POSITION ON THE PROPOSAL FOR A REGULATION TO MAKE PUBLIC CAPITAL MARKETS IN THE UNION MORE ATTRACTIVE FOR COMPANIES AND TO FACILITATE ACCESS TO CAPITAL FOR SMALL AND MEDIUM-SIZED ENTERPRISES (COM(2022) 762 final)

SUMMARY OF KEY MESSAGES

Eumedion, representing the interests of institutional investors who have more than € 8 trillion assets under management, has reviewed the proposal and generally *supports* it. We, in particular, support the proposals to: i) make incorporation by reference a legal requirement (art. 19 of the Prospectus Regulation (PR)), ii) ensure that issuers can prepare the prospectus only in the English language (art. 27 PR), iii) allow issuers to only publicly disclose aggregated information on share buy-back programmes (art. 5 (1) (b) of the Market Abuse Regulation (MAR)) and iv) introduce an obligation for issuers to notify the national competent authority immediately after the decision to delay disclosure (art. 17 (4) MAR).

Notwithstanding our general support we are of the opinion that the proposals should not go at the expense of an adequate level of investor protection. Against that background Eumedion has *concerns* regarding a number of proposals, particularly the following:

- The proposal to raise the threshold for the prospectus exemption for secondary issuances of shares to 40 percent (art. 1 (4) and (5) PR): As a consequence issuers can raise excessive amounts of capital from qualified investors without a prospectus. The proposal detracts from the objectives of the PR e.g. investor protection. A prospectus does not only inform new shareholders, it also provides decision-critical information for existing shareholders. Issuance of shares in these excessive proportions severely dilutes the ownership of existing shareholders and may have a significant impact on the issuer's capital structure, prospects and financial situation. Eumedion believes that the existing thresholds for the prospectus exemption and the proposed EU Follow-on prospectus already provide ample degrees of freedom for issuers. Therefore: **the threshold for the prospectus exemption for secondary issuances should not be raised.**
- The proposal to allow certain issuers to use an EU Follow-on prospectus when transferring to a regulated market (art. 1 (4) (db) PR): We believe that further harmonisation should not go at the expense of an adequate level of investor protection. If a company wants the benefits of raising capital among a much larger audience of investors on a regulated market, it should serve its investors with all decision-critical information. Therefore: **the proposal to allow certain issuers to use an EU Follow-on prospectus when transferring to a regulated market should be deleted.**
- The proposal to delete the obligation for issuers to rank the risk factors based on materiality (art. 16 PR): Eumedion strongly favours the existing obligation for issuers to present the risk factors in

a limited number of categories depending on their nature and to mention in each category the most material risk factors first. Eumedion is of the opinion that this obligation has proven to be very effective in significantly increasing the information value of prospectuses for both existing and potential investors and disagrees with the proposed deletion of this obligation. Therefore: **the currently existing obligation for issuers to rank the risk factors based on materiality should be preserved.**

- The proposals to introduce a page limit (art. 6 (4) and art. 14b (5) PR): a page limit may ultimately result in providing a 'valid' excuse to not disclose relevant information because there was a page limit. The result of those proposals would be that any prospectus hitting a page number near the page limit will be met with skepticism of investors on what information should have been included from an investor perspective, but was legally facilitated to be deliberately omitted. The need to adequately inform investors should always prevail over any perceived advantages of introducing a maximum length of the prospectus. Therefore: **we are in favour of a more principle-based approach that limits the disclosure of excessive information of dubious relevance.**
- The proposal to exempt information relating to intermediate steps in a protracted process from the obligation to disclose all inside information to the public (art. 17 (1) MAR): From an investor's perspective we recorded no negative experiences with the current broad notion of inside information for the purposes of the disclosure obligation. Recital 58 of the proposal states that 'When information is disclosed at a very early stage and is of a preliminary nature, it may mislead investors, rather than contribute to efficient price formation and address the information asymmetry'. We are not aware of any real world evidence that justifies this statement. We are of the opinion that the current disclosure obligation is both necessary and effective in protecting investors against harmful information asymmetry and supports the objectives of fair and well-functioning markets. We do not support the proposal as it provides issuers with a general exemption based on highly judgmental criteria. These elements of the proposal may impair a meaningful enforcement. Therefore: **the proposal to exempt information relating to intermediate steps in protracted processes from the obligation to disclose inside information to the public should be eliminated.**
- The proposal to raise the threshold for reporting and related disclosure with respect to transactions of persons discharging managerial responsibilities to EUR 20 000, while allowing national competent authorities to increase that threshold further (art. 19 (8) and (9) MAR): We believe that the notification obligation for persons discharging managerial responsibilities is a preventive measure against market abuse and provides useful information to investors. There is no justification why the protection against market abuse and the provision of information to investors should differ from Member State to Member State. Therefore: **we are not in favour of increasing the minimum reporting threshold with respect to transactions of persons discharging managerial responsibilities to EUR 20 000 and we believe that national competent authorities should not have the option to keep a higher threshold.**

For more information:

Rients Abma, executive director, tel. +31 70 2040 303; e-mail: rients.abma@eumedion.nl.

Eumedion's registration number with the European Commission and Parliament is: 65641341034-11.