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Ministerstwo Finansów
Wydział Rynku Kapitałowego
Departament Rozwoju Rynku Kapitałowego
ul. Świętokrzyska 12
00-916 Warszawa

dot. Kwestionariusz Next CMU High Level Group

Szanowni Państwo,

W nawiązaniu do odbytego spotkania oraz zgodnie z jego ustaleniami, w załączeniu przedstawiamy stanowisko CFA Society Poland co do zagadnień wskazanych w kwestionariuszu Next CMU High Level Group (Next CMU High Level Group- Questionnaire for upcoming meetings).

Z wyrazami szacunku,
Zespół CFA Society Poland

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CFA Society Poland presents the following statement in response to the Next CMU High Level Group questions:

1. **Question No 1:**

"Which are currently the most competitive global financial centers/ markets in the world? What would be the crucial elements for their success?"

Response:

There is a few most competitive global markets in the world – two are briefly described below as an example:

First is the Asian region, which leading center is Hong Kong. With its convenient location, it is being perceived as the gate to mainland China. Investing on HK stock provides the investors with exposure to both high tech and industrial companies on the Chinese developing market. Moreover, HK is known for lack of bureaucratic burden that comes along with simple tax law. This makes HK a pivotal market and financial center for companies that wish to grow its business in this part of the world.

The second region that is considered to be competitive is New York. Operating in a matured economy NY capital market is thriving due to the USA capital oriented type of organization. Equity financing is preferable over bank loans leading to the vast majority of companies, from startups to firms with stable position to choose capital markets as the source of financing. The underwriting is usually done through IPOs, with both private and professional active participants. The supply of investment opportunities comes along with demand for it.- Equity-based investments are considered a cornerstone for private or professional portfolios. Due to high interests, liquidity is maintained, which further cements the key position of the capital market as a place of redistribution of money and creating a high diversity of investment, spanning from low to high-risk/return opportunities.

2. **Question No 2:**

"Do you believe an EU 27 CMU will be able to compete on an equal footing with such global financial centers/ markets?
Has an EU 27 CMU sufficient access to global capital markets on its own, both on the sell side and on the buy side? Can you identify any significant strengths and/ or weaknesses? Please specify."

Response:

EU 27 Capital Market Union has every attribute to become one of the most competitive markets. It has a suitable position within EU that has trade agreements with most of the world

and has a solid industrial and post-industrial markets, impressive education system, and huge geographic importance."

There are however key points that need to be addressed.

Compared to markets mentioned in No.1 EU capital markets are much more heavily regulated and bear much bigger bureaucratic and administrative burden, than markets mentioned in No 2. This is especially true regarding small and middle-sized companies. In EU environment the proportionality is more often a slogan than the fact. Small companies listed in many markets or investment companies operating in those markets have much simpler environment than those operating within the EU.

On top of that many member statest practice 'goldplating' which is implementing a stricter rules and more restrictive rules than required by EU legislation or stricter interpretation of these rules.

Moresoever the general legislative path of the EU leads on to even more complicated and more restrictive legal regulations and even more restrictive environment. It will definitely impede the competition with leading world markets. The paradox is that as the main reason given behind EU regulations to become more restiirictive is often the recent financial practice and the need to protect investors from the crisis happening again. The main part of the finanacial crisis has started in the US and had the biggest impact on US economy and US investors. The US regulation is however far less restrictive and new regulations are being implemented a lot slower then in the EU.

Britain after leaving the EU will not continue to implement new EU regulations. It may even review its regulations and decide to ease on some of them. This would lead to increasing the competitiveness and capital outflow from EU countries to Britain.

The capital market needs to be promoted as the main source of obtaining/ investing capital. This needs to be done by significant cuts in the bureaucratic burden across the EU. That would enable both sell and buy side to easily participate in the investment process, regardless of their size or origin (within EU).

In order to promote equal opportunities, the tax law needs to be in the first stage simplify and finally, align across the EU. Last but not least the refurbishing of existing infrastructure is needed so that the access to the capital market is not determined by the region participant is based in.

The EU 27 CMU initiative aims to address the concerns above. It needs to be stated however that due to high defragmentation of the market and history of the different interpretation of the EU law when implementing on the local market might threaten the much-needed integration. The difficulty of integration of EU market manifests itself in the pace of the legislative process. One might forecast that the more real CMU will be the more odds might surface – both driven by inner but also outer forces.

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3. **Question No 3:**

„Do you believe an EU 27 CMU develops the appropriate diversity of: financial products (cash, derivatives, investment vehicles ...)? Markets segments (regulated, OTC)? Market infrastructures (Trading, Post- trading)? Financial intermediaries? Service providers? What priorities would you set to achieve such diversity?"

Response:

Current and projected legal regulations of the EU generaly lead to investors having less diversity of financial products available. While implementing more and more restrictive regualtions retail clients are restricted from being sold financial products and the financial product distributors are encouraged to close their product architecture (like under MIFID II).

4. **Question No 5:**

"Have you identified obstacles to financial markets consolidation in the EU 27? What would be the benefits? What steps could be taken to encourage more connections and cross border activity? Would this preserve/ create a dense and varied EU wide Ecosystem?"

Response:

Market consolidation cannot happen without harmonization of laws and rules within the EU countries - predominantly in Tax Law, Accounting Rules and Regulatory Environment. The biggest challenge is the insufficient political willingness to truly adopt an integrated capital market. The 27 EU CMU project needs to confront not only the differences across EU countries, infrastructural deficiencies and educational shortfalls but also growing protectionism movements within the EU.

The secondary obstacles that are to be mentioned is the limited technical possibility to exchange wealth within the EU. This relates not only to the primary concern around investing capital across the EU markets but also on the need for dual listing if access to multiple EU markets is needed. Moreover, there is a need to increase capital market role in funding new companies/projects and moving away from bank oriented organization. This would require, apart from the aforementioned changes, promotional/educational initiatives.

The benefit of harmonizing EU law and regulation is the creation of consolidated capital market with diversified products and investment opportunities. Gathering a vast range of different risk/return asset classes spanning from both startups to blue chips, production firms to IT companies from developed and developing economies under one trustworthy jurisdiction would not only increase collaboration between EU states. It would also promote

the capital market as the source of exchange of wealth and enable it to act as a catalyst for economic progress. It might also help achieve critical mass thus attract investors from around the world and becoming the safe port for the investors.

We have identified the following specific legal obstacles which removal would benefit with a deeper financial markets consolidation:
Namely, please notice that:

1. The licensing process of new investment companies and mutual fund companies (authorisation on provision of investment services and/or the performance of investment activities by an investment firm) is now granted by the home Member State competent authority. In our opinion, the abovementioned authorisation should be granted by the ESMA instead of the home Member States competent authorities.

The benefits resulting from this proposal implementation would be as follow:

1) it would shorten the time of granting authorisations (the investment firm should be informed about granting or refusal to being granted the authorisation within six (6) months from the submission of the complete application, in Poland, for instance, the proceedings may last up to five (5) years), sometimes even 10 years (one brokerage house application);
2) it would ensure consistent and equal principles, conditions and requirements of access to the capital market by exclusion of any factors which might cause any inequality, in particular, resulting from:

a) any inconsistences of the content and application of the EU law caused by its implementation to a local law systems, adoption of any executive acts based on the EU law as well as acting by the local competent authorities based on the local administrative procedural codes while applying the EU or the EU's based law;
b) any local interpretations of laws or any local practises of applying laws,
c) any discretionary powers of the local competent authorities,

3) it would uniform the level of fees,
4) it would uniform the principles, conditions and the practices for the authorisations withdrawal,

- and last but not least- it would allow to implement the principle expressed in MIFID II that the authorisation is valid for the entire Union.

2. The scope of the authorisation on provision of investment services and/or the performance of investment activities by an investment firm is limited solely to those kind of the investment services and activities and ancillary services which are specified in its content. In order to extend the scope of the granted authorisation to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation, an investment firm is obliged to submit a request for extension of its authorisation. The request is, in fact, a motion for initiating a procedure for granting

an authorisation. In consequence being granted the extension requires getting through the procedure of the initial authorisation granting again, which is a time-consuming process. There is a necessity to simplify the requirements and the procedure of granting the extensions of initial authorisations.

3. The general principle is that the authorisation is valid for the entire Union and allows an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the Union but it still does not authorise to operate directly on the territory of the other Member State than the home Member State. The investment firm, in order to provide the services or perform the activities on the territory of the other Member State than its home Member State one (host Member State), has to fulfil further legal and procedural requirements. Namely, separately and independently towards the each host Member State in which it would intend to operate, it has to, prior, submit notification to its Member State competent authority informing about its intent of operating abroad. The notification includes, in particular, the following information: (i) a programme of operations setting out, inter alia, the investment services and/or activities as well as the ancillary services to be offered, (ii) the organisational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents, (iii) the address in the host Member State from which documents may be obtained, (iv) the names of those responsible for the management of the branch or of the tied agent. The home Member State competent authority makes assessment of the notification within three (3) months from its submission. If there are no reasons to refuse the notification, the home Member State competent authority transfers it to the host Member State. The same path has to be repeated in case of extension of the scope of the investment services.
4. Practically, Member States sometimes prolong the non-obstacle clearance for much longer than 3 months.

   Nevertheless, the above description does not cover the whole range of obligations which have to be fulfilled in order to start operational activity in each host Member State. Namely, the investment firm has to establish and maintain a branch or appoint a tied agent. This requirement limits a freedom to provide investment services and/ or perform investment activities significantly. According to the Polish law, for instance, a branch can start its operational activity after being entered to the register of entrepreneurs run by the competent court of its National Court Register Division. It has to have a local seat and address, accountancy, lawyers (it operates based on local laws in many areas of its activity), its director and local employees. It has to fulfil mostly the same legal requirements and obligations as the local companies do. The necessity to meet all the requirements makes the establishment of a branch and its maintenance costly and time- consuming. Additionally, it might create at least operational and documentary risks for the mother company in relation to running a part of its activity in a form of a foreign branch.

Moreover, a branch is subjected to the supervision of the both- home Member State competent authority and host Member State authority.
We would like to emphasize that there is a risk that a branch may apply provisions of two different law systems- the laws binding in its location and the home Member State laws or it may apply the home Member State law despite the fact of operating abroad. There are many examples proving such risk but to mention one of the recent one- mandatory schemes reporting. The branch upon the general rule will have to report a tax scheme in his home Member State even if it would be implemented in the host Member State. It creates dualism of binding laws in the territory of host Member States towards the branches of the foreign investment firms and the local companies (including investment firms).

Considering the above statements we believe that resignation to operate in a form of a branch or tied agent can significantly support the capital markets unification.

5. In general, the investment firms have the right of membership or have access to regulated markets established in the territory of the others Member States by means of any of the following arrangements: (i) directly, by setting up branches in the host Member States, (ii) by becoming a remote member, (iii) by having remote access. Similarly, the access to the CCP, clearing and settlement systems in ensured in the territory of the others Member States. Nevertheless, the access to the regulated market by becoming a remote member or by having remote access is possible on condition that the appropriate arrangements have been provided by a specified regulated market on the territory of the Members States in which remote members or entities having remote access are placed. Prior to the provision of such arrangements, the regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate that information to the Member State in which the regulated market intends to provide such arrangements within 1 month. The scheme has to be repeated toward the each Member State, so 26 (twenty six) times at least in order to ensure access for each Member States.
6. The general principle is that a transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets. That principle should be amended in order to express much more general rule: „The financial instrument that has been admitted to trading on a regulated market is admitted to trading on other regulated markets.” The suggested amendment would increase the access to financing significantly.
7. The new forms of getting financing should be launched, e.g. a crowfunding.
8. There is a need of the MTF and OTF development and incresing their role and importance in getting financing by the small and midle sized companies. The access to the MTF and the OTF should become more common and less regulated for the

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investment firms from the others Member States that the one which territory the abovementioned platformed are seated.

5. **Question No 9:**

"Do you believe EU and national supervisors promote a more integrated CMU? In your area, how is supervisory efficiency best achieved (national, convergent, integrated)? Have you identified specific obstacles to more EU wide supervision?"

Response:

EU partially promotes a more integrated CMU. Most national supervisors do not promote a more integrated CMU. Some of them implement their own rule on top of EU rules or interpret them differently (goldplating). Other create preferencial environment for their markets to increase its competitiveness.

EU and EU authorities will naturally promote an integrated CMU and local supervisors will naturally concentrate on acting locally. To have a more integrated CMU the role of a central (EU) supervisor and regulator has to be increased.

6. **Question No 14:**

"How can and should progress towards an efficient and competitive EU 27 CMU be measured? Would this help review measures already agreed?"

Response:

We see that only an ungoing process of benchmarking measuring various PRACTICAL aspects of operations of different local EU member countries against each other may provide an efficient measurement on how the markets integrate and to benchmark them against each other. Only an ungoing process of benchmarking measuring various PRACTICAL aspects of operations of local EU member countries against non-EU markets may provide an efficient measurement of competitiveness of EU markets and EU legal environment against leading capital markets in the world.

Yours sincerley,
CFA Society Poland