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EBF Position Paper on the Listing Act Proposal

Listing Act – making public capital markets more attractive for EU companies and facilitating access to capital for SMEs

Key Dossiers:

- Proposal for a Regulation amending i) the Prospectus Regulation, ii) the Market Abuse Regulation and iii) MiFIR
- Proposal for a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME Growth Market
- Proposal for a Directive amending i) MiFID II on investment research, MTF as SME Growth Markets and ii) repealing the Listing Directive

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I. Summary

EBF Feedback to the Proposal for a Regulation amending i) the **Prospectus** Regulation, ii) the **Market Abuse** Regulation and iii) **MiFIR**

The **EBF** fully supports the CMU objective of **increasing participation** by **European companies** to capital markets and welcomes the proposal to **simplify** the EU listing regulatory framework to **facilitate** access to funding in public markets.

On the **Prospectus Regulation** (PR):

While conductive to high levels of **investor protection**, the current regulatory framework has contributed to making prospectuses too long, costly and complex, reducing their informational value to end-investors, increasing charges for issuers and curbing appetite by individual and qualified investors to participate to offers. Therefore, an effective **alleviation** of the listing and the post-listing obligations is needed to reduce drafting costs and undue complexities to promote new listings – notably IPOs.

In EBF's view, proportionate policy action should effort to strike a balance between two key uses of the prospectus: as a legal document ensuring clarity and protection against liabilities, and as informational tool for investors. Against this background, while fostering **readability** and **usability**, alleviation of the PR framework should not limit full **due diligence** activities nor prevent banks from providing investors with the **highest standard of information** (as they currently do). Introducing a strict **standardization** and **page-limit** to prospectuses carries the risk of producing such effect, especially in countries where levels of prospectus liability exceed those established by EU legislation, whereby the issuer and other liable parties may risk undesirable litigation for omitted information. Hence, while a limit to the length of the prospectus could be maintained as a **general recommendation** rather than binding rule, the focus of PR alleviation should be on **simplifying** and **streamlining** content and **harmonizing** supervisory practices, while leaving sufficient **flexibility** to issuers and intermediaries to assess appropriate contents and length. Notably, it is key that prospectus sections on which consultants (law firms, audit firms) and arrangers/underwriters currently rely on to carry out full due diligence on the issuer and its business be maintained in full.

Similarly, concerning the **EU Follow-On Prospectus**, additional clarity is needed. Although supportive of a simplification and streamlining of the prospectus for issuers who have a track record on regulated markets or SME growth markets, EBF Members emphasize that, for those jurisdiction where there is no URD, concerns on the proposed exemption to publish a prospectus for fungible securities, as it may risks making it difficult for investors to access the issuer's information

Finally, While making permanent some of the temporary amendments to the **supplement** rules according to Art. 23 PR introduced by the CMRP is a step in the right direction. further clarifications is needed on key specific points Specifically, while welcoming of the reduction of the period between the publication of the IPO prospectus and the end of the offering from 6 to 3 days, EBF Members emphasize that the 2-days withdrawal period should be kept and not extended to 3 days.

Additionally, Members are of the view that the proposed change (linked to this proposed change of article 23) in article 17 whereas according to the wording in the text a

supplement would need to be published if the final price differs by more than 20% from the maximum price included in the prospectus should be reconsidered.

The EBF also suggests complementing the legal framework with an EU-wide definition of "Small and Medium Capitalization Companies" (SMC) targeting SMEs with a market capitalization of less than 1 billion euros.

On the **Market Abuse Regulation** (MAR):

The EBF welcomes Changes proposed by the EC to alleviate MAR. Specifically:

- Tackling the issue of what constitutes "inside information'': the risk of publishing information which is not yet mature enough should be avoided. Although a L1 definition of inside information would be preferable, the choice to reduce the scope of the obligation to disclose inside information and to enhance clarity as to what information needs to be disclosed and when is welcomed.
- Clarifying the safe-harbor nature of the market sounding procedure and simplification the insider lists regime for all issuers.
- Raising the threshold above which managers shall notify their transactions and expanding the scope of exempted transactions during the "close period".
- We welcome the proposed simplification in the reporting and disclosure of share buybacks. The same provisions should be implemented for stabilization activities.

EBF Feedback to the Proposal for a Directive on **multiple-vote share** structures in companies that seek the admission to trading of their shares on an SME Growth Market

Multiple-vote structures allow company owners to retain decision-making powers while raising funds on public markets, making the process of accessing European capital markets more acceptable for small businesses and entrepreneurs as ownership structure is not diluted.

The EC proposal requires member states to ensure that companies may adopt multiple-vote share structures only when they first seek admission to trading on an SME growth market. Member states are then allowed to adopt or maintain national provisions allowing companies to adopt multiple-vote share structures in situations not covered by the Directive.

Against this background, EBF Members emphasize that it is essential to ensure a homogeneous regime at European level. Minimum harmonization should not create additional fragmentation and unlevel playing field (or race to the bottom) across multiple jurisdictions in relation to the implementation of MVR schemes and the related treatment of shareholders.

The aim of EU legislation in the post-trade and asset-servicing space should be the definition of workable and efficient pan-European processes that effectively remove some of the barriers to further cross-border integration of EU capital markets.

If notable national differences in multiple-vote shares structures persist, banks and intermediaries operating cross-border in the intermediary chain will face operational difficulties to manage the information flow required to allow the exercise of rights (especially voting rights) associated with the ownership of multiple-vote shares. This

would also run contrary to the objectives of SRD II to facilitate the transmission of information and exercise of shareholder rights across borders, as well as to increase the attractiveness of EU post-trade markets by ensuring efficient cost-effective processes.

This is why EBF Members emphasize that, in order to avoid issues such as in securities settlement in mass transactions, shares with multiple voting rights should be processed via STP. To achieve this, it remains key that each class of shares with multiple voting rights, e.g., shares with sunset clauses for voting rights, have their own ISIN code.

EBF Feedback to the Proposal for a Directive amending i) MiFID II on **investment research**, MTF as SME Growth Markets and ii) repealing the Listing Directive

Investment research contributes to the successful outcome of listing transactions as well as improved secondary market liquidity. Current MiFID II rules mandate the unbundling of investment research fees from other brokerage/trading execution services fees. Since its adoption, such provision has impacted the economic viability of investment research provision, thus limiting its offer, with particular detriment to SMEs and mid-caps that – as a result- do not attain sufficient coverage and visibility to incentivize further market-based funding. in fact, that the SME coverage has significantly shrunk or even disappeared altogether in the years after the unbundling rule took effect. The consequence was further concentration in the “unbundled” research market and a reduction in the diversity and breadth of the research offered.

Against this background, the exemption introduced by CMRP in 2021 did produce concrete effects in alleviating the impacts of the MIFID 2 unbundling rule.

The EBF supports a complete review of the current research regime. Amendments to article 24.3 positively redefine the main requirements of investment research and issuer sponsor research. However, further adjustments to increase coverage and drive more investors and market liquidity towards listed companies, especially SMEs, can be suggested.

Although the threshold EUR 10 billion in company market capitalization below which the unbundling rules do not apply (art. 24. 9.c) is welcomed, To foster liquidity and support the provision of research services, the unbundling rule should be eliminated permanently and joint payment of the research should be allowed with reference to all issuers, regardless market capitalization.

As far as the proposed code of conduct, in order to gather the largest representation of research providers, the EBF suggests that it would be critical to involve the industry in its development.

Finally, allowing for the combination of brokerage and research costs needs to be combined with complementary forms of incentives. Hence, to achieve the full objective of enhancing the availability of investment research in the market, EBF Members suggest that:

- Tax incentive measures are also needed for intermediaries producing investment research for SMEs, as well as for issuing companies, in order to increase the number of interested investors, and to appoint intermediaries to produce sponsored research.
- The TESG proposal to subsidize sponsored research on small and mid-cap companies with European funds and / or national incentives should be considered

Regarding the proposal of a minimum requirement of 10% of the shares subscribed and admitted on trading on regulated markets that should be held by the public (art 51 a. 4), we believe that the setting of such threshold should be delegated to the market operator, as it depends on the market segment and the type of investors acting into the market (large institutional investors vs retail investors).

II. Detailed EBF Comments

Comments to the proposed amendments to the Prospectus Regulation (Reg. EU 2017/1129)

Premise

The EU Prospectus Regulation consolidates trust and encourages participation in capital markets by ensuring that appropriate levels of investor protection underpin clear and effective communication between issuers and end-investors.

European banks, as both issuers and investment service providers in capital markets, remain fully committed to the objective of the Prospectus Regulation, and have taken significant steps to deliver the highest standard of information to their clients.

However, banks regrettably observe that the summation of the burdens imposed by the regulatory framework over the years has made today's prospectuses excessively content-rich, long, complex, and costly to produce for issuers and intermediaries, greatly reducing their informational value to the end investors, who often cannot make beneficial use of them.

Therefore, pursuant to the CMU objective of removing the structural and regulatory barriers preventing further participation to capital markets, EBF Members recommend that the **prospectus discipline is simplified** to promote a higher number of listings in Europe, notably of IPOs.

While targeting requirements to include redundant and immaterial information in the prospectus, such simplification should not prevent banks from complying with duty in due diligence and from providing the highest standard of information possible to the investors.

1. Exemptions from the prospectus requirements

a. Thresholds for exempting from prospectus non equity securities offered by credit institutions and small offers of securities

We support the proposal (Art. 1, par. 5.3.i) to make permanent the exemption introduced by CMRP (now expired) for non-equity securities offers with a total consideration less than 150 million Euro over a period of 12 months, issued in a continuous and repeated manner by credit institutions. However, in the light of such proposal and pending its approval, we urge the Commission to introduce a "grandfathering" regime to provide continuity to such exemption, without impacting credit institution funding activity due to the application of the preceding lower threshold.

We furthermore share the proposal (Article 3.2) to establish a unique harmonised threshold of EUR 12 million below which offers of securities to the public that do not require a passport are exempted from the prospectus requirement. Member States are allowed to require national disclosure documents for offers of securities to the public below EUR 12 million, so long as the national disclosures do not constitute a disproportionate burden.

b. Request for statutory exemption from the obligation to draw up and publish a prospectus for offers made only to existing shareholders

While recognizant that shareholders are already sufficiently aware of the risks of their investment due to their shareholder position, and that, especially for unlisted stock companies, the obligation to publish a prospectus, even if trading in subscription rights is excluded and subscription rights are only offered to the existing group of shareholders, can be difficult and make it time consuming to raise capital, only at the end of the period for the exercise of the subscription rights it is possible to have evidence that the capital increase will only subscribed by existing shareholders. In the meantime, banks need in any case to build the consortium to guarantee the unsubscribed shares. Therefore, we consider unlikely that they can undertake such an initiative without a deep due diligence on the issuer based on a prospectus.

Therefore, we believe that the statutory exemption that the obligation to publish a prospectus set out in Art. 3(1) PR should not apply to an offer of subscription rights to shares addressed exclusively to existing shareholders should be reconsidered.

2. Streamlined prospectus requirements for primary issuances on regulated markets

The proposed amendments to Art. 6(2), 13(1) PR-Proposal would introduce a standardised format and a standardised sequence of the information contained in the prospectus. While the EBF takes a positive view of streamlining the content of prospectus requirements, we emphasize the following:

- Market practice shows that prospectuses for non-equity securities are already largely comparable today. The already existing format and minimum disclosure requirements in the annexes of the Delegated Regulation already ensure a certain level of standardisation. There is therefore no need for a predetermined order or further format specifications.
- Given that prospectuses also constitute liability documents, issuers must be able to draw up prospectuses in a way that allows them to meet civil law and liability aspects. Predefined standardisation risks ignoring specific needs of the issuers and exposes them to additional liability risks.
- What is more, strictly prescribing the sequence of disclosure items runs counter to the international market practice which is mainly driven by the US-American customary structure of prospectuses. Such a deviation could jeopardize proven structures without any clear added value for the investors.

Therefore, EBF emphasize that **any alleviation/standardization of the current framework should ensure that appropriate flexibility is left to issuers and**

intermediaries to assess appropriate structure, contents and length. Crucially, aligning the level of disclosure of the standard prospectus to the level of disclosure currently required under the EU growth prospectus regime should not prevent issuers and banks, acting as arrangers/underwriters in IPO transactions and relying on information contained in the prospectus, from complying with their duties and providing the highest possible standard of information to the investors.

Furthermore, it is not clear if it is still possible to use the matching table mentioned in the Delegated Regulation 980/2019 when the order of the information provided in the Prospectus differs from the order in which that information is presented in the Annexes to above mentioned Regulation

3. Page limit for equity prospectus

Article 7 of the proposal introduces a 300-page limit for equity prospectuses, excluding the summary, incorporation by reference and additional information to be provided by issuers with complex financial histories or significant financial commitments. **We believe that limiting the number of pages is not an effective solution for a broad range of reasons,** as follows.

- The information may differ according to the size of the issuers or its business sector, or its economic and financial situation, not only in the case of a complex type of securities or issuers with a complex financial history. For example, in case of transactions with large issuers, operating in diversified sectors and/or in several countries, the inclusion of a maximum number of pages in the prospectus risks not allowing complete representation to investors of the complexity of the issuer's business.
- The maximum page limit should not harm the completeness and materiality of the content of the prospectus and should not prevent a deep due diligence activity on prospectuses carried on by the various advisors aimed at providing to the investors the highest possible standard of information.
- In some countries the length of the prospectus is proportionate to the level of responsibility of those involved in the transaction (i.e., issuers, offerors, arrangers/underwriters) set up by national prospectus liability regime, which exceeds the liability regime established by European legislation . Any forced shrinking of the content of the prospectus may expose the issuer and any other liable person to undesirable litigation for liable for omitted information.
- Furthermore, the prospectus is used also as a reference for analyst presentation and individual investors to understand the issuer and its business. It is important not to remove from the prospectus essential information for the marketing process of the deal that are needed for the analyst presentations to investors made during the pre-listing process, as well as for the sales force engaged with the retail distribution. By drying out some contents of the prospectus, the marketing process of the offer risks to be complicated.

- As the largest amount of these placements are usually underwritten by international qualified investors it is also necessary to consider the needs of the IOC (International Offering Circular). In general, the length of the IOC is more than 300 pages. Drying out the contents of the prospectus would also risk providing an asymmetric information between the two components of the market: retail, that will have a 300 pages limited prospectus, and qualified investors, which will not.
- From an issuer perspective, we consider that setting a 300 pages limit doesn't bring to relevant offering cost saving as this is not a relevant part of the overall costs of prospectus. It is worth considering that the costs of drafting a standard prospectus have decreased in the last years compared to what is indicated in the above-mentioned Impact Assessment, due to the length's reduction process seen in the more recent years (2020-2022).
- The average length of IPO's prospectus has also reduced in the last years in Europe, according to more recent data . This is therefore a process which is already underway.
- From a retail investor point of view, we consider that setting a pages limit doesn't really improve the readability of the prospectus neither make it easier to analyse and navigate through it in order to take a more informed investment decisions.

Therefore, the EBF emphasizes that **if EU regulators are persuaded to introduce an overall limit of 300 pages to the length of the prospectus, it should be done only as a general recommendation and not as a binding rule, leaving flexibility and let the issuer the option to assess the most appropriate content (and length) of the prospectus**.

The proposal should therefore be amended to provide a wider range of circumstances (e.g., size / business sector/ countries involved by the issuer, liability regime) in addition to those already provided in the proposal (i.e., complex type of securities or issuers with a complex financial history) that are not deemed to be sufficient. Comply or explain mechanism could be also provided.

Similarly, the issue of the readability and comprehension of the content of the prospectus by retail investors should be tackled:

- Primarily, by enhancing the level of consumer and investors financial literacy.
- Secondly, by assessing whether the Prospectus' Summary could be complemented with other key information in order to further align it to the Key Information Document (KID). This could represent a way to improve the effectiveness of information and its usability by individual investors.

4. Introduction of CSRD and ESG disclosure requirements in Art. 13(1)(f), (g), (2):

The amendments to Art. 13(1) and Annexes I-III PR-Proposal allows the Commission to adopt delegated acts setting out the format and content of prospectuses. In doing so, the Commission must consider whether the issuers of equity securities have to submit sustainy reporting under the CSRD and whether non-equity securities that are publicly offered or

admitted to trading on a regulated market pursue ESG goals or are marketed as taking ESG factors into account.

Our understanding is that:

- Issuers of equity securities will only be required to incorporate by reference for the period covered by the historical financial information sustainability-related information published, where applicable, under the Corporate Sustainability Reporting Directive.
- Conversely, issuers of non-equity securities that advertise them as taking into account the ESG factors or contributing to the ESG objectives will be required to disclose ESG-related information, which should be targeted and light touch, and should provide better information on the ESG factors to investors, thus enabling them to better assess and compare investment opportunities on that basis.

In the light of the future delegated acts regarding the standardised format and sequence of the prospectus, we deem necessary to clarify the responsibility, if any, of the issuers and/or of the arrangers in providing this information to investors for both the above-mentioned proposals.

Product-related sustainability information is usually known at the time of the respective issuance. For that reason, incorporating ESG information in the case of base prospectuses seems rather complex, such information can only be specified and included in the final terms of a base prospectus, e.g., in the "use of proceeds" section

Banks acting as underwriter can only rely on the information and assurance provided by the issuers and/or their advisors.

5. New EU follow-up prospectus replacing the simplified disclosure rules for secondary emissions (Art. 14a):

a. On exemptions set out in Article 1(5)(a) and (b bis)

The Art 14 b. of the proposal introduces a new EU Follow-On Prospectus, replacing on a permanent basis the simplified prospectus for secondary issuances as well as the EU Recovery Prospectus.

The EBF supports a simplification and a streamlining of the prospectus for issuers who have a track record on either a regulated market or an SME growth market. This will indeed avoid a burdensome exercise for these issuers allowing a cost savings from using a more simplified prospectus for equity secondary issuances or in the case of transition from a growth to a regulated market.

However, **we consider that amendments to article 1(5)(a) and (b bis) of the Prospectus Regulation** exempting to publish a prospectus:

a) for admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same market, provided that they represent, over a 12-month period, less than 40% of the number of securities already admitted to trading on the same regulated market;

b) companies that issue securities fungible with securities already admitted to trading on a regulated market or in an SME growth market, including companies relocating from a SMEs growth market to a regulated market;

risk excluding investors in secondary equity issuances from a full disclosure of information from the issuers in those jurisdictions where the URD is not present..

Specifically, we consider that the above-mentioned proposals to provide a summary document containing the key pieces of information (e.g. use of proceeds) in addition to the information already publicly available and an efficient filing with NCA can be sufficient, for examples, in case of issuers with an uncertain financial situation seeking new finance on the market or in case of offerings with a significant proportion of stocks sold by shareholders.

As already said for the IPO prospectus, we consider that some flexibility should be maintained in setting out a 50-page limit in the prospectus allowing a due diligence activity and adequate comfort package by third party consultants (i e. auditors /lawyers) in order to allow investors to get a more informed investment decision.

b. On minimum information requested in the Annex 4

With regards to the minimum information requested in the Annex 4 for shares and other transferable securities in companies, we consider that:

- the information in Section 5 Annex 3 Regulation 2019/980 (Business Overview) should generally be provided, bearing in mind that for secondary prospectuses they focus on significant changes since the end of the last business year covered by audited financial statements;
- Information on material investments since the date of the latest published financial information, including those that are in progress or in respect of which financial commitments have been made (item 5.2 of Annex 3 Regulation 2019/980) appears necessary for investors;
- where profit forecasts have been published and are still valid the information required in Section 7 Regulation 2019/980 should be provided;
- information on significant changes of the issuer's financial position (item 11.4 of Annex 3 Regulation 2019/980) and Information on the impact of a significant gross change on the issuer (item 11.5 of Annex 3 Regulation 2019/980) should be provided.

c. On clarity regarding the combination of the EU follow-up prospectus and base prospectus

It is unclear whether the EU follow-up prospectus can also be drawn up as a base prospectus. The PR uses the term "prospectus" as a generic term for all types of prospectuses regulated in the PR (see, for example, Art. 3(1) and (3) "a prospectus in accordance with this Regulation", Art. 1(s) "a base prospectus means a prospectus that ...", or Art. 8(1) "the prospectus may ... consist of a base prospectus"). This indicates that the various types of prospectuses provided for in the PR can be freely combined with one another. However, an explicit legal clarification to this effect is absent.

The following arguments support the idea that the EU follow-up prospectus can be combined with the base prospectus regime:

- recital 24 PR-Proposal: "To enable issuers to fully benefit from this alleviated prospectus type, the scope of the EU follow-on prospectus should be broad and encompass public offers or admission to trading on a regulated market of securities that are fungible or not fungible with securities already admitted to trading."
- recital 33 PR-Proposal: "The EU Follow-on prospectus and the EU Growth issuance document should complement the other forms of prospectuses laid down in Regulation (EU) 2017/1129. Therefore, unless explicitly stated otherwise, all references to the term

'prospectus' under Regulation (EU) 2017/1129 should be understood as referring to all different forms of prospectuses, including the EU Follow-on prospectus and the EU Growth issuance document."

- For the information that an investor receives in the case of an EU follow-up prospectus pursuant to Art. 14a and Annex IV or V, it makes no difference whether a separate EU follow-up prospectus is provided for each individual issue or for several issues.

For these reasons, it would be useful to clarify that the combination of EU follow-up prospectus and base prospectus is possible. Such a clarification could be included in a new Art. 14a(5) and read something like: "An EU follow-on prospectus may also be drawn up as a base prospectus in accordance with Article 8."

6. New EU Growth Issuance Document (Article 15a):

Article 15.a introduces a Growth Issuance Document, which replaces on a permanent basis the EU Growth Prospectus, also taking into account the most straightforward admission documents that some SME growth markets require issuers to produce in case of an exemption from the obligation to publish a prospectus.

The new regime follows a standardised format and sequence subject to a 75-page limit in the case of issuances of shares (excluding the summary, information incorporated by reference and additional information to be provided by issuers with complex financial histories or significant financial commitments).

We support a further streamlining of the Growth Prospectus: however we would also point out that the length of the new offering document would be on average less than that document approved by the stock exchanges for the admission to trade that isn't a legal requirement.

Furthermore, we highlight that, with the exception of one EU country, currently there is no relevant evidence on the use of the EU growth prospectus. The EU Commission Impact Assessment Report, also point out that listings on MTFs/SME growth markets are in most cases exempted from the prospectus obligation.

Thus, more time is needed to better understand if this is due to a lack of effectiveness in reducing the administrative burdens for SMEs.

Finally, we consider that also in this case some flexibility in the number of pages should be provided allowing a due diligence activity and adequate comfort package by third party consultants (i e. auditors /lawyers) in order to allow investors to have a full disclosure of the risks to get a more informed investment decision.

Finally, The above comments on the EU follow-up prospectus apply accordingly to the new EU growth issu-ance document. We therefore suggest the inclusion of the following clarification in a new Art. 15a(8): "An EU Growth issuance document may also be drawn up as a base prospectus in accordance with Article 8."

7. Risk factors (Art. 16(1):

Under article 16 of the proposal: i) a prospectus must not contain risk factors that are generic; ii) each risk factor must be adequately described; iii) the assessment of the materiality of the risk factors may be disclosed, using a qualitative scale of low, medium or high, at the discretion of the issuer, offeror or person requesting admission to trading on a regulated market.

The section of the prospectus on the risk factors represents the most complex one to be managed.

We agree with the proposal to provide a representation of the risk factors which are specific to the issuer and/or the securities and which are relevant to make an informed investment decision, as required by art. 16 of the Prospectus Regulation.

We also agree that the information should be presented in a concise form in order not to compromise the comprehensibility and clarity of the entire prospectus, as required by the ESMA Guidelines on Risk Factors (ESMA31-62-1293 IT).

However, we consider that in some countries the inclusion of a long list of risk factors in the prospectus is proportionate to the level of responsibility on those involved in the transaction (issuers, offerors, arrangers/underwriters) set up by national liability regime on prospectus, which in some cases exceeds the liability regime established by European legislation. It is for this reason that issuers, and their legal adviser, choose to list in this section all the risks, including potential ones, in order to avoid liability and compensation actions by investors, which can occur even in the medium term when the prospectus is not valid anymore.

Furthermore, it should be also noted that, in the case of transactions with large issuers, operating in diversified sectors and/or in several countries, the inclusion of a maximum number of pages and a maximum number of risks in the prospectus prevent a complete representation to investors of the complexity of the issuer's business.

It is therefore important to leave discretion to the issuer to select, based on the characteristics, size and operations of the issuer, the most appropriate content (comprehensive listing or selection of risk factors) with the aim to provide investors with all the relevant information and let them take an informed investment decision.

8. Incorporation by reference (Art. 19):

Although we support the increased use of incorporation of financial information by reference into the prospectus, in particular those regarding updating the annual or interim financial information to be incorporated by reference in a base prospectus, which would effectively replace the drafting of a supplement, we believe that a mandatory approach is not needed nor compatible with existing L2 requirements.

We are of the view that a flexible approach, whereby or issuers are allowed to directly incorporate information (i.e., not only by reference) in a prospectus at their discretion would be preferable.

Under Art. 19 a large set of information must be incorporated by reference where it has been previously or simultaneously published electronically. Furthermore, an issuer, an offeror or a person asking for admission to trading on a regulated market shall not be required to publish a supplement pursuant to Article 23(1) for updating the annual or interim financial information incorporated by reference in a base prospectus that is still valid.

9. Simplification of the URD regime:

The proposal simplifies and alleviates the Universal Registration Document (URD) regime through some amendments to art. 9.2 aimed at granting the status of frequent issuer only after one year (instead of two) from the approval of the URD by the NCA and making it possible to prepare the document in English only.

In order to get the URD more attractive, we propose that the already approved URD should not be submitted to scrutiny by the NCA where it is part of a prospectus for the offer.

10. Publication of the prospectus (Art. 21):

The proposal reducing from six to three days the minimum period between the publication of a prospectus and the end of an offer of shares is considered useful, as it will facilitate a swift book-building processes (especially in fast-moving markets) and increase the attractiveness of the inclusion of retail investors in IPOs.

No minimum period of days between the publication of a prospectus and the end of an offer should be set for offers of non-equity securities.

Removing the limitation to jurisdictions where the public offer takes place as foreseen in Art. 21 para 11 would expose issuers to additional risks. Therefore, the provision for delivering the prospectus only to jurisdictions "in which the offer of securities to the public is made or where the admission to trading on a regulated market is taking place" should be retained

11. Approval of prospectus (Art. 20):

Art. 20.11 of the proposal empowers the European Commission to specify in delegated acts: i) when a competent authority is allowed to use additional criteria for the scrutiny of the prospectus and the type of additional information that may be required in that circumstances; ii) the maximum time frame for a competent authority to finalise the scrutiny of the prospectus 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 a competent authority that fails to take a decision on the prospectus within those time limits.

Regarding the additional criteria for the scrutiny, their use should be anyway in accordance with the provisions of Art. 40 of the Delegated Regulation of the Commission 2019/980, limited to individual situations, in the context of the prospectus' scrutiny activity. Such article provides that "if necessary for the protection of investors, the competent Authority may apply additional criteria to those referred to in art. 36, 37 and 38 for the purpose of checking the completeness, comprehensibility and consistency of the information contained in the draft prospectus". This suggests that the use of the additional criteria can take place with regard to specific cases in which the protection of investors is at risk.

The standard timeline for an approval of a prospectus within 10 working days from its submission is rather adequate. However, in cases where the longer timeline of 20 working days is applicable – namely when the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public – the time limit for approval is cut to 10 working days where subsequent submissions of the prospectus may be necessary.

Therefore, we consider a "10-5-3 regime" could be appropriate, whereby the timeline of 10 working days would be cut to 5 working days, when deciding upon a revised prospectus (2nd phase) and to 3 working days, when deciding upon a re-revised prospectus (3rd phase).

12. Supplements (Art. 23):

The EBF welcomes the proposal of making permanent the temporary amendments to the supplement rules according to Art. 23 PR introduced by the CMRP. However, EBF Members are of the view that improvements and some clarifications would be further welcomed.

Firstly, the extension of the period during which the right of withdrawal can be exercised by investors may further expose the funding/pre-issuance activity to changes due to external factors (i.e., changes in ratings, in interest rates, etc.) and therefore to uncertainties on the final costs of funding for the issuer, rendering it rather disadvantageous for issuers, especially in periods of increased market volatility. Therefore while welcoming of the reduction of the period between the publication of the IPO prospectus and the end of the offering from 6 to 3 days, EBF Members emphasize that the 2-days withdrawal period should be kept and not extended to 3 days.

Secondly, Members are of the view that the proposed change (linked to this proposed change of article 23) in article 17 whereas according to the wording in the text a supplement would need to be published if the final price differs by more than 20% from the maximum price included in the prospectus should be reconsidered.

Thirdly, the EBF supports the proposal to clarify that, in the event of a publication of a supplement to the prospectus, the financial intermediary is required to inform only those investors who are clients of that financial intermediary and agreed to be contacted by electronic means. Nevertheless, it needs to be clarified that the requirement to inform and contact investors serves to protect those investors who have sought investment advice from a financial intermediary, in particular due to a lack of knowledge or experience. This group of investors is particularly in need of protection and requires support in obtaining information relevant to the investment decision. In contrast, clients who use execution only services have shown that they do not need support by the financial intermediary and therefore can rely on the issuers' supplement publication.

Furthermore, the proposed wording in Art. 23(3)(a) PR-Proposal "including on its website" should be clarified. The same applies to the wording in (d). The proposed new wording could be interpreted in a way that the intermediary must also publish the supplement or reproduce the issuers information about the supplement on its website. EBF Members feel that such requirement would not create any added value, as investors are already sufficiently informed by intermediaries due to the existing provision. A duplication of that information on another website could moreover cause confusion. Art. 21 PR already provides a sufficiently clear provision for the publication of information.

Finally, the EBF fully supports the promotion of digital means of communication between the intermediary and its clients. Having said that, the amendment in Art. 23(3)(c) PR-Proposal would establish an additional, electronic opt-in mailbox exclusively for prospectus supplements. However, If consent for electronic communications is not given, the customer can only be warned that the customer will not be informed if a prospectus supplement is published by the financial intermediary. If necessary, the inclusion of such a warning along the lines of (d) would be conceivable.

In this context, however, we must point out the issue related to the expiration of the transitional regime introduced by the CMRP. As the current proposal is aimed at making the temporary regime permanent, a "grandfathering regime" should be somehow introduced to avoid impact for intermediaries and confusion in the applicable regime.

Comments to the amendments proposed to the Market Abuse Regulation (Reg. 596/2014)

Premise

Requirements laid down by MAR constitute an additional and particularly significant burden for companies wishing to list. In this sense, EBF members believe that MAR's provisions should be eased to prevent the negative effect of disincentivizing listing while ensuring an adequate level of investor protection at the same time.

With respect to the specific proposed changes, some specific comments are provided below.

a) Clarify the safe-harbour nature of the market sounding procedure

The proposed amendment to Article 11 favorably aims at clarifying that the market sounding regime and the related requirements are only an option for disclosing market participants (DMPs) to benefit from protection against the allegation of unlawful disclosure of inside information ("safe harbour").

However, in order to further focus the market sounding rule on those market transactions where DMPs could actually incur a charge of unlawful disclosure of inside information, we consider it appropriate to make some remarks on so-called private placements.

In particular, the exemption from the market sounding regime of communication relating to bond placements to qualified investors, provided by art. 11, par. 1a, appears as a helpful simplification. It facilitates the execution of these transactions and gives more legal certainty without the need to comply with the requirements of market sounding. Indeed, such requirements appear cumbersome and inefficient, particularly in the context of this type of transaction.

In order to further alleviate the market survey rule for private placement activities, it would be appropriate to adopt the proposal of the TESG to extend such exemption to placements of equity securities, given that there isn’t a compelling reason why equity placements should be treated differently to bond transactions.

b) Narrow down the scope of the obligation to disclose inside information and enhance legal clarity as to what information needs to be disclosed and when

On the issue of inside information, in line with the TESG, a direct intervention on its definition would be preferred to distinguish between a definition of inside information for the purposes of market abuse prohibition and a notion of inside information triggering the disclosure obligation.

Although the Commission has decided not to change the definition laid down in the MAR, the proposed change to Art. 17 goes in the right direction. In particular, the clarification that the disclosure obligation does not cover the intermediate steps of the so-called protracted process is undoubtedly relevant for issuers.

However, in order for the clarification to be effective in identifying the moment at which information becomes an inside information, it is important that the delegated act to be adopted by the Commission (as provided for in the new paragraph 1a) be as broad as possible, although not exhaustive, in identifying a list of relevant information with the

indication (for each piece of information) of the moment when disclosure is expected to occur.

It is equally important that the Commission delegated act itself also contains examples of so-called multi-staged events and how information should be handled at each stage of the process.

c) Simplify the insider lists regime for all issuers

The simplification of the issuer's obligation to draw up the so-called insider lists by providing that the issuer shall be limited to drawing up and maintaining only the list of persons having permanent access to inside information of the same issuer goes in the right direction. The possibility for Member States to require the drawing up and maintenance of a 'full insider list' where justified by market integrity concerns is of particular concern. In fact, if cases of market integrity concerns will not be clearly defined in the regulation (even in a non-exhaustive form), too much discretion will be left to the Member States and there may be a risk of creating unequal treatment between issuers belonging to different Member States. It is also desirable, again with a view to simplification, to revise the templates for drawing up lists, provided for in the level 2 rules, in order to reduce the amount of information required and limit it to only the necessary information relating to the identity of the person on the list.

d) Raise the threshold above which managers shall notify their transactions and expand the scope of exempted transactions during the close period

The proposed amendments to Article 19 concerning transactions conducted by persons discharging managerial responsibilities (PDMR) go in the right direction. In particular, the raising of the annual thresholds provided for the notification of transactions involving the issuer's own securities or derivatives linked to them is acceptable. However, it would also be appropriate if, when reaching the threshold in the course of the year, it would be reset and following transactions should not be reported by PDMR until the threshold is again reached.

The extension of exemptions from the prohibition for PDMRs to carry out transactions in the 30 calendar days preceding the announcement of an interim or year-end financial report (so called closed period) is also acceptable. It would be appropriate to provide, however, that transactions exempted from the closed period trading ban should also be excluded from the calculation of the threshold for reporting.

Finally, aiming at greater legal clarity, it might be useful to provide for a non-exhaustive list of transactions that "do not imply active investment decisions by the person discharging managerial responsibilities, or result from external factors or third parties, or are the exercise of derivatives based on predetermined terms", as set forth in new point c of paragraph 12 of Art. 19.

e) Make administrative pecuniary sanctions for infringements of disclosure requirements more proportionate

The amendments to Article 30, aimed at making administrative sanction for breaches of disclosure requirements more proportionate, especially for SMEs, and the amendment to Article 31, aimed at avoiding the duplication of criminal and administrative proceedings and penalties for the same breach, go in the right direction. However, requiring member states to take account of possible duplication might be too weak. Instead, the text of the amendment should be more incisive to make the prohibition of imposing double penalties

on a person for the same breach clearer. An intervention along these lines in Directive 2014/57/EU on criminal sanctions (MAD2) could therefore also be considered.

About EBF

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from across Europe. The federation is committed to a thriving European economy that is underpinned by a stable, secure, and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere.

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