

Ref: EC open feedback on review of the Listing Act – making public capital markets more attractive for EU companies and facilitating access to capital for SMEs

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Link: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13238-Listing-Act-making-public-capital-markets-more-attractive-for-EU-companies-and-facilitating-access-to-capital-for-SMEs_en

ANSWERS TO THE EC PUBLIC CONSULTATION: GENERAL COMMENT (open feedback)

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BETTER FINANCE welcomes the stated objectives of the listing act review for prospectus standardisation and streamlined IPO cost reduction, particularly for SMEs. Investor protection both relies on reporting that must be adequate, accessible and on fair treatment.

Our first concerns relate to a ‘minimis’ multiple voting rights directive that would unbalance power between shareholders while creating inconsistent practices across the EU. Multi-Voting-Shares (MVS) are against the ‘one share – one vote’ principle in international markets, providing equal rights to all shareholders regardless of their shareholding size and this should generally be avoided. Only through certain cases of initial listing of SMEs GM could the MVS be possible, as we acknowledge this may avoid disincentivize directors to go public. However, any MVS must apply under maximised EU-wide application (‘not the preferred EC option’) and must remain temporary and attached to the initial holder only. This provision must come with harmonised EU safeguards for all shareholders. In particular, sunset clauses should be mandatory, not optional (i.e. 5y post-IPO for time-based ones), along with specific vote limitations and controls (including provision on ESG resolution). Clear transparency of share information must be provided for minority shareholders as clearly identifiable in the summary prospectus. In general, new share class contain the risk of discriminatory treatment and Article 5 safeguards may prove too weak in their transposition, whereas investors still lack clear disclaimers on type of shares traded. Therefore, reclassification of existing shares or the emission of new MVS in existing structures should always be prohibited since unequal voting rights are perceived as detrimental by engaged investors and that the European Commission should promote equitable companies’ governance (‘G’ part of ESG), by strengthening minority shareholders’ rights in the first place.

We also welcome the standardisation of the prospectus types and usage, and the possibility to use English as customary in the financial sphere, limit its length and make it accessible digitally. The summary prospectus remains the most consulted by retail investors and its English version, alongside the national languages should remain for EU investors. In addition, the summary needs further standardisation and to be elaborated in plain language to become an investor-friendly document, and any addition of reference information should be strictly limited to avoid content overload.

Following ESMA evaluation, and local market evidences, article 33(7) of should include a clear provision that instruments listed as primary on the SME GM can only be admitted to another trading venue with the explicit consent or at the request of the issuer. The condition under which an order book split of instruments of SMEs (with small capitalisation) brings liquidity risk to markets and prove detrimental for price formation (increase spread) for investors, on

one hand, and any potential benefit of wider investors access, on the other, should be reassessed for such markets.

On MAR, we welcome clarity on defining insider information; however, the new proposed rules may prove difficult to enforce and supervise, rather, a proper upkeep of insider lists proved beneficial. Moreover, any establishment of a CMOBS mechanism should include data from bilateral trading space (SIs and OTC transactions) to ensure market integrity. In addition, the new threshold disclosing managers' transactions may obstruct valuable market information as it also proves crucial to inform on price formation.

Finally, for bonds, a focus on democratisation and trade facilitation is needed in general. For simple corporate bonds, the prospectus could be simplified or the denomination of €100,000 reduced for wider investors' access. Also, any new ESG data documents for debt securities should be summarized and reflect standards (EU Green Bonds, SFDR).