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A9-0303/ 001-001

AMENDMENTS 001-001

by the Committee on Economic and Monetary Affairs

Report

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A9-0303/2023

Increasing the attractiveness of public capital markets and facilitating access to capital for SMEs – amending Directive

Proposal for a directive (COM(2022)0760 – C9-0415/2022 – 2022/0405(COD))

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2022/0405 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC

(Text with EEA relevance)

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, 53(1) and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2014/65/EU of the European Parliament and of the Council² has been amended by Regulation (EU) 2019/2115 of the European Parliament and of the Council³, which introduced proportionate alleviations to enhance the use of SME growth markets and to reduce the excessive regulatory requirements for issuers seeking admission of securities on SME growth markets, while preserving an appropriate level of investor protection and market integrity. However, to streamline the listing process and to render the regulatory treatment of companies more flexible and proportionate to their size, further amendments to Directive 2014/65/EU are necessary.
- (2) Directive 2014/65/EU and Commission Delegated Directive (EU) 2017/593⁴ set out the conditions under which the provision of investment research by third parties to investment firms providing portfolio management or other investment or ancillary services is not to be regarded as an inducement. In order to foster more investment research on companies in the Union, in particular small and medium capitalisation companies, and to bring those companies greater visibility and more prospect of attracting potential investors, it is necessary to introduce amendments to that Directive.
- (3) The provisions concerning research laid down in Directive 2014/65/EU require investment firms to separate payments which they receive as brokerage commissions from the compensation perceived for providing investment research ('research unbundling rules'), or to pay for investment research from their own resources and assess the quality of the research they purchase based on robust quality criteria and the ability of such research to contribute to better investment decisions. In 2021, those rules have been amended by Directive (EU) 2021/338 of the European Parliament and of the Council⁵ to allow for bundled payments for execution services and research for small

¹ OJ C , , p. .

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

³ Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

⁴ Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

⁵ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product

and medium capitalisation companies below a market capitalisation of EUR 1 billion. The decline of investment research has, however, not slowed down.

- (4) ***Compared to larger firms, small and medium-sized enterprises (SMEs) continue to be characterised by a lower amount of analyst research, a higher probability of losing coverage, a lower quality of research and limited secondary market liquidity.*** In order to revitalise the market for investment research and to ensure sufficient research coverage of companies, in particular the small and medium capitalisation companies, **unbundling rules should be further adjusted. Investment firms should have more flexibility to choose the way in which they wish to organise the payments of execution services and research. However, doing so would require a level of transparency to be maintained vis-a-vis clients as to the payment choice made by investment firms. Investment firms should inform their clients whether they apply a separate or joint payment for execution services and the provision of third party research. Investment firms should ensure that clients receive appropriate information by keeping records of the charges attributable to research and execution services and also via the provision of an annual report on those payments to clients.**
- (4a) ***The adjustment of unbundling rules alone will not suffice to revitalise the market of research investment and address the longstanding shortage of research coverage of small and medium capitalisation companies. The measures introduced in this Directive should not undermine the progress made in terms of price transparency, reduction of conflicts of interest and other regulatory objectives of MiFID II. Further measures should be introduced to improve the coverage of SMEs and the promotion of independent research in the market.***
- (5) In addition, to further support the coverage of small and medium capitalisation companies by investment research, research material paid fully or partially by issuers should be labelled as ‘issuer-sponsored research’. To ensure an adequate level of objectivity and independence of such research material, such material should be produced in line with a code of conduct developed or endorsed by **ESMA by means of regulatory technical standards. For that purpose, investment firms should have in place governance and organisational procedures to ensure that the issuer-sponsored research they produce, use or distribute is produced in compliance with that code of conduct and with the requirements laid down in this Directive. Member States should ensure that competent authorities have all the necessary supervisory and investigatory powers to ensure that investment firms comply with those requirements.** In order to support more visibility of the issuer-sponsored research, issuers should **submit their issuer-sponsored research to the relevant collection body as defined in [Article 2 (2)] of Regulation (EU) .../... of the European Parliament and the Council.**
- (6) Directive 2014/65/EU introduced the SME growth market category to increase the visibility and profile of markets specialised in SMEs and foster the development of

governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

¹ ***Regulation (EU) .../... of the European Parliament and of the Council of... establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L... ELI:....)***

common regulatory standards in the Union of markets specialised in SMEs. SME growth markets play a key function in facilitating access to capital for those smaller issuers by catering for their needs. To foster the development of such specialised markets and to limit the organisational burden for the operators of multilateral trading facilities (MTFs), it is necessary to allow the segment of a MTF to apply to become a SME growth market provided that such segment is clearly separated from the rest of the MTF.

- (6a) ***Member States should require that a financial instrument of an issuer which is admitted to trading on an SME growth market is able to be traded on another trading venue only if the issuer has been informed and has not objected. Shares in SMEs are often illiquid by nature as they have a smaller market capitalisation and a lower trading volume. Issuers should therefore be able to object to being traded on another trading venue, as that could reduce the risks of fragmentation of liquidity.***
- (7) Directive 2001/34/EC of the European Parliament and of the Council¹ lays down rules concerning listing on Union markets. That Directive aims at coordinating the rules on the admission of securities to official stock exchange listing and on information to be published on those securities to provide equivalent protection for investors at Union level. That Directive also lays down the rules of the regulatory and supervisory framework for Union primary markets. In the course of the years, Directive 2001/34/EC has been amended significantly several times. Directives 2003/71/EC of the European Parliament and of the Council² and Directive 2004/109/EC of the European Parliament and of the Council³ have replaced most of the provisions harmonising the conditions for the provision of information regarding requests for the admission of securities to official stock exchange listing and the information on securities admitted to trading, and have made large parts of Directive 2001/34/EC redundant. Directive 2001/34/EC as a minimum harmonisation Directive gives Member States a rather broad discretion to deviate from the rules laid down in that Directive, which has led to market fragmentation in the Union. To drive market harmonisation at Union level and create a single rule book, Directive 2001/34/EC should be repealed.
- (8) Directive 2014/65/EU, like Directive 2001/34/EC, provides for the regulation of markets of financial instruments and strengthens investor protection in the Union. Directive 2014/65/EU also sets out rules on the admission of financial instruments to trading. By extending the scope of Directive 2014/65/EU to cover specific provisions from Directive 2001/34/EC will ensure that all relevant provisions from Directive 2001/34/EC are maintained. A number of provisions of Directive 2001/34/EC, including the requirements on free float and market capitalisation which still apply, are enforced by competent authorities and are considered important rules for seeking admission to trading of shares on regulated markets in the Union by market participants. It is therefore

¹ Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1).

² Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

³ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

necessary to transfer those rules in Directive 2014/65/EU to set out, in a new provision of that Directive, specific minimum conditions for the admission to trading of shares on regulated markets. The application of that new provision should complement the general provisions on the admission of financial instrument to trading laid down in Directive 2014/65/EU.

- (9) To allow for more flexibility for issuers and to make Union capital markets more competitive, the minimum free float requirement should be decreased to 10%, which is a threshold that ensures for a sufficient level of liquidity in the market. The free float requirement laid down in Directive 2001/34/EC that a sufficient number of shares is to be distributed to the public in one or more Member States refers to the public within the Union and the European Economic Area (EU/EEA). That geographical restriction of the free float requirement to the EU/EEA should not be maintained as Directive 2014/65/EU does not provide for such restriction for financial instruments admitted to trading. The requirement that a company is to have published or filed its annual accounts for a specific period of time should not be transferred to Directive 2014/65/EU since Regulation (EU) 2017/1129 of the European Parliament and of the Council¹ already contains a provision to that effect. Directive 2014/65/EU already lays down provisions to designate competent authorities. Thus, the provisions laid down in Directive 2001/34/EC to appoint one or more competent authorities are redundant. The requirement for debt securities that the amount of the loan is not be less than EUR 200 000 are considered obsolete in light of current market practice.
- (10) The concept of admission of securities to official listing on stock exchanges provided for in Directive 2001/34/EC is no longer frequently used given market developments, as Directive 2014/65/EU already provides for the concept of ‘admission of financial instruments to trading on a regulated market’. The two concepts ‘admission to official listing’ and ‘admission to trading on a regulated market’ are often used interchangeably in some Member States. That means that, in some Member States, no distinction is made between the two concepts. Furthermore, the dual regime of admission to trading, on the one hand, and admission to official listing, on the other hand, could lead to legal uncertainty at Union level, in particular, due to the fact that the requirements laid down in Directive 2003/71/EC, Directive 2004/109/EC and Directive 2014/57/EU of the European Parliament and of the Council² do not apply to instruments admitted to official listing, while those requirements apply to instruments admitted to trading on a regulated market.
- (11) To enhance the visibility of listed companies, in particular SMEs and to adapt the listing conditions to improve requirements for issuers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Directive 2014/65/EU. The market capitalisation threshold for companies, for which the re-bundling of trading execution and research fees would be possible, ***should be removed while introducing safeguards***

¹ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

² Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

to ensure investor protection and maintain a level of transparency regarding the costs associated with research. The adaptation of the listing rules in the Union should also reflect market practice for it to be effective and promote competition. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (12) Directive 2014/65/EU should therefore be amended accordingly.
- (13) Since the objectives of this Directive, namely to ease Union small and medium capitalisation companies' access to capital markets, and to increase the coherence of Union listing rules cannot be sufficiently achieved by the Member States but can rather, by reason of the improvements and effects sought, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

- (1) in Article 4(1), point (12) is replaced by the following:
'(12) 'SME growth market' means a MTF, or a segment of a MTF, that is registered as an SME growth market in accordance with Article 33;';
- (2) Article 24 is amended as follows:
- (a) the following paragraphs **■** are inserted:
- 3a. research ***used or distributed to clients or potential clients*** by **■** investment firms providing portfolio management or other investment or ancillary services ***that has been produced by those firms, or produced by third parties and provided to those firms,*** shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions applicable to the research are met.
- 3b. Where the research is paid, fully or partially, by the issuer and disseminated to the public or to investment firms or to the clients of investment firms providing portfolio management or other investment or ancillary services, such research shall be labelled as "issuer-sponsored research" provided that it is produced in compliance with a ***Union*** code of

¹ OJ L 123, 12.5.2016, p. 1.

conduct *for issuer-sponsored research to be developed* by ESMA in accordance with the second subparagraph.

ESMA shall develop draft regulatory technical standards to establish a harmonised Union code of conduct for issuer-sponsored research. The code of conduct shall set out minimum standards of independency and objectivity to be complied with by the providers of such research, and specify procedures for the identification and prevention of conflicts of interest.

For the purpose of developing those regulatory technical standards, ESMA shall take into account relevant codes of conduct which have been established at national level. ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.*

The Union-wide code of conduct for issuer-sponsored research shall be made publicly available on ESMA's website.

- 3c. Member States shall ensure that any issuer may submit its issuer-sponsored research, as referred to in paragraph 3b of this Article, to the relevant collection body as defined in [Article 2(2)] of Regulation (EU) .../... of the European Parliament and of the Council**.

*When submitting such information to the collection body, the issuer shall ensure that it is accompanied by metadata specifying that the information complies with the Union code of conduct for issuer-sponsored research but that it is not to be considered regulated information within the meaning of Directive 2004/109/EU of the European Parliament and of the Council*** nor investment research within the meaning of Directive 2014/65/EU and is therefore not subject to the same level of regulatory scrutiny as such regulated information or investment research.*

- 3d. Research that is labelled as issuer-sponsored research shall indicate on its front page in a clear and prominent way that it has been prepared in accordance with *the Union* code of conduct referred to in paragraph 3b. Any other research material paid fully or in part by the issuer but *not prepared* in compliance with *the Union* code of conduct as referred to in paragraph 3b shall be labelled as marketing communication. *Member States shall ensure that competent authorities have the necessary supervisory and investigative powers to enforce compliance by investment firms producing or using issuer-sponsored research with the Union code of conduct referred to in paragraph 3b.*';

- (b) paragraph 9a is amended as follows:

(i) the first subparagraph is replaced by the following;

‘9a. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under paragraph 1 if:

(a) an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;

(b) the investment firm informs its clients about the separate or joint payments, as applicable, for execution services and research made to third party providers of research, and of the consequences of the choice of separate or joint payments for the client; and

(c) the investment firm regularly assesses the quality and price of the research used based on robust quality and price criteria and its ability to contribute to better investment decisions. ESMA shall develop guidelines for investment firms for the purpose of conducting these assessments.

(ii) the following subparagraphs are added:

Member States shall also ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under paragraph 1 if the research is provided by an independent research provider that is not engaged in execution services and is not part of a financial services group that includes an investment firm that offers execution or brokerage services.

Investment firms shall keep a record of separate payments and gather information distinguishing the part of combined charges or joint payments for execution services and research that is attributable to research provided to them. Investment firms shall inform their clients annually, in an aggregated form, of their annual expenditure on research that is attributable to clients.

Member States shall ensure that third party providers of research are not required to facilitate joint payment for execution services and research from investment firms. Member States shall also ensure that investment firms purchasing research from third party providers of research shall always be able to pay separately for the execution services and research that they receive.

By ... [3 years from the date of entry into force of this amending Directive], ESMA shall prepare a report with a comprehensive assessment of the market developments regarding research within the meaning of this Article. That assessment shall incorporate at least the research coverage of listed firms, the costs and quality of that research, the impact of joint payments on best execution by investment firms, the share of separate and joint payments made by investment firms to third party providers for execution services and research, and the level of fulfillment of the demand for research by investors and other buyers.

Based on that report, the Commission may, if appropriate, submit to the European Parliament and the Council a legislative proposal concerning changes to the rules laid down in this Directive regarding research.

(c) the following paragraph is inserted:

9b. ESMA shall organise a procedure for the establishment of a voluntary Union-wide research marketplace focusing on research into small and medium-sized enterprises and initial public offerings (IPOs). The research marketplace shall be funded through fixed contributions by participating firms. Research shall be commissioned by independent research providers.

ESMA shall develop draft regulatory technical standards setting out the conditions for establishment of a voluntary Union-wide research marketplace on research into small and medium-sized enterprises, including at least the following elements:

- (a) the conditions for joining the research marketplace;**
- (b) the governance principles;**
- (c) the funding arrangements;**
- (d) the research coverage of the research marketplace.**

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

* **Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).**

** **Regulation (EU) .../... of the European Parliament and of the Council of... establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L... ELI:....).**

*** **Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).';**

(2a) Article 27 is amended as follows:

(a) *in paragraph 1, the first subparagraph is replaced by the following:*

‘1. Member States shall require that investment firms take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature, the provision of investment research, or any other consideration relevant to the execution of the order. Nevertheless, where there is a specific instruction from the client the investment firm shall execute the order in accordance with that specific instruction.’;

(ab) the following paragraph is inserted:

‘1a. ESMA shall develop guidelines on how investment firms providing portfolio management or other investment or ancillary services to clients can comply with their best execution obligations when the investment firm uses joint payments for execution services and research as permitted under Article 24(9a).’;

(3) Article 33 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Member States shall provide that the operator of a MTF may apply to its home competent authority to have the MTF or a segment thereof, registered as an SME growth market.

2. Member States shall provide that the home competent authority may register the MTF, or a segment thereof, as an SME growth market if the competent authority receives an application as referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF, or that the requirements in paragraph 3a are complied with in relation to a segment of the MTF.’;

(b) the following paragraph **■** is *inserted*:

‘3a. Member States shall ensure that the relevant segment of the MTF is subject to effective rules, systems and procedures which ensure that the conditions referred to in paragraph 3 and all of the following conditions have been complied with:

(a) the segment of the MTF registered as ‘SME growth market’ is clearly separated from the other market segments operated by the MTF operator, which is *inter alia* indicated by a different name, different rulebook, different marketing strategy, and different publicity, as well as a specific allocation of the market identification code to the SME growth market segment;

(b) the transactions made on the specific SME growth market segment are clearly distinguished from other market activity within the other segments of the MTF;

(c) upon request of the MTF’s home competent authority, the MTF shall provide a comprehensive list of the instruments listed on the SME

growth market segment concerned, as well as any information on the operation of the SME growth market segment that the competent authority may request.’;

(c) paragraphs 4 to 8 are replaced by the following:

‘4. The criteria laid down in paragraphs 3 and 3a are without prejudice to compliance by the investment firm or market operator operating the MTF, or a segment thereof, with other obligations under this Directive relevant to the operation of MTFs. ***Those criteria do not prevent the investment firm or market operator operating the MTF from imposing additional requirements to those laid down in paragraphs 3 and 3a.***

5. Member States shall provide that the home competent authority may deregister a MTF, or a segment thereof, as an SME growth market in any of the following cases:

- (a) the investment firm or market operator operating the MTF, or a segment thereof, applies for its deregistration;
- (b) the requirements in paragraph 3 or 3a are no longer complied with in relation to the MTF, or a segment thereof.

6. Member States shall require that if a home competent authority registers or deregisters a MTF, or a segment thereof, as an SME growth market under this Article, that authority shall as soon as possible notify ESMA of that registration or deregistration. ESMA shall publish on its website a list of SME growth markets and shall keep that list up to date.’;

7. Member States shall require that a financial instrument of an issuer which is admitted to trading on an SME growth market is able to be traded on another trading venue only if the issuer has been duly informed and has not objected.

ESMA shall develop guidelines on the communication methods used and the relevant timelines.

8. The Commission is empowered to adopt delegated acts in accordance with Article 89 to supplement this Directive by further specifying the requirements laid down in paragraphs 3 and 3a of this Article. Those requirements shall take into account the need to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market. They shall also take into account that de-registrations do not occur nor shall registrations be refused merely because of a temporary failure to comply with the requirement laid down in paragraph 3, point (a), of this Article.’;

(4) the following **article** is inserted:

Article 51a

Specific conditions for the admission of shares to trading

1. Member States shall require that the foreseeable market capitalisation of the shares for which admission to trading is sought, or if this cannot be assessed, the company’s capital and reserves, including profit and loss, from the last financial year,

shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the Euro.

2. Paragraph 1 shall however not apply to the admission to trading of shares fungible with shares already admitted to trading.

3. Where, as a result of an adjustment of the equivalent amount of the Euro in national currency, the market capitalisation expressed in national currency remains for a period of 1 year at least 10 % approximately the value of EUR 1 000 000, the Member State shall, within the 12 months following the expiry of that period, adjust its laws, regulations or administrative provisions to comply with paragraph 1.

4. Member States shall *ensure* that regulated markets *require* at least 10% of the subscribed capital represented by the class of shares concerned by the application for admission to trading *to be* held by the public *at the time of admission*.

5. Where the percentage of shares held by the public is below 10% of the subscribed capital, Member States shall ensure that regulated markets require that a sufficient number of shares is distributed to the public to fulfil the requirement laid down in paragraph 4.

6. Where admission to trading is sought for shares fungible with shares already admitted to trading, regulated markets shall assess, to fulfil the requirement laid down in paragraph 4, whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to the shares fungible with shares already admitted to trading.

7. The Commission is empowered to adopt delegated acts in accordance with Article 89 to amend this Directive by modifying the thresholds referred to in paragraphs 1 and 3 or in paragraphs 4 and 5 or in both, when the applicable thresholds impede the liquidity on public markets taking into account the financial developments.’;

(4a) In Article 69(2), first subparagraph, the following point is added:

‘(v) supervise whether investment firms that produce or distribute issuer-sponsored research do so in compliance with the Union code of conduct developed by ESMA as referred to in Article 24.’;

(5) Article 89 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4) Article 54(4), Article 58(6), Article 64(7), Article 65(7) and

Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(b) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 51a(7), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.’.

Article 2

Repeal of Directive 2001/34/EC

Directive 2001/34/EC is repealed as of ... [OP please insert the date = 24 months from date of entry into force of this Directive].

Article 3

Transposition

1. Member States shall adopt and publish, by ... [OP please insert the date = 12 months **from** the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from ... [OP please insert the date = 18 months **from** the date of entry into force of this Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President