



Capital Markets Union: proposal by the European Commission to make it easier for small- and medium-sized enterprises to get financing. October 2018.

One of the objectives of the Capital Markets Union (CMU) is to extend the access of European companies, at all stages of their development, to the sources of finance offered by capital markets, thereby reducing their dependence on bank funding. Since its launch, the CMU Action Plan has encouraged an increase in the sources of financing for companies as they expand through different initiatives. In its 2017 review, the European Commission (EC) placed greater emphasis on encouraging the access of small- and medium-sized enterprises (SMEs) to public markets and undertook to explore measures for achieving this.

Despite the potential benefits of SMEs accessing these markets (such as greater investor diversification, enhanced public profile and brand recognition), the number of initial public offerings in specific European Union (EU) SME markets fell significantly as a result of the crisis and has not recovered.

The MiFID II Directive¹, which came into force in January 2018, introduced a new category of Multilateral Trading Facilities (MTFs) – the **SME Growth Markets** (SMEGMs). Even though a number of simplifications have been made to the EU regulatory framework to alleviate the burdens on issuers in SMEGM, it is still considered necessary to continue working to reduce the obstacles that limit their full development.

With this objective, on 24 May, the EC published a proposal to introduce technical amendments to the legislation in order to: (1) reduce the administrative burden and high compliance costs for the admission to trading of financial instruments issued by SMEs in SMEGMs, while preserving a high level of investor protection and market integrity and (2) enhance the liquidity of the shares issued in these markets, as the lack of liquidity affects issuers as well as investors and intermediaries.

This proposal follows much ground-work, including the use of specialised advice in a public consultation opened in December 2017 and comprises: (1) a Regulation which amends certain rules in the new Prospectus Regulation² and in the Market Abuse Regulation³ and (2) a delegated act amending Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing the MiFID II Directive as regards organisational requirements and operating conditions for investment firms.

¹ Directive 2014/65/EU, of the European Parliament and the Council, of 15 May 2014, on markets in financial instruments.

² 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.

³ Regulation (EU) 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse.

Proposed measures for promoting the use of SMEGMs

The content of the proposal and the barriers it seeks to remove are summarised below.

Amendments to the Market Abuse Regulation

This Regulation, which contains a number of provisions to prevent insider dealing and market manipulation and contains several disclosure and record-keeping obligations for issuers, is a “one-size-fits-all” regulation. It only contains two adaptations to issuers listed on SMEGMs. The first allows training venues operating an SMEGM to post insider information on the trading venue’s website (instead of the issuer’s website). The second allows issuers listed on SMEGMs to only produce insider lists upon request from a national competent authority (NCA), although they are required to gather and store all relevant information to be able to produce insider lists on request. However, these simplifications are considered limited.

In addition, the market sounding regime in the private placement of bonds with institutional investors under the Regulation is also an obstacle as the procedure establishes a series of requirements – with the aim of preventing the use of inside information disclosed in this context – that are burdensome for SMEs.

Similarly, liquidity in these markets is hindered by the shortcoming stemming from the obligation of the Regulation that requires Member States to establish an Accepted Market Practice in order to allow issuers to enter into a liquidity provision contract with a broker. Only four Member States have already established an Accepted Market Practice, which means that the market is fragmented.

In order to resolve these and other issues, five amendments are proposed:

(1) *Exemption from the market sounding regime for private placements of bonds with qualified investors.* The exemption will apply (i) if the issuer seeking a private placement of bonds already has its equity or non-equity financial instruments admitted to trading on an SMEGM; and (ii) if an alternative wall-crossing procedure is in place, by which any potential qualified investor acknowledges the regulatory duties stemming from the access to inside information, for example through a non-disclosure agreement.

(2) *Liquidity provision contract for SMEGM issuers.* The aim is to offer the possibility for issuers in these markets to enter into a liquidity provision contract with a financial intermediary even if the NCA where the market is located has not established an Accepted Market Practice. This will be subject to three conditions: (i) said contract shall meet the conditions set out by the Regulation and the standards to be developed by the European Securities and Markets Authority; (ii) the liquidity provider should be an investment firm authorised under MiFID II and a market member of the SMEGM where the issuer has its shares admitted to trading; and (iii) the market operator or the investment firm operating the SMEGM shall be informed of the contract and agree with its terms and conditions.

(3) *Justification of the delay in disclosing inside information.* SMEGM issuers will be required to notify a delay in disclosing inside information to the NCA, but they will only be required to justify the reasons upon the request of said authority. Similarly, they will not be required to maintain the list of detailed information to justify the delay and may prepare the justification *ex-post* if and when requested by the NCA.

(4) *Insider lists for SMEGMs.* Even though the Regulation contains a simplification of the obligation for SMEGM issuers, the amendment proposes to replace this by a “list of permanent insiders”, which will include all the persons that have regular access to inside information relating to that issuer due to their function within the issuer or their position.

(5) *Managers’ transactions by SMEGM Issuers.* Currently, Persons Discharging Managerial Responsibilities and Persons Closely Associated must declare their transactions to the NCA and to the issuer within three days

after the transaction date, while the issuer must disclose the information to the market no later than three days after the transaction. However, it is impossible to comply with this obligation on time if the issuer receives the information from the manager late. The amendment proposes extending the deadline so that the issuer will have an extra two days from the date on which it receives the notification to disclose information to the public.

Amendments to the Prospectus Regulation

The simplified “EU Growth prospectus”, incorporated in the new Prospectus Regulation in the framework of the CMU Action Plan aims to facilitate and reduce the cost, after its entry into force in July 2019, for small companies to access capital markets. However, according to the new Prospectus Regulation, the simplified prospectus will not be valid for issuers listed for a specific time on an SMEGM to be able to transfer their shares from that market to a regulated market. In this case, therefore, the issuer must produce a full prospectus. In order to address this obstacle, the EC proposes an amendment to the new Prospectus Regulation to facilitate the aforementioned “transfer” from the SMEGM to the regulated market. Specifically, it proposes that those companies listed for at least three years on an SMEGM and wishing to move to a regulated market may do so using this type of simplified prospectus.

Amendments to Commission Delegated Regulation (EU) 2017/565, supplementing the MiFID II Directive

Two regulatory barriers have been detected with regard to this Delegated Regulation: 1) the definition of non-equity SME issuer is not adapted and calibrated for companies issuing bonds on MTFs, which often do not meet the criteria⁴ and 2) SMEGM non-equity issuers are required to publish half-yearly financial reports that are not required of regulated market issuers issuing bonds with a denomination per unit above 100,000 euros.

Furthermore, the liquidity of these markets is also affected by the absence of a free float requirement (a minimum amount of capital in the hands of the public that may be freely traded).

Three amendments to the Delegated Regulation are proposed:

(1) *Definition of a non-equity SME issuer on a SMEGM.* The proposal is to replace the current definition for one based on issuance size, establishing a threshold of 50 million euros over a period of 12 months, starting on 1 July each year. In addition, in order to determine whether an issuer qualifies with regard to this threshold, all the issuances of debt securities that could be made on all trading venues across the EU need to be taken into account.

(2) *Half-yearly report.* The proposal is to make this mandatory report optional for non-equity SME issuers on SMEGMs (while keeping the obligation unchanged for equity issuers).

(3) *Free float.* The proposal introduces a free float requirement for issuers of shares or equivalent instruments that request admission to trading on an SMEGM, allowing market operators or investment firms operating SMEGMs to have flexibility to adopt the specific criterion as regards this requirement (express it as a percentage or an absolute value).

These measures aim to: (i) increase the number of debt-only issuers that would qualify as SMEs, which would in turn enable more MTFs to register as SMEGMs and issuers on these markets to benefit from alleviated regulatory requirements; (ii) allow market operators to better adapt their listing rules to local conditions; and (iii) ensure that shares listed on SMEGMs are not too illiquid at the admission stage.

Conclusion

Although the current regulatory framework already provides for some simplifications affecting SMEGMs, these

are considered to be extremely limited. The regulatory changes now proposed are a further step but not a full remedy, and additional steps in the same direction should be expected in the future.

⁴ According to the definition in the Delegated Regulation, "an issuer which has no equity instrument traded on any trading venue shall be deemed an SME for the purpose of Article 4(1)(13) of Directive 2014/65/EU if, according to its last annual or consolidated accounts, it meets at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43,000,000 and an annual net turnover not exceeding EUR 50,000,000".

Links of interest:

[Proposal for a Regulation of the European Parliament and of the Council, amending Regulations \(EU\) No 596/2014 and \(EU\) 2017/1129 as regards the promotion of the use of SME growth markets](#)

[Proposal for a Commission Delegated Regulation, amending Commission Delegated Regulation \(EU\) 2017/565, as regards certain registration conditions to promote the use of SME growth markets for the purposes of Directive 2014/65/EU, of the European Parliament and of the Council](#)