POSITION TO THE EC CONSULTATION ON BUILDING A PROPORTIONATE REGULATORY ENVIRONMENT TO SUPPORT SME LISTING

SECTION I. QUESTIONS ON CHALLENGES FACED BY PUBLIC MARKETS FOR SMES

Question 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" (also possible to mark Don't know / no opinion / not relevant)

- Low number of companies coming to the public markets: **5**
- Decline of local ecosystems: **5**
- Lack of retail and institutional investors: **3**
- Other (please specify in the textbox below): **5**

Question 1.1 Please explain and describe the current situation of SME-dedicated markets in your own jurisdiction or countries of operations:

The Polish capital market is dominated by SMEs: 749 companies have capitalisation below the threshold set in MiFID II (EUR 200 million), while only 85 are bigger. In fact majority of issuers are not even SMEs, but rather start-ups. As many as 159 listed companies (including 22 from Warsaw Stock Exchange and 137 from NewConnect market) have capitalisation below EUR 1 (one) million, 260 companies (including 22 from WSE and 238 from NewConnect market) in the range EUR 1-10 million and 251 (all from WSE) in the range EUR 10-100 million. Altogether there are 670 listed companies with capitalisation below EUR 100 million.

At the same time they are in many areas subject to the same requirements as the biggest companies. In fact Market Abuse Regulation imposes even stricter requirements on the smallest companies – in case of start-ups the scope of inside information is much wider than in case of big multinational corporations, since any business decision could lead to high growth or to bankruptcy. Moreover, smaller companies are subject to higher sanctions – in case of big issuers the limit is at the level of "only" 2% of annual income, while in case of smaller – as much as EUR 2,5 million, which is much bigger amount, than 2% of annual income and often much bigger than 100% of annual income. In case of 285 Polish listed companies (including 47 from Warsaw Stock Exchange and 238 from NewConnect market) a single maximum sanction under MAR is higher than their capitalisation. In majority of cases the maximum sanction which could be imposed on physical person (EUR 1 million) is much higher than given person could earn during his/her lifetime.

Such inadequate and disproportionate requirements not only do not stimulate new listings, but even lead to delistings – last year only 15 companies came to the market, while as many as 20 left it. This implies decline of local ecosystems, which – if it lasts longer – will have an irreversible impact on the financial industry (or rather "financial craft") and on ability of SMEs to raise non-banking financing.

Question 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" (also possible to mark Don't know / no opinion / not relevant):

- Availability of alternative sources of financing for SMEs (including bank finance) **for equity: 3**
- Availability of alternative sources of financing for SMEs (including bank finance) **for bonds: 4**
- Lack of awareness of SMEs on the benefits of public markets **for equity: 2**
- Lack of awareness of SMEs on the benefits of public markets **for bonds**: **2**
- High (admission and ongoing) compliance costs due to regulatory constraints **for equity: 5**
- High (admission and ongoing) compliance costs due to regulatory constraints **for bonds: 4**
- Lack of preparation from companies' management as regards the implication of a listing **for equity: 1 – see explanation in the box below**
- Lack of preparation from companies' management as regards the implication of a listing **for bonds: 1 – see explanation in the box below**
- Reluctance of SMEs' owners to relinquish a stake in the capital of their company (for equity): **3**
- Other (please specify below): **5**

2.1 Please illustrate by providing evidence from your own jurisdiction:

See our response to question 1.1 regarding the size of Polish listed companies.

The biggest problem is disproportionate regulatory regime: high requirements and sanctions vs. low benefits of listing by small companies. Additional problem (extremely important, having in mind potential value of sanctions), which should be raised in case of Polish market is lack of the possibility of real appeal from the decision of NCA (the appeal is dealt with by the NCA itself and the appeal to administrative court is focused on procedural aspects only).

It should be noted, that the above answers: "Lack of preparation from companies' management as regards the implication of a listing" were rated 1 "completely irrelevant", but in fact they are relevant, although in opposite direction, so they should be rated "minus 3". Our experience shows, that in many instances companies make decision on joining the market just because the managers (in smaller companies being at the same time owners) are not aware of the implications of listing.

Question 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" (also possible to mark Don't know / no opinion / not relevant):

- Lack of visibility of SMEs (including lack of financial research and credit information) towards investors **for equity: 5**
- Lack of visibility of SMEs (including lack of financial research and credit information) towards investors **for bonds: 5**
- Differences in local accounting standards hindering cross-border investments: **1**
- Regulatory constraints on investors as regards investments in SMEs: **4**

- Lack of liquidity on SME shares and bond markets for equity: **4**
- Lack of liquidity on SME shares and bond markets for bonds: **2**
- Lack of investor confidence in listed SMEs: **2**
- Lack of tax incentives: **3**
- Other (please specify below): **5**

3.1 **Please illustrate by providing evidence from your own jurisdiction:**

See our response to question 1.1 regarding the size of Polish listed companies.

The most important factors discouraging investments in listed companies are very high issuers' regulatory costs borne by investors. They include:

1. Compliance costs of many new regulations – MAR being inglorious example of them
2. Non-compliance costs – a single maximum sanction under MAR would lead to bankruptcy of vast majority of Polish issuers (it should be noted, that fines become proceeds of state budget, so the money is not transmitted back to investors – any sanction on companies is in fact sanction on investors themselves)
3. Lost opportunity costs – disclosure requirements make the competitive situation of issuers much worse towards their non-listed peers (it should be noted, that in case of start-ups any single business decision could be perceived by "rational investor" as information which "could be taken into account while making investment decision", so the smaller company – the bigger problem with proper disclosure)
4. Brain drainage – best managers, who are aware of regulatory requirements and potential sanctions, prefer to work for non-listed companies.

Investors in smaller companies cannot afford such high risk costs and this is one of the reasons, for which they leave regulated market and start "investing" on forex markets and cryptocurrencies.

Question 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" (also possible to mark Don't know / no opinion / not relevant). Some options might not be mutually exclusive.

- Brokers, market-makers, liquidity suppliers: **3**
- Financial research providers: **4**
- Credit Rating Agencies: **1**
- Investor base: **4**
- Investment banks: **1**
- Boutiques specialised in SMEs and offering several services (brokerage, research, underwriting…): **5**
- Legal and tax advisers: **1**
- Accountants: **1**
- Others (please specify below): **5**

4.1 Please illustrate by providing evidence from your own jurisdiction:

First we should address declining number of the SMEs themselves – over last 5 years the number of companies listed on NewConnect market declined by 11% - from 445 to 401.

Disproportionate regulatory burden imposed on small and very small companies (eg. MAR) leads also to leaving public market by investors and service providers to this group of issuers.

Moreover, regulations imposed on other market participants (eg. MiFID II) lead to focusing on providing services to the biggest companies, limiting analyst/advice coverage for other part of market.

Question 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" (also possible to mark Don't know / no opinion / not relevant):

- Impact of low level of liquidity on brokers' business models **for equity: 2**
- Impact of low level of liquidity on brokers' business models **for bonds: 2**
- Impact of low level of investors' appetite for SME instruments **for equity: 3**
- Impact of low level of investors' appetite for SME instruments **for bonds: 2**
- Regulatory constraints on investment services providers specialised in SMEs: **5**
- Lack of profitability of the SME segment **for equity: 3**
- Lack of profitability of the SME segment **for bonds: 3**
- Other (please specify below): **5**

5.1 Please illustrate by providing evidence from your own jurisdiction:

The main reason impacting SME ecosystems seems to be lack of IPOs. IPOs are the main source of income for many entities (lawyers, advisors, accountants, auditors, investment firms) and imply further income by other market participants (investors, investment firms, asset managers, exchanges, depositories). Declining number of IPOs and declining number of listed companies (as a result of delistings) are clear signal for many service providers, that in the nearest future generating profits on bringing SMEs to public market will be extremely difficult.

Obviously, the question behind is – what are the reasons for declining number of IPOs? The general answer is: too burdensome regulatory requirements. More specific answers are presented under items 1.1, 2.1, 15.1, 16.1 and 18.

SECTION II. QUESTIONS ON SPECIFIC REGULATORY BARRIERS

A. Making a success of the 'SME Growth Market' concept

Criteria and requirements in relation to the 'SME Growth Market' should be set in a way that makes this segment attractive for issuers, investors and stock exchanges, while ensuring investor protection and market integrity. The Commission is seeking views to assess whether MiFID II rules on SME Growth Markets as currently framed are sufficiently well-calibrated to achieve their intended objectives.

1. Definition of an SME Growth Market and SME Growth Market issuer (MiFID II – Articles 4 and 33)

The criteria defining an SME Growth Market should be well-calibrated in order to facilitate the registration of SME-dedicated MTFs as SME Growth Markets. In turn, if the SME Growth Market framework is widely used, this will allow many SMEs across the EU to benefit from the regulatory incentives embedded in the EU legislation for those issuers and the potential further alleviations envisaged in this document (see sub-section B. below).

An 'SME Growth Market' is currently defined as an MTF, where at least 50% of the issuers whose financial instruments are traded on the MTF are SMEs. MiFID defines an SME as a company that 'had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years'.

As regards the size threshold (i.e. EUR 200 million of market capitalisation), it should be noted that some EU Acts currently grant regulatory incentives to companies with a higher market capitalisation[15]. Furthermore, the definition of an SME under MiFID II does not correspond to the definition of small and midcaps used by asset managers of equity funds and in indexes. If the market capitalisation threshold is set at a too low level, the SME Growth Markets risk capturing only smaller companies and this could reduce the interest of institutional investors in the shares traded on those trading venues. On the contrary, if the threshold is set at a too high level, this could create regulatory arbitrage opportunities for larger companies.

As regards the requirement of having at least 50% of SME issuers, it can be important to ensure that a proportion of large companies can be admitted to trading on SME Growth Markets so that a sufficient level of liquidity and profitability of those platforms is ensured. This allows successful companies that were SMEs at the time of the IPO but whose market capitalisation has increased beyond the EUR 200 million threshold to remain listed on an SME Growth Market. However, if the market capitalisation threshold (i.e. EUR 200 million) was raised to a significant extent, the question would arise whether the proportion of SMEs (at least 50%) should also be raised to avoid any regulatory arbitrage by non-SME issuers.

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

- ○ Yes
- ◉ No
- ○ Don’t know / no opinion / not relevant

6.1 Please explain your reasoning:

It is very difficult to vote for any changes without clear view, what actually Growth Markets will be in terms of alleviations for companies listed there. In case of MAR, alleviations for SMEs were very limited (not to mention, that even they could not be introduced due to postponing of entering MiFID II info force).

For this reason “doing nothing option” could be the best for the moment for the sake of stability of regulations.

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

- ○ raised (please specify an appropriate market capitalisation threshold)
- ○ 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 below)
- ○ Don't know / no opinion / not relevant

7.1 Please explain your reasoning. Where relevant, please specify appropriate market capitalisation thresholds or criteria to define an SME for the purpose of SME Growth Markets:

See comments to question 6.1.

Question 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%)
- ○ Between 51%-74%
- ○ 75% or above
- ○ Don't know / no opinion / not relevant

8.1 Please explain your reasoning:

See comments to question 6.1.

2. Definition of an SME debt issuer for the purpose of an SME Growth Market (MiFID II – Article 4)

There are several markets across the EU specialised in SME bonds[19]. SMEs tapping the bond markets have an annual turnover between EUR 19 million and EUR 400 million and the typical minimum issuance size is around EUR 17 million[20].

An issuer that has no equity instrument traded on any trading venue shall be deemed an SME according to level 2 of MiFID II[21] if it meets at least two of the following three criteria according to its last annual or consolidated account: (i) an average number of employees during the financial year of less than 250; (ii) a total balance sheet not exceeding EUR 43 million and (iii) an annual net turnover not exceeding EUR 50 million. Given these provisions, SME bond markets could face difficulty in registering as SME Growth Markets, as their issuers could most likely not meet the criteria set in MiFID II level 2, despite their relatively small size.

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

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

9.1 Please explain your reasoning.

If you answered affirmatively, please provide appropriate criteria (turnover, outstanding issues of debt securities, size of the bond issuance…) and thresholds to define an SME Growth Market debt issuer:

See comments to question 6.1.

3. Key adviser requirements

The vast majority of SME-dedicated MTFs across the EU require their issuers to be assisted by a key adviser[23], i.e. a market professional approved by the exchange. The key adviser plays a prominent role by assessing the company's suitability for the market, bridging the information gap between quoted SMEs and investors and upholding the reputation and integrity of the market. A 'key adviser' on SME Growth Markets could boost investor confidence in securities listed on those trading venues that have no such requirements at the moment.

However, the role of a key adviser can vary greatly from one SME-dedicated MTF to another. For instance, some markets do not require issuers to have a key adviser for SME listing (due to the costs of such advisers for SMEs).

Question 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" (no opinion option also possible):

- A key adviser should be imposed for **equity issuers** on an SME Growth Market: **2**
- A key adviser should be imposed for **bond issuers** on an SME Growth Market: **2**
- A key adviser should be mandatory during the whole period an SME is listed: **1**
- 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; ….): **2**
- Minimum requirements regarding the mission and obligations of key advisers on SME Growth Markets should be imposed at the EU level (Please specify): 1
- Minimum requirements regarding the mission and obligations of key advisers on SME Growth Markets should be imposed by individual stock exchanges: **5**

10.1 Please explain your reasoning and provide supporting evidence on the costs associated with the appointment of a key adviser. If appropriate, please specify the mission and obligations that should be placed on key advisers at EU level:

The requirements of key advisers should be adopted to the conditions of the given market, as the particular SME markets vary to large extent. Hence, setting them by individual exchanges seems the best approach.

4. Delisting rules on SME Growth Markets

Delisting refers to cancelling a company's authorisation to be listed on a stock exchange. Delisting can be mandatory or voluntary. A mandatory delisting follows a decision of the stock exchange when the listing requirements are no longer met by a company. A voluntary delisting may be decided by a controlling shareholder, either after enhancement of control by a 'historical' controlling stakeholder or by a new owner after a takeover bid or a merger. In general, such delisting decisions usually give rise to a 'squeeze out' procedure. Voluntary delisting may also be decided by the management's company, and results in the company continuing as an unquoted company with the same shareholder register.

Voluntary delisting can be an important part of the regulatory landscape for investors and SMEs. The rules on delisting can vary from country to country or from market to market and investors can be deterred from investing in the first place (especially in a cross-border context) if they anticipate difficulties in gaining full control of a listed SME and in delisting its shares. Likewise, some companies can be deterred from going public because they consider a listing of their shares to be a 'one-way ticket' and that they cannot go back to their previous (unlisted) situation. However, even if a decision to delist taken by the management's company is based on sensible grounds, this raises some fundamental investor protection issues.

Question 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
- ○ Fully agree
- ○ Don't know / no opinion / not relevant

11.1 Please explain your reasoning.

If you answered affirmatively, please indicate the scope (mandatory, voluntary delisting at the management's and/or controlling shareholders' initiative) and the features of such minimum requirements:

SME markets are very different in particular Member States and were regulated in different ways. For these reasons, new minimum requirements could be detrimental to the market. From the perspective of investors – because they would need to follow some procedure to delist, which they haven't taken into account while making earlier investment. From the perspective of issuers – because while entering the market they thought, they were buying "two-way ticket". In case the new requirements were to be introduced, they should refer only to companies coming to the market after the new regulations went into force.

5. Transfer of listings

Small caps listed on regulated markets can find it increasingly difficult to comply with some regulatory requirements (such as the Transparency Directive[27], the Shareholders Rights Directive[28]). Furthermore, many midcaps on regulated markets can feel that their market capitalisation makes them candidates for SME Growth Markets. In such a case, quoted SMEs may consider a voluntary transfer of their shares from a regulated market to a market with a lighter regulatory burden (i.e. the future SME Growth Markets). However, such transfers may imply some investor protection issues[29] and can be difficult to organise for SMEs. In addition, the legal framework of such transfers can vary from one Member State to another.

Question 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
- ◉ Fully agree
- ○ Don't know / no opinion / not relevant

12.1 Please explain your reasoning.

If you answered affirmatively, please indicate examples of rules and their purpose:

Changing the market towards lower regulatory requirements should be possible only after giving the investors the possibility to sell the shares at a fair price. For this reason harmonised ruled for "translisting" seem to be appropriate solution.

On the other hand, SME Growth Markets should only be a step in the growth path of SMEs. When their capitalisation has grown, SME Growth Markets issuers should be encouraged to graduate to a main/regulated market, in order to benefit from greater liquidity, investor pool, and credibility. This would also help avoid situations of regulatory arbitrage where large corporates remain listed on SME-dedicated exchanges for the purpose of benefiting from exemptions. The question arises if the transfer of SME Growth Markets issuers to regulated markets should be required or incentivised (through regulatory measures) when those issuers have reached a certain size.

Question 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".

- required when the issuer exceeds some thresholds (such as the market capitalisation): **1**
- incentivised through regulatory measures when they exceed some thresholds (such as the market capitalisation): **3**

- always left to the discretion of issuers and not required or incentivised by regulatory measures: **5**
- Other (please specify below):
- Don't know / no opinion / not relevant

13.1 Please explain your reasoning and supporting arguments/evidence. When relevant, please indicate appropriate thresholds or possible incentives for SME Growth Market issuers to move to a regulated market:

SMEs are specific enterprises and usually the volatility in prices of their shares is much higher than in case of large caps (due to specificity of business models, more possibilities for changing the scale of business and as a result of lower liquidity). Moreover it should be noted, that in many cases their value not only raises, but sometimes also falls down quite rapidly. For these reasons any regulatory requirements forcing transfer between markets could result in moving in both directions. This would be not only burdensome for issuers, but also misleading for investors.

B. Alleviating the administrative burden on SME Growth Market issuers

Disclosure and transparency rules are the hallmarks of sound and fair market places. From the perspective of SMEs, those rules can be seen as burdensome and costly. It is critical to ensure that the benefits of being listed continue to outweigh the costs. If the standards are too strict, the resulting compliance costs may discourage listings by SMEs. On the contrary, if the standards are too lax, investor protection and confidence may be jeopardised and some investors might choose not to invest in SME securities. The objective of this sub-section B is to identify scope for reducing obligations placed on the future SME Growth Markets issuers while maintaining a high level of investor protection and market integrity on those markets.

Question 14. Please indicate whether you agree with the statements below:

Regulatory alleviations should be restricted to

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

Regulatory alleviations should be restricted to:

- SMEs listed on SME Growth Markets: **3**
- All SME Growth Markets issuers: **5**
- No regulatory alleviations should be granted for any kind of firm: **1**

14.1 Please explain your reasoning:

Introduction of regulatory alleviations only in relation to SMEs listed on SME Growth Markets seems to be the most logical approach, but in practice could create a lot of problems. There will be many SMEs, which – in consecutive years – will be up and down the threshold. Changing their regulatory requirements according to e.g. market capitalisation would be burdensome and could be misleading for investors. Moreover, in case SME Growth Markets list companies being subject to two different regulatory regimes, the investors could be even more misled.

For the above reasons, the best approach seems applying regulatory alleviations to all SME Growth Markets issuers. Having in mind, that – for obvious reasons – these markets will be less credible than exchanges, there is very limited risk, that big issuers will "hide" on Growth Markets and will deliberately avoid "translisting" to the regulated market.

Question 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".

- Management's transactions: **5**
- Insider lists: **3**
- Justification of the delay in disclosing inside information: **5**
- Market soundings: **4**
- Disclosure of inside information by non-equity issuers: **3**
- Half-yearly reports for SME Growth Market issuers: **2**
- Other (please specify below): **5**

15.1 Please explain your reasoning:

The most important MAR-related problems of SMEs are:

1. Extremely vague definition of "inside information". It is even more problematic, than in case of big companies for 2 reasons:

1.1. Small companies to not have their legal/compliance/investor relation departments and have no money to hire external advisors in this respect, they just focus their activity on earning money for their shareholders

1.2. In case of small company [let's repeat: as many as 159 listed companies (including 22 from Warsaw Stock Exchange and 137 from NewConnect market) have capitalisation below EUR 1 (one) million] any single business decision could be deemed important for investors, but it's not possible to run business reporting in real time on everything, what happens in the company

2. Sanctions not adjusted to the size of companies/earnings of managers:

2.1. In case of 285 Polish listed companies (including 47 from Warsaw Stock Exchange and 238 from NewConnect market) a single maximum sanction under MAR (EUR 2,5 million) is higher than their capitalisation

2.2. Single maximum sanction under MAR on natural person (EUR 1 million) is higher than annual compensation of almost all managers on the Polish market. According to PWC data for 2016 there were only 7 managers (out of almost 7000), who earned more than 1 million euro. In case od 120 biggest Polish companies average annual compensation was EUR 325,6 thousand, so even in this group the managers would need to work over three years for single maximum sanction.

If we assume, that manager's annual compensation is not higher than 1% of company's capitalisation (so assumption is extremely safe, comparing to the market reality), in case of managers of 462 issuers (including

109 from Warsaw Stock Exchange and 353 from NewConnect market) a single maximum sanction would be higher than their 10-year compensation.

3. Burdensome, humiliating and unnecessary (from the perspective of investors) requirement of maintain lists of closely associated persons. Art. 19 of MAR requires to gather from PDMRs very delicate information relating to their personal life. According to the data gathered by Polish NCA there are as many as 25200 closely related persons. On the other hand only very few of them (less than 1%) actually enters info transactions related to given issuer's securities. On the other hand, any infringement in the procedure is subject to a fine up to EUR 0,5 million for any person in the chain (eg. manager and his/her family members). Comparing to the size of companies and earnings of managers, such sanctions are like financial capital punishment.

For each of the following questions in sub-section B, you will be asked to provide cost estimates for the provisions you identified as burdensome, as well as estimate the reduction in costs for the alleviations you identified as meaningful.

1. Management's transactions (Market Abuse Regulation – Art. 19)

Under MAR, the Person Discharging Managerial Responsibilities (PDMR) or associated person must notify the issuer (either on a regulated market or an SME Growth Market) and the competent authority of every transaction conducted for their own account relating to those financial instruments, no later than three business days after the transaction. The obligation to disclose a manager's transaction only applies once the PDMR's transactions have reached a cumulative EUR 5,000 within a calendar year (with no netting). A national competent authority may decide to increase the threshold to EUR 20,000.

Issuers must ensure that transactions by PDMRs and persons closely associated with are publicly disclosed promptly and no later than three business days after the transaction. Alternatively, national laws may provide that a competent authority may itself make the information public.

Question 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
- ○ Don't know / no opinion / not relevant

16.1 Please explain your reasoning and provide supporting evidence, notably in terms of costs (one-off and ongoing costs)/time spent (number of hours)/number of people needed (in full-time equivalent)[1]:

The most burdensome requirement related to managers' transaction is the necessity of creating and updating the list of closely related persons. As a result of it, in Poland as many as 25200 persons have been identified, vast majority of them will never enter into any transaction on the market. Such a requirement is a huge cost to all market participants (including investors, who will ultimately cover financial and non-financial costs), while the benefits are very limited.

The costs related to keeping the lists relate to the following activities (figures below based on data collected by the Polish NCA, refer to 802 out of 832 listed companies, as of July 2017):

1. Identification of PMDRs (in case of Polish market 6900 persons, average per company: 8,6, mean: 8, minimum: 1, maximum: 66)

2. Notification to the PMDRs their duties, including requirement to identify their closely related persons (duty performed by 802 companies towards 6900 PMDRs)

3. Notification by the PMDRs (6900 persons) to their closely related persons, both natural (family and quasi-family members) and legal (to at least 25200 persons)

4. Notification by PMDRs' natural closely related persons to their legal closely related persons

5. Transferring by PMDRs the lists of closely related persons (legal persons, family/quasi-family members and legal persons related to family/quasi-family members) – altogether 25200 persons, average per company: 31,4, mean: 24, minimum: 0, maximum: 285

6. Keeping and updating all the documentation related to closely related persons.

The activities presented under item 1 above are easy, fast and important for investors. On the other hand, activities under items 2-6 are very difficult, take a lot of time and effort and are of no importance for investors. It's also worth to mention, that huge part of activities under 2-6 is contrary to Polish and EU regulations on protection of personal data.

Moreover, all of these 25200 persons are subject to extremely high fines (EUR 0,5 million for natural person and EUR 1 million for legal person), although usually they have nothing to do with capital market and – as a rule – they don't even understand the rationale of this regulation.

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

[1] In 2011, a study from EIM (Effects of possible changes to the Market Abuse Directive, p.39) estimated that for an SME, the annual average cost related to manager transaction reports was at EUR 135 per year (and 3 hours spent per issuer per year). In 2015, a study from Europe Economics (Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.59-60) estimated the one-off compliance costs for technical standards on management's transactions at between EUR 300 and EUR 500 for a small issuer and between EUR 3.400 and EUR 4.900 for a medium-sized issuer. The annual ongoing compliance costs were estimated at EUR 0 for a small issuer and at EUR 200 per year for a medium-sized issuer.

	I support	I don't support	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	Please indicate the appropriate notification period length		**[textbox]**
b) The threshold (i.e. EUR 5,000) above which managers of SME Growth Markets Issuers should declare their transactions should be raised	Please indicate the appropriate threshold		**[textbox]**
c) The national competent authorities (NCA) should always be made responsible for making public the managers' transactions			**[textbox]**
d) The trading venue should be made responsible for making public the managers' transaction			**[textbox]**
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)	Please indicate the appropriate time period length		
f) other (please specify)	**[textbox]**		

17 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

- (•) I support
- ( ) I don't support
- ( ) Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 a) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

Definitely, the current situation, where the deadline for obligated persons and for companies themselves is the same, creates a lot of problems with meeting this obligation. Three working days seems appropriate deadline, but it should be calculated as of the moment, the notification has been received by the issuer. If not, than the deadline for issuers should be extended to e.g. 6 working days, leaving the deadline for required persons unchanged.

17 b) The threshold (i.e. EUR 5,000) above which managers of SME Growth Markets Issuers should declare their transactions should be raised

- (•) I support
- ( ) I don't support
- ( ) Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 b) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

Definitely, raising the threshold to e.g. EUR 20000 would eliminate some burden related to notifying transactions, but the most burdensome part of this regulation remains keeping the lists of PMDRs' closely related persons see our response to question 16.1.

17 c) The national competent authorities (NCA) should always be made responsible for making public the managers' transactions

- ( ) I support
- (•) I don't support
- ( ) Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 c) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

Transferring the responsibility of notifications to other entity than issuer (e.g. NCA or exchange) would mean, that also the lists of PDMRs' closely related persons should be transferred (otherwise this entity would have no possibilities to verify, if this is real notification or an attempt to manipulate the market). Transferring such data (including a lot of details from personal life of managers and their families) would be perceived as even further violation of privacy.

17 d) The trading venue should be made responsible for making public the managers' transaction

- ( ) I support
- (•) I don't support
- ( ) Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 d) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

Transferring the responsibility of notifications to other entity than issuer (e.g. NCA or exchange) would mean, that also the lists of PDMRs' closely related persons should be transferred (otherwise this entity would have no possibilities to verify, if this is real notification or an attempt to manipulate the market).

Transferring such data (including a lot of details from personal life of managers and their families) would be perceived as even further violation of privacy.

17 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)

- (•) I support
- ( ) I don't support
- ( ) Don't know / no opinion / not relevant

Please explain your reasoning for proposal 17 e) and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

We would indeed support such an approach – see our response to question 17a.

17 f) Is there any other change or clarification to the management's transactions regime for SME Growth Markets that you would support?

Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

As far as management's transactions are concerned, the most important burden to issuers, PMDRs and their families is the need to keep and update the list of PMDRs' closely related persons. The simple solution would be to come back to pre-MAR situation, i.e. the obligation imposed on PMDRs to intermediate in transferring the information on the trades made by closely related persons to the issuer, which would mean, that the issuers would not be obliged to keep the lists of PMDRs closely related persons. See also our response to question 16.1.

Question 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 (one-off and ongoing) /in time spent (number of hours)/in number of people needed (in full-time equivalent) resulting from the alleviation[2]:

[2] In 2011, a study from EIM (Effects of possible changes to the Market Abuse Directive, p.39) estimated that for an SME, the annual average cost related to insider lists was at EUR 945 per year (and 21 hours spent per issuer and per year). In 2015, a study from Europe Economics (Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.59-60) estimated the one-off compliance costs for technical standards on insider lists at between EUR 300 and EUR 600 for a small issuer and between EUR 3.300 and EUR 5.800 for a medium-sized issuer. The annual ongoing compliance costs were estimated at between EUR 600 and 800 for a small issuer and between EUR 3.300 and 5.500 per year for a medium-sized issuer.

Due to delay of MiFID II application until 3 January 2018, the SME Growth Market exemption in MAR was not applicable. For this reason over 400 companies listed on NewConnect market had to introduce provisions concerning insider lists. According to the data gathered by the Polish NCA, 370 issuers introduced procedures for insider lists, out of which 270 companies introduced section of permanent access to inside information. Having in mind the complexity of provisions relating to insider lists on one side, and extremely small size of issuers concerned on the other (average capitalisation of EUR 5,6 million), it was a huge effort for them, definitely much more costly, than is worth for investors.

Question 19. Please indicate whether you agree with the statements below:

SME Growth Market issuers should be:

Please rate each proposal from 1 to 5, 1 standing for "completely disagree" and 5 for "fully agree".

- Obliged to maintain insider lists on an ongoing basis: **1**
- Obliged to submit insider lists when requested by the NCA (as provided by MAR): **5**
- Obliged to maintain a list of 'permanent insiders' (i.e. persons who have a 'regular access to insider information'): **3**
- Exempted from keeping insider lists: **1**

Would you have any other proposal as regards insider lists for SME Growth Market Issuers?

19.1 Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce:

In case of start-ups listed on Growth Markets there should be different definition of inside information. In case of such small companies any business decision in fact could be perceived by "rational investor" as information, which "could be taken into account while making investment decision". Such a vague and extensive definition is very dangerous while applied to very small companies (e.g. with the capitalisation below EUR 1 million).

So it is not only the problem of insider lists, but also of disclosure regime, which should be much lighter for start-ups than for large multinational companies. Unfortunately, MAR sets the same rules for all listed companies and is not taking into account their size.

3. Justification of the delay in disclosing inside information (Market Abuse Regulation – Art.17)

An issuer shall disclose the inside information concerning its financial instruments as soon as possible. The issuer can delay the disclosure of this information in certain cases in order to avoid harming its legitimate interests. However, once it discloses inside information, it must inform its NCA and justify the delay. Depending on the option chosen by the Member State, this written explanation justifying the delay should be provided: (i) in all circumstances, or (ii) only when the national competent authority requests it. The implementing legislation of MAR[33] requires that issuers deciding to delay the announcement of inside information record and document in writing a list of information ('disclosure record'), including – amongst many other facts and figures – the time and date when such information came to exist, when the decision

was taken to delay its disclosure, the identity of the persons who adopted the decision and are responsible for constantly monitoring the conditions of the delay, and the manner in which the prerequisite conditions for such delay were met.

Question 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".

- The written explanation justifying the delay to communicate inside information by SME Growth Market issuers should be submitted only upon request from the NCA: **2**
- SME Growth Market issuers should be exempted from the obligation of keeping a 'disclosure record': **5**

20.1 Please explain your reasoning and illustrate the impact in terms of cost (one-off and ongoing costs)/time spent (number of hours)/number of people needed (in full-time equivalent)[3]:

The MAR regulations relating delay of publication of inside information are very complicated even for big issuers. The regime for Growth Markets should be much lighter. Even if the issuer had to provide explanations only upon request, still this would require all the administrative burden to have documentation ready just in case it is asked. If we want to alleviate this burden, we would need to exempt small issuers from such obligation.

4. Market soundings (Market Abuse Regulation – Art. 11)

Market soundings are a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors35.

The market sounding rules could raise issues for SME issuers, in particular when they issue some privately placed bonds. Private placement transactions of debt instruments can sometimes take the form of listed bonds. This is the case notably in France ('Euro-PP' when issued in a listed bond format), in Italy (the so-called 'Mini-bond' markets) and in Spain (on the Mercado Alternativo de Renta Fija – 'MARF'). In general, such transactions are not subject to a prospectus requirement because they rely on the 'qualified investors' or high denomination bond exemptions. However, they do fall under the scope of market sounding rules as the privately placed bonds are admitted to trading on an MTF.

When a privately placed bond transaction is prepared, the goal is not to contact a few selected investors to identify certain specific terms of a transaction with a view to maximising its chances of success, but rather to identify potential investors with whom all the terms of the privately placed bond transaction (including contractual terms) will be negotiated. In the past, some Member States established an 'accepted market

[3] In 2011, a study from EIM (Effects of possible changes to the Market Abuse Directive, p.39) considered that, for an SME, the annual average costs related to administrative burdens related to reporting decision to delayed disclosure was estimated at EUR 1,755 per year (and 39 hours spent per issuer per year). For another cost estimate, see also: Europe Economics, Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.51.

practice' (under the Market Abuse Directive) recognising that private placements of bonds were outside the scope of market sounding rules36.

Question 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 / not relevant

21.1 Please explain and illustrate your reasoning, notably in terms of costs (one-off and ongoing costs)/time spent (number of hours)/number of people needed (in full-time equivalent):

Regulations on market sounding make placement of new instruments very difficult. Strict requirements should be alleviated at least in relation to private placement of bonds. Standard regulations relating to prevention of use of privileged information should be enough.

5. Disclosure of inside information for SME Growth Markets Issuers of bonds only

MAR has extended the scope of the market abuse regime to MTFs, including those where debt instruments are traded. Some market participants underline that plain vanilla bonds37 are less exposed to risks of market abuse due to the nature of the instrument. While the prices of equity financial instruments can be influenced by the publication of (negative or positive) inside information about the firm, the key variables that would impact the price of the plain vanilla bonds would be market risk, liquidity risk and credit risk. Bondholders would not be able to act on those variables while the only factor that could be influenced by the issuer is the likelihood of default. As a consequence, some stakeholders have argued that the disclosure of all inside information (either positive or negative) for debt issuers only would be burdensome and not justified.

Question 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".

SME Growth markets issuers that only issue plain vanilla bonds should:

- have the same disclosure requirements as equity issuers on SME Growth markets: **1**
- disclose only information that is likely to impair their ability to repay their debt: **5**

22.1 Please explain your reasoning and provide supporting arguments/evidence, in particular in terms of savings/reduction in costs, or in terms of additional costs, that any change of the currently applicable rules may induce[4]:

The information needs of investors on shares market and bonds market are very different. In fact, for bond investors the information disclosed should be limited only to information important for assessing the possibility to repay debt.

6. Half-yearly reports for SME Growth Market Issuers

The level 2 of MiFID II39 requires SME Growth Markets issuers to publish annual financial reports within six months after the end of each financial year and half-yearly financial reports within four months after the end of the first six months of each financial year. MiFID II does not prescribe the form that such financial reporting should take. Financial reporting provided on a half-yearly basis is usually welcomed by investors and contributes to attracting interest in the company. In practice, the vast majority of SME-dedicated markets already ask for the publication of both annual and half-yearly reports. However, some market participants have indicated that the publication of such half-yearly information represents a time-consuming and costly obligation for SMEs.

Question 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
- ☑ 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
- ☐ Other (please specify below)
- ☐ Don't know / no opinion / not relevant

Please specify what other possibility you would see for the obligation of SME Growth Market issuers to publish half-yearly report:

23.1 Please explain and illustrate your reasoning, notably in terms of costs/time spent (number of hours)/number of people needed (in full-time equivalent):

[4] See cost estimates on technical means for disclosure for public disclosure of inside information and delays (Europe Economics, Data gathering and Cost Analysis on Daft Technical standards relating to MAR, p.51 - https://www.esma.europa.eu/sites/default/files/library/2015/11/cost_analysis_u_for_final_report_on_mar_technical_standards_0.pdf).

Reporting in semi-annual intervals is burdensome and inclines towards short-termism. On the other hand, however, if we introduced light disclosure regime combined with lack of relatively "fresh" financial data, we would create very high risk for investors. Semi-annual reporting seems to be the minimum cost of listing.

C. FOSTERING THE LOCAL ECOSYSTEMS FOR SME GROWTH MARKETS AND ENHANCING LIQUIDITY

Public markets for SMEs need to be supported by a healthy ecosystem (i.e. a network of brokers, equity analysts, credit rating agencies, investors specialised in SMEs) that can bring small firms seeking a listing to the market and support them after the IPO. The decline of those local ecosystems that can cater to SMEs' specific needs impedes the functioning and deepening of public markets and reduces the willingness of SMEs to seek a listing. One reason behind this decline of ecosystems is often attributed to the low level of liquidity on SME-dedicated markets that can deter institutional investors from investing in SME shares and undermine the brokers' business model. As a consequence, this sub-section places a strong focus on how to foster liquidity on SME Growth Markets.

1. 'Tick size' regime of SME Growth Markets (Art. 49 – MiFID II)

MiFID II40 requires trading venues (including SME Growth Markets) to adopt minimum tick sizes (i.e. the minimum increment in which a security can be traded) in relation to equity and certain equity-like instruments, in order to ensure the orderly functioning of the markets and mitigate the risk of an ever-decreasing tick size. The level 2 of MiFID II specifies the minimum tick size regime which applies to those instruments depending on their liquidity and price level.

While lower tick sizes would contribute to the reduction in trading costs, tick sizes also have an impact on the spread between sellers and buyers of securities and consequently may influence the incentives of intermediaries (brokers) to trade those instruments and earn income from their activity. In the US, the low tick sizes are seen as a potential reason behind the erosion of the ecosystem for listing SMEs, since they allegedly undermined the business models of the mid-cap brokers. This is why a new pilot project of larger tick sizes for smaller caps has been introduced in the US41. Based on the preliminary results of this pilot programme, the US Treasury has recently recommended that the Securities Exchange Commission evaluate allowing issuers, in consultation with their listing exchange, to determine the tick size for trading of their stock across all exchanges42.

Question 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 **liquidity** of shares traded on SME Growth Markets						
Inpact of the minimum tick size regime on the **spreads** of shares traded on SME Growth Markets						

- Impact of the minimum tick size regime on the **liquidity** of shares traded on SME Growth Markets:
  No opinion
- Impact of the minimum tick size regime on the **spreads** of shares traded on SME Growth Market:
  No opinion

24.1 Please explain your reasoning and provide supporting evidence:

It is extremely difficult to provide strong evidence, while there is no possibility to gather comparable data. Even if the regulations are aimed at solving particular problem, the implementing and ongoing costs for the market can be higher than leaving particular problem unregulated.

Question 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".

- Market operators should be given the **flexibility not to apply** the minimum EU tick size regime on their SME Growth Markets: **5**
- Market operators should be given another form of flexibility as regards the EU minimum tick size regime on their SME Growth Markets: **5**

25.1 Please explain your reasoning and provide supporting evidence:

Since particular SME markets vary to large extent, the further flexibility offered to them in various aspects, the better. Local ecosystems devoted to SMEs evolved according to requirements of local regulations and local needs, while now universal approach is devastating decades of sustainable growth of local small firms providing services to local small issuers. These ecosystems should be kept and preserved similarly as in case of local food production. If we had strictly universal approach, we would have lost feta and camembert cheeses and many other local products. Fortunately we managed to preserve these local products and we should do our best to preserve local capital market products as well.

2. Creating a liquidity provision contract available for all SME Growth Market Issuers across the EU (MAR - Accepted Market Practice – Art. 11)

MAR prohibits market manipulation. Some practices are not qualified as market abuses where the transaction, order or behaviour was carried out for legitimate reasons and in accordance with an accepted market practice ('AMP') formally established by a national regulator.

For an accepted market practice to be established a national regulator must notify ESMA. ESMA then issues an opinion assessing whether the AMP would threaten market confidence in the EU's financial market. For the time being, only five Member States have tried to make liquidity provision contract recognised as an AMP under MAR. It means that liquidity provision contracts can still be qualified as a manipulative practice by certain competent authorities in other Members States. As a result, in 23 Member States, some SME Growth Markets issuers are deprived from the possibility to establish a liquidity contract with an investment firm. However, this mechanism could improve the liquidity of SME shares and attract the interest of new investors for SME shares, while creating more business opportunities for midcaps brokers.

Question 26. Building on the ESMA's opinion ('Points for convergence in relation to MAR accepted market practices on liquidity contracts' in May 2017), 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?

- Yes
- **No**
- Don't know / no opinion / not relevant
- Other

26.1 Please explain your reasoning and provide supporting arguments/evidence. If you answered affirmatively, please describe the conditions for such EU framework for liquidity contracts:

As pointed out before – the specificity of local SME markets should be kept untouched, hence the less universal rules, the better.

3. Free float requirement on SME Growth Markets

When an SME goes public, it is likely that there will be a low level of free float (i.e. the percentage of shares that can be freely traded)45. Limited free float may contribute to the low level of liquidity as it may limit the opportunities of day-to-day trading. To mitigate this risk, the listing rules of several SME-dedicated markets require companies to comply with free float requirements (expressed in a percentage of shares or in a fixed amount of capital, for instance) and/or a minimum capitalisation threshold before admitting SME shares to trading. Other SME-dedicated markets do not impose such requirements as this can make the listing unattractive for the company's owners. Currently MiFID II does not impose that SME Growth Markets impose a minimum free float (and/or a minimum capitalisation) criteria.

Question 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
- ○ Other (please specify below)
- ○ Don't know / no opinion / not relevant

27.1 Please explain your reasoning, notably on the advantages and disadvantages of the introduction – at the EU level – of minimum free float requirements. Specify appropriate criteria and thresholds if you consider that such minimum free float rule should be introduced and determined at EU level:

See our answer to question 25.1.

4. Institutional investors' participation in SME shares and bonds

There is a need to consider what can be done to diversify and grow the investor base for SME shares. The Commission has recently adopted regulatory initiatives to improve the ability of institutional investors to invest in SME shares. For example, the revised EuVECA regulation46 – recently approved by the co-legislators – allow EuVECA funds to invest in SMEs listed on an SME growth market. The recent European Long-Term Investment Funds (ELTIFs) shall invest at least 70% of their money in certain type of assets among which SMEs listed on regulated market or MTFs and with a market capitalisation below EUR 500 million. Finally, with regards to investments made by insurance companies, a recent amendment to the Solvency II Delegated Regulation47 (that came into force in March 2016) grants equities traded on MTFs (including the future SME Growth Markets) the same treatment as equities traded on regulated markets. However, some barriers to investment in SMEs may still exist.

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

There is a contradiction between prudential requirements related to investment by institutional investors (which promote large and liquid companies) and financing SMEs (which – by definition – are small and usually not liquid). Hence, in many instances the regulations (or supervisory incentives/internal rules/individual approach of particular managers/employees) calling for prudent investment, not intentionally prevent from investment in SMEs. The regulatory answer could be that in case of particular products (i.e. funds investing in SMEs), many requirements relating to market pricing, liquidity etc. could be abolished, not only in regulations, but also in supervisory/compliance approach. However, we should remember, that investment in SMEs will always be more difficult due to strictly market reasons – economics of scale will always make big investments cheaper than small ones.

5. Credit assessments and ratings for SME bond issuers

Credit assessments and ratings can facilitate SME access to bond markets. They contain valuable information for participants in corporate bond markets, influencing profoundly investment decisions. They help investors assess credit risk and hence price in the probability of default. Therefore, many institutional investors have concentration limits in their portfolios based on credit assessments and ratings and require bonds to be rated, preferably by a Credit Rating Agency (CRA) – as regulated by the Credit Rating Agencies Regulation.

However, many SMEs seeking to issue bonds are not rated by CRAs. The costs SMEs have to bear for obtaining a rating from a CRA can be disproportionately high when compared to the average size of the issue. In the past, investment banks operating in some Member States used to issue "unsolicited ratings on SMEs". This practice increased the transparency and visibility of SMEs towards some institutional investors but was not compatible with the CRA regulation, as those investment banks were not registered as CRA. The Commission is seeking views on whether some market players should be allowed to publish "unsolicited credit ratings" on SME Growth Market issuers, provided that those ratings would not be used by institutional investors (such as insurance companies and credit institutions) for regulatory purposes.

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

Banks and investment firms should be allowed to publish "unsolicited credit ratings" on SME Growth Market issuers. As these institutions are subject to strong regulation and supervision (in fact much stronger than CRAs themselves), there is very limited risk, they would do anything, that would harm the market.

SMEs usually are not covered by market analysts, there is very little research on them available, so additional information published by credible institutions would be very important for investors.

Question 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?

In case the ratings are issued by regulated and supervised entities (banks and investments firms), the risks related to such ratings seem to be much lower than in case of ratings issued by CRAs, due to better regulation and supervision of banks and investment firms. We do not have data available, but – to better understand the risk – it could be appropriate to compare the accuracy of "unsolicited credit ratings" and ratings issued by CRAs in the past.

GENERAL QUESTIONS:

Question 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".

- Criteria to define an SME Growth Market: **4**
- Market capitalisation threshold defining an SME debt issuer: **3**
- Key adviser requirement: **3**
- Delisting rules on SME Growth Markets: **3**
- Transfer of listings from a regulated market to an SME Growth Markets: **4**
- Transfer of listings from an SME Growth Market to a regulated market: **3**
- Management's transactions: **5**
- Insider lists: **5**
- Justification of the delay in disclosing inside information: **5**
- Market soundings: **4**
- Disclosure of inside information for bond issuers: **4**
- Half-yearly reports for SME Growth Market issuers: **2**
- Tick size regime for SME Growth Markets: **1**
- Liquidity provision contracts: **3**
- Free float requirements: **1**
- Institutional investors' participation in SME shares and bonds: **3**
- Credit assessments and ratings for SME bond issuers: **4**

Question 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:

The most important problem related to fostering listings of SMEs is not defining the criteria of SME Growth Market, but defining the rules, which will be applicable to issuers listed there. These rules should include:

1. Adjustment of sanctions to company size – possibility of imposing sanction much bigger than company capitalisation makes no sense, since there will be no possibility to execute such payment anyway. At the same time such threat of "death penalty" discourages many companies from listing. The maximum sanction

for SMEs should be not higher than in case of large companies, i.e. 2% of annual income. In fact – due to specificity of these companies – it should be lower, e.g. 1% of annual income. Obviously, additional requirement of disgorgement (equal to any profits made or loses avoided due to fraudulent activity) should be applied.

2. Adjustment of sanctions to value of compensation – possibility of imposing sanction much bigger, than given person would earn in his/her lifetime makes no sense, since there will be no possibility to execute such payment anyway. At the same time such threat of "financial death penalty" discourages many companies from listing and many managers from working for listed companies. The maximum sanction should be not higher than annual compensation. Obviously, additional requirement of disgorgement (equal to any profits made or loses avoided due to fraudulent activity) should be applied.

3. Clear definition of inside information – small start-ups do not have legal/compliance departments or money to hire external firms. They are just focused on making money for their shareholders. On the other hand, the smaller the company is, the bigger is potential for emerging inside information (at least in the meaning of wide and vague definition under MAR). In fact in case of start-ups any business decision could be deemed important for "rational investor" and it is not possible to run business in such disclosure regime. It should be noted, that vague regulations lead co very different approach at the level of particular companies – according to data gathered by the Polish NCA for the first year of MAR in place, the number of inside information identified during the first year of MAR was between 0 and 179! Moreover, they are not prepared to proper identification of inside information. As many as 406 issuers (50,6%) answered, that they identify inside information exclusively relying in Art. 7.1. MAR, although it is too vague to make any decision based on it. As many as 216 issuers (27%) were not even able to answer a question, whether – while identifying inside information – they take into account any other factors beyond Art. 7.1. MAR.

4. Clear regulations on delay in publication of inside information – justification and proving decision on delay is very complicated even for large companies. SMEs should operate in lighter disclosure regime, enabling publishing inside information only once it is sure and precise. Lack of clarity is a problem particularly for smaller companies, which was confirmed by the data gathered by the Polish NCA. Over the first year of MAR in force 104 companies decided to delay publication of inside information, but only 21 of them were listed on NewConnect market.

5. Exemption from the requirement to keep lists of persons closely related to PMDRs – in case of Polish market there are 6900 PMDRs (average per company: 8,6, mean: 8, minimum: 1, maximum: 66) and 25200 persons closely related to them (average per company: 31,4, mean: 24, minimum: 0, maximum: 285). Out of this number of closely related persons much less than 1% of persons makes any trades in securities related to to issuer. Consequently over 99% (or almost 25 thousand persons) have to disclose personal information (which – by the way – is contrary to Polish and EU laws on protection of personal data) and are subject to extremely high fines (EUR 0,5 million) – the money, they will not be able to earn during their lifetime – for any formal mistake.

***SEG** is an SRO gathering Polish listed companies since 1993. Our activities are focused on regulatory work, education relating to regulations and to proper communication with investors, as well as on assisting issuers in compliance and communication.*

For more information, please visit www.seg.org.pl