

## NSA's comments to the EU Commission's Listing Act proposal of 7 December 2022

The Nordic Securities Association (NSA)<sup>1</sup> welcomes the opportunity to give input on the EU Commission's Listing Act initiative and would like to provide the following comments.

As representatives of finance associations in Denmark, Finland, Norway and Sweden we support the fostering of competitive and efficient capital markets in the European Union. We believe that the Listing Act initiative has potential to further improve the EU capital markets whilst still maintaining an adequate level of investor protection.

After two strong years in 2020 and 2021, the Nordic capital markets have proven themselves as a force to be reckoned with in terms of issuer and investor attraction, as well as number of IPOs – especially as regards SMEs. The NSA believes there are several factors behind this e.g., a significant degree of institutional and retail investor participation along with high levels of financial literacy. With this in mind, the NSA does not consider there to be a need of extensive changes in the regulatory landscape regarding public listings in the EU. Rather, the NSA believes that accurate adjustments, focused on harmonising the listing rules as well as simplifying them to lower the costs associated with public listings, is the way forward to fulfilling the goals of the Capital Markets Union and encouraging companies to seek market-based financing in European capital markets.

### Listing Directive

The NSA supports the proposal to repeal the Listing directive and to transfer relevant remaining provisions to MiFID II.

### Directive on markets in financial instruments (MiFID II)

The NSA considers issuer-sponsored research to be an important and a legitimate type of research that effectively increases the research coverage on SMEs. However, it is important that issuer-sponsored research is responsibly produced and transparent in order to maintain proper investor protection and market integrity. Therefore, the NSA supports subjecting such research to a code of conduct. It is, however, important that such a code of conduct is adopted at EU level to provide for harmonised rules and a level playing field.

As regards the question of bundling research costs with execution costs, the NSA shares the Commission's view that the re-bundle initiative that set a market capitalisation threshold of EUR 1 billion in the Capital Markets Recovery Package, has not proven to be an effective way of achieving the desired objectives. The NSA believes that this is because investment firms see no benefits in having two separate systems for disclosing costs to clients; one that bundles costs and another that unbundles them. Even though the investment firms were reluctant to the unbundling rules from the very start, they have adapted to the situation and incorporated systems that unbundle the different costs.

<sup>1</sup> The Nordic Securities Association (NSA) is a Nordic cooperation that works to promote a sound securities market primarily in the Nordic region. The NSA is formed by Capital Market Denmark (Kapitalmarked Danmark), Finance Finland (Finanssiala), the Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and the Swedish Securities Markets Association (Svensk Värdepappersmarknad). [www.nsa-securities.eu](http://www.nsa-securities.eu). Nordic Securities Association's public ID number in the Transparency Register is: 622921012417-15.

### Memo

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Contact: Erik Einerth

erik@svpm.se

NSA questions if increasing the market capitalisation threshold to EUR 10 billion will have any effect on research coverage.

Regarding the proposed decrease of the minimum free float requirement, the NSA agrees that this may make an IPO seem more attractive to an issuer. However, we believe that it will be much more difficult to find institutional investors willing to invest in IPOs with free floats as low as 10%. Additionally, the NSA fears that issuers that go public with such a low free float will have an increased risk of suffering from low liquidity in the secondary markets. Therefore, the NSA does not support the proposal to decrease the minimum free float requirement.

### **Prospectus regulation (PR)**

The NSA fully supports the Commission's proposal to harmonise the threshold for when issuances and offers of securities to the public. However, the NSA questions setting the threshold to EUR 12 million, believing it may be too far-reaching. Although the production of prospectuses may pose a financial hurdle for companies looking to go public, the NSA considers the prospectuses to be an essential tool for providing transparency and investor protection during issuances and offers of securities to the public. It is, therefore, much important that the threshold is set at an adequate level.

The NSA supports the proposal to allow prospectuses (except for the summary) to be written in English. The NSA furthermore supports the proposal to delete the requirement for issuers and offerors to be able to provide investors with a physical copy of the prospectus.

As regards making permanent certain parts of the Capital Markets Recovery Package, the NSA does not support maintaining the extension of the investors' right of withdrawal. The NSA believes this disproportionately increases the burdens an issuer or offeror is subjected to during the issuance or offer, due to increased uncertainty and a prolonged time frame before the issuance or offer is concluded.

Furthermore, the NSA does not support the proposal to prohibit the introduction of a new type of security to a base prospectus by means of a supplement. The NSA considers this proposal to be contradictory to the main objective of the Listing Act initiative, which is to encourage and facilitate for market-based financing. The proposed change would cause issuers or offerors to incur significant costs and force them to invest much more time and resources into producing new prospectuses in a way that, according to the NSA, is not proportionate to the slightly increased investor protection.

### **Market abuse regulation (MAR)**

The NSA supports the objective to clarify the legal framework regarding issuers' requirement to disclose information relating to intermediate steps of a protracted process. However, for such legislative efforts to be effective and truly clarify for issuers how to act to comply with the rules, they must be carefully considered and concretely stated. Otherwise, the rules risk creating even more confusion.

As regards the timing of the notification of the delay of inside information to the NCA, the NSA objects to the proposal. The NSA considers the current rules, according to

which, the issuers should notify the NCA of the delay at the moment the inside information is disclosed, are well-balanced and reasonable. Since the issuer does not need pre-approval from the NCA before disclosure of inside information is delayed, it would be unreasonable for the issuer to be required to notify the NCA prior of the delay. Such a system would only risk causing confusion regarding the permissibility of the delay.

The NSA does not fully support the proposed changes to the insider lists, more specifically Article 18(1b). We do see a number of challenges with the practical implementation of this paragraph. For example, what are the requirements for a Member State to require an issuer to apply to the full insider lists? Can it be required for only a few issuers or will it have to be required for all issuers whose securities have been admitted to trading for at least 5 years? Can a Member State change their opinion and not require a full insider list (in scope and out of scope)? Also, for issuers with securities listed in different jurisdictions, it can be very complex to comply with different requirements in different Member States. We urge the Commission to elaborate more on this to ensure clarity for issuers and to ensure level playing field.