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FINANS DANMARK

**Høringssvar**

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# Høringssvar vedr. CMU Listing Act

1. **Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprices**

**Prospectus Regulation (2017/1129)**

General comments

Finance Denmark supports the overall set of measures to make public markets more attractive for EU companies and facilitate access to capital for small and medium-sized companies. That said, it is important that legislators keep in mind that simplifying the listing rules for small and medium-sized companies cannot be on the costs of a high level of investor protection and the market integrity.

Finance Denmark is of the opinion that level playing field is important for issuers when it comes to the scrutiny and approval procedures of prospectuses by competent authorities. As ESMA also has stated in their Peer review report of the scrutiny and approval procedures of prospectuses by competent authorities there are some areas where issuers are not treated in the same way. It is of utmost importance, that there is an alignment and convergence in the way the national competent authorities assess the completeness, comprehensibility, and consistency of draft prospectuses for approval. For that reason, the legislator should be aware of not using words that can lead to different interpretations between the national competent authorities. For example, the proposed amended wording to Article 16 "A prospectus shall not contain risk factors that are generic, that only serve as disclaimers, or that do not give a sufficiently clear picture of the specific risk factors that investors are to be aware of", gives room for a wide interpretation, which does not strengthen level playing field and alignment.

Specific comments

We do not support the suggestion to limit the **number of pages** in prospectuses that relates to shares. We do not believe that it is in the interest of investors and issuers to put restrictions on the issuer when describing the company and the risk factors. From an investor perspective, not having all the necessary information available in the prospectus due to a hard-set page limit could impair its informed investment decision. It is important to keep in mind that the prospectus is a legal document with legal liability attached to its content. A limitation in pages could result in an increase in litigation coming from lack of sufficient disclosure of the risk of which may mean that companies in the European Union will shun away from the capital markets and instead rely on financing provided by banks. Therefore, the issuer must not be forced to leave out important information due to restrictions on the number of pages.



Today issuers are not obliged to present the prospectus in a **standardized sequence**. Instead, if the issuer presents the information in a different sequence than presented in the Annexes to the prospectus regulation, a list of cross references shall be provided to the competent authorities upon request. We do not support the proposal that a prospectus shall be presented in a standardized sequence, cf. Article 6(2). For example, for non-equity issues such as EMTN programmes, market participants are familiar with the current framework used for these with EMTN programmes already now following a fairly standard market practice format and sequence which have been in place for decades and it will be overly burdensome and costly to change/re-write the prospectuses into a new format, which does not seem to add any value. Alternatively, a standardized sequence can be required if the issue is targeted at retail investors with non-equity securities in low denominations, whereas for issues targeted institutional investors the issuer shall not be forced to use a specific sequence.

We are supportive to the suggestion of an **EU Follow-on prospectus** as a permanent replacement to the EU Recovery prospectus. On the other hand, we think SME issuers should have the option to freely choose between drawing up an **EU Growth issuance document** and a "normal" prospectus.

We also support the changes to Article 20 where the Commission is empowered to adopt delegated acts, among other a **maximum timeframe** for a competent authority to finalise the scrutiny of the prospectus. We believe, this initiative will create level playing field for the issuer.

We also support the following changes:

- That issuers should no longer be required to rank the most material **risk factors.**
- The amendment of the **20% threshold in Article 1(5) to 40%** in respect of securities fungible with securities already admitted to trading and the extension of such exemption to also include offers to the public.
- That issuers should **not be required to publish a supplement** for updating annual or interim financial information incorporated by reference in a base prospectus which is still valid.
- That prospectuses only shall be drafted in an **electronic format**.
- The amendment to Article 21(1) which shortens **the period from 6 to 3 working days** in relation to prospectus availability period with respect to initial public offers of shares.
- That issuers can draw-up the prospectus in **English only**, except for the summary.



We are not supportive of the **investor walk-away right** in Article 23(2) in connection with supplements to prospectuses being published being extended from 2 to 3 working days since such extension may lead to uncertainty for a longer period of time about the final outcome of the relevant offer.

Further, we are not supportive with respect to the suggested new Article 23, 4a which prohibits the introduction of a new type of security to a base prospectus via a supplement. Such prohibition reduces the flexibility of issuers to issue a different kind of debt security in between updates of the base prospectus by publishing an approved supplement which includes all the necessary information with respect to such new kind of debt security and would mean that issuers would either have to do a full update of the base prospectus or prepare and publish an approved standalone prospectus for such issue with both such options meaning that the issuers will incur significant costs and require more work in preparing an updated new base prospectus or a standalone prospectus.

The proposal also touches upon **ESG** in prospectuses. We believe there is an inconsistent between recital 23 and Article 13(f). According to recital 23 the requirement only applies to equities whereas according to Article 13(f) it applies to both equities and non-equities. Further we would like to emphasize that in relation to Article 13(g) it is important that non-equity issuers which are covered by CSRD can refer to their CSRD reporting.

Finally, we would like to underline the importance of a sufficient **transitional period** of 24 months from the time where the delegated acts from the Commission are final and that prospectuses, including base prospectuses, which are still valid

at the time the Listing Act enters into force being grandfathered for the remaining time of their validity. Writing a prospectus is not a trivial task, for which reason the issuers and the overall capital markets must be given sufficient time to adapt to the new regulation.

**Market abuse Regulation (596/2014)**

The suggested amendments to the Market Abuse Regulation are to a large extend positive and we would like to highlight the following:

- Changes to the **buy-back** reporting obligations.
- That the Commission has made it clear that the **market sounding** regime is a mere option for the disclosing market participant to benefit from the protection form the allegation of unlawful disclosure of inside information. We would have welcomed if the Commission had taken the opportunity to further change the regulation and deleted the requirements to market sounding of information that is not classified as inside information. Information that is not inside information simply falls outside the scope of MAR.
- A less burdensome insider list of "**permanent insiders**".
- The increased threshold for **PDMRs** and that certain specified transactions and activities are out of scope.
- Disclosure of **inside information** in a protracted process. It is positive that it is clarified on Level 1 that issuers are not obliged to disclose all inside information to the public if the information related to intermediate steps of a protracted process.

In recital 61 it is stated that an issuer should notify the competent authority immediately after the issuer has taken the decision to **delay disclosure of inside information**, though without giving the competent authorities the power to authorize those delays. We do not see the need for this requirement, and we do not understand the rationale behind.

**2. Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC**

**MiFID 2014/65**

We share the Commission's view that the 1bn EUR threshold have not achieved the desired objectives. That said, it is of utmost importance to acknowledge the work that has been done from sell-side, with the implementation of the unbundling regime. This was not a trivial task and new governance structures have

been implemented together with a streamlining of the organization in order to fit the new regulation. Today research departments have been reduced and the introduction of a threshold of 1 bn EUR has not increased the capacity in the Research departments. We do not see any changes to this situation even if the threshold is increased to 10 bn EUR. Further, operating a dual system (bundling and unbundling) is both costly and comes with a lot of administration for the sell-side business, for which reason sell-side most likely will continue to unbundle, also for companies with a market cap up to 10 bn EUR. This situation is further supported by the buy-side that have also adjusted to the new regime and does not foresee going back to paying for research through a bundling regime. Therefore, we do not see an increase of the threshold as the right solution. If changes to the unbundling regime is assessed to be the way going forward, we believe that it will require a thorough analysis of costs and benefits, and the Listing Act proposal is not fit for this purpose. Instead, we support the suggestion on issuer-sponsored research and of a 'code of conduct' that keeps a level playing field across the EEA, rather than NCA or Member State having too large discretion here to develop and implement their own bespoke codes of conduct. If it is left up to NCAs or Member States to implement their own codes of conduct, it is important that such codes of conduct are subject to mutual recognition of each Member States' code of conduct across the EEA to ensure a smooth cross border distribution of "issuer-sponsored research" across the EEA.



**Listing directive (2001/34)**

Finance Denmark supports the proposal to repeal the Listing directive and transferring relevant provisions into MiFID II, including the proposal to decrease the minimum free float requirement from 25% to 10%, and to extend such threshold not only to free float in the European Union/the European Economic Area.

**3. Proposal for a directive on multiple-vote share structures in companies that see the admission to trading of their shares on an SME growth market**

Finance Denmark supports the overall purpose with the proposal to enhance the opportunities for SMEs in relation to IPOs and thereby creating enhanced opportunities for financing and growth.

Finance Denmark notes that the Commission's rationale for the proposal is a desire to ensure that founders of SME companies can maintain enhanced decision-making rights even after an IPO. The Commission finds the introduction of legislation on share classes as an appropriate model to ensure control. Given the fragmentation of national regulation in this area, which is seen to have negative con-

sequences for the free movement of capital within the internal market, the Commission considers it appropriate to have harmonized rules that should provide greater uniformity within the EU.

We are generally positive in relation to increased flexibility for SMEs in connection to IPOs. We note, however, that the proposal interferes unnecessarily with the regulation in the member states that have already introduced national rules in this regard, including Denmark.

As mentioned, we recognize improved opportunities for SMEs who wishes to go public, but who wish to maintain some control over the company. However, we consider that the proposal regulates an area which is exclusively a national matter.

Voting rights differentiation of shares is an integral part of national company law, which is linked to national corporate governance models. It is our assessment that voting rights differentiation – like other corporate governance-related matters – should not be regulated by the EU. It should only be regulated nationally, whereby the member states can adapt their specific model with the necessary flexibility in accordance with the individual corporate governance model.

We therefore consider the proposed directive an unnecessary EU interference with the existing national – including Danish – legislation in this area and on that basis, we suggest that efforts should be made to reject the proposal, alternatively for an amendment stating that the directive does not apply/takes account of member states that already have legislation in this area.

Med venlig hilsen

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