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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets

Delegations will find attached document SWD(2018) 244 final.

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Brussels, 24.5.2018
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion
of the use of SME growth markets**

{COM(2018) 331 final} - {SEC(2018) 247 final} - {SWD(2018) 243 final}

Executive Summary Sheet

Impact assessment on Commission proposal on Fostering and promoting the use of SME Growth Markets

A. Need for action

Why? What is the problem being addressed?

The initiative stands central to the Capital Markets Union (CMU) work programme and aims to facilitate access to public capital markets for small and medium-sized enterprises (SMEs). Specifically, it aims to tackle excessive administrative burden placed on SMEs when listing or issuing equity and bonds and to enhance the level of liquidity on SME Growth Markets (a new category of multilateral trading facilities, created by the Markets in Financial Instruments II 2014/65/EU – MiFID II).

The EU rulebook currently provides only a few alleviations to SME Growth Market issuers and places disproportionately high costs on them. This is particularly the case for one-size-fits-all approaches as taken under the Market Abuse Regulation 596/2014 (MAR). These costs decrease the relative attractiveness of public issuances of equity or debt. In addition, SME shares suffer from poor liquidity. This increases liquidity and volatility risks for investors, which lowers share valuations. Furthermore, the current definition of SME debt issuers (for the purposes of SME Growth Markets) and the requirement for them to prepare half-yearly reports creates significant obstacles for operators and hinders SME debt issuers from taking advantage of the alleviations already in place as well as those envisaged by this initiative.

What is this initiative expected to achieve?

The initiative is expected to reduce the administrative costs for listed SMEs and increase the level of liquidity on SME Growth Markets. In conjunction with related regulatory and non-regulatory actions taken under the CMU work programme, the initiative will increase the relative attractiveness of public markets and improve access to finance for SMEs. This will make SMEs less dependent on bank financing, thereby increasing their resilience to economic shocks and benefitting the wider economy.

What is the value added of action at the EU level?

As there is almost no flexibility for Member States to adapt the Markets in Financial Instruments Directive II, the Market Abuse Regulation nor the Prospectus Regulation 2017/1129 to local conditions, a legislative action at EU level is absolutely needed in order to reduce the administrative burden placed on SME Growth Market issuers and stemming from those EU Acts. As regards the regulatory obstacles impairing liquidity provision, the logic behind EU intervention is different. Member States may adopt accepted market practice (AMP) on liquidity contracts but only four have done so. This means that in many Member States, the potential SME issuers are deprived from the right to enter into liquidity contracts. This situation creates a fragmentation of the Single Market and creates a distortion of competition between issuers who have the right to enter into a liquidity contract (and therefore ensure liquidity, lower their cost of capital...) and those which do not have this possibility. Limited trading due to limited free float may cause investors to have a negative perception of the liquidity of securities listed on SME Growth Markets and it could impair the credibility and attractiveness of those newly-created trading venues. Action at EU level is needed to ensure that the identified regulatory issues resulting from EU rules are adequately tackled and that liquidity can be increased on those markets.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The baseline option in all cases was not to propose any changes in the rules applying to SME Growth Markets and issuers on these markets. While non-legislative policy options can help to further enhance the market environment and contribute to the objectives of the initiative, they were not considered to be effective tools to address the specific problems.

The preferred policy options were identified based on their respective effectiveness and efficiency to (i) reduce the compliance costs faced by issuers on SME Growth Markets and (ii) increase the liquidity on SME Growth Markets, but at the same time (iii) maintain a high level of investor protection and market integrity. The preferred regulatory adjustments concerning liquidity were chosen based on their ability to effectively improve liquidity while still maintaining sufficient flexibility to tailor them to local market environments. This should help to improve their effectiveness. The analysis demonstrated that the best approach would be to implement a European opt-in regime for liquidity contracts and mandate SME Growth Markets to apply minimum free float requirements without further specifications.

The preferred measures regarding the reduction of compliance costs were selected according to their ability to reduce costs while still upholding a high degree of market integrity. The analysis of options resulted in proposing technical amendments that provide limited reliefs as regards scope, time requirement for disclosing information, and record-keeping obligations resulting in particular from the MAR. It was also decided to enable SMEs to use an alleviated 'transfer prospectus' when moving from an SME Growth Market to a regulated market ('main market').

Who supports which option?

The stakeholder consultation and prior consultative actions have shown wide support for regulatory adjustments to facilitate a better access to public capital markets for SMEs. Stakeholders noted in particular that the one-size-fits all approach under MAR places a disproportionate burden on smaller issuers. Issuers, exchanges and intermediaries generally called for targeted alleviations to lower administrative costs, in particular as regards manager transactions, insider lists and disclosure of inside information. Member States also showed support for such action, noting however that any adjustments made should avoid detrimental impacts on market integrity. Stakeholders showed similar support also for the implementation of an alleviated 'transfer prospectus'. Concerning the adjustment of definitions, stakeholders showed wide support for amending the definition of SME debt issuers. The replies were less conclusive as regards the overall definition of SME Growth Markets. While many stakeholders showed support for raising the market capitalisation threshold, others noted that such action would be premature. Based on this feedback and further analysis the preferred option is to maintain the current status-quo as regards the definition of SME Growth markets (except for the SME debt issuer definition). As regards the measures aimed at enhancing liquidity, market participants widely acknowledged the benefits of liquidity contracts. Among the stakeholders who expressed an opinion, a larger number agreed that there would be merits in creating an EU framework, although many insisted on the need to maintain flexibility for such contracts to be adapted to local conditions. A few National Competent Authorities feared that such practices could give rise to manipulative pricing behaviours. Other NCAs however saw no ground for concerns, as long as the framework would be calibrated to prevent manipulative behaviours as under currently existing Accepted Market Practices. Concerning minimum free float requirements, respondents were equally split between those supporting and opposing such a measure.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred options on MAR strike the balance between reducing the administrative costs for SME listing and maintaining a high level of market integrity. At the same time, they avoid any substantial cost increase for national and EU budgets. The measures in relation to liquidity ensure that issuers are able to improve the liquidity of their shares by entering into liquidity contracts. They meanwhile still maintain sufficient flexibility for NCAs to tailor market practices to local conditions. The free float requirement provides equal calibration flexibility for market operators. The envisioned 'transfer prospectus' provides significant cost savings to issuers moving to main markets while still ensuring that sufficient information is made available to investors.

What are the costs of the preferred option (if any, otherwise main ones)?

There are no substantial costs that arise from the regulatory adjustments proposed. There are minimal cost implications for NCAs (see below).

How will businesses, SMEs and micro-enterprises be affected?

SMEs will face reduced compliance costs and increased liquidity when listing on SME Growth Markets. This will help them to diversify funding sources away from bank lending and increase their overall capacity to raise funds, thereby facilitating increased growth and increasing their ability to invest in R&D.

Will there be significant impacts on national budgets and administrations?

There will be no significant impact on national budgets. The proposed regulatory adjustments will create minimal one-off costs for NCAs given required changes to internal procedures. On-going costs are expected to remain unchanged or decrease slightly. The alleviations under MAR will reduce the supervisory workload of NCAs in relation to insider lists, delayed disclosure of insider information and market soundings. At the same time, NCAs may see a necessity to step up other supervisory measures (e.g. monitoring the execution of liquidity contracts).

Will there be other significant impacts?

There are no other significant impacts expected.

D. Follow up

When will the policy be reviewed?

As part of its wider plan to enhance SME access to public markets foreseen by the Capital Market Union Mid-term Review, the Commission services will monitor the development of SME Growth markets and SME access to capital market funding and review the effectiveness of the measures taken in line with the Better Regulation approach.