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Response to Green Paper on

Long-Term Financing of the EU Economy

1 July 2013

1. INTRODUCTION

We welcome the publication of the Green Paper and the opportunity to respond on behalf of companies quoted on the European exchanges, which are subject to financial regulation in their capacity of issuers of securities.

We are interested in the link between job creation and the ability of public markets to finance companies and enable them to grow. The focus of EU policymakers in recent years has been on the financial crisis and on the secondary markets, but we believe that the health of the primary equity markets is an essential indicator for the health of the capital markets as a whole, particularly in terms of markets' ability to deliver value to the real economy.

We are concerned that some of the regulation to combat the financial crisis may significantly increase the costs for issuers including non-financial corporates and that costs will continue to increase. A report from McKinsey[1] states that "the advantages of investing in listed equities are being questioned" and that "companies could see the cost of equity rise over the next decade... A shift away from equity in the global financial system is an important trend and, in our view, an unwelcome one. Equity markets have enabled growth by efficiently channeling money to the best-performing companies, including rapidly growing enterprises that drive economic growth".

We note that IPOs have dramatically declined in recent years and that trade sales are a more exit popular route for investors in unlisted companies.

We believe that action at EU level is required to rectify the situation.

[1] The emerging equity gap: Growth and stability in the new investor landscape dated December 2011

2. RECOMMENDATIONS

We respond below to the individual questions, but our key recommendations to EU policymakers are as follows:

Development of EU funding options:

- Develop additional EU funding options such as: private placement, covered and project bonds, crowdfunding, securitisation, fund of funds regime for venture capital, pooled investment vehicles, platforms and optional savings model (Q8, 9, 11, 14, 15)

Focus on end users of markets and connecting companies with end investors

- Develop long-term measurements of the cost impact of EU regulation and of financial intermediation against delivery for end users[2] not market intermediaries (Q10)

- Review disincentives as well as incentives in corporate governance – consider factors which prevent reward for fundamental analysis (see comments under 3.10)

- Promote stewardship codes for institutional investors and move away from emphasis on quarterly reporting by investors as well as companies (Q22)

- Conduct study on fiduciary duty of institutional investors to their clients in different Member States (Q23)

- Empower companies to undertake shareholder identification (Q21)

- Investigate factors preventing the development of local indices that are more closely related to the real economy (Q25)

Access to finance – make capital markets and long-term financing instruments more attractive to issuers (Q26-29)

- Think about business progression to allow companies to grow from one stage of development to the next (Q26)

- Create IPO Taskforce to facilitate listings and reduce the equity gap in Europe for companies (Q11)

- Review, and reduce wherever possible, information requirements on all companies, especially those on companies going public for the first time. This should include caution on the increased integration of financial and non-financial information in EU regulation, as well as strengthening EU influence towards reduced requirements in IFRS (Q10, 20, 24, 26)

[2] Companies and investors

- Review market for analyst research to see how better information on smaller companies could be provided (Q26)

- Review best practice in Member State taxation for supporting long-term investments such as minimum holding periods, tax deductibility for IPO and notional capital and ongoing listing costs (Q17)

- Create maximum threshold for Growth markets for the current alternative exchange-regulated markets, which can be lowered by the Member States (Q28)

- Create Growth companies directive / EU Jobs Act (Q29)

- Measure Europe's comparative position in terms of listings (Q30)

Better regulation

- Develop differentiated regulation for different asset classes - equities, fixed income, and derivatives and ensure the proper functioning of capital markets (Q11)

- Distinguish between the requirements of primary and secondary markets and measure the health of both from the end user perspective for both equities and bonds (Q12)

- Follow better regulation principles and conduct impact assessments of cumulative reforms from the perspective of the end users who may be indirectly affected by EU legislation, including companies, not just the financial institutions directly affected (Q10)

- Collect statistics relevant to end users such as issuers, not just financial intermediaries (Q30)

- Consider whether current arrangement for overview of regulation of issuers are optimal (Q11)

Adverse impacts of EU regulation

- Review the impact of recent regulation on market making for smaller quoted companies (short selling, CSDs) (Q10)

- Avoid application of Solvency II insurance regulation to pension funds which might harm financing available to corporates (Q7)

- Measure impact of prudential regulation on behaviour of financial intermediaries and on issuers (Q10).

3. RESPONSES TO SPECIFIC QUESTIONS

3.1. THE SUPPLY OF LONG-TERM FINANCING AND CHARACTERISTICS OF LONG-TERM INVESTMENT

1) Do you agree with the analysis out above regarding the supply and characteristics of long-term financing??

Overall we agree with the analysis in the Green Paper and Staff Working Document, particularly:

- the need for a long-term strategy on savings and investment in Europe;
- the existence of bias against "patient capital";
- the fact that corporate bond, equity and securitisation markets in Europe remain relatively under-developed compared to other economies;
- the need to consider access to non-bank finance for smaller companies, particularly bond markets, equity markets and IPOs;
- the need for different stages of financial intermediation in capital markets: underwriting, brokerage and distribution;
- inefficiencies in the intermediation chain, and the premise that the success of financial intermediation should be measured against how well it serves the needs of the end users, being companies and investors in the capital markets,.

As regards the intermediation chain, we have commented elsewhere on problems in communication between companies and shareholders in our position papers on corporate governance[3] and securities regulation[4].

In addition, we would make the following comments:

- We are not convinced that the fall in private investments was driven solely by "risk aversion and lack of confidence as a result of the weak macroeconomic situation". This analysis minimises the impact of regulation on investors' behaviour;
- we believe that there should be more emphasis on the appropriate environment needed to support the development of debt and equity markets fit for mid-sized companies, including an emphasis on both primary and secondary markets;
- Company shares are designed to be long-term investments (at least five years).and long-term holdings of corporate securities should be encouraged. However capital markets

[3] See our response to Green Paper on corporate governance from July 2011
[4] See our most recent position paper on securities law from autumn 2012

are designed to serve the short-term, in order to enable investors to sell shares and other financial instruments at an earlier stage. Short-term financing is also important to ensure liquidity, but the current incentive structures should be reviewed.

- We are not convinced that home bias is a disadvantage for smaller companies, since their natural investors are more likely to be local or national. In addition, we note that investors may be more likely to perform better in local markets;

- We do not believe that EU policymakers currently measure either financial intermediation or EU regulation on ability to deliver for the end users. Rather the objectives set and the measurements taken are of the creation of a single capital market as an end in itself, rather than as a means for delivering benefits to the end users, being companies and investors.

- Instead the EU needs to construct a strategy for what it wants financial markets to do: from our perspective this should include the need to serve the end users such as issuers and thus whether markets provide finance to the real economy and facilitate communication with investors. Once the purpose is adequately established, the EU should then measure the existing regulatory tools for market protection and work out how they should be applied in order to achieve those objectives e.g. whether the issue is greater disclosure or more product regulation or suitability tests by intermediaries;

- there has to be a recognition that regulation, looked at as a whole, must achieve a balance between consumer protection on the one hand and facilitating access to the markets by issuers on the other. A regime that protects investors by depriving them of supply as a result of costly and burdensome regulation does not serve the interests of issuers and investors.

2) Do you have a view on the most appropriate definition of long-term financing?

There are several different definitions of long-term financing, which emphasize different purposes and thus require different solutions. The EU needs to decide which of these purposes it wants financial markets to serve. Capital markets can then provide growth (as in the USA), provided that the regulatory regime achieves the right balance.

Key areas are:

- providing investment in productive capital as long-term financing for corporates
- providing savings for people in retirement
- attracting investment in infrastructure.

Long-term investment in companies

We would like to see greater emphasis on the role of capital markets in delivering finance to companies via all mechanisms. Investments can go, directly or indirectly, into building new factories, creating new jobs and taxable income. However, tactics intended to be long-term on the part of the investor may appear short-term from the viewpoint of the investee company. Thus there is a difference between:

(a) investing in Eurotunnel shares during construction, in the expectation of capital growth, income and discounted ticket prices in 7 years time; and

(b) investing to build a capital fund that will generate income for old age in 30 years time.

In the case of (a), there is an intention to buy and hold as an investor for many years. In the case of (b), there is no such intention. There is a role for both types of financing, but they are different.

Too much emphasis on trading can lead to markets that are highly volatile and respond to quarterly results rather than the company's prospects for growth over several years. Investment today for gain tomorrow that may damage quarterly results may be avoided. Volatility of this sort is damaging to the longer term growth prospects of both the issuer and the investor, who may be exposed to more speculative price movements and experience difficulty in making sensible investment decisions.

Providing savings for retirement

People are living for longer and Member States will struggle to provide for them in retirement. So they will have to be encouraged to work longer and to save (and therefore invest) more for capital growth, with manageable risks, thus relieving the burden on the national welfare state.

Most investors try to invest when a stock is priced low and, when it rises (even after a few months or a year), take the profit to invest in another stock that is priced low. This may lead to an emphasis on the importance of liquidity in order to be able to sell, even where the aim is to build up funds for the longer-term.

Infrastructure

Europe needs investment in its infrastructure and to attract funding from those who are prepared to wait for many years before they see a return. In order to achieve this, solutions such as project bonds bought by sovereign wealth funds could be useful.

3.2. ENHANCING THE LONG-TERM FINANCING OF THE EUROPEAN ECONOMY

3) Given the evolving nature of the banking sector, going forward, what role do you see for banks in the channelling of financing to long-term investments?

We believe that the role of traditional banks in the EU economy will be reduced and that policymakers therefore need to look at factors which enable non-bank finance such as equity and debt markets to succeed, and to plan for the growing importance for companies of accessing finance through the capital markets. Unfortunately, the increasing amount of regulation and additional requirements for listed companies may make it too difficult and too costly for companies, including smaller companies to go public.

Many companies have held back from IPOs, while investors are driving hard bargains in the secondary markets.

However, financial intermediation via banks will remain necessary for European companies and so there is clearly a need to consider the cumulative impacts of the reform of the financial sector. See our comments in response to Q10 below.

4) How could the role of national and multilateral development banks best support the financing of long-term investment? Is there scope for greater coordination between these banks in the pursuit of EU policy goals? How could financial instruments under the EU budget better support the financing of long-term investment in sustainable growth?

5) Are there other public policy tools and frameworks that can support the financing of long-term investment?

No comment.

3.3. INSTITUTIONAL INVESTMENT

6) To what extent and how can institutional investors play a greater role in the changing landscape of long-term financing?

We support the direction of travel for making institutional investors more accountable to their end beneficiaries in the recent Company Law & Corporate Governance Action Plan, as we believe that this will help to ensure that investors assume a more long-term role.

To this end, we believe that disclosure on stewardship responsibilities, voting and engagement could have a positive impact on institutional investors and could facilitate the dialogue between investors and companies and could encourage shareholder engagement. We also think that the rules for institutional investors should remain in the self-regulation area.

We welcome the recent development of codes in the UK, the Netherlands and Switzerland. We support the promotion of stewardship codes for institutional investors and their asset managers and request asset managers and institutional investors to disclose whether or not they comply with a code and report back to their clients on their strategy for looking after their investments in the wider sense, not just in monetary terms; institutional investors should also disclose whether they use proxy advisors.

On the question of proxy advisors, we fully support ESMA's recent conclusions for the adoption of a Code of conduct developed by the proxy advisory industry, recommending adequate standards of accuracy and transparency. Such a Code of conduct should be applied on a comply or explain basis, providing that proxy advisors shall publish an annual statement with a reference to the code of conducts applied, and/or an explanation as to which parts of the code it departs from and the reasons of that, and/or all relevant information about the practices followed with reference to their methodology, engagement with issuers, issuers' representative and corporate governance committee, transparency. In particular, full disclosure should be ensured to conflicts of interest, methodology and voting policies and guidelines. Disclosure to proxy advisors' clients should be ensured as to their direct engagement with issuers when drafting voting recommendation.

However, we have some concerns that corporate governance reforms alone will not be sufficient. Corporate governance policies can have some effect, but they cannot work in an environment where markets or regulation create the wrong behavioural incentives. A realignment of incentives between asset managers and end investors should feed into the realignment of incentives between shareholders and company management. Otherwise reforms may risk undermining companies' links to long-term behaviours.

See our comments in response to Q21-23 below.

7) How can prudential objectives and the desire to support long-term financing best be balanced in the design and implementation of the respective prudential rules for insurers, reinsurers and pension funds, such as IORPs?

As major pension scheme sponsors, European listed companies welcome this question and sincerely hope that there is an opportunity here to resume the debate about the IORP Directive on completely new grounds.

We note that the European Commission recently decided to postpone any legislative proposal about solvency rules for occupational pensions, and to focus on governance and transparency issues instead. Companies are committed to work constructively on these issues, provided that the proposed legislation is proportionate and appropriate for occupational pensions, and not simply derived from insurance regulation.

Yet companies are still concerned that the European Commission did not completely drop the idea of adapting the first pillar of Solvency II to pensions, although the many shortcomings and the tremendous cost of this approach were made obvious in EIOPA's Quantitative Impact Study.

It has been mentioned by many stakeholders (governments, trade unions, employers…) that the project to align the prudential regulation of IORPs with Solvency II stems from a deep misunderstanding of the role and nature of pension funds. Although they may offer seemingly similar benefits, insurance policies and occupational pension arrangements are different. The argument "same risks, same rules" is a flawed one, and there is no need for a "level playing field" between occupational pensions and the insurance industry.

- Pension schemes are not-for-profit institutions, which only carry the risks that are necessary to fulfil the pension promise at best cost.
- Pension schemes are collective vehicles, with mechanisms to share these risks between all stakeholders (employer, actives, retirees, pension protection scheme …).
- Pension schemes have joint governance bodies, where beneficiaries have a say in strategic decisions.
- Pension schemes are not competitors of the insurance industry. The huge majority of pension schemes are solely dedicated to their sponsoring employer and its employees.

So it would not make sense that the prudential regulation for IORPs is derived from Solvency II, particularly before any political decision is made about the role of IORPs in the overall pension system and in the economy of the European Union.

The starting point of the debate should be the principles stated in the White Paper "An Agenda for Adequate, Safe and Sustainable Pensions" and this Green Paper on "Long-Term Financing of the European Economy". Offering a pension promise is a bet on the future of the economy, with risks involved. The challenges are the following ones:

- First pillar pensions will be limited by the scarcity of Member States resources
- Occupational pensions must then form a growing part of European pension systems
- Occupational pensions are costly, and resources of employers and members are also limited.

Thus imposing additional capital requirements to IORPs would not be the right way forward:

- Sponsoring companies already face difficulties in accessing long-term financing, and should invest the capital they hold to develop their business rather than freeze it in pension funds,
- In most European countries, benefits of retirees cannot be altered, so the cost of the reform would mainly be borne by the younger generations through an increase of their own contributions,

- As pension contributions are most often tax deductible, some further strain would be put on public finances on the European Union,

Member States have already developed their own security mechanisms, which are fully integrated in their overall pension and social system and offer the required level of safety and flexibility (funding regulation, sponsor support, pension protection schemes…).

The issue is then to find the right balance between affordability and safety of the pension system, so that:

- a growing portion of the European population gets a decent retirement income
- the costs of the reform do not weigh too much on the younger generation
- the costs of the reform do not weigh too heavily on companies and their potential for growth in the economy.

We would also like to see a review of the effect of the prudential rules for insurance undertakings and private equity under Solvency II in terms of the impact on their ability to invest in shares and corporate bonds. See also our response to Q10.

8) What are the barriers to creating pooled investment vehicles? Could platforms be developed at the EU level?

Pooling:

We support the creation of long-term funds for illiquid assets at EU level. Company pension funds have limited liquidity needs and are able and willing to hold illiquid assets, provided that the prevailing regulation allows them to do so.

Such pension funds are generally very interested in pooled vehicles which would facilitate access to specific investments, such as infrastructure, project finance or SME funding. Many have already explored these areas, usually through pooled funds run by specialised asset managers. Pooled vehicles offer numerous advantages (access to larger scale projects, diversification…). As mentioned by the EC, there have been a number of initiatives in that respect in some Member States, and an EU initiative would be welcome.

An important factor to consider is not just the liquidity of the individual investment, but of the investment portfolio as a whole. If the ability to sell is considered as more important than the underlying value of the asset, then something has gone wrong.

Platforms:

We support the development of cross-border platforms[5] in principle, since this should encourage competition between fund groups and drive down intermediary costs for retail

[5] For an example of a national platform, see https://www.fidelity.co.uk/investor/funds/fund-supermarket.page

investors, thus making investment in funds which invest in companies more attractive. We would thus also support the development of platforms which could offer shares as well as funds, perhaps via the development of an optional EU savings / investment account structure (see our response to Q15).

9) What other options and instruments could be considered to enhance the capacity of banks and institutional investors to channel long-term finance?

There is clearly still an ongoing need for banks to play a major role in credit maturity transformation. It is important that the reforms following the financial crisis area measured for their cumulative impact on this process (see also our response to Q10). Although it is important to consider financial stability; if banks are forced to hold only very liquid assets due to all the regulatory reforms of capital and liquidity in Basel II, Solvency II etc, we wonder whether they will be able to play a role in long-term financing.

We believe that the development of a private placement regime in Europe[6] similar to the US or German Schuldscheine model would also help institutional investors to play their role by reducing costs and offering greater flexibility.

We also believe that the development of fund of funds for venture capital could be useful in order to prevent double taxation and difficulties in pooling.

3.4. RETAIL INVESTORS

We note that only institutional investors and not retail investors were included in the Green Paper. We leave it to the retail investors to comment on this themselves, but we note that there is a perception that private client stockbrokers no longer support investment in shares or corporate bonds and that intermediaries and regulators prefer clients to invest in UCITS funds. Although there is a place for UCITS, a majority of our members believe that there should also be a place for direct investment by retail investors. Such investors have traditionally supported small and mid-cap companies in their national markets.

Some of our members now believe that the focus of policymakers on what they see as investor protection, regardless of the costs to companies, means that achieving a sensible EU regulatory regime that works for smaller companies is impossible while allowing retail investors access to these markets. This is based on the belief that EU regulators actively seek to discourage investment in smaller companies in the name of investor protection. The result of this would be that certain markets should be open to professional investors only, in order to reduce the regulatory burden and the costs for smaller companies.

[6] See previous EC workshops and studies undertaken on private placements at http://ec.europa.eu/internal_market/investment/private_placement/index_en.htm

3.5. THE COMBINED EFFECTS OF REGULATORY REFORM ON FINANCIAL INSTITUTIONS

10) Are there any cumulative impacts of current and planned prudential reforms on the level and cyclicality of aggregate long-term investment and how significant are they? How could any impact be best addressed?

Yes, there are cumulative impacts on companies and on investments.

Prudential reforms

The impact of prudential reforms and liquidity requirements would appear to be likely to have a major impact. EU legislators should not go too far with liquidity requirements without a proper analysis of the cumulative effect of all the prudential reforms on companies and investors, including the implications for different segments of the market such as those for smaller companies.

The prudential environment of all institutional investors in Europe is deeply and quickly changing, and there are clearly cumulative negative impacts on the availability of long-term financing. In brief, current prudential reforms are all based on the following two principles:

- Market-based valuation of all assets and liabilities
- Risk-based models to compute capital requirements (like Value-at-Risk)

These prudential frameworks have the following consequences for institutional investors:

- Undue volatility of their balance sheet and far higher capital requirements
- Strong incentive to shift their investments from risky assets to "risk-free" government bonds
- Strong incentive to focus on liquidity rather than fundamental analysis.

It would appear that institutional investors are being forced into a vicious circle whereby they feed the current financial crisis. By raising huge amounts of equity to meet their new prudential obligations, by selling risky assets in a bottom-of-cycle market, by reducing dramatically their business exposure, they make long-term financing even less available to the real economy.

Much has been said already about the negative side-effects of such "pro-cyclical" regulation, especially by OECD. These cumulative impacts are certainly huge in Europe, and partly explain why European equity markets have never really recovered and are now lagging far behind their American counterparts.

To address this issue, it is necessary that:

- Current prudential reforms, like Basel III or Solvency II, are calibrated at best to minimise their macro-economic consequences,

- Planned prudential reforms, especially IORP II, are fully redesigned not to add further pressure on long-term financing.

With regards to the revision of the IORP Directive, the QIS preliminary results released on 9 April 2013 clearly show that pension funds are huge and steady holders of long-term investments. In the United Kingdom and the Netherlands, which are by far the two largest countries for IORPs with over € 2,000 bl. of assets, equity and property holdings weigh a half of total investments. So the European Commission needs to be extremely cautious about the impact any new prudential framework for pensions may have on long-term financing of the real economy in Europe. See also our response to Q7.

Other comments on cumulative impact

The first way in which such impact should be addressed is by better regulation – allowing sufficient time to think, to consult with members and to respond. EU legislators do not take sufficient account of the fact that companies may not speak English as their first language and need sufficient time to understand and reflect on proposals, and then to translate the comments into English in order to feed into a European response.

EU legislation should focus more on the outcomes sought and less on dictating how these outcomes should be achieved.

EU proposals should include reference to all those affected by legislation and EU policymakers should seek out the views of those who may be indirectly affected. At present, there is a tendency to focus only on those directly affected e.g. stock exchanges / investment banks / audit firms, without consideration of the fact that companies may also be affected by individual proposals. It is then made more difficult for them to find the relevant information if they have to wade through 600 pages of technical detail in order to find the sections relevant to them.

We would like to see impact assessments for financial markets legislation clearly indicate where there will be an impact on the end users such as companies and investors, and not just the financial intermediaries. In addition, EU policymakers need to be less short-term in their own actions, for example by not re-opening directives before they have had a chance to bed down. We see considerable regulatory fatigue among our members, which makes it harder for them to engage.

In terms of specific examples which will directly impact the costs and regulatory burdens for quoted companies seeking to access finance, we comment on the following areas:

- Market making
- Market abuse
- Transparency Obligations

- Prospectus
- MIFID / MIFIR
- PRIPS
- IFRS

Market making

Market makers can play a key role in the small and mid-size quoted company markets by providing liquidity. They compete in both price (known as the bid/offer spread) and size (the quantity of buy/sell commitments displayed), thus giving investors certainty of execution at the best available price.

This type of liquidity provision is not a feature of all European markets, but it is one of the pillars upon which the London public equity markets, particularly AIM, have been successfully built. Given the success of AIM for smaller companies, we believe that the benefits of this model should be considered further.

Recent EU legislation, such as the Short Selling Regulations and the draft Central Securities Depositories regulation, may make it increasingly difficult and less attractive for market makers to continue providing prices in small and mid-size quoted company stocks. This is because market makers may engage in short selling activity to provide liquidity for small and mid-size quoted company shares, where buyers and sellers are more likely to be mismatched for longer periods.

Previous legislation had allowed for exemptions for market makers to small and mid-sized companies. A decline in liquidity in small and mid-size quoted company shares would make it even more difficult for the companies to raise capital on the public equity markets.

Market abuse

The extension of disclosure obligations to issuers traded on demand only on "listing" MTFs is not appropriate. Companies choose listing MTFs because there are less costly rules with respect to regulated markets. Imposing disclosure obligations would increase costs and limit the possibility for SMEs (which are the typical issuers traded on demand only on "listing" MTFs) to raise capital.

The European Commission text of the directive included an exemption from the administrative burden of producing insider lists for companies on SME Growth Markets. However, this has been removed in the European Parliament’s text of the directive and is in danger of being removed from the Council’s text.

This is an example of where legislation is seeking to dictate the means of delivery of the outcome, when it would be sufficient to ban market abuse and to require companies to inform regulators of those with access to the relevant information when requested.

In addition, we are concerned that the trend for disclosure, being based on disclosure to "the market", is biased towards the short-term. As an example, we would cite the recent case of Daimler, where immediate disclosure in order to protect those who may trade in the short-term was perceived as more important than discretion re succession planning for the longer-term. Such a regulatory environment creates incentive structures for companies to think more about the short-term.

Transparency Obligations

We welcome the recent abolition of the quarterly reporting requirements. However, we note that what had originally been planned as a simplification exercise to reduce costs and burdens for companies ended up with additional country by country reporting requirements. We are opposed to a potential extension of these requirements to industries other than the extractive and forestry industries.

Prospectus

The Report by ESMA's Stakeholder Group[7] on access to finance recommended the following changes to the Prospectus requirements: allowing pre-IPO registration, increasing the consideration limit from €5m to €25m in a 12-month period, and delegating the review of prospectuses on SME markets to the exchange or to key advisers such as sponsors.

In addition, we propose that companies that pay for independent research should have a higher threshold for a secondary public fundraising before they have to prepare a prospectus because there is more objective information in the public domain about the company.

We note that the International Capital Market Association[8] has expressed its concern that bond markets have worked less well for retail investors, in part due to the costs of the Prospectus regime.

MIFIR

Although we believe that increased competition in trading has brought some benefits to companies, there have also been some disadvantages. The Kay Report noted that: "It is a measure of priorities that regulation admits, even encourages, market participants to gain an advantage over others by reacting more quickly to data, but prohibits market participants from gaining an advantage over others by obtaining better information."

What we have seen is a fragmentation of trading, lower trading volumes in smaller companies, although they form the majority of actual listings and the withdrawal of liquidity from local exchanges and regulated markets. See our previous comments[9].

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[7] See report dated 12 October 2012 at www.esma.europa.eu/system/files/2012-smsg-59.pdf

[8] See ICMA paper on the Economic Importance of the Corporate Bond Markets at http://www.icmagroup.org/assets/documents/Media/Brochures/2013/Corporate-Bond-Markets-March-2013.pdf

[9] See e.g. our previous position papers at

According to the March 2010 report on EU listings[10], "on average, 93% of listed companies that are not in the largest market capitalisations benefit from less than 7% of the liquidity." This has had an impact on the local ecosystems which have traditionally provided the relevant expertise and support to companies. Many smaller brokers have gone out of business. The loss of such local brokers means a loss of relevant knowledge and advice for companies, at a time when they are more likely to need to seek capital market financing.

However, we know from experience that dealing with capital markets is generally far more time intensive than company management expects. Their need for external support and advice on how to deal with external investors instead of bank finance is likely to be greatly increased in the coming years, at a time when the ecosystem has been dying. There is thus likely to be a great need for information and education available to companies. To that end, we welcome the work undertaken by DG Enterprise to provide online information on access to public markets[11], as well as to industry education initiatives such as Investing in Bonds Europe[12], which includes a section on corporate debt. We believe that more consideration needs to be given to the information needs of and requirements on companies seeking to access the capital markets.

We are also concerned that the focus of MIFIR has been on the competition between stock exchanges and investment banks / trading platforms. While we do not disagree with the need for a level playing field on trading rules in general, there are some circumstances which are specific to smaller companies (see comments elsewhere on settlement) which should be taken into account. There are also different rules for listing requirements for those companies quoted on the alternative, currently exchange-regulated markets. In trying to create a harmonised trading environment, there is a danger that the rules are not suited to the needs of the smaller, less liquid company shares. It was precisely for this reason that these alternative markets for smaller companies opted for exchange-regulated status, in order to avoid the unduly high costs of EU financial regulation under the FSAP. We comment further on this in our response to Q28.

PRIPS

Current amendments in the European Parliament seek to extend regulation aimed at packaged retail investment products to shares and bonds. This is yet another information disclosure obligation for companies which could have unintended consequences. We share the concern of the European Parliament of increasing investor protection as well as supporting the aim of promoting investment into shares and corporate bonds. In order to meet these objectives, however, it is important to develop a proper framework which would

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http://www.europeanissuers.eu/_mdb/position/224_MiFID_EI_FINAL_20110208.pdf and http://www.europeanissuers.eu/_mdb/position/235_MiF_Key_Messages_Final_111216.pdf

[10] An EU-Listing Small Business Act: Establishing a proportionate regulatory and financial environment for Small and Medium-sized Issuers Listed in Europe (SMILEs) by Fabrice Demarigny of Mazars, March 2010.

[11] See http://ec.europa.eu/enterprise/policies/finance/risk-capital/going-public/index_en.htm

[12] See http://investinginbonds.eu/

be tailored to the specificities of shares and corporate bonds while not duplicating other disclosure requirements. Any such development should only take place after a period of full consultation, which was not the case for shares and bonds.

IFRS

Although the move to IFRS has brought about more comparable financial reporting within Europe, the complexity of the standards is widely recognised, with at least 4 recent consultations on disclosure. Because of this complexity, the costs of auditing financial statement prepared under IFRS are in some cases twice as high as those prepared under national GAAP and thus these costs create another barrier to efficient access to markets for companies.

See also our comments in response to Q20.

3.6. IMPROVEMENTS IN EFFECTIVENESS OF CAPITAL MARKETS

11) How could capital market financing of long-term investment be improved in Europe?

See our comments in response to Q10 above on the various regulatory proposals which are adding costs for companies seeking access to finance.

In addition, we have the following suggestions for improvement:

- Development of differentiated regulation for the different asset classes – equities, fixed income, derivatives;
- Distinguish between different requirements for primary and secondary markets and measure the health of both;
- Create Taskforce to report on the equity gap in Europe and develop consensus to make recommendations , especially on IPOs;
- Consider whether current EU arrangements for regulation of listed companies are well designed for coherence;
- Develop additional funding options such as crowdfunding, covered and project bonds, private placement.

We comment further on these proposals below.

A prerequisite: well-functioning capital markets

The range of instruments offered is an important factor to improve capital market financing of long-term investment in Europe. However, as a prerequisite, well-functioning capital markets and infrastructures are needed to channel long-term finance and, from the perspective of issuers, much progress remains to be done in this respect.

Since 2007, the implementation of the legislation on Markets in Financial instruments (Miff) and the technological developments have led to an increased number of trading venues, to fragmentation in both markets and liquidity, as well as to the rise of high frequency transactions (HFT), which now represent 37% of the trading volumes (50% in the United States). These developments and the insufficient transparency of transactions and orders seem rather often to undermine essential objectives:

- Facilitate the financing of the economy, in particular over the long term – the central role of capital markets -;

- encourage issuers and investors, especially long-term investors, from using capital markets. Moreover high frequency trading adversely affects the equal treatment of investors and may destabilize markets and prices;

- reduce financing costs.

We support the objectives of the revision of the MiF legislation proposed by the Commission, in particular to enhance transparency and information efficiency and enhance requirements to reduce short-term and speculative trading activities. However further efforts are needed to contribute to the swift adoption of the pending legislation.

The fragmentation of markets and liquidity should be compensated for by greater pre- and post-trade transparency and better regulation of all order execution venues, thereby contributing to meet several key objectives for companies: preserving the price formation process – the basis for assessments and decision taking -; verifying the best execution of orders; ensuring financial stability and market integrity. It is necessary to strictly control High frequency transactions (HFT), whose business model is based on an order cancellation rate of 95% that is likely to drive the market in favour of their initiators.

The reports on the draft Directive and Regulation on Markets in Financial Instruments that were adopted by the European Parliament in 2012 go in the right direction, especially with regard to pre-trade transparency and HFT. However, the agreement in the Council seems difficult to achieve, for example with regard to pre-trade transparency and the establishment of a European database of consolidated post-trade data would be delayed. If market forces do not deliver comprehensive, consistent and affordable post-trade data, recourse to alternative options, including a mandatory tape, should be contemplated.

Different asset classes:

Regulatory requirements are often designed by copying requirement for one asset class to another. This is not always workable in practice and we would prefer to see regulation designed for the different ways in which markets operate in practice.

For example, corporate bond markets operate mostly for large and mid-sized rather than small companies due to costs of information and rating requirements. Companies often use corporate bonds to raise funds for specific time-limited investments or business needs and thus issue many different bonds with different terms and maturities. Secondary corporate bond markets are characterised by much larger and fewer trades than equity markets. This makes the role of market makers more important.

However, access to the bond markets tends to be less difficult for larger companies, primarily because of the high cost of issuance. In addition, EU regulatory incentives may favour investors holding sovereign debt over corporate debt, thus disadvantaging companies seeking to access markets for growth.

The International Capital Market Association[13] suggests that bond markets have worked well for institutional investors, but less well for retail investors, in part due to the costs of the Prospectus regime. Perhaps the EU should set itself the target of reducing the administrative costs of issuance of corporate bonds for smaller companies by 25%.

Primary v secondary markets

The focus of EU policymakers in recent years has been on the financial crisis, but we believe that the health of the primary equity markets is an essential indicator for the health of the capital markets as a whole, particularly in terms of markets' ability to deliver value to the real economy.

We note that IPOs have declined in recent years and that trade sales are a more exit popular route for investors in smaller unlisted companies. We believe that action at EU level is required to rectify the situation.

IPO Taskforce

As regards smaller quoted companies, we would encourage the EU to create an IPO Taskforce to consider the issues affecting these companies in greater detail. Members of the taskforce should be drawn from the following groups: issuers, institutional (small-cap) and retail investors, brokers, exchanges, advisers such as lawyers and accountants, and venture capital.

Coherence of EU regulation of listed companies

We wonder whether, within the next Commission, there should be clearer responsibility within DG Markt for oversight of the regulation of listed companies. At present, this responsibility is divided between Company law, Corporate governance, Securities, Asset Management, Market Infrastructure, etc. No-one appears to be responsible for ensuring a consistent approach from the corporate perspective and it is difficult for companies to follow the work of all the individual units without an overview from the services themselves.

Additional funding options:

- Crowdfunding

[13] See ICMA paper on the Economic Importance of the Corporate Bond Markets at http://www.icmagroup.org/assets/documents/Media/Brochures/2013/Corporate-Bond-Markets-March-2013.pdf

- corporate bonds;
- securitisation;
- project bonds;
- covered bonds.

Crowdfunding

We share the view that crowdfunding can be a tool to stimulate new forms of financing for small and medium-sized enterprises as an alternative to traditional forms of capital raising through regulated markets and the banking channel. We believe that any rule of conduct and discipline applicable to this kind of activity must be calibrated to create an "environment" reliable for investors without providing strict rules that could immobilizing the development of management portals.

Corporate bonds

These are set to play a growing role in the long-term financing of companies, taking into account the constraints on bank financing and the weakness of investments in shares. We are of the opinion that several avenues should be taken in order to support this trend and further open up the bond markets, by improving how they operate:

- ensure the transparency of the bond markets and greater visibility concerning issues;
- encourage the establishment of dedicated bond platforms;
- ensure their liquidity;
- facilitate the subscription of bonds by individuals, particularly through more attractive taxation (direct subscription or in the form of UCITS).

Securitisation

Corporate loan securitisation, concerning in particular loans to SMEs and intermediate-sized companies, should be developed, while seeking the right balance between financial stability and the need to improve maturity transformation (please also refer to our response to question 14).

Project bonds

Their use is still limited in volume and in scope, despite their advantages. Not only greater use should be made of project bonds, but also their scope should be extended to other key European long-term projects[14]. Easing of rating constraints would be needed to promote their use.

Project bonds have many advantages: these private debt instruments issued by a project

[14] The proposed mechanism of the Project Bond Initiative only targets the European Investment Bank's core business, i.e. infrastructure financing.

company aim to stimulate investment in key strategic European infrastructure projects in the fields of transport, energy, information and communication technology (ITC) and to establish debt capital markets as an additional source of financing. More specifically:

- they reduce the risks through pooling among private companies and investors.

- they enhance the ability of private investors (in particular institutional investors) to identify long-term projects, to assess the associated opportunities and risks and to match their long-term obligations;

- they benefit from a credit enhancement provided by the European Investment Bank to project companies raising senior debt, which facilitates its placement with institutional investors (while, since the financial crisis, there have been few new issues guaranteed by the monoline insurance companies).

Covered bonds

Please see our response to question 13.

12) How can capital markets help fill the equity gap in Europe? What should change in the way market-based intermediation operates to ensure that the financing can better flow to long-term investments, better support the financing of long-term investment in economically-, socially- and environmentally-sustainable growth and ensuring adequate protection for investors and consumers?

Strengthening companies' equity should be a priority for the reasons outlined in the response to question 10. In this response, we highlight the negative impacts of the current and planned prudential reforms on the holding of shares. We also indicate the many factors affecting investment in shares in the response to question 10.

Filling the equity gap implies a set of actions, in particular:

- reassess and address the impacts of the current prudential reforms concerning insurance undertakings and banks; anticipate those of the planned prudential reform concerning IORPs to avoid similar negative effects;

- avoid or strictly regulate short-termist approaches (cf. response to question 11);

- ensure attractive taxation, at national and European levels, in contrast to short-term investments and sovereign bonds (cf. response to question 17);

- adopt economic and fiscal policies enabling companies to maintain or restore their competitiveness;

- if applicable, promote the establishment or development of long-term investment vehicles, such as pension funds.

Changes in intermediation

In order to ensure that financial intermediation can better flow to long-term investments, we believe that regulation of financial intermediation also needs to serve the needs of the end users.

This means that policymakers themselves need to use more long-term measurements. For example, the EU has in the past commissioned Oxera to undertake research into the costs of buying and selling shares across Europe, and thus into the relative breakdown of costs of the individual trades between brokers, CSDs, etc. It is useful to have information on the costs of trading, but it would be more helpful if coupled with long-term measurements also. As far as we are aware, there has been no attempt to undertake any research into the comparative costs to investors of buying and holding a share for 3-5 years and whether this cost is increasing or decreasing across Europe.

Nor are we aware of any research commissioned by the EU into the comparative costs to companies of raising equity capital in terms of both initial and ongoing listing and regulatory costs.

13) What are the pros and cons of developing a more harmonised framework for covered bonds? What elements could compose this framework?

The development of covered bonds at European level should, in particular, reduce banks' refinancing constraints and facilitate the financing of capital-intensive industries (e.g. the aircraft, rail or ship industries).

An arrangement of this kind could take its inspiration from the characteristics of the German model of Pfandbriefe (medium/long-term maturities; dynamic cover pools potentially changing over time; investors' preferential claim on the cover assets; choice between private placement and public offering).

14) How could the securitisation market in the EU be revived in order to achieve the right balance between financial stability and the need to improve maturity transformation by the financial system?

Securitisation enables banks, on the one hand, to reduce their exposure to transformation/liquidity risks, at the same time as being involved in analysing and managing the credit risk, and, on the other hand, to free capital, which can then be mobilised for additional lending.

It leads to a more direct relationship between companies and investors, but makes them bear the risks linked to holding assets (credit and liquidity risks), by nevertheless pooling these risks. The sub-prime crisis demonstrated, moreover, that not completely knowing the content of special purpose vehicles could entail systemic risks, particularly in the case of resecuritisation.

We leave it to the intermediaries and investors to comment in the first instance on the ways in which securitisation could be revived, with appropriate safeguards. However, we would support the option of securitisation being made available to companies as one of several financing options, given the size of the financing gap in Europe.

3.7. SAVINGS

15) What are the merits of the various models for a specific savings account available within the EU level? Could an EU model be designed?

What could be useful could be the promotion of best practice examples.

The UK ISA (Individual Savings Account[15]) is not cited as one of the examples in the Green Paper, which refers to the Livret A in France, the libretti postale in Italy and the Bausparvertrag in Germany.

However, it might be useful to consider as a model also, since it is specifically designed to encourage individual savings in the capital markets and thus to provide a source of finance to companies, and a long-term source of income to investors, free from capital gains to the individual.

Taxation benefits for any such savings accounts should, however, only be offered to investors who hold for longer periods. For example, a best practice recommendation could be that the benefits of such a model could be offered to savings in the capital markets with a holding period of at least 2 years for individual shares or an average holding period of at least 2 years for UCITS funds. Investments for shorter time periods should be allowed, but should not be tax incentivised.

3.8. TAXATION

16) What type of CIT reforms could improve investment conditions by removing distortions between debt and equity?

Taxation is not the only criterion determining the choice by a company of how to finance its investments. However taxation may have an impact on its financing cost and thus interfere with that choice.

In some countries, debt-related taxation is more favourable than that applicable to capital funding, as only the interest generally is deductible from taxable income (at least partly).

[15] For explanations on ISAs, see http://en.wikipedia.org/wiki/Individual_Savings_Account or http://www.moneysavingexpert.com/savings/ISA-guide-savings-without-tax

It is not desirable to challenge the deductibility of interest, which is a real burden on companies. However, it would be desirable to introduce a mechanism that would enable to reduce the tax distortion affecting capital financing. In particular, it could be useful to consider the introduction of a system that would allow the deduction of a notional interest attributable to the company’s equity, like under schemes existing in several European countries (Belgium, Italy, the Netherlands).

17) What considerations should be taken into account for setting the right incentives at national level for long-term saving? In particular, how should tax incentives be used to encourage long-term saving in a balanced way?

Investment in companies' equity should be supported by an attractive taxation regime (see above). However, this attractive regime should be limited to situations of real investments.

Furthermore, taxation is an essential tool for guiding household savings into long-term financial products. Public authorities must adapt tax incentives to mobilize savings for long-term investment and the holding of shares. Therefore, tax systems which offer incentives to investment in the capital markets should be linked to a minimum holding period (see also our comments in response to Q15 above). Capital gains taxes on long-term holdings should be very low, if any at all.

These incentives should be based on several cumulative principles:

- boost investment in productive capital (as opposed to a part of the savings and loan);
- encourage the holding of long duration instruments (shares; medium- and long-term bonds; supports invested in these instruments), in particular through tax incentives that are progressive depending on the length of holding (taper relief);
- take into account the risk associated with relatively risky instruments, such as shares:

- for similar holding periods, a share could be taxed less than a bond;
- a bond with a medium or long term maturity could be taxed less than a cash instrument;
- an illiquid instrument could be taxed less than an equivalent liquid instrument.

- ensure that the after-tax savings incomes are differentiated according to the above principles and are on average higher than inflation;
- be stable or sustainable (last long periods of time), to ensure savers’ trust.

In order to achieve the above-mentioned objectives, we recommend that best practice recommendations for Member States, based on best in class, are developed. It would be useful to have a survey of the national structures in place in order for companies in one Member State to learn more about what may work in other Member States across Europe.

Some of the best practices of which we are aware include:

- targeted saving accounts to supporting the financing of long-term investment projects;
- a stable tax and social security regime for savings blocked for some time under a contractual commitment;
- tax cuts for long investments in shares and bonds;
- exemptions from financial transaction taxes for SME Markets / trades in smaller companies (France, Italy, UK);
- for shares, the deduction of an allowance from the capital gains, based on holding periods;
- a tax credit on dividends for reinforcing the medium or long-term savings of modest-income households; the possibility of opting out of a flat rate tax for a progressive tax scale as regards their capital gains on securities;
- improving existing tax regimes (ceilings, tax cuts) to strengthen the equity financing of SMEs;
- a fiscal transparency regime allowing individual investors to absorb the losses incurred by companies in their start-up phase;
- tax deductibility for IPO and ongoing listing costs;
- independent research costs should be offset against profits for tax purposes.

18) Which types of corporate tax incentives are beneficial? What measures could be used to deal with the risks of arbitrage when exemptions/incentives are granted for specific activities?

Please see our response to question 16.

19) Would deeper tax coordination in the EU support the financing of long-term investment?

Better coordination between States would prevent the implementation in isolation of fiscally attractive practices that could be harmful to other States. In this respect it is unfortunate that this lack of coordination between States ultimately results in companies being held responsible for tax optimization practices, while tax benefits derive from differences in legislation in States where these companies conduct their business.

The financing of long-term investment would benefit from a close coordination of fiscal policies based on the principles developed in our response to question 16 above.

Also it would be worth considering the availability of specific vehicles at the EU level to mobilise greater long-term savings.

3.9. ACCOUNTING PRINCIPLES

20) To what extent do you consider that the use of fair value accounting principles has led to short-termism in investor behaviour? What alternatives or other ways to compensate for such effects could be suggested?

IFRS requires that all financial instruments held for trading and all derivatives be measured at fair value. The use of fair value accounting principles leads to short-termism in investor behaviour and has procyclical effects. To compensate for short-termism in investor behaviour, actions are needed at both EU and IASB level. At EU level the following actions are needed:

- strengthening the role and resources of the EFRAG, enabling the EU to act further upstream;
- including EU financial stability and economic development criteria in the criteria which it applies for the adoption of the IFRS;
- ultimately, amending the European regulation giving the EU the capacity to define appropriate accounting treatment in those exceptional cases where the provisions of the IFRS prove to be inappropriate, despite the actions carried out upstream by the EU;
- in the EU's agreements with third countries, taking into account the IFRS standards adopted by the EU, rather than the standards published by the IASB.

At IASB level, the following actions are needed:

- incorporate the objective of financial stability and the notion of long-term investor into the IASB's conceptual framework;
- ensure the stability of the IASB's reference framework to the full extent possible;
- amend the IASB's conceptual framework and standards to:
- reintroduce the concepts of prudence and reliable information;
- define those cases where fair value can be used, taking into account the specific characteristics of the elements to be valued and the limitations of the markets. The use of fair value should only be contemplated for instruments traded on liquid markets.
- better understand, in measuring performance and valuation methods, the business models, backgrounds and management methods of undertakings (particularly in the long term) and the possible interaction between assets and liabilities.

In particular:

- in most cases, performance should be measured based on cash flows, the predictive value of which is often better than that of fair value;
- the reduced volatility of a portfolio dedicated to financial investments held on a medium-term/long-term basis should be reflected, by providing for a specific accounting category, valued at historic cost, depreciated if applicable on the basis of the value in use, any impairment being recognised in profit and loss;
- it should be possible to value holdings at historic cost (depreciated if applicable).

We explain below why we believe that the use of fair value accounting principles has led to short-termism in investor behaviour.

The purpose of fair value is to determine the value of a part of the undertaking at any time, primarily in order to meet the instant valuation expectations of certain investors. It increases the volatility in the financial statements considerably, and deviates from the principle of prudence: fair value variations are recognised in profit and loss or, if they are excluded from it, in comprehensive income[16] which, moreover, may create confusion for users of financial statements.

With regard to financial instruments, the induced volatility would be even greater given that the criteria to be met for amortised cost accounting (SPPI) appear restrictive and would therefore prompt undertakings to recognise a large proportion of their financial assets at fair value;

- furthermore, the use of fair value leads to unrealised gains being recognised in certain parts of the balance sheet:
- for the assets, by taking into account all the instant variations and, if applicable, the unrealised gains, contrary to the principle of prudence;
- for the liabilities, by requiring unrealised gains to be recognised in the event of the issuer's own credit risk deteriorating, which produces counterintuitive results.

Concerning pension liabilities, as they are extremely long, their accounting value is highly sensitive to changes in discount rates. These changes in value (actuarial gains and losses) are directly recognised in equity, and heavily impact the main financial ratios of the reporting entity.

Such shocks in equity are obviously enhanced by the reference to a "market rate" and by the current low yield environment. Eventually, some sponsoring companies have seen their equity wiped out and were either downgraded or forced into recapitalisation. Yet nothing really changed with their pension commitments, it is exactly the same benefits they will pay

[16] Fair value changes are recognised in profit or loss, with the following exceptions:
- IFRS 9 allows an irrevocable election to recognise in other comprehensive income (OCI) changes in fair value for equity investments that are not held for trading;
- when the option to designate a financial liability as measured at fair value is used, the entity is usually required to recognise in OCI the change in fair value arising from changes in the issuer's credit risk.

in the end. Volatility is only driven here by fair value accounting.

Finally, the use of fair value tends to blur the interpretation of the results of the strategy of long-term investors (e.g. insurance companies) and may promote the adoption of procyclical behaviour.

3.10. CORPORATE GOVERNANCE ARRANGEMENTS

We support the statement in the Kay Report that: "It is generally more effective, and in the long-term less intrusive, to give incentives to do the right thing than to attempt to prevent people who are subject to inappropriate incentives from doing the wrong thing."

The correct incentives need to be in place all along the investment chain. Therefore public policy needs to create the right incentives at each stage in the investment chain; thus not just company – asset manager, but also asset manager - asset owner, asset owner – investment consultants and other agents, and asset owners to the end beneficiaries.

We agree that positive incentives should be considered; however, it is also important to consider the removal of disincentives.

We note that the Green Paper states complacently that various rules are already in place for asset management. However, the net result of these rules does not appear to create the right outcomes for end investors and for companies accessing the capital markets, nor is there a coherent and agreed narrative regarding the type of markets that we want.

As has been shown by various reports[17], it would appear that capital markets do not reward fundamental analysis sufficiently for the effort required. Instead, it is easier to make money from trading activities which do not require sufficient analysis of the fundamentals of the companies or other underlying economic realities. Thus market incentives reward traders rather than investors.

Unless investors are rewarded, however, it is difficult to see how to build the right culture and to promote shareholder engagement. Policymakers therefore need to consider why asset managers are not rewarded for fundamental analysis, and whether EU regulation itself may play a part in creating right incentive structure for all market participants.

21) What kind of incentives could help promote better long-term shareholder engagement?

The Commission puts forward two options, i.e. increased voting rights or dividends for long-term investors. The *"Reflection group on the future of EU company law"* report

[17] See e.g. Kay Report on UK Equity Markets and FGRE Stewardship Report "An investigation into stewardship – Engagement between investors and public companies: Impediments and their resolution" by Charles Cronin and Dr John Mellor at http://www.foundationgre.com/Stewardship%20Report%20Final%20-%2022.6.11.pdf

recommended that companies' articles of association should include preferential rights to promote long-term share ownership[18]. We support this view as these measures, which are already in place in some Member States, could help to mitigate short-termism, speculation and agency problems.

Increased voting rights are common in certain Member states, including France, the Netherlands and certain Scandinavian countries. We give an example below, but believe that this option is best left to the company law of Member States.

Example voting rights

French law provides for a neutral, non-discriminatory regime enabling companies to grant, subject to the satisfaction of certain requirements, double voting rights: they must be contained in the company's by-laws or offered pursuant to a decision of the extraordinary meeting of shareholders to any shares fully paid-up that have been registered in the name of the same holder for at least 2 years. This does not therefore call into question the principle of equality of shareholders.

In companies with dispersed share ownership, double voting right is primarily designed to reward loyalty and encourage shareholders to hold their shares in registered form, which enables the company to know them better. Double voting is strategically important in companies with a family or entrepreneurial shareholding structure, because it reinforces control of the shareholding structure and makes implementation of the company's financial and industrial strategy easier. Far from disrupting financial markets, it therefore provides listed companies with the stability they need for medium and long-term management.

Example dividends

French companies may also offer higher dividends. To reward loyalty as part of clauses of companies' by-laws, it can be done under the following terms:

- only those shareholders who have held their shares registered for at least two years at the end of the financial year and who still hold them in this form on the dividend payment date can benefit from this measure;
- the higher dividend rate which must be stipulated in the articles of association cannot exceed 10%;
- in companies whose equity securities are admitted to trading on a regulated market, the number of securities entitled to the higher dividend cannot exceed 0.5% of the company's capital for the same shareholder.

In practice, however, only individual shareholders have an incentive to receive double voting, as institutional investors and asset managers appear reluctant to convert their

[18] "Companies' Articles should be allowed to provide for long-term shareholders' preferential treatment. These benefits consist of: a) Enhanced voting rights b) Higher dividends."

securities into registered shares. This may in part be due to inefficiencies in the intermediation chain.

In Italy, listed companies may grant, in the Article of Association, a dividend increase for loyal shareholders along the following lines:

- each share held by the same shareholder for a continuous period indicated in the Article (no less than one year or the lesser period running between two consecutive payment dates of the annual dividend) shall assign the right to an increase of no more than 10 % of the dividend distributed to other shares;
- the Article of Association may envisage other conditions for granting such a benefit;
- should the same party, during the maturation period, have directly or indirectly through trustees, subsidiaries or third party, have held an investment in excess of 0,5% of the company capital, or lesser percentage specified by the Articles of Association, the increase may only be assigned for shares representing this maximum stake;
- the increase cannot be assigned to shares held by those who, during the said period, even temporarily, exercised a dominant (individual or jointly with other shareholders by means of a shareholders' agreement) or significant influence over the company;
- in any case, the increase may not be granted on shares which, during the said period, were continuously or temporarily assigned to a shareholders' agreement representing more than 30% of the company capital.

Employee share ownership also plays a part in increasing the proportion of shareholders with a long-term outlook. Consequently, we support the European Commission's objective, as featured in its action plan on company law and corporate governance, of creating a favourable environment for the development of employee share ownership, as a means of promoting group motivation and cohesion.

More effective shareholder identification laws would also assist companies to engage with their shareholders, as recommended by the ECB Shareholder Transparency Taskforce[19]. This would see recognition by intermediaries of national systems of shareholder identification, where the issuer may issue a request for identification of shareholders or of other persons having an interest in the security. Such request could be addressed to the issuer CSD or to any intermediary in the chain.

[19] See report at http://www.ecb.int/paym/t2s/progress/pdf/subtrans/st_final_report_110307.pdf?878b1bc8cb2ea1bc443bfd2fdacb942b

EuropeanIssuers also wishes to see provision for reconciliation obligations for intermediaries included in the future securities law legislation in order to ensure that share ownership is more transparent and accurate. For further details, please see our comments[20].

22) How can the mandates and incentives given to asset managers be developed to support long-term investment strategies and relationships?

Stewardship Codes

EuropeanIssuers supports the development of stewardship codes for asset managers and asset owners across Europe[21]. We believe that disclosure of stewardship responsibilities may have a positive impact on institutional investors and facilitate the dialogue between investors and companies.

We take the view that codes applicable to institutional investors should remain more in the self-regulation area, rather than on detailed legislative requirements. We therefore consider it appropriate to promote stewardship codes for institutional investors and their asset managers with a simple requirement to disclose against a code, as is done for listed companies in the 4th and 7th company law directives, so that they disclose whether or not they comply with a code and also with which code they comply (FRC Stewardship code; EFAMA code, BVI *Wohlverhaltensregeln,* Swiss code etc).

With regard to fund managers, they could be required, in particular, to:

- draw up a report on the investments made;
- disclose their voting policy and how votes have been exercised ex post. The format of this report could, among other things, take the form of a detailed report for each issuer, a summary of the resolutions, or details about the resolutions they voted against. Finally, if investors decide not to vote, they should indicate this in their voting policy;
- disclose the remuneration policy for portfolio managers and, in particular, the base criteria for the variable portion of this remuneration, so as to enable clients to check whether it also includes long-term aspects;
- report the turnover relating to the portfolio managed throughout the year and the fees pertaining thereto;
- indicate whether the manager has invested personally in the funds he or she manages.

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[20] See http://www.europeanissuers.eu/_mdb/position/248_EuropeanIssuers_position_on_Securities_Law_Legislation_2012.pdf

[21] See pp 19-20 of our response to the Green Paper on Corporate Governance dated 22 July 2011.

Asset owners should be encouraged to move away from an undue focus on quarterly reporting by fund managers. We welcome the removal of such an obligation for companies in the Transparency Directive.

23) Is there a need to revisit the definition of fiduciary duty in the context of long-term financing?

Before we can answer this question clearly, we would like to have a better understanding of the current situation across different Member States. We have recently suffered huge waves of regulation following the financial crisis. While much of this may have been necessary, there is a perception that some is probably not helpful and that insufficient time has been devoted to thinking about the potential impacts. Taking additional time now to understand the facts and any potential consequences later would be better for the development of a truly long-term strategy.

10 years ago there was a useful comparative study of national corporate governance codes by Weil Gotshal & Manges; perhaps a similar study could now be undertaken on investor governance and the comparative duties of asset managers and other financial intermediaries.

Nevertheless, with regard to the fiduciary duties of asset managers, we believe that they should be required to inform their clients about the investment strategies and ensure that these match the investor's profile throughout the mandate.

3.11. INFORMATION AND REPORTING

24) To what extent can increased integration of financial and non-financial information help provide a clearer overview of a company's long-term performance, and contribute to better investment decision-making?

In the current situation, increased integration of financial and non-financial information should be avoided in EU regulation. Such integration should be left to best practice to avoid confusion as it would not currently produce the effect of generating a better view of the performance of the company in the long term. This is mainly due to:

- The lack of generally accepted non-financial information standards, but only several sets of principles, which differ widely from financial reporting frameworks;
- The qualitative nature of non-financial information; it is difficult to quantify or measure and difficult to provide a clear overview of a company's long-term performance;
- Inconsistency and incomparability of social and environmental indicators;
- Lower level of reliability of non-financial information compared to financial information;

- Given the many uncertainties and the limitations mentioned, public disclosure of long-term performance using non-financial information would require a greater use of estimates and assumptions and thus involve frequent publication of profit warnings, which could in turn increase short-termism;

- Major issues with regard to communicating commercially sensitive information – the International Integrated Reporting Council (IIRC) recommends communicating company strategies, data related to research and development, etc, which could be potentially detrimental to companies.

25) Is there a need to develop specific long-term benchmarks?

Given the market trend of a growing concern on non-financial information, we think it may be useful to consider parameters of non-financial information that might be comparable over time; provided, however, that the analysis of these parameters should take into account the sector and size of the undertaking and the concerns highlighted in response to Q 24 above. Based on such analysis, some of these parameters might then become an instrument of "linkage" to the long-term investor, which ultimately is the Green Paper's fundamental aim.

Indices

We believe that there are benefits to investing in the local economy. However, some markets such as the UK have national indices are heavily weighted towards large global companies that are headquartered in the UK, but which do not necessarily reflect economic contribution to that economy.

This has the effect that passive investment funds are skewed to investing in these larger global companies. It is also more difficult for retail investors to choose to invest in their local economy. There are many "UK Funds" marketed to institutional and retail investors which, as a result of the index methodology applied, do not actually demonstrate investment in UK-centric quoted businesses.

We believe that investors should be offered the choice of indices that are directed not just to globalised indices, but also to the local markets, so that liquidity can flow into these companies from local investors who prefer to invest in companies known to them.

3.12. SME FINANCING

26) What further steps could be envisaged, in terms of EU regulation or other reforms, to facilitate SME access to alternative sources of finance?

There are three main areas where further steps could be envisaged:

- EU regulation

- Market environment and behaviours
- Access to information and education.

EU regulation

We comment on specific suggestions on EU regulation in our response to Q28 below. In addition, we have the following comments:

Need to encourage business progression

EU regulation tends to deal with specific issues in silos. Rather than a single SME Action Plan looking at many different types of company, policymakers should look at actions plural for companies at different stages of development. What is appropriate for microfinance or small unlisted companies is not the same as what is needed for Mittelstand or smaller quoted companies undertaking an IPO for the first time. Thus Europe needs to develop policies which encourage business progression from one size of company to the next stage, rather than taking a one size fits all approach to what are different businesses.

Each piece of regulation is self-contained, whereas what is needed is a more joined-up approach so that e.g. the EU strategy for venture capital includes the possibility of exit onto the public markets and the need to investigate barriers to such exits.

Proportionate regulation

We believe that lessons could be learned from markets such as the BondM market in Stuttgart or recent changes at the London Stock Exchange regarding the development of bond markets for mid-cap companies, where an important factor in their success is that, as the Green Paper recognises, "documentation provisions and costs are kept to a minimum".

Another example is the Italian ExtraMOT PRO. From February 2013, Borsa Italiana started a new Professional Segment of ExtraMOT market dedicated to the listing of bonds, commercial paper, and project bonds. The new segment was created to offer to corporates and, in particular to SMEs, a flexible and national cost effective market, in which to create opportunities and tax benefits arising from the new regulatory framework (Decree-Law No. 83/2012).

The regulatory infrastructure of the new segment provides companies with easier and more efficient initial access to capital markets. The only listing requirements are: publication of the annual financial statements for the past two years, the last of which should be audited, and provision of an admission document in Italian or in English with some essential information.

No listing prospectus in accordance with the Prospectus Directive is required. After admission to listing, the following must also be published / disclosed: audited financial statements, disclosure of any ratings if a public rating is assigned, information concerning any changes in bondholders' rights, and any technical information related to the characteristics of the instruments (e.g. payment dates, interest coupons, sinking schedule).

The segment has the same structure of ExtraMOT, but trading is available only to professional investors. It is possible to have a specialist to support the liquidity of the instrument.

Market environment and behaviours

We have commented above on the environment needed to support companies coming to market for the first time and in their ongoing disclosure requirements.

Raising finance on public markets is more difficult and less efficient for smaller companies, especially when compared to other forms of finance available to them (bank loans, venture capital, private equity, etc). Since they are likely to raise smaller amounts of capital, the costs are proportionately much higher and thus impact them much harder than larger companies. For example, DG Enterprise states that[22]:

"On average, first listing costs can be:

- *3 to 7,5% from an Initial Global Offering of more than EUR 100 million;*
- *5 to 8% from an Initial Global Offering between EUR 50 million and EUR 100 million;*
- *6 to 10% from an Initial Global Offering of less than EUR 50 million;*
- *10 to 15% from an Initial Global Offering of less than EUR 6 million."*

We note that recent OECD[23] research appears to indicate that companies listing now need to be twice the size they were 10 years ago, which would indicate that the equity gap has been growing.

Access to information and education

a) Information for companies

What smaller companies need is a support infrastructure, as they are very dependent on advisers to provide information, and advisers are costly. Many exchanges require companies to take on sponsors, who will advise the company on its listing and disclosure obligations.

The move from being a family-owned business to being a public company with external shareholders requires a huge cultural change. Companies need advice and assistance in order to adapt to the different environment and in order to learn about capital market expectations, which may be different to those of a family-run business. If information can be made more easily accessible in order to assist companies along the journey, then the costs to companies will be reduced.

[22] See http://ec.europa.eu/enterprise/policies/finance/risk-capital/going-public/step-by-step-guide/7-costs-how-much_en.htm

[23] See comments by Mats Isaksson, Head of the Corporate Affairs Division, OECD on Corporate Governance and Value Creation in Today's Equity Markets at the joint conference by ACCA, ecoDa and EuropeanIssuers on 4 February 2013

To that end, we are pleased that DG Enterprise has recently developed its website on access to finance with our support to include a practical guide to going public. We would like to see such information available to companies on alternative financing sources and on how capital markets work developed further.

Some possible ideas for further support for companies could include similar information to help companies accessing the capital markets for the first time on:

- How to develop business plans to attract investors?
- How to obtain a credit rating?
- How to obtain research coverage?
- How to obtain information on changes in your shareholder base after the IPO?

In capital markets, the flow of information is usually one-way. It should be made easier for companies to find out information about investors, not just the other way around. At present, companies are heavily reliant upon financial advisers and proxy solicitation agents in order to find information about investors. This is thus expensive for the companies.

We believe that this could be made easier, if policymakers and markets thought more about the need to serve end users being both companies and investors, and about the need to facilitate communication between companies and investors, rather than only about investor protection. Retail investors can find information about funds online on databases such as Morningstar, etc. Perhaps some of this information could also be made more easily available to companies.

b) Information for investors

Another area for consideration is the most cost effective and efficient way to make information available on smaller companies, in order for investors to be able to evaluate their credit worthiness. We understand that some consideration has been given to this subject and we would encourage the European Commission to publish a Discussion Paper in order to stimulate the debate.

Independent analyst research

There is less research available on small and mid-size quoted companies than for large blue chip companies, which hinders their ability to attract and retain investors. Possible solutions which we believe should be investigated include:

- Incentives for smaller brokers and analysts to cover small-caps
- Making credit ratings for mid-caps more widely available and
- Making information on investors more easily available to companies (see comments above).

Incentives:

Some 35-40% of all publicly traded companies worldwide may have no sell-side analyst coverage[24] - small and micro cap companies suffer the most from the lack of coverage. The key reasons that small and mid-size quoted companies do not attract as much coverage include:

1 Large cap companies are more likely to generate higher investment banking fees;

2 Greater liquidity usually translates into higher revenue from trading commissions; and

3 Many buy-side funds are bound by market cap restrictions on portfolio holdings.

So there is less incentive from a broker perspective to provide coverage for small and mid-size quoted companies. Fewer sell-side analysts are employed now in investment banks than a few years ago. In some cases, fund managers on the buyside have employed their own analysts; in some cases they use independent research as well as sellside analysts. This has been driven by several factors, including a perceived lack of added value to the buyside from sell-side research. While fund managers may be prepared to pay for independent research into the larger, more liquid stocks, it is less clear whether they do the same for smaller companies.

In terms of analyst incentives, it could be helpful to consider whether minimum tick sizes for small and mid-size quoted companies could create a return for liquidity providers, which could be reinvested in the provision of services. In addition, companies that pay for independent research should be able to offset that cost against profits in any year for tax purposes (see also our response to Q17).

We understand that some EU stock exchanges offer online access to independent research on all the companies listed on their exchange. We would encourage the SME Growth Markets to develop this and also to ensure that they have a panel of research providers who cover every company on the market.

Credit ratings

We welcome the development of new ratings aimed at mid market companies, although we do not wish to see these included in regulation and believe that the existing references to credit ratings should be removed from EU regulations.

27) How could securitisation instruments for SMEs be designed? What are the best ways to use securitisation in order to mobilise financial intermediaries' capital for additional lending/investments to SMEs?

We leave it to the intermediaries and investors to comment in the first instance on the ways in which securitisation could be designed, although we would support the option of securitisation being made available to smaller companies.

[24] According to Forefactor, an independent market research organisation.

28) Would there be merit in creating a fully separate and distinct approach for SME markets? How and by whom could a market be developed for SMEs, including for securitised products specifically designed for SMEs' financing needs?

Small and mid-size quoted companies are fundamentally different from large blue chip companies - in terms of their growth potential[25], size, turnover, market capitalisation, number of employees, percentage shareholding of investors, types of investors, etc. As such, they require a different regulatory environment.

"Growth companies' definition" for SME Markets

We would like to see the creation of a workable definition for small and mid-size quoted companies, which includes those companies on both regulated markets and primary MTFs. We would suggest the term "growth companies", in order to make the distinction from the SME definition used for other directives. The current SME definition is used to cover a huge variety of different businesses. As the definition is often aimed at microfinance and smaller unlisted companies, it is often inappropriate to listed small-caps.

We suggest setting a maximum threshold of 1 billion euro of market capitalisation, which is high enough to encompass all the different national markets in Europe, but which could be lowered by the individual Member States to the level appropriate to their own market.[26] It may also be appropriate to set a floor below which EU regulation should not apply to smaller quoted companies at all e.g. national regulation should apply to any companies below €10m. We recognise that a suitable definition of small and mid-size quoted company will vary for each Member State.

Our suggestion of 1 billion would be more in line with the definition used for emerging growth companies in section 101 the US's Jumpstart Our Business Startups (JOBS) Act[27], which aimed to ease the initial public offering process and reporting requirements for growth companies, but would also allow Member States to adjust the amount for their own markets.

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[25] See for example Report from GE Capital & Essec Business School entitled The Mighty Middle: Why Europe's Future rests on its Middle Market Companies - Despite accounting for less than 2% of European companies in France, Germany, Italy & the UK, the mid market contributes almost one-third of private sector GDP (€1.11 trillion) and supports 32 million jobs.

[26] 1 billion euro Cap Company in Poland is not the same as in France for instance.

[27] Section 101 of the US Jobs Act defines an emerging growth company as a company with annual gross revenues of less than $1 000 000 000 during its most recent fiscal year, as shown on the income statement presented under US GAAP. Meanwhile Weild, Kim and Newport's report on US equity markets (September 2012), defines a small cap company as one with a market capitalisation between $500m and $2bn.5, while EFAMA defines small-cap as...

29) Would an EU regulatory framework help or hinder the development of this alternative non-bank source of finance for SMEs? What reforms could help support their continued growth?

Growth companies directive / EU Jobs Act

A specific “Growth Companies Act” could be considered, to create an optional and more appropriate EU regulatory regime, facilitating the growth of small and mid-size quoted companies on public equity markets, and ensuring that Europe’s equity markets remain competitive in terms of attracting such companies.

We strongly believe that such a regime should be optional, in order to allow the exchanges to choose whether to opt to apply for SME Growth Company Market status. We do not support full harmonisation of regulation on such markets, as we believe that the costs would be likely to outweigh the benefits. There are currently various alternative markets in Europe which current offer a route to market for smaller companies, such as Alternext in Belgium / France / Holland / Portugal, AIM Italia in Italy, NewConnect in Poland, FirstNorth in Scandinavia, AIM and PLUS in the UK. They are all adapted to the relevant national environment.

We also believe that any such regime would only be worth pursuing if there were to be genuine reductions in the administrative burdens on companies. Already back in March 2010, before much of the additional regulation for the financial crisis had been passed, a report on EU listing requirements[28] had noted that: “A large number of SMILEs (Small and Medium-Sized Issuers Listed in Europe), but also regulators, public authorities, exchanges and stakeholders shared the view that the initial and on-going listing costs outweigh the benefits.... EU Directives have set requirements, applicable to all issuers irrespective of their size, representing a barrier for Small and Medium Companies in terms of compliance and costs... there is a major risk that financial and regulatory developments lead to the desertification of regulated markets”.

We would suggest that the recommendations in the report from ESMA’s Stakeholder Group[29] dated 12 October 2012 on helping small and medium-sized companies access funding could be considered for future action. Thus, for example, the review of prospectuses on SME growth markets could be delegated to the exchange or to key advisers such as sponsors, rather than given to national regulators.

We believe that such proposals should follow the creation of an IPO Taskforce in order to debate the issues fully first.

[28] An EU-Listing Small Business Act: Establishing a proportionate regulatory and financial environment for Small and Medium-sized Issuers Listed in Europe (SMILEs) by Fabrice Demarigny of Mazars, March 2010. ◦
[29] See ww.esma.europa.eu/system/files/2012-smsg-59.pdf

3.13. OTHER

30) In addition to the analysis and potential measures set out in this Green Paper, what else could contribute to the long-term financing of the European economy?

There are in fact two separate questions underlying the Green Paper which need to be explored more clearly:

- financing of the EU economy and
- growth of EU companies.

The solutions can be the same but may not necessarily be so. Financing of the EU economy can come from non-EU sources. Likewise, sources of growth for EU companies can come from outside Europe.

Listing – Europe's competitive position

In order to ensure that Europe's capital markets remain competitive, it is important to consider a competitive analysis of the relative merits from the corporate perspective of listing in Europe v the USA or Asia. In most cases, companies will choose to list in their home market. However, this is not always the case. In some cases, access to a wider capital base i.e. a greater and more diverse range of investors may tempt companies to list overseas.

It appears from some studies[30] that "the centre of IPO activity is gradually shifting towards Asia-Pacific... Asia is increasingly a source of both issuers and capital, with the highest level of cross-border activity". The significant increase in European rules and the accompanying compliance burdens may accelerate this trend. Significantly, in a recent survey, "36% of investment bankers say they expect de-listing to become a trend for the next few years"[31].

Europe also needs to measure whether other parts of the world may provide investment opportunities that EU regulation has prevented EU issuers from providing.

Statistics

Statistics and performance indicators are important and could contribute to better measurement by policymakers of the outcomes that benefit the end users of markets.

There is currently very little measurement of the real economy in the financial statistics considered by policymakers. The various publications produced by the European Central Bank, European Securities & Markets Authority, Eurostat, etc, do not always appear to be very relevant to the interests of companies.

It would be useful to have a statistical tool at European level, which could be placed under the auspices of Eurostat or the European Central Bank.

[30] See PwC report "Capital Markets in 2025"
[31] See p17 PwC report "Equity sans frontières" November 2012

We would like to see greater focus on the measurement of performance indicators that relate to the different financing channels (including the health of the equity and corporate bond markets) from the end user perspective. For issuers, this would include indicators such as:

- Financing in euros and financing in other currencies (particularly USD);
- Financing, depending on the size of the companies (large companies; intermediate-sized companies; smaller companies);
- The number of listed companies across Europe[32]
- IPO activity across Europe; also the relative performance of EU listings v the rest of the world[33]
- Companies' ability to raise money 2-3 years after listing, not just at the IPO stage, which is a good indicator of the success or otherwise of their move onto the capital markets
- The relative costs of buying and holding (as opposed to trading) a share over a 5-year period across Europe
- The costs of listing, including fees paid to advisers and the comparative listing fees charged by exchanges and national regulators[34].

In each case, it would be useful to know whether these figures are increasing or decreasing.

***EuropeanIssuers** was set up to represent the interests of quoted companies across Europe.*

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers. More information can be found at www.europeanissuers.eu.

[32] Note that FESE statistics are based on their membership rather than all EU markets
[33] See for example PwC IPO Watch at http://www.pwc.com/gx/en/audit-services/capital-market/ipo-watch.jhtml
[34] See for example presentation of a study by the University of Bocconi at http://www.europeanissuers.eu/_lib/presentation/lazzari.pdf