Listing Act

AMAFI's proposed amendments

Association française des marchés financiers (www.amafi.fr) is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

On 14 June 2023, the ECON committee of the European Parliament published the 3 draft reports of rapporteur Alfred Sant in relation to the Listing Act package[1]:

- 2022/0406(COD) on the proposal for a directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth markets;
- 2022/0405(COD) on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC (COM (2022)0460 – C9-0415/2022 – 2022/0405(COD));
- 2022/0411(COD) on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (COM (2022)0762 – C9-0417/2022 – 2022/0411(COD)

AMAFI comments on report 2022/0405(COD) related to amendments to MiFID and on report 2022/0411(COD) related to amendments to the Prospectus Regulation and to the Market Abuse Regulation.

AMAFI does not comment on report 2022/0406(COD) related to multiple-vote share structures.

I. ON MiFID II

AMAFI has the following comments on the proposal for a directive amending MiFID II.

1) Regarding investment research, AMAFI agrees with the Commission that the coverage of SMEs is not satisfactory, which weighs on the benefits they can draw from their listing. Therefore, AMAFI reiterates its support on the proposal that qualifies sponsored research as investment research provided it complies with a code of conduct, which has proven to be a good alternative in France. In fact, since the establishment of the French Charter for sponsored research in May 2022, close to one third of issuers listed on Euronext Paris with a market cap between 10 Million to 1 Billion € are covered by the

[1] Proposal published on 8 December 2022 including a regulation amending the Prospectus and Market Abuse Regulations, a directive amending MIFID II and a directive on multiple voting shares with the aim to make public capital markets more attractive for EU companies and facilitating access to capital for SMEs.

Charter (*AMAFI / 23-34*). AMAFI tends to believe that the code of conduct should be developed or endorsed by national competent authorities (NCAs) with general orientations provided by ESMA through guidelines. Moreover, AMAFI considers that people who receive research cannot be held responsible for ensuring that research providers comply with the code. This should be the responsibility of the NCAs. Finally, if sponsored research for a given issuer / from a given provider does not comply with the code, NCAs could have the ability to requalify this research as marketing communication (as proposed in article 24 paragraph 3d in the EP draft Report).

2) On the *rebundling* issue, AMAFI considers that a threshold should be set at 5 billion €, given that the most acute issues when it comes to the financing of research concern small and medium sized firms and that the 5 billion € threshold represents the threshold under which management companies consider investing in SMEs.
3) On product governance requirements, AMAFI considers it necessary to lift or reduce such requirements for vanilla financial instruments (such as simple bonds and shares), as they are disproportionate and constitute a hindrance to the distribution of such products, especially SMEs.

II. ON THE PROSPECTUS FRAMEWORK

On the proposal to raise from € 8 million to € 12 million the threshold beneath which issuers are exempted from the obligation to publish a prospectus, AMAFI and despite a consensus of the colegislators, has reservations about raising the threshold.

The exemption from a prospectus shifts the administrative burden from the regulator to a market operator or intermediaries. The visa that Authorities give on prospectus allows issuers to legitimize their offers and therefore not to confront possibly very detailed requests for information (due diligence) from market operators. In addition, the absence of a prospectus leads to competition between entities on due diligence, which leads to a loss of homogeneity of the process. Moreover, the exemption of prospectus for operations bellow 12m€ could reduce investors universe. Compliance departments could prevent different type of investors to participate (retail, some institutional funds).

Furthermore, AMAFI notes that Regulation (EU) 2021/528 on the exemption document is not included in the Listing Act package. This Regulation should also be alleviated in order to facilitate the administrative burden on SME that go listed whilst being exempted from the obligation to publish a prospectus. This would allow coherence of texts and alignment of requirements and would lead to a desired simplification of procedures.

Regarding the proposed amendments to the Prospectus Regulation, AMAFI welcomes the removal of the exemption from the obligation to publish a prospectus for offers of fungible shares already admitted to a regulated market or an SME growth market on a continuous basis for at least 18 months preceding an offer of new securities. The four conditions added to the prospectus exemption when the offer to the public or admission to trading on a regulated market or SME growth market is less than 40% of the number of securities already admitted to trading on the same market are, according to AMAFI, perfectly consistent and leads to a desirable flexibility framed in a measured manner.

AMAFI also warmly welcomes the removal of the 300-page limit from the prospectus, as well as the drafting proposed by the Parliament regarding the standardization of the sequence order. Indeed, the prospectus composed with separate documents is excluded from this standardisation, which allows issuers to model the prospectus on the international prospectus (Initial offering memorandum). In addition, AMAFI is fully in line with Parliament's proposal to remove the requirement of incorporation by reference in the prospectus, which remains optional.

Regarding deadlines, AMAFI points out that the parliament's proposal reduces from 3 to 2 "business days" the delays for investors to withdraw their subscription to the offer in certain circumstances (*Article 17.1 of the Prospectus Regulation*) including when publishing a supplement (*Article 23.2 of the Prospectus Regulation*). This measure was strongly desired by AMAFI and is therefore strongly welcomed by the association. This reduction in time is more consistent with the reduction from 6 to 3 days before the end of the offer to publish the prospectus (also strongly welcomed), and with the computerization of the publication of the supplement proposed in Article 3.3a of the Prospectus Regulation, which, because of its instantaneity makes an extension of the withdrawal delays inconsistent.

III. ON THE MARKET ABUSE FRAMEWORK

AMAFI believes that the provisions relating to market soundings should be amended to:

- Extend to all financial instruments, and not only to bonds, the clarification that discussions taking place strictly for the purpose of concluding a trade are not market soundings; and
- Exclude contacts with investors aimed at adjusting the issuance terms of an EMTN to their needs.

The current scope of application of MAR on investment recommendations should exempt sales memos of wholesale information sent to professional clients from the scope of the provisions on investment recommendations of MAR.

On insider lists, for issuers of vanilla bonds only, AMAFI is of the view that they should be exempted from the requirement to publicly disclose inside information other than information that jeopardize the issuer's ability to repay their debts.

Moreover, AMAFI does not welcome the delegation to ESMA of the definition of an indicative list of information likely to constitute inside information and, for each of these pieces of information, of the moment when it can reasonably be expected to be disclosed to the market. Indeed, the Association believes that such a list is likely to bring rigidity to a process which, in essence, requires a case-by-case assessment.

AMAFI is of the view that insider lists' requirement still entails overly burdensome requirements and would advocate the following changes to such provisions:

- The scope of the information to be included in the list should be reduced (in particular the personal data of the persons included in the list) and additional information should only be provided on request of the national competent authority.
- Issuers and persons acting on their behalf (notably financial intermediaries) should be entitled to include in their own insider list only one natural person per external provider, through which they get access to the other insiders of this third party.

AMAFI welcomes the proposed simplifications on the reporting and disclosure of share buybacks. The same amendments should be made with regards to stabilization activity.
AMAFI notes that the Delegated Regulations relating to share buybacks and stabilization activity should be amended in order to further simplify and align with the proposed changes to MAR.

Throughout this document, the left column contains the amendments proposed in the respective European Parliament's draft reports (*i.e. right column in the reports*) and the right columns in this document contain AMAFI's proposed changes to the report. In rare cases, AMAFI proposes additional changes to the EU Commission's text or to the current version in force. This is indicated as such.

1. Amendments to MiFID II (directive 2014/65/EU)

These are the comments on European Parliament document 2022/0405(COD) of 14.6.2023, i.e. draft report of rapporteur Alfred Sand on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC.

Investment Research

Amendment 1

Proposal for a directive
Recital 5

ECON amendment	***AMAFI's proposed amendment***
In addition, to further support the coverage of small and medium capitalisation companies by investment research, research material paid fully or partially by issuers should be labelled as 'issuer-sponsored research'. To ensure an adequate level of objectivity and independence of such research material, such material should be produced in line with a code of conduct developed or endorsed by ESMA. In order to support more visibility of the issuer-sponsored research, issuers should have the possibility to submit their issuer-sponsored research to the relevant collection body as defined in Article 2 (2) of Regulation(EU) .../... of the European Parliament and the Council [33] .	In addition, to further support the coverage of small and medium capitalisation companies by investment research, research material paid fully or partially by issuers should be labelled as 'issuer-sponsored research'. To ensure an adequate level of objectivity and independence of such research material, such material should be produced in line with a code of conduct developed or endorsed by ***~~ESMA~~ a competent authority***. In order to support more visibility of the issuer-sponsored research, issuers should have the possibility to submit their issuer-sponsored research to the relevant collection body as defined in Article 2 (2) of Regulation(EU) .../... of the European Parliament and the Council [33] .

Amendment 3

Proposal for a directive
Article 1 – paragraph 1 – point 2 – point a
Directive 2014/65/EU
Article 24 - paragraphe 3b - subparagraph 1

ECON amendment	***AMAFI's proposed amendment***
Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as "issuer-sponsored research" provided that it is produced in compliance the EU code of conduct for issuer-sponsored research to be developed by ESMA.	Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as "issuer-sponsored research" provided that it is produced in compliance ***~~the EU~~ with a*** code of conduct ***developed or endorsed by a competent authority ~~for issuer-sponsored research to be developed by~~ and framed by*** *ESMA* ***guidelines***.

Justification

AMAFI welcomes the general approach of the European Commission which is to consider issuer-sponsored research as investment research provided that it complies with a code of conduct. However, and contrary to the European Parliaments' proposal, AMAFI considers that this code should be drafted at national level based on ESMA guidelines. In fact, unlike the wholesale market, the specificities of local markets for small and mid-cap stocks persist. Given the different levels of development of local markets, a one-size-fits-all approach is not yet timely. Such a *bottom-up* approach, by developing local markets, would contribute to the completion of the Capital Markets' Union objectives. Finally, we have certain doubts on the (institutional) competence for ESMA to set up commercial conditions regarding the duration and the remuneration of the research, which are two of the most important components of the existing charter.

On that matter AMAFI is therefore fully supportive of the EC's approach to have a code of conduct developed or endorsed by a market operator registered in a Member State or by a competent authority and that shall set out minimum standards of independency and objectivity.

Amendment 4

Proposal for a directive
Article 1 – paragraph 1 – point 2 – point a
Directive 2014/65/EU
Article 24 - paragraphe 3b - subparagraph 2

ECON amendment	***AMAFI's proposed amendment***
ESMA shall develop draft regulatory technical standards to establish a harmonised EU code of conduct for issuer-sponsored research. The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research, and specify procedures for the effective identification and prevention of conflicts of interest.	ESMA shall ~~***develop draft regulatory technical standards***~~ ***issue guidelines*** ~~***to establish a harmonised EU code of conduct for issuer-sponsored research. The code of conduct shall set out***~~ **to establish** minimum standards of independency and objectivity to be complied with by the providers of such research and specify procedures for the effective identification and prevention of conflicts of interest. ***The code of conduct should be published on the website of its provider and should be reviewed and re-endorsed every 2 years.***
	In establishing its guidelines, ESMA shall take into account the content and parameters of codes of conduct which have been established at national level prior to the application of the guidelines, especially where such codes have been widely endorsed and adhered to.
ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this Directive].	~~***ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this Directive].***~~
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	~~***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***~~

The EU code of conduct shall be made available to the public on ESMA's website.	~~***The EU code of conduct shall be made available to the public on ESMA's website.***~~
The competent authorities of Member States shall be given supervisory powers in order to ensure that investment firms comply with the requirements of the EU code of conduct developed by ESMA. The competent authorities of Member States shall have the necessary powers to do the following:	The competent authorities of Member States shall be given supervisory powers in order to ensure that investment firms comply with the requirements of the ~~***EU***~~ code of conduct ***that they developed or endorsed*** ~~***by ESMA***~~. The competent authorities of Member States shall have the necessary powers to ~~***do the following:***~~
(a) check whether investment firms have in place the organisational measures to ensure that the issuer-sponsored research that they receive is produced in compliance with the EU code of conduct;	~~***(a) check whether investment firms have in place the organisational measures to ensure that the issuer-sponsored research that they receive is produced in compliance with the EU code of conduct;***~~
(b) suspend the distribution by investment firms of any issuer-sponsored research that is not produced in compliance with the EU code of conduct;	~~***(b) suspend the distribution by investment firms of any issuer-sponsored research that is not produced in compliance with the EU code of conduct;***~~
(c) issue warnings to inform the public that the issuer-sponsored research is not produced in compliance with the EU code of conduct.	~~***(c)***~~ issue warnings to inform the public that the issuer-sponsored research is not produced in compliance with the ~~**EU**~~ code of conduct.
ESMA shall ... [24 months after the date of entry into force of this Directive], be required to conduct a mandatory peer review analysis of the supervisory activities of the competent authorities in relation to the application of this Article. That peer review shall focus on the supervisory activities of the competent authorities ensuring that investment firms comply with the requirements of the EU code of conduct. ESMA shall assess on a regular basis, and at least every three years, whether the EU code of conduct needs to be reviewed, in which case it shall submit amended draft regulatory technical standards to the Commission.	ESMA shall ... [24 months after the date of entry into force of this Directive], be required to conduct a mandatory peer review analysis of the supervisory activities of the competent authorities in relation to the application of this Article. That peer review shall focus on the supervisory activities of the competent authorities ensuring that investment firms comply with the requirements of the EU code of conduct. ***ESMA shall assess on a regular basis, and at least every three years, whether*** ~~***the EU code of conduct***~~ ***guidelines needs to be reviewed,*** ~~***in which case it shall submit amended draft regulatory technical standards to the Commission.***~~

Amendment 10

Proposal for a directive
Article 1 – paragraph 1 – point 4 a (new)
Directive 2014/65/EU
Article 69 – paragraphe 2 – point u a (new)

ECON amendment	***AMAFI's proposed amendment***
(4a) In the first subparagraph of Article 69(2), the following point is added:	(4a) In the first subparagraph of Article 69(2), the following point is added:
(ua) supervise whether investment firms that produce or distribute issuer-sponsored research do so in compliance with the EU code of conduct developed by ESMA as referred to in Article 24.	(ua) Supervise whether investment firms that produce ~~***or distribute***~~ issuer-sponsored research do so in compliance with the ~~**EU**~~ code of conduct ~~***developed by ESMA***~~ as referred to in Article 24.

Justification

a) *Responsibility to ensure compliance with the code of conduct (Amendment 4 related to Article 24 3b (2) & amendment 10 related to a new Article 69 2 (ua))*

AMAFI is against the Council and the Parliament's approach that sets responsibility on investment firms providing portfolio management or other ancillary services, to ensure that the research they distribute is produced in compliance with the code of conduct given that in many cases there is no contractual link between the research provider and the asset management company. We cannot see how this measure could be set from an operational point of view. Furthermore, the compliance of research with the code of conduct can only engage the person who produces it. AMAFI is therefore supportive of the European Commission's proposal which doesn't impose to such firms to ensure that the research complies with the code of conduct.

b) *Sanctions for non-compliance with the code of conduct (Amendment 4 related to Article 24 3b (2))*

AMAFI is against the Parliament's proposal to suspend the distribution by investment firms of any issuer-sponsored research that is not produced in compliance with the EU code of conduct. In fact, AMAFI supports the European Commission's proposal which only states that research material paid fully or in part by the issuer but that is not produced in compliance with a code of conduct shall be labelled as marketing communication (as provided for in article 24 paragraph 3d of the Parliament's draft report). The requalification of sponsored research as marketing communication should be sufficient to manage any risk induced by the non-compliance of the research to the code of conduct.

Rebundling

Proposal for a directive
Directive 2014/65/EU
Article 24 – paragraph 9a – (c)

EU commission proposal	*AMAFI's proposed amendment*
The research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when those issuers are or were listed or by the own-capital for the financial years when those issuers are or were not listed.	The research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR ~~**10**~~**5** billion, as expressed by end-year quotes for the years when those issuers are or were listed or by the own-capital for the financial years when those issuers are or were not listed.

Justification

On the rebundling issue (joint payment for the execution services and the provision of research), the Parliament supports the European Commission's proposal to set a 10 billion € threshold under which rebundling is authorised. AMAFI agrees that setting a threshold is necessary and that allowing firms to rebundle without any threshold of market capitalisation could have detrimental effect on brokers specialised in small and medium sized businesses. However, AMAFI also believes that a 5 billion € threshold would be more suited considering that it's the threshold under which management companies consider investing in SMEs and as the negative trend in the supply of research concerns SMEs.

Product Governance

Proposal for a directive
Directive 2014/65/EU
Article 16a (new)

EU Commission proposal	***AMAFI's proposed amendment***
N/A	Article 16a 16a Exemptions from product governance requirements An investment firm shall be exempted from the requirements set out in the second to fifth subparagraphs of Article 16(3) and in Article 24(2), where the investment service it provides relates **to simple shares or** bonds ~~**with no other embedded derivative than a make-whole clause**~~ or where the financial instruments are marketed or distributed exclusively to eligible counterparties.

Justification

AMAFI considers it necessary to lift or reduce product governance requirements for vanilla financial instruments (such as simple bonds and shares), as they are disproportionate and constitute a hindrance to the distribution of such products, especially SMEs. AMAFI bases this position on the following arguments:

- These products are not issued to meet (retail) investors' needs and objectives or address particular risk profiles. Their aim is to raise financing for issuers, not to address investment needs. They are fundamentally different from investment products, such as funds, or from structured products that offer solutions tailored to the needs of certain categories of investors, particularly in terms of strategy, risk/return profile, maturity or nominal invested. These products' purpose is to answer investors' needs, hence they are "manufactured" for this purpose.
- The role of the investment firm in an initial public offering is not to define the objectives and investment needs of the targeted clients, but rather to assist the issuer in structuring the deal to raise the necessary financing. This is all the more critical with the new ESG provisions on product governance as investment service providers now have to analyse the ESG characteristics of a product according to the corresponding expectations of the final investors (target market) which is at odds with their role in a capital market offering of securities that should be analysed as financing products of issuers rather that investment products for investors.
- The added value of product governance requirements for vanilla products is very low or non-existent in the primary market and the current requirements on primary and secondary markets are unsuitable, in particular with regard to the following:
  - Costs. By nature, plain vanilla products do not incur a product "manufacturing" costs.
  - Regular review of products. Given their nature, it is disproportionate, unnecessary and perhaps impossible (particularly on the primary market) to conduct regular reviews.
  - Scenarios. The obligation to undertake analyses of various scenarios is not relevant for shares and bonds, whose valuation conditions are not dependent on a manufacturer' choice.
  - Reports on sales outside the target market: given the limited scope of its obligations, the "manufacturer" will not perform a regular review of the product (or its target market) and, therefore, these reports on sales outside the target market are pointless in any event.

2. Amendments to Prospectus regulation 2017/1129

These are the comments on European Parliament document 2022/0411(COD) of 14.6.2023, i.e. draft report of rapporteur Alfred Sant on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises.

Amendment 5

Proposal for a regulation
Recital 8

ECON amendment	*AMAFI's proposed amendment*
To adapt to the different national stock market conditions within the Union, Member States may exempt offers of securities to the public from the obligation to publish a prospectus where the total aggregated consideration in the Union for the securities offered is less than EUR 5 000 000 per issuer or offeror, calculated over a period of 12 months, up to a threshold of EUR 12 000 000. In the case of such an exemption, however, Member States should be able to require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate or unnecessary burden. Member States should also strive to bring their different national requirements closer to each other.	To adapt to the different national stock market conditions within the Union, ***a single harmonised threshold of EUR 12 000 000 should be set out at Union level and should replace the existing optional thresholds. Below that threshold, offers of securities to the public should be exempted from the obligation to publish a prospectus, provided that those offers do not require passporting.*** ***Nevertheless,*** Member States may exempt offers of securities to the public from the obligation to publish a prospectus where the total aggregated consideration in the Union for the securities offered is less than EUR 5 000 000 per issuer or offeror, calculated over a period of 12 months ~~***up to a threshold of EUR 12 000 000.***~~ In the case of such an exemption, however, Member States should be able to require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate or unnecessary burden. ~~***Member States should also strive to bring their different national requirements closer to each other.***~~

Justification

AMAFI notes that the terms used in the recital 8 and those used in the text (Article 3.2.1b of the Prospectus Regulation) are not aligned. The recital mentions 'up to' while the text does not provide this clarification. This results in uncertainty regarding the scope of the option. Consequently, AMAFI proposes to delete the wording « up to », in order to make the text coherent and to promote the harmonization of practices between Member States.

Amendment 7

Proposal for a regulation
Recital 11

ECON amendment	*AMAFI's proposed amendment*
Article 1(5), point (a), of Regulation (EU) 2017/1129 contains an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same regulated market, provided that the newly admitted securities represent over a period of 12 months less than 20 % of the number of securities already admitted to trading to the same regulated market and provided such admission is not combined with an offer of securities to the public. To reduce complexity and to limit unnecessary costs and burdens, that exemption should apply to both the offer to the public and the admission to trading on a regulated market of the concerned securities and the percentage threshold that determines the eligibility for that exemption should be increased to 30%. For the same reason, that modified exemption should also encompass an offer to the public of securities fungible with securities already admitted to trading on an SME growth market.	Article 1(5), point (a), of Regulation (EU) 2017/1129 contains an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same regulated market, provided that the newly admitted securities represent over a period of 12 months less than 20 % of the number of securities already admitted to trading to the same regulated market and provided such admission is not combined with an offer of securities to the public. To reduce complexity and to limit unnecessary costs and burdens, that exemption should apply to both the offer to the public and the admission to trading on a regulated market of the concerned securities and the percentage threshold that determines the eligibility for that exemption should be increased ***to ~~30%~~ 40%.*** For the same reason, that modified exemption should also encompass an offer to the public of securities fungible with securities already admitted to trading on an SME growth market.

Justification

AMAFI supports the proposal to exempt secondary issues of securities offered to the public from prospectuses where the offer to the public or admission to trading on a regulated market or an SME growth market is less than 40% of the number of securities already admitted to trading on the same market (*Article 3.1 of the Prospectus* Regulation). This 40% threshold is assessed over a period of 12 months (without the terminus ad quem being indicated; it is certainly the date of the secondary issue) (*Article. 1.4(da) of the Prospectus Regulation*).

The recital 11 should be amended to replace 30 with 40%, as mentioned in article 1.4 (da) of the Prospectus Regulation.

Amendment 19

Proposal for a regulation
Recital 34

ECON amendment	***AMAFI's proposed amendment***
Risk factors that are material and specific to the issuer and his or her securities should be mentioned in the prospectus. For that reason, risk factors are also to be presented in a limited number of risk categories depending on their nature.	Risk factors that are material and specific to the issuer and his or her securities should be mentioned in the prospectus. For that reason, risk factors are also to be presented in a limited number of risk categories depending on their nature.
	However, issuers should no longer be required to rank the most material risk factors, which is complicated and burdensome for issuers.
To improve the comprehensibility of the prospectus and make it easier for investors to take informed investment decisions, it is necessary to specify that issuers should not overload the prospectus with risk factors that are generic, that only serve as disclaimers, or that could obscure the specific risk factors that investors should be aware of. Furthermore, in each risk category, the most material risk factors should be mentioned first.	To improve the comprehensibility of the prospectus and make it easier for investors to take informed investment decisions, it is necessary to specify that issuers should not overload the prospectus with risk factors that are generic, that only serve as disclaimers, or that could obscure the specific risk factors that investors should be aware of. ~~***Furthermore, in each risk category, the most material risk factors should be mentioned first.***~~

Amendment 70

Proposal for a regulation
Article 1 – paragraph 1 – point 15
Regulation (EU) 2017/1129
Article 16 – paragraph 1 – subparagraph 5

ECON amendment	***AMAFI's proposed amendment***
The risk factors shall be presented in a limited number of categories depending on their nature. In each category, the most material risk factors shall be mentioned first according to the assessment provided for in the third subparagraph.	The risk factors shall be presented in a limited number of categories depending on their nature. ~~***In each category, the most material risk factors shall be mentioned first according to the assessment provided for in the third subparagraph.***~~

Justification

AMAFI opposes the reintroduction of the rule requiring risk factors to be described in order of importance for each category (*Article 16 of the Prospectus Regulation*). On the contrary, removing this requirement, as proposed by the European Commission, would have given desirable flexibility for issuers and intermediaries.

3. Amendments to Market abuse regulation 596/2014

These are the comments on European Parliament document 2022/0411(COD) of 14.6.2023, i.e. draft report of rapporteur Alfred Sant on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises.

Proposal for a regulation
Regulation (EU) No 596/2014
Article 11 – paragraph 1a

EU Commission proposal	***AMAFI's proposed amendment***
N/A	Where an offer of securities is addressed solely to qualified investors as defined in point (e) of Article 2 of Regulation (EU) 2017/1129 of the European Parliament and of the Council (1), communication of information to those qualified investors for the purposes of negotiating the contractual terms and conditions of their participation in an issuance of ~~***bonds***~~ ***financial instruments*** by an issuer that has financial instruments admitted to trading on a trading venue, or by any person acting on its behalf or on its account, shall not constitute a market sounding. Such communication shall be deemed to be made in the normal exercise of a person's employment, profession or duties as provided for in Article 10(1) of this Regulation, and therefore shall not constitute unlawful disclosure of inside information. That issuer or any person acting on its behalf or on its account shall ensure that the

	qualified investors receiving the information are aware of, and acknowledge in writing, the legal and regulatory duties entailed and are aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information

Market sounding

Proposal for a regulation
Regulation (EU) No 596/2014
Article 11 – paragraph 1 – point aa (new)

ECON amendment	***AMAFI's proposed amendment***
N/A	***Where the discussions conducted by an issuer with potential investors aim solely at adjusting the issuance terms of a structured EMTN to the needs of such investors, such discussions do not embed any risk of disclosure of inside information. Therefore, they do not fall within the scope of Article 11.***

Justification

AMAFI believes that the provisions relating to market soundings should also be amended to:

- On the one hand, extend to all financial instruments, and not only to bonds, the clarification that discussions taking place strictly for the purpose of concluding a trade are not market soundings; and
- On the other hand, exclude investment products such as structured EMTNs from the scope of Article 11 of MAR. For those products, the sole objective of discussions conducted by the issuer (or its advisors) with potential investors is to facilitate matching investors' expectations and do not embed any risk of disclosure of inside information. At least such scope should exclude contacts with investors aimed at adjusting the issuance terms of an investment product to their needs, as done for EMTNs. Such discussions, by essence, will not focus on any information about the issuer nor are likely to have any impact on the value of any financial instrument issued by such issuer.

Proposal for a regulation
Regulation (EU) No 596/2014
Article 3 – paragraph 1 – point 35 (new)

EU Commission proposal	***AMAFI's proposed amendment***
N/A	**(**35) 'investment recommendations' means information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public. ***Such recommendations should not encompass sales memos of wholesale information sent to professional clients by sales divisions of investment firms.***

Justification

This topic is not caught by the Listing Act package. However, AMAFI reiterates a concern it has since the first entry into force of MAR.
The current scope of application of MAR on investment recommendations is too wide. There is no rationale for including sales memos or wholesale information flows sent systematically by sales to professional clients.

More generally, their scope should be limited to information effectively distributed on a large scale. The current regime is heavy and costly, without added value for clients (especially wholesale) who do not consult the disclosed information relating to this obligation.

Therefore, it would make sense to exempt sales memos of wholesale information sent to professional clients from the scope of the provisions on investment recommendations of MAR.

Amendment 88

Proposal for a regulation
Article 2 – paragraph 1 – point 5 – point a
Regulation (EU) No 596/2014
Article 17 – paragraph 1 – subparagraph 1

ECON amendment	***AMAFI's proposed amendment***
An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event.	An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3**).** ~~***where those steps are connected with bringing about a set of circumstances or an event.***~~ ***That requirement should not apply to firms issuing only simple bonds unless the information relates to the ability of the issuer to repay such bonds.***

Amendment 91
Article 2 – paragraph 1 – point 5 – point c a (new)

Regulation (EU) No 596/2014
Article 17 – paragraph 4 a (new)

ECON amendment	*AMAFI's proposed amendment*
4a. ESMA shall develop draft regulatory technical standards to establish a non-exhaustive list of situations in which delay of disclosure of inside information is likely to mislead the public, as referred to in paragraph 4, point (b). ESMA shall submit those draft regulatory technical standards to the Commission by ...[12 months from date of the entry into force of this Regulation]. Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	~~**4a. ESMA shall develop draft regulatory technical standards to establish a non-exhaustive list of situations in which delay of disclosure of inside information is likely to mislead the public, as referred to in paragraph 4, point (b). ESMA shall submit those draft regulatory technical standards to the Commission by ...[12 months from date of the entry into force of this Regulation]. Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**~~

Justification

For issuers of vanilla bonds only, AMAFI is of the view that the only information that can have an influence on these bonds is information that jeopardize the issuer's ability to repay them. Therefore, issuers of vanilla bonds only, should be exempted from the requirement to publicly disclose inside information other than the latter.
Moreover, AMAFI does not welcome the delegation to ESMA of the definition of an indicative list of information likely to constitute inside information and, for each of these pieces of information, from the moment when it can reasonably be expected to be disclosed to the market. Indeed, the Association believes that such a list is likely to bring rigidity to a process which, in essence, requires a case-by-case assessment.

Proposal for a regulation
Article 2 – paragraph 1 – point 6 – point a
Regulation (EU) No 596/2014
Article 18 – paragraph 1 – point b

EU Commission proposal	*AMAFI's proposed amendment*
(b) promptly update the permanent insider list in accordance with paragraph 4; and	(b) promptly update the ~~permanent~~ insider list in accordance with paragraph 4; and

Justification

For consistency with the amended requirements on insiders 'list Article 18.1 b should also be amended and the term "permanent" should be deleted.

Amendment 98

Proposal for a regulation
Article 2 – paragraph 1 – point 6 – point d
Regulation (EU) No 596/2014
Article 18 – paragraph 6

ECON amendment	*AMAFI's proposed amendment*
Deleted.	***Issuers whose financial instruments are admitted to trading on an SME growth market shall be entitled to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.*** ***By way of derogation from the first subparagraph of this paragraph and where justified by specific national market integrity concerns, Member States may require issuers whose financial instruments are admitted to trading on an SME growth market to include in their insider lists all persons referred to in point (a) of paragraph 1. Those lists shall comprise information specified in the format determined by ESMA pursuant to the fourth subparagraph of this paragraph. The insider lists referred to in the first and second subparagraphs of this paragraph shall be provided to the competent authority as soon as possible upon its request. ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9. ESMA shall submit those draft implementing technical standards to the Commission by 1 September 2020. Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.***

Explanation to Amendment 98: The EU Commission proposed to delete paragraph 6. The ECON report proposes the word “deleted”. AMAFI wishes to maintain the text of article 18.6 of the Market Abuse Regulation as currently in force.

Proposal for a regulation
Article 2 – paragraph 1 – point 6 – point d
Regulation (EU) No 596/2014
Article 18 – paragraph 3 (new)

EU Commission proposal	***AMAFI's proposed amendment***
N/A	**Article 18 – paragraph 3 *in fine* (new)** 3. The insider list shall include at least: (a) the identity of any person having access to inside information; (b) the reason for including that person in the insider list; (c) the date and time at which that person obtained access to inside information; and That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event. (d) the date on which the insider list was drawn up. ***In case persons acting on behalf of the issuer are legal persons, the issuer's insider list could only mention the name of a natural person within the legal person, in charge of maintaining the insiders list on behalf of the legal person.***

Proposal for a regulation
Regulation (EU) No 596/2014
Article 18 – paragraph 9 *in fine* (new)

EU Commission proposal	***AMAFI's proposed amendment***
ESMA shall review the implementing technical standards on the alleviated format of the insider lists for issuers admitted to trading on SME growth markets to extend the use of such a format to all insider lists referred to in paragraphs 1, 1a and 1b. ESMA shall submit those draft implementing technical standards to the Commission [by 9 months after the application/entering into force of this Regulation].	ESMA shall review the implementing technical standards on the alleviated format of the insider lists for issuers admitted to trading on SME growth markets to extend the use of such a format to all insider lists referred to in paragraphs 1, 1a and 1b. ESMA shall submit those draft implementing technical standards to the Commission [by 9 months after the application/entering into force of this Regulation]. ***Such review should also allow issuers to solely indicate, in their insider list, the identity of persons having access to inside information under the condition that other detailed information regarding their identity would be made available to Competent Authorities without delay upon request.***
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Justification

AMAFI is of the view that insider lists' requirement still entails overly burdensome requirements and would advocate the following changes to such provisions:

- The scope of the information to be included in the list should be reduced (in particular the personal data of the persons included in the list) and additional information should only be provided on request of the national competent authority.

- Issuers and persons acting on their behalf (notably financial intermediaries) should be entitled to include in their own insider list only one natural person per external provider, through which they get access to the other insiders of this third party.

Such amendments would not weaken the efficiency of the insider list, while alleviating the burden for market intermediaries.

Share buybacks and stabilisation

AMAFI welcomes the proposed simplifications on the reporting and disclosure of share buybacks. The same amendments should be made with regards to stabilisation activity.

AMAFI notes that the Delegated Regulations relating to share buybacks and stabilisation activity should be amended in order to further simplify and align on the proposed changes to MAR.