be published includes

i. yearly and half-yearly financial reports

ii. major changes in the holding of voting rights

iii. ad hoc inside information which could affect the price of securities

This information must be released in a manner that benefits all investors equally across the EU.

The Transparency Directive was amended in 2013 by Directive 2013/50/EU to reduce the administrative burdens on smaller issuers, particularly by abolishing the requirement to publish quarterly financial reports, and make the transparency system more efficient, in particular as regards the publication of information on voting rights held through derivatives.

The Commission has recently adopted a harmonised electronic format for annual financial reports developed by ESMA (the European Single Electronic Format, ESEF). The ESEF has been applicable since 1 January 2021, except for 23 Member States who opted for a 1-year postponement. It makes reporting easier and facilitates accessibility, analysis and comparability of reports.

The Commission published in April 2021 a fitness check report accompanying the Commission report to the European Parliament and the Council on – inter alia – the operation of the 2013 amendment to the Transparency Directive. These reports indicate an overall good effectiveness of the corporate reporting framework, while highlighting areas for potential improvement, for instance in relation to supervision and enforcement.

Question 82. Do you consider that there is potential to simplify the Transparency Directive's rules on disclosures of annual and half-yearly financial reports and on the ongoing transparency requirements for major changes in the holders of voting rights, keeping in mind the need to facilitate accessibility, analysis and comparability of issuers' information and to maintain a high level of investor protection on these markets?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Question 83. Would you have any other suggestion to improve the current rules laid down in the Transparency Directive?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.2 Special Purpose Acquisition Companies (SPACs)

In the course of the COVID-19 pandemic, the capital markets saw a surge of SPACs listings. If this SPACs' phenomenon was much stronger in the US, some EU markets also saw the rise of the listing of these particular vehicles. The fact that privately held operating companies were seeking a reverse merger to access public markets by means of a listed shell company such as SPAC appeared for some as a sign that the traditional IPO process was in need of reform. However, after a promising trend during the first half of 2021, the second half of 2021 showed that SPACs IPOs were already losing some steam, at least on the EU markets, in favour of more traditional IPOs.

Some argue that SPACs may play a useful role, in particular for start-ups and scale-ups, when the economic situation is dire and access to public markets becomes more difficult.

Although SPAC IPOs present weaknesses and risks that investors, in particular retail ones, should be aware of. Although, if SPACs' offers in the EU are mainly addressed to professional investors, SPACs' shares may be available for purchase by retail investors on the secondary markets. In that respect, in July 2021, ESMA published the statement "SPACs: prospectus disclosure and investor protection considerations" (ESMA32-384-5209) to promote coordinated action by EU regulators on the scrutiny of prospectus disclosures relating to SPACs and provide guidance to manufacturers and distributors of SPAC shares and warrants about MiFID II product governance provisions.

The purpose of this consultation is to get your view as to the appropriateness of the current listing regime when considering an IPO via a SPAC.

Question 84. Do you believe that SPACs are an effective and efficient alternative to traditional IPOs that could facilitate more listings on public markets in the EU?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 84:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The development and future of SPACs in the EU may depend on the kind and valuation of investments made by the SPACs. While SPACs may be an appropriate alternative to traditional IPOs, there is at the same time a risk in case of, e.g., lack of transparency.

Question 85.1 What would you see as being detrimental to the SPACs development in the EU?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA notes that a major risk involved with SPACs, if not managed well, besides a potential general lack of transparency, is that SPACs may acquire target companies that are over-valued or mispriced, causing SPAC share value to drop significantly post-acquisition. If this were to happen, it may deter investors from investing in SPACs.

Question 85.2 What could be done in terms of policies to contain risks for investors while encouraging the efficient and safe development of SPACs' activity in the EU?

Please explain your reasoning:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that risks investors are facing in relation to SPAC investments could be reduced if rules and regulations were implemented concerning the quality and valuation of the target company, such rules to be agreed at EU-level. In addition, it is important that SPACs are subject to relevant and appropriate transparency rules.

Question 86. Do you believe that investing in SPACs, via an IPO or on the secondary market, should be reserved to professional investors only?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 86:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is if the opinion that investing in SPACs should not be reserved to professional investors only. All listed shares must be possible to trade for all clients.

Question 87. In the case of investments in SPACs (whether on the primary or the secondary markets), would you see the need to reinforce some safeguards and/or to further harmonise the disclosure regime in the EU?

	Yes, even if an investment is open to professional investors only	**Yes**, for an investment open to both professional and retail investors	**No**	Don't know - No opinion - Not applicable
Reinforce safeguards	○	◉	○	○
Harmonise the disclosure regime	○	◉	○	○

Please explain the reasoning of your answer to question 87 and list additional safeguards, if any, you may find relevant:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA would support that additional rules and regulations that increases the transparency regarding SPACs be put in place. Such additional rules and regulations may, for instance, increase the disclosure requirements as regards what type of company the SPAC intends to acquire and how the value of the target company should be calculated in order for SPACs to avoid acquiring over-valued target companies.

Question 88. As part of the SPAC's IPO process, it is common practice for SPACs to issue warrants subscribed by the sponsors and/or the initial shareholders, which can subsequently have significant dilutive effects for the shareholders post IPO. Do you believe measures should be put in place to ensure that post IPO shareholders get a clear information about the dilutive effects of those warrants and that the dilutive effect of those warrants remains limited?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 88:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA would support that measures be put in place ensuring that investors, and especially retail investors, are informed about the potential dilutive effects of warrants subscribed by the sponsors and/or initial shareholders, and what the maximum dilution may arise to. This must be clear before the SPAC is listed.

Question 89. Do you see the need for a clear framework for the deposit and management of the securities and proceeds held in escrow by a SPAC?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 89:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the view that a clear framework as regards the deposit and management of the securities and proceeds held in escrow by a SPAC is needed. The management of the securities and proceeds held in escrow must be done with very limited risks involved since the assets held in escrow will be used by SPAC to buy the future target company.

Question 90. Some recent SPACs IPOs have relied on the sustainability-related characteristics of the contemplated target companies. Do you believe that SPACs putting forward sustainability as a selling point should be subject to specific/different disclosures and/or standards in this regard?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 90:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

From a principal point of view, the SSMA does not believe that special treatment is needed. It must however be clear which requirements is put on the future target company to be eligible for purchase by the SPAC.

Question 91. Do you have any other proposal on how to improve the current listing regime when considering an IPO via a SPAC?
Please explain your reasoning:

4000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA has no other proposals, but thinks this subject needs to be followed closely since potential poor practices of SPACs will probably not be seen until we see the next major recession with falling equity markets for a prolonged period of time.

2.4.3 Listing Directive (Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities)

The Listing Directive (Directive 2001/34/EC) concerns securities for which admission to official listing is requested and those admitted, irrespective of the legal nature of their issuer. The Listing Directive aims to coordinate the rules with regard to

i. admitting securities to official stock-exchange listing

ii. the information to be published on those securities in order to provide equivalent protection for investors at EU level.

The Prospectus Directive and the Transparency Directive further consolidated rules harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock-exchange listing and the information on securities admitted to trading. Therefore, those directives amended the Listing Directive removing overlapping requirements (i.e. deleting Articles 3, 4, 20 to 41, 65 to 104 and 108 of the Listing Directive). Furthermore, MiFID replaced the notion of 'admission to the official listing' with 'admission to trading on a regulated market'.

The Listing Directive is a minimum harmonisation directive. It allows EU Member States to put in place additional requirements for admission of securities to official listing, provided that

i. such additional conditions apply to all issuers

ii. and they have been published before the application for admission of such securities

Question 92. Do you consider that the Listing Directive, in its current form, achieves its objectives and does not need to be amended?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 92:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.3.1. Definitions

Question 93. Do you consider that the definitions laid down in Article 1 of the Listing Directive are outdated?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

2.4 3.2. Listing conditions

Question 94. Do you consider that the broad flexibility that the Listing Directive leaves to Member States and competent authorities on the application of the rules for the admission to the official listing of shares and debt securities is appropriate in light of local market conditions?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 94:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Specific conditions for the admission of shares

Chapter II of Title III of the Listing Directive sets out specific rules for the admission to the official listing of shares of companies. However, a rather broad discretion is given to Member States or competent authorities to deviate from those rules to take into account specific local market conditions. The Listing Directive sets out, among others, rules on the foreseeable market capitalisation of the shares to be admitted to the official listing, (Article 43), on the publication or filing of the company’s annual accounts (Article 44), on the free transferability of the shares (Article 46), on the minimum free float (Article 48) and on shares of third country companies (Article 51).

Question 95.1 How relevant do you still consider the following requirements?

	1 (not relevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (very relevant)	Don't know - No opinion - Not applicable
a) Expected market capitalisation: The foreseeable market capitalisation of the shares for which admission to official listing is sought or, if this cannot be assessed, the company's capital and reserves, including profit or loss, from the last financial year, must be at least one million euro (Article 43(1)).	○	○	○	◉	○	○
b) Disclosure pre-IPO: A company must have published or filed its annual accounts in accordance with national law for the three financial years preceding the application for official listing. (…) (Article 44).	○	○	◉	○	○	○
c) Free float:A sufficient number of shares shall be deemed to have been distributed either when the shares in respect of which application for admission has been made are in the hands of the public to the extent of a least 25 % of the subscribed capital represented by the class of shares concerned or when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market will operate properly with a lower percentage. (Article 48(5)).	○	○	○	◉	○	○

Please explain the reasoning of your answer to question 95.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 95.2 Regarding the foreseeable market capitalisation referred to on question 95.1 a), would you consider a different threshold?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 95.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 95.3 Do you consider that the minimum number of years of publication or filing of annual accounts is adequate?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 95.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA is of the opinion, as regards listings on regulated markets, that the minimum number of years of publication of annual accounts could be lowered to two years.

The free float is the portion of a company's issued share capital that is in the hands of public investors, as opposed to company officers, directors, or shareholders that hold controlling interests. These are the shares that are deemed to be freely available for trading. The recommendation of 25% free float set out in Article 48 dates back to 2001. It allows the Member States' discretion in setting the percentage of the shares that would be needed to be floated at the time of listing. According to information received from stakeholders, the percentages in the EU-27 vary from 5% to 45%.

Question 96.1 In your opinion is free float a good measure to ensure liquidity?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that it could be relevant to define the recommendation in a more precise way (e.g., shares under lock up, endowment insurance).

Question 96.2 In your opinion, could a minimum free float requirement be a barrier to listing?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A minimum free float requirement could indeed be a barrier, but in the SSMA's view it is an appropriate barrier.

Question 96.3 In your opinion, is the recommended threshold set at 25% appropriate?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 96.3:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As regards the lowering of the minimum free float requirement, the SSMA considers this to be something that potentially could be evaluated in the future. From a business perspective, a slightly lower free float could be beneficial. However, we do not consider this to be an important issue.

Question 96.4 In your opinion, is it necessary to maintain the national discretion to depart from the recommended threshold for free float?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 96.4:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 97. Are there other provisions relating to the admission of shares, set out in Title III, Chapter II of the Listing Directive, that you would propose to change?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Specific conditions for the admission of debt securities

Chapter III of Title III of the Listing Directive sets out specific conditions for the admission to the official listing of debt securities issued by an undertaking. In particular, the Listing Directive sets out rules on the free transferability of the debt securities (Article 54), the minimum amount of the loan (Article 58), convertible or exchangeable debentures and debentures with warrants (Article 59). As for shares, the Listing Directive leaves wide discretion to Member States or competent authorities to deviate from those rules in light of specific local market conditions. Finally, Articles 60 to 63 set out rules relating to sovereign debt securities.

Question 98. Do you consider the provisions relating to the admission to official listing of debt securities issued by an undertaking, set out in Title III, Chapter III and IV of the Listing Directive (e.g. amount of the loan, rules on convertible or exchangeable debentures, rules on sovereign debt), adequate?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 98:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4 3.3. Competent authorities

Question 99. Would you propose any changes relating to the provisions on competent authorities and cooperation between Member States, laid down in Title VI of the Listing Directive?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 99:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.3.4. Other

Question 100. Would you have any other suggestions on possible improvements to the current rules laid down in the Listing Directive?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.4 Shares with multiple voting rights

Loss of control is widely cited by unlisted companies as the most important reason for staying private. Equity-raising very often generates a tension between existing owners, who rarely want to cede control of their business, and new investors who want to have control over their investment. This tension affects in particular family-owned companies but also the founders of tech, science and other high-growth companies who are often interested in preserving their ability to influence the strategic direction of the company after going public.

In order to encourage companies to list without owners having to relinquish control of their companies, multiple voting right shares have been used in a number of EU countries and have been highlighted as an efficient control-enhancing mechanism.

It is however worth noting that currently only some Member States allow for multiple voting rights. Amongst Member States that do allow multiple voting right share structures there are divergences as to the maximum allowed voting rights ratio.

Whilst multiple voting rights allow founders to keep control over their business, they may also make it easier for owners to extract private benefits to the detriment of investors, for instance by engaging in related-party transactions. The trade-off associated with multiple voting rights has led some countries to allow these types of shares provided that they include a sunset clause i.e. after a certain period, the shares with additional voting rights become regular shares. This safeguard aims at making sure that founders do not have indefinite control over their companies.

Both the HLF as well as the TESG stated that multiple voting right shares are a key ingredient for improving the attractiveness and competitiveness of European public market ecosystems and that allowing them across the whole EU would/could facilitate the transition of companies from private to public markets.

Question 101. Do you believe that, where allowed, the use of shares with multiple voting rights has effectively encouraged more firms to seek a listing on public markets?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 101 and substantiate with evidence where possible:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Reference is made to the recommendation set out in the Final report of the Technical Expert Stakeholder Group on SME:s (TESG): While there is a large variety of views in terms of the ideal proportion of voting rights in dual class share structures, the TESG recommends introducing the EU harmonised maximum 10:1

ratio, which has worked successfully for many years in Sweden and has been implemented by HKEX and SGX.

Question 102.1 In your opinion, what impact do shares with multiple voting rights have on the attractiveness of a company for investors?

- ○ Negative impact
- ○ Slightly negative impact
- ◉ Neutral
- ○ Slightly positive impact
- ○ Positive impact
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 102.1:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that introducing an EU harmonised maximum ratio of 10:1would have a neutral impact on the attractiveness of a company for investors. However, introducing a higher ratio than that may have a slightly negative or a negative impact on the attractiveness of a company for investors.

Question 102.2 When shares with multiple voting rights are allowed, do you believe limits to the voting rights attached to a single share improve the attractiveness of the company to investors?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain the reasoning of your answer to question 102.2:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that introducing an EU harmonised maximum ratio of 10:1would have a neutral impact on the attractiveness of a company for investors. However, introducing a higher ratio than that may have a slightly negative or a negative impact on the attractiveness of a company for investors.

Question 102.3 Please indicate what ratio you consider acceptable to overcome potential drawbacks associated with shares with multiple voting rights:

- ○ 2:1
- ◉ 10:1
- ○ 20:1
- ○ Other
- ○ Don’t know / no opinion / not applicable

Please explain the reasoning of your answer to question 102.3:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 103. Do you believe that the inclusion of sunset clauses (i.e. clauses that eliminate higher voting rights after a designated period of time) have proved useful in striking a proper balance between founders’ and investors’ interests?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please illustrate the reasoning of your answer to question 103, namely in terms of advantages and disadvantages:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

From a Swedish standpoint, this is not something we are familiar with. The SSMA does not see an issue with keeping the multiple voting rights on a permanent basis.

Question 104. Would you see merit in stipulating in EU law that issuers across the EU may be able to list on any EU trading venues following the multiple voting rights structure?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please illustrate the reasoning of your answer to question 104, namely in terms of advantages and disadvantages:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA sees merit in stipulating in EU law that issuers across the EU may be able to list on any EU trading venue following the multiple voting rights structure, provided that it is agreed within the Union that the voting rights should not exceed the ratio of 10:1.

Question 105. Do you have any other suggestion on how to make listing more attractive from the standpoint of companies' founders?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.5 Corporate Governance standards for companies listed on SME growth markets

Good corporate governance and transparency are deemed essential for the success of any company and in particular to those seeking access to capital markets. When issuers are governed according to principles of good corporate governance, they will find it easier to tap capital markets and attract investors. As issuers listed on SME growth markets do not need to comply with the Shareholder Rights Directive (2007/36/EC, as amended) or Transparency Directive (2004/109/EC, as amended), some market participants see merit in setting minimum corporate governance requirements applicable to these issuers in order to reassure investors. Institutional investors in particular may fear reputational risk when investing in companies listed on SME growth markets and find them not sufficiently attractive.

Question 106. Would you see merit in introducing minimum corporate governance requirements for companies listed on SME growth market with the aim of making them more attractive for investors?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain the reasoning of your answer to question 106:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In general, the SSMA has a positive view on minimum corporate governance requirements. However, it is important that such requirements do not become too burdensome.

Question 106. Which of the following option(s) would be most suitable for a possible initiative on corporate governance?

- ○ SME growth market operators should require in their own rulebook that issuers comply with corporate governance requirements tailored to local conditions.
- ○ SME growth market operators should recommend in in their own rulebook that issuers comply with corporate governance requirements tailored to local conditions.
- ◉ EU legislation should set out corporate governance principles for issuers listed on SME growth markets while allowing Member States and/or market operators' flexibility in how to implement the principles.
- ○ Corporate governance requirements for companies listed on SME growth markets should be fully harmonised at EU level.
- ○ Other
- ○ Don't know / no opinion / not relevant

Please explain the reasoning of your answers to question 106, notably on the advantages and disadvantages of the preferred option:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that it may be beneficial for the EU capital markets if SMEs were subject to minimum corporate governance requirements/principles. However, in this case, the member states should be granted some leeway as regards their implementation of the requirements/principles.

Question 107.1 Please indicate the corporate governance requirements that would be the most needed and would have the most impact to increase the attractiveness of issuers listed on SME growth markets:

	1 (no impact)	2 (almost no impact)	3 (some positive impact)	4 (significant positive impact)	5 (very significant positive impact)	Don't know - No opinion - Not applicable
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)	○	○	○	○	◉	○
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets	○	○	○	◉	○	○
Obligation to appoint an investor relations manager	◉	○	○	○	○	○
Introduction of minimum requirements for the delisting of shares: Supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)	○	○	○	○	◉	○
Introduction of minimum requirements for the delisting of shares: Sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.	○	○	○	○	◉	○

Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 107.1:

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 107.2 In your opinion, what would be the impact on the costs of listing and staying listed if the following corporate governance requirements were introduced for issuers listed on SME growth markets:

	1 (no impact)	2 (almost no impact)	3 (some positive impact)	4 (significant positive impact)	5 (very significant positive impact)	Don't know - No opinion - Not applicable
Requirement to report related party transactions (i.e. issuers would have to publicly announce material transactions with related parties at the time of the conclusion of such transaction and to adopt an internal procedure to assess and manage these transactions in order to protect the interests of the company)	○	○	○	○	○	◉
Additional disclosure duties regarding the acquisition/ disposal of voting rights as required by the Transparency Directive for major shareholdings in companies with shares traded on Regulated Markets	○	○	○	◉	○	○
Obligation to appoint an investor relations manager	○	◉	○	○	○	○
Introduction of minimum requirements for the delisting of shares: supermajority approval (e.g. 75% or 90% of shareholders attending the meeting) for shareholders resolutions which directly or indirectly lead to the issuer's delisting (including merger or similar transactions)	○	○	○	○	○	◉
Introduction of minimum requirements for the delisting of shares: sell-out rights assigned to minority shareholders if the company is delisted or if one shareholder owns more than 90% or 95% of the share capital.	○	○	○	○	◉	○

Appointment of at least one independent director (independence should be understood according to para. 13.1. of Commission's recommendation 2005/162/EC)	○	○	○	○	◉	○
Other	○	○	○	○	○	◉

Please explain the reasoning of your answer to question 107.2, and, if possible, provide supporting evidence, notably in terms of costs (one-off and ongoing costs):

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 108. Do you have any other suggestion on how to make issuers listed on SME growth markets more attractive to investors?

4000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.4.6. Gold-plating by NCAs and/or Member States

Question 109. Are you aware of any cases of gold-plating by NCAs or Member States in relation to EU rules applicable both to companies going through a listing process and to companies already listed on EU public markets? Please note that for the purposes of this consultation gold-plating should be understood as encompassing all measures imposed by NCAs and /or Member States that go beyond what is required at EU level (i.e. it does no relate to existing national discretions and options in EU legislation).

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous**.

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act-targeted_e

Consultation document (https://ec.europa.eu/info/files/2021-listing-act-targeted-consultation-document_en)

More on the public consultation running in parallel (https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act_en)

More on SME listing on public markets (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/sme-listing-public-markets_en)

Specific privacy statement (https://ec.europa.eu/info/files/2021-listing-act-targeted-specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

fisma-listing-act@ec.europa.eu