AN EU-LISTING *SMALL BUSINESS ACT*

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Establishing a proportionate regulatory
and financial environment for
Small and Medium-sized Issuers Listed in Europe
(SMILEs)

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EXECUTIVE SUMMARY

Time has arrived to assess the impact of the European Union Directives and Regulations of the Financial Services Action Plan (FSAP) in the area capital markets and securities.

A CRA International study[1], commissioned by the European Commission, has measured the impact of the EU Directives on the Initial Public Offering (IPO) market. One of the conclusions of the study is that the decrease of activity on the IPO market is not purely cyclical. Clearly, initial and ongoing requirements for issuers have impacted the decision-making process to float a company as well as the way exchanges have structured their listing and trading facilities. Furthermore, statistics show a constant decrease in the number of listed companies on EU regulated markets. This can be explained by the decreasing number of new entrants but, more significantly, by the fact that listed companies decide to de-list and go private.

This trend mainly affects Small and Medium-sized Issuers Listed in Europe (SMILEs)[2]. This difficulty of SMILEs to access capital markets has become even more critical with the financial crisis. And even if Member States made efforts to have a more fluid lending, the capital markets remain the only valid alternative for SMILEs to access long term finance.

A large number of SMILEs, but also regulators, public authorities, exchanges and stakeholders shared the view that the initial and on-going listing costs outweigh the benefits[3]. It appears therefore that the EU Directives have set requirements, applicable to all issuers irrespective of their size, representing a barrier too high for Small and Medium Companies in terms of compliance and costs. In addition, the Market in Financial Instruments Directive (MiFID) has concentrated even more the trading and the liquidity on major listed companies of the leading indexes. On average, 93% of listed companies that are not in the largest market capitalisations benefit from less than 7% of the liquidity. If this trend persists, the EU will end-up with regulated markets exclusively composed of "Blue Chips" included in top indexes. There is a major risk that financial and regulatory developments lead to the desertification of regulated markets. In short, in the medium run, the Single Market would not be providing financing to tomorrow's EU emerging economy. This can only be seen as a failure. Not acting is no longer an option.

2010 provides a unique opportunity to revisit this set of directives with a "Think Small First" spirit in mind. In other words, it is possible to extend the EU Small Business Act approach, approved by the Union in 2008, to securities legislation. Contrary to the EU, this kind of proportionality revision has been successfully carried out in the US more than a decade ago. Without prejudice to investor protection, the purpose of this report is to propose to introduce a more proportionate regulatory regime for SMILEs in the EU securities Directives and Regulations.

The corner stone of this proportionate regime is a legal definition of SMILEs that should be broader than the existing EU definition of Small and Medium-sized Enterprises (SMEs) of the *acquis communautaire*. It is proposed to introduce such new definition in the Prospectus Directive or the Transparency Directive and base it on more pragmatic market criteria that take into consideration the diversity of market conditions in Member States (**Recommendation # 1**). Once this specific category of issuers is legally recognised, it is also recommended that a general EU policy is implemented to favour both a regulatory and supervisory proportionate approach to SMILEs (**Recommendation # 2**).

Accordingly, it is proposed to define detailed proportionate information requirements for SMILEs along with an attempt to produce short and readable prospectuses (**Recommendation # 4).** These proportionate disclosure requirements would include only 2 years of historical financial information, less notes and materiality thresholds

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[1] See *Evaluation of the Economic Impact of the Financial Services Action Plan (FSAP)*, CRA International, March 2009

[2] For the exclusive purpose of the EU-Directives and Regulations in the area of securities (in particular the Prospectus Directive, the Transparency Directive and the Market Abuse Directive), a definition of what constitutes a Small and Medium-sized Issuer listed in Europe (SMILE) is proposed in this report. This definition is without prejudice of the EU definition of Small and Medium-sized Enterprises (SMEs).

[3] A list of interviews conducted and contributors is provided in Annex 1.

but, at the same time, would be more stringent regarding risk factors (**Recommendation # 5**). In addition, more flexibility could be given to SMILEs already listed (or preparing to be) and seeking to raise capital (**Recommendations # 3 and # 6**).

Without altering the level of information disclosed to the market, ongoing financial information requirements (annual, half-yearly and quarterly financial information, corporate governance and internal control) should be made easier to comply with for SMILEs (**Recommendations # 7, # 8, # 9, # 11 and # 12**). As an example, SMILEs should be permitted to publish half-yearly financial statements within 3 months. In addition, it is also recommended that following careful consideration and consultation by the European Commission and the Committee of European Securities Regulators (CESR/ESMA), SMILEs have the option to use the "IFRS for SMEs" to present their financial statements (**Recommendation # 10**).

As regards market integrity, the fundamental provisions of the Market Abuse Directive (MAD) should remain applicable irrespective of the size of the issuer. However, calibrating the manner in which these obligations are applied to SMILEs can make information given to the market more relevant. Proposals in that sense are put forward regarding the obligation to draw insiders' lists and to declare transactions by managers and directors (**Recommendation # 13 and # 14**). In addition, under the MAD, the legal basis for the activity of liquidity providers should be made consistent across the EU (**Recommendation # 15**).

The report also identifies legal initiatives that should not discourage or even favour more fluid investment in SMILEs. One topical point is the definition of capital requirements under the Solvency II Directive that could severely hamper equity investment. The report recommends that any decision in this regard is made only after measuring the overall impact of such rules on the allocation of capital within the Single Market (**Recommendation # 18**). It is also proposed that an EU passport is more widely used for EU domiciled Private Equity Funds or UCITS dedicated to Small and Mid Caps (**Recommendation # 16 and # 17**).

However, facilitating listings has to be done in such a way that investment on SMILEs becomes more fluid and that supply and demand efficiently meet. Indeed, SMILEs complain about the lack of liquidity in the market which makes their share price more volatile and impacts directly their market value. The absence of IPOs and the poor liquidity makes the business case of intermediaries very fragile. A market solution is therefore necessary to revitalize trading on SMILEs and to improve their visibility across the EU.

One possibility could be to create a single EU access point to trade SMILEs' shares. Whilst keeping the listing functions and services at the level of each regulated market, these markets, active intermediaries/brokers and long term institutional investors could pool together the trading on SMILEs. SMILEs would continue to list and be listed on the regulated market of their choice while benefiting from a common EU trading place accessible to the EU pool of liquidity. Intermediaries/brokers would be able to carry out transactions on one single place (saving membership fees). Investors will have simple and straightforward access to all SMILEs representing the future of the EU economy. Existing exchanges would keep their listing services and capacity unchanged and, in addition to the SMILEs they list, would offer to their members the possibility to trade all the SMILEs listed on the other EU regulated markets. National supervisors will continue to exercise their responsibilities as is the case today in accordance with relevant Directives. The licensing and supervision of the joint platform could be included directly within the scope of competence of ESMA (**Recommendation # 20**).

Finally, there is no fundamental economic reason to harmonize in EU law the way in which exchange-regulated (alternative) markets currently function. These markets play a crucial role as a first entry door for Micro and Small Companies. They are very flexible and open, offering more "tailor made" solutions to young companies outside the scope of the EU directives. This flexibility should be preserved (**Recommendation # 19**).

If the recommendations of the report are taken into consideration by the EU Commission, and subsequently by the European Parliament and the Council, the following should be kept in mind: (i) the rationale of this report is fully in line with the various initiatives taken at EU level since the Lisbon Strategy (2000) in order to boost SMEs and their access to finance; (ii) the recommendations are strongly guided by the fundamental objective of protecting investors - none of them will create a systemic or market risk: the SMILEs that would benefit from a proportionate regime represent less than 7% of the total EU market capitalisation and trading volumes; (iii) the driving principle of this report is to facilitate existing ways and means for SMILEs to access finance and to offer new legal possibilities for a public floatation.

Finally, only a determined and visible political action can successfully create a renewed environment facilitating the financing of Small and Medium-sized Companies through the EU capital markets.

KEY RECOMMENDATIONS

Definition of SMILEs and Policy

Recommendation #1: Create a legal EU definition of "Small and Medium-sized Issuers Listed in Europe" (SMILEs)

A definition should be included in the Prospectus Directive or the Transparency Directive, to which other directives could refer. Small and Medium-sized Issuers Listed in Europe (SMILEs) would be:

- At the initial public offering (IPO), companies for which the transaction value is of less than €75 million. Member States may decide to set a lower threshold for those companies for which they are the Home Member State.
- AND, if admitted to trading, companies for which the market capitalisation is less than 35% of the average market capitalisation on the regulated market(s) of the Home Member State of the issuer.

If a SMILE crosses the latter threshold during 2 subsequent years, it will cease to be considered as a SMILE after a 12-month transition period.

Thresholds should relate to year-end market capitalisation during the year of the initial listing and, subsequently, to the average of the previous 2 years.

The definition of SMILEs could be inserted into Article 2 (4) and referred to in Article 7 (2) (e) of the Prospectus Directive or included in the implementing Regulation.

The extent to which third country issuers offering securities or seeking a listing in the EU could be considered as SMILEs should be specified by way of a delegated act.

Recommendation #2: Implement the "Think Small First" principle in any legislation and in the day-to-day supervision

- The European Commission should implement the "Think Small First" principle when proposing new legislation in the area of financial services, capital markets and issuers.
- New legislative proposals for listed companies should include a cost-benefit analysis and demonstrate whether a proportionate regime for SMILEs is relevant or not.
- Specific resources should be devoted to the promotion of the "Think Small First" principle within the EU Commission Internal Market DG, within the future European Securities Markets Authority and special units for SMILEs should be created within national competent authorities.

Proportionate offering and listing requirements

Recommendation #3: Facilitate private placements by raising the thresholds triggering the obligation to produce a formal prospectus

The securities offering threshold, below which a formal prospectus approved by a competent authority is not required, should be raised to €5 or 10 million.

Recommendation #4: Provide more meaningful information to investors by creating specific schedules for SMILEs in the Prospectus Regulation

- The financial information requirements to be included in proportionate schedules for shares, debt and derivatives securities, for the exclusive use of SMILEs, should be integrated in the Prospectus Regulation 809/2004 by way of a delegated act (Level 2).
- To ensure legal predictability for issuers, the schedules for SMILEs should be drafted in detail and, to the maximum extent possible, include all information requirements. Article 3 of the above mentioned Regulation should then be fully respected.
- To ensure that the prospectus becomes a useful document for investors and focuses on key information necessary for investment decisions, prospectuses for SMILEs should not exceed 50 pages and its editing format should be harmonized by a technical standard of the CESR/ESMA (Level 3).

Recommendation #5: Determine proportionate information requirements for a SMILE prospectus

- Audited historical financial information, and all other information referring to the period covered by the historical financial information, should cover the latest 2 years (or such shorter period that the SMILE has been in operation)
- Disclosures should be limited to the latest Financial Statements
- Specific materiality threshold should be introduced and information required only if it has a significant impact on the SMILE

- The Share and Debt or Derivatives Securities Registration Document should be streamlined in some sections (3, 6, 9, 10, 11, 14 and 20) and be more specific on other sections, which are of particular relevance for investors in SMILEs (section 4) (see Annex 2).

Recommendation #6: Allow more flexibility to raise capital
SMILEs could be exempted from the obligation to publish a Prospectus for shares representing, over the previous 12 months, less than 15% of the number of shares of the same class already admitted to trading on the same regulated market.

Proportionate on-going requirements

Recommendation #7: Develop a single and fully harmonized format for the publication of Annual Reports
Subject to a more detailed harmonisation of the definition of the content of Annual Reports, at least for SMILEs, the disclosure of Annual Reports under Article 4 of the Transparency Directive should be of maximum harmonisation.

Recommendation #8: Allow a three-month deadline for the publication of Half-Yearly Financial Reports
Option 1: For SMILEs, the Half-Yearly Financial Reports required under Article 5 of the Transparency Directive should be published within 3 months after the end of the period covered (instead of 2 months).
Option 2: If the Half-Yearly Financial Report has been audited or reviewed by an external auditor, the Half-Yearly Report required under Article 5 of the Transparency Directive should be published within 3 months instead of 2 months after the end of the period covered.

Recommendation #9: Enable SMILEs to progressively publish Quarterly Interim Management Statements
The publication of Quarterly Interim Management Statements required under the Article 6 of the Transparency Directive should become compulsory from SMILEs only after three years of admission to trading on a regulated market. During this initial three-year period, listed SMILEs should be free to publish Quarterly Interim Management Statements on a voluntary basis.

Recommendation #10: Create a proportionate IFRS regime for the publication of Financial Statements – IFRS for SMEs
Reconsider the need to publish all currently required disclosures resulting from the full IFRS and allow SMILEs to waive this requirement.
Following careful consideration and consultation by the Commission and CESR/ESMA, SMILEs admitted to trading on a regulated market could be given the possibility to use IFRS for SMEs to present their Financial Statements.
In order for IFRS for SMEs to be fully applicable to SMILEs, some additional financial information requirements, not currently contemplated, would need to be added.

Recommendation #11: Allow reference to proportionate national Corporate Governance Codes
SMILEs should be authorised to disclose under the Prospectus Directive the way in which they comply with Corporate Governance rules by referring to proportionate Corporate Governance Codes.

Recommendation #12: Scale Internal Controls Standards for SMILEs
Member States should consider reviewing their standards and guidelines related to internal controls so as to scale requirements and adapt them to the size of SMILEs.

Market Integrity

Recommendation #13: Waive the obligation to maintain an insiders' list
Provide SMILEs with the possibility of waiving the obligation to draw up a list of insiders under the condition that the persons likely to have access to insider information are duly informed of their legal and regulatory duties and aware of the sanctions attached to the misuse or improper circulation of such information.

Recommendation #14: Provide more meaningful information to the market on transaction by SMILEs' Managers

Create in Article 6 of the implementing Regulation of the MAD a specific regime by which SMILEs Managers should notify transactions on shares, or the financial instruments linked to shares, issued by the company they manage, representing at the end of the calendar year more than 0.02% of the market capitalisation of the company (as computed at the end of the previous calendar year).

Recommendation #15: Favour liquidity provision for SMILEs' shares traded on EU regulated markets

Liquidity providers, acting with appropriate "Chinese Walls" and by virtue of an agreement with the relevant issuer, should be able to provide their services across the EU on legitimate grounds.

The Market Abuse Directive as well as its implementing Regulation should explicitly recognize this activity as an "accepted market practice". In particular Article 3 of the Regulation on buy back programmes (n°2273/2003) should allow that the purpose of buy back programme is also to facilitate the activity of liquidity providers.

Investor's interest for SMILEs

Recommendation #16: Create an EU passport for private equity funds

Directly or through the managers of the funds, create an EU passport for EU domiciled private equity funds with adapted functioning rules. The current proposed AIFM Directive could be used for this purpose.

Recommendation #17: Create a specific UCITS dedicated to investment in SMILEs

The European Commission should study the possibility of creating within the UCITS Directive a new category of UCITS dedicated to investments in SMILEs, to which specific rules would apply and also defining the conditions for EU domicile private equity funds to benefit from an EU passport and be marketed to retail investor.

Recommendation #18: Ensure that capital and liquidity requirements under the Solvency II Directive do not damage equity investment, in particular in SMILEs

- When considering the implementing measures of the Solvency II Directive, the EU Commission, Member States and the European Parliament should be able to measure the overall impact of these prudential requirements on the efficient allocation of capital within the whole EU economy.
- In particular, lower capital requirements than those currently envisaged should be considered for equity investments.
- Capital requirements could be even lower for investments in SMILEs' equities as a consequence of the very low percentage they represent in insurers' portfolios.

"Think Small – Act Big"

Recommendation #19: Preserve the flexibility and attractiveness of exchange-regulated (alternative) markets

- SMILEs quoted on exchange-regulated markets should benefit from all the modifications to the Prospectus Directive; and in particular the possibility to publish a Proportionate Prospectus.
- The extension of provisions of other EU Directives or Regulations to exchange-regulated markets should be left to the discretion of Member States and/or national competent authorities or the market operators themselves.
- The harmonisation of rule books on the cross border activity of exchange-regulated markets should not be done by means of EU law but rather left to market forces.

Recommendation #20: Establish a joint EU trading platform for SMILEs

- Under the auspices of the European Investment Bank (EIB), the operators of EU regulated markets, active intermediaries/brokers and long term institutional investors should work together to create an EU Multilateral Trading Platform for all SMILEs listed on their regulated markets.
- Listing functions and revenues would remain at the level of each EU regulated markets and trading revenues would be shared by the joint owners of the platform.
- Supervision and enforcement of SMILEs listings and ongoing obligations would continue to be exercised by the Home competent authorities in accordance with the relevant Directives.
- Through a legal ability for competent authorities to delegate powers to the European Securities Markets Authority (ESMA) or by way of a direct entrustment introduced in the MiFID, this joint trading platform should be licensed and supervised directly by the ESMA.

Introduction: IS THE SINGLE MARKET IN A POSITION TO FINANCE TOMORROW'S EU ECONOMY?

(a) A fact: The Single Market is not providing capital markets financing to Small and Medium-sized companies

In order to favour long term growth and job creation, one of the key ambitions of the European Union is to become the most competitive economy in the world. A fluid and liquid EU capital market is of paramount importance to achieve this objective. An efficient capital market is the best tool for proper allocation of financial resources to entrepreneurial projects.

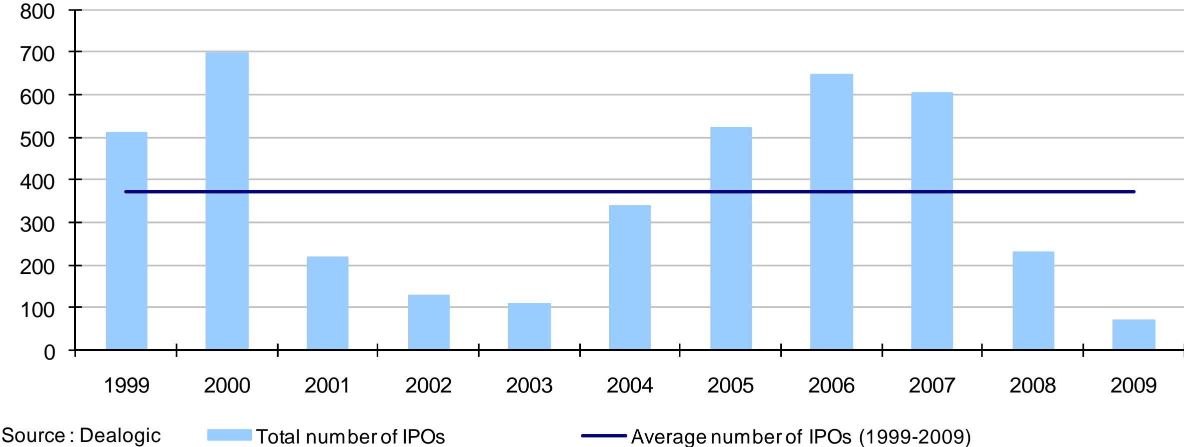
In the past decade, the EU has successfully created a more integrated Single Market for financial services through the Financial Services Action Plan (FSAP) and other related initiatives. The implementation of this set of EU laws has coincided with one of the most significant financial crisis ever experienced. So as not to overburden market players with disproportionate obligations, throughout this process, the EU has been cautious. Two general policies have been adopted: (i) a plan to reduce administrative burden and, inspired by the US experience, (ii) an EU Small Business Act. Regarding securities markets, the first policy has positively impacted the way legislation was conceived, adopted and implemented. Conversely, the "Think Small First" principle adopted by the 2008 EU Small Business Act, has not been implemented in the securities field: except for very few provisions introducing proportionality clauses, all EU securities laws provisions are applicable irrespective of the size or age of the market player that has to comply with it. This is all the more true for the legislation applicable to securities issuers.

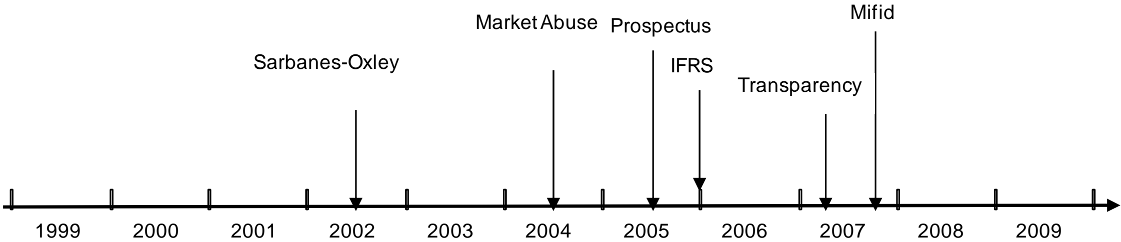
After three or four years of the functioning of the EU Directives and Regulations in the securities area, the time has arrived to assess the impact of such measures. 2010 is the year when possible improvements in EU legislation can be achieved. To prepare such an evaluation and revision process, the EU Commission has conducted or commissioned several studies on the economic impact of the FSAP directives and the cost of compliance with those Directives[4].

A CRA International study has measured the impact of the EU Directives on the Initial Public Offering (IPO) market. One of the conclusions of the study is that the decrease of activity on the IPO market is due not only to cyclical factors. Clearly, initial and ongoing requirements for issuers have impacted the decision-making process to float a company as well as the way exchanges have structured their listing and trading facilities. Furthermore, statistics show a constant decrease in the number of listed companies on EU Regulated Markets. This can be explained by the decreasing number of new entrants but, more significantly, by the fact that listed companies decided to de-list and go private. The graphs below show a negative trend regarding (i) the number of IPOs on an EU Regulated Market over the past ten years, and (ii) the number of listed companies on an EU Regulated

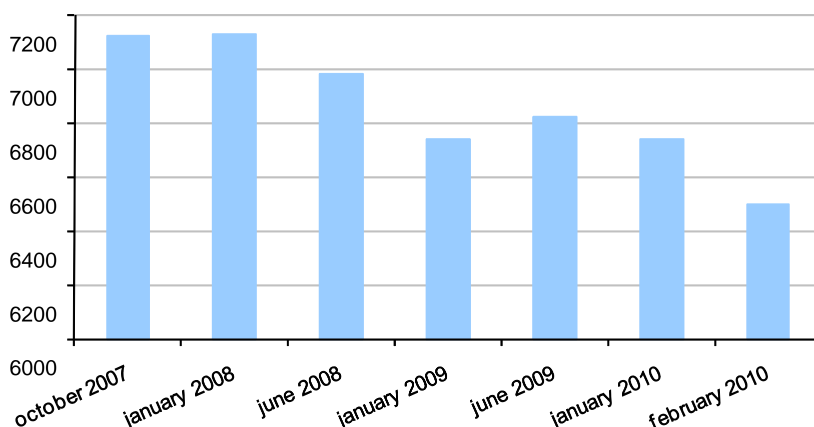
[4] See *Evaluation of the Economic Impact of the Financial Services Action Plan (FSAP)*, CRA International, March 2009 ; and *Study on the cost of compliance with selected FSAP measures, Europe Economics*, January 2009

Market[5].





[5] A full list of the shares admitted to trading on an EU Regulated Market is kept and updated by CESR in application of article 27 of the MIFID since 2007. It should be understood as an indicator of the number of listed companies admitted to trading on an EU Regulated Market. The number of issuers admitted to trading on an EU Regulated Market is inferior to the number of shares admitted to trading on an EU Regulated Market as some issuers may have several classes of shares admitted to trading on a Regulated markets.



Source : CESR Mifid database

The graphs overleaf show that the sluggish activity in the stock markets is not solely due to an almost unprecedented financial and economic crisis. It is often mentioned that the flourishing 2005-2007 IPO activity in the EU was favoured by the discouraging effect of Sarbanes-Oxley in the US. Similarly, since 2005-2006, the negative trend would also seem to be related to the implementation of several EU Directives, in particular: the Market Abuse Directive (2004), the Regulation that obliges companies listed on a Regulated Market to use International Financial Reporting Standards - IFRS (2005) - for the publication of Financial Statements, the Prospectus Directive (2005), the Transparency Directive (2007) and the Market in Financial Instruments Directive (2007)[6].

This trend mainly affected Small and Medium-sized Issuers listed in Europe (SMILEs)[7]. This difficulty of SMILEs to access capital markets has become even more critical with the financial crisis. Indeed, in addition to a number of efforts in the Member States to make the lending market more fluid, the capital markets remains the only valid alternative for SMILEs to access long term finance.

This is particularly worrying in view of the importance of SMEs in the EU economy. According to a Eurostat's study at the EU-level *European Business – Facts and Figures*[8] (2006), of the 20 million active enterprises of the non-financial business economy, 99.8% were SMEs.

[6] These legislations are:

- Market Abuse Directive - MAD (2001/34/EC)
- Regulation on the application of International Accounting Standards (1606/2002)
- Prospectus Directive (2003/71/EC)
- Transparency Directive (2004/109/EC)
- Markets Financial Instruments Directive – MiFID – (2004/39/EC)

[7] For the exclusive purpose of the EU-Directives and Regulations in the area of securities (in particular the Prospectus Directive, the Transparency Directive and the Market Abuse Directive), a definition of what constitutes a Small and Medium-sized Issuer listed in Europe (SMILE), or more formally, a "Small and Medium-sized Issuer in the European Union" (SMI) is proposed in this report (see recommendation #1) to designate small and medium-sized listed companies or companies seeking listing. This definition is without prejudice of the EU definition of Small and Medium-sized Enterprises (SMEs).

[8] http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BW-09-001/EN/KS-BW-09-001-EN.PDF

More than two thirds (67.4%) of the EU-27's non-financial business economy workforce was employed by SMEs. In a September 2009 survey, the European Central Bank[9] echoed this trend by underlining that market-based financing remains very low, which is "*both a structural phenomenon and a consequence of the difficult capital market conditions during the financial turmoil*": only 1% of SMEs had issued debt securities and a similar number had issued equity or relied on external equity investors.

The reasons governing a decision to list a company are very diverse and closely connected to the strategy of the company and its owners. Hereafter are the most frequently mentioned arguments: to make the shareholders' structure evolve; to enhance the visibility and credibility of the company vis-à-vis its clients and providers; to raise capital to finance new projects; to realise finance mergers and/or acquisitions; to have a more "result connected" compensation mechanism for managers and employees. The fact that the companies become publicly accountable is also presented as a favourable outcome. The resulting transparency and scrutiny of the markets oblige the management to implement more structured decision making processes and to favour a more efficient monitoring of company's financial situation and risk management.

In 2009, a large number of SMILEs, but also regulators, public authorities, exchanges and stakeholders shared the view that the initial and on-going listing costs outweigh the benefits. It appears therefore that the EU Directives have set requirements representing a barrier, which is too high for Small and Medium Companies in terms of compliance and costs. Interviews substantiate this fact. Issuers' associations are very vocal on the disproportionate nature of the existing rules. According to several EU-level studies[10], a significant number of SMEs consider they operate in an over-regulated environment (44% of SMEs in 2007). All in all, as they stand today, the EU listing rules are not achieving their primary objective: to build on an EU Single Capital Market open to all kinds of companies.

Confronted to these disincentives to list, traditional exchanges have launched exchange-regulated markets to attract Small and Medium-sized Companies. Today, there are more than 13 exchange-regulated or alternative markets across the EU. These markets are based on national law (and therefore not submitted to EU Directives) and rely heavily on lower listing standards and lighter ongoing requirements. This does not completely satisfy the market. Some investors complain about the lower degree of investors' protection and poor liquidity. In addition, for regulatory or tax reasons, some Small and Medium-sized Companies have no other choice than to list on a regulated market (e.g.: Real Estate companies in a number of Member States must be listed on a Regulated-market to benefit from a specific tax regime). Finally, securities listed or quoted on exchange-regulated markets are not automatically eligible in the portfolios of EU regulated institutional investors. In other words, companies listed on an exchange-regulated market do not have full access to the pool of liquidity of the Single Market.

In addition, the MiFID contributes to concentrate even more the trading and the liquidity on major listed companies of the leading indexes. On average, 93% of trading volumes on regulated markets are concentrated on 7% of the total number of companies listed in the EU.

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[9] *Survey in the access to finance of small and medium-sized enterprises in the Euro area, September 2009:* *http://www.banque-france.fr/fr/eurosys/telechar/bce/2009/accesstofinancesmallmediumsizedenterprises200909_em.pdf*

[10] See notably Flash Eurobarometer 196, January 2007

To put it in another way, 93% of listed companies that are not in the top market capitalisation benefit from less than 7% of the liquidity.

If this trend persists, the EU will end-up with regulated markets exclusively composed of "Blue Chips" included in top indexes. There is a major risk that financial and regulatory developments lead to desertification of regulated markets. In short, in the medium run, the Single Market would not be providing financing to tomorrow's EU emerging economy. This can only be seen as a failure. Not acting is no longer an option.

(b) 2010 offers a unique opportunity to establish a proportionate regulatory and favourable financial environment for Small and Medium-sized Issuers listed in Europe (SMILEs)

2010 is the year of the review of the Prospectus Directive, the Transparency Directive, the Market Abuse Directive and the MiFID. This coincidence provides a unique opportunity to revisit this set of directives with a "Think Small First" spirit in mind.

In the US, for similar reasons, the Securities and Exchange Commission (SEC) gives high priority to calibrating securities' laws and rules when applied to Small and Mid Caps. A number of filing and disclosure rules have been amended to create a specific regulatory regime for Small and Mid Caps ("Smaller Reporting Companies"[11]). Similarly, the primary objective of this Report is to provide a simplified and less costly means of access to capital markets for Small and Mid Caps.

The proposed recommendations presented in this report have been drafted after a wide consultation of EU stakeholders including interviews with stock exchanges, regulators, national Ministers of Finance, associations of issuers, investors, lawyers, banks, brokers and private equity managers (see Annex 1). All the interviewees welcomed this initiative.

Each section contains a number of recommendations that should favour SMILEs' listings across the EU. If the recommendations of the report are taken into consideration by the EU Commission, and subsequently by the European Parliament and the Council, five major factors need to be constantly kept in mind:

1. The rationale of this report is fully in line with the various initiatives taken at EU level since the Lisbon Strategy (2000) in order to boost SMEs and their access to finance. The report particularly builds on: the European Charter for Small Enterprises endorsed in Feiria in 2000; the High Level Group of Independent Stakeholders on Administrative Burdens set up in August 2007 and chaired by Pr. Edmund Stoiber; the Small Business Act for Europe adopted in June 2008, and the work undertaken by the European Investment Bank Group to favour SMEs' access to finance.

2. The recommendations are strongly guided by the fundamental objective of protecting investors. None of them should create a systemic or market risk. Indeed, the SMILEs that could benefit from such alleviated regime represent less than 7% of the total EU market capitalisation and trading volumes

[11] For small companies, the first change in the regulatory landscape was adopted by the SEC in 1992 (see Release N° 33-6949 – July 30, 1992). The most recent one is the "Smaller Reporting Company Regulatory Relief and Simplification". http://www.sec.gov/rules/final/2007/33-8876.pdf

3. The driving principle has been not to challenge or damage the existing ways and means for SMILEs to access finance through the capital market, but rather to facilitate those and offer new legal possibilities for a public floatation. In particular, the proposals to facilitate access to regulated markets for SMILEs are carried out in a manner that preserves the specificity, the flexibility and the attractiveness of exchange-regulated markets.

4. Issuers have been the victims of the financial crisis. In addition, no regulatory failure has been recorded regarding listing and reporting rules on regulated markets.

5. The last point to bear in mind is that adopting only certain but not all proposed recommendations will not suffice to create a momentum favouring listing of Small and Medium Companies or to convince entrepreneurs as to the merits of a public float. Determined and visible political action is necessary to create a renewed environment facilitating the financing of Small and Medium Companies through the EU capital markets.

The report is structured in 4 sections:

- **Section 1 provides a definition of “Small Medium-sized Issuers Listed in Europe**” (“SMILEs”) for the purpose of the EU Directives and Regulations in the securities field. SMILEs would benefit from a specific proportionate regulatory regime.
- **Section 2 is a review of the securities Directives and Regulations with a “Think Small First” perspective.** It provides a set of possible amendments that would create a friendlier regulatory environment for the listing of SMILEs.
- **Section 3 identifies obstacles to fluid long term investment** in SMILEs within EU financial services legislation.
- **Finally, Section 4 is a proposal to launch a joint EU trading platform** providing SMILEs with greater visibility and liquidity.

Section 1: WHAT ARE SMALL AND MEDIUM-SIZED ISSUERS LISTED IN EUROPE (SMILEs)?

1.1 The current EU definitions and thresholds are not appropriate for listing and market purposes

Within the EU securities laws, the Prospectus Directive is the only directive that refers to the general EU definition of the Small and Medium-sized Enterprises (SMEs). For the purposes of the Prospectus Directive, SMEs are defined as any company fulfilling at least 2 out of the 3 following criteria[12]:

- An average number of employees during the financial year of less than 250,
- A total balance sheet not exceeding €43 million,
- An annual net turnover not exceeding €50 million.

This definition is the one used transversally in all EU legislation. This was created to provide consistency and understanding of EU legislation. After 4 years of the application of the securities directives, it appears that the definition of SMEs itself and the related thresholds are not appropriate for listing purposes. These criteria appear to be disconnected from the market and excessively restrictive in Member States with significant exchanges.

1.2 Create a specific legal definition of "Small and Medium-sized Issuers Listed in Europe" (SMILEs) for listing purposes

The EU prospectus regime already acknowledges the need for a specific regulatory environment for SMEs.

The Prospectus Directive opens the possibility for SMEs to benefit from an alleviated prospectus regime: Article 7 (2) (e) provides that "*the various activities and size of the issuer, in particular SMEs*" shall be taken into account and requires that the rules regarding minimum information to the market "*shall be adapted to their size and, where appropriate, to their shorter track record*". Such a proportionate regime was supposed to be elaborated at level 2 when the Prospectus Directive was adopted. Yet the SMEs' proportionate regime was never implemented. Listed SMEs have therefore to comply with the very same requirements as the largest capitalized companies.

As far as the definition of Small and Medium-sized Companies is concerned, a more pragmatic solution should be used. For the definition of "Small Reporting Companies", the US SEC uses the threshold of USD 75 million of public equity float: under this threshold, financial disclosure requirements are scaled and streamlined.[13]

Unfortunately, there is no harmonised definition of public float in the EU legislation and the existing national definitions are extremely diverse. The fact that the SEC uses market criteria to define Small Reporting Companies should, nevertheless, be taken into consideration.

[12] Article 2, § 1, (f)

[13] http://www.sec.gov/rules/final/2007/33-8876.pdf

Accordingly, to elaborate a definition of Small and Medium-sized Issuers Listed in Europe (SMILEs) closer to market reality across the EU, two criteria could be combined: (i) a criterion based on the IPO deal value (the amount of funds collected), (ii) a criterion based on the market capitalisation in proportion to the average market capitalisation of relevant regulated market[14]. Due to the wide EU diversity of regulated markets in terms of size of listed companies, a threshold in the form of a uniform amount in Euros for the latter criteria would create distortions with reality and not be efficient. In major markets, it will capture only very small companies and in smaller markets it might create an alleviated regime for almost all listed companies.

Recent negotiations on the proposed modification of the Prospectus Directive show precisely that a criteria based on market capitalisation expressed in a fixed amount of Euros is considered as too low by Member States with major Exchanges and too high for Member States with smaller exchanges.

A definition taking into account the different market realities would be more pragmatic. This definition would not damage the Single Market. Indeed, the first criteria to entry the market will be harmonised and regulatory arbitrage would not be possible for issuers of shares as both the Prospectus Directive and the Transparency Directive are based on the principle that the applicable rules are those of the Member State where the company has its registered office ("Home Member State Principle").

The extent to which third country issuers offering securities or seeking a listing in the EU could be considered as SMILEs should be specified by way of a delegated act. This delegated act should in particular specify the calculation method for the market capitalisation of third countries issuers (for primary and secondary listings) and how the equivalence of prospectuses under article 20 of the Prospectus Directive, applies.

Definitions calibrated for each Member State are not an innovation under EU securities law. As an example, Article 27 of the MiFID and Article 22 of its implementing regulation already provide for a definition of "liquid shares" taking into account different market realities in the Member States[15].

The following graphs illustrate the result of the application of a criterion based on a float amount expressed in Euros or a criterion based on a proportion of the average market capitalisation.

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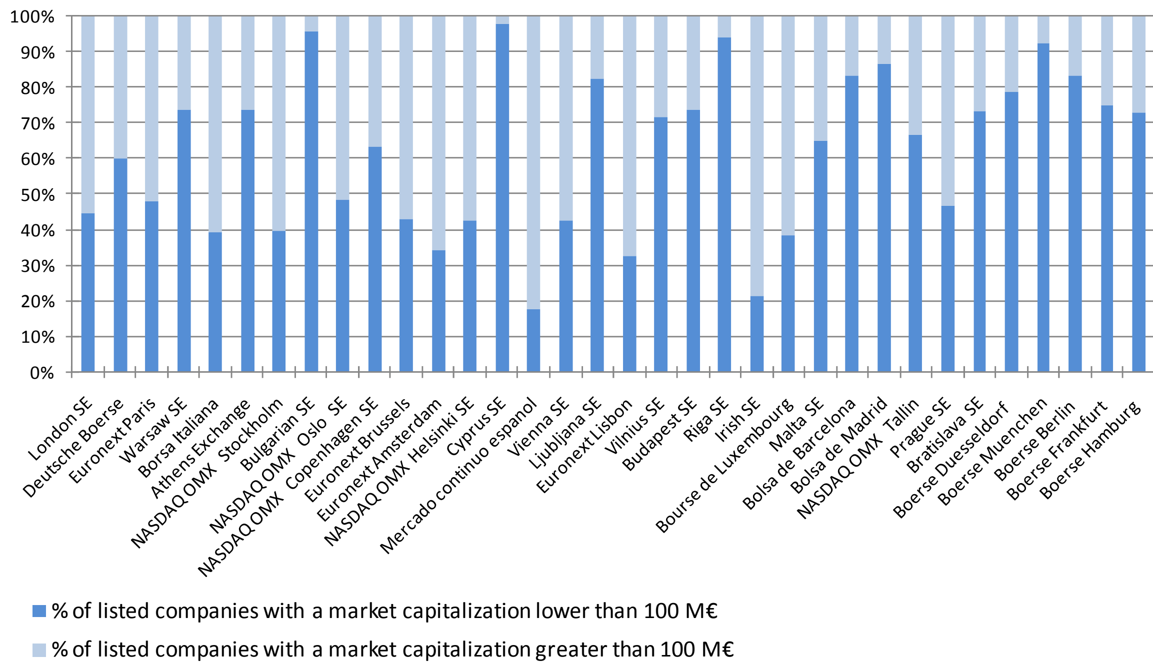
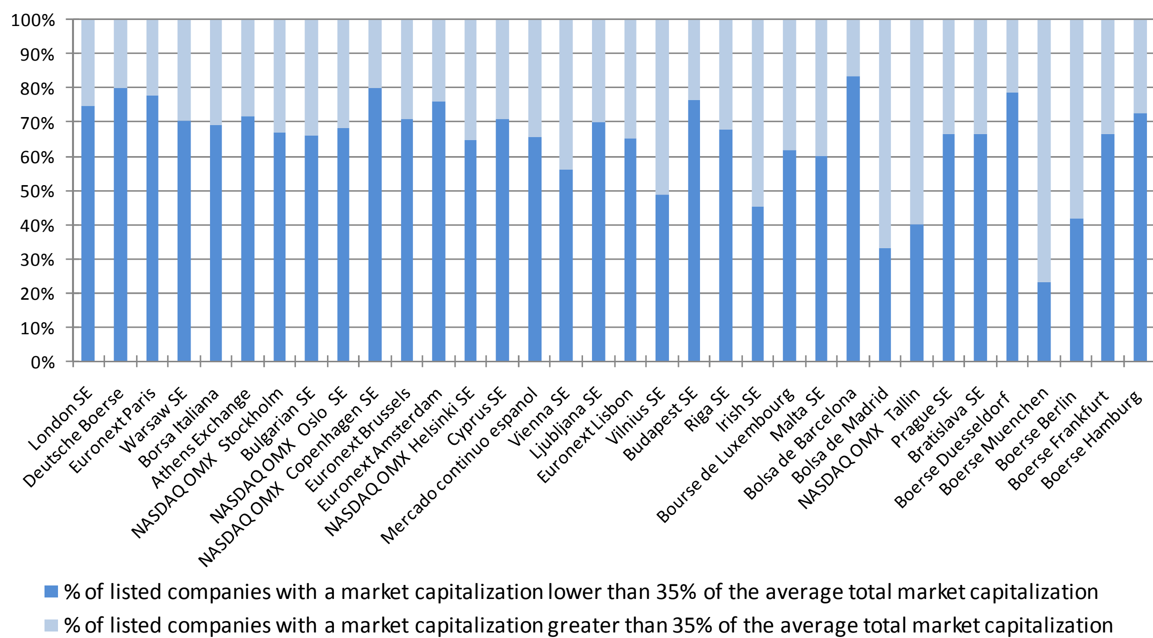
[14] Which average market capitalisation should be used to know whether or not a company can continue to benefit from a SMILE regime? The average market capitalisation of the regulated market where the company is **primary listed**? Or the average market capitalisation of the regulated market(s) of the Home Member State of the issuer? For most SMILEs, these two average market capitalisations coincide as they most often choose to list on the regulated market of the Member State where they have their registered office. If this is not the case, all things considered, the less disruptive criterion is the one of the average market capitalisation of the regulated market(s) of Home Member State. This will better reflect the economic environment in which the company operates. More importantly, this would avoid confusing investors about the regime applicable and as the identity of competent authority.

[15] Article 22 §1 to 3 of the Regulation (EC) No 1287/2006



Source : CESR, Reuters



Source : CESR, Reuters

Recommendation #1: Create a legal EU definition of "Small and Medium-sized Issuers Listed in Europe" (SMILEs)

A definition should be included in the Prospectus Directive or the Transparency Directive, to which other directives could refer. Small and Medium-sized Issuers Listed in Europe (SMILEs) would be:

- At the initial public offering (IPO), companies for which the transaction value is of less than € 75 million. Member States may decide to set a lower threshold for those companies for which they are the Home Member State.
- AND, if admitted to trading, companies for which the market capitalisation is less than 35% of the average market capitalisation on the regulated market(s) of the Home Member State of the issuer.

If a SMILE crosses the latter threshold during 2 subsequent years, it will cease to be considered as a SMILE after a 12-month transition period.

Thresholds should relate to year-end market capitalisation during the year of the initial listing and, subsequently, to the average of the previous 2 years.

The definition of SMILEs could be inserted into Article 2 (4) and referred to in Article 7 (2) (e) of the Prospectus Directive or included in the implementing Regulation.

The extent to which third country issuers offering securities or seeking a listing in the EU could be considered as SMILEs should be specified by way of a delegated act.

1.3 "SMILE First": Apply the "Think Small First" principle to legislation and supervision of SMILEs

The very limited use of the "Think Small First" principle during the process of adopting EU legislation in the financial sector and for listed companies is economically disruptive. The economic impact and disproportionate costs induced by a "one size fits all" approach as well as the need to amend legislations to introduce more flexibility for Small and Medium business should be avoided in the future. As a general principle, all EU legislation concerning listed issuers should include a cost-benefit analysis and a clear demonstration as to whether a proportionate regime is or is not relevant.

In addition, in order to build on the US SEC experience, it would also seem appropriate to dedicate specific resources to promote the "Think Small First" principle within the DG Internal Market of the European Commission, the European Securities Market Authority and even in each national competent authority.

Recommendation #2: Implement the "Think Small First" principle in any legislation and in the day-to-day supervision

- The European Commission should implement the "Think Small First" principle when proposing new legislation in the area of financial services, capital markets and securities.
- New legislative proposals for listed companies should include a cost-benefit analysis and demonstrate whether a proportionate regime for SMILEs is relevant or not.
- Specific resources should be devoted to the promotion of the "Think Small First" principle within the EU Commission Internal Market DG, within the future European Securities Markets Authority and special units for SMILEs should be created within national competent authorities.

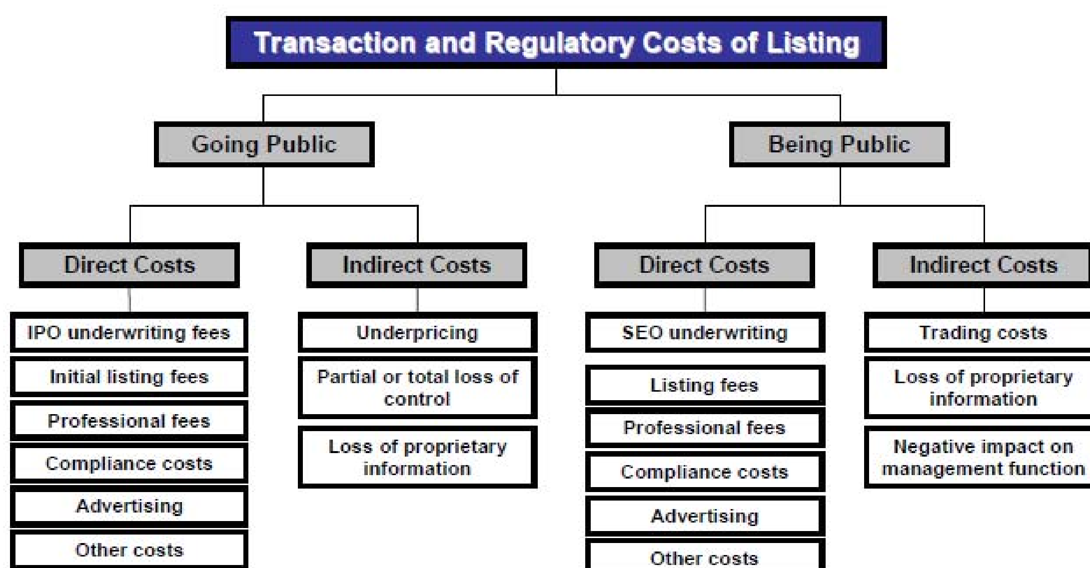
Section 2: HOW TO DEFINE PROPORTIONATE LISTING REQUIREMENTS FOR SMILEs PRESERVING INVESTORS' CONFIDENCE?

The beneficial effects of a public listing are less and less perceived by SMILEs. Attention has shifted and at present is mainly focused on the initial and ongoing costs of listing. In addition, issuers complain about the ever evolving applicable regulation that makes the cost of going public somehow unpredictable, and therefore difficult to include in a proper business case.

2.1 SMILEs are confronted with dissuasive listing costs

The diagram below illustrates the transaction and regulatory costs of a listing.

The cost structure of capital markets



Source: Mendoza (2007), adapted from Kaserer and Schiereck[16]

Going public requires the assistance of several services providers (intermediaries, listing sponsors, communication and Investor Relation specialists, legal advisors, auditors, Exchange, etc.). Some of the fees related to these services are proportional to the amount of capital raised and other are fixed costs. In fact, while IPO fees amount 2 to 3% of the capital raised on average, due to the fixed costs, these costs can reach up to 6-10% for small companies due to the fixed costs.

In addition, the production and disclosure of periodic financial information as well as the compliance with other rules applied to public companies are a source of direct costs. Based on interviews, one can estimate that these costs amount from € 150'000 to 500'000 a year

[16] In *Securities regulation in low-tier listing venues: the rise of the alternative investment market*, Mendoza, August 2007, http://ssrn.com/abstract=1004548

for companies with less than € 150 million of market capitalisation. These costs are almost always non-proportionate to the size of the listed company or to the amount of market funding. In this context, the cost is proportionally higher for SMILEs.

The purpose of this section is to develop a set of proportionate listing and reporting requirements that would diminish the cost of listing and therefore ease access to public markets financing for SMILEs whilst maintaining a high level of investor protection.

2.2 Proportionate initial requirements for SMILEs

2.2.1 Offerings: More fluid private placements for Micro and Small Companies

Currently, the Prospectus Directive provides that no formal prospectus is required for offers of less than € 2.5 million, calculated over a 12–months period (Article 1 (2) (h)). The purpose of this provision is to exempt smaller companies from the obligation to have a prospectus approved by a competent authority when raising only a limited amount of capital in the market. Below this threshold, information documents or circulars are purely contractual.

As this threshold triggers the obligation to produce a full prospectus with all the requirements and costs attached to it, it creates a real obstacle for more fluid capital increase by micro- and small companies. This threshold could therefore be raised in order to alleviate such cost.

Recommendation #3: Facilitate private placements by raising the thresholds triggering the obligation to produce a formal prospectus
The securities offering threshold, below which a formal prospectus approved by a competent authority is not required, should be raised to € 5 or 10 million.

2.2.2 Listings: A proportionate prospectus for SMILEs

Under the Prospectus Directive, issuers seeking the admission of their shares, or other financial instruments, onto an EU-regulated market, should draw-up and publish an approved prospectus using one or more of the information schedules included in the implementing measures of the Directive (Regulation 809/2004). Article 3 (2) of the Regulation states that the supervisor approving the prospectus *"(…) shall not request that a Prospectus contains information items, which are not included in the Annexes*". It should be recalled that the Article 7 (2) (e) of the directive provides for the possibility to adapt information requirements to the size of the issuer. Whereas the Directive came into effect, the possibility to apply more proportionate information from SMEs has never been implemented.

In practice, therefore, the prospectus of a major company and that of a SMILE follow exactly the same processes. The result is that the "jurisprudence" of information requirements developed by supervisors for vetting prospectuses for major issuers is implemented indistinctively to SMILEs. This jurisprudence, that has its rationale on a case by case basis, appears to be cumulative and leads to the publication of extensive and heavy prospectuses. Litigation risk has also led issuers to publish extensive information, which is not always relevant for investment decisions. In short, the current practice has resulted in prospectuses that are legal binding documents for issuers but are no longer readable by investors. Too much information is killing information.

There are number of reasons for this progressive evolution, one of which is structural. The schedules of the implementing Regulation are often all too vague or general. Consequently, supervisors have ample latitude to interpret requirements and ask for more precise and detailed information.

Therefore and paradoxically, in order to obtain a prospectus containing only meaningful information for investors and which is a document that can be read from A to Z, the requirements in the schedules should be much more detailed. Combined with this, Article 3 (2) of the Regulation should be more strictly applied so as to make the production of prospectuses more predictable and their approval swifter. The risk of lacking important information would remain limited taking into consideration that every prospectus starts with an issuer's statement ensuring that the information provided is in accordance with the facts and contains no omission likely to affect its import.

Recommendation #4: Provide more meaningful information to investors by creating specific schedules for SMILEs in the Prospectus Regulation

- The financial information requirements to be included in proportionate schedules for shares, debt and derivatives securities, for the exclusive use of SMILEs, should be integrated in the Prospectus Regulation 809/2004 by way of a delegated act (Level 2).
- To ensure legal predictability for issuers, the schedules for SMILEs should be drafted in detail and, to the maximum extent possible, include all information requirements. Article 3 of the above mentioned Regulation should then be fully respected.
- To ensure that the prospectus becomes a useful document for investors and focuses on key information necessary for investment decisions, prospectuses for SMILEs should not exceed 50 pages and its editing format should be harmonized by a technical standard of the CESR/ESMA (Level 3).

As regards SMILEs, the marginal cost of completing an extensive prospectus is, of course, higher than for a major issuer. It is therefore relevant to take into consideration the specificities of SMILEs and create dedicated schedules for SMILEs in the Regulation as requested by the EU legislator, similarly to the approach carried out in the US by the SEC, and recently updated through the "Smaller Reporting Company (SRC) Regulatory Relief and Simplification" introducing "scaled" disclosure requirements for SRCs into the various reporting forms. Within the EU, the recent proposed directive of the European Commission to amend the Prospectus Directive[17] gives an excellent basis to introduce a more calibrated and proportionate prospectus for SMILEs.

The content of this prospectus would have to be specified in a level 2 amendment to Regulation 809/2004. In order to keep a wide spectrum of possibilities to raise capital, it is of paramount importance that the schedules developed for SMILEs cover both shares and debt or derivative securities. These schedules should not be mixed with others that could be drafted for other purposes (i.e. rights issues).

In order to provide that high quality information to investors, a proportionate prospectus for SMILEs should not necessarily lead to a basic exercise consisting in deleting requirements. The approach should rebalance the intensity of the various requirements. In other words, some sections of the schedules could be more demanding for SMILEs so as to be less

[17] Proposal of the EU Commission of 23 September 2009, http://ec.europa.eu/internal_market/securities/docs/prospectus/proposal_240909/proposal_en.pdf

demanding on others. As an example, generally speaking SMILEs are considered to be more risky. The section on the “Risk Factors” could be more prescriptive but then several other sections of the schedule as the section on the “Business Overview” or “Trend information” could be significantly reduced.

In addition, building on the US experience, the requirement regarding the financial information track record to be included in prospectus could be adjusted to 2 years (instead of 3 years) for SMILEs.

Possible amendments to the Share Registration Document are given in Annex 2.

Recommendation #5: Determine proportionate information requirements for a SMILE prospectus

- Audited historical financial information, and all other information referring to the period covered by the historical financial information, should cover the latest 2 years (or such shorter period that the SMILE has been in operation)
- Disclosures should be limited to the latest Financial Statements
- Specific materiality threshold should be introduced and information required only if it has a significant impact on the SMILE
- The Share and Debt or Derivatives Securities Registration Document should be streamlined in some sections (3, 6, 9, 10, 11, 14 and 20) and be more specific on other sections, which are of particular relevance for investors in SMILEs (section 4) (see Annex 2).

The Prospectus Directive includes a number of exemptions from the obligation to publish a prospectus. One of them is granted for increases of shares representing, over a 12-month period, less than 10% of the existing number of shares admitted to trading on the same regulated market. The amount of capital that can be raised with the benefit of this exemption is higher for companies with a significant market capitalisation and lower for SMILEs. To gives more flexibility to SMILEs to raise capital without a prospectus would not increase risks on the market: significantly higher amounts are raised by major companies without a prospectus. In addition, because the shareholders’ structure of SMILEs is generally much more concentrated the dilutive effects of a capital increase can be better understood. It could therefore be permitted for SMILEs, following authorization by the shareholders’ general meeting, to increase the threshold of this exemption up to 15% of the existing shares.

Recommendation #6: Allow more flexibility to raise capital

SMILEs could be exempted from the obligation to publish a Prospectus for shares representing, over the previous 12 months, less than 15% of the number of shares of the same class already admitted to trading on the same regulated market.

2.3 Proportionate ongoing requirements for SMILEs

For each periodic disclosure obligation, a specific proportionate regime can be implemented without undermining the transparency of the market and the level of information that investors expect.

2.3.1 A fully harmonized format for Annual Reports

Under Article 4 of the Transparency Directive, audited Annual Reports shall be disclosed at the latest four months after the end of each financial year.

As the Transparency Directive is not of full harmonisation, disclosure of annual information can differ from one Member State to another, notably regarding the format, the content, timing and approval of Annual Financial Statements.

As a result, the disclosure of Annual Reports is often required by national company law, commerce law or other law categories with different specificities. Issuers are complying several times with the same obligation and are required to publish it in different formats. This creates unnecessary burden and costs to disclose identical information. Fully harmonizing the requirement regarding Annual Reports would therefore be a significant simplification.

This would allow listed companies and SMILEs in particular, to present a single document fulfilling all other yearly information obligations and "gold plating" would be allowed at national level. This single document would be the Annual Report as set forth in the Transparency Directive.

Recommendation #7: Develop a single and fully harmonized format for the publication of Annual Reports
Subject to a more detailed harmonisation of the definition of the content of Annual Reports, at least for SMILEs, the disclosure of Annual Reports under Article 4 of the Transparency Directive should be of maximum harmonisation.

2.3.2 A more flexible deadline for the publication of Half-Yearly Reports

According to the Article 5.1 of the Transparency Directive, Half-Yearly Financial Reports "*should be published as soon as possible after the end of the relevant period, but at the latest two months thereafter*". It is not formally required by the directive to have the Half-Yearly Reports reviewed or audited by an external auditor.

The two-month deadline for the publication of the Half-Yearly Report is generally perceived as too short, in particular where having the Half-Yearly Financial Statements reviewed by an external auditor is compulsory. This complaint is strongly expressed by SMILEs that are by definition less equipped or have fewer resources devoted to the production of financial information.

In addition, financial analysts think that the two-month deadline creates inefficiencies in the market. Indeed, this deadline creates a bottleneck at the end of the second month when analysts gather information. Confronted with a flow of half-yearly results, analysts generally need selecting information they will treat, and always favour information published by major companies. In other words, the two-month deadline for the publication of Half-Yearly Report contributes to diminish the visibility and the interest of investors on SMILEs (the so called "Black Hole").

This is notably why the International Organisation of Securities Commissions (IOSCO) recently recommended that the size of the issuer should be taken into consideration when establishing the due dates for periodic reports[18].

Accordingly, in order to increase flexibility and improve market efficiency, without lowering the level of information given to the market, SMILEs should be authorized to publish Half-Yearly Reports within three months. Alternatively, considering the fact that in practice most companies have their Half-Yearly Reports reviewed or audited by an external auditor, listed companies could be allowed to publish Half-Yearly Reports within this longer time period if the Half-Yearly Report has been reviewed or audited by an external auditor.

Recommendation #8: Allow a three-month deadline for the publication of Half-Yearly Financial Reports

Option 1:

For SMILEs, the Half-Yearly Financial Reports required under Article 5 of the Transparency Directive should be published within 3 months after the end of the period covered (instead of 2 months).

Option 2:

If the Half-Yearly Financial Report has been audited or reviewed by an external auditor, the Half-Yearly Report required under Article 5 of the Transparency Directive should be published within 3 months instead of 2 months after the end of the period covered,.

2.3.3 A requirement to progressively publish quarterly Interim Management Statements

Following the minimum requirement set up in Article 6 of the Transparency Directive, the content of the Quarterly Interim Management Statement for the first and the third quarter is purely narrative.

When implementing this minimum obligation of the Transparency Directive, several Member States have added information items to the obligations to publish quarterly information. In practice, only Sweden has decided to make full Quarterly Financial Statements compulsory. Other Member States have added an obligation to publish some selected financial figures (in particular the quarterly turnover). Therefore, in many instances, the disclosure of such quarterly information represents a time-consuming obligation for SMILEs, which are not always in the situation to provide fresh and market-relevant information on a quarterly basis.

This being said, investors consider that some information provided on a quarterly basis is welcomed and contributes to attract interest in the company. It is therefore proposed that, during an initial period of 3 years, a SMILE should decide if it wishes to comply with a widespread market practice regarding the publication of Quarterly Interim Management Statements.

[18] IOSCO principles for Periodic Disclosure by Listed Entities, February 2010

Recommendation #9: Enable SMILEs to progressively publish Quarterly Interim Management Statements

The publication of Quarterly Interim Management Statements required under the Article 6 of the Transparency Directive should become compulsory from SMILEs only after three years of admission to trading on a regulated market. During this initial three-year period, listed SMILEs should be free to publish Quarterly Interim Management Statements on a voluntary basis.

2.3.4 A proportionate IFRS regime for the publication of Financial Statements

Irrespective of the size of the company, under Regulation 1606/2002, companies admitted to trading on a regulated market must publish their consolidated Financial Statements in IFRS, as endorsed by the EU.

This requirement is very often presented as the most dissuasive factor to list on an EU regulated market. To a large extent, full IFRS is a key driver of the fact that most Small and Medium-sized Companies IPOs currently take place on exchange-regulated markets allowing the use of national GAAPs.

In addition to the initial cost incurred by issuers to shift from the use of national GAAPs to IFRS, SMILEs complain about the fact that the full IFRS are constantly evolving, and are therefore not predictable. The need to track modifications of IFRS and subsequent interpretations represent a disproportionate cost for SMILEs.

It is generally not considered as a progress, or as a valid option, to return to the previous situation and allow SMILEs listed on a regulated market to use national GAAPs to present their Financial Statements. Similarly, it would be damaging for the necessary flexibility of exchange-regulated or alternative markets to extend the obligation to present consolidated Financial Statements in IFRS to companies listed on these markets.

Some simplification could be introduced by eliminating a number of disclosures that are not relevant for SMILEs. Market players also believe that it may be worthwhile to explore the possibility of allowing SMILEs listed on a regulated market to use IFRS for SMEs instead of full IFRS to present their Financial Statements. IFRS for SMEs is a set of standards developed and published in July 2009 by the International Accounting Standards Board (IASB). The initial intention of the IASB is that the IFRS for SMEs would be permitted for non-publicly accountable companies. The European Commission is currently conducting a wide consultation on the relevance of the IFRS for SMEs for private companies.

An analysis of this set of standards shows that, with the exception of a few technical points that are not included by definition in the IFRS for SMEs (as these standards are not originally conceived for public markets[19]), there are no accounting obstacles for this set of standards to be used by SMILEs.

The cost of presenting Financial Statements would be reduced for the following reasons:

- The presentation of Financial Statements would become significantly easier;

[19] Share based payment, some market connected risks and possibly sector specific information.

- The revision of the IFRS for SMEs would occur only every third year;
- The shift to IFRS for SMEs would be less complicated that a shift to full IFRS;
- Reviews and/or auditing by external auditors would be less time-consuming;
- SMILEs would continue to benefit from international comparability.

Any consideration of such an option given to SMILEs should include a proper cost-benefit analysis and consultation by the European Commission and CESR/ESMA and be followed by a political decision to endorse such kind of IFRS in order to be used by SMILEs in the EU.

Recommendation #10: Create a proportionate IFRS regime for the publication of Financial Statements – IFRS for SMEs

Reconsider the need to publish all currently required disclosures resulting from the full IFRS and allow SMILEs to waive this requirement.

Following careful consideration and consultation by the European Commission and CESR/ESMA, SMILEs admitted to trading on a regulated market could be given the possibility to use IFRS for SMEs to present their Financial Statements.

In order for IFRS for SMEs to be fully applicable to SMILEs, some additional financial information requirements, not currently contemplated, would need to be added.

2.3.5 Corporate Governance

In most Member States, listed companies governance rules have been elaborated through self-regulation and included in Corporate Governance Codes. The EU has published several recommendations on specific corporate governance items but there is no legally binding comprehensive Corporate Governance Code at EU level. The Prospectus Directive requires listed companies to "comply or explain" the manner in which they implement the applicable national Corporate Governance Code. Generally, these codes have been drafted with the intention of being applicable to all listed companies irrespective of their size. Corporate Governance Codes taking into account the specificities of Small and Medium-sized Companies, or applicable to companies quoted on an exchange-regulated market, have been adopted in very few Member States[20]. These codes have been recognized by supervisors as being equally valid compared with those applicable to major listed companies. They include more proportionate governance requirements in line with the shareholder structure and size of SMILEs. Compliance with these requirements is therefore less costly and burdensome. There is therefore a merit in expanding the possibility for SMILEs to refer to proportionate Corporate Governance Codes when disclosing their governance practices under the Prospectus Directive. On a voluntary basis, and if possible with the support of the Commission, associations of listed companies and law practitioners could even coordinate their efforts to agree on general principles on an EU-wide basis.

Recommendation #11: Allow reference to proportionate national Corporate Governance Codes

SMILEs should be authorised to disclose under the Prospectus Directive the way in which they comply with Corporate Governance rules by referring to proportionate Corporate Governance Codes.

[20] The Quoted Companies Alliance (QCA) Corporate Governance Guidelines for AIM companies, February 2007; The Middlenext *Code de gouvernance d'entreprise* for Alternext companies, December 2009.

2.3.6 *Internal control*

In accordance with Article 41 of the Audit Directive (2006/43/EC), a public-interest entity should have an audit committee to monitor the effectiveness of the company's internal controls, internal audit and risk management systems in particular.

There is, however, no EU Directive or recommendation regarding the manner in which those internal controls should be organised. Competent authorities have developed standards and guidelines at national level for the establishment and running of internal controls and systems. In most cases, these standards and guidelines are applicable to all listed companies. In the United States, small businesses are exempted from section 404 for Management Assessment of Internal Controls of the Sarbanes-Oxley Act since 2002. The US Congress is currently examining whether or not to prolong this exemption.

Taking into account the limited size and complexity of SMILEs, and building on the US experience, Member States should consider reviewing their standards and guidelines on internal controls so as to scale requirements and adapt them to SMILEs.

Recommendation #12: Scale Internal Controls Standards for SMILEs
Member States should consider reviewing their standards and guidelines related to internal controls so as to scale requirements and adapt them to the size of SMILEs.

2.4 Pragmatic implementation of market integrity obligations for SMILEs

Market integrity provisions of the Market Abuse Directive (MAD) regarding insiders' dealings and price manipulation apply to all companies admitted to trade on an EU regulated market irrespective of the size of the company. There is no strong argument in favour of creating a two-tier market integrity regime in the EU. Proper and fair functioning of the market and investors' trust cannot be alleviated. The general principles of the MAD should therefore continue to apply as today.

Having said that, the manner in which some practical requirements of the MAD are applied can be reviewed to take into account the specificities of SMILEs. This can be done for the obligation to maintain an "insiders' list" and for the requirement to declare managers' transactions (as defined in the MAD).

2.4.1 *Insiders' list*

Article 6 (3) of the MAD provides that issuers should establish and regularly update a list of all persons receiving insider information on the issuer in the normal course of business. The purpose of insiders' lists is to assist supervisors when investigating insider cases. One of the merits of the insiders' list is also to force the persons mentioned on the list to pay careful attention to their obligations. To require such lists might be relevant for major companies where the flow of inside information is intense. Experience shows, however, that the list is, in practice, very rarely used for an investigation. In addition, this requirement is perceived by issuers as a pure burden, as they can neither see nor measure the benefits. In any case, the relevance of maintaining an insider list is almost nil for SMILEs. The flow of insider

information is significantly lower and concentrates on very few managers which are easily identified.

It is therefore proposed to waive the obligation to maintain an insiders' list for SMILEs, but to keep the requirement to provide the persons likely to access inside information with a summary of their obligations under the insiders' legislation. In addition, access to all documents by supervisors in case of investigations should be fully permitted.

Recommendation #13: Waive the obligation to maintain an insiders' list
Provide SMILEs with the possibility of waiving the obligation to draw up a list of insiders under the condition that the persons likely to have access to insider information are duly informed of their legal and regulatory duties and aware of the sanctions attached to the misuse or improper circulation of such.

2.4.2 Managers' transactions

Under Article 6 (4) of the MAD, all persons discharging managerial responsibilities, or persons closely associated to them, conducting transactions on their own account within a company, or on the financial instruments issued by the said company, should be notified to the supervisor. In some Member States, no notification is required if the total amount of transactions has not reached €5'000 at the end of the calendar year.

A recent consultation by the European Commission shows that several market players consider this notification threshold as too low. This opinion is shared by all categories of issuers.

It should be acknowledged, however, that the specificity of SMILEs makes this requirement not only burdensome but also poorly informative for the market. Indeed, the capital and managerial structure of SMILEs is very often made of a majority shareholder who is also the key manager. In other words, interesting information for the market is when these shareholders / managers sell or buy shares, or financial instruments linked to shares, representing a certain percentage of the equity capital.

A requirement to disclose SMILEs managers' transactions reflecting movements of their investment within the company is more informative for the market. It is therefore proposed to set for SMILEs a threshold representing a percentage of the market capitalisation instead of a low amount in Euros.

Recommendation #14: Provide more meaningful information to the market on transaction by SMILEs' Managers
Create, in Article 6 of the implementing Regulation of the MAD, a specific regime by which SMILEs Managers should notify transactions on shares, or the financial instruments linked to shares, issued by the company they manage, representing at the end of the calendar year more than 0.02% of the market capitalisation of the company (as computed at the end of the previous calendar year).

2.4.3 Liquidity providers

To favour trading and liquidity on their markets and in particular for SMILEs equities, regulated markets have encouraged the development of market-making or of the activity of liquidity providers. The latter are investment firms playing the same role as market makers but who do not act on their own account. Liquidity providers carry transactions by virtue of an agreement with the relevant issuer and with appropriate “Chinese Walls” with the issuer.

Liquidity provision has been considered as an “accepted market practice” under the MAD in some Member States but it can still be qualified as a manipulative practice by certain competent authorities in other Members States.

The end result is that within the Single Market, liquidity providers can act on legitimate grounds in a Member State and risk being sanctioned should they engage in the same activity in another Member State.

An EU-wide harmonisation of the decision allowing the activity of liquidity providers would considerably favour liquidity on SMILEs’ shares admitted to trading on EU regulated markets.

Recommendation #15: Favour liquidity provision for SMILEs’ shares traded on EU regulated markets

Liquidity providers, acting with appropriate “Chinese Walls” and by virtue of an agreement with the relevant issuer, should be able to provide their services across the EU on legitimate grounds.

The Market Abuse Directive as well as it is implementing Regulation should explicitly recognize this activity as an “accepted market practice”. In particular Article 3 of the Regulation on buy back programmes (n°2273/2003) should allow that the purpose of buy back programme is also to facilitate the activity of liquidity providers.

Section 3: HOW TO INCREASE EU INVESTORS' INTEREST FOR SMILEs?

One of the main obstacles to the trading on Small and Mid Caps is the low liquidity and the decreasing interest of institutional investors. Initiatives can be taken at EU level to favour investments in SMILEs equity (or other forms of financial instruments) and to prevent unintended effects of EU financial services legislation that would discourage or undermine investment in equity.

3.1 Create EU investment vehicles specialized in SMILEs

3.1.1 An EU passport for EU domiciled private equity funds

There are real economic benefits in creating a European passport for common EU-domiciled private equity funds. This would allow more fluid cross-border investments in private equity and a better allocation of capital within the Single Market for innovative and young companies that are sooner or later likely to be admitted to trading on an exchange-regulated or regulated market.

Such funds benefiting from a European passport towards professional investors should be introduced by the AIFM Directive.

Recommendation #16: Create an EU passport for private equity funds
Directly or through the managers of the funds, create an EU passport for EU domiciled private equity funds with adapted functioning rules. The current proposed AIFM Directive could be used for this purpose.

3.1.2 A specialized category of Mutual funds (UCITS) investing in SMILEs

UCITS can currently invest in any transferable security on a regulated market in a Member State, which operates regularly and is recognised and open to the public. The different investment ratios are the same, irrespective of the capitalisation of the underlying issuers, and nothing prevents UCITS from investing in SMILEs.

However, poor liquidity and asset liability constraint might discourage fund managers to invest in SMILE's through UCITS. Some flexibility is provided by Article 34 of the UCITS Directive by which a fund shall make public the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, and at least twice a month, or even under certain conditions, once a month.

It does not seem advisable to increase this redemption frequency. Such a modification could indeed blur the UCITS label, which is perceived as secure across jurisdictions. It could however be interesting to study the possibility of creating within the UCITS Directive a new category of UCITS dedicated to investments in SMILEs, to which specific rules would apply (lock-up, side pockets etc.) and also defining the conditions for EU domicile private equity funds to benefit from an EU passport and be marketed to retail investor.

Recommendation #17: Create a specific UCITS dedicated to investment in SMILEs
The European Commission should study the possibility of creating within the UCITS Directive a new category of UCITS dedicated to investments in SMILEs, to which specific rules would apply and also defining the conditions for EU domicile private equity funds to benefit from an EU passport and be marketed to retail investor.

3.2 Avoid obstacles to fluid equity investment in SMILEs

Almost all interviews strongly pointed out the lack of investors' interest for Small and Mid Caps. This appears to be true irrespective of the investor's profile. Almost inevitably, investment is concentrated in shares of top companies of major indexes. As an example, on average, only 10% of EU insurer's portfolios are invested in equities, of which investment in Small and Mid Caps represent only 10 to 20% (therefore 1 to 2% of the total investment portfolio).

Only a limited number of mutual funds or UCITS dedicated to Small and Mid Caps can be identified and they are always very domestic. The Single Market misses specific vehicles and incentives to invest in SMILEs.

Retail investors' investment in SMILEs is also limited, except when encouraged by tax incentives. Tax has proved to be a quite powerful tool in several Member States to enhance the interest of retail investors in Small and Mid Caps. These incentives have taken different forms. As tax issues are mainly a national competence, no decisive action can really be undertaken at EU level. It could, however, be interesting for Member States to share their experiences on the various tax measures that have favoured retail equity investment.

Other obstacles can be found in the legislation on prudential supervision for insurance companies and credit institutions. This legislation is very often conceived with exclusively the objective of risk management and financial stability in mind. The financial crisis led to a more risk-adverse and very conservative approach by supervisors regarding these issues. There are legitimate reasons for improving capital requirements for financial institutions as agreed at the G 20 level. However, a more holistic vision of the impact of such measures on the whole EU economy should be adopted before a final decision is taken. In particular, imposing heavy capital requirements on certain classes of assets and not others will produce brutal movements in portfolios which could significantly damage to the efficient allocation of financial resources to issuers.

The most serious example of these unintended consequences can be anticipated when the Solvency II Directive will be implemented. Under the Solvency II "risk based approach", the portfolio of assets of EU insurance companies will be subject to capital requirements. The risks will be calculated over a very short period of time, which is generally irrelevant to measure the risk related to equity investment.

As a result, the cost in capital to cover equity investments risk is likely to be extremely discouraging and will be more expensive than for other classes of assets, in particular bonds. It goes without saying that this will seriously damage the Small and Mid Caps equity market.

It is of primary importance for the financing of the EU economy that the EU Commission, the policy makers in the Member States and in the European Parliament are given the possibility to fully measure the impact of Solvency II on the efficient allocation of financial resources within the Single Market before they adopt the final implementing measures of the Directive.

Without undermining the stability objectives of the Directive, lower capital requirements than those currently considered can be implemented for equity investment. Some differentiation can even be introduced, in particular, regarding SMILEs as they represent a very low percentage of insurance companies' portfolios.

Recommendation #18: Ensure that capital and liquidity requirements under the Solvency II Directive do not damage equity investment, in particular in SMILEs

- When considering the implementing measures of the Solvency II Directive, the EU Commission, the Member States and the European Parliament should be able to measure the overall impact of these prudential requirements on the efficient allocation of capital within the whole EU economy.
- In particular, lower capital requirements than those currently envisaged should be considered for equity investments.
- Capital requirements could be even lower for investments in SMILEs' equities as a consequence of the very low percentage they represent in insurers' portfolios.

The same kind of dissuasive effects on equity investment can occur within the context of the revision of the prudential and liquidity requirements of the Capital Requirements Directive (Basel II) as direct a consequence of the financial crisis. Here again, it is very important that the impact of such measures on the Single Market and the EU economy is fully understood before a firm and definitive decision is taken.

Finally, taking a more long term investment perspective, the existence of pension funds in several Member States and absence of EU legal framework for such pension funds are not favouring more robust and long term equity investment.

Section 4: THINK SMALL, ACT BIG - SETTING UP A JOINT EU TRADING PLATFORM FOR SMILEs

The establishment of a specific regulatory regime for SMILEs will create a new opportunity for listings on EU regulated markets and exchange-regulated markets.

This will not alter the way public markets are organized but add new possibilities. The purpose of this report is not to challenge the way exchange-regulated markets are functioning. On the contrary, as a result of the recommendation of this report, companies listed or quoted on an exchange-regulated or alternative market will benefit from a proportionate prospectus regime. National legislators and/or regulators will remain free to apply to companies listed or quoted on Exchange-regulated markets other provisions applicable to SMILEs.

There is no fundamental economic reason to harmonize in EU law the way in which exchange-regulated markets or listing Multilateral Trading Facilities (MTFs) should function. These markets play a crucial role as a first entry door for Micro and Small Companies. They are very flexible and open, offering more “tailor made” solutions to young companies outside the scope of the EU directives. This flexibility should be preserved as it plays a real economic role. In addition, the investor base of exchange-regulated markets is significantly domestic.

The fact that exchange-regulated markets are not included in EU law is not in contradiction with the fact that these markets attract international listings, establish cross-border linkages or ignore the possibility that they could even collaborate together to harmonize their rule books and try and obtain a visibility that goes beyond national borders.

As regards the activity on SMILEs currently listed on EU regulated markets, a number of weaknesses are expressed:

- **SMILEs complain about the lack of liquidity**, which makes their share price more volatile and impacts directly their market value. They also complain about the lack of research by financial analysts on their companies and the poor interest of investors, in particular from foreign institutional investors.
- **Intermediaries are less and less active on the SMILEs**. The absence of IPOs and the poor liquidity makes the business case of an active presence in this market very fragile, when there is one. Indeed, only the provision of a full range of services (IPO advice, placement, listing sponsoring, research, liquidity provision or market making or pure brokerage, etc.) makes the activity of intermediaries profitable.
- **Major institutional investors concentrate their equity investment on the major indexes.** Small and Mid Caps’ funds or specialists are very often led to change their strategies over time due to the lack of liquidity and the high volatility of the Small and Mid Caps share prices. When prices go down, mutual funds’ obligations to diversify portfolios oblige them to invest in more liquid shares. They also complain about the lack of visibility of SMILEs on an EU basis and about the

absence of indexes reflecting the performance of this category of companies across the EU.

- **As a consequence of the MiFID, the vital profitable business of regulated market operators is more and more connected to the trading volume of their top market capitalisation** (where they are experiencing aggressive competition). The trading on their respective SMILE segment does not seem to be a profit centre anymore, especially when the number of listed companies reduces every year. All national attempts to increase the liquidity on these market segments have not produced miracles and leave market players experiencing frustration with the current environment.

The recommendations of this report are a possible way forward to resume SMILEs' IPOs. However, liquidity and investor interest cannot be decided by law. A market solution is therefore necessary to revitalize trading on SMILEs in the EU.

One possibility could be to create a single EU access point to trade SMILEs shares. The idea would be quite simple. Whilst keeping the listing functions and services at the level of each regulated market, these markets could pool together the trading of SMILEs listed across the EU. This could take the form of a Joint Multilateral Trading Platform offering the possibility to trade 2'000 to 4'000 EU SMILEs.

For each market participant, the benefits of such regrouping would be as follows:

- **SMILEs would continue to list and be listed on the regulated market of their choice** in order to maintain proximity with their market place and with their domestic shareholders. However, they would benefit from a common EU trading place easily accessible to the EU pool of liquidity. This joint trading platform will enhance their visibility vis-à-vis EU investors and provide an answer to the infamous "Black Hole" experienced by EU Small and Mid Caps.
- **The IPO related services would continue to be provided locally** but, for trading purposes, intermediaries would be able to carry out transactions in one single place (saving membership fees) on 2,000 to 4,000 SMILEs. This will open the possibility to multiple trading and brokerage strategies or other related investment services (benchmarking, investment by sector, market making, research and comparative financial analysis on companies across the EU, etc.).
- **With one common trading platform, investors will have simple and straightforward access to all SMILEs representing the future of the EU economy**. This simplification and a more active presence of intermediaries would enhance the liquidity of SMILEs. If indexes are developed on this EU platform, and possibly corresponding derivative options or futures, the liquidity would also increase and improve effective investors' choice.
- **Existing exchanges (or regulated-markets' operators) would keep their listing services and capacity unchanged** and, in addition to their existing list of SMILEs, they would be able to offer trading to all other EU SMILEs admitted to trade in the other EU regulated markets.
- **Finally, national supervisors will continue to share their responsibilities as of today in accordance with relevant Directives**. The licensing and supervision of the joint platform could be included directly within the scope of competence of ESMA.

The establishment of such a trading platform would appear to be beneficial to all market players. However, one key question immediately comes to mind: How can it be created?

The history of the stock exchanges in the EU is full of examples where tentative mergers have failed. This time, however, the likelihood of success is higher. The reason being is that the FSAP has considerably harmonized the initial and ongoing listing requirements making the comparability of all Small and Mid Caps across the EU a reality for investors. This would be reinforced if the SMILE regime is fully implemented.

In addition, the idea is not to merge the key profit centres of the existing competing exchanges. Concerning Small and Mid Caps, competition between exchanges happens at the time of the IPO. This competition on listings would remain. What is suggested is to put in common the trading services on SMILEs and, by doing so, provide an opportunity to make this activity profitable.

There are several manners in which this trading platform could be created. As an illustration, one of them could be a joint creation by the existing regulated markets operators, active intermediaries/brokers and long term institutional investors, of a MTF under the MiFID, where all trading activity on EU SMILEs will occur. The parties to the agreement would decide the best way to share initial investments and the profits. In the initial phase, clearing and settlement facilities would remain fragmented, yet, nothing should preclude a more integrated solution in the future. Target 2 Securities (T2S) will indubitably be a contribution in this direction.

However, experience shows that the presence of a neutral outside player, acting as a "catalyst", could be beneficial. Such neutral player would serve as a facilitator and ensure that the project actually starts and progresses. Within the EU framework, the European Investment Bank (EIB) would appear to be the most suitable candidate to play this role. The EIB is not a bank competing with regulated markets and works with an EU institutional mandate. The EIB has gained significant experience on SMEs across the EU.

Recommendation #19: Preserve the flexibility of exchange regulated (alternative) markets

- SMILEs quoted on exchange-regulated markets should benefit from all the modifications to the Prospectus Directive; and in particular the possibility to publish a proportionate prospectus.
- The extension of provisions of other EU Directives or Regulations to exchange-regulated markets should be left to the discretion of Member States and/or national competent authorities or the market operators themselves.
- The harmonisation of rule books on the cross border activity of exchange-regulated markets should not be done by means of EU law but rather left to market forces.

Recommendation #20: Establish a joint EU trading platform for SMILEs

- Under the auspices of the European Investment Bank (EIB), the operators of EU regulated markets, active intermediaries/brokers and long term institutional investors should work together to create an EU Multilateral Trading Platform for all SMILEs listed on their regulated markets.
- Listing functions and revenues would remain at the level of each EU regulated markets and trading revenues would be shared by the joint owners of the platform.
- Supervision and enforcement of SMILEs listings and ongoing obligations would continue to be exercised by the Home competent authorities in accordance with the relevant Directives.
- Through a legal ability for competent authorities to delegate powers to the European Securities Markets Authority (ESMA) or by way of a direct entrustment introduced in the MiFID, this joint trading platform should be licensed and supervised directly by ESMA.

Annex 1: List of the interviews and contributors

The list of interviews conducted and/or contributions received is given for information purposes only. The views collected have considerably enriched the understanding of the current difficulties of the IPO market and the financing of SMILEs, however, the opinion expressed in this report can in no manner be attributed to any of the individual persons, institutions, firms or organisations listed below.

EU Institutions / Ministries of Finance / International bodies

- European Commission - DG Internal Market and DG Enterprises (Europe)
- European Parliament (Europe)
- European Investment Bank (Europe)
- International Accounting Standard Board - IASB (UK)
- *Ministère de l'Economie, de l'Industrie et de l'Emploi* (France)
- *Bundesministerium der Finanzen* (Germany)
- *Ministerio de Economia y Hacienda* (Spain)
- *Minesterio dell Economia e delle Finanze* (Italy)
- Her Majesty's Treasury (UK)
- *Conseil National de la Comptabilité – CNC* (France)
- *Médiateur du Crédit* (France)

Regulators

- Committee of European Securities Regulators - CESR (Europe)
- *Autorité des Marchés Financiers - AMF* (France)
- *Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin* (Germany)
- *Comision Nacional del Mercado de Valores - CNMV* (Spain)
- *Commissione Nazionale per le Societa e la Borsa - Consob* (Italy)
- Financial Services Authority - FSA (UK)
- Securities and Exchange Commission - SEC (USA)

Exchanges / Alternative markets

- Federation of European Stock Exchanges - FESE (Europe)
- Bourse du Luxembourg - BDL (Luxembourg)
- Bolsa y Mercados Espanoles - BME (Spain)
- Borsa Italiana (Italy)
- Deutsche Börse - AG (Germany)
- Irish Stock Exchange -ISE (Ireland)
- London Stock Exchange - LSE (UK)
- Nasdaq-OMX (Sweden, Finland, Norway, Denmark, Lithuania, Iceland, Estonia, Latvia)
- NYSE Euronext (France, the Netherlands, Belgium, Portugal)

- Alternative Investment Market - AIM (UK)
- Plus Market (UK)
- Warsaw Stock Exchange (Poland)
- Alternext (France)
- *Mercado Alternativo Bursatil - MAB* (Spain)
- Alternative Investment Market Italia - AIM Italia (Italy)

SMEs and/or Listed companies

- European Issuers (Europe)
- Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises - EUAPME (Europe)
- The Quoted Companies Alliance– QCA (UK)
- Assonime (Italy)
- Association of Polish listed companies - SEG (Poland)
- MiddleNext (France)
- *Mouvement des entreprises de France - Medef* (France)
- *Confédération Générale des Petites et Moyennes Entreprises - CGPME* (France)
- *Association des Moyennes Entreprises Patrimoniales - ASMEP ETI* (France)
- *Association Française des Entreprises Privées - AFEP* (France)
- Association of Greek issuers (Greece)
- *Deutsche Aktieninstitut - DAI* (Germany)
- Association of Chartered Certified Accountants – ACCA (UK)
- Czech Chamber of Commerce (Czech Republic)
- *Unie van Zelfstandige Ondernemers – UNIZO* (Belgium)
- *Zentralverband des Deutschen Handwerks - ZDH* (Germany)
- *Handwerksroadet* (Denmark)
- LPA Group (UK)
- The Character Group (UK)
- Thermador (France)
- Solucom (France)
- Homair (France)
- Société Foncière Lyonnaise (France)

Investors/Private Equity

- European Investment Fund – EIF (Europe)
- European Federation of Financial Analysts – EFFA (Europe)
- European Funds and Asset Management Association - EFAMA (Europe)
- European Venture Capital Association - EVCA (Europe)
- *Comité Européen d'Assurance – CEA* (Europe)
- *Association Française de Gestion* (France)
- *Association Française des Investisseurs en Capital - AFIC* (France)
- Investment Management Association - IMA (UK)
- *Fédération Française des Sociétés d'Assurance – FFSA* (France)
- Caisse des Dépôts et Consignations (France)
- Brewin Dolphin Ltd (UK)
- Share Center Ltd (UK)
- Moneta (France)
- Crédit Agricole Asset Management (France)

Banks / Intermediaries specialized in mid-caps

- European Banking Federation – EBF (Europe)
- *Associazione Bancaria Italiana – ABI* (Italy)
- *Fédération Bancaire Française – FBF* (France)
- *Association des Marchés Financiers – AMAFI* (France)
- OSEO (France)
- Allegra Finance (France)
- Crédit du Nord (France)
- City Group (UK)
- Euroland (France)
- Oddo (France)
- Natixis (France)
- Portzamparc (France)
- Arkéon Finance (France)

Law firms / Advisor firms

- Clifford Chance (UK)
- Fidal (France)
- Servulo & Associados (Portugal)
- Marccus Partners (France)
- Faegre & Benson LLP (UK)
- Stikeman Elliott LLP (UK)
- David Venus & Company (UK)
- Moorhead James LLP (UK)

Audit firms / Accountants

- *Fédération des Experts-Comptables Européens - FEE* (Europe)
- Mazars
- Price Waterhouse Coopers
- KPMG
- BDO
- Ricol-Lasteyrie (France)
- Corporate Governance Ltd (UK)

Annex 2: Possible content of a proportionate Share Registration Document for SMILEs

This annex provides with an indicative and non exhaustive list of possible amendments to the information requirements of a prospectus so as to make them more proportionate for SMILEs. As an example, the requirements of the Share Registration Document[21] can be amended as follows:

a. Selected financial information (section 3):

i. Historical financial information should cover a period of 2 years (instead of 3 years)
ii. An exhaustive list of relevant indicators should be provided and limited to 1 indicator for the following key financial information: growth, operational profitability, net profitability, debt

b. Risk factors (section 4):

i. A detailed and, to the maximum extent possible, exhaustive list of risks should be included in this section, including for example:
ii. The extent to which the SMILE is dependent on key clients
iii. A specific liquidity risk statement
iv. If they reflect a specific exposure, foreign exchange risk or other market risks (interest rate, equity and commodities) should be included above a certain threshold. In all other cases, it should be possible to refer to the Financial statements or to the Management report (IFRS 7)

c. Information about the issuer (section 5):

i. For already listed SMILEs important events connected to the issuer's business should be limited to press releases disclosed in accordance with the provisions of the MAD
ii. A materiality threshold should be introduced for the definition of "issuer's principal investment" (i.e. 25% of net assets value)

d. Business overview (section 6):

i. The description of the nature of the issuer's operations and principal activities as well as the new products sold and/or services performed should be concise and cover a period of 2 years
ii. Sub-sections 6.3 and 6.4 are not necessary if already described in the "risk factors" (section 4)

[21] Sections relate to the classification of Annex 1 of the Regulation (EC) No 809/2004 of 29 April 2004 implementing the Prospectus Directive.

e. Operating and financial review (section 9):

i. Financial condition: the period covered should be limited to 2 years

f. Capital resources (section10):

i. Information under this section is required only if not already included in the Financial Statements
ii. A materiality threshold should be introduced and information required only if the SMILE has a significant debt (both short and long term)
iii. Information on the borrowing requirement and the funding structure of the SMILE and its investment are not required if already published under "Risk factors" (section 4)

g. Research and development (section 11): A materiality threshold should be introduced and disclosure of information required only when SMILEs research and development activities amount to 10% of the company's turnover

h. Administrative, management and Supervisory bodies and senior management (section 14): the requirement to publish historical information about activities performed outside the issuer by the persons referred in 14.1 should for SMILEs be limited to a description of the current situation.

i. Historical financial information (sections 20.1 to 20.6):

i. Audited historical financial information should cover the latest 2 years (or such shorter period that the SMILE has been in operation)
ii. Own financial statements should be included only when no consolidated financial statements are prepared by the SMILE
iii. If the SMILE presents only own annual financial statements, it should present the latest annual financial statements (with all disclosures) and only insert a comparative column providing figures related to the year before
iv. If the SMILE presents consolidated annual financial statements and no significant transaction occurred during the (2-year) period, the disclosures of the annual financial statements should be limited to the latest financial year
v. Where interim financial information is required to be presented in the IPO prospectus, this should only be required for one period (i.e. no comparative and only primary statements need be disclosed: income statement, balance sheet, cash flow and statement of changes in equity).
vi. Where relevant, specific possibilities to present aggregated or combined accounts where the legal group has not existed for the duration of the 2 years should be permitted.