

CFA Institute and BETTER FINANCE Report on the Review of the Listing Rules in the EU With input from FESE

Executive Summary

Over the last two decades, the number of listed companies in the European Union (EU) and around the world has been in a constant decline. Particularly in the EU, only a minority of small and medium-size enterprises (SMEs) can easily access financing from the public capital market. This issue is crucial because SMEs account for 99% of all businesses in the EU.¹

On 7 December 2022, the European Commission put forward a legislative package (Listing Act) aimed at increasing the attractiveness of public markets and making capital more accessible to SMEs. The proposed measures initially intend to reduce the regulatory burden for SMEs and the costs associated with going public. In parallel, they seek to give the founders and controlling shareholders of European companies (initially targeting SME growth markets) greater flexibility in deciding how to allocate voting rights once the company's shares have been admitted to trading (i.e., introduction of a multiple-vote share structure directive).

In 2020, CFA Institute, the Federation of European Securities Exchanges (FESE), Accountancy Europe, and the European Bank for Reconstruction and Development (EBRD) jointly produced the European IPO Task Force, which included a series of recommendations to enhance European IPO markets and to provide a more flexible regulatory environment for SMEs looking to raise capital through public markets. That report, which was published before the outbreak of the COVID-19 pandemic, particularly recommended that the

¹See the European Commission's "Entrepreneurship and Small and Medium-Sized Enterprises (SMEs)" webpage: https://single-market-economy.ec.europa.eu/smes_en.

European Commission and the other European co-legislators adopt more proportional requirements for SMEs, better promote SME growth markets, and encourage the access of equity research on smaller companies.²

Reflecting on the functioning of listing rules in the EU and anticipating their revision through the European Commission Listing Act package proposal, CFA Institute and BETTER FINANCE carried out an informal survey with their respective memberships in the EU, while FESE provided inputs on the Listing Act package proposal (Prospectus Regulation, Market Abuse Regulation, and Multiple Voting Rights Shares Directive) that are relevant to certain themes of the above-mentioned survey. The aim was to gauge the initial views from different groups of organisations on the obstacles European companies encounter when trying to get funding through capital markets. Several solutions were outlined, and those could thus be expected to be put forth by policymakers and regulators to facilitate conditions for European companies and especially SMEs to more efficiently access capital markets for their funding needs.

The report starts by including the survey results from CFA Institute European local societies next to BETTER FINANCE member organisations (the European Federation of Investors and Financial Services Users). We therefore identify convergence points below.

Main Takeaways of the CFA Institute Survey Results

- The excessive costs of accessing public markets and the scarce integration of European markets represent the main obstacles to the development of capital markets in the EU.
- The current legislative framework on the prospectus should be revised. The procedures for scrutiny and approval of EU prospectuses need to be simplified and shortened to reduce the regulatory burden that companies experience when issuing new investment securities to the public.
- A single EU definition of SMEs would facilitate the role of regulators in adopting supporting measures for smaller companies across member states. The diverse nature of SMEs, however, makes it difficult for EU legislators to converge on a reasonable definition in the EU.
- Lack of liquidity and research coverage represent the two main reasons why investor participation in SME growth markets remains low.
- To encourage increasing SMEs' participation in public markets, policymakers should alleviate listing and disclosure requirements for SMEs and better support smaller companies through specific aid packages.
- More financial education initiatives for investors, companies, and financial advisers would have a positive impact on the level of investments in EU public markets.

²Accountancy Europe, CFA Institute, EBRD, and FESE, "European IPO Report 2020: Recommendations to Improve Conditions for European IPO Markets" (2020). www.fese.eu/app/uploads/2020/03/European-IPO-Report-2020.pdf.

- Multiple voting rights are not seen as a solution to the small amount of listings³ in the EU.
- Survey respondents are concerned that the disclosure requirements under the EU legislative framework on sustainable finance could cause an increase in greenwashing practices.

Main Takeaways from the BETTER FINANCE Survey⁴

- Primary markets are deemed to be falling far short of expectations in terms of raising capital for SMEs and creating sound and growing investment opportunities for EU households.
- Market fragmentation makes cross-border investment more complex, resulting in a lack of access to prospective investors for companies.
- Excessive listing costs linked to prospectus rules are seen as detrimental, both for companies and for investors because of the length, complexity, and legal verbiage diminishing their understandability. Fostering accessibility (digitally and also in English) under a page limit and with an investor-friendly document (summary revision) is necessary to present sound, key, and strictly relevant information to investors.
- Participants mostly caution against a single applicable EU definition of an SME for listing purposes because of the different realities of national markets, although guidelines would be beneficial. Rather, for investors, a common definition of 'shareholder' enabling cross-border operations (and rights) should prevail.
- SME growth markets (SME GMs) lack attractiveness because of a lack of equity coverage, cross-border information, or aid programmes. SME GMs should be encouraged in smaller markets, and clearer disclaimers on risk should prevail (e.g., on lighter reporting requirements).
- Market abuse rules are fit for purpose to ensure investor protection, market integrity, and attractiveness. Equal treatment of shareholders and transparency across all markets are primordial. Yet, introducing proportionality for SMEs' liability regime is acceptable.
- Multiple voting rights are opposed by a majority of small investors, while others are satisfied with specific national settings. Any EU-wide multiple voting rights shares (MVRS) directive is seen as unsuitable for promoting listings at the expense of shareholder equality and insiders' accountability.

³Only 34 companies were publicly listed in Europe in the first half of 2023. For more details and data, see "European IPOs Fall to Lowest Level since 2009," *Financial Times* (2 August 2023). www.ft.com/content/abaa645e-04c0-44fb-b963-ad24ab46f70d.

See also Association for Financial Markets in Europe, "Equity Primary Markets and Trading Report: European Market Data Update" (2Q 2023). <https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20Q2%202023%20-%20Equity%20Primary%20Markets%20and%20Trading%20Report-1.pdf>.

⁴See BETTER FINANCE, "BETTER FINANCE Position on the Listing Act Review—EC Package Proposal" (30 June 2023). <https://betterfinance.eu/publication/listing-act-review-ec-package-proposal/>.

- A European collective redress mechanism is needed to protect investors and make cross-border share ownership attractive via primary and secondary markets.

Convergences: Sweet Spots on the Review of Listing Rules (CFA Institute and BETTER FINANCE)

Analysing the responses from the members of CFA Institute and BETTER FINANCE, several key convergence points can be singled out. Both investment professionals and retail investors share the following views:

- MVRS are either considered unnecessary to encourage listing or unsuitable to boost investor confidence.
- The Prospectus Regulation would benefit from a review that would both reduce the regulatory burden and cost on issuers (standardisation, approval process) and facilitate investor information.
- A single EU definition for SMEs is difficult to reconcile with national markets' specificities and needs.
- SMEs need better coverage to address the lack of liquidity in SME growth markets while boosting investor participation.
- SME growth markets should be the main scope of revised legislation, whereby listing costs need to be alleviated, in addition to aid packages and improved cross-border information.
- Financial education programmes should be provided through various channels and for all investors. Financial education is deemed necessary to increase knowledge of primary (and secondary) market participation.

FESE View on the Listing Act Package Proposal⁵

The European Commission's review of the EU legislative framework for primary markets and its focus on strengthening access to European capital markets are much welcomed actions. European IPOs continue to face several obstacles, and joint efforts from policymakers and the industry are needed to reverse the decline in listing and the recent delisting trend. A thorough review of the main existing primary market legislation (i.e., the Prospectus Regulation, the Market Abuse Regulation, and certain provisions in the Markets in Financial Instruments Directive, or MiFID II) represents a good approach towards reducing regulatory costs and administrative burdens, as suggested by the European Commission. In addition, both the objectives of the proposed directive on multiple voting rights and its *de minimis* approach at the EU level represent agreeable components of the envisaged framework.

⁵See FESE, "Position on the Listing Act Proposal" (3 March 2023). www.fese.eu/blog/position-on-the-listing-act-proposal/.

Overall, although the European Commission has achieved a sound balance in many of its proposals and although progress has been made by the Council and Parliament, respectively, refinement is needed in some areas in order to effectively reconcile market integrity, investor protection, proportionality, and practicability.

CFA Institute and BETTER FINANCE Survey Results

The CFA Institute questionnaire was run between December 2022 and January 2023. Valid responses were provided by the members of advocacy and policy councils established by several CFA Institute local societies in Germany, Ireland, Italy, the Netherlands, and Poland. The BETTER FINANCE questionnaire ran among its members from November 2022 to February 2023. Valid responses were provided from national representatives of investors' associations established in Austria, the Czech Republic, Denmark, Germany, and Latvia. Targeted comments were also provided from members in Finland and Spain.

The survey was conducted before the release of the EC Listing Act proposal. The results provide granular insights from CFA Institute and BETTER FINANCE members. Starting with a general section covering perceptions of issues relating to EU equity markets, subsequent sections deal directly with the EU Prospectus Regulation, SME growth markets, the Market Abuse Regulation, investor protection and financial education, equity research, the current Listing Directive, multiple voting rights, and sustainable finance.

When directly addressing the EC Listing Act package proposal, we highlight reconciled positions of each organisation by presenting views from CFA Institute, BETTER FINANCE, and FESE.

General Section

Question 1 of the general section of this survey focuses on the functioning of EU public markets.

The question of barriers and issues impeding European companies' access to capital markets is also raised.

The majority of CFA Institute local societies responding to the survey feel either satisfied or neutral about capital market conditions in their own local market. Several issues, however, which are mentioned by some local societies in their responses to Question 2, should be addressed to better develop European capital markets.

Most BETTER FINANCE members are overall unsatisfied (from very unsatisfied to neutral) by the functioning of EU primary markets. Danish investors remain the most positive on market conditions, while Latvian investors are the most critical towards financial authorities. The lack of IPOs is a constant issue raised across all responding countries. Consequently, primary markets are seen as falling far short of expectations in terms of raising capital for SMEs and creating healthy and growing investment opportunities for households.

Question 2 of our survey asked respondents to rank, in order of importance, the main issues that have been negatively affecting the development of capital markets in the EU.

Among CFA Institute local societies, responses show that, despite EU legislators' efforts to make capital markets more attractive, high costs to access primary markets remain the main barrier. Such costs typically include banking, legal, consulting, and service provider-related charges. In particular, members from CFA Society Germany emphasised that these one-off costs are added to the recurring costs borne by start-up companies, and they are dramatically high. Such a situation has pushed growth funding to be relegated to shadier and less well-regulated sectors of the EU financial market. In addition, CFA Institute members underlined that European markets are still too fragmented and not very integrated. Respondents from CFA Society Italy remarked that the Italian market lacks investments in future growth prospects in the technology sector. Our Italian members pointed out that rather than further relaxing capital market requirements, the markets need to attract domestic and foreign institutional investors that can understand the potential of growth companies.

BETTER FINANCE members surveyed ranked the current listing rules as one of the main barriers to accessing public finance and associated these rules with high costs, as did CFA Institute local societies. Pointing towards high IPO costs for SMEs, respondents view the fragmentation of European markets as a second obstacle to cross-border investments: Issuing companies lack potential investors yet have to comply with complex rules. On the other hand, investor protection rules are seen not as excessive but rather as a pledge of market confidence, ensuring all stakeholders' integrity and trust.

Question 3 asked about the main factors impacting organisations in their decision to launch an IPO.

Most CFA Institute local society respondents believe that the high costs, reporting requirements, and risks associated with being listed have played an important role in the decline of IPOs in the EU market. Current market conditions, however, are also now a significant issue impacting public markets: High interest rates impacting valuations (using the discounted cash flow method) discourage company owners from launching an IPO, as potential listing prices are low.

For BETTER FINANCE members, the shortfall of IPOs as a funding resort for companies similarly lies in excessive costs (long and technical prospectuses) and is associated with a lack of competition in the accompanying market—financial auditors, legal advisers, and investment banking services—alongside high underwriting fees for reporting. In parallel, the lack of prospective investors (namely because of a lack of certainty, cross-border visibility, and engagement) was noted as a deterrent to IPOs' performance. Overall, in addition to these costs, the workload required may not be worth the risk of underperforming primary market funding, since access to investors (e.g., via information roadshows) also remains difficult across the EU.

Questions 4 and 5 of the general section of this survey referred to the current MiFID II/MiFIR regulatory framework on trading venues.

A plurality of CFA Institute survey respondents agree that the current legislative regime is not adequate to encourage listing in EU markets. Nevertheless, some rules concerning reporting obligations could be relaxed to facilitate listing for SMEs.

BETTER FINANCE's investors' representatives similarly stated that current rules could be improved to simplify frameworks in terms of trading venues' reporting, particularly to enhance SME growth market attractiveness. Quality mechanisms for listings should be guaranteed insofar as market differences exist within the EU. In markets such as Latvia, Austria, and the Czech Republic, emphasis is made on reinforcing national competent authorities' (NCAs') supervision over trading venues. In addition, trading platforms should facilitate market participants' access to relevant registries and data to encourage the visibility of IPOs.

Prospectus Regulation

Question 6 asked to rank, in order of importance, the areas of the Prospectus Regulation that regulators should reform.

A clear majority of CFA Institute local society respondents believe that the scrutiny and the approval process by the NCAs need improvement. The procedure for the approval of the prospectus should be simplified and quickened, because the current process is cumbersome and gives little benefit either to companies that are looking to get listed or to investors. For similar reasons, another top priority is to introduce conditions for exemptions from prospectus drafting. Finally, another relevant feature is the standardisation and framing of the disclosures, which would facilitate comparability between different prospectus documents.

BETTER FINANCE members began by stressing the need to enhance accessibility by reducing the prospectus's length and introducing English as the primary language. They advocate transforming the summary into a genuinely investor-friendly document and call for further standardisation to streamline approval and enhance scrutiny. However, they view cases of exemption from producing a prospectus not as a solution for easier market entry but as a potential risk to investor protection.

Question 7 surveyed respondents on whether the current regulatory regime on secondary issuances is fit for purpose.

Although most of the responding CFA Institute local societies did not have an opinion, a relevant number of members emphasised that simplified prospectus rules for secondary issuance can contribute to reducing the costs for issuers and facilitating access to new funds. In particular, respondents from CFA Society Poland suggested that regulators should exempt companies that have obtained a prospectus approval recently from going through a new thorough approval process for a prospectus document related to secondary issuances.

Similarly, BETTER FINANCE members believe that simplifying the prospectus for secondary issuances could be advantageous, particularly when justified by the appropriate—and limited—size of such issuances or of the issuer itself. Therefore, these facilities should primarily benefit SMEs. Certain members also highlighted a significant issue: Retail investors' access to secondary issuances is notably limited, primarily because these offerings tend to target institutional investors. This situation underscores the need to enhance retail investors' awareness and access, rectifying the current imbalance between institutional and retail participation.

CFA Institute Views on Secondary Issuances

With regard to primary issuances, CFA Institute appreciates the regulatory efforts to standardise and streamline prospectuses for primary issuances. The revision of the Prospectus Regulation would enhance comparability for investors and reduce costs for issuers, especially for SMEs. Nevertheless, further standardisation is necessary for prospectuses related to secondary offerings, as well as other types of prospectuses.

CFA Institute supports the creation of a European Single Access Point (ESAP), which would ensure EU-wide access of information disclosed by entities, including the information that securities issuers are required to provide under the Prospectus Regulation.

BETTER FINANCE View on the Prospectus Regulation

BETTER FINANCE supports the revision of the Prospectus Regulation and the aim to simplify its content and standardisation, enabling NCAs to achieve harmonised assessments for primary and secondary issuances. The proposed limitation of 300 pages for the prospectus to serve its legal purpose of investor information is welcomed, along with digital accessibility and the use of English as customary language. BETTER FINANCE calls for an overhaul of the summary prospectus to be designed as a truly 'investor-friendly' document.

FESE Viewpoint on the Prospectus Regulation

The prospectus (standard prospectus, follow-on prospectus, and growth prospectus) should be further standardised and harmonised across EU Member States. Also, a page limit for equity prospectuses should be established, and there should be an option to publish a prospectus in English only (except for the summary) as the customary language in international finance and only in electronic format. There should be a page limit to avoid excessively lengthy documents, as well as a standard for content, layout, and font size. The Commission's recognition of the need for page limit flexibility, for those complex businesses where more information is needed, is appreciated, along with the fact that the limit would not apply to non-equity prospectuses.

Exemptions in the context of secondary issuances would be welcomed, especially for fungible securities that are already admitted to trading on a regulated market or an SME GM. The exemption threshold of 40% of the number of securities already admitted to trading on the same market, as proposed initially by the Commission, for both regulated markets and SME GMs, is adequate.

The threshold at which offers of securities to the public are exempted from the requirement to publish a prospectus should include a single threshold, as proposed by the Commission, so as to maintain consistency and harmonisation as proposed throughout the Listing Act. There should also be policies in place to enable an issuer whose securities are admitted to trading on a regulated market or an SME GM continuously for at least 18 months to benefit from a simplified prospectus when raising further issuances and for migrating from an SME GM to a regulated market. The preparation of a simplified disclosure in connection with a secondary issuance is less burdensome and would be sufficient from an investor protection perspective. The follow-on prospectus could be used for this purpose.

In general, overall policy coherence between different legislation mandating ESG disclosures (e.g., Taxonomy Regulation) is needed, and imposing duplicative disclosures under different legislation should be avoided.

Growth Markets

Question 8 asked whether the current growth prospectus is fit for purpose.

Survey respondents from European local societies had split opinions; most respondents did not express a view. Members from CFA Society Poland, however, pointed out that the growth prospectus regime also needs to be further simplified to facilitate access to listing to SMEs.

BETTER FINANCE respondents noted that the scarcity of SME Growth Market (GM) IPOs hampers a robust evaluation. They emphasised, however, that the relatively higher risk associated with these IPOs should always be disclosed to investors. There is consensus on the need to enhance the visibility of such instruments, ensuring they are presented within a proper disclosure framework for retail investors. Two further trends emerge: In Germany, there is a call to better align the growth prospectus with other legally mandated disclosures as a common investor protection measure. Meanwhile, in Denmark and the Czech Republic, the current framework is viewed as reasonable, yet amenable, to bolster investor protection.

Question 9 looks at the ideal definition of SMEs in the EU.

CFA Institute local societies were asked whether they believe that having a single definition of SMEs at the European level would be beneficial and, if so, whether there is an appropriate capital threshold that regulators could set up. Most respondents argued that a common definition of SMEs would definitely make it easier for EU regulators to put in place programmes supporting small business throughout the EU. However, CFA Institute members from Germany and the Netherlands highlighted the diverse nature of SMEs across EU markets. Looking at only market capitalisation for the definition of an SME would be challenging, because an organisation could be considered 'small' in one market but seen differently in another market. CFA Society Netherlands suggested that, in addition to market capitalisation, regulators also could consider the amount of free float of a company in order to agree on a single definition of SME.

According to statements by BETTER FINANCE members, the need to define SMEs tends to differ depending on whether answers stem from a country where large-cap companies prevail. Overall, guidelines are deemed more useful over a rigid definition. The term 'SMEs' might hold different meanings in smaller countries and for investors aiming to invest locally, such as in Latvia. For others, factors such as the 'scope of activity', size, and growth prospects are the most significant considerations, as seen in Denmark. In Austria and Germany, stakeholders express a consensus on the utility of a standardised definition for SMEs. Moreover, the emphasis shifts significantly towards the need for a precise definition of 'shareholders'. Such clarity is viewed as crucial for establishing a status that affords equal beneficiary rights, thereby enhancing ancillary services and promoting cross-border engagement among investors.

Question 10 investigated the reasons why investor participation in SME growth markets in the EU remains low.

Overwhelmingly, survey respondents from CFA Institute local societies underlined that the scarce participation in these markets results from the lack of liquidity and research coverage. A few respondents, however, also mentioned the lack of investor demand in listed SMEs or the lack of attractive rates of return in SME GMs as additional causes. Members from CFA Society Ireland added that riskiness and overall volatility in investing in small-cap companies play a role in the low level of investor participation in SMEs.

Considering BETTER FINANCE members' views, the lack of attractiveness, liquidity, research equity coverage, and tax incentives are the main obstacles to fostering investors' participation in SME GMs. Moreover, differences in accounting standards (and thus reporting) and in disclosures must be considered. For respondents, investor demand is to be boosted by better cross-border information coverage of SME GM offers. The disincentives to retail investor participation are therefore linked to a lack of transparency, coverage, incentives, and protection.

Question 11 looked at the possible measures that EU legislators could put in place to encourage SMEs' participation in EU growth markets.

According to the responding CFA Institute local societies, the two most effective measures would be to (1) have lighter listing and disclosure requirements for SMEs aiming to get listed in growth markets and (2) introduce additional aid packages supporting SMEs participating in public markets. A few local societies also mentioned that the provision of specific business/investor monitoring schemes would represent another helpful regulatory measure facilitating SME listings.

BETTER FINANCE respondents predominantly favour appropriate risk disclosures next to lighter listing requirements. They also pointed towards a need for aid programmes and small business/investor monitoring schemes to foster SMEs' participation in GMs. Stimulating investment in SMEs could also involve encouraging investment in SME funds through tax benefits or by providing tax incentives to investors.

Market Abuse Regulation

Questions 12 and 13 focus on the limitations of the Market Abuse Regulation (MAR).

The CFA Institute local societies responding to the survey have split opinions. About half of the respondents believe that the current MAR requirements are appropriate and should not be relaxed. The other half claimed that the current regulatory regime is burdensome, because significant time and cost requirements make compliance with MAR challenging.

Furthermore, most of the respondents stressed that new guidelines clarifying the notion of 'inside information' should be produced by the European Securities and Markets Authority (ESMA). Slightly different is the view from CFA Society Poland members, who pointed out that a clarification of the definition of inside information should be part of the core of the MAR Level 1 legislation.

BETTER FINANCE members overwhelmingly consider MAR rules of paramount importance in continuing to attract and protect investors within EU capital markets. In some instances, MAR can be considered insufficient due to inequality of treatment between shareholders and a lack of scrutiny of the financial authority (Latvia). Other members, however, agree that MAR can lay burdensome requirements for both insiders and the issuer (Denmark, Czech Republic). Yet all participants stated that current provisions remain necessary to ensure trust, particularly for transparency requirements and equal treatment of shareholders. Thus, respondents consider that growth markets should equally be subject to most MAR provisions, where a proportionate liability regime could be introduced for SMEs.

As per the 'inside information' notion, overall, according to EU investors' representatives, ESMA guidelines should further clarify its remit and allow for adaptation (flexibility of case-by-case options), next to a general definition.

BETTER FINANCE Views on Market Abuse Regulation

BETTER FINANCE agrees with the new proportionality regime proposal for SMEs, which has the potential to prevent practices that discourage listing by providing greater financial confidence in the event of infringement. The perimeters of the 'inside information' must be carefully evaluated so as not to conceal information from investors. As regards the insiders' list, a proper upkeep should remain (current MAR Article 18) as a consistent risk management instrument. We share ESMA's concerns regarding a proposed 'permanent insider list' (further replacing any 'event-based insider list') to ultimately be a less effective monitoring tool. Consequently, issuers' liability and control will be diminished.

Regarding the delays in information disclosure, BETTER FINANCE is also concerned that the proposed changes grant excessive discretion to issuers regarding the 'reasonable expectation' timing for disclosure. This approach is seen as overly subjective and prone to varied interpretations, which could impact the effectiveness of the MAR review. We therefore advise against altering the current regime based solely on a single appraisal evaluation. Substituting it with guidelines that include a 'non-exhaustive list of relevant information' as set by the European Commission, which ties to the justification of an 'end result' under a 'prolonged process', could introduce new conflictual challenges.

For managers' transactions disclosure, BETTER FINANCE opposes increasing the threshold from EUR5,000 to EUR20,000, recommending a compromise

at EUR10,000 for EU harmonisation. This threshold could be doubled to EUR20,000 by NCAs, aligning with current rules accounting for national market considerations. Firmly rejecting the proposal to raise this limit nationally to EUR50,000, BETTER FINANCE argues that the proposed thresholds would impede market information essential for price formation and are ill-suited for SMEs' valuation needs.

FESE Views on Market Abuse Regulation

Market integrity and investor protection are central elements of well-functioning capital markets. In many cases, both are compatible with the introduction of further alleviations for market participants. The MAR framework is a centrepiece in achieving these objectives. The multiple measures proposed by the European Commission in the MAR review are welcomed, but there is further room for improvement in the pursuit of an effective and proportionate regime, the cross-market order book surveillance (CMOBS) mechanism proposal being a clear example.

The CMOBS mechanism is intended to allow NCAs to exchange order book data collected only from trading venues on an ongoing basis to detect market abuse in a cross-border context. Although effective cross-border surveillance is unquestionably needed, the mechanism would regrettably fall short of being an effective tool for market surveillance, both because of its inexplicably limited scope and because it does not allow for sufficient flexibility in its implementation.

On the need to ensure market integrity, it is essential that the mechanism also include order data from bilateral platforms, such as quotes and indications of interest from systematic internalisers (SIs) for the sake of market surveillance effectiveness across all existing regulated trading and execution venues.⁶

ESMA and NCAs will lack a complete picture of trading activities under the current Commission's scope. This is particularly concerning given the significant portion of trades made through bilateral trading systems, where transactions can be negotiated based on non-equal manipulated terms or be the result of potential insider trading. Receiving information from SIs on an ongoing basis is equally crucial to effectively determine whether market manipulative behaviour can be identified. In fact, the biased scope of the CMOBS mechanism is all the more contradictory when considering that MAR does not differentiate between execution venues (see scope under Article 2(3)), as well as the potential consequences of creating an unlevel playing field, as echoed by the European Economic and Social Committee in its legislative opinion.⁷

⁶See European Economic and Social Committee, "Opinion: Listing Rules for Public Markets (Listing Act)" (28 March 2023). <https://data.consilium.europa.eu/doc/document/ST-7875-2023-INIT/en/pdf>.

⁷Go to <https://data.consilium.europa.eu/doc/document/ST-7875-2023-INIT/en/pdf>.

There is room to facilitate the workability of the CMOBS mechanism, however, both for regulated trading venues and SIs within the scope, as well as NCAs, without undermining market integrity. This could be achieved, for example, by extending the implementation date from 12 to 24 months and by increasing the deadline for NCAs to exchange data. These extensions would make the implementation timeline more realistic and the ongoing functionalities more flexible for NCAs and the private sector. Similarly, the standardisation of order data formats should apply to all trading and execution venues, including SIs, for easier processing by supervisors.

Concerning insider lists, extending the SME GMs' alleviated format to all issuers, and subsequent ESMA supervision thereof, would reduce the burden on issuers and ease the information depth required in insider lists. In addition, the discretion of member states should not be present when it comes to lowering the threshold above which managers must notify their transactions. With respect to intermediate steps, the conditionality of 'misleading the public' is a source of unclarity and uncertainty, and it should not be ultimately retained in the regulation.

Investor Protection and Financial Education

The following two questions were about investor protection and financial education initiatives.

Specifically, Question 14 asked whether the current regulatory regime is fit for purpose or needs to be reformed.

CFA Institute local society respondents have mixed opinions on this question: Most of them suggest that EU legislators could create a separate regime of investor protection, which would include lighter requirements for professional investors (those having a certain level of wealth and knowledge in capital markets). A few respondents believe that current standards of investor protection should be reinforced, and ESMA should be entrusted with increased supervisory powers and investor protection powers and responsibilities.

According to BETTER FINANCE respondents, further harmonisation is necessary, as investor protection differs too widely across EU markets. The cross-border situation is viewed with criticism. Specifically, the need to develop a European collective redress mechanism and the strengthening of EU standards of investor protection rules were identified by most respondents. ESMA should also acquire more direct intervention power across national markets. Finally, a separate investor protection regime (with lighter requirements) would be welcomed, provided it builds on a strong knowledge assessment—for 'semi-professional' investors—and does not solely rely on disposable income thresholds or asset holdings.

Question 15 focused on the impact of financial education initiatives on the development of EU primary markets.

A significant majority of CFA Institute local societies responding to the survey believe that more financial education programmes for investors, financial advisers, and companies are necessary to enhance investments in EU primary markets. Survey respondents agree that the current level of financial education is insufficient for the development of these markets.

Unanimously, BETTER FINANCE respondents called for more investor education, as the current level remains too low, all the more to develop primary market participation. However, solving the investor education issue alone is not sufficient. There is also an overall need for training for investor advisers and better guidance for companies on the primary and secondary markets.

Equity Research

Questions 16 and 17 focus on equity research and the reasons why the level of research on small issuers has been diminishing.

The great majority of CFA Institute respondents believes that this situation was due to the implementation of the MiFID II unbundling rules on research, which seems to have caused unintended consequences on equity research coverage for SMEs in the EU. However, respondents from the Netherlands and Germany also cited the popularity of passive funds as another possible reason why equity research has gone down.

With regard to the suggested measures to tackle this issue, members from Germany, the Netherlands, and Poland believe that the MiFID II unbundling regime should be repealed, and investors should be able to pay research fees out of funds in the same manner as they were allowed before the implementation of the current legislative framework. Members from CFA Society Ireland underlined that declining equity research coverage is an ongoing trend for SMEs, and this trend is expected to continue without introducing any incentives for sell-side firms.

The issue of research coverage remains an open question, especially as it is difficult to obtain the right data to form a conclusive opinion on the actual impact of regulation on the creation and distribution of research. The industry has, probably naturally, felt that MiFID II's unbundling rules had an overwhelmingly negative effect on research coverage, which has also been largely the finding of successive CFA Institute member surveys in 2017 and 2018.

A careful analysis of the data, however, may point to a more subtle reality.

CFA Institute has released several pieces on the question, including a research article published in the *Financial Analysts Journal* in 2021 called "To Bundle or

Not to Bundle,”⁸ which reviewed the literature on the impact of regulation on the market for research. The key conclusions regarding the effects from MiFID II included the following:

- The observed effect on coverage was most significant for firms that were the largest, older, and less volatile and already had greater analyst coverage. In other words, one way to interpret this result is that the introduction of competition has rooted out inferior-quality research and reduced over-supply in some areas.
- All papers consistently found increased quality of analysts’ research papers following MiFID II introduction.
- The papers confirmed a tendency for European investment firms to internalise their research effort through an increased number of buy-side analysts, which could have an effect on the creation and dissemination of public information across markets.

CFA Institute is also finalising a research report that attempts to generate an empirical and purely quantitative analysis of the relationship between regulatory developments and research coverage across different markets around the world. Our preliminary findings are pointing to secular trends in research coverage that predate MiFID II unbundling rules, rather than an actual direct effect of regulation.

Nonetheless, this question is crucial, both for financial market development and for the capacity for innovative SMEs to find the right access to the capital they need to fund their growth. It is a question at the core of the reason why the EU is still working on the foundations of its capital markets union.

Many BETTER FINANCE members admitted that MiFID II unbundling rules on research have had unintended effects on the equity research coverage for SMEs and that better balance is needed. Besides, in a few instances, the popularity of passive funds is seen as having impacted equity research (in Austria), while this decline in equity research is seen as the continuation of an ongoing trend (Czech Republic). Other statements point out that lower trading fees make it difficult for many banks, especially in smaller markets, to justify a costly research analysis. Therefore, for retail investors, there is a need to identify alternate ways to promote EU equity research, for example through re-adjusted unbundling rules review, a revitalisation of professional research service in financial institutions with public rating agencies, or even clearinghouses that should contribute to supporting simple, quality analysis in small markets.

⁸See Micha Bender, Benjamin Clapham, Peter Gomber, and Jascha-Alexander Koch, “To Bundle or Not to Bundle? A Review of Soft Commissions and Research Unbundling,” *Financial Analysts Journal* 77 (Third Quarter, 2021): 69-92. www.tandfonline.com/doi/full/10.1080/0015198X.2021.1929687.

BETTER FINANCE Views on Equity Research

BETTER FINANCE acknowledges the necessity to boost SMEs' visibility in stock markets, but not at the price of a setback in transparency. The proposed 're-bundling' of equity research services costs should equally remain reasonable, and a 10-fold increase in such costs would be disproportionate. The unbundling would thus apply only to companies with quite high market capitalisation: above EUR10 billion (instead of EUR1 billion currently). The lack of transparent pricing for research services, on the one hand, and for execution services, on the other, may hinder effective competition between brokers using these services—and this to the detriment of retail investors. BETTER FINANCE calls on legislators to reassess unbundling rules appropriately.

BETTER FINANCE supports the development of 'issuer-sponsored research' in the EU. Such promotion must, however, be subject to strict labelling where ESMA should draft a robust, mandatory EU code of conduct and require its inclusion in the ESAP. The suggestion to implement a discretionary and voluntary code, pending approval by NCAs, is seen as a deviation from market standards, which could increase conflict-of-interest risks and potentially dissuade investors—and consequently diminish liquidity for SMEs.

Listing Directive

Question 18 asked opinions on the Listing Directive, which is the current legislative regime regulating the admission of securities to stock exchange listings and the information to be published on these securities.

Most CFA Institute local society respondents do not have a strong view on whether this legislation should be improved, repealed, or kept as it is. Members from CFA Society Poland, however, believe that the Directive should be amended or repealed in an attempt to encourage listings.

Each BETTER FINANCE respondent agrees that there is a need to amend the listing directive; however, any structural change would need to be proportionate and will take time to effectively affect the current market conditions.

Multiple Voting Rights Shares

Question 19 focuses on multiple voting rights and whether allowing this practice would encourage more firms to get listed on public markets.

A plurality of CFA Institute respondents believe that this measure would not have a great impact on the number of listings. In addition, many investors might be reluctant to invest in shares with fewer voting rights.

CFA Institute View on Multiple Voting Rights Shares (MVRS) Directive

CFA Institute argues that deviations from the 'one share, one vote' principle would further undermine investor protection. Allowing such deviations, minority shareholders would be prevented from having a say on critical decisions concerning their organisation, while controlling shareholders would benefit from easier control of the company.

We feel that an EU directive could, at least, consider introducing a standardised limit on the number of voting rights that can be granted per share. Such a measure would limit the abuse of this practice solely to enhance majority shareholders' control over their companies.

A large majority of BETTER FINANCE respondents dismiss the idea that MVRS would be a proper incentive for companies to seek listing. In fact, all respondents find potential deterrents in its cross-border implementation. Even members in agreement with current national-specific MVRS point out that it would undermine shareholder equality across the EU, as it may further diminish insiders' accountability towards small investors. Rather, equality under the 'one share, one vote' principle is stressed as fundamental by most respondents. For others, such incentive would only prove secondary (after cost consideration of IPOs) and would not enhance the primary market situation. Despite varying reasons for their opposition to MVRS harmonisation, investors' representatives unanimously agreed on the need to issue a clear warning about any potential unequal distribution of shareholder voting rights. Most of them also advocate for a framework with definitive limits and safeguards.

BETTER FINANCE Views on MVRS Directive

BETTER FINANCE strongly advocates for the 'one share, one vote' principle, ensuring equal rights for all shareholders regardless of their stake or company size. Introducing new share classes with enhanced voting rights would create discrimination among shareholders. The proposed MVRS Directive is deemed inappropriate, as certain member states already introduce such share classes based on market considerations and rules. We particularly disagree with the European Commission's '*de minimis*' approach, because it could create an uneven playing field among member states. Implementing various national safeguards may further undermine shareholder protection and democracy in the EU. Thus, we emphasise the need for a robust EU-wide safeguard framework, incorporating maximum-harmonised (mandatory) sunset clauses and limitations on enhanced voting rights.

FESE Views on MVRs Directive

As previously mentioned, both the objective of the proposed Directive on multiple voting rights and its *de minimis* approach at the EU level represent agreeable components of the envisaged framework. MVRs have been used in several EU countries and have been highlighted as an efficient control-enhancing mechanism. They are used to encourage companies to list without obliging owners to relinquish complete control of their companies. Promoting the possibility to design multiple-vote share structures across the EU could facilitate companies' transition from private to public markets and is a step in an extensive process to make EU capital markets more competitive vis-à-vis third countries. Introducing provisions into EU law for issuers who wish to benefit from this option is a welcome development.

Mature multiple-vote share structures are already in place in some EU countries, with different technical characteristics depending on the jurisdiction. For this reason, there should be an overall *de minimis* approach to the topic. Member states should adapt the EU regime to the needs of their local markets. In this context, it is also critical to avoid mandating specific additional safeguards at the EU level (i.e., the 'maximum voting ratio' as well as the one share, one vote rule in shareholders' resolutions) beyond the Commission's initial proposal, so as to avoid undermining the established status quo in certain member states or lessen the appeal of using multiple-vote structure for companies considering admission to public capital markets.

In general, it is important to ensure that the voting right structure is framed appropriately and that there are clear disclosures to the market. Member states are the appropriate legislators to adapt a high-level EU system to their local market needs and investor protection practices.

Although a multiple voting rights option would benefit SME companies the most, it is favourable that the option also extends to regulated markets. The extension to multilateral trading facilities (MTFs) in this context is also agreeable. Limiting multiple-vote structures to SME GMs only would discourage issuers with long-term growth strategies, as well as increase legal uncertainties as to what would happen to the main market after migration.

Sustainable Finance

Finally, Question 20 concerns the new EU rules on sustainable finance and, in particular, asked about the possible impact that the Sustainable Finance Disclosure Regulation and the disclosure requirements under the Taxonomy Regulation might have had on investor participation.

Most CFA Institute local society respondents argued that the EU legislation on environmental, social, and governance (ESG) disclosures might lead to more unintended consequences than positive results for investors. The new rules might lead to more uncertainty and confusion for investors when reading the

information published by organisations. A significant number of respondents also highlighted that this required information to be published by companies may generate more greenwashing practices.

CFA Institute will be conducting a specific ESG survey with its European members to gauge their latest views on the responsibilities that asset managers owe to clients in the context of integration of ESG factors in investment analysis and decision making, as well as to understand market participants' interaction with the EU regulatory framework on sustainable finance.

BETTER FINANCE respondents have mitigated views on ESG disclosure rules. Most acknowledge sustainable investing rules as ambitious, however prone to greenwashing practices. Because accountants and auditors now have a greater role and responsibility in analysing such disclosures, this may have led to confusion on the information companies provide. Respondents also highlight overlooked factors resulting from EU rules on ESG disclosures, which have shifted the focus more towards 'exclusion investment' rather than 'engagement investment' in the transition finance agenda. Furthermore, it is viewed as necessary to further tackle potential misconceptions on the relationship between ESG commitments and the potential for financial gains.

Highlight 1: The European Commission Listing Act

In December 2022, the European Commission issued three legislative packages aiming to strengthen the EU's capital markets union:

- A proposal to make EU clearing services more attractive and resilient
- A proposal to harmonise certain corporate insolvency rules across the EU
- A Listing Act package to alleviate the administrative burden for companies of all sizes, in particular SMEs, so that they can better access public funding by listing on stock exchanges

In this section, we focus only on the Listing Act package, which includes three separate proposals:

1. A proposal to amend the Prospectus Regulation, the Market Abuse Regulation (MAR), and the Markets in Financial Instruments Regulation (MiFIR)
2. A proposal to amend MiFID II and repeal the Listing Directive
3. A proposal on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market

The first proposal includes the following:

- Exemptions from the obligation to publish a prospectus for secondary issuances of securities fungible with securities admitted to trading on a regulated market or on an SME growth market

- A harmonised threshold for exempting small offers of securities to the public from the requirement to publish a prospectus
- More standardised and streamlined prospectuses for primary issuances of securities offered to the public or admitted to trading on a regulated market
- The replacement of the simplified disclosure regime for secondary issuances with a new EU follow-on prospectus, which would have a standardised format and sequence, have a page limit (when published for secondary issuances of shares), and be written in a language customary in the sphere of international finance
- The replacement of the EU Growth prospectus with a new EU Growth issuance document, which is mandatory, unless an exemption from the publication of a prospectus applies (however, SMEs and issuers on SME growth markets could still choose to draw up an EU follow-up prospectus)
- Accelerating and improving convergence of the scrutiny and approval of prospectuses by NCAs
- Narrowing the scope of the requirement to disclose inside information and clarifying what needs to be disclosed and when under the MAR
- Clarifying the conditions under which issuers may delay disclosure of inside information
- Clarifying the safe-harbour nature of the market sounding procedure under the MAR

The proposal amending MiFID II and repealing the Listing Directive includes the following:

- The introduction of conditions to label research as 'issuer-sponsored research': compliance with a code of conduct and with requirements for the content, publication, and review of such code of conduct
- The requirement that any research material that is paid by the issuer but not produced in compliance with such code of conduct must be labelled as a marketing communication
- The requirement that issuer-sponsored research must clearly indicate on the front page that such research has been prepared in compliance with a code of conduct
- New conditions for the admission of shares to trading on a regulated market, such as the requirement of having a minimum of EUR1 million of capitalisation and a 10% minimum free float for organisations seeking to list their shares on a regulated market

The proposal on multiple-vote share structures sets out the following:

- The requirements for member states to ensure that organisations may adopt multiple-vote share structures when seeking admission to trading of their shares on an SME growth market for the first time

- The possibility for companies to adopt multiple-vote share structures before seeking the admission to trading of their shares, in which case, however, member states may require that enhanced voting rights associated with multiple-vote shares can be used only after the admission to trading
- The obligation for member states to introduce appropriate safeguards to ensure the fair and equal treatment of shareholders and adequate protection of the interests of the company and shareholders that do not hold multiple-vote shares
- The introduction of disclosure requirements for companies that adopted multiple-vote share structures: Such disclosures include information relating to the structure of the company's share capital, the characteristics of the multiple-vote shares, and the presence of other control-enhancing mechanisms in the company. The requirements apply both at the point of admission to trading of shares and recurrently on an annual basis.

Sources

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European Commission, "Proposal for a Directive of the European Parliament and of the Council on Multiple-Vote Share Structures in Companies That Seek the Admission to Trading of Their Shares on an SME Growth Market" (7 December 2022). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0761>.

Highlight 2: The UK Financial Conduct Authority Proposed Listing Rules

In May 2023, the Financial Conduct Authority (FCA) proposed significant changes to the UK listing rulebook. The proposals aim to encourage an increasing number of companies to list in the UK market while improving transparency for investors to support decision making.

In particular, the FCA put forward the following:

- A single listing segment for commercial company issuers of equity shares, to replace the current distinction between premium and standard listing segments
- The removal of certain eligibility requirements that could deter early-stage companies from listing
- Simplified eligibility and ongoing rules requiring that a company has an independent business and has operational control over its main activities
- New rules on the need for listed companies to conclude a shareholder agreement with a controlling shareholder under a 'comply-or-explain' and 'disclosure-based' approach
- More permissive rules on the issuance of dual-class shares
- The removal of mandatory shareholder votes and shareholder circulars for certain transactions
- The removal of mandatory shareholder votes and shareholder circulars for related-party transactions, including the situation where the controlling shareholder is involved and a controlling shareholder agreement has not been concluded
- The possible merger for sovereign-controlled commercial companies into the single category for equity shares
- A single set of listing principles for the single listing segment

Together with these proposals, the FCA also introduced changes to technical standards, aiming to improve secondary equity markets. In particular, the FCA proposed the following:

- New rules improving the content of post-trade transparency requirements, which would allow market participants to better identify transactions that contribute to the price discovery process and enhance the consolidation of trade reports from diverse sources
- Simplifying the reporting of OTC transactions for all classes of financial instruments by eliminating the systematic internaliser criterion for establishing when an investment firm is required to report transactions

- Allowing UK trading venues to reference prices from non-UK venues where those prices are robust, reliable, and transparent
- The removal of size thresholds for orders benefiting from the order management facility waiver, which would allow trading venues to calibrate such orders based on the characteristics of the markets
- Improvements to the quality of execution by allowing trading venues to use the same tick size used by non-UK trading venues, where the latter are the primary markets in a financial instrument

Sources

Financial Conduct Authority, "Primary Markets Effectiveness Review: Feedback to DP22/2 and Proposed Equity Listing Rule Reforms," Consultation Paper CP23/10 (May 2023). www.fca.org.uk/publication/consultation/cp23-10.pdf.

Financial Conduct Authority, "Improving Equity Secondary Markets," Policy Statement PS23/4 (May 2023). www.fca.org.uk/publication/policy/ps23-4.pdf.

Highlight 3: The ECON Report Vote on EC Listing Act

In October 2023, the Committee on Economic and Monetary Affairs (ECON Committee) of the European Parliament (EP) amended certain provisions of the EC Listing Act package proposal.

In this short section, we update the main changes made to the EC proposal presented above.

Prospectus Regulation:

- The exemption threshold for producing a prospectus has been reduced. Member states may exempt issuers from publishing a prospectus for an amount of less than EUR5 million per issuer or offeror over a 12-month period. However, member states may increase the threshold to EUR12 million by notifying the EC and ESMA.
- A seven-page limit is imposed for the prospectus summary, for which ESMA should provide guidelines to ensure clear and user-friendly information standards.

The vote amending MiFID II and repealing the Listing Directive includes the following change:

- The conditions to label research as 'issuer-sponsored research' are more stringent; such research should comply with a code of conduct (regulatory technical standards to be drafted by ESMA) and requirements for the content, publication, and review of such code of conduct.

The vote on multiple-vote share structures sets out the following:

- Member states shall ensure that organisations may adopt multiple-vote share structures when seeking admission to trading of their shares for the first time. This now includes all primary market venues (SME GMs, regulated markets, or MTFs).
- Additional standard EU safeguards are introduced, including maximum enhanced voting ratio and impact limitations restricting the use of enhanced voting rights on shareholder resolutions and ESG-related decisions.
- Further safeguards remain at the discretion of member states and are mandated to ensure the fair and equal treatment of shareholders and an adequate protection of the interests of the company and shareholders that do not hold multiple-vote shares.
- Additional disclosure requirements for multiple-vote share structures are introduced: for example, a new stock name that ends with the marker 'WVR'.
- Other disclosures include information relating to the structure of the company's share capital, the persons holding enhanced voting rights, the characteristics of the multiple-vote shares, and the presence of other control-enhancing mechanisms in the company. The requirements apply both at the point of admission to trading of shares and recurrently on an annual basis.

The vote on MAR:

- The rules on disclosure of insider dealing (executive transactions) have been adjusted to a maximum threshold of EUR20,000. However, NCAs are empowered to lower this threshold to EUR10,000, where justified.

The vote on MiFID II:

- The adjustment of the threshold for the unbundling rules has been entrusted to the European Commission, which will have to carry out a more in-depth assessment. This should give investment firms greater flexibility in the way they pay for execution and research. New transparency requirements are imposed: client information and record-keeping of research and execution fees, including annual reports on these payments.

The vote on MiFIR:

- The monitoring of order data for market activity surveillance now encompasses both multilateral and bilateral trading systems.

Conclusion: Continuing Discussion

The vote of the EP ECON Committee report marks the start of a trilogue phase with the Council and the European Commission. The ECON report presents a more balanced approach than that of the European Commission on key elements (MAR, MiFID) while going further in implementing changes (Prospectus Regulation and Directive), as well as addressing contentious points regarding the introduction of a Directive on Multiple Voting Shares. Overall, the current compromise text seems to strike an agreeable balance among our three organisations, with the notable exception surrounding the introduction of a Directive on Multiple Voting Shares. Therefore, the legislative debate would merit further consideration of the views of key stakeholders. In addition, the forthcoming specifics on envisaged guidelines and delegated acts and, in particular, on ESG-related information have yet to be fleshed out.

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The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives, and commodities through 16 Full Members and 1 Affiliate Member from 30 countries.

At the end of February 2024, FESE members had 7,181 companies listed on their markets, of which 18% are foreign companies contributing towards European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium-sized companies across Europe to access capital markets; 1,461 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their regulated market and MTF operations, FESE members are keen to support the European Commission's objective of creating a Capital Markets Union.

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