afme/
Finance for Europe

Summary of recommendations

EU Listing Act

March 2022

Overall functioning of the EU regulatory framework for company listings

As the EU competes with other global markets to attract company listings, attractive and harmonised listing rules on EU public markets are vital to support crucial access to market finance for EU companies, while retaining strong levels of legal certainty, transparency and investor protection.

Features of the existing regime that are unclear, inconsistent across EU markets, disproportionately burdensome on issuers and/or which fail to provide adequate reassurance to investors should be reviewed in order to achieve a more consistent approach to regulation across the EU.

AFME members have identified targeted recommendations in a number of areas – Listings Directive, prospectus regime, MAR, MiFID and SPACs – that have the potential to boost the competitiveness of the EU markets for listings, while benefitting retail investors, businesses already listed in the EU and new entrants.

Listing Directive considerations

We consider that adjustments with respect to multiple voting right share structures and free float requirements would be highly valuable.

Recommendations

1) **Lowering free float requirements (e.g., to a 10-15% threshold)** while maintaining national discretion to depart from the recommended threshold would allow EU companies to pursue IPOs more easily.
2) **Multiple voting right share structures, subject to the appropriate checks and balances**, have the potential to attract founder-led high-growth companies looking to list.

Prospectus regime considerations

In AFME's view, the importance of high quality disclosure justifies the cost and effort of producing a prospectus. We support enhancements to the regime to focus on ensuring that prospectuses are only required where necessary and that, when required, their content is relevant for their purpose.[1] Regulatory reforms should also be directed at streamlining and making prospectus approval processes by authorities more consistent and predictable.

Recommendations

1) **Retain the 20% prospectus exemption**, as an issuance of this size implies a transformative change to the issuer's capital structure, business and/or balance sheet, and a prospectus acts as a protectionary tool. Any relaxation of this requirement is contingent on adequate disclosure being made available to investors in accordance with prospectus standards (e.g., via a shelf registration document regime such as the Universal Registration Document (URD) regime).
2) **Increase the threshold for the exemption for preparing a prospectus from EUR 8,000,000 to EUR 20,000,000.** This would benefit both retail investors, who would gain greater access to listed companies, and businesses, who would be able to raise larger amounts of capital from retail investors.
3) **Do not impose any arbitrary restriction on the length of a prospectus**, or the continuation of a recovery prospectus, as it would unduly constrain issuers, in particular those with complex businesses requiring detailed disclosure.
4) **Promote a single civil liability regime across Member States.** This will reduce legal uncertainty when determining whether a prospectus is complete and correct and enable a single capital market.
5) **Adopt a flexible approach with respect to third country prospectuses.** Equivalence should be determined at the EEA level rather than any further work on the national level.

[1] For further details on AFME's views, please refer to our response to the European Commission's targeted consultation on the EU Listing Act.

Market Abuse Regulation (MAR) considerations

We recognise that the work carried out by the Technical Expert Stakeholder Group in their report is looking at alleviating burden for issuers on SME growth markets, but are concerned that creating a dual approach compromises the market abuse regime, introduces operational complexity for firms and undue distortions between companies.

Recommendations

1) **Simplify the approach to insider lists for all market participants**, to avoid operational burdens and ensure that only essential information for identification purposes is included.
2) **There is no need for Market Soundings Regime, set out in Art.11 MAR, to be made compulsory.** Most EU participants use this regime in order to protect themselves against any allegations of unlawfully disclosing inside information. It is disproportionate and unnecessary to compel participants to do so, especially where no inside information is being disclosed.
3) **Review certain disclosure requirements for investors recommendations** for instruments traded on all markets for wholesale clients, rather than just those instruments admitted to SME growth markets.

MiFID Equity Research Regime for SMEs considerations

Given that the recent research regime adjustments only came into force in February 2022, we believe is too early to make an assessment of the efficacy at this juncture. However, we take the opportunity to present some proposals which we believe will increase SME research.

Recommendations

1) **Pre-IPO/transaction research should be able to qualify as a minor non-monetary benefit.**
2) **Clarify that all content** – not solely FICC macro-economic content – **made available to investment firms who would like to receive it, or to the general public, is not an inducement** and can therefore be received free of charge.
3) **Rules on issuer-sponsored research work well and need no further clarification.**

Special Purpose Acquisition Companies (SPACs) considerations

Under the right circumstances, and with the shares and warrants not to be offered at IPO to retail investors, AFME members support SPACs as a valid alternative to traditional IPOs.

Indeed, SPACs can attract fast growth companies in innovative sectors across Europe, by providing multiple advantages such as private equity-like investment with downside protection; automatic liquidation if no acquisition with predefine time frame; equity exposure through cash investment; alignment of interests through sponsor capital at risk; access to incentivised best-in-class sponsors; and opportunity to participate in mid-term investments in private operating companies.

Recommendations

1) **European NCAs should seek increased harmonisation across the prospectus disclosure regime** in order to minimise opportunities for regulatory arbitrage. We would also welcome delegated acts and/or technical standards to be developed by the EC in consultation with ESMA, and/or Level 3 guidelines to be developed by ESMA in this area.
2) **Shorten the period between the announcement of a de-SPAC/Public Investment in Public Equity and the completion of the related business combination**, by shortening the time required for the review and approval of a prospectus and potentially the notice period for the general meeting.
3) **Further EU and member state level guidance on the application of AIFMD to SPACs.**
4) **Reduce the liability regime for "profit forecasts" and "forward looking statements" published in prospectuses generally**, to encourage the willingness of market participants to share this information with investors in European SPACs.

Contacts

AFME London
Gary Simmons, Gary.Simmons@afme.eu
Oscar Newman, Oscar.Newman@afme.eu

AFME Brussels
Pablo Portugal , Pablo.Portugal@afme.eu
Carolina De Giorgi, Carolina.Degiorgi@afme.eu

About AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76. Information about AFME and its activities is available on the Association's website: www.afme.eu.