

**BNP Paribas feedback to European Commission “Listing Act – making public capital markets more attractive for EU companies and facilitating access to capital for SMEs” (March 2023)**

BNP Paribas welcomes the proposed set of measures referred as the “Listing Act” as part of a wider initiative to put in place a real Capital Markets Union which is absolutely necessary in order to have mature capital markets that will enable the financing of the digital transformation of the European economy and the transition to low carbon economy and to ensure our sovereignty in a context of a continued attractiveness of US capital markets and a desire of the UK to compete in terms of attractiveness.

BNP Paribas therefore supports the objective of the European Commission to simplify the listing and post-listing requirements in order to attract more European companies to public markets, and in particular to facilitate Small and Medium Enterprises (“SME”) access to capital. We also positively note that the proposal aims to address the issue of harmonisation of national laws on dual-class shares.

BNPP welcomes the overall efforts to reduce administrative burdens for companies raising capital, so that they can access European public markets more efficiently and to align national competent authorities in the way they regulate and approve prospectuses.

We are also mindful that the proposed amendments would also preserve necessary degrees of transparency, investor protection and market integrity.

Please refer to BNP Paribas answer to the public consultation on “making public capital markets more attractive for EU companies and facilitating access to capital for SMEs” submitted in February 2022.

**1/ Pre-IPO – New directive on Multiple-Vote Right shares for SME listing (MRV)**

BNP Paribas welcomes the proposal for harmonisation of Multiple Vote Regime within the European Union, as we firmly believe that opting for dual-class shares when going public<sup>1</sup> should have a common framework in all European jurisdictions.

We also believe that this should be the case not only for growth markets but also for all companies, whether they are listed on any regulated market or a growth market, and that adequate safeguards should be put in place.

More generally, BNP Paribas is supportive of further integration, including initiatives aiming at harmonizing more deeply national corporate law, corporate taxation and bankruptcy regime.

In that context, we do not support in the directive the proposed optional safeguards per Member States discretion, such as the transfer based sunset clause, the time-based sunset clause, the event-based sunset clause, as they could introduce further distortion between jurisdictions.

In our view, Multiple-Vote Right shares structures should be harmonised and meet the following cumulative conditions:

- The principle to limit the benefit of multiple voting shares for a uniform period of time across European jurisdictions (uniform sunset clause);
- The principle to limit the maximum weighted voting rights ratio at the same level across European jurisdictions;
- The enhanced voting rights cannot be transferred to third parties.

Also, we do not support in the directive the proposed provision that allow Member States that already have regimes on multiple vote shares not to have to amend their rules. There is no justification why distortion between jurisdictions and protection of shareholders should differ from Member State to Member State. Member States with already existing national provisions on multiple-vote share should also be obliged to introduce safeguards described above.

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<sup>1</sup> For operational reasons related to corporate trust arrangements, we would limit the attribution of dual shares at the time when the securities are going public or to new shares at the time of capital increase to avoid as much as possible the complexity to change the nature of existing shares already traded (i.e. necessity to modify the ISIN when securities are subject to central depository arrangements)

## **2/ IPO stage – Introduction of shorter prospectuses combined with streamlined scrutiny by National Competent Authorities (NCAs) in the proposed amendments of the Prospectus Regulation**

BNP Paribas is mostly in line with the proposed simplification and harmonisation.

However, our view is that EU markets are generally built on an adequate balance between burdens and benefits of a listing whilst providing adequate levels of investor protection.

Prospectus and disclosure costs ensure a high level of rigor and transparency; efforts should be focussed on improving benefits of being listed in terms of accessing a wide investor base, enabling quick equity and debt raisings and maintain investor interest and liquidity throughout life of a listed company. We do not believe it was clearly addressed in the proposed Listing Act.

### Exemptions

BNP Paribas welcomes the introduction of the two new proposed exemptions from the obligations to publish a prospectus (i.e. 40% exemption and 18 months exemption) for companies whose securities are already admitted to trading.

### Length limitation

Regarding the prospectus length limitation, BNP Paribas is in favour of a page limitation throughout the EU of 300 pages, except for structured products where such limit should not be applicable.

However, we are also mindful of the current lack of a uniform civil liability regime.

We support the AFME position relating to the unchanged civil liability regime, in particular *“the lack of a uniform liability regime across Europe and individual member states creating significant risks, inefficiencies and differences that act as a barrier to the market”*.

We firmly believe that a more consistent and clarified civil liability regime such as what exists in the US would facilitate the access to capital markets of issuers. We also recognise the positive effect of shortened disclosure framework in jurisdictions such as Australia, as it was associated with adapted civil liability regime where it is specified that banks are not responsible for issuer’s documents.

The introduction of a uniform civil liability regime necessarily associated with prospectus page limitation could also clarify the responsibility related to forward-looking information. We also support AFME position when it advocates for the limitation of issuer’s liability *“only if the issuer was aware of the falsity of such statements or has intentionally made the statement to mislead investors”*.

This would align European framework with standards already adopted for listed companies in the US regulated markets and with standards expected to be adopted in the UK.

### Order of presentation

BNP Paribas does not support the proposal regarding the order of presentation.

We are in line with the answer of AMAFI that states *“establishing a precise order of the different sections does not meet the objective of clarifying and simplifying the prospectus. On the contrary, it deprives issuers and intermediaries of flexibility in the preparation of the document and prevents them from adapting its drafting to specific situations that require it”*.

### Risk factors

We are in line with the answer of AMAFI that states it *“warmly welcomes”* the proposal to remove the requirement that risk factors be described in order of importance in each topic, as it also relates to the balance between prospectus simplification and adapted civil liability regime for issuers and their counsels.

### Language

BNP Paribas is in favour of the proposed usage of English only, with the summary in official language of the Member States.

We would also even support the insertion of a *“Plain English Handbook”* to ensure the consistency of terms used, the clarity and the transparency across European venues

#### List of documents incorporated by reference

BNP Paribas recognises the benefits of documents incorporated by reference in the context of the simplification and reduction of number of pages of prospectuses.

However, we would also favour the introduction of some flexibility of the list of such documents, to ensure the prospectus would be able to relevantly represent specificities of SMEs.

#### Supplement

BNP Paribas is in line with AMAFI position when it states that the introduction of a supplement when the final price differs by no more than 20% from the maximum price in the prospectus is “*an excessive burden*”.

#### Delay

BNP Paribas welcomes the proposed reduction of delay between publication and the end of IPO offer from six working days to three working days.

However, we do not support the proposed increase from two days to three days for investor’s retraction in certain circumstances.

BNP Paribas in line with AMAFI when it stresses the necessity “*to maintain the time limits at two days as this extension would increase execution risks when financial markets are volatile*”.

It is also contrary to the proposed amendment that provides that the supplement may be published on the issuer’s website. “*Given the instantaneous nature of the information via publication on the website, the extension of the withdrawal period is not consistent*”.

### **3/ IPO stage – Simplification and harmonisation of the access to listing and alleviation of MiFID research unbundling rules for SMEs [repeal of Listing Directive, amendment of the Markets in Financial Instruments Regulation (MiFIR) and amendment of the Markets in Financial Instruments Directive II (MiFID II)]**

#### Minimum Free Float

BNP Paribas is in line with the need to address Minimum Free Float. We support the need to remove minimum set at 25%, but we believe we should let local authorities the ability to adapt it to each local market, but with ESMA having a mandate to ensure harmonisation across Member States.

#### Research

As previously mentioned, BNP Paribas considers there is no way back as regards the unbundling of research introduced by MiFID II.

This has now become market standards both for brokers and asset management firms. All have adapted their systems to the payment of research independently of brokerage fees. This may even have benefitted the quality of research and the ability of best research houses to be rewarded for their investment in the intellectual and analytical quality of equity research notably.

We do not consider that alleviating the standards in Europe will ultimately be beneficial for investors and market integrity.

However, BNP Paribas is strongly supportive of sponsored research which is a pragmatic answer to the ability of mid cap companies to get research on their stock.

#### **4/ Post IPO – Clarification of the disclosure obligation and adoption of a proportionate sanctioning regime for SMEs in the proposed amendments of Market Abuse Regulation (MAR)**

##### Inside information

BNP Paribas is in line with proposed alleviation of insider information regime.

However, we are in line with AMAFI regarding the proposed delegation to ESMA of the definition of a list of information, when it states that *“such a list is likely to bring rigidity to a process which, in essence, requires a case-by-case assessment”*.

##### Market sounding

BNP Paribas welcome the proposed simplification of Market sounding regime, even if it could be further simplified, as exemption from market sounding rules to private equity placements could be extended or, at least, the current regime should be simplified to the signing of a form of NDA.

We also believe that the clarification that discussions taking place strictly for the purpose of concluding a trade are not market soundings, should be extended to all asset classes, not only bonds.