

## BUILDING A CAPITAL MARKETS UNION

### - *Contribution by AMAFI to the European Commission's Green Paper*

1. 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. Nearly one-third of members are subsidiaries or branches of non-French institutions

Accordingly, AMAFI is paying close attention to progress in the Capital Markets Union (CMU) initiative launched last July by the future President of the European Commission, which led to publication in February of a Green Paper – *Building A Capital Markets Union* – with accompanying proposals aimed at revising the Prospectus Directive and establishing a European framework for simple, transparent and standardised securitisation.

2. AMAFI would like to provide its contribution to this vitally important initiative. Before responding to the questions raised in the Green Paper, AMAFI wishes to begin with a few general observations to set several aspects of CMU in perspective and provide a consistent overall analysis.

It goes without saying that this contribution also needs to be considered in the light of the specific observations made by AMAFI concerning the revision of the Prospectus Directive and the establishment of a European securitisation framework.

## I. – GENERAL OBSERVATIONS

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### An important initiative that AMAFI supports wholeheartedly in principle

3. The European Commission has launched an important initiative. AMAFI wholeheartedly agrees with the core issues raised by the Commission, particularly:

- The reduced ability of bank lending, following regulatory changes resulting from the financial crisis, to continue to fund businesses at the levels that it has in the past in Europe, particularly in the event of a pronounced economic recovery;
- The resultant need for market financing to play a bigger role, which is increased for companies by the inherent interest they have in diversifying their funding sources and by the fact that there is no substitute for the markets when it comes to equity financing, which is particularly crucial to funding investment;

- The attendant challenge of building liquid and diversified European markets that allow project contributors to raise funding at the best cost so that they can invest and thereby contribute to generating jobs and collective wealth.
- The need to draw more investors to the markets with a view to promoting long-term investment; it is especially urgent to attract investors to equity markets, where they can provide European companies with more capital.

The markets play an essential role as tools for financing the economy and allocating savings. The Green Paper reflects a willingness to understand the markets as such and puts forward a positive vision of their role, a point worth stressing particularly because a more punitive approach has largely prevailed since the outbreak of the financial crisis (see also § 23). This positive vision needs to be supported and encouraged at a time when reviving growth is one of Europe's central challenges. The European Union (EU) can provide crucial impetus in fostering the development of markets, not for their own sake, but so they can play to the full their role in serving businesses and investors.

4. Within this framework, however, it is vital not to set up market financing and bank lending in opposition. The idea is not to secure the success of one at the expense of the other, but to ensure that they work together harmoniously, complementing each other to finance the European economy.

In any case, the market cannot always offer a credible alternative to bank lending. While the development of solutions such as Euro PP and crowdfunding has made it possible to cater to funding requirements that used to rely exclusively on banks, the special characteristics of these solutions mean they cannot offer a perfect and full substitute for bank loans. Nor would this be desirable: by its very nature, the market cannot have the kind of close relations that banks enjoy with their client firms, without which some funding would simply not exist. But with lending subject to tougher restrictions, it is important that the market should be able to propose financing solutions wherever possible. These solutions could be provided indirectly through securitisation mechanisms that free up bank balance sheets to lend.

#### **Europe's integrated market is already very much a reality for professional markets and large caps**

5. The 1999 Financial Services Action Plan gave a major boost to the harmonisation approach that has been at the heart of European initiatives for over 40 years. The pace has not slackened post-crisis, although regulations have been tightened in many areas. Today, Europe's markets are extensively integrated, as evidenced by the wealth of directives and regulations. Often based around the principle of a European passport, these texts ensure real uniformity in the cross-border provision of financial products and services, and particularly in market-related products and services. Naturally this does not mean that the approach cannot be pursued and extended: it is right to keep moving forwards by examining markets and products that stand to benefit from additional harmonisation, so as to create a wider area and promote deeper markets.

That being said, cross-border uniformity is not and cannot be total. While it has reached a high level on wholesale markets and among large issuers that are capable of tapping international savings, it is much weaker on retail markets and among smaller issuers, which in practice essentially have access to local savings. AMAFI sees two main reasons for this situation:

- The importance to small and medium-sized issuers of local market ecosystems, which are uniquely placed to have direct intelligence on and assess these issuers' characteristics and provide funding accordingly. Moreover, a local presence enables close relationships to be created. Overlooking the importance of these local ecosystems would be a serious error that could hinder proper market development. This is especially true for medium-sized or smaller Member States and/or Member States with recently established markets.

- The different historical, social and cultural backgrounds of individual countries, which often increase the natural focus of Member States and national authorities on domestic activity, particularly when it comes to financing for small or mid-sized companies or the situation of retail investors. In some cases, this may lead common European standards to be the subject of differing interpretations or adjustments, not all of which are unwarranted. Treating them all as barriers to a large unified market would be counterproductive if they have real value for the local ecosystem and generate positive effects in terms of business financing.

**+ Orderly markets and growth are the first priority, and harmonisation is merely a means to that end**

6. The abovementioned issues (see § 3) mean that efforts must be concentrated around the vital need to ensure orderly markets. This means that we have to keep perspective on an important aspect of the Green Paper when it says that “capital markets need to play a larger role in channelling financing to the economy. [...] this means ensuring that obstacles to the movement of capital between investors and those who need funding are identified and broken down, whether they be within a Member State or cross border”.

Harmonising the standards is important of course – as is removing unjustified barriers – and must be pursued, but should be prioritised only insofar as it contributes towards orderly markets. There are two reasons for this. First, the emphasis should be on convergence of supervisory practices, as this is probably where the largest number of effective barriers to the cross-border movement of financial products and services can be removed. Second, and perhaps most importantly, it is vital to maintain local funding ecosystems.

7. This point must be taken on board: exceptions aside, the smaller the company, the more its financing is reliant on local relationships. This partly explains the dominant share of bank lending in certain types of funding (see also § 4). It also accounts for the pre-eminent role of local ecosystems made up of investors, market participants and infrastructures in providing market financing to mid cap issuers.

Naturally, the importance of the local ecosystem also reflects the specific features of the local environment, in which smaller issuers are much more deeply rooted than international firms. Removing these peculiarities by radically harmonising and standardising them might seem like a tempting solution, but this would not be as easy as it seems, or even realistic. As it pushes ahead with harmonisation, Europe must not disrupt working domestic market ecosystems, when the integrated market might not be able to offer an alternative. The immediate challenge is to improve these ecosystems to make them as efficient as possible.

**+ The absolute priority is growth**

8. While there has already been considerable progress in harmonisation, there is no denying that much still remains to be done. The Green Paper sets out a number of areas where action would be worthwhile, including insolvency, taxation and securities law. While there is no doubt that action is warranted, it is important to keep some perspective by bearing in mind the following:

- If the areas mentioned have not yet been harmonised, it is partly because of their complexity and difficulties in obtaining a consensus from Member States. Securities laws have been on the negotiating table for years without agreement because of irreconcilable national positions.
- Insolvency procedures are intertwined with many societal aspects in individual Member States and offer a good example of the complexity of harmonisation. In particular, insolvency procedures cannot be reformed without addressing the question of judicial organisation, which varies drastically from country to country, to say nothing of case law and court culture in different

jurisdictions. Harmonising all this is surely not humanly possible. Furthermore, there are serious questions over the usefulness of such harmonisation to investors, given the difficulty entailed. However, it might be worth considering a shared reference framework that could be beneficial to investors (*see also § 68*).

- Because of the need for unanimous agreement, taxation is not an area where swift progress is conceivable, particularly on a broad basis. Yet it plays a major role in investor behaviour and in their willingness to provide long-term funding to companies. Further, given the importance of local ecosystems to mid cap financing, domestic taxation regimes are decisive in steering domestic savings. Here again, the most realistic approach is surely to leave this door open when, in the context of shared measures or harmonisation, it seems vital to adopt a minimum tax measure. This could be the case for investment in equities, which AMAFI believes should be prioritised; it is certainly the case for the European pension fund scheme, which also has AMAFI's backing.
- The example of the United States, which the Green Paper cites several times to highlight the merits of greater integration, needs to be properly understood. While having a federal state is certainly a major factor in ensuring fluidity and uniformity (but also unachievable for Europe in the near future), genuine differences between the legal and tax systems of US States have not hindered market financing for North American firms.

9. In any event, regulatory harmonisation needs to be further down the priority list because the timeframes are inconsistent with the pressing need for growth. [The time taken by the European legislative process cannot be shortened](#). Five years from the start of discussions is about the minimum needed to achieve an effective outcome in Member States. And it may take considerably longer if the issue is complex and there are stark differences in the domestic situations in Member States, as is the case for most of the subjects identified by the Green Paper.

This is of course not a reason not to try to achieve more harmonisation wherever possible, and AMAFI believes that ambitious initiatives should be taken. But it is a reason to [prioritise identifying and working on more immediate action areas](#). While these are not always to be found in new standard-setting initiatives, Europe can [play a driving role in many areas by launching initiatives and providing support to](#) encourage Member States to take actions that will promote market financing based on their home situations. The European Union should seek to create a ripple effect, but not necessarily replace local players.

#### **Prioritise several key action areas to respond to current needs**

10. Particularly given the low interest-rate setting and the prudential restrictions placed on banks, ensuring that growth is restored and the economy is efficiently financed will entail [facilitating the transition from a system that has been historically based on \(i\) distribution of debt and \(ii\) risk-taking almost exclusively by banks, to a system more suited to \(i\) capital generation and \(ii\) redistribution of risk among financial system participants](#).

11. Achieving this will require progress [in several areas](#), which are described in detail below. The main and most pressing of these include:

- Defining standards for sound securitisation at European level and developing tools to support the large-scale development of securitisation (this point is addressed at greater length in the consultation on this subject).
- Facilitating securities issuance by small and mid-sized issuers (see after), which goes beyond the questions raised by the Prospectus Directive and which would justify specific legislation for these markets, whose features are strikingly different from those of large markets in terms of closeness, liquidity, market making, financial research and costs.

- Holding shared discussions on ways to give equity and the stockmarkets the absolute priority that they deserve, not just for safety reasons (i.e. to avoid the dangerous level of leverage in our economies) but more importantly to provide financing for the future, especially for new, technologically innovative firms. This issue inevitably touches on tax aspects involving both corporate taxation (reverse the preferred treatment of debt over equity) and individual taxation (establish the principle that shares enjoy more advantageous tax treatment than any other investment).
- Creating a European pension fund scheme, in addition to existing schemes, with a clause ensuring that retirement products are entitled to coverage by the most advantageous locally available tax treatment. This would address the threefold need to provide a common framework for mobile Europeans, promote pension funds where these schemes are underdeveloped, and facilitate long-term financing, particularly equity financing.
- Harmonising and clarifying the range of fixed-income financing available on the market, as described below.

#### **Develop a financing continuum, notably to cater to the needs of mid caps**

**12.** For the reasons set out above ([see § 6 and 7](#)), mid cap financing is a key aspect of CMU. It has a critical bearing on growth because of the place occupied by these firms in the European economy. And it is vital because these are issuers that lack easy access to international savings and are thus dependent on local market ecosystems and particularly on local savings. There is little likelihood, for example, of southern European investors making a substantial contribution in the short or medium term to financing for mid cap issuers based in the north of Europe. Accordingly, while a liquid, pan-European market for large caps should be encouraged, [steps are also needed to promote the development of local or regional financial centres that are close to local investors and issuers.](#)

With this in mind, a close examination should be conducted to ascertain how adequately market financing solutions meet the needs of issuers, especially small and mid caps. The discussion should cover four areas: the [rules applicable to issuers](#), the rules applicable to the [market participants](#) that put project creators in touch with funders, the rules applicable to [professional investors](#), and the rules to ensure [investor protection](#). [Taken together, these rules will determine how robustly and efficiently local ecosystems play their role.](#)

**13.** Currently, only the opposite ends of the spectrum are addressed.

- On the one end there is the body of rules that make up a shared legal framework for participants in the integrated market. These rules, some of which are in the process of being adopted or revised, are either cross-cutting (Market Abuse, for example) or specific (Prospectus, Transparency, MiFID, EMIR, CRD 3 and 4, Solvency 2, UCITS 5, AIFM, PRIIPS). Together, they form an impressive and in some cases highly detailed corpus that is essentially suited to large caps and deep markets.
- At the other end of the spectrum, Member State have independently (and, in France's case, recently) set up ad hoc frameworks for crowdfunding. These frameworks feature much less onerous requirements for market participants, reflecting the trade-off between investor protection concerns and the development of this type of financing, which is clearly tilted towards the latter in the belief that placing overly heavy restrictions on participants will make development impossible.
- Between the two, a variety of products, such as private placements and commercial paper, would stand to benefit from having a more precise and clarified position at European level, based on market-led solutions. Although welcome across the board, such clarification would be especially useful for mid caps.



14. Given the importance of the market financing question, AMAFI believes that [Europe's funding ladder needs to be revised](#). The first rung (crowdfunding) is probably too low and lacks a European base, while the top rung (issuers subject to the Prospectus and Transparency frameworks) is too high and needs to be lowered; one or two intermediary steps also need to be established.

In the case of small and mid caps especially, the trade-offs need to be reviewed. [There is no question that protecting investors and preventing market failings and systemic risk are worthy objectives](#). But we need to ask whether they have always been pursued while properly [weighing the issues involved against the capacity of the market to play its role in financing the economy to the full](#). What works for large caps and what was tolerable when credit was the main source of finance is no longer acceptable: the priorities have changed, and regulation needs to change accordingly.

15. Specifically, alongside the Green Paper's proposals to revise the Prospectus Directive, which could certainly use some simplification and clarification, it is necessary to:

- [Check the suitability of the requirements placed on different categories of participants on the large cap market](#), particularly in terms of customer protection.
- [Create a separate framework for funding small and medium-sized enterprises \(SMEs\) and mid-tier firms \(MTFs\)](#). This framework would naturally apply to mid cap issuers, establishing appropriate and streamlined requirements for these companies relative to the arrangements applicable today (Prospectus, Transparency, Market Abuse), particularly with view to reducing listing costs. But this flexible framework would also apply to other participants in the ecosystem. For example, just as banks receive favourable prudential treatment for lending to SMEs, [market intermediaries should receive favourable prudential treatment for dealing in securities of this kind \(as market makers\)](#). Furthermore, care must be taken to maintain and develop tools that are vital to the functioning of markets accessible to SMEs and MTFs, such as market making and the production of financial research.
- [Create a European framework for crowdfunding](#), notably by providing participants with legal certainty with respect to the scope of the securities placement service as governed by MiFID ([see also § 43](#)).
- [Clarify the status of issues that lie between crowdfunding and conventional bonds, such as private placements, commercial paper and deposit certificates](#).

16. The [segmentation of different issuer categories](#) is thus of great importance. Which levels should determine the regime a company is subject to?

AMAFI has already made proposals concerning the method for calculating the threshold for public offerings under the Prospectus Directive. Beyond the methodological question, the challenge is to set the level that allows firms to be covered by the regime for SMEs and MTFs. Various concepts exist in the European regulatory framework but none is suited to the specific problem of financing. [The objective must be to distinguish issuers that can easily access international savings from those that in practice only have access to local savings](#). Since this is an inherently smaller savings pool, issuers in the second category inevitably find it harder to raise reasonably priced market financing. This problem is exacerbated because since their funding requirements are far lower than those of issuers in the first category, they incur heavier listing-related costs relative to the amounts raised. In this respect, the market generally treats [market cap of €1 billion as the dividing line between issuers in the first and second categories](#).

17. At this stage, AMAFI has no proposals on [crowdfunding](#). However, it believes that two principles should inform the decision on setting the applicable level:

- First, the higher the level, the more important questions of investor protection become.
- Second, the market needs to be set with an eye to maintaining a financing continuum so that, as issuers grow, they can move from one segment to the other as smoothly as possible.

**+ Ensure market efficiency by preserving local ecosystems and secondary liquidity**

18. As mentioned above ([see § 6 and 7](#)), accommodating the peculiarities and needs of all participants, investors and issuers, makes it necessary to approach the question of developing market financing not through the prism of a single, uniform market but rather in terms of a [diverse supply suited to needs that vary depending on investor and issuer type](#).

For this reason, it is important to [maintain multiple financial centres](#) rather than try at all costs to organise a single market. In some cases, mergers between financial centres, notably of their market infrastructure, would be a way to generate economies of scale that could lower market access costs for companies. Yet this kind of approach needs to consider the existence of undeniable sources of friction, and notably the fact that the EU has several currency zones. There needs to be a recognition that some initiatives would make sense only at the level of zones that are already fairly uniform, whether in terms of law (failures, securities, etc.) or currency.

19. It is similarly important to [ensure the quality of liquidity on the secondary market](#). It can never be sufficiently stressed that the quality of this liquidity directly determines issuers' cost of capital. An investor on the primary market where companies raise the financing that they need takes account of secondary market liquidity when determining the investment price: the lower the liquidity, the higher the liquidity premium demanded by the investor.

As stressed elsewhere ([see § \*Erreur ! Source du renvoi introuvable.\*](#)), measures taken since 2008 to secure the financial system and ensure its stability, while strengthening consumer protection, market transparency and the resilience of market infrastructures, have led to a [worrying reduction in available liquidity](#). This concern, which has now been taken up by the BIS, ECB and IMF, is all the greater given that, in addition to the proposed European FTT and banking structure reforms ([see § □](#)), the accompanying measures adopted with MiFID, notably in relation to paying for research ([see also § 33](#)) and non-equity market transparency, pose a real threat in this regard.

20. To signal the liquidity-related issues, AMAFI has prepared a document clarifying the characteristics of market making ([AMAFI / 15-03](#)), which is appended to this contribution. AMAFI believes that [ensuring market liquidity should be an immediate priority for action in Europe](#). The EU has to consider the consequences at this level of the legislation that is currently being adopted, notably within MiFID, before reviewing legislation that has already been adopted.

21. Furthermore, to promote orderly markets, it is important to:

- [Improve market information by rationalising and consolidating data flows](#), which means promoting shared tools to enable enhanced market surveillance by regulators, including central data repositories and shared databases.
- [Secure the operational framework of clearing houses](#), which are systemically important, through appropriate shared rules.

✚ **Ensure that CMU is consistent overall with other initiatives taken by Europe**

22. The stated goal of enabling the markets to make their contribution to financing the European economy is a necessary step. It means abandoning the basically punitive vision that has guided financial regulation since the financial crisis not only at European level, but also nationally in many instances. While some serious shortcomings certainly needed to be addressed, we are now starting to perceive – and the Green Paper is a welcome reaction in this respect – the macroeconomic effects created by subjecting financing to multiple sets of different regulations. The goal now is to ensure that markets can play their financing role efficiently.

This notably entails:

- Recognition that much standard-setting has been achieved in Europe – with effects that were not always measurable from the outset, and calibration challenges – and that the priority must now be to effectively implement the many pieces of legislation passed in the last five years and review the consequences.
- A cross-impact assessment of the main regulations that have been adopted or that are in the process of being adopted for market functioning with regard to growth, jobs and competitiveness objectives.
- Review or amendment of existing or proposed elements of European legislation that conflict with CMU.

23. This last point is particularly important because a number of regulatory initiatives taken by Europe could have a destructive impact on the ability of the financial system (credit and market) to play its role in financing the economy efficiently. These include:

- The sharp increase in capital and liquidity requirements, which have a disincentivising effect for many financial system participants. The increased requirements curtail bank lending and lead to withdrawal from many market activities, particularly market making (CRD III, NSFR calibration). They have also reduced the capacity of some investors to take on long-term exposure to risky assets, even though these assets are central to the return of growth (Solvency II). This aspect is especially critical because accounting standards over-stress mark-to-market rules, making it extremely hard to hold onto the assets in question in the event of severe market fluctuations, even for investors pursuing a buy and hold approach.
- The sharp increase in financial reporting requirements for issuers (particularly under the Prospectus and Transparency Directives), which has raised the level above which securities issuance is attractive to companies, so curbing the ability of smaller firms to obtain market financing.
- The relentless increase in requirements placed on market ecosystem participants (intermediaries, managers, infrastructures), which, by raising their breakeven point, promotes concentration and reduces the range of available services. This effect needs to be taken into account especially because it primarily affects businesses with the lowest profit margins, including some that lie at the heart of local ecosystems. The potential impact of overly radical positions on paying for research mooted under MiFID 2 is a good example (*see also § 33*).

24. More generally, two projects under discussion at European level need particularly to be reassessed in connection with CMU, insofar as they severely curtail the development prospects for market financing.



- The first is the [proposed financial transactions tax \(FTT\)](#), which would be introduced by 11 Member States under enhanced cooperation arrangements. Its direct effect will be to increase the cost of capital for issuers subject to the tax as well as the hedging costs of economic agents (businesses and investors), and thus undermine their competitiveness. In the affected Member States at least, the tax will not act as an incentive for increased take-up of market financing. The proposal also represents an ugly break in harmonisation efforts on the single European market; its likely effect, notably in the case of derivatives, will be to cause business to relocate outside the affected area.
- The second is the [proposed structural reform of the banking sector](#). By challenging the universal bank model, which showed its resilience in the recent financial crisis, these proposals, as they stand, would create an insurmountable barrier to maintaining and developing major market participants in Europe.

Both sets of proposals focus on market making, and could, depending on the stance that is ultimately taken, place even more handicaps on a business that is already subject to overly severe prudential restrictions. [The BIS, the ECB and the IMF have all turned their attention to the reduced market liquidity provided by market makers \(see also § 19 and 20\).](#)

#### Adapt Europe's regulatory system

**25.** In 2001, the Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, also called the Lamfalussy Report, noted that the European regulatory system was too slow, too rigid, produced too much ambiguity, and failed to distinguish between framework principles and detailed procedures. Far-reaching reforms were undertaken and then extended from 2009 owing to the impact of the financial crisis and the Larosière Report by the High Level Group on Financial Supervision in the EU. One notable development was the transformation of the Committee of European Securities Regulators (CESR) into the European Securities and Markets Authority (ESMA).

While progress has indisputably been made, the fact is that [major weaknesses remain](#):

- [The European regulatory process](#) still takes too long, as already stressed ([see § Erreur ! Source du renvoi introuvable.](#)), notably at Level 1, [and is unsuited to the much faster pace of the markets](#).
- This brings a harmful lack of flexibility, as [negative effects that go undetected at an early stage cannot be quickly corrected](#). This problem is exacerbated because, paradoxically, the time allotted to developing technical implementing measures (in which ESMA plays a central role) is far too short given the issues at stake.
- When faced with major divergences, to avoid blocking a possible political agreement [co-legislators themselves too often create ambiguity](#) by leaving the appropriate solution to be determined at the technical level but without providing clear guidance, although there is no reason why the same sticking points will not arise at the technical level as well.

**26.** AMAFI is aware of the difficulties posed by these questions in the European institutional environment. However, there are some steps that could be taken relatively simply:

- [Take care to ensure that every piece of European legislation is consistent overall and as simple as possible](#). This is necessary to enable political negotiations and technical work to move ahead quickly while making it easier for stakeholders to identify and prioritise the issues at hand. The MiFID (or EMIR) framework is a perfect example of what not to do. By lumping together the operating frameworks for investment firms and market infrastructures, the rules applicable to non-

financial participants, the transparency and functioning of equity, bond and derivatives markets, including commodities, plus investor protection, MiFID affects many different aspects and participants, making it harder to identify priority action areas.

- Ensure that different pieces of legislation use the same concepts. MiFID and the short-selling regulation, for example, both use the concept of market making, but define it differently. The resulting problems could well be exacerbated as future legislation on the FTT and banking structure reforms are likely to use different definitions as well. A more modular approach in which diverse pieces of legislation draw on shared references would surely be clearer and more efficient.
- Require co-legislators to decide on political issues so that the guidelines for preparing implementing measures are clearly outlined, even if that means accepting that national options remain open when agreement is impossible. AMAFI does not favour the current approach, which seeks to reduce or eliminate national option mechanisms. A case-by-case approach is needed, with decisions based on a single concern, namely to promote orderly markets as a tool for financing companies and allocating savings.
- Introduce greater flexibility in the implementation of European regulations. Two things are needed. First, the ability to push back deadlines to allow for a sufficiently in-depth discussion and, where necessary, impact analyses that are not merely designed to provide an alibi. Second, the ability if need be to quickly suspend provisions that turn out to be counterproductive. From this point of view, it would be instructive to look at the no-action letters used in the USA.

**27.** The responsiveness and adaptability of European market standards are at stake here. Given the context in which the Green Paper is set, this is a challenge of the utmost importance.

**28.** In this respect, one of the Commission's priorities must be to carry out an assessment of the cumulative effects of all the financial legislation introduced during the last term of office and to establish a process for systematically assessing the post-implementation impact of any new regulation.

**29.** ESMA's role and positioning also need to be considered. AMAFI believes that real priority should be given to convergence of the supervisory practices of national authorities (assuming identical legislation) and resource sharing. As already pointed out, different interpretations by national authorities are a major source of market fragmentation, creating a need to look again at the unconvincing peer review mechanisms. An effective appeals mechanism that is open to the industry should also be set up. And shared resources need to be developed, particularly in IT, where running parallel systems, in addition to generating day-to-day costs, will likely make it impossible to combine these systems further out in a way that is acceptable in terms of time and cost.

However, convergence has to be conducted with a view to the absolute priority, which is to have orderly markets and to maintain local financing ecosystems with this in mind. Convergence must not take away the ability of national authorities to ensure that these local ecosystems operate as efficiently as possible, which is essential to the proper financing of small and mid caps.

**30.** At this stage, AMAFI opposes assigning EMSA new responsibilities. The authority is still in its infancy and has had much to do since it was set up in 2011, often in extremely challenging circumstances, given the number of new pieces of legislation passed at European level and the time given to it to carry out its work. Although it does not bear all the blame, ESMA has not yet shown that it can carry out its existing tasks in the expected manner and hence that it is ready to take on new responsibilities without adversely impacting its other tasks. In particular, ESMA still has to establish a genuine dialogue with the industry that will enable it to take proper account of firms' opinions on a case-by-case basis; this is a key factor in the success of national regulators.

**31.** See also § 61.

## II. – RESPONSES TO THE QUESTIONS RAISED BY THE GREEN PAPER

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### **Question 1: Beyond the five priority areas identified for short-term action, what other areas should be prioritised?**

32. With respect to the priority areas identified in the Green Paper, AMAFI would like to add the following points.

#### a. Lowering barriers to accessing capital markets

The Prospectus Directive revision is welcome as clarifications and simplifications are needed. Please see our specific comments on this point.

However, access to capital markets cannot be considered solely from the angle of the Prospectus Directive. As stressed above (*see § 15 and 16*), it is vital to create an ad hoc framework to facilitate access to market financing for companies with market cap of less than €1 billion.

Furthermore, a European framework for crowdfunding needs to be established (*see above, ibid.*).

Also, access to capital markets will be insufficiently fluid if markets are insufficiently liquid. This means putting market liquidity at the heart of European action for the reasons mentioned above (*see § 19 and following*).

#### b. Widening the investor base for SMEs

AMAFI has concerns about the “development of a common minimum set of comparable information for credit reporting and assessment”. Not in terms of the principle, which should be upheld, but in terms of the practical implications. Experience shows that efforts to develop a set of information of this kind might end up attempting to reflect very different concerns across Member States, resulting in multiple layers of data to cater to all needs. This could have serious repercussions for participants that supply data and temporarily undermine existing mechanisms.

In any event, it would be disheartening if access to existing systems was extensively opened up without any particular benefits for those who contribute to these systems and who are responsible for their effectiveness.

#### c. Building sustainable securitisation

This major challenge must be met to restore to bank balance sheets the ability to maintain loan origination capacity, which is especially vital in many situations where the market cannot provide financing solutions, particularly for smaller businesses (*see specific consultation*).

#### d. Boosting long-term investment

AMAFI once again stresses the need to incorporate accounting and prudential aspects in the discussion (*see § 23*). The applicable standards have an extremely adverse impact on long-term investment, notably by curtailing the ability to hold onto assets in the event of substantial value impairment, even though Europe has vital needs in this area.

The proposed model for a European pension fund comes under this priority area (*see § Erreur ! Source du renvoi introuvable. and following*) as does the vital need for a discussion on prioritising equity markets (*see § 12 and following*).

**e. Developing European private placement markets**

AMAFI naturally looks favourably on this priority area, for the reasons detailed in response to question 4.

**+ Question 2: What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?**

**33.** The first measure that Europe needs to take urgently is to ensure that the Level 2 provisions currently being adopted as part of MiFID 2 do not dilute current financial research coverage of SMEs and MTFs. This coverage has a major bearing on access to market financing for these companies, as the Commission itself points out in the working document accompanying the Green Paper: “More generally, there is inadequate business information on SMEs that have a listing or seek a listing. One of the reasons is that equity research analysts and business information providers are far less likely to cover SMEs with their research than large enterprises. The lack of investment research and analysis on SMEs partly explains the limited interest of investors. It is expensive to provide good quality independent research, which is necessary to provide added value over the provision of raw data”.

On this question, AMAFI refers to comments contained in a memo entitled “MiFID II implementing measures – Paying for research – The macroeconomic issues raised mean an in-depth debate is needed”, prepared in February in conjunction with its fellow associations in Germany (BWF), Denmark (DSDA) and Italy (ASSOSIM) and appended to this contribution.

**34.** Moreover, AMAFI believes that at least two additional types of measures should be considered.

- Review the conditions for setting up a [European rating agency for SMEs and MTFs](#). Since the cost of such a rating would probably be out of the reach of most SMEs and MTFs, a portion would surely have to be paid for publicly.
- [Develop financial training for business executives](#), especially for micro businesses and SMEs. It is likely that not everyone is fully aware of the available financing alternatives. A European initiative could thus consist in encouraging Member States to develop this aspect, since a lack of information and financial training might be a major barrier to the take-up of alternative financing methods.

**+ Question 3: What support can be given to ELTIFs to encourage their take-up?**

**35.** AMAFI has no specific comments on this topic.

**+ Question 4: Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?**

**36.** AMAFI believes that [developing private placement markets is vital](#) because these markets can meet the financing needs of companies as well as the need among institutional investors for portfolio returns. It was for this reason that AMAFI spearheaded work within the Paris financial community, taking the cue from existing systems such as US PP or Germany’s *Schuldschein* loans. This led to the publication of the Euro PP Charter, a master framework endorsed by issuers, investors and market intermediaries. The charter greatly facilitates the negotiations by parties to private placements.


This work by the Paris market is now the subject of discussions with ICMA aimed at adapting and rolling out the model elsewhere in Europe.

37. The EU needs to play a [driving role](#) here by encouraging the representatives of stakeholders (issuers, investors and market intermediaries) in Member States to come together to consider adjustments to the Euro PP Charter that they feel are needed to adapt to the specific local features of their market. [The goal is to enable the charter to respond to the primary objective of providing funding for domestic MTFs.](#)

Europe could also help to create a [precise statistical view](#) on the development of this market.

 **Question 5: What further measures could help to increase access to funding and channelling of funds to those who need them?**

38. An analysis is also needed of the ability of [markets in short-term securities](#) such as commercial paper and deposit certificates to play their role, while being more accessible to SMEs and MTFs. Short-term funding is a growth issue too. This point was raised earlier, notably for mid caps; it should be part of efforts to rationalise the range of available fixed income products, which would benefit from clarification at European level, including for large caps.

 **Question 6: Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?**

39. AMAFI shares the view that “greater standardisation of corporate debt issuances could allow for a more liquid secondary market for corporate bonds to develop”. Standardisation needs to be encouraged.

But [guidelines currently being adopted under MiFID 2 are not necessarily consistent with this objective](#). It would be counterproductive to link the concept of liquidity – and the related enhanced transparency requirements – solely to the size of bond issues. If market intermediaries incur increased risk on an issue, their interest in being a market maker will be severely lessened, which is likely in return to lead many issuers to conduct more and smaller issues rather than tap existing issues.

40. In any case, other than the fact that it is important to distinguish between sovereign and corporate debt markets, as they do not obey the same rationale, it is reasonable to ask whether an EU-level initiative is needed: market forces should be enough if there is genuine interest among issuers and investors.

 **Question 7: Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?**

41. AMAFI supports the development of such investment, which moreover meets the expectations of a growing number of investors. In this regard, [the EU should play primarily a role in encouraging and supporting a market-led approach](#). It is hard to conceive of regulatory standardisation in this area.



- ✚ **Question 8: Is there value in developing a common EU-level accounting standard for small and medium-sized companies listed on multilateral trading facilities? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?**

42. AMAFI does not support standard-setting in this area. This type of action could easily end up placing severe restrictions on the companies that it is trying to help. Shared accounting rules for SMEs and MTFs making public offerings or listing on a multilateral trading facility need not be a prerequisite. At any rate, it does not seem appropriate to develop a third set of standards that would increase the number of languages used, potentially creating inequalities and transition costs for growing firms.

However, it might be worth trying to develop a shared framework that affected companies could choose to adopt if they felt this would facilitate their financing when weighed against the cost of adopting the framework. A cost/benefit analysis would have to be carried out to determine the value of such an approach.

- ✚ **Question 9: Are there barriers to the development of appropriately regulated crowdfunding or peer-to-peer platforms including on a cross-border basis? If so, how should they be addressed?**

43. The barriers are inherent to the platforms, which remain domestic. For transactions to be conducted on a cross-border basis, these systems have to be harmonised first. This should be done while including this type of financing within a continuum as described above (see § 12 and following).

Furthermore, as indicated before (see § 15), steps are needed to provide legal certainty for crowdfunding participants. The national frameworks that allow them to offer company securities to investors without having investment firm status do not comply with MiFID provisions insofar as these provisions govern the service of securities placement defined as an investment service that may be provided only by authorised entities.

- ✚ **Question 10: What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?**

44. As already mentioned (see § Erreur ! Source du renvoi introuvable.), accounting standard are a major drag. Mark-to-market rules often force investors to liquidate their holdings in the event of major market fluctuations, even when they are following a buy and hold strategy.

Priority should be given to revising the status of equity investments under Solvency 2 and exempting pension institutions from these rules.

- ✚ **Question 11: What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?**

45. There are real difficulties facing cross-border marketing, particularly because of differing interpretations adopted by Member States and national authorities to protect domestic retail investors.

AMAFI believes that convergence in supervisory practices holds the key to resolving these problems (see also § 5 and 6).

- ✚ **Question 12:** Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

46. AMAFI has no specific comments on this topic.

- ✚ **Question 13:** Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

47. In Europe, as funding of the economy becomes more market-dependent, it is vital that this development should not result in non-EU investors accounting for a disproportionate share of the financing of European firms, making these firms overly reliant on such investors, whether in economic or political terms. To address this sovereignty issue, at least the majority of European countries must have investment structures with the capacity to invest in the long or even very long term.

This issue is in large part directly linked to the existence of funded pension schemes, which are virtually alone in having sufficiently long investment horizons.

48. From this perspective, AMAFI fully supports a shared European non-compulsory pension fund scheme with harmonised minimum tax breaks (and a clause for coverage by the national scheme if it is more favourable) and investing chiefly in European equities. Such a scheme would be a powerful lever to enable European markets to play their role, particularly in terms of equity financing.

- ✚ **Question 14:** Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

49. AMAFI has no specific comments on this topic.

- ✚ **Question 15:** How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

50. Venture capital is a critical asset class for growth in Europe. Financing for start-ups is crucial: too often, young companies with global ambitions struggle to find the capital they need in Europe, which slows their development or forces them to look for funds elsewhere by shifting their centre of gravity outside the EU.

Not enough is invested in venture capital today, yet these funds are required to build the companies that will be Europe's champions in the future and generate the growth that the EU needs.

Tax aspects are vitally important here.

- ✚ **Question 16:** Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

51. AMAFI has no specific comments on this topic.

**+ Question 17: How can cross-border retail participation in UCITS be increased?**

52. AMAFI has pointed out that [taxation plays a determining role in this regard \(see § 8\)](#). Steps are also needed to [remove, as much as possible, differing interpretations between Member States on marketing rules](#).

**+ Question 18: How can the ESAs further contribute to ensuring consumer and investor protection?**

53. There is now a great number of highly restrictive consumer and investor protection standards. This raises practical difficulties for proper implementation, especially when it comes to applying the rules to the cross-border provision of financial products and services, since interpretations may (and often do) differ between Member States in such situations.

The main role that the ESAs can play is thus to promote convergence in these interpretations. For this, [a macroeconomic view of the issues](#) must be maintained. European consumers and investors are also citizens and employees, and what some gain in protection, others may lose in terms of collective wealth and jobs. What matters is the balance that results from the trade-offs.

54. To promote convergence, the ESAs have an important task ahead of them in the area of [peer reviews](#), which need to be developed and made more effective.

**+ Question 19: What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?**

55. The question echoes a major trend that now needs to be revisited. It is not necessarily appropriate to continually strengthen protection within a regulatory framework that already provides considerable safeguards. Investing on the market also entails [accepting a certain level of risk](#). There is now a need to [revisit some earlier trade-offs](#) to ensure that investor protection does not have the inappropriate effect of reducing companies' access to market financing.

**+ Question 20: Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?**

56. AMAFI has no specific comments on this topic.

**Question 21: Are there additional actions in the field of financial services regulation that could be taken to ensure that the EU is internationally competitive and an attractive place in which to invest?**

57. [Europe needs a clear industrial strategy for finance](#). There is a risk that financing of the European economy will be fairly heavily reliant on non-European financial institutions in the future. The answer is not necessarily more or less regulation, but more balanced regulation, particularly with respect to what other regions are doing.

Here, the ability to attract non-European investors is directly linked to the much bigger question of the EU's ability to generate growth.

✚ **Question 22: What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?**

58. This aspect is directly linked to the previous one. Only by placing tighter restrictions on access to the European market will it be possible to encourage third countries to open their markets. Too often, Europe's market is open as a matter of principle. [Reciprocity must prevail](#).

✚ **Question 23: Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?**

59. [Market data reporting needs to be pooled and consolidated](#). Europe has wasted ten years dragging its heels over this question.

✚ **Question 24: In your view, are there areas where the single rulebook remains insufficiently developed?**

60. The issue is not to strengthen the already substantial European rulebook but rather to adapt it to [more effectively accommodate the different challenges](#), i.e. preserve the stability of the financial system, protect investors and ensure that the economy is properly financed.

Most importantly, it is crucial to adapt the European legislative and regulatory process to make it more consistent, responsive and flexible (see § 26 to 29).

✚ **Question 25: Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU-level supervision would materially contribute to developing a capital markets union?**

61. A single regulator, or at least strengthened supervisory powers for the ESAs, is often seen as a solution to counteract the regulatory arbitrage that could result from differences in the implementation of supervision across Member States. But the fact is that each State operates within a specific cultural, economic and legal environment in which regulators and politicians are primarily accountable towards domestic institutions and electors. From this perspective, the ability of regulators to maintain the integrity of their home markets is, for example, important.

If, at least in the short or medium term, the prospect of a single regulator is unworkable and surely undesirable, serious thought could be given to [creating a monitoring mechanism along the lines of what was set up for CESR with the Inter-Institutional Monitoring Group \(IIMG\)](#). The IIMG, which was made up of independent experts and placed under the authority of the European institutions, was tasked with monitoring progress in implementing the Lamfalussy process, an approach designed to establish a more efficient system of regulation for securities markets in Europe. A mechanism of this sort is important to ensure that Europe's regulatory arrangements are properly suited to the challenges at hand.

62. On this point, see also § 25 and following.

✚ **Question 26: Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?**

**63.** One crucial aspect of these rules is the level of protection that they afford securities holders through the rights granted. Many systems give holders ownership rights, whereas others merely recognise a claim. In the post-financial crisis environment, it would be politically indefensible to approach harmonisation other than based on the most secure and protective system, with recognition of ownership rights.

Whatever the case may be, AMAFI observes that this aspect does not seemingly constitute a barrier to large European companies accessing large European markets and international investors. The specific barrier that is apparently created for small and mid-sized companies thus needs to be documented.

✚ **Question 27: What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?**

**64.** The importance of collateral and its free movement has increased and will be critical to the success of CMU. European regulation increasingly requires additional collateral and, in terms of removing barriers to cross-border collateral use, it is important that to have free flow of collateral and collateral availability across entities and across borders. The following steps are needed:

- Review of the interaction of recent regulatory measures affecting collateral flow (in particular MiFID, EMIR, SFT) as regards unintended obstacles or restrictions on the use of full title transfer or omnibus structures plus other effects on collateral use and collateral flow.
- Further harmonisation of methods of creating collateral. Continuation and coordination of ongoing initiatives to harmonise the insolvency laws of Member States in respect of the treatment of collateral.
- Despite the implementation of the Financial Collateral and Settlement Finality Directives, the legal frameworks of Member States for the recognition of close-out netting still differ considerably. Further harmonisation and alignment with international developments (UNIDROIT netting principles) of the legal basis for close-out netting agreements would greatly improve legal certainty and strengthen close-out netting as an essential risk mitigation instrument.

**65.** Standardised forms of collateral (e.g. assets and transactions) should be developed where appropriate. It is also important that the cross-border flow of collateral is not constrained by excessive regulatory restrictions (e.g. caused by constraints on repo markets, margin requirements or insolvency laws).

In the context of the operational approach to securities law suggested in the answer to question 26, we would note that with regard to collateral there should be a clear distinction between (1) crediting and debiting of securities accounts, as dispositive incidents of transfer of ownership, whatever the underlying consideration (outright sale or title transfer collateral), and (2) the means of providing collateral under a security financial collateral arrangement, which is designed to vest possession and/or control of the subject securities in the collateral taker and limit an account holder's or third party's access to those securities. In the former case, the circumstances under which an account holder's ownership rights would arise and cease would be clarified.



66. In relation to collateral, it should be made clear that an account holder's creditor may enforce its rights against an account holder only in relation to the securities held by the account holder's relevant intermediary, and not in the books of an upper-tier account provider, including where that account provider holds the debtor's securities in segregated accounts.

- Collateral should not be tied down in designated (beneficial holder) accounts. Usually omnibus accounts provide greater fluidity, particularly where the assets are held on balance sheet rather than through nominee accounts;
- The proposed SFT Regulation will help the cross-border flow of collateral. It will provide investors and regulators with greater visibility on stock loans, repurchase agreements and re-hypothecation/re-use of assets. Meanwhile, MiFID 2 should reinforce the safeguarding of client assets, especially if the investment firm becomes insolvent, and will prevent the use of the client's financial instruments on the firm's own account except with the client's express consent;
- Methods of creating collateral must be clarified, such as earmarking the securities account Priority rules – for example, consensual collateral interests should rank in chronological order from when the relevant collateral agreement is entered into or the securities account is earmarked;
- Harmonisation of rules on “good faith acquisition” of securities and securities collateral;

✚ **Question 28: What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?**

67. AMAFI has no specific comments on this topic.

✚ **Question 29: What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?**

68. Harmonising the laws on insolvency procedures and security rights would be a very large-scale reform that would be extremely complicated to carry out because of the way these rules are woven into domestic legal systems. In this sense, it seem unrealistic (see also § 8).

✚ **Question 30: What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?**

69. Integration of tax policies would undeniably provide a way to steer savings towards long-term investment. This is especially true since we are talking about SMEs and MTFs, which depend primarily on local savings pools, for which taxation plays a key role. However, it is hard to imagine such an outcome because it would require a transfer of sovereignty that seems even more unlikely because unanimous agreement is needed.

If Europe needs to follow a route, it should primarily be that of coordinating tax policies.


70. AMAFI observes however that the combination of taxation for companies and taxation of savings means that the tax costs for company financing are not the same depending on whether financing is based on equity (taxation of dividends) or debt (taxation of interest). These differentials, which are more or less pronounced from country to country, are generally unfavourable to equity financing. This is an unwelcome situation, given the particular role that equity plays in business investment. At the very least, Europe should promote the principle of neutrality.

On this question, AMAFI refers to the appended table, which compares the situations in Germany, France and the UK.

71. From this point of view, the European regime for State aid, as recently reformed, has established through the procedures of its *de minimis* rule a system whose complexity reduces the ability of States to help in SME/MTF financing.

 **Question 31: How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?**

72. AMAFI would like to point out that incessantly strengthening and tightening financial regulations will certainly not promote the development of new business models. This primarily encourages concentration in the sector, reducing the range of available products and services.

 **Question 32: Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?**

73. AMAFI supports the implementation of an appropriate and specific framework for commodity markets.

Commodity derivative markets are in a category of their own, owing to the nature of their underlying assets, i.e. commodities. They are very important to European end users, who include producers, manufacturers and consumers, offering a way to hedge risks and secure delivery. International harmonisation would be most appropriate but cannot be achieved easily. Accordingly, Europe needs to recognise the specific nature and importance of these markets by treating them as such and setting up a specific framework, rather than dealing with them as an ancillary issue in general financial legislation, and by appropriately regulating market participants. This will provide the opportunity for an in-depth discussion on a topic that is attracting growing interest.

