

**Statement of**  
**Gruppe Deutsche Börse**

on the amendment of Delegated Regulation (EU) 2017/565 as regards certain registration conditions  
to promote the use of SME growth markets for the purpose of Directive 2014/65/EU of the  
European Parliament and of the Council

19 June 2018

## Introduction:

We express our gratitude for the opportunity to give a first feedback on the draft amending the Delegated Regulation (EU) 2017/565 to Directive 2014/65/EU („**MiFID II**“).

Overall, we welcome the proposal to further enhance the attractiveness of capital market financing in certified growth markets for small and medium-sized enterprises ("**SME**", "**SME Growth Market**"). Therefore, it is appropriate to further simplify access to the capital market for SMEs and, as a result, to make technical adjustments to the European regulatory framework. We consider the conceptual implementation/execution - namely to reduce administrative and legal burdens as well as to reduce costs for the issuers and to increase the liquidity of equity instruments in SME growth markets without endangering market integrity or investor protection – reasonable and expedient.

However, the proposed changes remain behind from what we believe is necessary to strengthen the attractiveness of the SME Growth Markets. The existing definition set out in Article 4 section 1 number 13 of MiFID II concerning SMEs is constrained to issuers whose shares have been admitted to trading for more than three years. MiFID II does not contain any indications regarding the classification of issuers whose shares are admitted for less than three years or those who offer non-equity securities for trading as an SME. Article 4 section 2 of MiFID II, however, contains a legal basis and enabling provision to adopt delegated acts, which allow the technical elements of the definitions - and thus the definition of an SME - to be refined and adjusted. The purpose of such delegated regulations is to adapt definitions to constantly changing market and technological developments. With the Delegated Regulation 2017/565/EU, the European Commission exercised this right and implemented provisions for the classification of issuers as SMEs whose shares have been admitted to trading for less than three years and for those that offer non-equity securities. In addition to amending these existing requirements of Delegated Regulation 2017/565/EU, we believe that a technical adjustment of the definition (directly set out in MiFID II) for issuers whose shares have been admitted for more than three years would also be desirable. We believe that this could also be possible by technical amendment through the proposed delegation.

We aim for a comprehensive system that, on the one hand, satisfies the interest of the European or national legislator to enact future legal advantages and alleviations. On the other hand, the threshold for SMEs should not be set too high in order to facilitate their access to capital markets, especially to make use of SME Growth Markets.

## Article 1: amendment of Delegated Regulation (EU) 2017/565

### **1. Amendment of article 77 section 2**

We welcome the proposal to modify the definition of SMEs for issuers who offer non-equity securities for trading and to adapt them to lower requirements.

There are several multi trading facilities (“**MTF**”) across the EU specialised in non-equity securities of SMEs. On those platforms (“**EU public markets for SMEs**”) the classification of debt issuers as SMEs is important as an MTF can only be certified as an SME growth market if at least 50% of all issuers (equity and non-equity issuers) are SMEs.

Given the current definition in the delegated regulation 2017/565/EU, EU public markets for SMEs specialising in non-equity or both, non-equity and equity securities, will face difficulties in registering as SME growth markets, as their issuers do not meet the described criteria. Those are too restrictive and outdated as they refer to the definition set out in the 2003 Commission Recommendation. SMEs listed in EU public markets for SMEs have an annual turnover between EUR 19 million and EUR 400 million and a minimum debt issuance size of approximately EUR 20 million. Raising capital via debt issuance below EUR 20 million will oftentimes not be seen as profitable for issuers as well as for investors. On the other hand, debt issuances above EUR 20 million will lead to a high impact on the balance sheet of SMEs. Therefore, we consider the criteria of a total balance sheet not suitable as a provision of the definition and appreciate the refrain therefrom.

To implement a new and sole criterion based on the total size of the debt issuances within 12 months is also appreciated, as it is the most appropriate measure for defining a non-equity issuer as SME. However, it is not clear if “total size of debt issuance” includes the development of the placed volume within the relevant period or focuses on the total size only of the initially placed volume. We assume and consider that the only meaningful interpretation would be to relate to the total size of the originally placed volume.

Anyhow, the “total size of debt issuance” has to be seen with regard to not only one MTF but to “all trading venues across the Union”. From our perspective, it will be very difficult to track each debt issuance of non-equity issuers on all European MTFs. As there is no public source collecting such information, we highly recommend implementing a binding disclosure obligation regarding already issued debts as well as future debt issuances on European MTFs. The obligation could potentially include to directly report those data to the respective operator of the MTF they are trading on. Otherwise, the operator of an MTF has enormous administrative expenses to gather such information.

Nevertheless, we consider a EUR 50 million-cap per non-equity issuer falls short off the mark, as it is not sufficiently high enough taking into consideration that this number includes every debt of all non-equity issuers being issued in the whole EU. Regarding the debt market within Scale, a new exchange segment of Deutsche Börse to enhance access to investors for SMEs and growth companies and therefore supposed to be registered as SME Growth Market, the average size of issued debts already meets the EUR 50 million cap. Consequently, the majority of non-equity issuers could not be deemed as SMEs, if they also place debts on other European MTFs (than Scale). Therefore, we propose to increase the cap to at least EUR 150 million regarding the total size of debt issuances across the EU. Taking in consideration the average size of debt issuances of large entities on the regulated markets of Deutsche Börse amounting EUR 1,09 million, the proposed 150-million-cap is quite appropriate to SMEs.

Moreover, the existence of “larger sizes” of debt issuances (up to EUR 150 million) on those EU public markets for SMEs are also very important and useful as they ensure a sufficient level of liquidity and profitability. Such an advantage should not be devalued by the fact that, at the same time, such issuers would not meet the SME definition, therefore reduce the number of SMEs and in turn impede SME Growth Market Certification.

## **2. Amendment of article 78 section 2**

### **a) Free-float-condition**

We accept the approach to implement a free-float-condition as free-float guarantees an orderly exchange trading and liquidity. Therefore, Deutsche Börse already requires such obligation from their issuers listed on Scale. Scale aims to meet the MiFID II guidelines for certified SME growth markets. Nevertheless, we take the view that free float should be developed and applied by individual market operators, so that they can tailor the requirements in a way that is appropriate to their markets. In our opinion, this includes the possibility to completely renounce such condition. As the new requirement includes the right to set an appropriate threshold based on the particular circumstances of the market, including on whether the amount should be expressed in absolute value or in percentage of the total issued share capital, our basic idea of maintaining flexibility is still met. Furthermore, there is no general definition of “free float” provided in the draft, which provides even more flexibility to market operators, which can set up their own parameters for a definition.

### **b) Exemption of half-yearly financial reports**

The approach to revoke rules that impose greater burdens on non-equity issuers than those applicable to non-equity issuers on regulated markets has different impacts on issuers and investors. Those disproportionate burdens include the obligation to publish half-yearly financial reports within four months after the end of the first six-month period of each financial year while regulated markets abstain from this obligation due to non-equity issuers targeting professional clients. In terms of costs, listed companies consider the publication of half-time reports as a significant cost factor.

Nevertheless, the information published in those half-yearly reports is highly appreciated by investors and – in case of exempting non-equity issuers from this obligation – this would also lead to major differences in the treatment of non-equity and equity issuer, which do not have the chance of being exempted, on one and the same EU public market for SMEs. Furthermore, the alleviation implies that market transparency decreases and investor demand in EU public markets for SMEs is reduced. Without half-yearly financial statements, the investor has no opportunity to obtain information on the debt security during the year. As a result, the rating agencies cannot rate the creditworthiness of the non-equity issuers up-to-date and correctly. This would have a negative impact on the attractiveness of debt capital market financing via the stock exchange.

## **Article 2: Entry into force**

We consider a three-month period for operators of an EU public market for SMES appropriate to adapt the conditions for registration.

### **Additional suggestions**

Besides the above commented Amendments we suggest revising the definition of equity-issuers issuing securities more and less than three years as well. Technical adjustments regarding the market capitalisation would be highly appreciated. We consider that market capitalisation should continue to be applied as the basis for determining an SME Growth Market as it is the most appropriate measure to use, but we believe that the threshold should be increased as EUR 200 million is too low. The qualifying threshold for SME should be increased from EUR 200 million to at least EUR 300 million but up to EUR 500 million as the current threshold only takes into consideration small enterprises and not mid-caps.

### **Conclusion:**

We hope that our comments, ideas and suggestions stemming from the experience we gained over the last decades trying to foster a better capital market environment for SMEs will be included in the process of amending the current definition of SMEs to promote SME growth markets. We are available for further questions and additional discussions.