Set of proposals from the European Commission on the admission to trading of companies (listing act)

April 2023

The European Commission (EC) published on December 7, 2022 a set of proposals to make the capital markets of the European Union (EU) more attractive, grouped into three themes: i) measures on clearing, to make clearing services in the European Union they are more attractive and resilient in order to sustain strategic autonomy and preserve financial stability; ii) measures on company insolvency, to harmonize certain aspects and help promote cross-border investment; and iii) measures on admission to trading of companies (known as listing act), to simplify the rules for listing on the markets, lightening the administrative burden for companies in general, and SMEs in particular, and facilitating access to financing from investors through their admission to trading on the stock exchanges.

The set of measures on admission to trading are three proposals: a regulation that modifies the Prospectus, Market Abuse and MiFIR Regulations, and two Directives, the first one that modifies MiFID and repeals Directive 2001/34/EC on admission to trading and, second, a new Directive on multiple vote share structures in companies that seek the admission to trading of their shares in an SME growth market.

1. Regulation that amends the Prospectus Regulation, MAR and MiFIR

1.1. Prospectus Regulation. The amendments are intended to make it easier and cheaper for issuers to prepare prospectuses, while at the same time allowing investors to make appropriate investment decisions as the prospectuses contain more understandable, easy-to-analyze and concise information.

1.1.1. The **exemptions to the obligation to publish a prospectus for admission to trading for secondary issuances of securities fungible with securities already admitted to a regulated market are extended**: on the one hand, it covers the public offer prospectus and, on the other, it includes the securities admitted in SMEs growth markets. The exemption is eased since the percentage of new securities could reach, over 12 months, 40% (currently 20%) of the volume of securities already admitted to trading. This new percentage is also applied to the shares resulting from conversion or exchange, when the resulting shares are of the same class as those already admitted to trading. A **new exemption** from the obligation to publish an offer or admission to trading prospects covers f**ungible securities of securities that have been admitted to trading continuously for at least the previous eighteen months to offer or admission in a regulated market or in an SME growth market** and submit to the Competent National Authority (ANC) a short document (annex IX of the proposal) that includes a statement declaration of compliance with the ongoing and periodic reporting and transparency obligations and details the use of proceeds and any other relevant information not yet disclosed publicly. This exemption (broader than the current one) does not apply to secondary issuances by companies that are in financial distress or that are going through a significant transformation (a change in control resulting from a takeover, merger or spin-off), in which case issuers are required to draw up and publish a new short-form prospectus: the EU follow-on prospectus). **For non-equity securities issued in a continuous or repeated manner by credit institutions**, it becomes permanent the **threshold of 150 million euros** of the total amount of the offer to be exempt from the obligation to publish a prospectus in the event of an offer or admission to trading on a regulated market.

1.1.2. It sets **a single harmonized threshold (which increases from 8 to 12 million euros) below which public offerings of securities are exempt from a prospectus**, as long as it is not subject to notification (passport) from the ANC of the home Member State (MS). The threshold is calculated on the total amount of the aggregate offers made by the same issuer or offeror in the EU during a period of twelve months; below that threshold, the issuer can voluntarily issue a prospectus and MS can require national disclosure documents as long as they do not constitute a disproportionate burden.

1.1.3. It is proposed **a standardized format and a fixed order of disclosure of information for prospectuses and summary notes in public offerings of securities and admissions to trading on regulated markets**.The format of the prospectuses will be developed through EC delegated acts that will take into account: i) for issuers of equity securities, whether the issuers are subject to the sustainability reporting under the upcoming Corporate Sustainability Reporting Directive; and ii) for issuers of non-equity securities, whether those non-equity securities are marketed as taking into account environmental, social and governance (ESG) factors or pursuing ESG objectives. **Additional improvements to the efficiency of the prospectus** are: i) equity prospectuses will have a maximum length of 300 A4 pages (not counting the summary note, information incorporated by reference or other additional information such as complex financial history or a significant financial commitment); ii) the summary notes will have a maximum length of 5 pages, which can be extended in specific cases; iii) the description of the risk factors cannot be generic and the description of their importance can be included in a qualitative scale; iv) incorporation by reference is mandatory; v) investors cannot request paper copies of the prospectus; and vi) it is possible to write only in English except in the case of the summary note.

1.1.4. The simplified prospectus for secondary issuances (and the EU Recovery prospectus about to expire) are replaced by a **new EU follow-on prospectus for equity and non-equity securities**, that will apply to secondary issuances of issuers/offers of securities continuously admitted to trading for at least the previous eighteen months when they do not fall within the scope of an exemption (for example, when the fungibility criterion is not met). As an exception, an issuer that only has non-equity securities admitted to trading on a regulated market or SME growth market will not be authorized to issue this type of prospectus. The prospectus will contain the information on the issuer, the securities and the issuance contemplated in annexes IV and V of the proposal for equity and non-equity securities, respectively, and will have a maximum length of 50 pages when related to shares.

1.1.5. The EU growth prospectus is replaced by **a new EU growth issuance document** whose drawing -up and publication is mandatory (unless exempt), provided they do not already have securities admitted to trading on a regulated market, for public offerings of securities of the following categories of offerors: i) SMEs, ii) issuers (non-SMEs) whose securities are or will be admitted to trading on a SME growth market, and iii) other issuers than the above when the amount of the aggregated offer in the Union is less than 50 million (currently 20 million) and have an average number of employees during the previous financial year up to 499. However, offerors described in i) and ii) may choose to draw-up an EU follow-on prospectus provided they have securities already admitted to trading on an SME growth market continuously for at least the last eighteen months. The prospectus will contain the information on the issuer, the securities and the issuance contemplated in annexes VII and VIII of the proposal for s equity and non-equity securities, respectively, and will have a maximum length of 75 pages when related to shares.

1.1.6. Streamline and improve **convergence of scrutiny and approval of the prospectus** by the ANCs. To this end, the EC is empowered to specify in delegated acts: i) when an NCA is allowed to use additional criteria for the scrutiny of the prospectus and the type of additional information that maybe required; ii) the maximum timeframe to complete the scrutiny and reach a decision on whether that prospectus is approved or the approval is refused and the review process terminated; and iii) the consequences for an ANC that does not take a decision on the prospectus within the time limits laid down in the Regulation. ESMA shall conduct, at least every 3 years, a peer review on scrutiny and approval of prospectuses.

1.1.7. It is clarified that, in the case of **publication of a supplement to the prospectus**, the financial intermediary -as it was introduced in the capital markets recovery package- is obliged to inform only investors who are its clients and agree to be contacted by electronic means.

1.1.8. To obtain the **equivalence for third country prospectuses**, the public offering in the EU must be accompanied by an admission to trading on a regulated market or an SME growth market and meet the following conditions: i) the issuer must submit the prospectus for approval to the ANC of the third country and provide a confirmation of its approval to the NCA of an EU MS; ii) the EC must adopt an implementing act and ESMA must have formalized cooperation agreements with the ANC of the third country; iii) the prospectus language regime and marketing communications will be adjusted to the Regulation. The proposal describes requirements that the third country’s legislation must meet for the EC to determine the equivalence of its legal and supervisory framework. The EC, in delegated acts, will specify the equivalence requirements and the minimum content of the cooperation agreements.

1.1.9. **Other additional modifications** are the following: the regime of the **universal registration document** is simplified and alleviated by allowing the document to be written in English only and granting frequent issuer status after one year of approval (instead of two); it reduces from six to three days the minimum period between

the publication of a prospectus and the end of an offer of shares; and it extends from two to three working days the period withing which investors may withdraw from their subscriptions to securities in case issuers published a supplement due to new significant factors, errors or material inaccuracies.

1.2. Market Abuse Regulation (MAR). The proposal is intended to reduce legal uncertainty about what insider information must be disclosed and when to disclose it, as well as ease regulatory compliance on manager`s transactions, insider lists and market soundings.

1.2.1. **It narrows down the scope of the obligation to disclose inside information in the case of the so-called protracted processes** (multi-staged events, such as a merger) that now does not include the intermediate steps and there is only an obligation to disclose the information related to the event that is intended to complete a protracted process, although insider trading is prohibited during the intermediate stages. Issuers shall ensure the confidentiality of inside information until the moment of its disclosure and immediately disclose such inside information to the public in the case of a leakage (for example, a rumour). The EC shall adopt a delegated act establishing (and revising where necessary) a n**on-exhaustive list of relevant inside information and, for each piece of information, the moment when the issuer can reasonably be expected to disclose it**. Furthermore, in the **definition of inside information**, it is included not only information transmitted by a client relating pending orders but also information conveyed by other persons acting on the client´s behalf or information known by virtue of management of a proprietary account or a managed fund.

1.2.2. The **conditions under which issuers may, under their responsibility, delay disclosure of inside information** are clarified by replacing the general condition that the delay must not mislead the public with a list of conditions that the information must meet: i) not differ materially from the issuer's prior public announcement; ii) not taking into account the fact that the issuer's financial objectives are not likely to be met if they have been announced; and iii) not contrast with market expectations if these are based on previous signals from the issuer. The time of the notification of the delay to the NCA is advanced to the moment immediately after the decision to delay disclosure is taken by the issuer (instead of the moment immediately after the information is disclosed to the public) and NCA to not authorise delays. Along with credit/financial institutions, parent companies or companies linked to them are included among the issuers that can delay the public disclosure of inside information, including information related to a temporary liquidity problem.

1.2.3. It is clarified that the **character of "safe harbour" of the market sounding regime** is optional: if market participants meet the requirements on disclosure and recording of inside information, then they are protected against the allegation of unlawfully disclosure of inside information ("safe harbour"). However, in the case of non-compliance, there is no presumption that market participants have disclosed inside information unlawfully. The definition of market prospecting is also extended to include cases where a transaction is not eventually announced.

1.2.4. It simplifies the **insider list regime** by extending to all issuers (including those in regulated markets) the simplifications introduced by Regulation 2019/2115 for issuers in SME growth markets. Issuers must draw-up and maintain a **permanent insider list** which includes all persons who, due to the nature of their function or position at the issuer, have regular access to inside information, for example, members of the administrative, management and supervisory bodies, executives who make managerial decisions that affect future developments and the business prospects of issuers and administrative staff who regularly have access to inside information. However, persons acting on their behalf or for their account (accountants, lawyers, rating agencies) do have the obligation to draw up, update and provide the ANC, upon request, with their own insider list. In addition, EMs, in the case of issuers whose securities have been admitted to trading on a regulated market for at least the last five years, are allowed to choose to require the drawing up and maintenance of a **complete list of insiders** when justified by market integrity concerns. Issuers and anyone acting on their behalf or on their account may require persons on their insider list to acknowledge their obligations on a durable medium.

1.2.5. The threshold above which **manager´s transactions** shall be notified to the issuer and to the ANCs is raised from 5.000 to 20.000 euros. The NCAs can increase the threshold applicable at the national level up to 50,000 euros (previously up to 20,000 euros). It also extends the scope of the exemptions to the prohibition to carry out transactions in the closed period (thirty calendar days before the announcement of an interim financial report or an end-of-year report) since the issuer can authorize such operations: i) when are carried out within the framework of an employee participation/savings schemes that concern financial instruments other than shares (currently only shares); and ii) when persons with managerial responsibilities do not take any active investment decisions (such as the automatic conversion of financial instruments).

1.2.6. **Administrative pecuniary sanctions are more proportional to the size of the issuer**. The financial penalties will either be a percentage of the total annual turnover of the legal person or, exceptionally, a fixed

amount (which is lower if it is an SME) for failure to comply with disclosure of inside information or insider listing requirements. NCAs, to calculate the amount of the sanctions, will take into account, among other circumstances, the financial strength of the person responsible for the indicated infraction (the total turnover of a legal person or the annual income of a natural person) and the non bis in idem principle. Benchmarks administrators and supervised contributors are included in the scope of application of the sanctioning regime.

1.2.7. The **new order book data exchange mechanism (CMOBS)** allows NCAs supervising trading venues with a significant cross-border dimension to set up the mechanism for the continuous and timely exchange of order book data collected in such trading venues with respect to instruments traded on that market, to detect market abuse in a cross-border context. An ANC will be able to obtain such data when it is the Competent Authority of the most relevant market according to MiFIR for shares, bonds and/or futures.

1.2.8. **Other modifications** of interest are: i) for a **buyback program** to benefit from the exception of non-application of articles 14 and 15 (prohibition of use of inside information and market manipulation) to the trading of own shares, the issuer will communicate the information only to the Competent Authority of the most relevant market in terms of liquidity for their shares and will only publish aggregated information; ii) the requirement that the operator of a SME growth market approves the conditions of the liquidity contracts is replaced by the obligation to acknowledge in writing to the issuer that it has received said contract; iii) the cases of delay in the public disclosure of inside information are extended in order to preserve financial stability under certain conditions to include the case of an issuer that is a **parent company or related company** of a credit or financial institution listed or unlisted; and iv) the creation by ESMA of **collaboration platforms** with the ANCs and with public bodies that supervise the spot markets, to reinforce the exchange of information in the case of concerns related to market integrity or the good functioning of market.

1.3. MiFIR. ANC may request from the operator of a trading venue the relevant data on all orders relating to financial instruments that are received in its systems on an ongoing basis. The operator shall keep the relevant data available to the ANC for 5 years. ESMA will coordinate the access to information by the NCAs and will specify the relevant data of the order that must be maintained.

2. Directive that amends MiFID and repeals Directive 2001/34/EC

2.1. For covering a broader range of SMEs, increase their visibility and make the investment more attractive to investors the **market capitalisation threshold of 1,000 is increased up to 10,000 million euros**, below which they would **benefit from the exception to the rule unbundling** since it would be possible to regroup the trading execution fees and the research fees.

2.2. It contemplates the "**issuer-sponsored research"** when the research is paid fully or partially by the issuer and disseminated to the public, to the ESIs or to the clients of investment firms providing portfolio management or other investment service. It must be drawn up in accordance with a code of conduct endorsed or endorsed by a market operator registered with an MS or by an ANC. MS will ensure that any issuer can submit its sponsored research to the collection body under the proposed European Single Access Point (ESAP) Regulation.

2.3. It allows that a **segment of a Multilateral Trading Facility (MTF)** is registered as a SME growth market when the operator of said MTF requests so and provided that certain requirements are met.

2.4. In order to increase the harmonization of listing rules and reduce legal uncertainty and regulatory arbitrage in the EU, on the one hand, it **repeals the Listing Directive a**nd its current provisions are transferred to MiFID II and, on the other, it **updates the requirements for admission to trading**: the minimum free float is reduced from 25% to 10% to allow greater flexibility for issuers wishing to maintain a significant stake and the 10% is not limited to citizens of the EU or the European Economic Area. The foreseeable market capitalization of the shares for which admission to trading is sough does not change (at least 1,000,000 euros or equivalent in another national currency).

3. New Directive on multiple vote share structures in companies seeking the admission to trading of their shares in an SME growth market

3.1. Issuer will be able to access financing through their a**dmission to trading in SMEs growth market** in one or several MS on condition that they do not have shares admitted in any other trading venue, retaining decision-making power over their company and at the same time protecting the rights of other shareholders. To achieve this, companies issue **two different classes of shares** with a different number of associated voting rights: **shareholders with multiple voting rights** (have additional votes associated to the shares) and **shareholders (investors) without multiple voting** (that have one vote per share and, therefore, less decision-making power).

MS may introduce or maintain national provisions in situations not covered by the Directive.

3.2. **For the adequate protection of shareholders without multiple voting safeguards are provided** for: i) the decision to adopt a multiple vote share structure will be taken at the general shareholder´s meeting and approved by a qualified majority (as specified in national law); ii) the voting weight of multiple vote shares at general meetings will be limited: either with a maximum weighted vote ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple vote shares can represent, or with a restriction of the exercise of enhance voting rights attached to the multiple vote shares for voting on issues that require approval by a qualified majority at a general meeting. MS could provide additional safeguards in relation to additional voting rights: transfer-based sunset clauses (prohibit their transfer or existence in the event of the death/incapacity/retirement of the original holder) or time-based sunset clauses (avoid existence after a period) or event-based sunset clauses (avoid existence after a specific events).

3.3.For the sake of **transparency**, MS will ensure that the companies make publicly available: a) the capital structure, the different classes of shares (rights and obligations, the percentage of the total share capital and total voting rights that each class represents); b) any restrictions on the transfer of securities; c) the identity of the holders of any security with special control rights; d) any restrictions on voting rights; e) the identity of the shareholders holding multiple vote shares and of the natural or legal person entitled to exercise voting rights on behalf of such shareholders, when applicable. The information will be included in the Growth Union brochure (or appropriate admission document) and in the annual financial report.

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1.1.1. The exemptions to the obligation to publish a prospectus for admission to trading for secondary issuances of securities fungible with securities already admitted to a regulated market: on the one hand, it extends the exemption to the prospectus of the public offer and, on the other, it includes the securities admitted in SMEs growth markets. The exemption is eased since the percentage of new securities could reach, over 12 months, 40% (currently 20%) of the volume of securities already admitted to trading. This new percentage is also applied to the shares resulting from conversion or exchange, when the resulting shares are of the same class as those already admitted to trading. A new exemption from the obligation to publish an offer or admission to trading prospects covers fungible securities of securities that have been admitted to trading continuously for at least the previous eighteen months to offer or admission in a regulated market or in an SME growth market and submit to the Competent National Authority (ANC) a short document (annex IX of the proposal) that includes a statement declaration of compliance with the ongoing and periodic reporting and transparency obligations and details the use of proceeds and any other relevant information not yet disclosed publicly. This exemption (broader than the current one) does not apply to secondary issuances by companies that are in financial distress or that are going through a significant transformation (a change in control resulting from a takeover, merger or spin-off), in which case issuers are required to draw up and publish a new short-form prospectus: the EU follow-on prospectus). For non-equity securities issued in a continuous or repeated manner by credit institutions, it becomes permanent the threshold of 150 million euros of the total amount of the offer to be exempt from the obligation to publish a prospectus in the event of an offer or admission to trading on a regulated market.

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additional information such as complex financial history or a significant financial commitment); ii) the summary notes will have a maximum length of 5 pages, which can be extended in specific cases; iii) the description of the risk factors cannot be generic and the description of their importance can be included in a qualitative scale; iv) incorporation by reference is mandatory; v) investors cannot request paper copies of the prospectus; and vi) it is possible to write only in English except in the case of the summary note.

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1.2.7. The new order book data exchange mechanism or CMOBS (cross market order book surveillance mechanism) allows NCAs supervising trading venues with a significant cross-border dimension to set up the mechanism for the continuous and timely exchange of order book data collected in such trading venues with

respect to instruments traded on that market, to detect market abuse in a cross-border context. An ANC will be able to obtain such data when it is the Competent Authority of the most relevant market according to MiFIR for shares, bonds and/or futures.

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2. Directive that amends MiFID and repeals Directive 2001/34/EC

2.1. For covering a broader range of SMEs, increase their visibility and make the investment more attractive to investors the market capitalisation threshold of 1,000 is increased up to 10,000 million euros, below which they would benefit from the exception to the rule unbundling since it would be possible to regroup the trading execution fees and the research fees.

2.2. It contemplates the "issuer-sponsored research when the research is paid fully or partially by the issuer and disseminated to the public, to the ESIs or to the clients of investment firms providing portfolio management or other investment service. It must be drawn up in accordance with a code of conduct endorsed or endorsed by a market operator registered with an MS or by an ANC. MS will ensure that any issuer can submit its sponsored research to the collection body under the proposed European Single Access Point (ESAP) Regulation.

2.3. It allows that a segment of a Multilateral Trading Facility (MTF) is registered as a SME growth market when the operator of said MTF requests so and provided that certain requirements are met.

2.4. In order to increase the harmonization of listing rules and reduce legal uncertainty and regulatory arbitrage in the EU, on the one hand, it repeals the Listing Directive and its current provisions are transferred to MiFID II and, on the other, it updates the requirements for admission to trading: the minimum free float is reduced from 25% to 10% to allow greater flexibility for issuers wishing to maintain a significant stake and the 10% is not limited to citizens of the EU or the European Economic Area. The foreseeable market capitalization of the shares for which admission to trading is sough does not change (at least 1,000,000 euros or equivalent in another national currency).

3. New Directive on multiple vote share structures in companies seeking the admission to trading of their shares in an SME growth market

3.1. Issuer will be able to access financing through their admission to trading in SMEs growth market in one or several MS on condition that they do not have shares admitted in any other trading venue, retaining decision-making power over their company and at the same time protecting the rights of other shareholders. To achieve this, companies issue two different classes of actions with a different number of associated voting rights: shareholders with multiple voting rights (have additional votes associated to the shares) and shareholders (investors) without multiple voting (that have one vote per share and, therefore, less decision-making power). MS may introduce or maintain national provisions in situations not covered by the Directive.

3.2. For the adequate protection of shareholders without multiple voting safeguards are provided for: i) the decision to adopt a multiple vote share structure will be taken at the general shareholder´s meeting and approved by a qualified majority (as specified in national law); ii) the voting weight of multiple vote shares at general meetings will be limited: either with a maximum weighted vote ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple vote shares can represent, or with a restriction of the exercise of enhance voting rights attached to the multiple vote shares for voting on issues that

require approval by a qualified majority at a general meeting. MS could provide additional safeguards in relation to additional voting rights: transfer-based sunset clauses (prohibit their transfer or existence in the event of the death/incapacity/retirement of the original holder) or time-based sunset clauses (avoid existence after a period) or event-based sunset clauses (avoid existence after a specific events).

3.3.For the sake of transparency, MS will ensure that the companies make publicly available: a) the capital structure, the different classes of shares (rights and obligations, the percentage of the total share capital and total voting rights that each class represents); b) any restrictions on the transfer of securities; c) the identity of the holders of any security with special control rights; d) any restrictions on voting rights; e) the identity of the shareholders holding multiple vote shares and of the natural or legal person entitled to exercise voting rights on behalf of such shareholders, when applicable. The information will be included in the Growth Union brochure (or appropriate admission document) and in the annual financial report.

Links of interest: Proposal for a Regulation amending Regulations 2017/1129, 596/2014 and 600/2014 to make the Union's public capital markets more attractive to companies and to facilitate access to capital for small and medium-sized companies Proposal for a Directive amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized companies and repealing the Directive 2001/34/EC Proposal for a Directive on multiple vote share structures in companies seeking the admission to trading of their shares in an SME growth market