

AMAFI – Position Paper EU Listing Act Improving companies access to EU-27 financial markets

About AMAFI

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

The sanitary crisis and Brexit have underlined the necessity for the Union to develop and strengthen its Open Strategic Autonomy, especially in the financial sector area where financial markets have a major role to play. In this context, the relaunching and deepening of the CMU project is crucial to finance European companies, but also to support the fight against climate change, the digitalisation of the Union's economy and its adaptation to the ageing of populations.

The Covid-19 health crisis, through its severe impact on the EU-27 economy and the induced surge of debt, has further increased the need for the EU to bolster its market-based financing capacity.

With regards to EU companies' financing and especially SMEs, AMAFI agrees with the European Commission that unlike in the United States, they rely too much on bank credit, which could seem paradoxical at a time where the strengthening of the prudential framework of banks creates important constraints. Encouraging the European economy's financing model to evolve towards a more intense use of the financial markets, both equity and debt, is therefore of the utmost importance to increase EU companies' access to funding.

In this context, AMAFI supports the objective highlighted in the [2020 Capital Markets Union Action Plan](#) "to make companies more visible to cross border investors, better integrate national capital markets and facilitate their access to market funding".

While the EC reflexions around regulatory reforms are at an early stage, AMAFI considers that key objectives should be to reinforce the competitiveness of EU actors and the attractiveness of EU financial markets. These objectives should be considered as important as consolidating financial stability, market integrity and investor protection in the Union.

This is all the more necessary as the UK is making significant changes to its regulations for listing with for instance the recent decision of the British authorities to lower the free float requirements from 25% to 10%¹.

With this in mind, AMAFI welcomes the European Commission's initiative to consult on its upcoming legislative proposal to facilitate access to capital to EU corporates and in this paper would like to highlight the core priorities from its response.

¹ <https://www.fca.org.uk/news/press-releases/fca-confirms-new-listing-rules-boost-growth-and-innovation>

Overview of AMAFI core priorities

File	Key message
MiFID II	<p><i>Product governance rules</i> Removing ordinary shares and plain vanilla bonds from the scope of the product governance regime</p> <p><i>Financial research & sponsored research</i> Promoting the development of sponsored research in EU legislation with the objective to provide investors with guarantees equivalent to those provided by non-sponsored research</p> <p><i>Definition of SME</i> Enlarging the definition to include all companies with a market capitalisation of less than 1 billion Euros (currently 200 million euros).</p>
Prospectus	<p>Simplifying prospectus where deemed necessary while preserving appropriate investor information. Alleviation should not be considered as an option.</p> <p>Harmonizing market practices and interpretation by NCAs' through the development of ESMA guidelines on intelligibility of prospectus</p>
MAR	<p>Alleviating the insider list regime regarding the content of the lists and some mandatory fields on personal data of the included persons</p> <p>Maintaining the rules on the prevention and sanctioning of market abuse given their role in contributing to confidence in the markets. Excepted for the maintenance of insider lists and for issuers of vanilla bonds who should be exempted from the publication of inside information</p> <p>Excluding investment products from the scope of market soundings</p>

I. Introducing a more proportionate approach for MiFID II Product Governance rules

We welcomed the alleviation of the product governance requirements for corporate bonds with no other embedded derivative than a make-whole clause and for bonds for eligible counterparties as per the [MiFID II Quick-fix](#) dispositions. However, we consider that all ordinary shares and plain vanilla bonds issuance are similarly important for the financing of companies and should be exempted based on the following arguments:

- (i) These products are not issued to serve additional (retail) investors' needs and objectives or address particular risk profiles unlike structured products for instance that offer solutions that can be adapted to the needs of each investor, particularly in terms of strategy, risk/return profile, maturity or nominal invested;
- (ii) The role of the investment firm in an IPO is not to define the objectives and investment needs of the targeted clients that the product is intended to meet, but rather to assist the issuer in structuring its introduction;
- (iii) The added value of product governance requirements for vanilla products is, in principle, very low or non-existent in the primary market.

This is all the more important with the upcoming implementation of ESG provisions in product governance as investment firms will soon have to analyse the “greenness” of a product according to the expectations of the final investors in this matter (target market) even though these provisions are inadequate with the investment service provider’s role in an IPO.

II. Enabling better market valuation and higher capitalisation of SMEs

One of the main factors of insufficient valuation and capitalisation of SMEs is the lack of liquidity of SMEs’ securities due to poor visibility amongst investors. Institutional investors struggle in building up large enough positions in SME securities. They are drawn to a limited number of SMEs which reach sufficient liquidity to make it eligible to an index to which investment funds are benchmarked. SMEs also suffer from a lack of visibility notably due to a low coverage in financial research.

In AMAFI’s view, the following would help promote better market valuation and higher capitalisation of SMEs:

- (i) Maintaining high standards of investor information;
- (ii) Promoting financial research, including sponsored research;

a. Maintaining high standards of investor information

Good investor information is key in building trust in the capital markets and in enabling investors to make informed investment decisions, especially in SMEs for which available information is scarcer.

We consider that the current prospectus regulation is not a barrier to SMEs access to capital markets. Therefore, it does not seem appropriate to extend the exemptions to the publication of a prospectus as proposed in the EC consultation paper, rather its content should be adjusted where necessary. The proportionality of the issuer's obligations to its size (which already exists) should not be at the expense of good investor information. However, certain burdens and costs can be removed without harming appropriate investor information. As such we consider that (i) no new prospectus for secondary issuances should be required and that (ii) the definition of an SME under art. 4.13 of MiFID II should be enlarged to include all companies with a market capitalisation of less than 1 billion Euros (currently 200 million euros). That latter change seems like a reasonable compromise between facilitating access to capital markets for smaller issuers and preserving good investor information through a prospectus.

Besides, technological development and more precisely the dematerialisation of prospectus makes it possible to reinforce investor protection by offering more fluid and more rapidly accessible information. It is nevertheless necessary to ensure that the information remains correct, clear and not misleading while promoting technological advances. We believe that market practices and interpretation by NCAs should be further harmonised and call on ESMA to be given a mandate to set guidelines related to the intelligibility of prospectus.

b. Promoting financial research including sponsored research

The availability of financial research is a key factor in attracting investors because it provides them with analyses developed by financial experts which can inform their decision process. The more research papers are available for a given issuer, the more comparisons investors can make.

MiFID II rules have severely weakened the economic model of SME spontaneous research, by cutting the cross-subsidisation relation that used to exist between (i) execution and research and (ii) research on blue chips and research on SMEs. This has made SME research hardly viable in the many instances where the universe of potential investors is too narrow. As a consequence, the recourse to issuer sponsored research, which was already a well-established practice has significantly developed since January 2018 with the entry into force of MiFID II and has become a significant part of the SME research coverage. As an example, to date, AMAFI members have signed over 350 sponsored research contracts with issuers, and it is anticipated that this number is going to increase in the coming years.

We believe this alternative model should be enshrined in EU legislations as it provides investors with guarantees equivalent to those provided by non-sponsored research. It is also important that new sources of revenues of research – including academic research – should find public funding through the EU to counterbalance, post Brexit, the weight of academic research around financial markets in the UK.

The approach to issuer-sponsored research should be based on the following reasoning:

- (i) Issuer-sponsored research provided that the research provider strictly complies with the current MiFID II and MAR rules can be qualified as investment research.
- (ii) Issuer-sponsored research could be distributed through the same channels as non-sponsored research, as agreed between the producer and its clients.

III. Removing unjustified cost and administrative burdens

We support ESMA's recommendation in its [MAR Review Report](#) to allow issuers and persons acting on their behalf (notably financial intermediaries) to include in their own insider list only one natural person per external provider through which they access to inside information.

Furthermore, we believe that the insider list regime should be alleviated regarding the content of the lists and some mandatory fields on personal data of the included persons. The information required in those fields could rather be transmitted to the supervisors upon request if needed. In addition, the insider list regime should be completely repealed for issuers listed on SME growth markets.

On the contrary, the rules on the prevention and sanctioning of market abuse are not burdens to the access to capital markets. These rules have the important merit of contributing to confidence in the markets. We are not in favour of amending them except for the maintenance of insider lists and for issuers of vanilla bonds only that should be exempted from the publication of inside information since only information that jeopardise the issuer's ability to redeem the bonds can have an influence on these bonds.

With regards to market sounding, we call for the provision in the [SME growth markets regulation](#) whereby "*communication of information to those qualified investors for the purposes of negotiating the contractual terms and conditions of their participation in an issuance, shall not constitute a market sounding*" to be extended to all financial instruments and not only to bonds.

The market sounding regime should not apply when there is no risk of inside information. Investment products should be excluded from the scope of market soundings since for those, the sole objective of discussions conducted by the issuer (or its advisors) with potential investors is to facilitate matching investors' expectations and do not embed any risk of disclosure of inside information. At least such scope should exclude contacts with investors aimed at adjusting the issuance terms of an investment product.

