

Reply form for the Consultation Paper on the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets.





Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_CP_SME_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

ESMA_CP_MiFID_EQT_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_CP_SME_ESMA_REPLYFORM or

ESMA_CP_SME_ANNEX1

Deadline

Responses must reach us by **15 July 2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	Interessenverband kapitalmarktorientierter kleiner und mittlerer Unternehmen e.V. (Kapitalmarkt KMU)
Activity	Audit/Legal/Individual
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_SME_1>

Kapitalmarkt KMU is the first association in the German market especially representing the interests and needs of small and medium sized issuers and enterprises looking for funding on the capital markets. They want to actively contribute to make the Capital Markets Union (CMU) a success for SMEs.

Kapitalmarkt KMU's objective is to make it easier for small- and medium-sized enterprises to gain access to the capital markets as they are convinced of the advantages of financing via the capital markets, also for SMEs. Up to now, German small- and medium-sized enterprises were not adequately represented in the legislative process, which in the past has often led to excessive and inappropriate regulation, which in turn has made it difficult for SMEs to access the capital markets. Kapitalmarkt KMU wants to close this gap.

Kapitalmarkt KMU's current and future members are SMEs with an interest in the capital markets. These are companies that are already financing themselves via the capital markets or intend to do so in the future. Any company that is already listed on a stock exchange or is interested in the capital markets as a complementary source of financing and does not exceed a market capitalisation of EUR 500 million or a similar scale can become a member of Kapitalmarkt KMU. In addition, individuals can also become members if, due to their work, their profession or any other participation in economic life, they can promote the goals of the Kapitalmarkt KMU. Other organisations or persons who advise capital market-oriented SMEs and are thus able to promote the objectives of the Kapitalmarkt KMU may also be accepted as sponsoring members.

Having introduced ourselves, we would like to respond to the questions in the consultation paper as follows.

Additionally, we would like to refer to our responses in previous consultations.

Therefore, please see in respect of the EU Growth Prospectus our response dated September 28, 2017 in respect to the ESMA Consultation Paper on EU Growth prospectus. Here, we strongly recommended that the possibility should remain to include in the EU Growth prospectus financial statements which are prepared under national accounting standards. Our response to that consultation you can find on our website: <https://www.kapitalmarkt-kmu.de/opinions/>

In respect of the EU-Growth Market we already gave very critical opinions in previous consultations:

- February 23, 2018 Opinion relating to "Public consultation of the EU Commission on the creation of a proportionate regulatory framework to facilitate SME quotations"
- June 21, 2018 Opinion relating to Public consultation of the EU Commission „Promoting the use of SME growth markets - Level 2“
- July 24, 2018 Opinion relating to the Initiative of the EU Commission „Fostering and promoting the use of SME growth markets – Level 1“



Our Opinions to theses consultations you can find on our website: <https://www.kapitalmarkt-kmu.de/opinions/>

We refer to these opinions as well. We are not convinced at all with the concept of the EU-Growth Market.
<ESMA_COMMENT_CP_SME_1>

Q1. Do you have any views on why the SME activity in bonds is limited? If so, do you see any potential improvements in the regime which could create an incentive to develop those markets?

<ESMA_QUESTION_CP_SME_1>

Kapitalmarkt KMU believes that the German market for SME corporate bonds is well developed and that there is currently no need for further incentives.

In the last ten years, more than 200 offerings with an average volume of approximately EUR 10 million to EUR 150 million per issuance have been carried out with subsequent listings on various stock exchanges in Germany. These bonds are labelled as "Mittelstandsanleihen" or "Mini Bonds".

Today, these instruments are mainly listed on MTFs operated by incumbent stock exchanges. The issuers are classified as MTF issuers. Hence, the ongoing obligations set out by the Market Abuse Regulation (MAR) apply as transparency standards. Special segments within the open market created in past with additional initial requirements and ongoing obligations have not proven successful on the market. They are not required by investors, for whom the (relative) liquidity of these bonds is of particular importance. It is also worth noting that some issuers of Mini Bonds have their shares admitted to trading on SME segments like m:access (of Börse München), SME GMs like Scale (of Deutsche Börse AG) or regulated markets and are therefore already subject to increased transparency obligations.

The fact that the total number of SME issues falls significantly short of the issues of large caps is due to the size and, above all, the potentially reduced creditworthiness of SME issuers and not to the general market conditions.

<ESMA_QUESTION_CP_SME_1>

Q2. In your view, how could the visibility of SME GMs be further developed, e.g. to attract the issuers from other members states than the country of the trading venue ?

<ESMA_QUESTION_CP_SME_2>

Kapitalmarkt KMU believes that measures to foster capital market financing for SMEs should be taken on the level of the SME and not necessarily on the level of SME GMs; the individual companies should benefit from regulatory easing regardless of where they are listed

The SME segments in Germany (SME GMs or others) mainly comprises companies from Germany and some companies from the German speaking countries like Austria and Switzerland (in German called the "DACH-Region"). The investors are also predominantly investors located in Germany or the DACH-Region. We assume that also retail investors play a major role in SMEs. These investors traditionally have strong ties to their home market so that the widespread understanding in the financial world "equity is local" is thus realised, in our view. However, as can be seen with some specific issuers, this does not prevent international investors (predominantly based in the UK) from investing in these companies despite not being listed on an SME GM in the investor's home country.

<ESMA_QUESTION_CP_SME_2>

Q3. In your view does the 50% threshold set in Article 33(3)(a) of MiFID II remain appropriate for the time being as a criterion for an MTF to qualify as an SME GM? Do you think that a medium-term increase of the threshold and the creation of a more specialised SME GMs regime would be appropriate?

<ESMA_QUESTION_CP_SME_3>

Kapitalmarkt KMU is of the opinion that the 50% threshold is certainly an appropriate criterion in the short term.

In the medium term, it could be advisable to create a more focused SME GM regime, e.g. by a broader definition of SMEs (e.g. to issuers with a market cap of up to EUR 500 million or even EUR 1 bn) with a corresponding reduction of the share of permissible non-SMEs at the same time.

Concentrating on the issuer characteristics would lead to a stronger contouring of the SME GM. This is justified in order to ensure that in the long term only SMEs benefit from the exemptions granted to SME GMs and not non-SMEs, for which this market category was not created per se.

<ESMA_QUESTION_CP_SME_3>

Q4. Do you consider that a further alignment of the definitions of an SME in different pieces of regulation with the MiFID II definition of SME would be helpful? Can you provide specifics of where alignment would be needed?

<ESMA_QUESTION_CP_SME_4>

A uniform definition of an SME across all parts of regulation is reasonable in order to avoid different legal consequences and thus inconsistencies of assessment, depending on the subject matter dealt with. As mentioned in our answer to Q3 the definition of an SME should have a broader scope, i.e. issuers with a market cap of up to EUR 500 million or even EUR 1bn.

<ESMA_QUESTION_CP_SME_4>

Q5. Which are your views on the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments? Are there requirements which should be specified?

<ESMA_QUESTION_CP_SME_5>

Kapitalmarkt KMU supports ESMA's assessment that at this stage further fundamental changes to the SME GM set up are not necessary.

It should be left up to the respective market operators of the SME GMs how they define their admission requirements and ongoing obligations in detail. This also makes sense as the relevant MTF operators are most familiar with their home markets and the needs of the issuers and investors using their platforms.

<ESMA_QUESTION_CP_SME_5>

Q6. Do you think it could be beneficial to harmonise accounting standards used by issuers listed on SME GMs with the aim of increasing cross-border investment?

<ESMA_QUESTION_CP_SME_6>

Kapitalmarkt KMU is of the opinion that mandatory harmonized accounting standards are not necessary but would create a further burden for SMEs to access SME GMs.

A mandatory uniform accounting standard (such as IFRS at the international level) for all European SMEs would put an unnecessary burden on smaller SMEs. This would above all result in increased costs and, as a result, would create a further hurdle for these smaller issuers to access the capital markets. This cannot be the aim of the Capital Market Union and the creation of SME GMs.

Successful markets should rely on a flexible solution. Accounting in accordance with national accounting standards should be sufficient for disclosure purposes. Alternatively, issuers should be able to voluntarily prepare their accounts in accordance with international accounting standards and thus also meet the market's ongoing transparency requirements. This concept is flexible and leaves it up to companies to choose the accounting standard that suits them best.

<ESMA_QUESTION_CP_SME_6>

Q7. Should ESMA propose to create homogeneous admission requirements for issuers admitted to trading on SME GMs? Should such requirements be tailored depending on the size of the issuer (e.g. providing less burdensome requirements for Micro-SMEs)?

<ESMA_QUESTION_CP_SME_7>

Kapitalmarkt KMU thinks that it is not necessary that ESMA create homogeneous admission requirements for issuers admitted to trading on SME GMs and to be disclosed to investors.

The general requirement of Article 33 (3) (c) of MiFID II stating that sufficient information should be published on initial admission to trading "*to enable investors to make an informed judgement about whether or not to invest in the financial instruments*" is fully sufficient.

This leaves it up to the market operator how these requirements are actually met. This approach is adequate, as market operators should be well aware of the overall markets and the requirements of the investors specifically using their markets.

At the same time, it should be left to the market operator to decide whether to differentiate in the requirements according to the size of the issuer. Kapitalmarkt KMU is generally against too much differentiation

within existing flexible concepts, so that the contours of special SME segments do not blur and complexity is not increased.

<ESMA_QUESTION_CP_SME_7>

Q8. Should ESMA suggest an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration?

<ESMA_QUESTION_CP_SME_8>

Kapitalmarkt KMU opposes such an obligation, as a corresponding obligation already arises from other provisions:

For example, financial information must be published in the prospectus in the context of public offerings, and national legislation requires financial reports to be made publicly available (e.g. in Germany by the transmission to the *Elektronischer Bundesanzeiger*). If, in exceptional cases, publication is not required by law, it should be left to the issuer whether to voluntarily publish their previous financial reports for the purpose of informing and/or attracting investors.

<ESMA_QUESTION_CP_SME_8>

Q9. Is there any other aspect of the SME GMs regime as envisaged under MiFID II that you think should be revisited? Would you consider it useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format?

<ESMA_QUESTION_CP_SME_9>

Kapitalmarkt KMU thinks that it is not useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format as increased requirements might impose a further cost burden on SMEs where it is, in fact, not necessary.

In our view, both SMEs and investors in SMEs are so multi-layered that a standardised view of these groups is not appropriate. It should rather be left to the companies how they fulfil the obligation of "*appropriate ongoing periodic financial reporting*" in order to meet the expectations of their investors.

The flexible solution provided by Article 33(3)(d) MiFID II should therefore be retained.

<ESMA_QUESTION_CP_SME_9>

Q10. Do you think that in the medium term a two-tier SME regime with additional alleviations for micro-SMEs could incentivise such issuers to seek funding from capital markets? If so, which type of alleviations could be envisaged for micro-SMEs?

<ESMA_QUESTION_CP_SME_10>

Kapitalmarkt KMU is of the opinion that a two-tier SME regime with additional alleviations for micro-SMEs is not the right approach to incentivise such issuers to seek funding from capital markets.

A two-tier SME regime would undermine and ultimately jeopardise the objective of a uniform regime for SME markets. The intensification of micro-SME issuers should rather be achieved by making the general requirements as flexible as possible in order to allow such issuers access to the SME GMs. A further fragmentation of the segment is not necessary.

At the same time in a system as described, larger SMEs are free to fulfil or exceed requirements on a voluntary basis.

<ESMA_QUESTION_CP_SME_10>

Q11. Do you think that requiring SME GMs to have in place mandatory liquidity provision schemes, designed in the spirit of what is envisaged in Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go public? Do you think that on balance such provision would increase costs for MTFs in a way which encompasses potential benefits, resulting in reducing the incentive to register as an SME GM?

<ESMA_QUESTION_CP_SME_11>

From the perspective of Kapitalmarkt KMU requiring SME GMs to have in place mandatory liquidity provision schemes is not suitable to provide SMEs an incentive to go public.

The implementation of mandatory liquidity provision schemes would lead to an overall increase in the cost of being public, since the liquidity provider's service must be paid for. There is a potential risk that part of the costs - from an economic point of view - will nevertheless be incurred by the issuer or increase costs for MTFs respectively. This would lead to negative incentives, which obviously are not intended.

A voluntary system, on the other hand, would leave it up to the issuers to decide whether they want to invest in the liquidity of their securities and thus make the share more attractive for investors.

It should be left to market participants, in particular to issuers themselves, to enter into liquidity contracts in order to provide for adequate liquidity in their securities. For this purpose, issuers can be granted a general permission by the regulation of SME GMs and, if necessary, certain general conditions can be set up which, if fulfilled, prevent the risk of market manipulation. These general conditions should not, however, make any specific stipulations with regard to limits on resources (see Q15), limits on volumes (see Q16), trading during periodic auctions (see Q17) and the restriction of large orders (see Q18). These details should be left to the bilateral agreements between issuer and liquidity provider in order to enable agreements that are as precise as possible and thus cost-effective.

<ESMA_QUESTION_CP_SME_11>

Q12. Do you think the requirement in Article 33(7) of MiFID II regarding the issuer non objection in case of instruments already admitted to trading on SME Growth Markets to be admitted to trading on another SME growth market should be extended to any trading venue? Should a specific time frame for non-objection be specified? If so which one?

<ESMA_QUESTION_CP_SME_12>

The requirement in Article 33(7) of MiFID II should not be extended to any trading venues other than SME GMs.

Such a provision is also not necessary from a liquidity point of view. The fear that the liquidity of shares being split between too many venues follows a perception of markets, venues and market participants being isolated or separated from each other. Given the deep interconnectedness of these capital market players, the focus should lie on an overall market assessment taking into account the overall liquidity in the market. In consequence, the total liquidity is independent of where the respective instrument is traded and how many venues are used to conclude transactions of the respective instrument. In our opinion a detrimental split of liquidity does not exist.

<ESMA_QUESTION_CP_SME_12>

Q13. Do you think that it should be specified that obligations relating to corporate governance or initial, ongoing or ad hoc disclosure should still hold in case of admission to trading in multiple jurisdiction?

<ESMA_QUESTION_CP_SME_13>

Yes.

<ESMA_QUESTION_CP_SME_13>

Q14. How do you think the availability of research on SMEs could be increased?

<ESMA_QUESTION_CP_SME_14>

Kapitalmarkt KMU has already taken a stand on this issue in its response to the "*Public consultation on the review of the MiFIDII/MiFIR regulatory framework*" conducted by the European Commission.

The introduction of the prohibition of research-related benefits (also known as the MiFID II research unbundling rules) has accelerated a decrease in spending on investment research. This has a rather negative impact on research for SMEs and may have reinforced a general trend to reduce research spending. Mostly affected by this is the coverage of the smallest companies in the equities sphere. Therefore, the impact of MiFID II's unbundling rules should be assessed and alternative means to improve liquidity of SME shares should be considered.

Kapitalmarkt KMU thinks that the availability of research on SMEs could especially be increased by revising MiFID II unbundling rules and allow bundling of SME research, whereby the threshold defining an SME should be set at a market cap below EUR 1bn.

<ESMA_QUESTION_CP_SME_14>

Q15. Do you agree with the proposed limits on resources or would you propose different ones? If so, please provide a justification.

<ESMA_QUESTION_CP_SME_15>

See Q11.

<ESMA_QUESTION_CP_SME_15>

Q16. Do you agree with the proposed limits on volumes or would you propose different ones? If so, please provide a justification of the alternative proposed parameters.

<ESMA_QUESTION_CP_SME_16>

See Q11.

<ESMA_QUESTION_CP_SME_16>

Q17. Do you think that specific conditions should be added as regards trading during periodic auctions? For SME GMs following different trading protocols, are there criteria or safeguards which should be considered in order to make sure that the liquidity contract does not result in a manipulative impact on the shares' price?

<ESMA_QUESTION_CP_SME_17>

See Q11.

<ESMA_QUESTION_CP_SME_17>

Q18. Do you agree with ESMA's view that the liquidity contract may cover large orders only in limited circumstances as described in paragraph 118?

<ESMA_QUESTION_CP_SME_18>

See Q11.

<ESMA_QUESTION_CP_SME_18>

Q19. Do you agree with the proposal described above regarding the template for the insider list to be submitted by issuers on SME GMs? If not, please elaborate.

<ESMA_QUESTION_CP_SME_19>

Yes.

<ESMA_QUESTION_CP_SME_19>

Q20. CBA: Can you identify any other costs and benefits? Please elaborate.

<ESMA_QUESTION_CP_SME_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_SME_20>