Nasdaq reply to Commission Consultation on CMU mid-term review

Keep the momentum
Nasdaq fully supports the Capital Markets Union project. The case for developing capital markets as a means for companies to finance growth is as relevant as ever. Growth and jobs are needed to keep rebuilding what was lost during the financial and economic crisis. And currently we are seeing a wave of innovation in the technology space, not least fintech, where startups are growing and in need of capital. For Europe to stay competitive and to enable these success stories to remain in Europe, capital markets need to have a bigger role to play.

Nasdaq acknowledges the measures already taken and underway within the Capital Markets Union project, including the attention given to corporate bond markets liquidity and the issue of debt vs. equity tax bias. To fully realise the potential in this project, many measures of various types remain. Below we highlight some measures and approaches that should be taken, immediately or in the longer term, directly or indirectly.

Turn savers into investors
For the Capital Markets Union to help provide better access to finance to companies and thereby create growth and jobs, savers need to be turned into investors. Opportunities need to be embraced and barriers need to be overcome. Efforts should be focused on both cross-border investors and those active within a more local ecosystem. In some countries, such as Sweden, the equity culture has kept developing in a positive direction over a number of years and the retail investor involvement in the stock exchange and the growth market First North is significant. In other regions however, such as the Baltic countries, the current starting point is very different and the development of an investment culture locally is essential. Investor protection is important and should ensure that the investor can easily access and understand the risks associated with a certain investment. What needs to be avoided is to totally discourage risk-taking, as any investment and opportunity is always associated with some level of risk.

Corporate bond investments for a broader investor community
The recent review of the EU Prospectus legislation missed the opportunity to broaden investment opportunities in bonds to a wider investor community. The revised Prospectus Regulation still incentivizes issuers to offer corporate bond instruments to wholesale markets with only professional investors. The reason is that prospectus requirements for such situations are lighter than for retail investors, and thus more attractive for the bond issuers.

A regime where any prospectus for bonds is less complicated to produce as well as to digest, would have supported the development of more useful corporate bond markets, as it could have attracted offers realistically available and interesting also to retail investors. The Commission’s original proposal to lower the 100.000 Euro threshold for the lighter prospectus regime should be revisited.
The Commission’s ongoing work on corporate bond market liquidity seems a relevant context for doing so.

It is also important to maintain benefits for bond issuers where such benefits are already in place, and which foster the development of corporate bond markets. For instance in Latvia, where for corporate tax purposes, costs associated with bond issue are recognized in the same manner as costs associated with bank loan, which allows to decrease the taxable income. This regime has led to a significant increase of corporate bond market activity in Latvia over the past five years.

To further encourage a broader investment community, the pre- and post-trade transparency of the corporate bond markets need to be improved. The review of MiFID did not provide significant improvement in this regard. Further measures can be taken.

**Fintech**

The ongoing development and innovation as regards technology opens up new opportunities for investors to access investment prospects. Policymakers should embrace these opportunities and ensure regulatory intervention first of all does not stall innovation, and secondly closely analyze if there are any current regulatory barriers standing in the way for innovation.

Examples of relevant technology is:

- Mobile apps can connect investors to the markets much more easily and cheaper than before. Investing in a company can be done from one’s mobile phone or tabled, rather than by an in-person visit to one’s bank.
- Distributed Ledger Technology (DLT) opens up opportunities for easier shareholder engagement. For instance, Nasdaq is enabling DLT based e-voting in Estonia. This enables shareholders to vote in Shareholder Meetings without being present in-person and without providing a proxy. Further innovation in post-trade structures may be expected, driving down costs.
- Automated translation breaks down language barriers for cross-border investments.
- Standardisation of information, data and formats will facilitate automation, translation and comparability. This should improve accessibility to data and information for investors.
- E-brokerage is relatively well developed in the Nordic financial ecosystem and have led to individual investors being able to be active on capital markets in a simpler way. It has also had positive effects on equity culture in general (see also below.)

**Growth Prospectus**

The new ‘Growth Prospectus’ to be introduced by the Prospectus Regulation, needs to become as useful as intended. Only if the Growth Prospectus is useful for both investors and issuers will it be used. Otherwise the efforts will be worth nothing. We urge rulemakers to realise the intention to make this document appropriate.

In Nasdaq’s First North markets, the companies which do not need to produce prospectuses, instead issue a ‘Company Description’. This document is significantly shorter and to-the-point than the regular prospectuses. The Company Descriptions have proved very successful. The fact that they are vetted by the market operator (surveillance department) is key. Allowing a process which includes a clear and efficient dialogue with the market operator keeps costs down for the issuer. Nasdaq suggests that the Growth Prospectus could be allowed to be vetted by the market operator. Otherwise there is a significant risk that this new document will not serve any purpose at all, and it will be a missed opportunity.
Equity culture
Many seem to agree that an important factor for the success of the Nordic markets, especially the Swedish, is a strong equity culture. The portion of retail participation is high, not least on First North. There are many roads leading to an improved equity culture. A few examples can be mentioned:

- The Swedish pension system allows the individual to allocate a certain portion of the pension money at his or her own choice. This has led to an increased awareness of investments and of equity.
- Financial education in schools.
- The Swedish model of an Investment Savings Account (ISK) has proven very successful and in the first few years 2 million accounts were opened. The ISK allows the account holder to buy and sell shares actively without being taxed by every transaction. Instead a holding tax is calculated and collected. This provides a much less complex regime for the account holder and encourages investor activity. This model is now explored in for instance Denmark. A similar example is the Estonian investment account model, when investments are tax eligible only when the profit is withdrawn from the investment account.
- Tax incentives for investments in SMEs are in place in many jurisdictions and could be further explored by sharing of best practices.

Facilitate cross-border investments
There still remain barriers which make investors hesitate to invest cross-border. Insolvency regimes, securities laws, post-trading environment are a few examples. When these areas are better harmonized across the EU and provide better foreseeability and certainty for investors, only then can we expect cross-border investments to increase beyond the level we see today.

A special area is language regimes. Credibility in the aim of facilitating cross-border investments requires allowing companies to communicate in the language they deem most efficient to reach the investors they wish to target. Today, public offers are accessible for anyone to read on internet and cross-border transactions are possible. The sometimes strict national language regimes motivated by investor protection however function as a barrier in the form of translation costs for the issuers.

In the Nordic markets, 70% of the flow is from abroad, which has contributed to the success of these markets.

Policy consistency
While the CMU Action Plan has clear goals to improve access to finance for especially SMEs and to develop the capital markets as a means of non-bank finance, there are still conflicting policy measures in place or being discussed. Such inconsistencies should be removed. A few examples below:

Financial Transaction Tax
As a financial transaction tax can be described as a tax on liquidity, it will have significant negative effects on the efficiency of capital markets. The currently discussed proposal for a Financial Transaction Tax among certain EU Member States should be withdrawn. Other similar taxes already in place across the EU should also be reconsidered.

Capital requirements
Stability of financial institutions is fundamental for the functioning of and trust in financial markets. However, when such capital requirements disincentivise financial institutions to invest in equity, it
will be difficult to unlock the needed capital for equity investments. Frameworks such as CRD and Insolvency should be revised with this in mind.

Pension frameworks
The requirements and rules for how pension funds invest could be better targeted at EU companies. In some countries, only a minimal portion of the funds are invested in the home country. In some cases even a small increase in the percentage invested in home equity markets could release an amount of capital which would be immensely significant for growth companies locally.

Liquid and transparent derivatives markets
The implementation of G20 commitments on OTC derivatives needs to continue. Businesses use derivatives to hedge their risks. The more efficient, liquid and transparent derivatives markets, the more efficient risk reduction. The clearing obligation as stipulated under EMIR should be implemented swiftly in order to provide the opportunities of risk reduction through hedging by the use of derivatives to the broader European business community.

Efficient price formation
The implementation of MiFIDII/MiFIR needs to defend an efficient price formation process. The transparency and liquidity in the price formation process is key. There is however currently a lack of clarity around what type of activity is allowed on a Systematic Internaliser, risking blurring the line between bilateral and multilateral trading. If an SI would operate on a riskless principal basis, this would essentially replicate the functioning of a multilateral venue, but with a fraction of the transparency requirements. This will not support the further development of capital markets as an alternative source of finance for European companies.

Long-term investments
Also, the capital markets as a place for long term investments need to be continuously defended. Again, the recent years’ financial market legislation, especially MiFID, leads to more fragmented markets. This has made high-frequency trading more attractive, sometimes creating a sense of short-termism in the markets. But capital markets need to be the place where companies can access long-term capital and companies as well as investors need to have a trust in this. Financial regulation needs to consistently support this and refrain from step by step favoring short-term market participants.

Further, we wish to again underline the role tax policy can play in this regard. We encourage the Commission’s work to help sharing best practices on various examples of tax incentives supporting long-term investments.

Appropriate target and scope for policy measures outside capital markets policy
Companies choosing public markets as the route to accessing finance need to accept certain regulatory requirements associated with this route. Financial markets need efficiency and stability to function, which is why a proper regulatory framework is absolutely necessary. This concerns for instance rules ensuring surveillance, information symmetry, equal access to markets, legal certainty and transparency.

Other rules, i.e. rules which are not per se intended to support the well-functioning of capital markets, should not target listed companies specifically. Such rules, which may indeed serve very important policy purposes, such as social and environmental purposes, should apply equally to companies seeking finance through public markets, bank loans or otherwise. If not, the effect is that companies are discouraged from entering the public capital markets. This effect runs contrary to the Capital Markets Union Action Plan, which aims at developing capital markets and equity financing.
Examples of areas where the listed companies should not be singled out are sustainability reporting and gender balance in boards.

**Keeping an SME market focus**

**Financial ecosystem**

Much of the recent years’ new and changed legislation for financial markets have improved the efficiency of trading of financial instruments. The efficiency has mainly benefitted the blue chip markets. Trading of large shares have become even more attractive, thus even further widening the gap to smaller shares. The business case for various participants in the capital markets ecosystem has disappeared. In some markets the local ecosystem has virtually disappeared.

As a general approach, policymakers should keep in mind that also smaller intermediaries, analysts, banks, accountancy firms, etc. need to be able to maintain their business in a reasonable business environment. If the regulatory costs become too high, the smaller actors will close down. SMEs will keep struggling to find advisors and partners to support them through the funding escalator.

One example are the rules of MiFID II aimed at unbundling investment research and trading fees. If brokers are not allowed to use trading fees to finance their equity research. There is no longer a business case for doing proper equity research, which leads to a deterioration of the ecosystem.

To somehow counter the poor analyst coverage of especially SMEs, Nasdaq has created ‘Company Information Sheets’ for all its listed companies, of all sizes, with the same basic key data for all. This does not include an analysis, but provides easily accessible and comparable key information and data for investors. Hopefully it can also be a basis for analysts to do further work.

One specific part of the ecosystem is market data, being produced by trading venues and further resold by data vendors. It is important that market venues continue to have incentives to produce high quality market data. It is not sustainable in the long run to force trading venues to provide market data free of charge. The technology investment needed to provide high quality market data needs to be financed.

**SME Growth Market**

The MiFID SME Growth Markets are legislatively recognized, but in order for them to reach a fuller potential as a place for growth companies to access capital, more needs to, and can, be done, on EU level as well as nationally in Member States. To the extent the measures would be more relevant for Member State level, we still believe the Commission can play a role in helping sharing best practices.

On EU level, as already mentioned above, the Growth Prospectus is one opportunity not to miss.

Other relevant measures could be tax incentives for investments in companies listed on SME Growth Markets. Also, funds could be incentivized or required to place a certain share of their investments on the SME Growth Market. This share could vary depending on the type of fund, such as UCITS, pension funds, and one could even explore new types of funds or investment vehicles.

In order for the SME Growth Market to be attractive to SMEs, it is crucial that the regulatory burden for companies listing on it, is lighter than on the regulated market. Otherwise the SME Growth Market will not add anything. A few examples of areas where there needs to be room for flexibility and adaptation to local conditions are:

- Reporting standards – Local GAAP should always be sufficient. IFRS should not be required outside the regulated markets. Any alternatives, such as IFRS for SMEs, may be useful but should always be optional.
- Corporate Governance – The governance needs for each company may vary depending on the size, type of business, type of ownership structure, growth stage, etc. This is especially true for companies in earlier stages of growth.

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