ALERT MEMORANDUM

The Listing Act: New Developments for Financial Markets in The European Union

November 21, 2024

Key amendments applicable from 2024 to 2026

Prospectus Regulation (2024 - 2026)

- **Raised exemption threshold for the offering prospectus requirement from €8 million to €12 million, with the option for Member States to adopt a lower threshold of €5 million**
- **Introduced new exemptions from the obligation to publish a prospectus, and raised exemption threshold for the listing prospectus requirement from 20% to 30% in the event of admission of securities fungible with securities already admitted**
- **Introduced standardized prospectus, of maximum 300 pages, to be distributed in electronic format and in English only**
- **Introduced new simplified prospectus scheme for secondary securities issuances (follow-on prospectus)**

Market Abuse Regulation (2024 - 2026)

- **Eliminated requirement to disclose intermediate steps in a protracted process**
- **Raised threshold for internal dealing notifications from €5,000 to €20,000**

Directive Amending MiFID II (by mid - 2026)

- **Introduced stricter requirements for issuer-sponsored research, in accordance with a new EU code of conduct**
- **Companies to be listed: required minimum capitalization of €1 million and minimum floating rate of 10%**

Multiple-Vote Shares Directive (by end of 2026)

- **Allowed adoption of multiple-vote share structure even before admission to trading is requested, with the option to make its effectiveness conditional upon the IPO**
- **Introduced new safeguards measures to protect minority shareholders' interests**

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On October 8, 2024, the European Council approved the so-called "Listing Act Package" (the "Listing Act")[1], a package of legislative proposals presented by the European Commission on December 7, 2022, and approved by the European Parliament on September 16, 2024. The Listing Act contains measures aimed at enhancing the attractiveness of the European Union's capital markets and facilitating access to European stock exchanges for European companies, including small and medium enterprises ("SMEs")[2].

The Listing Act will enter into force 20 days after its publication in the Official Journal of the European Union ("OJEU") on November 14, 2024, with the exception of certain provisions that form the core of the reform, which will enter into force between 2025 and 2026. For more details, please refer to *sub* Annex 1.

I. Introduction

The EU Commission's initiative is part of a plan launched in 2015 to create a single capital market at the European level (Capital Market Union) that companies (particularly SMEs) can quickly and easily access.

In this context, the main objectives of the Listing Act are to:

(a) reduce the bureaucratic and economic burdens imposed on issuers, while preserving an adequate level of investor protection and ensuring market integrity;

(b) increase the flexibility granted by corporate law to controlling shareholders of companies that intend to access the capital market; and

(c) simplify and optimize certain aspects of the current capital market regulation.

Although one of the explicit goals of the Listing Act is to facilitate capital access for SMEs, the scope of the reform extends to all listed companies as well as to companies seeking to be listed.

II. Areas of intervention

The Listing Act is composed of:

(i) Regulation (EU) 2024/2809, (the "Listing Act Regulation"), which amends (a) Regulation (EU) 2017/1129 concerning the prospectus for public offerings or admission to trading of securities on a regulated market (the "Prospectus Regulation"), (b) Regulation (EU) 2014/596 on market abuse (the "Market Abuse Regulation" or "MAR"), and (c) Regulation (EU) 2014/600 on markets in financial instruments ("MiFIR");

(ii) Directive (UE) 2024/2811, (the "Directive Amending MiFID II"), which amends Directive 2014/65/EU on markets in financial instruments ("MiFID II") and repeals Directive 2001/34/EC on the admission of securities to listing (the "Listing Directive"); and

(iii) Directive (UE) 2024/2810 (the "Multiple-Vote Shares Directive"), a new directive on multiple-vote share structures for companies seeking admission to trading on a multilateral trading facility ("MTF").

From the date of entry into force of the Listing Act, Member States will have (a) 18 months to transpose the Directive Amending MiFID II and (b) 2 years to transpose the new Multiple-Vote Shares Directive.

[1] The texts approved by the EU Council are available here (Listing Act Regulation), here (Directive Amending MiFID II) and here (Multiple-Vote Shares Directive).

[2] Pursuant to Art. 2, paragraph 1, letter f), of the Prospectus Regulation, "SMEs" are defined as (i) "*companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43,000,000 and an annual net turnover not exceeding €50,000,000*", or (ii) companies that have "*an average market capitalization of less than €200,000,000 on the basis of end-year quotes for the previous three calendar years*" (Art. 4, paragraph 1, subsection 13, of Directive 2014/65/UE).

III. Key amendments

A. Amendments to the Prospectus Regulation

The Prospectus Regulation sets out the requirements for the drafting, approval, and dissemination of the prospectus to be published in the event of a public offering or admission to trading on a regulated market located or operating within a Member State.

The amendments to the Prospectus Regulation introduced by the Listing Act Regulation simplify the disclosure obligations for initial public offerings ("IPOs") and admission to trading on regulated markets, by reducing the length, complexity and costs of the publication of prospectuses, and streamlining the prospectus review and approval process by the authorities.

The key amendments to the Prospectus Regulation are summarized below.

- *Exemptions from the obligation to publish a listing or offering prospectus*

a. Public offering: introduction of a "double threshold" exemption system

To harmonize regulations across Member States, while taking into account the different sizes of national markets, the Listing Act Regulation replaces the current exemption regime[3] with a double threshold mechanism[4], which provides:

(a) a general exemption threshold for offers with a total aggregated consideration in the European Union of less than €12 million per offeror or issuer, calculated over a 12-month period; and

(b) the option for Member States to lower the above threshold to €5 million;

provided that such offers do not require passporting (Art. 25 of the Prospectus Regulation).

This double threshold exemption system will take effect in June 2026, *i.e.*, 18 months after the Listing Act Regulation comes into force.

Exemption threshold for the offering prospectus requirement raised from €8 million to €12 million, with the option for Member States to lower this threshold to €5 million

b. Admission to trading: threshold increased for certain pre-existing exemptions

The Listing Act Regulation raises the relevant percentage threshold for the applicability of certain exemptions from the listing prospectus requirement from the current 20% to 30%. Specifically, as a result of these amendments, a prospectus will not be required for the admission to trading of:

(a) securities fungible with securities already admitted to trading on the same market, provided that such securities represent, over a 12-month period, less than 30% of the number of securities already admitted to trading[5]; and

(b) shares resulting from the conversion or exchange of other securities (or from the exercise of rights conferred by other securities), provided that such new shares (i) are of the same class as the shares already admitted to trading on the same regulated market and (ii) represent, over a 12-month period, less than 30% of the number of shares of the same class already admitted to trading[6].

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3 Under the current discipline (see Art. 1, paragraph 3 and Art. 3, paragraphs 1 and 2, of the Prospectus Regulation), the Prospectus Regulation (i) does not apply to public offerings of securities for a total consideration of less than €1 million (this minimum threshold will be completely eliminated by the reform) and (ii) allows Member States to exempt from the prospectus requirement public offerings with a total consideration not exceeding a threshold set between €1 million and €8 million. In Italy, Art. 34-*ter*, paragraph 1, of Consob Regulation No. 11971/1999 exempts from the prospectus requirement public offering for a total consideration between €1 million and €8 million.

4 Art. 3, paragraph 2, of the Prospectus Regulation, as amended by the Listing Act Regulation, which introduced new paragraphs 2-*bis* and 2-*ter*.

5 Art. 1, paragraph 5, letter a), of the Prospectus Regulation, as amended by the Listing Act Regulation.

6 Art. 1, paragraph 5, letter b), of the Prospectus Regulation, as amended by the Listing Act Regulation.

Exemption threshold for the listing prospectus requirement raised from 20% to 30% in the event of admission of securities fungible with securities already admitted

c. New exemptions

The Listing Act Regulation introduces new exemptions from the obligation to publish a listing or offering prospectus.

Firs, new exemptions (independent of size requirements) apply in the case of:

(a) public offering of securities fungible with securities already admitted to trading on a regulated market or on an SME Growth Market[7] ("SME Market") continuously for at least 18 months[8]; and

(b) admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same market continuously for at least 18 months[9],

provided that the following conditions are met:

(i) the securities offered to the public or intended to be admitted on a regulated market are not issued in connection with an acquisition through a public exchange offer, a merger or a demerger;

(ii) the issuer of the securities is not subject to a restructuring or insolvency proceeding; and

(iii) a concise information document (of maximum 11 pages and not subject to approval by the competent authority) containing the information referred to in new Annex No. IX of the Prospectus Regulation is filed with the competent authority and simultaneously published[10].

Second, an additional exemption[11], dependent on the size of the offer, is introduced in the case of an offer of securities intended to be admitted to trading on a regulated market or on an SME Market and fungible with securities already admitted to trading on the same market, provided that the following conditions are met:

(i) the securities represent, over a 12-month period, less than 30% of the number of securities already admitted to trading on the same market;

(ii) the issuer of securities is not subject to a restructuring or insolvency proceeding; and

(iii) a very concise information document (of maximum 11 pages and not subject to approval by the competent authority) containing the information referred to in new Annex No. IX of the Prospectus Regulation is filed with the

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7 Pursuant to Art. 33(3) of MiFID II, an "SME Growth Market" is a market that meets the following conditions: (i) at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME Growth Market and in any calendar year thereafter; (ii) appropriate criteria are established for the initial and continued admission of issuers' financial instruments to trading on the market; (iii) at the time of initial admission of financial instruments to trading in the market, sufficient information was published to enable investors to make an informed investment decisions; (iv) there is adequate periodic financial reporting by or on behalf of the issuer in the market; (v) issuers, persons exercising administrative, managerial or supervisory functions, and persons closely associated with them comply with the requirements provided by MAR; (vi) regulatory information regarding issuers in the market is maintained and publicly disclosed, and (vii) there are effective systems and controls aiming to prevent and detect market abuse on that market as required by MAR. An example of an SME Growth Market is Euronext Growth Milan.

8 Art. 1, paragraph 4, of the Prospectus Regulation, as amended by the Listing Act Regulation, which introduced new paragraph d-*ter*.

9 Art. 1, paragraph 5, of the Prospectus Regulation, as amended by the Listing Act Regulation, which introduced new paragraph b-*bis*.

10 Such information covers, among other factors, the name and registered office of the issuer, the name of the competent authority of the home Member State, the reasons for the issuance and the use of proceeds, the issuer-specific risk factors, the characteristics of the securities, and the terms and conditions of the offering in the case of a public offering of securities.

11 Art. 1, paragraph 4, of the Prospectus Regulation, as amended by the Listing Act Regulation, which introduced new paragraph d-*bis*.

competent authority and simultaneously published[11].

New exemptions in the event of (i) public offering or admission to trading of securities fungible with securities already admitted to trading on the same market for at least 18 months, regardless of size, and (ii) public offering of fungible securities representing less than 30% of the securities already admitted to trading on the same market

d. Exemptions applicable to credit institutions

Art. 1, paragraph 4, letter j), of the Prospectus Regulation, currently provides an exemption from the obligation to publish a prospectus for credit institutions in the case of a public offering or admission to trading on a regulated market of securities, other than equity securities, where the total aggregated consideration in the European Union is less than €75 million, calculated over a 12-month period.

The Listing Act Regulation raises this threshold to €150 million[12] with the aim of promoting fundraising by credit institutions.

- <u>*Simplification of Prospectus*</u>

a. Standardization, length, and language of the prospectus

In order to improve the prospectus readability for investors, reduce the costs associated with its drafting, and create uniformity across the European Union, the Listing Act Regulation provides that the prospectus be drafted "in a standardized format"[13], both for equity and non-equity securities. Moreover, the information included in the prospectus should be presented in standardized sequence, to be defined through delegated acts of the European Commission[14].

Additionally, the legislator has set a maximum length limit of 300 pages for a prospectus related to shares[15].

In the case of an offering or admission to trading on a regulated market conducted only in the home Member State, the prospectus may also be drafted in English only. However, Member States can require that the prospectus be drafted in a language accepted by the competent authority of such Member State[16].

Finally, the reform requires the prospectus to be distributed in electronic format only, thus eliminating the possibility for investors to request a paper copy[17].

Standardized prospectus, of maximum 300 pages, to be distributed in electronic format and drafted (at the Member State's discretion) in English only

b. Incorporation by reference

The Listing Act Regulation extends the scope of Art. 19 of the Prospectus Regulation regarding the inclusion of information in prospectus by reference, by allowing issuers to use this technique for a greater number of documents and information. More precisely, a prospectus may incorporate by reference (i) a universal registration document (or a section thereof) approved by, or filed with, a competent authority, and (ii) the information document containing the information referred to in new Annex

12 Art. 1, paragraph 4, letter j), of the Prospectus Regulation, as amended by the Listing Act Regulation.

13 Art. 6, paragraph 2, of the Prospectus Regulation, as amended by the Listing Act Regulation.

14 Pursuant to Art. 6, paragraph 8, of the Prospectus Regulation, as amended by the Listing Act Regulation, the European Securities and Market Authority (ESMA) shall submit draft implementing technical standards to the European Commission to specify the format and layout of the prospectus, depending on the type of the prospectus and the type of investors for which it is intended, by December 2025, *i.e.*, within 12 months of the date of entry into force of the Listing Act Regulation. The European Commission will be asked to adopt the necessary implementing technical standards.

15 This amendment will enter into force in June 2026, *i.e.*, 18 months after the Listing Act Regulation becomes effective.

16 Art. 27, paragraph 1, of the Prospectus Regulation, as amended by the Listing Act Regulation. In Italy, pursuant to Art. 12, paragraph 2 and 3 of Consob Regulation No. 11971/1999, a prospectus for the offering of securities can be drafted in Italian or English (in which case, only the Italian translation of the notes to the financial statements is required).

17 Art. 21, paragraph 11, of the Prospectus Regulation, as amended by the Listing Act Regulation.

No. IX of the Prospectus Regulation (see paragraph III(A)(c) of this alert memorandum)[18].

As for an "EU Growth Prospectus" prepared in connection with a share offering, the Listing Act Regulation provides that the management report for the covered financial periods (including, where applicable, the sustainability report) be either incorporated by reference or the information contained therein be included in the prospectus[19].

Finally, the reform provides the possibility for the issuer, the offeror, or the entity requesting admission to trading on a regulated market not to publish a supplement[20] for new annual or interim financial information published, when a base prospectus is still valid pursuant to Art. 12, paragraph 1 of the Prospectus Regulation (*i.e.*, for 12 months from its approval). If such new information is published electronically, it may be included in the base prospectus[21].

More information may be incorporated by reference in the prospectus

c. Historical financial information

The Listing Act Regulation also amends Annex No. I to the Prospectus Regulation, reducing the informational burden on issuers regarding historical financial information to be included in the prospectus. Specifically, it is now sufficient to include in the prospectus (a) the financial information for the last two financial years (instead of the three previously required) in connection with an equity offering, and (b) the financial information for the last financial year only in connection with a non-equity offering[22].

Only two (and no longer three) years of historical financial information are required in a prospectus for an equity offering

d. Simplification of risk factors

The Listing Act Regulation provides that the prospectus should not contain generic risk factors that are merely used as disclaimers and do not provide a sufficiently clear representation of the specific risks to investors[23].

Moreover, the risk factors should be clearly described and listed in a manner that reflects their significance as determined by the issuer, enabling investors to understand the impact they may have on the issuer or on the securities offered or admitted to trading.

Risk factors should not be used as mere disclaimers

e. New simplified prospectus for secondary issuance ("follow-on" prospectus)

To make listing documentation more understandable, better protect investors and at the same time reduce costs and burdens for issuers conducting secondary issuances, the Listing Act Regulation introduces a new and more efficient simplified prospectus, the "EU Follow-on Prospectus"[24].

Specifically, this prospectus can be used for the public offering or admission to trading on a regulated market of securities by:

(a) issuers whose securities have been admitted to trading on a regulated market continuously for at least 18 months;

18 Art. 19, paragraph 1, letter a) and b), of the Prospectus Regulation, as amended by the Listing Act Regulation.

19 Annex No. VII of the Prospectus Regulation, as amended by the Listing Act Regulation.

20 Art. 23, paragraph 1, of the Prospectus Regulation.

21 Art. 19, paragraph 1-*ter*, of the Prospectus Regulation, as introduced by the Listing Act Regulation.

22 Annex No. I, item XI of the Prospectus Regulation, as amended by the Listing Act Regulation.

23 Art. 16, paragraph 1, of the Prospectus Regulation, as amended by the Listing Act Regulation.

24 Art. 14-*bis* of the Prospectus Regulation, as amended by the Listing Act Regulation. Art. 14-*bis* will enter into force in March 2026, *i.e.*, 15 months after the Listing Act Regulation comes to force. The European Commission is required to adopt supplementary delegated acts to define the standardized content, format and sequence of the "EU follow-on prospectus".

(b) issuers whose securities have been admitted to trading on an SME Market continuously for at least 18 months;

(c) issuers seeking admission to trading on a regulated market of fungible securities with securities that have been admitted to trading on an SME Market continuously for at least 18 months; and

(d) offerors of securities admitted to trading on a regulated market or an SME Market continuously for at least 18 months.

The "EU Follow-on Prospectus" prepared in connection with a share offering may not exceed a maximum of 50 pages and should be presented in an easily readable form and structure.

Issuers with only non-equity securities admitted to trading on a regulated market or SME Market, are not allowed to use a follow-on prospectus for the admission of equity securities to trading on a regulated market.

New simplified prospectus ("follow-on prospectus"), of maximum 50 pages, for secondary issuances and public offerings of securities that have been listed for at least 18 months

f. New simplified prospectus, the "EU Growth Prospectus"

The Listing Act Regulation allows certain issuers to use a new simplified prospectus, the so-called "EU Growth Prospectus"[25], in the case of a public offering of securities, provided that these entities do not have securities admitted to trading on an MTF.

Specifically, the following entities are eligible to use such prospectus:

(a) SMEs;

(b) issuers, other than SMEs, whose securities are or will be admitted to trading on an SME Market;

(c) issuers, other than those referred to in prongs (a) and (b), where the total aggregate consideration in the European Union for securities offered to the public is less than €50 million, calculated over a 12-month period, and provided that such issuers (i) do not have securities traded on an unregulated market and (ii) have employed an average of no more than 499 employees during the preceding financial year; and

(d) offerors of securities issued by the issuers referred to in prongs (a) and (b).

The "EU Growth Prospectus" prepared in connection with a share offering may not be longer than 75 pages and should be presented in an easily readable form and structure.

- *Corporate social responsibility disclosure obligations*

The European legislator requires, for the first time, that information on corporate social responsibility and ESG factors be included in the prospectus. The Commission will adopt delegated acts to specify the information to be disclosed[26].

- *Prospectus review and approval procedure*

To harmonize the prospectus review and approval, the Listing Act Regulation introduces: (a) additional criteria to be used by the competent authority when reviewing a prospectus and reach a decision on its approval[27]; and (b) a maximum time window within which the competent authority is required to complete its review[28]; provided, however, that failure by the competent authority to reach a decision within the

[25] Art. 15-*bis* of the Prospectus Regulation, as introduced by the Listing Act Regulation. Art. 15-*bis* will enter into force 15 months after the date of entry into force of the Listing Act Regulation, *i.e.*, in March 2026, during which time the European Commission will be required to adopt supplementary delegated acts aimed at defining the standardized content, format and sequence of the "EU Growth Prospectus".

[26] Art. 13, paragraph 1, subsection 2, of the Prospectus Regulation, as amended by the Listing Act Regulation, which introduced new letter g).

[27] Art. 20, paragraph 11, letter a), of the Prospectus Regulation, as amended by the Listing Act Regulation.

[28] Art. 20, paragraph 11, letter c), subsection 1, of the Prospectus Regulation, as amended by the Listing Act Regulation.

above deadline will not constitute approval of the prospectus[29].

Simplification of the prospectus review and approval procedure by the competent authorities, through the introduction of new criteria and timelines

B. Amendments to the Market Abuse Regulation (MAR)

MAR aims to prevent market abuse, safeguarding market integrity and investor confidence. To this end, it imposes particularly stringent reporting and registration requirements on issuers.

Without prejudice to MAR's objectives, the reform introduced by the Listing Act Regulation aims to reduce the regulatory burden on issuers and to increase the attractiveness of European markets.

The key amendments to MAR are summarized below.

- *Definition of inside information*

While maintaining the definition of inside information of Art. 7 of MAR, the Listing Act Regulation clarifies that, with regard to the execution of orders related to financial instruments, such definition should capture information that the intermediary receives not only directly from a client[30], but also from other parties acting on behalf of the client or known by virtue of a management relationship of a proprietary account or a managed fund.

This amendment aims to counteract the so-called "front running" phenomenon, an illegal practice consisting in the exploitation of inside information by financial operators who, having received orders from their clients that could potentially influence the price of listed securities, use this information to make transactions directly on the market.

Definition of "inside information" expanded to include information obtained (a) from parties acting on behalf of clients or (b) by virtue of an account or fund management relationship

- *Intermediate steps in a protracted process*

One of the most significant aspects of the Listing Act is the abolition of the requirement for issuers to disclose inside information related to the "intermediate steps" of a protracted process[31].

Pursuant to Art. 7, paragraph 3, of MAR, even intermediate steps in a protracted process qualify as "inside information" and should therefore be disclosed if they meet the criteria set in that article.

The Listing Act Regulation provides that issuers are no longer required to disclose inside information concerning the intermediate steps of a protracted process, where such steps are connected to the subsequent materialization or occurrence of specific circumstances or a particular event. The disclosure requirement will, therefore, apply only to inside information related to the final event or circumstances of the protracted process[32].

Issuers should still ensure the confidentiality of information related to the intermediate steps of the protracted process that have the features of inside information, as well as prevent any potential market abuse[33].

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29 Art. 20, paragraph 11, letter c), subsection 3, of the Prospectus Regulation, as amended by the Listing Act Regulation.

30 Pursuant to Art. 7, paragraph 1, letter d), of MAR: "*inside information means: [...]information conveyed by a client and relating to the client's pending orders in financial instruments [...]*".

31 Recital 16, 17, and Art. 7, paragraphs 2 and 3, of MAR. In particular, recital 17 provides that: "*Information which relates to an event or set of circumstances which is an intermediate step in a protracted process may relate, for example, to the state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, provisional terms for the placement of financial instruments, or the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such an index*".

32 Art. 17, paragraph 1, last sentence, of MAR, as amended by the Listing Act Regulation.

33 Art.17 of MAR, as amended by the Listing Act Regulation, which introduced new paragraph 1-*bis*.

The above amendments will become effective in June 2026, *i.e.*, 18 months after the Listing Act Regulation comes into force.

Eliminated requirement to disclose intermediate steps of a protracted process that qualify as inside information

- *The delay*

The Listing Act Regulation introduces certain amendments to the provisions on the delay in the disclosure of inside information, providing clearer guidelines on the conditions under which an issuer can make use of this provision.

Currently, Art. 17, paragraph 4, of MAR allows issuers to delay the disclosure of inside information on their own responsibility, provided that the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the issuer;

(b) the delay of disclosure is not likely to mislead the public; and

(c) the issuer is able to ensure the confidentiality of that information.

The Listing Act Regulation—which incorporates ESMA's guidance on the matter[34]—replaces the generic reference to the absence of a misleading effect on the public with a requirement that the disclosure of inside information must not contradict the latest information disclosed to the public, or any other type of communication by the issuer related to the same situation to which the inside information relates[35].

The Listing Act Regulation also clarifies that issuers are not required to initiate the delay procedure for the disclosure of inside information related to the intermediate steps of a protracted processes since such disclosure is no longer required[36].

The above amendments will become effective in June 2026, *i.e.*, 18 months after the Listing Act Regulation comes into force.

Identified cases where delay would not be misleading

- *Market soundings regime*

The Listing Act Regulation also introduces some amendments to the rules on market soundings under Art. 11 of MAR.

Pursuant to MAR, *"market sounding"* is "*the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors*".

Without making substantial changes to the market sounding regime, the European legislator clarifies that such regime is an optional regime[37] through which market participants can benefit from a limited exemption from the prohibition of disclosing inside information. In other words, if an issuer chooses to disclose inside information to third parties during a market sounding in compliance with the procedure outlined in MAR, such disclosure is deemed by law to have been made "*in the normal exercise of a person's employment, profession or duties*". However, if an issuer decides to disclose inside information to third parties during a market sounding without complying with the market sounding regime provided by MAR, such issuer might still prove that the disclosure was made "*in the normal exercise of a person's employment, profession or duties*" and would therefore be lawful.

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34 See ESMA Guideline No. 2 to MAR (https://www.esma.europa.eu/sites/default/files/library/esma70-156-4966_mar_gls-delay_in_the_disclosure_of_inside_information.pdf) which specifies that delay would not be misleading even where "*the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced*"; or "*the inside information whose disclosure the issuer intends to delay is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market*".

35 Art. 17, paragraph 4, of MAR, as amended by the Listing Act Regulation.

36 Art. 17, paragraph 4-*bis*, of MAR, as introduced by the Listing Act Regulation.

37 Art.10, paragraph 4, of MAR, as amended by the Listing Act Regulation.

Furthermore, the definition of "market sounding" is extended to include the disclosure of information to third parties prior to the potential announcement of a transaction[38]. Therefore, the scope of the market sounding regime is extended to include cases where the transaction to which the inside information related does not ultimately take place.

Finally, the Listing Act Regulation intervenes on the rules regarding "cleansing" of information, *i.e.*, the obligation to disclose to the relevant parties when certain information ceases to qualify as "inside information". Specifically, where information that has been disclosed in the course of a market sounding ceases to be inside information according to the disclosing market participant, such participant shall inform the recipient as soon as possible. The Listing Act Regulation specifies that such obligation shall not apply in cases where the information has otherwise been publicly announced[39].

Clarified optionality of the market sounding regime, expanded its scope to include preliminary disclosures of information regarding transactions that are subsequently not carried out, and simplified the "cleansing" procedure

- *Simplification of "share buy-back" program requirements*

MAR provides certain safe harbors from the three types of market abuse it covers (*i.e.*, insider dealing, unlawful disclosure of inside information, and market manipulation)[40]. Pursuant to Art. 5 of MAR, these safe harbors apply to share buy-back programs and stabilization transactions.

To limit the reporting obligations currently imposed on issuers with respect to buy-back programs, the Listing Act Regulation requires that information on buy-back transactions be disclosed (i) only to the national competent authority of the most relevant market in terms of liquidity for the issuer's own shares (and no longer to all competent authorities of the markets on which the shares are listed) and (ii) to the public only in aggregate form (rather than with respect to each transaction)[41].

- *Simplification of the insider list discipline*

The Listing Act Regulation makes no substantial amendments to the legal framework governing insider lists (*i.e.*, lists with the names of people who have access to inside information), but it mandates ESMA to review the implementing technical rules on the simplified scheme for insider lists (which can currently be used by issuers whose securities are admitted to trading on an SME Market) to extend its use in connection with any insider list[42].

ESMA is required to submit the draft implementing technical rules to the European Commission by September 2025, *i.e.*, within 9 months of the entry into force of the Listing Act Regulation.

- *Managers' transactions*

The Listing Act Regulation introduces a series of important amendments to the rules applicable to insiders[43], *i.e.*, persons discharging managerial responsibilities ("PDMRs") and persons closely associated to them ("CAPs").

First, the minimum threshold for the notification requirement by PDMRs and CAPs to the issuer (which currently applies to any transaction once a total amount of €5,000 is reached within a calendar

38 Pursuant to Art. 11, paragraph 1, of MAR, as amended by the Listing Act Regulation, "*a market sounding comprises the communication of information, prior to the announcement of a transaction, if any, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by: [...]".*

39 Art. 11, paragraph 6, of MAR, as amended by the Listing Act Regulation.

40 Articles 14 and 15 of MAR.

41 Art. 5, paragraph 1, letter b), of MAR, as amended by the Listing Act Regulation.

42 Art. 18, paragraph 9, of MAR, as amended by the Listing Act Regulation.

43 Art. 19 of MAR.

year) has been increased to €20,000[44]. However, national authorities retain some discretion, with the option to increase such threshold to €50,000 or decrease it to €10,000[45].

Second, new exemptions to the "black-out period" of Art. 19, paragraph 11 and 12, of MAR are introduced. Under MAR, PDMRs and CAPs are prohibited to make transactions on the issuer's securities during the 30 calendar days preceding the publication of the mandatory financial reports. In particular, the Listing Act Regulation specifies that issuers may allow insiders to operate during a black-out period—by way of derogation from the aforementioned prohibition—in cases where the transactions or trade activities "*do not relate to active investment decisions undertaken by the person discharging managerial responsibilities, or that result exclusively from external factors or actions of third parties, or that are transactions or trade activities, including the exercise of derivatives, based on predetermined terms*"[46].

Raised the threshold for notification requirement of internal dealing transactions from €5,000 to €20 ,000, subject to certain discretionary choices by national authorities

- *Administrative sanctions*

The Listing Act Regulation modifies the sanctions regime under MAR to make penalties more proportionate to the size of the issuer[47].

Specifically, it introduces a cap on the administrative sanctions that can be imposed on issuers for breaches of Articles 14-20 of MAR[48]. This cap is calculated as a percentage of the issuer's total annual turnover, based on the latest available balance sheet. However, if the resulting fine is disproportionately low, national authorities have the option to set a minimum amount.

Made administrative sanctions for issuers for MAR violations more proportionate to the size of the issuer

C. Amendments to MiFID II

The Directive Amending MiFID II primarily aims to strengthen the regulatory framework of SME Markets (e.g., Euronext Growth Milan), as defined by MiFID II and Delegated Regulation (EU) 2017/565, which governs the organizational requirements and operating conditions for investment companies. The amendments aim to reduce the administrative and regulatory burdens for issuers, while ensuring adequate standards of investor protection and market integrity.

The key amendments to MiFID II are summarized below.

- *Investment research*

The main intervention of the Directive Amending MiFID II concerns the regulation of investment research, with the goal of improving its quality, particularly for the benefit of SMEs.

In particular, it introduces stricter requirements for the preparation of issuer-sponsored research. Specifically, Art. 24 of MiFID II now provides, among other things: (a) a general requirement that research be fair, clear and not misleading[49]; (b) that the use of the label "issuer- sponsored research" be restricted to research produced in compliance with a new EU code of conduct, which will establish standards of independence and objectivity, and will specify procedures and measures for the effective

44 Art. 19, paragraph 8, of MAR, as amended by the Listing Act Regulation.

45 Art. 19, paragraph 9, of MAR, as amended by the Listing Act Regulation.

46 Art. 19, paragraph 12-*bis*, of MAR, introduced by the Listing Act Regulation.

47 Art. 30, paragraph 2, of MAR, as amended by the Listing Act Regulation.

48 Prohibition of insider dealing (Art. 14 of MAR), prohibition of market manipulation (Art. 15 of MAR), prevention and detection of market abuse (Art. 16 of MAR), public disclosure of inside information (Art. 17 of MAR), insider lists (Art. 18 of MAR), manager's transactions (Art. 19 of MAR), and investment recommendations and statistics (Art. 20 of MAR).

49 Art. 24 of MiFID II, as amended by the Directive Amending MiFID II, which introduced new paragraph 3-*bis*.

identification and prevention of conflicts of interest[50] (where this requirement is not met, the research will qualify as marketing communication)[51]; and (c) a mandate to ESMA to develop draft technical standards for the establishment of this code, which the European Commission is required to adopt by December 2025, *i.e.*, within 12 months of the entry into force of the Directive Amending MiFID II[52].

Introduced stricter requirements for the preparation of issuer-sponsored research and a new EU code of conduct

- *Notion of "SME Growth Market"*

The Directive Amending MiFID II expands the current definition of "SME Growth Market". In particular, it clarifies that not only an MTF itself, but also a segment of an MTF (e.g., the professional segment of Euronext Growth Milan) can qualify as an SME Market[53], provided that Member States establish a dedicated regulatory framework and that the segment is clearly separate and autonomous from the rest of the MTF[54].

- *Special conditions for the admission of shares to trading*

The Directive Amending MiFID II also addresses the admission of shares to trading on a regulated market, incorporating certain provisions previously contained in the Listing Directive, which has been repealed.

Specifically, Member States shall ensure that regulated markets require that: (a) the foreseeable market capitalization of a company whose shares are being considered for admission to trading (or, alternatively, the company's capital and reserves, including profit and loss, for the most recent financial year) be at least equal to €1 million[55]; and (b) the floating rate, *i.e.*, the percentage of capital held by the public, be at least equal to 10%[56].

Companies seeking listing: minimum capitalization of €1 million and minimum floating rate of 10%

D. The new directive on multiple-vote shares

The Multiple-Vote Shares Directive[57] aims to establish a harmonized European framework for multiple-vote shares of companies seeking to list on an MTF.

The existing differences among national regimes regarding dual class structures, which deviate from the "one share one vote" principle, create an uneven playing field for companies across Member States. These disparities can lead to opportunities for regulatory arbitrage and opportunistic decisions, such as domiciling in countries with more flexible regimes[58].

Therefore, the Listing Act aims to harmonize national legislation on multiple-vote share structures, while granting Member States sufficient flexibility in its implementation.

50 Art. 24 of MiFID II, as amended by the Directive Amending MiFID II, which introduced new paragraph 3-*ter*.

51 Art. 24 of MiFID II, as amended by the Directive Amending MiFID II, which introduced new paragraph 3-*sexies*.

52 Art. 24 of MiFID II, as amended by the Directive Amending MiFID II, which introduced new paragraph 3-*quater*.

53 Art. 4, paragraph 1, point 12, of MiFID II, as amended by the Directive Amending MiFID II.

54 Art. 33 of MiFID II, as amended by the Directive Amending MiFID II, which introduced new paragraph 3-*bis*.

55 Art. 51-*bis*, paragraph 1, of MiFID II, as introduced by the Directive Amending MiFID II.

56 Art. 51-*bis*, paragraph 4, of MiFID II, as introduced by the Directive Amending MiFID II.

57 Pursuant to Art. 8 of the Multiple-Vote Shares Directive, the directive will become effective in December 2024, *i.e.*, 20 days after its publication date in the Official Journal of the European Union.

58 For example, Sweden and Denmark have allowed multiple-vote shares almost since the inception of their capital markets. In contrast, other states have prohibited multiple-vote shares (in some states the ban is limited to listed companies, e.g., in Germany and Belgium, while in others it applies to all companies, e.g., Austria and Croatia). See the EU Commission's proposal for the Multiple-Vote Shares Directive, available here.

- *Scope*

The Multiple-Vote Shares Directive targets companies that are not yet listed on a regulated market or MTF and are seeking first time admission of their shares to trading on MTFs, including SME markets[59].

- *Definition*

The Multiple-Vote Shares Directive defines a "multiple-vote share" as a "*share belonging to a distinct and separate class of shares in which the shares carry more votes per share than in another class of shares with voting rights on matters to be decided at the general meeting of shareholders*"[6061].

- *Adoption of multiple-vote share structure at pre-IPO stage*

Member States shall ensure that companies whose shares are not yet admitted to trading on a regulated market or an MTF have the right to adopt a multiple-vote share structure for the admission to trading their shares on an MTF[62].

Moreover, the Multiple-Vote Shares Directive provides that the right to adopt a multiple-vote share structure should also be granted to companies prior to seeking admission to trading on an MTF[63].

However, Member States may make the exercise of the multiple voting rights attached to the multiple- vote shares conditional on the admission of the company's shares to trading on an MTF[64].

Potential adoption of multiple-vote share structure by SMEs to be listed on MTFs even prior to seeking admission to trading, with option for Member States to make effectiveness of such structures conditional upon the IPO

- *Safeguard measures for "ordinary" shareholders*

To ensure adequate protection of the interests of shareholders who do not hold multiple-vote shares, the Multiple-Vote Shares Directive requires that certain safeguard measures be introduced.

Specifically, Member States shall:

(a) ensure that the decision to adopt or modify a multiple-vote shares structure is taken by the general shareholders' meeting by at least a qualified majority as specified in national law[65]; and

(b) limit the impact of multiple-vote shares on the decision-making process at the general shareholders' meeting, by introducing, alternatively:

(i) a maximum *ratio* of the number of votes attached to shares with multiple voting rights and the number of votes attached to shares with the lowest voting rights; or

(ii) a requirement that decisions by the general shareholders' meeting subject to qualified majority of votes cast, as specified by national law, excluding decisions regarding the appointment and dismissal of members of the administrative,

59 Art. 1 of the Multiple-Vote Shares Directive.

60 Art. 2, number 2, of the Multiple-Vote Shares Directive.

61 A multiple-vote share structure differs from the increased voting rights structure of Art. 127-*quinquies* of Legislative Decree 58/1998 and, more generally, from similar loyalty share schemes provided for in other European legal systems in that it contemplates distinct and separate classes of shares, with one class carrying not just different but higher voting rights compares to another class.

62 Art. 3, paragraph 2, of the Multiple-Vote Shares Directive.

63 Art. 3, paragraph 2, of the Multiple-Vote Shares Directive.

64 Art. 3, paragraph 3, of the Multiple-Vote Shares Directive.

65 Art. 4, paragraph 1, letter a), of the Multiple-Vote Shares Directive. Italian legislation already requires a qualified majority for the approval of any statutory amendment.

management and supervisory bodies of the company, and not excluding operational decisions to be taken by such bodies which are submitted to the general shareholders' meeting for approval, are adopted by (x) a qualified majority both of the votes cast and either of the share capital represented at the general shareholders' meeting or of the number of shares represented at the general meeting, or (y) a qualified majority of the votes cast, and subject to a separate vote in each class of shares the rights of which are affected[66].

Member States retain the option to establish additional safeguards measures to ensure adequate protection for shareholders who do not hold multiple- vote shares[67]. In particular, reference is made to so-called "sunset clauses", *i.e.*, forfeiture clauses of multiple-voting rights[68].

Adoption or modification of multiple-vote shares requires a qualified majority decision at the general shareholders' meeting. Safeguard measures to protect minority shareholders (e.g. sunset clauses) to be put in place

- *Transparency*

Member States shall ensure that companies that have adopted multiple-vote shares and are listed (or seek to be listed) on an SME market or other MTF make a detailed set of information available to the public (by inclusion in the prospectus or admission documents and annual financial reports). In particular, this information should cover:

(a) the company's share structure, with the indication of the various classes of shares (including those not admitted to trading) and certain additional details for each class;

(b) any restrictions to the transfer of shares (including those arising from shareholder agreements);

(c) any restrictions on share voting rights (including those arising from shareholders' agreements); and

(d) the identity of shareholders with multiple-vote shares who hold more than 5% of the voting rights of all shares in the company (as well as the identity of persons authorized to exercise voting rights on behalf of such shareholders)[69].

- *Transposition*

Member States are required to adopt appropriate legislative measures to comply with Multiple-Vote Shares Directive by December 2026, *i.e.*, within two years of its entry into force[70].

Italian companies intending to access an SME Market are already entitled to adopt certain adjustments to the "one share one vote" principle under Art. 2351, paragraph 4, of the Italian Civil Code, which allows the creation of shares with multiple-voting rights. This option is precluded for companies listed on the regulated market under Art. 127-*sexies*, paragraph 1, of Legislative Decree No. 58 of 1998 ("TUF").

The Italian legislator has recently addressed the regulation of multiple-vote shares with the so-called "DDL Capitali"[71], introducing significant changes in this area. Specifically, the DDL Capitali amended: (i) Art. 2351 of the Italian Civil Code, allowing companies to provide in their bylaws for the issuance of multiple-vote shares up to a maximum of ten votes (instead of three votes under the prior rules) and (ii) Art. 127-*quinquies* of the TUF regarding majority voting rights, allowing companies to grant a majority

66 Art. 4, paragraph 1, letter b), of the Multiple-Vote Shares Directive.

67 Art. 4, paragraph 2, of the Multiple-Vote Shares Directive.

68 These are clauses that result in the forfeiture of the multiple voting rights attached to multiple-vote shares upon the occurrence of certain circumstances, e.g., the occurrence of a specific event, the transfer of the shares or after a specified period of time following the issue or purchase of the shares.

69 Art. 5, paragraph 1, 2 and 3, of the Multiple-Vote Shares Directive.

70 Art.7 of the Multiple-Vote Shares Directive.

71 L. No. 21 of March 5, 2024. For a more detailed analysis of the changes introduced by this law, please refer to our previous Alert Memorandum, available here.

vote (up to a maximum of two votes) for each share held by the same shareholder for a continuous period of not less than twenty-four months, with the possibility of granting an additional vote after each subsequent twelve-month period (up to a total maximum of ten votes per share).

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Annex 1

<table>
<tr><th colspan="4">Entry into force/application</th></tr>
<tr><th colspan="3">Amendment</th><th>Deadline</th><th>Estimated date</th></tr>
<tr><td colspan="3">I. Listing Act Regulation</td><td>20 days after its publication in the OJEU</td><td>December 2024</td></tr>
<tr><td rowspan="3">Prospectus Regulation</td><td rowspan="5">Provision</td><td>Dual threshold exemption system</td><td>18 months after entry into force of the Listing Act Regulation</td><td>June 2026</td></tr>
<tr><td>EU Follow-on Prospectus</td><td>15 months after entry into force of the Listing Act Regulation</td><td>March 2026</td></tr>
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<tr><td rowspan="3">MAR</td><td>Mandatory disclosure of intermediate steps</td><td>18 months after entry into force of the Listing Act Regulation</td><td>June 2026</td></tr>
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<tr><td colspan="3">II. Directive Amending MiFID II</td><td>20 days after its publication in the OJEU
*To be transposed within 18 months of its entry into force</td><td>December 2024
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<tr><td>MIFID II</td><td>Provision</td><td>New EU code of conduct on investment research</td><td>12 months after entry into force of the Directive Amending MiFID II</td><td>December 2025</td></tr>
<tr><td colspan="3">III. Multiple-Vote Shares Directive</td><td>20 days after its publication in the OJEU
*To be transposed within 2 years of its entry into force</td><td>December 2024
*December 2026</td></tr>
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