



EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

**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**

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2018)

Opinion

Title: Impact Assessment / SME listing act

(Version of 19 March 2018)*

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Context

Businesses in the EU mostly rely on bank loans for financing. The EU has adopted measures to increase financing through securities issues. Small and medium-sized enterprises (SMEs) can list shares and bonds on “junior markets” (Multilateral Trading Facilities or MTFs) with reduced regulatory requirements. Most of these markets have reportedly been struggling. Most junior market activity is also in the UK, which will be leaving the EU.

In January 2018, MIFID II introduced a new category of MTFs, the “SME Growth Markets,” to further ease SME access to capital markets. All MTFs also became subject to the Market Abuse Regulation (MAR). Some stakeholders have reportedly expressed concerns that administrative burdens of these regulations remain too high and not adapted to the SMEs. The Council has expressed support for a proportionate regulatory environment to support SME listing on public markets. The European Parliament has also called for active use of the SME Growth Market category in future financial services regulation.

This report examines amendments to the current regulations that would increase market liquidity and make it less burdensome for SMEs to list securities. The changes would reportedly not revive junior markets on their own.

(B) Main considerations

The Board notes the limited scope and potential impact of this initiative.

However, the report contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects:

- (1) The justification of the initiative is weak from a subsidiarity point of view. The report does not consider the costs of introducing piecemeal legislative changes that alone will not revive SME growth markets.**

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(2) The report does not sufficiently discuss how it arrived at the scope of the initiative in terms of what measures to include and how it grouped those measures into options.

(3) The report is unclear about how the preferred option would affect investor protection.

(C) Further considerations and adjustment requirements

(1) The report needs to better explain the initiative's scope, its timing and any related actions planned for the future. It should clarify why the proposal addresses not more and not less than the MAR, MiFiD II and the Prospectus Regulation. Stakeholders have raised more issues than addressed by this initiative, and the report should discuss why the scope of the initiative is limited to the proposed measures.

(2) The report needs to more strongly justify taking action at EU-level, especially regarding improving liquidity. It is not clear how much room for manoeuvre Member States and multilateral trading facilities have to attract more SMEs.

(3) The report should explain the need to act now and why this proposal could not be bundled with other initiatives in a way that would avoid frequent regulatory changes and make the legislative environment of junior markets more stable.

(4) The report needs to clarify whether and how the type, amount and timing of information available to investors would change under the preferred option. It needs to spell out why reducing (reporting) requirements for SMEs does not lower the level of necessary safeguards requested under the MAR, MiFiD II and the Prospectus Regulation. The report should also discuss risks that the proposed initiative might result in unintended loopholes.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.

The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.

Full title	SME listing act
Reference number	PLAN/2017/1686
Date of RSB meeting	18/04/2018

ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 19 March 2018

(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)

I. Overview of Benefits – Preferred Option		
Description	Amount	Comments
Direct benefits		
Extended deadline for issuers to publicly disclose transactions relative to the notification by PDMRs	N/A	There is insufficient data to estimate the benefit of the technical adjustment with reasonable accuracy. The overall costs of disclosure will ultimately remain the same, although minor costs savings are foreseeable given increased temporal flexibility. Benefits arise mainly due to the avoidance of legal liability in the case of late disclosure from PDMRs.
Permanent List of insiders	EUR 1.68 – 3.33 million ¹	The costs reduction is based on the fact that issuers on SME GMs will only need to compile one permanent insider list per annum. The lower estimate represents a scenario whereby no new markets register as SME GMs. The upper estimate represents the case wherein all SME MTFs that have indicated an ambition to register as SME GMs actually do so.
Justification of delayed disclosure of insider information only on request of NCA	EUR 1.68 – 3.33 million ²	The cost reduction arises from the envisioned approach that would require issuers to only justify delayed disclosures on the request of the NCA. Issuers will therefore (usually) only need to notify NCAs. Full justifications are assumed to require 40 workhours on average ³ , while a mere notification would only take 1 hour (estimated). Lower and upper bound figures represent cases of and average 0.25 delays per issuer per year and 0.75 delays per issuer per year respectively ⁴ .
Lighter "transfer prospectus" for issuers moving from SME GMs to RMs	EUR 4.8 – 7.2 million	The application of an alleviated Prospectus for a move from MTFs to RMs would save issuers costs in the range of EUR 200,000 – 300,000 ⁵ . The figures presented reflect a

¹ The estimates are based on the average number of insider lists per issuer (available for AIM IT and New Connect), number of listings per venue (direct input from exchanges), the total amount of work-hours spent per list (based on figures in EMI - 'Effects of possible changes to the Market Abuse Directive' (2011)) and assuming an average hourly rate of EUR 50.

² The estimates are based on the average number of insider lists per issuer (available for AIM IT and New Connect), number of listings per venue (direct input from exchanges), the total amount of work-hours spent per list (based on figures in EMI - 'Effects of possible changes to the Market Abuse Directive' (2011)) and assuming an average hourly rate of EUR 50.

³ EMI, Effects of possible changes to the Market Abuse Directive, 2011

⁴ Estimate based on EMI, *Effects of possible changes to the Market Abuse Directive* (2011) and input from Polish FSA.

⁵ Estimate based on Prospectus Regulation IA and stakeholder input.

		scenario of 24 transfers from MTFs to RMs per year on average ⁶ It is also expected that NCAs will face lower costs as the transfer prospectus will require less workhours to validate (cost saving not quantified given lack of data).
Indirect benefits		
Define an SME debt issuer based on the value of the issuance	Re-calibrating the definition of SME debt issuer will increase the number of MTFs that can apply for the SME GM status. This will benefit the issuers on these markets given the existing alleviations as well as those envisaged by this initiative	
No mandatory half-yearly reports for non-equity issuers	There are currently no bond MTFs that have registered as an SME GM. This is partially due to the current obligation for issuers to publish half-yearly report. As such, there are no direct benefits. The envisaged amendment should be viewed in conjunction with the re-calibration of the definition of SME debt issuer (see above). Once bond MTFs register as SME GMS, issuers will save the potential costs of publishing half-yearly reports.	
European regime for liquidity contracts	The European regime for liquidity contracts will enable all issuers on SME GMs to engage in such contracts. It is unclear, however, how many issuers will take up this possibility. More so, there are no direct benefits of such contracts. However, the increased liquidity resulting from such contract will reduce liquidity and volatility risks for investors. In turn, valuations of issuers will increase. This will increase the capital that businesses can raise both via secondary offerings (and to a more limited extend primary offerings).	The effect on primary offerings is more limited as liquidity risks can only be gauged once respective shares are actually trading. Nevertheless, primary offerings will benefit from the investors' expectation of higher liquidity if the issuer enters into a liquidity contract.
Requirement for SME GMs to impose a free float requirement	Minimum free float requirements aim at increasing liquidity, especially in the early stages following primary offerings. The same reasoning applies as for liquidity contract in that it will lower risks to investors thus ultimately enable companies to raise more capital.	

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Justification of delayed disclosure of insider information only on request of NCA	Direct costs	None	None	None	None	NCAs will be required to change internal procedures and establish a mechanism to decide when to request full justifications. This will give rise to marginal one-off costs	None (recurrent costs will be lower than status quo as NCAs will need to vet fewer justifications)

⁶ Figures based on statistics provided by MTF operators during the stakeholder consultation and direct data requests. The average provided reflects the years 2013-2017 (insufficient data for prior years)

	Indirect costs	None	None	None	None	None	None
Lighter "transfer prospectus" for issuers moving from SME GMs to RMs	Direct costs	None	None	None	None (lower costs than status quo of issuing a full prospectus)	The establishment of a transfer prospectus will impose minor one-off costs on NCAs given required changes to internal procedures.	
	Indirect costs	None	None	None	None		