



**Response: EU consultation on Listing Act
28th March 2023**

Background

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearing houses. We represent the operators of over 250 market infrastructures, spread across the Asia-Pacific region (25%), EMEA (58%) and the Americas (17%), with everything from local entities in emerging markets to international groups based in major financial centres. In total, member exchanges trade around \$100 trillion (equivalent) in securities a year and are home to over 55,000 companies, with an aggregate market capitalisation of around \$140 trillion. In addition, the 90 distinct central counterparty (CCP) clearing services (both vertically integrated and stand-alone) collectively ensure that traders put up \$1.3 trillion of resources to back their risk positions.

With extensive experience of developing and enforcing high standards of conduct, WFE members support an orderly, secure, fair and transparent environment for all sorts of companies and market participants wishing to raise capital, invest, trade, and manage financial risk.

Established in 1961, the WFE seeks outcomes that maximise financial stability, consumer confidence and economic growth. We also engage with policy makers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in an internationally integrated financial system.

If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal. Please contact:

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Response

The WFE¹ welcomes the chance to comment on the European Commission's proposed package of changes touching on listing.

The Listing Directive of 2001 was the first step in harmonising EU rules concerning listing and admission to a stock exchange. The Directive was the legislation underpinning the 'official listing' regime in European markets, consolidating the measures concerning the conditions for the admission of securities to official stock exchange listing and the ongoing financial information that listed companies must make available to investors. Over the years, many of its provisions were transferred to newer Directives and Regulations. The use and functioning of the official listing regime has, due to minimum harmonisation, brought a variety of outcomes in terms of Member State jurisdictions and how the regime is transposed into national law. We invite EU policymakers to carefully balance the pros and cons of repealing the Listing Directive as explained below.

While some members believe that the Listing Directive contains a helpful element of flexibility, others consider that, in its current state, together with the other pieces of legislation mentioned above, it no longer achieves a sufficient level of harmonisation and may bring legal confusion with the admission to trading under MiFID II. Member States transposed the 'official listing' regime with distinct, unharmonised provisions and, today, most countries no longer rely on it for admitting issuers on capital markets. Since the focus of EU legislation shifted to admission to trading several years ago, rather than listing per se, the repeal of the 'official listing' regime might seem a natural approach to further harmonise and integrate European capital markets.

As indicated above, some members wish to draw the Commission's attention to the negative effects of changing the legislation in the way proposed. They believe that exchanges and issuers should continue to have the ability – currently provided under the Listing Directive – to list a bond without necessarily admitting that same security to trading. To be clear, they would only propose this in relation to bonds –not equity.

The concept of official listing is of particular value in the case of bonds, where trading activity may be minimal and episodic but where there is still value to both investors and issuers in providing initial and ongoing transparency regarding the issuer, at the point of listing and thereafter. The Impact Assessment accompanying the proposal does not take sufficient account of the distinction between equity and non-equity, which is crucial to understanding the relevance of and need for the listing-only dimension.

The transparency associated with listing is valuable to issuers because it allows them to build a profile, which makes it easier for them to subsequently move more fully onto public markets, whether via an IPO or simply just admission to trading of other securities that the issuer may subsequently bring to market.

Equally, the transparency is valuable to investors, who can build up a picture of the issuer and, in the meantime, use alternatives to the exchange to place any orders.

Listing on an official list may also render bonds eligible for inclusion in some fund portfolios, depending on their mandate. Thus professional investors can access a wider range of securities, while issuers can target a broader investor base than otherwise. In the context of the need for market-based finance to balance out over-reliance on banking channels, this is a good thing.

¹ Transparency Register number 973382524675-69

In some cases, there may be restrictions on issuers – eg, relating to currency of payment or to transfers in the case of debt restructuring – which mean they cannot release securities for trading purposes. Shutting off official listing to such companies appears counterproductive.

A range of venue types exist to serve bond markets including RFQ mechanisms that suit those securities that do not naturally trade continuously. Given that primary and secondary market activity in bonds does in practice often take place on such non-exchange venues, it is important to allow exchanges some role in relation to bonds, in order not to be at a total competitive disadvantage. (By the same token, regulation can and should ensure that the optimal level of transactional transparency applies to trading on non-exchange venues.)

At the same time, bonds can be particularly useful in relation to areas of ‘transformational’ finance such as ESG securities. In that sense, official listing furthers the sustainable finance agenda, because the value of maximum flexibility around listing vs trading could be crucial. Scrapping the distinction would be to the detriment of consolidated, centralised, freely accessible information on disclosures that are not otherwise legally mandatory but are increasingly important for investor decisions, throughout the life cycle of a security. The use of the official list therefore helps position the EU in the fight against climate change and in the achievement of the United Nations Sustainable Development Goals.

The official listing concept also promotes innovation and fintech initiatives. Official listing is today a way to centralise documentation for security tokens – a process that brings trust into a market where some securities cannot yet be admitted to trading from a legal or regulatory perspective, and in relation to which investors may otherwise struggle to access information. Even after the entry into force of the EU Pilot Regime and the Markets in Crypto-Assets (MiCA) Regulation, the official list will remain a credible way to bring visibility into the security token market.

As mentioned above, the concept of an official list is fundamentally linked to the nature of the fixed-income ecosystem. The European Commission’s proposal and Impact Assessment is in reality focused on equity, lacking deep analysis of the relevance and importance of the official list for debt capital markets.

Based on this experience and arguments, some members therefore encourage the Commission to reconsider this proposal, bearing in mind that the Capital Markets Union requires a well calibrated non-equity ecosystem and not just a strong equity market.

Their preferred course of action is to include a distinction in MiFID II between listing on an official list and admission to trading on a trading venue.

In that case, they would suggest defining listing as “being included on an official list, notwithstanding any admission to trading”. Finally, the amended MiFID II should allow market operators to define the conditions for admission of securities to such an official list. For this purpose, they suggest adding a new Article 51b, entitled “An official list without admission to trading”. This would state the following:

“1. Market operators operating a regulated markets or multilateral trading facility, or the competent authority appointed by a Member State for this purpose, may keep an official listing and may decide on the admission, suspension, and removal of financial instruments from the official listing.”