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ESMA Public consultation on the functioning of the regime for SME Growth Markets
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AMAFI Contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

INTRODUCTION

AMAFI welcomes the opportunity to share its insight on the functioning of the regime for SME Growth markets. We believe that the regulations governing the regime are overall satisfactory. However, we believe that the current market capitalisation threshold is too low.

We argue that setting the threshold at EUR 1 Billion instead of EUR 200 Million would reflect a more accurate assessment of what institutional investors and, more globally market participants, consider to be a SME. The current threshold maintains a restrictive regulatory framework for issuances that are not large enough to attract investments outside of the SME Growth markets regime, and not small enough to qualify as SMEs. This situation is moreover highly uncompetitive, considering the more flexible regulatory frameworks prevailing for issuances of similar sizes outside the EU.

QUESTIONS

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

While ESMA's figures highlight the limited SME activity in bonds across the EU, a broader picture shows that the main sources of finance used by the European SMEs are actually banking services ranging from credit lines (34% in 2019) to bank loans (15% in 2019)[1]. One of the reasons behind the massive use of banking services is the ancillary nature of the debt products supplied by the banks. The recent favourable monetary context has also contributed to drive the interest rates down, making it cheaper to use bank loans for financing. The development of alternative financing sources to bank debt has also contributed to weaken the relevance of the public bonds. However, unlike the U.S where a sophisticated and uniform regulatory framework and industry practices are in place favouring alternatives such as private placements and unitranche, the fragmented and different patterns of financing alternatives in the EU favour a larger use of bank debt over securities debt. While SMEs access to finance in the U.S is still highly dependent on traditional debt, the recent evolutions show that the improvements in the regulatory framework are pushing U.S SMEs towards different financing patterns[2].

[1] *"Survey on the access to finance of entreprises (SAFE): Analytical Report 2019"*, European Commission, November 2019
[2] *"OECD SME and Entrepreneurship Outlook 2019"*, OECD Publishing, Paris, 2019

In light of these observations, AMAFI believes that isolated initiatives such as the French Euro PP and the German Schuldschein markets should be encouraged and standardised across the Union, with an aim to offer a standardised and more flexible regulatory framework for the development of private placement. One of the most notable advances of the private placement market in the U.S is the credit rating process put in place by National Association of Issuance Commissioners (NAIC), via its Securities Valuation Office (SVO), allowing to lift the requirement for issuers to obtain a credit rating for such placements. Private placement in the U.S is considered as a credible alternative for companies willing to raise unrated debt in smaller denominations than in the public bond market[3].

In addition, on the capital markets side, it is important to note that the costs of a capital market transaction, the continuing obligations that apply post-listing and the post listing publicity that it brings, makes it intrusive, costly and difficult for SMEs to issue bonds. The regulatory obligations for companies to publish regular market announcements and disclose financial statements act as a strong disincentive for SMEs to list on a public market. From a cost perspective, SMEs would prefer opting for bank financing.

AMAFI believes that the Commission can play a role to further incentivise SMEs' access to public markets, notably via the EU's SME Growth Markets (SME GMs). In line with the Commission's Capital Markets Union (CMU) objectives, AMAFI recommends a number of specific amendments to the current SME GM regime and make it a more attractive venue for bond issuers.

In particular, the **Market Abuse Regulation (MAR) framework** has been identified as particularly onerous and cumbersome for SMEs. AMAFI suggests that ESMA and the European Commission undertake further analysis to make the SME GM regime more appropriate for the issuance of fixed income securities, with a lighter market abuse framework dedicated to it.

In addition, AMAFI recommends that:

- in the case of admission of bonds with a denomination of over € 100 000, and/or limited to qualified investors, **market operators may choose to waive the obligation to publish an information document as issuers are sometimes reluctant to publish sensitive information to a wider public.**
- **bond issuers with a denomination of at least €100 000 be exempted from publishing annual financial reports**, in line with recital 112 of the Commission Delegated Regulation (EU) 2017/565. Otherwise, the SME GM regime would be stricter for bonds issuers than those listing on Regulated Markets.
- **ESMA verifies if an issuer of bonds is or is not an SME**. Since the introduction of the new provision for bonds to include a cumulative issuance criterion not exceeding €50 million over a period of 12 months, market operators have faced difficulties to verify this as they do not have full access to the nominal value of the debt issuances of an issuer on all trading venues across the EU.
- **Issuers of bonds should not be required to make a statement on working capital** in the admission document (Article 78 (2) e) of Regulation 2017/565) – notably because issuers of bonds are not required to mention this information in a prospectus pursuant to the prospectus regime. **Tax incentives** can be created to stimulate SME activity at Member State level.

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

The findings displayed in ESMA's consultation paper seem to confirm a domestic bias among investors when it comes to SMEs. Notable discrepancies among national legislations and growth markets within the EU tend to further discourage investors willing to invest in countries other than their own home country.

In regards to capital markets, as mentioned in our answer to Q1, AMAFI believes SMEs face many challenges to list on public markets. To increase the visibility of SME Growth Markets and to ensure easier access to capital markets for SMEs, a focus should be on attracting SMEs to that market by:

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[3] *"Identifying market and regulatory obstacles to the development of private placement of debt in the EU"*, European Commission Private placement of debt study, December 2017

- **reducing their high regulatory compliance costs to be listed**
- **creating incentives for both institutional and retail investors to invest in their shares**
- **allowing for sufficient research coverage to increase their visibility and address their liquidity deficit**

In addition, whilst the Commission recently introduced alleviations to the SME GM framework, issuers have indicated that the is no real increased interest to list on an SME GM compared with Multilateral Trading Facilities (MTFs), as the difference in requirements is very limited.

As some of the regulatory burdens are still perceived to be prohibitive for many SMEs, AMAFI believes the SME GM should benefit from further alleviations to **MAR and the Prospectus Regulation**. More specifically:

- **Market Abuse Regulation (MAR)**

MAR obliges all issuers of financial instruments to notify the market of inside information. A more proportionate approach may be needed going forward as SMEs may be disincentivised by the comparatively high regulatory burden. Therefore, MAR should be further adjusted to allow for greater differentiation for SME GMs, including:

- the disclosure requirements, notably around information dissemination;
- the duty to react on rumours related to inside information;
- the level of detail of insider lists;
- requirements in relation to managers' transaction reporting;
- the interpretation of the necessary speed around an ad hoc announcement, depending on the actual announcement; and
- the very high level of sanctions.

As referenced in Q1, it is also important that bond-only issuers benefit from the Commission's broad approach to improve the regime for all issuers within the SME GMs. There needs to be a tailored regime adapted for bond-only issuers on SME GMs.

- **Prospectus Regulation**

AMAFI suggests clarifying the provision to allow an issuer whose securities are admitted to trading on an SME GM continuously for at least the last 18 months to benefit from a simplified prospectus when raising further issuances. ESMA should add that this is calculated as of when the issuer was admitted to trading on the MTF (even without the SME GM label at that time) rather than from the moment that the MTF obtains the SME GM label, as this will ensure issuers that meet this criteria can benefit from this provision as soon as possible.

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

AMAFI believes that the current market capitalisation threshold set at EUR 200 Million is too low compared to the thresholds set by multiple U.S regulations for SME issuances. We believe that the current 50% threshold for SME issuers should be removed, and that relying on an ambitious market capitalisation threshold of EUR 1 Bn could further encourage investors to invest in SME GMs. The current requirements set by the SME GMs regime are too restrictive and do not offer a competitive regulatory framework for market participants willing to invest larger amounts than those set by the current market capitalisation thresholds.

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

AMAFI believes that further harmonisation of the definitions of an SME among different pieces of regulation would be helpful. We hence suggest setting a higher threshold for market capitalisation as requested in the previous answer.

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

AMAFI believes that the current flexibility offered by the SME GMs regime regarding the initial and ongoing admission to trading criteria remains useful, and that further restrictions in this area are not necessary and would not be useful in the current time.

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

While AMAFI believes that such harmonisation could be useful for encouraging cross-border investment, we believe that discrepancies in accounting standards are not the main obstacle preventing cross-border investment, and that such adjustments are not a priority.

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

The SME GM regime should not be amended to create homogenous admission requirements for trading. Smaller markets have to consider the local financial ecosystem to cater for the specific needs of SME companies, and therefore market operators should retain some flexibility to apply rules best suited to local market conditions.If the requirements are harmonised further there is a risk that it would increase costs for issuers and could compromise the proportionate approach that is intended for SME GMs.

In addition, it is important to stress the importance of balancing the minimisation of data disclosed for the sake of better quality products and encouraging a larger number of investors to invest in SME GMs.

Regarding the proposal to tailor the requirements for micro-SMEs, we suggest that this could over-complicate the current regime and that the focus should be on applying the most appropriate alleviations to make the current regime a more attractive one for SME issuers.

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

AMAFI does not support requiring SME GMs to make publicly available financial reports of the issuers admitted to trading on the SME GMs. We believe that such a provision would be counterproductive. It would unlevel the playing field between the financial markets and the private equity, and discourage companies from resorting to SME GMs for financing.

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

We believe that the current SME GMs regime should be viewed as a competing solution for SME financing, along with private equity and bank debt. In this configuration, the current state of play encourages bank debt and private equity financing over public equity financing, largely because of the quantitative easing policies put in place, favouring a higher acceptance of debt, and easier access to capital through indebtedness.

SMEs generally have smaller size financing needs compared with bigger corporates, and therefore their capacity to gain **financing from the banking channels is easier, faster and cheaper.** They are closely connected with bank managers and do not normally know the capital market dynamics as there still tends to be a lack of financial knowledge and education. Stock exchanges are often seen as something unreachable and too complex.

In addition, there is a **growing importance of private equity in the earlier stages of financing**. These days, private equity funds are focused in valuing the ability to entirely exit from an investment, instead of being partially locked into their investment and subject to public markets price fluctuations (unlike IPOs).
AMAFI does not support the proposal to make periodic financial information available in a more standardised format as we agree with ESMA's assessment that this could represent a burden for smaller SMEs.

While we acknowledge the intention for standardisation is to improve cross-border listings, the reality is that for the majority of SMEs, it's likely they will continue to remain local so a balanced approach is required.

Considering the *de facto* relative disadvantage of IPOs as a financing tool for European companies in general and SMEs in particular, we believe that further regulatory flexibility regarding IPOs should be considered for SMEs, along with an increase of the threshold for SMEs market capitalisation up to EUR 1 Bn.

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

AMAFI believes that a two-tier SME regime with additional alleviations for micro-SMEs would create a "club" effect by preventing issuers belonging to higher cuts from access to advantages that we believe they should be entitled to. We believe that it is rather more appropriate to have a harmonised less restrictive regime for all issuers, by setting a transition regime to better fit issuers who exceed market capitalisation thresholds.

AMAFI suggests the focus should be on creating one regime with the most appropriate alleviations for both SMEs and micro-SMEs so that the current regime can be developed into a more attractive proposition for this type of issuers.

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

AMAFI believes that the establishment of mandatory liquidity provision schemes would in term represent little benefit for issuers and harm MTFs registered as SME GMs. We believe that harmonisation provisions suggested by ESMA should rather come with less constraints on SME GMs and issuers alike.

In addition, we welcome the new regime for issuer liquidity contracts on SME Growth Markets introduced under the Market Abuse Regulation as this is another element which should contribute to supporting and increasing liquidity for SME trading.

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

AMAFI believes that an extension of the requirement in Article 33(7) to any trading venue would help concentrate the trading activity for instruments admitted to trading on SME Growth Markets, and prevent the fragmentation of liquidity.

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

AMAFI is not responding to this question

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

AMAFI would like to point out that the MiFID II rules on research, which had neither been the subject of political discussions by the co-legislators nor been the subject of serious impact studies, have had a negative impact on the production of research in Europe, particularly for SMEs. It can be considered that this piece of legislation was not introduced in a proper manner.

AMAFI recognizes that the decline in SME coverage was a pre-existing trend to the implementation of MiFID II / MiFIR and that there are geographic divergences about the way investment research is produced and displayed in the UE.

It is assessed in many EU markets major markets that MiFID 2 has had a negative impact[4], in number and in quality on the SME coverage. It is not easy to give today quantitative evidence of the decline of the coverage.

Given that; AMAFI is in the opinion that the following issues should be addressed:

<u>Authorise bundling for SME research</u>

AMAFI considers it essential to introduce proportionality into the MiFID II rules on research.

This proportionality should be introduced on the basis of the company's capitalisation (below EUR 1 billion) and the size of the management company (depending on the amount of commissions (execution + research) paid by the management company, for instance an annual amount of EUR 500,000).

In these situations, bundling of some activities should be authorised. It should be recalled that before MIFID II, brokerage commissions paid for execution services on the one hand, investment/trading decision support services on the other hand.

Execution services notably encompassed:

- the supply of explanatory or forward-looking information about market movements
- order execution, in any form (DMA, algorithm, discretionary, natural crossing, etc.)
- follow-up services, e.g. order confirmation, reporting, settlement
- ….

Investment/trade decision support services notably encompassed:

- research
- financial analysis
- advice and sales services
- access to companies and their management

[4] Fang, B., Hope, O.-K., Huang, Z. and Moldovan, R. (2019), 'The Effects of MiFID II on Sell-Side Analysts, Buy-Side Analysts, and Firms,' *Rotman School of Management Working Paper No. 3422155*, http://dx.doi.org/10.2139/ssrn.3422155, accessed 10 September 2019. See also for example the report issued by Assosim in June 2019 : 'The Financial Research in Italy under the MiFID II' . Admittedly, the Financial Conduct Authority (FCA) has published mid-September multi-firm review findings indicating the Markets in Financial Instruments Directive's (MiFID II) research unbundling rules have improved asset managers' accountability over costs, saving millions for investors (lien). It is surprising, however, that those findings, published by those who actively supported the new regime, has not been confirmed by these other studies, nor by the feeling of players in the French market : buy-side, sell side and small and mid-issuers. On this issue, see also Q 59 and 59.1 and the reasons why sponsored research is developing today.

- trade analysis
- the supply of market information, depending on the situation
- …

Some jurisdictions, such as France and the UK, had introduced Commission Sharing Arrangements ("CSA") that allowed the remuneration of execution services to be separated from that of other services. This scheme could be put in place again for SMEs

Amend rules on free trial periods of research

The rules on free trial periods should be amended in order to:
- be implemented at the level of each asset class (equities, bonds, derivatives...)
- allow free trials for a period of 6 months in order to consider the pace at which the research recipients revise their purchasing policies for the services they subscribe to.

Make it clear that issuer sponsored research may qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565.

It is absolutely essential for issuer-sponsored research to be qualified as "investment research" as defined in MiFID 2. Were this research to be treated as "marketing communication" under the provisions of the directive, the effect would be particularly damaging. First of all, for issuers, such a qualification would only lessen the interest of the research. The sums that they pay for this coverage only make sense if they receive a quality service in return. Then for investors, the research would be deemed of lower quality and therefore of less interest to investors.

Given that the various rules resulting from the MAR and MiFID 2 apply in full to sponsored sell-side research, there are no legal or practical grounds to consider that this research could not be identified as "investment research". The fulfilment of MAR and MiFID 2 requirements is a guarantee that the research has been produced under objective and independent conditions.

Notably, Article 37 of the MiFID 2 DR ("Art. 37") specifically sets out strict organisational requirements intended to prevent and avoid any conflict of interest. In particular, the personal transactions of financial analysts are highly regulated. There must also be information barriers between the financial analysts and other persons whose responsibilities may conflict with their interests. **They must not accept "*inducements*"** or promise issuers favourable research coverage. Lastly, they must not submit their research to issuers prior to publication without first removing the recommendation and the target price.

Compliance with Art. 37 is necessary to qualify sponsored research as "investment research". Otherwise, it would have to be treated as "marketing communication" (MiFID 2 DR, Art. 36).

The issue with sponsored research is the requirement of Art. 37 (d) to "*not accept inducement*". Hence the question: **"Should the remuneration received by the investment firm form the issuer for producing the sponsored research be considered an "inducement"?** Bearing in mind that the notion of "inducement" in MiFID 2 is a broad concept, various elements nevertheless argue to answer **no**.

Sponsored research should be considered as a service provided to the issuer. As a result, while the remuneration received by the investment firm is linked to the provision of an ancillary service, this remuneration is in fact **paid directly by the client, disqualifying it as an inducement**.

However, research is a service that can also be considered as being provided to investors. From this angle, the payment received – possibly an inducement – must be "*designed to enhance the quality of the relevant service to the client*", and "*not impair compliance with the investment firm's duty to act honestly, fairly and professionally*". Research necessary leads to an improvement in the service provided to the client. As for the second condition, investment firms producing sponsored research necessarily fulfil both the conditions laid down by the MAR – and in particular the fact that its "sponsored" quality is clearly disclosed in the research document – and all the other conditions laid down by Art. 37. We cannot presume that the mere fact of being remunerated by an issuer to produce research prevent the investment firm from acting "*honestly, fairly and professionally*". Therefore, **the remuneration received by the investment firm – and provided that it is clearly disclosed to investors (in compliance with MAR anyway) - is compliant with MiFID inducement regime**.

Lastly, one may argue that a **more literal meaning of the term "*inducement*" used in Article 37 (d) should be applied here**. The aim of this provision is, in fact, not to deprive the investment firm of any remuneration from the issuer but more likely to prohibit the receipt of benefits by the analyst (probably rather gifts or other non-monetary benefits) that could **undermine the production of impartial research**. The issue of impartiality is so central to the credibility of research (regardless of whether or not it is sponsored) that most of the compliance procedures in that matter provide that analysts must not accept gifts (including invitations to events) from issuers.

To conclude, all those elements **support the analysis that sponsored research could be considered as compliant with Article 37 and therefore qualifies as investment research.** More generally speaking, and as long as it meets the same independence and impartiality requirements as non-sponsored research and produced in compliance with both MAR and MIFID, **there is no reason to treat sponsored sell-side research any differently.**

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

As a general comment, AMAFI is very supportive of the new SME GM Issuer liquidity contract regime as this should help create additional liquidity for illiquid security markets, notably those dedicated to SMEs.

We believe it would also be helpful to provide further clarity on how the new regime interacts with the current Accepted Market Practices regime already in place and that will continue to exist under MAR. In particular, we would welcome clarification that:

- An issuer traded on an SME Growth Market should still be able to benefit from a liquidity contract under an Accepted Market Practice and that, in such cases, the issuer should not be covered by the obligation of the new legislation;

- Given many issuers traded on SME Growth Markets have already signed a liquidity contract with investment firms and these contracts are known by the relevant NCA, it should be clarified that these can continue to be accepted under this new regime. These issuers should not be required to replace the existing contract by a "new contract" as this would lead to increased costs and burdens for issuers on SME Growth Markets.

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

AMAFI is not responding to this question

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

AMAFI is not responding to this question

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

AMAFI is not responding to this question

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

First, AMAFI would like to **reiterate that even "ordinary" insider lists** (i.e. lists that should be drawn up for issuers that are *not* SME GMs and persons acting on their behalf – like investment firms ("ISP"°) **creates unnecessary administrative burden**.

As explained in our reply to ESMA CP on the MAR Review, we would suggest to **remove some compulsory fields of the template provided in Annex I** of Implementing Regulation 2016/347 that are highly difficult to maintain all the time in all insider lists for all insiders. **Fields like "*Date of birth*", "*National Identification Number*", "*Personal telephone numbers*" and "*Personal full home address*" are personal data** and such sensitive to retrieve and maintain in insider lists. First those data are burdensome to retrieve and keep up to dated. For some individuals, especially located outside UE, there is an issue of a potential conflict between MAR and local data privacy requirements. Also, even for individuals located within UE, some employees may refuse to provide some personal data (personal phone number for example). Those issues outline the difficulty to complete and maintain permanently fields with personal data.

If we red in the CP that, according to ESMA, this "*data remains necessary in the course of market abuse investigations*", it should be outlined that only a relatively minor number of insider lists drawn by ISP are actually requested by NCAs. Therefore, a solution could be to only require adding those fields and data at NCAs actual requests. In other words, ISPs would not have to maintain full insider lists with those last fields all the time (but only the 7 first columns).

In AMAFI's view there is nothing in MAR legislation anyway requiring insider's personal data to be stored in specific insider lists IT systems and therefore preventing personal data from being stored in two different sites or information systems. AMAFI believes that ISPs are free to keep these data in a dedicated IT system for insider lists or in the HR system, for example. If this option is taken, however, the ISP must still be able to quickly provide the regulator with all the information required pursuant to MAR.

In all cases, it should be clarified somehow that where the ISP cannot be held liable for being unable to provide the NCA some of those personal data, provided that there is evidence of its efforts to obtain this information or the barriers under local law that prevent it from accessing such information.

Second, **and as regards more specifically to this ITS proposal for insider list to be submitted by issuers on SME GMs**, AMAFI supports the proposal to eliminate the fields '*birth surname*', '*company name and address*', and '*personal full home address*'. However, we consider that other fields like "*Date of birth*", "*National Identification Number*", "*Personal telephone numbers*" and "*Personal full home address*" **should have been removed as well.** If that is not possible, **it should be at least limited to actual NCA requests of submitting insider lists.**

Thirdly, AMAFI wish to outline that the new regime of insider list for SME GMs issuers **has raised questions for the persons acting on behalf of such issuers, notably ISPs** advising such SME GMs issuers.

AMAFI understands (but is seeking for a confirmation) that SME GMs issuers may have 2 different regimes as regards to insider lists:
(1) by default, they are only required to maintain solely a list of persons who, in the normal exercise of their duties, have "regular access" to inside information or
(2) if the relevant Member State decides so, to maintain a "full" list of insiders – and if so, in accordance with the template as proposed here by ESMA in this CP.

If we consider regime (1) ("partial list"), in the meantime and **in accordance with the revised article 18.1 of MAR, persons acting on behalf of issuers are required to maintain respectively their own lists of (all) insiders**. **New article 18(6) introduced an alleviation in the requirements only for issuers but *not* for persons acting on their behalf**. Could ESMA confirms that such analysis is correct?

In other words, if a SME GMs issuers can have a partial list (provided that the relevant Member State is not deciding otherwise) on one specific deal, with only, for instance, members of its board, **it means that the ISP advising such issuer will *not* be on the issuer's insider list. However, the same ISP is required to maintain on its own a full list of (its own) insiders on the same deal**. **That does not seem logical since NCA will not identify the ISP as an insider in the first place**, considering it will not be on the issuer's list.

This creates in our view an ambiguity or even inconsistency that should be clarified by ESMA, for instance by way of a Q&A.

Also, it remains unclear whether the alternative template proposed here is for the regime (2) only – i.e. if Member State is not willing to grant SME issuers the alleviation as per article 18(6) or for regime (1) as well – i.e. that SME issuers are granted the alleviation. In other words, which template shall be used by SME GMs issuers for listing insiders that have regular access to inside information?

Lastly, again for the sake of clarity, ESMA should also precise how the reference to 'regular access" is similar or different from "permanent insider" section in the 'ordinary' regime of insider lists.

For all the reasons above, in conclusion, AMAFI considers that:
(*i*) further fields like "*Date of birth*", "*National Identification Number*", "*Personal telephone numbers*" and "*Personal full home address*" **notably because they are personal data should have been removed from the proposed template as well.** If that is not possible, **it should be at least limited to *actual* NCA requests**.
(*ii*) **those fields should be eliminated from the template of insider lists for both SME GMs and not SME GMs issuers**
(*iii*) **a Q&A from ESMA would be useful to clarify the SME GMs regime of insider lists in general and how it works, in particular, for persons acting on behalf of such issuers, like ISPs acting on their behalf.**

CBA Q1: Can you identify any other costs and benefits? Please elaborate