

**FESE Response to the European Commission Consultation Document  
'BUILDING A PROPORTIONATE REGULATORY ENVIRONMENT TO SUPPORT SME LISTING'**

Questions:

1. In your opinion, what is the importance of each of the factors listed below in explaining the weakness of EU SME-dedicated markets (please rate each proposal from 1 to 5, 1 standing for "not important factor" and 5 for "very important factor"):

	1	2	3	4	5	No opinion
low number of companies coming to the public markets					x	
decline of local ecosystems					x	
lack of retail and institutional investors					x	
Other – please specify in the textbox below						

In the recent wave of action to regulate the financial industry, with multiple EU and international measures, several regulatory actions have had the effect of:

- Creating 'one size fits all' regulation for companies, markets and/or financial instruments (equity vis-à-vis non-equity);
- Driving up costs for all companies looking to go public, thus reducing the supply of small and mid-cap companies in particular;
- Disincentivising investment in smaller companies and in equity overall;
- Shifting the economics of trading shares away from long-term investing and towards more high-frequency trading of larger company shares, thus making the IPO process less attractive and more difficult, for smaller companies. This also resulted in the erosion of the local ecosystems of smaller brokers, analysts and advisers catering the needs of smaller companies and investors.

Traditionally, these actors have been incentivised to invest time and resources into building the demand for smaller IPOs. However, European ecosystems have generally been impacted negatively by a range of factors, not least the **MiFID framework on the regulatory side**, although in different ways across countries.

**In FESE Members' experience, the decline of local ecosystems** is, therefore, the most important factor from the Commission's list in **explaining the weakness of EU SME dedicated markets**. **However**, the factors behind such decline **are specific** to each individual local market ecosystem.

There are several SME Markets in Europe, such as AIM (LSE), Euronext Access & Euronext Growth (Euronext), First North (Nasdaq), MAB (BME), New Connect (Warsaw SE), Scale (Deutsche Börse), and ESM (ISE). As of January 2018, 2,200 companies were listed on these markets in Europe, with a total market capitalisation of more than EUR 173 billion. Nevertheless, compared to their US counterparts, European SMEs remain reluctant to list and further opportunities remain in this space.

The above list reflects mainly the equity side: consideration should also be taken to the specificities of non-equity markets in order to make CMU more attractive, efficient and effective.

In addition, as traditional financing remains limited, more can be done to **improve access to non-traditional financing for early and expansion stage companies** as outlined in the CMU Action Plan.

Exchanges already assist companies looking to raise capital in the Pre-IPO stage (For example: Budapest Stock Exchange: ‘Club of Quotables’; Deutsche Boerse: ‘Venture Network’; Euronext: ‘TechShare’ and ‘FamilyShare’; Irish Stock Exchange: ‘#IPO Ready’; Warsaw Stock Exchange: ‘Capital for Growth’). These companies are future IPO candidates and depend on funding for further growth.

2. What are the main factors that can explain the low number of SMEs seeking an admission of their shares or bonds to trading on EU public markets? (Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant"):

	1	2	3	4	5	No opinion
Availability of alternative sources of financing for SMEs (including bank finance):				X		
For equity						
For bonds						
Lack of awareness of SMEs on the benefits of public markets:				X		
For equity						
For bonds						
High (admission and ongoing) compliance costs due to regulatory constraints				X		
For equity						
For bonds						
Lack of preparation from companies' management as regards the implication of a listing						
For equity issuance			X			
For bond issuance			X			
Reluctance of SMEs' owners to relinquish a stake in the capital of their company (for equity)				X		
Other (please specify)						

In FESE Members’ experience, the option of accessing public markets for capital is often not on the radar of smaller companies and, even when it is on the radar, it is often not understood. Exchanges have implemented pre-IPO programmes to address these issues. For smaller companies, in particular, there is a significant transition to the full rigors of being a publicly quoted company and complying with the relevant exchange requirements and EU securities law, such as MAR.

Furthermore, according to FESE’s members, there are two further significant broadly shared factors explaining the low number of SMEs seeking an admission of their shares or bonds across the existing venues. Firstly, other financing avenues – primarily bank and private equity based – remain a strong alternative. Secondly, cultural issues, notably in respect of family owned companies does play a key role in terms of decisions regarding the use of public capital markets.

3. What are the main factors that inhibit institutional and retail investments in SME shares and bonds? (Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant"):

	1	2	3	4	5	No opinion
Lack of visibility of SMEs (including lack of financial research and credit information) towards investors					X	
For equity						
For bonds						

Differences in local accounting standards hindering cross-border investments		X				
Regulatory constraints on investors as regards investments in SMEs				X		
Lack of liquidity on SME shares and bond markets:				X		
For equity						
For bonds						
Lack of investor confidence in listed SMEs	X					
Lack of tax incentives					X	
Other (please specify)						

Minimal fiscal incentives to encourage investment into smaller growth companies are important given the risk profile of such companies. In addition, regulatory constraints need to be addressed. The MiFID II research unbundling is an important consideration, particularly where a number of quoted companies have three or fewer analysts. In addition, the application of inappropriate MiFID II tick size regimes to smaller less liquid stocks creates significant challenges.

A further theme around regulatory constraints concerns the restrictions in UCITS limiting institutional investment in SME shares and bonds. Usually mutual funds can only invest in a given company up to a low percentage – 5% or 10% of outstanding equity. However, 10% of an SME usually implies a very small ticket which does not necessarily justify the allocation of resources and focus by market participants. We believe this is an area where changes to the EU framework could be considered to allow for specific funds and/or products and larger investments in SMEs, which would greatly benefit this segment.

Above and beyond this point, common themes from across FESE Members' markets include the visibility deficit and challenges in respect of liquidity. Conversely, it is not our experience that differences in local accounting standards are hindering cross-border investment in any meaningful manner.

4. In your opinion, what participants of the ecosystems surrounding local exchanges for SMEs are declining the most? (Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant" – some options might not be mutually exclusive):

	1	2	3	4	5	No opinion
Brokers, market-makers, liquidity suppliers					X	
Financial research providers					X	
Credit Rating Agencies	X					
Investor base					X	
Investment banks	X					
Boutiques specialised in SMEs and offering several services (brokerage, research, underwriting...)					X	
Legal and tax advisers	X					
Accountants	X					
Others (please specify)						

There has been a general decline in respect of brokers, market makers, liquidity providers and boutiques specialised in SMEs. As with previous questions, while there is commonality in respect of the areas subject to the decline, the reasons to explain this differ across jurisdictions. This underpins the need for tailored responses to this challenge.

5. What are the main reasons behind the decline of the ecosystems surrounding the local exchanges? (please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant"):

	1	2	3	4	5	No opinion
Impact of low level of liquidity on brokers' business models:				X		
For equity						
For bonds						
Impact of low level of investors' appetite for SME instruments						
For equity						
For bonds						
Regulatory constraints on investment services providers specialised in SMEs					X	
Lack of profitability of the SME segment						
For equity					X	
For bonds			X			
Other (please specify)						

In our experience, companies need to be of a particular size before the advisor community are willing to engage with them about joining public markets. Given the lower liquidity of smaller companies coupled with some of the regulatory changes under MiFID II, the business case and financial incentives for the broker community are being eroded and, as a result, smaller companies are finding it harder to obtain the crucial ecosystem support they need for a successful quotation on a public market.

6. Given the considerations mentioned above, do you consider that the criteria used to define an SME Growth Market should be modified?

We consider that market capitalisation should continue to be applied as the basis for determining an SME Growth Market as it is the most appropriate measure to use, but we believe that the threshold should be increased as EUR 200 million is too low.

Furthermore, in regard to SMEs' public offers, immediately followed by an admission to trading on an MTF or SME Growth Market for the first time, we believe it should be possible to consider including a tentative market capitalisation criterion for these prospective new issuers in line with the SME market capitalisation threshold established under the Prospectus Regulation. This is needed to ensure that such firms can benefit from the alleviated prospectus requirements. Failing such an approach, there is a risk that such companies will not match with the alternative functional definition of SMEs under the Prospectus Regulation<sup>1</sup>.

7. Should the market capitalisation threshold of EUR 200 million defining SMEs under MiFID II be:

raised (please specify an appropriate market capitalisation threshold)	x
decreased (please specify an appropriate market capitalisation threshold)	
left unchanged	
replaced by another criterion (Please specify below – e.g. turnover, number of employees...)	
Other (please specify)	

<sup>1</sup> Prospectus Regulation Art 2(f)(i): average number of employees during the financial year of less than 250; a total balance sheet not exceeding €43m ; and an annual net turnover not exceeding €50m

Don't know / No opinion	
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The qualifying threshold for SMEs should be increased from €200m to €1bn as the threshold is too low and only takes into consideration small enterprises and not mid-caps.

Alternatively, the threshold could be set at EUR 500 million to be in line with the definition in the ELTIF Regulation (EU) 2015/760.]

8. Bearing in mind your answer to the previous question, should the proportion of SMEs on SME Growth Markets (currently 50%) be:

Below 25%	
Between 25%-49%	
Unchanged (50%)	X
Between 51%-74%	
75% or above	
Don't know / No opinion	

The 50% proportion of SME's on SME Growth Markets seems to be an appropriate level and we consider that it would be sensible for the SME GM regime to apply for at least three years before assessing whether a change is warranted.

9. Should the criteria used to define an SME Growth Market non-equity issuer be modified?

During the European Commission Workshop with trading venues in November 2017, market participants discussed two potential criteria for the thresholds: (i) under €20m issuance and (ii) fewer than 499 employees.

Some FESE Members would support the issuance criterion which seems better suited to cover the specificities of bond issuance, however ideally this would be set at the level of €50m. In setting a level for threshold, FESE favours a limit set on a cumulative issuance amount of €50m in a given year (over the past 12 months). In contrast, FESE would not support the introduction of a 'number of employees' criterion as it would not reflect the fact that SMEs from certain industry sectors employ considerably more employees than others as part of their business models, e.g. the food industry, transport and logistics sectors.

10. Please indicate whether or not you agree with the following statements regarding minimum requirements and obligations of key advisers for firms listed on SME Growth Markets (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree"):

	1	2	3	4	5	No opinion
A key adviser should be imposed for equity issuers on an SME Growth Market					X	
A key adviser should be imposed for bond issuers on an SME Growth Market	X					
A key adviser should be mandatory during the whole period an SME is listed					X	
A key adviser should only be mandatory during a limited period after the first listing of a firm (please specify below the relevant period (1 year, 3 years; ...))	X					

Minimum requirements regarding the mission and obligations of key advisers on SME Growth Markets should be imposed at the EU level (Please specify)	X					
Minimum requirements regarding the mission and obligations of key advisers on SME Growth Markets should be imposed by individual stock exchanges				X		

We do not support establishing minimum requirements at EU level: this should be left to Exchanges to decide. Most FESE Members already recommend having a key adviser for equity issuances or have different systems in place which are working successfully, and therefore it would not be necessary to have mandatory requirements.

11. In your opinion, are there merits in imposing minimum requirements at EU level for the delisting of SME Growth Market Issuers?

Completely disagree	
Rather disagree	
Neutral	
Rather agree	X
Fully agree	
Don't know / No opinion	

We would be in favour of having minimum harmonised provisions for certain selected criteria, but importantly the details regarding thresholds/implementation, etc. should be developed and applied by individual market operators, so that they can tailor the requirements in a way that is appropriate to their markets.

12. In your opinion, are there merits in introducing harmonised rules at EU level on voluntary transfer of listing from a regulated market to an SME Growth Market?

Completely disagree	
Rather disagree	
Neutral	
Rather agree	X
Fully agree	
Don't know / No opinion	

In principle, we would be in favour of introducing harmonised rules on voluntarily transfers of listings from a RM to an SME Growth Market. Such transfers should not be made mandatory as the choice should be left to each individual company. In line with what was indicated in the response to Q11, the harmonised rules should focus on specific criteria which will be incorporated by exchanges into their processes, but with the precise details and implementation rules should be left to the market operators.

13. In your opinion, should the transfer of issuers from an SME Growth Market to a regulated market be: (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree")

	1	2	3	4	5	No opinion
required when the issuer exceeds some thresholds (such as the market capitalisation)	X					

incentivised through regulatory measures when they exceed some thresholds (such as the market capitalisation)	X					
always left to the discretion of issuers and not required or incentivised by regulatory measures					X	
Other (please specify in the textbox below)						
Don't know/no opinion						

We consider that the decision to move from a SME to a Regulated Market should reside with the company, based on its own circumstances, market requirements and state of readiness for the rigors of a regulated market listing. Also, each exchange would usually have their own frameworks and set of rules and therefore we support retaining flexibility for the issuers.

Instead, we would highlight the fact that the focus should be on how to support companies that want to upgrade, e.g. by introducing a proportionate prospectus for companies who want to upgrade. Such proportionate legislative framework for the transition should not act as a disincentive to the transfer, but it should recognise the regulatory framework that that company has been subject to while quoted on the SME GM.

Furthermore, we are also concerned that mandating the transfer of listing would create the risk of turning the SME GM into merely a 'phase market' where the listing would eventually need to be transferred to the RM.

14. Please indicate whether you agree with the statements below (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree"):

<i>Regulatory alleviations should be restricted to:</i>	1	2	3	4	5	No opinion
SMEs listed on SME Growth Markets	X					
All SME Growth Markets issuers					X	
No regulatory alleviations should be granted for any kind of firm	X					

All companies on a SME GM should be subject to the same regulatory requirements, and the regulatory regime should be appropriately calibrated for smaller growth companies while at the same time ensuring investor protection. Therefore, FESE members would welcome the introduction of a proportionate regime for all SME Growth Markets issuers, with specific alleviations, which would not harm the overall concept of MAR. The creation of a two-tier segment, especially at a regulatory level, could cause confusion to both investors and issuers.

15. For each of the provisions listed below, please indicate how burdensome the EU regulation associated with equity and bond listings on SME dedicated markets is (please rate each proposal from 1 to 5, 1 standing for "not burdensome at all" and 5 for "very burdensome"):

	1	2	3	4	5	No opinion
Management's transactions				X		
Insider lists				X		
Justification of the delay in disclosing inside information				X		
Market soundings				X		
Disclosure of inside information by non-equity issuers				X		
Half-yearly reports for SME Growth Market issuers		X				
Other (please specify in the textbox below)						

With regard to equity issuers, feedback received by FESE members on the practical application of the above requirements for smaller companies suggests that they are procedurally burdensome, particularly given how prescriptive the MAR requirements are, and in many instances necessitate legal advice which increases compliance costs for issuers.

In the case of debt issuers, we would suggest that the above requirements in MAR are less appropriate and need to be revised in a manner that is appropriate for such issuers. Our view applies as much in respect of markets for debt securities in general, as they do for debt issuers with securities on SME growth markets. A significant amount of information, highlighting the negative impact that MAR has on EU capital markets, is publicly available from law and consultancy firms. For new and existing issuers, most of these firms suggest issuers ‘assess the increased compliance burden and, if too onerous, to consider whether to delist and migrate the listing of those securities to an exchange that is more lightly regulated’<sup>2</sup>. These inputs suggest that the application of such requirements to debt only issuers is making EU capital markets unattractive to certain types of non-EU issuers, who are often choosing to list their securities outside of the EU altogether. There is also evidence of a number of non-EU issuers delisting their debt securities as a result of MAR. Since July 2016, when MAR was implemented, bond listings, for instance, in the Channel Islands Securities Exchange have considerably increased.

On market soundings and, in particular, in what regards the impact of MAR on corporate bonds, it is worth noting the recommendations recently issued by the Expert Group on Corporate Bond Markets, which was set up by the European Commission. In its report, the Group explicitly recommends amendments to MAR market soundings:

“When a company seeks to raise debt on capital markets it often conducts, through its bank, a market sounding, which aims at testing the appetite of investors for the new issuance and at determining the optimal price, terms and conditions. The Market Abuse Regulation has significantly increased the obligations regarding market soundings. The risks and uncertainties linked to the implementation of these new rules and their interpretation by National Competent Authorities can deter intermediaries from carrying out market soundings. Therefore, the Expert Group recommends that the Market Abuse Regulation be amended in order to alleviate the requirements regarding market soundings that could result in disproportionate burden for companies”<sup>3</sup>.

MAR is driving debt issuers away from the EU, undermining the core objectives of the CMU intended at enhancing the efficiency and competitiveness of the EU capital markets. As set forth by MAR Article 38, “[by 3 July 2019, the [European] Commission shall submit a report to the European Parliament and to the Council on the application of (...) [MAR], together with a legislative proposal to amend it if appropriate”. Within this framework, we encourage the Commission to bear in mind the aforementioned impacts and explore adjustments to the scope of MAR.

**16. Does the management's transactions regime represent a significant administrative burden for SME Growth Markets issuers and their managers?**

Completely disagree	
Rather disagree	
Neutral	
Rather agree	
Fully agree	X

<sup>2</sup> As an example only, see Michael E. Hatchard, *The New EU Market Abuse Regulation: Impact on US Issuers*, Skadden, Arps, Slate, Meagher & Flom LLP, 6 November 2016. There are however several articles and clients’ memoranda on this topic.

<sup>3</sup> Commission Expert Group on Corporate Bond Markets, *Report on Improving European Corporate Bond Market*, p. 5 (bold in the original).



Don't know / No opinion	
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PDMR requirements cause some administrative difficulties for smaller issuers and give rise to increased costs, particularly where it is necessary for an issuer to seek legal advice.

We consider that the following changes could alleviate the PDMR burdens on smaller companies: (1) Permit disclosure of a PDMR transaction by way of an announcement of the main information in free text, without having to complete a prescribed form; (2) Revise the timelines for notification so that the Company has one business day to notify the market following the receipt of the notification of the transaction by the PDMR; (3) Permit the Company to notify the Competent Authority of the transaction on the PDMR's behalf, rather than the PDMR having to notify the Competent Authority directly; (4) It would be preferably to have a single threshold to clarify the application of the obligation to disclose managers' transactions; and (5) the delay for notifications should be extended up to 5 days.

17. Please indicate if you would support the following changes or clarifications to the management's transactions regime for SME Growth Markets:

	I support	I don't	Justify
a) The time limit (i.e. currently 3 days) for PDMRs and person closely associated to notify their transactions to the issuer should be extended	5 days		
b) The threshold (i.e. EUR 5,000) above which managers of SME Growth Markets Issuers should declare their transactions should be raised	EUR 20,000		[Please see below]
c) The national competent authorities (NCA) should always be made responsible for making public the managers' transactions			
d) The trading venue should be made responsible for making public the managers' transaction		X	
e) The time limit for issuers to make management's transactions public (or notify the NCA when the latter is made responsible for making the manager's transaction public) should start as of the date the transactions have been notified to issuers (and not as from the date of transactions)	X		Notification should be one business day following the date of
f) other (please specify)			

Q17(b) – MAR Article 19(9) already provides for NCAs to increase the level to EUR 20,000. We suggest proposing that this level – EUR 20,000 – is simply harmonised across the EU.

18. What is the impact of the alleviation provided by MAR for SME Growth Market issuers as regards insider lists? Please illustrate and quantify, notably in terms of reduction in costs

This alleviation is unlikely to be availed of to any great extent as issuers will want to be in a position where they can provide an insider list within a short timeframe following a request from their competent authority.

Instead we believe there should be a change to the requirement for issuers on an SME Growth Market to make it less onerous; in our view, while they should still be required to maintain an insider list, they should not have to adhere to the prescriptive detail as required in MAR.

19. Please indicate whether you agree with the statements below (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree"):

<i>SME Growth Market issuers should be...</i>	1	2	3	4	5	No opinion
Obligated to maintain insider lists on an ongoing basis	X					
Obligated to submit insider lists when requested by the NCA (as provided by MAR)	X					
Obligated to maintain a list of 'permanent insiders' (i.e. persons who have a 'regular access to insider information')	X					
Exempted from keeping insider lists	X					
Other (please specify)						

We support the extension of the MAR regime to the SME Growth Market; however, we would like to highlight the fact that this is a significant transition for SMEs on smaller growth markets, especially the inside information disclosure obligations which are detailed and complex.

Within the scope of MAR, maintenance of insider lists for companies listed on 'SME Growth Markets' has been relaxed from January 2018. However, the current market perception is that this 'relaxation' does not go far enough in differentiating requirements for SMEs compared to large companies. Disclosure burdens remain unfeasible for SMEs and further action is required to reduce these burdens in order to make it easier for them to raise capital on public markets.

Therefore, we suggest that the Commission and ESMA should closely monitor the impact of MAR on SMEs with a view to recommending changes to MAR or developing relevant guidance where necessary. As set out above, in our view, issuers should still be required to maintain an insider list, but they should not have to adhere to the prescriptive detail as required in MAR as this should make it less onerous for them. We fear that otherwise this would invalidate the whole notion of introducing alleviations in this area.

The new Prospectus Regulation requires from secondary issuances a concise summary of price sensitive information disclosed under Market Abuse Regulation (MAR) over the past 12 months. We suggest it should be possible to fulfil this requirement by providing a link to the dedicated webpage with all MAR disclosures on the issuer's website. This will substantially lower liability risks and administrative costs for issuers while ensuring relevant information is available to investors. MAR already requires an issuer to keep inside information on its website for a period of at least 5 years.

20. Please indicate whether you agree with the following statements (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree"):

	1	2	3	4	5	No opinion
The written explanation justifying the delay to communicate inside information by SME Growth Market issuers should be submitted only upon request from the NCA	X					
SME Growth Market issuers should be exempted from the obligation of keeping a 'disclosure record'					X	

This is an area where administrative and cost savings could be achieved for SMEs by removing the requirement to maintain a disclosure record, particularly as it may lead to reducing the frequency with which issuers seek legal advice on disclosure related matters.

As a general point, it is not our experience that issuers use the delay provisions in respect of disclosure of inside information. Therefore, we see no need for this provision going forward.

21. *Should private placement of bonds on SME Growth Markets be exempted from market sounding rules when investors are involved in the negotiations of the issuance?*

Completely disagree	
Rather disagree	
Neutral	
Rather agree	
Fully agree	
Don't know / No opinion	

N/A

22. *Please indicate whether you agree with the following statements (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree"):*

<i>SME Growth markets issuers that only issue plain vanilla bonds should...</i>	1	2	3	4	5	No opinion
have the same disclosure requirements as equity issuers on SME Growth markets	X					
disclose only information that is likely to impair their ability to repay their debt					X	

The current obligation under MAR to disclose 'inside information' is less appropriate for issuers that only list debt securities. It gives rise to unnecessary administration and legal costs and is perceived, particularly by non-EU issuers, as being a deterrent to seeking list debt securities on EU securities markets (regulated markets and MTFs).

We consider that for debt securities it is appropriate to only require disclosure of material information relating specifically to an issuer's capacity to meet its payment obligations under the bond, and that such a move would not compromise investor protection. Our views apply as much in respect of markets for debt securities generally, as they do for debt issuers with securities on SME growth markets.

23. *Should the obligation of SME Growth Market issuers to publish half-yearly report be (you may select several answers):*

Mandatory for SME Growth Markets equity issuers	X
Mandatory for SME Growth Markets debt issuers	
Left to the discretion of the trading venue (through its listing rules) for SME Growth Markets equity issuers	
Left to the discretion of the trading venue (through its listing rules) for SME Growth Markets debt issuers	
Removed for all the SME Growth Market equity issuers	
Removed for all the SME Growth Market debt issuers	X
Other	

Don't know / No opinion	
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We consider that it is appropriate for SME growth markets to require equity issuers to publish half-yearly financial statements which is important information for investors. For issuers of debt securities, although the Transparency Directive (Directive 2013/50/EU) does not apply to MTFs, certain FESE members currently require on their MTF / SME Growth Markets the publication of half-yearly reports. However, this is not required currently for bond-only issuers (only yearly reports for bond issuers and no report at all for private placements of bonds with a denomination of at least EUR 100 million). In addition, under the Transparency Directive, bond issuances are exempted from the obligation of half-yearly reports on Regulated Markets.

However, the MiFID Level 2 implementing measures require<sup>4</sup> all issuers on SME Growth Markets to publish both annual and half-yearly reports (Article 78(2g)). There is an obvious mismatch with the approach applied to bond only issuers on Regulated Markets under the Transparency Directive and represents, we believe, an obstacle to the take-up of the SME Growth Markets label, as in some cases it might impose additional requirements on issuers instead of alleviating the framework.

FESE would therefore welcome an amendment to the MiFID II Level 2 implementing rules to remove such obligation for debt issuers.

24. Which of the following options best reflect your opinion on the impact that the minimum tick size regime provided by MiFID II would have on the liquidity and spreads of shares traded on SME Growth Markets:

	No impact	Lead to minor increase	Lead to significant increase	Lead to minor decrease	Lead to significant decrease	No opinion
Impact of the minimum tick size regime on the <b>liquidity</b> of shares traded on SME Growth Markets					X	
Impact of the minimum tick size regime on the <b>spreads</b> of shares traded on SME Growth Markets		X				

MiFID II puts in place an harmonised tick size regime for shares and certain ETFs traded on trading venues with the objective of ensuring a level playing field between venues. Another objective of the tick size regime is to improve the quality of price formation in equity trading to the benefit of investors.

Following the entry into application of MiFID II, we would suggest that the Commission and ESMA should pay particular attention to whether tick sizes for smaller caps are having any negative impact on the trading of these shares and whether they should be reviewed (as it has been done in the US under the Jobs Act). Since tick size arbitrage is not really an issue for SME shares, due to their local nature, the NCA could be given the competence to set higher tick sizes for SME shares in order to enable more profit for market makers to ensure an efficient ecosystem exists. In doing so, it would be advisable for the NCA to engage with the relevant trading venue(s). While SME shares are generally listed/traded locally, for some instruments it may be appropriate to apply a binding EU-wide tick size for a given instrument in order to avoid unfair competition from SIs and OTC trading. However, for other instruments it may be more appropriate to set a market specific tick size.

<sup>4</sup> Commission Delegated Regulation 2017/565

In parallel, the fact that MIFID II tick sizes do not apply to SIs should be addressed for all types of shares in order not to encourage trading away from multilateral and transparent venues.

25. Please indicate whether you agree with the following statements (please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree"):

	1	2	3	4	5	No opinion
Market operators should be given the flexibility not to apply the minimum EU tick size regime on their SME Growth Markets					X	
Market operators should be given another form of flexibility as regards the EU minimum tick size regime on their SME Growth Markets					X	

We would welcome a minimum level to harmonisation to avoid regularity arbitrage. Also, we believe that, as stated above, it is important to ensure a playing level field among trading venues.

26. Building on the ESMA's opinion<sup>44</sup>, would there be merits in creating an EU framework on liquidity contracts that would be available for all SME Growth Market issuers across the EU?

In principle, yes as it would help SME specialised brokers to offer their services in a sound regulatory environment and to enhance liquidity. However, before proposing an EU framework for liquidity contracts, the EU should demonstrate the existence of problems arising from the current regime. In our experience, the provisions under MAR by which exchanges can introduce liquidity contracts via the Accepted Market Practices regime are working well.

27. Which of the following options best reflects your opinion on the application of a rule on minimum free float:

A rule on minimum free float should be introduced in the EU legislation with criteria and thresholds determined at EU level	
A rule on minimum free float should be introduced by the EU legislation with criteria and thresholds left to the discretion of the SME Growth Market operator (through its listing rules)	
No rule on minimum free float should be introduced in the EU legislation	X
Other – please specify in the textbox below	
Don't know / No opinion	

We do not consider that it would be appropriate to introduce a rule on minimum free float given the diversity in SME markets across the EU. Instead this should be left to individual market operators based on the specific characteristics of their own markets.

28. Please describe any regulatory barriers to institutional investments in SME shares or bonds listed on SME Growth Markets or MTFs.

Under the new Solvency II regime insurers must, in principle, hold a 39% capital charge for owning shares in listed companies in the developed markets and a capital charge of 49% for other categories of shares. Depending on the (exceptional) development of share prices, the regulatory authority has the power to adjust this capital requirement upwards or downwards by no more than 10%.<sup>5</sup> A capital charge of 22% applies to participations of a strategic nature. Debt-related instruments are potentially less expensive and they are subject to a capital charge of 15%.

<sup>5</sup> Article 106 Solvency II directive.

There is no capital charge whatsoever for treasury bonds issued by Eurozone Member States. Since insurers and possibly regulatory authorities as well are already anticipating the new rules, insurers are in the process of disposing of a significant volume of the equity investments that they hold at their own expense. Some insurers have completely stopped investing in equities, which means that equity funding via the capital markets may not be an option for as many companies, at the same time as bank funding may be scaled back.

As highlighted by the OECD<sup>6</sup>, “Compared to Australia, Canada and the United States, institutional investors in Europe’s larger countries typically allocate a smaller portion of their assets to public equity. This is also reflected in the fact that equity allocations of European asset managers are considerably lower than their allocation to bonds.”

Other problems include the suggestion that all shares on exchange-regulated markets (primary market MTFs) should be considered complex under MIFID, and appropriateness tests under MIFID, which may push fund managers to focus on factors such as volatility risk rather than long-term value.

There may also be national restrictions which could be reviewed. It might be useful to ask Member States to provide the European Commission with a list of any such restrictions, in order to compare the differences in investment options. This would also help the European Commission to consider whether any such requirements may constitute barriers to the free movement of capital.]

29. Which steps could be taken to facilitate SME bond issuances on SME Growth Markets without incurring high costs for assessing creditworthiness of issuers?

N/A

30. What would be the risks associated with a more flexible approach to 'unsolicited credit ratings' by market players other than CRAs and what might be done to mitigate them?

N/A

31. Please indicate the areas and provisions where policy action would be most needed and have most impact to foster SME listings of shares and bonds on SME Growth Markets (please rate each proposal from 1 to 5, 1 standing for "no positive impact" and 5 for "very significant positive impact"):

	1	2	3	4	5	No opinion
Criteria to define an SME Growth Market				X		
Market capitalisation threshold defining an SME debt issuer				X		
Key adviser requirement		X				
Delisting rules on SME Growth Markets			X			
Transfer of listings from a regulated market to an SME Growth Markets			X			
Transfer of listings from an SME Growth Market to a regulated market			X			
Management's transactions				X		
Insider lists			X			
Justification of the delay in disclosing inside information		X				
Market soundings					X	
Disclosure of inside information for bond issuers				X		
Half-yearly reports for SME Growth Market issuers				X		

<sup>6</sup> Çelik, S. and Isaksson M. (2013), “Institutional Investors as Owners: Who Are They and What Do they do?”, p 17, OECD Corporate Governance Working Papers, No. 11, OECD Publishing, December 3.

Tick size regime for SME Growth Markets				X	
Liquidity provision contracts				X	
Free float requirements	X				
Institutional investors' participation in SME shares and bonds			X		
Credit assessments and ratings for SME bond issuers		X			

32. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above. Please include examples and evidence.

#### Review of the Prospectus rules – Approval procedures

In the context of the ongoing review of the Prospectus rules, we would encourage regulators to consider specific regimes currently adopted by the existing markets for growth companies, for example in the case of the approval procedures, and to reuse their features as much as possible.

Although many requirements are naturally and still should be harmonised across the EU, there may well be practices which have developed in a local ecosystem and which motivate certain requirements. Especially smaller companies in earlier stages of growth are more dependent on local investors for financing, and thus the room for local adaptation of rules becomes especially important.

#### Tax Incentives in Member States

We understand that taxation is the competence of the Member States; nonetheless, we feel that Member States should be encouraged to use tax policies to stimulate long-term investing of listed equity of smaller companies and to ensure the fair treatment of debt and equity financing. We call on Member States to review fiscal incentives against equity financing in Europe given the high potential positive impact such changes could deliver for the overall attractiveness of European public capital markets.

We would also urge the Commission to conduct an impact assessment on the cost of capital arising from the current tax bias against equity investments. Currently in many European Member States we either observe a lack of positive tax incentives, or the presence of significant disincentives, whereby the tax system is more favourable to debt issuance than to equity.

SMEs may have limited access to loan financing and will need more access to share capital in the future. Most national legislation currently in force is discriminatory, insofar as from a tax perspective it is more efficient to finance the business through loans, since the loan costs are deductible in the business before tax, while the costs of share capital are not. Thus, this discrimination provides an incentive for SMEs to finance the business through borrowed capital. This discrimination should be ended by Member States.