EUMEDION
CORPORATE GOVERNANCE FORUM

Submitted by e-mail: consult@bourseentreprise.eu

To the chairman and members of
NYSE Euronext's Strategic Planning Committee for SMEs

Amsterdam, 17 September 2012

Ref: B2012.54

Subject: Eumedion response to NYSE Euronext's Strategic Planning proposal "Creating the Entrepreneurial Exchange"

Dear Sirs,

Eumedion welcomes the opportunity to submit comments on the Strategic Planning proposal "Creating the Entrepreneurial Exchange". Eumedion is the dedicated representative of the interests of 70 institutional investors – all with a long term investor horizon – and aims to promote good corporate governance and sustainability in the companies our participants invest in. Together they have more than € 1 trillion assets under management. Through the investments in equity and non-equity, long term institutional investors are a major source of the capital that is used by listed companies to grow, create wealth and provide employment, which is vital to the long term interests of the European economy.

The proposal raised a number of concerns which we would like to express.

1. No mix of regulated and unregulated market

The proposal suggests to combine the regulated B and C segments of the Euronext markets with unregulated ('Alternext') companies in a new exchange. We believe investors benefit from a very clear distinction between regulated and unregulated companies. Trading both of them on a single exchange does not contribute to such very clear distinction, and may even damage the interests of companies, and their investors, in the regulated B and C segments. In principle, we do not oppose a single exchange for the currently regulated B and C segments.

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2. Smaller company size does not reduce disclosure needs for users

Investors are aware that disclosure requirements come at a cost for listed entities. Ultimately, it is the investor that bears the costs of these requirements as they reduce operating profits, cash flows, and the ability to pay interest and dividends to the investor. Please note that Eumedion actively seeks to increase relevance of (financial) reporting, also by reducing certain disclosures for all companies, independent of size.

Whether a company is large or small, investors will need proper disclosure for their investment decisions and for engaged share-ownership. The examples where weak governance structures result in financial havoc for investors, and even for society as a whole, are abundant.

3. Reduced disclosure requirements for SMEs

The consultation document hints for reduced disclosure requirements on several occasions[1]. We do not believe that the relatively large proportion of small caps that are not successful is due to the costs of disclosure requirements. One could even argue that rather unsuccessful small caps and their investors would benefit more from improved transparency, checks and balances, corporate governance, etc. than from reduced disclosure costs.

Additionally, we believe there is no need for a suggested special 'comply or explain' code of governance for SMEs, as suggested on page 31 of the Strategic Planning Proposal. The existing 'comply or explain' codes by their very nature, already offer the ability for all companies to deviate from the code's best practice provisions. Explanations why companies deviate are relevant for investors in companies of any size.

4. Limited room for ever smaller companies on capital markets

NYSE Euronext should not focus on providing access to capital markets for ever smaller companies. There will always be companies that lack the size to overcome the costs of the above required disclosures. Current limited access to capital from the traditional SME capital providers (banks, private equity), is no justification for allowing inferior checks and balances.

Apart from costs for the company, it is just not feasible for most institutional investors to analyse a company with a market cap less than € 100 mln: it will often prove impossible to acquire a reasonable stake without unreasonable changes in the price. There are also time constraints, since experience learns that the time an investor needs to analyse a company is largely unrelated to its market cap.

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[1] Examples are included in Appendix 1: Excerpts from consultation document.

5. 'Pre-access market'

We believe any unregulated 'pre-access market' should explicitly exclude the issuance of capital of any kind. Apart from disclosure concerns, we are concerned investor interests could be severely damaged, if a pre-access market entity that is allowed to raise capital would not migrate to the regulated market and is forced off the market by the exchange after the trial period of 3+1 years.

6. Unregulated markets

Instead of emphasizing a low barrier to entry for companies, we would advise NYSE Euronext to maintain a low barrier to entry for investors in SMEs by safeguarding investor interests by raising the requirements for the unregulated entities. For example, the exchange could require those companies to:

- report according to IFRS,
- adhere to the 'comply or explain' corporate governance code,
- notify significant changes in ownership,
- notify transactions in company securities by management.

Especially since none of the above mentioned currently is required by the current Alternext.

7. Convertible bonds

'Made-to-measure products, such as bonds that both raise funds and create a roadmap for opening capital' (page 4): insofar this implies the issuance of a traded bond that may convert into equity, we believe that this should only be allowed for entities that already are on a regulated market. Otherwise, we are concerned this could result in tradable equity without a proper prospectus.

If you would like to discuss our views in further detail, please do not hesitate to contact us. Our contact person is Martijn Bos (martijn.bos@eumedion.nl, tel. +31 20 7085 885).

Yours sincerely,

Rients Abma
Executive Director

Appendix 1: Excerpts from consultation document

Page 10: 'The only new regulatory framework we propose is the one needed to create the "pre-access market" as an antechamber to the Entrepreneurial Exchange, inasmuch as the rules applicable to issuers transiting through it would need to be defined. These rules will have to be stricter than those applicable to the Marchés Libres in order to win investors' confidence, but less restrictive than those in force on NYSE Alternext so as to make the experience valid as an adaptation period.'

Page 20: 'The Exchange would thus offer the issuer a means of financing without having to take any decisions about supervision, and the issuer would benefit from more flexible disclosure requirements.'

Page 21: 'We recommend a specific, new segmentation for these R&D companies, for which the market constitutes the only source of financing. Given their specific features including long-term investment, dependence on authorizations and tax issues, the Committee recommends creating a working group to define the terms that would be applied to such a segment (access and liquidity conditions, required disclosures, etc.).

Page 29 & 37: 'We are thus issuing an urgent call to multiply substantial initiatives in the European Union to—at long last—implement a proportionate system to encourage long-term financing of SMEs. Combining a Small Business Act mindset with stock -market law, this means a broad definition of companies benefiting from a regulatory framework defined in directives and regulations governing prospectuses, disclosure requirements for listed companies, market abuse, markets in financial instruments and IFRS.'