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European Parliament
Committee on Economic and Monetary Affairs
B-1049 Brussels
BELGIUM

Amsterdam, 16 April 2012

Ref: B2012.40

Subject: Suggestions for amendments on proposals for regulation and directive of the European Parliament and of the Council on markets in financial instruments (MiFID II and MiFIR)

Dear Members of European Parliament,

As a representative organisation of long term institutional investors, Eumedion is very grateful for the considerable efforts currently being made by the European Parliament to improve the functioning of the MiFID regime.[1] Eumedion is the dedicated representative of the interests of 69 long term institutional investors – all with a long term investor horizon – and aims to promote good corporate governance (e.g. appropriate remuneration policies and robust risk management arrangements) and sustainability in the companies our participants invest in. Together they have more than EUR 1 trillion assets under management. Through the provision of equity and non equity, long term institutional investors are a major source of the capital that is used by companies to grow, create wealth and provide employment, which is vital to the long term interests of the European economy.

We are convinced that governance quality and corporate social responsibility (CSR) are key factors to improve the sustainability of EU businesses and to regain citizens' trust in the financial markets. High quality governance is an adequate way to address inappropriate short-term behaviour of executive management, board of directors and/or investors. We believe that long term institutional shareholders have an own responsibility and commitment to promote good corporate governance practices and risk mitigation. To this end, Eumedion participants seeks to constructively engage with companies to better understand the issues and sometimes effect a change of governance in order to serve the company's performance in the long run. In order to foster institutional investors' engagement

[1] Rapporteur Ferber published draft rapports at the MiFID II and MiFIR the end of March 2012.

Eumedion has published best practices on responsible share-ownership in june 2011.[2] The best practices facilitate a high standard of engaged share-ownership by Eumedion participants.

Whilst we strongly support the MiFID review objectives, we are concerned that some of the proposals made probably will seriously harm long term institutional investors interests and their returns to European citizens as being pensioners, policy holders and savers. We will clarify a number of the issues and suggest some amendments to the proposals in order to make the new rules less harmful to long term institutional investors.

1. General

The emphasis in the MiFID review debate has predominantly been on moving all kind of trading activities to regulated markets and others trading venues and, thereby, pampering the commercial interests of their operators. So far the interests of long term institutional investors and European citizens on whose behalf they trade have drawn much less attention. This is a serious flaw, as it is this long term focused 'buy side' which is crucial to strengthen en re-establish the connection between the financial markets and the overall economic and social environment.

We are cautious that the adoption of some the Commission's proposals as well as some of MEP Ferber's proposed amendments will:

- result in a steep increase of long term institutional investors' trading costs, ultimately at the expense of European citizens;
- lead to seriously limited opportunities for long term institutional investors to trade large in scale and illiquid orders; and
- neither contribute to financial market stability and efficiency nor to the overall economic environment.

2. Corporate governance

We largely agree with the revised high level principles proposed in relation to good corporate governance but find some of the proposals to be too detailed and prescriptive. Corporate governance refers to the relationship between the company's executive management, non-executive directors and shareholders. Prescriptive rules and heavy scrutiny by public supervisory authorities may make it more difficult, not easier, for these actors to make some real improvements. Generally, we prefer a principle based approach to corporate governance above detailed regulation. In our view the focus should primarily be on board governance across all financial sector companies, not only investment firms, and on discouraging the combination between CEO and Chairman. In this regard, there is also an issue of ensuring consistency with the proposals on governance in CRD IV.

[2] http://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best_practices-engaged-share-ownership.pdf.

In terms of the proposed limit on board directorships one particular problem arises from draft article 9.1.
MiFID II for individuals who have directorships on the boards of corporate-type funds with a separate legal personality, for example a property fund. These directorships will not be able to qualify as being held within the same group although managed by the same investment manager, and therefore will not be considered as a single directorship.

Further, we find the requirements in the draft articles 9.4 and 48.4 that direct ESMA to develop regulatory standards to specify the notions of knowledge, integrity or diversity, etc. as unnecessarily prescriptive and question whether ESMA should be tasked with codifying abstract concepts into law. Further requirements on these notions would then result in a box ticking compliance exercise rather than genuine improvements in corporate governance.

Suggested amendment

Article 9 MiFID II:

Member States shall require that all members of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. Member States shall ensure that members of the management body shall, in particular, fulfil the following requirements:

(a) Members of the management body shall commit sufficient time to perform their functions in the investment firm. They shall not combine at the same time more than one of the following combinations:

(i) one executive directorship with two non-executive directorships within investment firms, financial institutions or listed companies.

(ii) four non-executive directorships within investment firms, financial institutions or listed companies.

A combination of one ~~E~~executive and one or more non-executive directorships held within the same group and/or pursuing the same investment strategy shall be considered as one executive ~~single~~ directorship.

Competent authorities may authorise a member of the management body of an investment firm to combine more directorships than allowed under the previous sub-paragraph, taking into account individual circumstances and the nature, scale and complexity of the investment firm's activities and the other companies’ activities in which directorships are held.

(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the investment firm's activities, and in particular the main risk involved in those activities.

(c) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management.

(d) the chairman of the management body of an investment firm shall not exercise simultaneously the function of a chief executive officer within the same institution.

….

2. Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business, to establish a nomination committee to assess compliance with the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination committee shall be composed of members of the management body who do not perform any executive function in the institution concerned. ~~Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.~~

…

~~4. ESMA shall develop draft regulatory standards to specify the following:~~

~~(a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the investment firm which competent~~

~~authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a);~~

~~(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),~~

~~(c) to notions of integrity of a member of the management body as referred to in paragraph 1(b),~~

~~(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body,~~

~~(e) the notion of diversity to be taken into account for the selection of members of the management body.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2014].~~

3. Algorithmic and High Frequency Trading

There is a serious risk involved in the definition and treatment of algorithmic trading. The definition is very broad and will capture any form of automated trading. It is fundamental that high frequency trading strategies will be distinguished from other automated trading strategies. Algorithmic trading refers to trading methods and execution methods used to implement trade strategies over a broad range of investment horizons, while high frequency strategies are acknowledged as self-contained profit generating routines, associated with ultra short (intra-day) holding periods. Long term institutional investors, such as pension funds, insurers and mutual fund managers, often use automated systems to execute normal orders. For example, algorithmic trading strategies are used by institutional investors to slice their parent orders into smaller child orders which can be slowly absorbed by trading venues over the course of minutes, hours, days etc. These methods do not interfere with an orderly functioning of the financial markets and have added value for the overall economy.

We support the rapporteur's amendments 42 and 57 (MIFID II), as long term institutional investors already have appropriate measures and checks and balances in place to avoid that algorithmics could interfere with an orderly functioning of the markets. We are also generally in favour of some specific regulations on high frequency trading (HFT) as long term institutional investors face difficulties from some of those HFT strategies in their daily trading activities. HFT strategies require attention from regulators and should be made subject to minimum resting periods and cancellation rates.

We are generally supportive of the rapporteur's amendment 44 (MiFID II) for a separate definition of 'high frequency trading' in Article 4, paragraph 2, point 30a. But we have some concerns that the system of meeting four out of six of the conditions could rather easily be avoided and lead to regulatory arbitrage. At the same time, under certain circumstances the definition may result in investment firms that are not high frequency traders unintentionally being caught by the proposed regulation. In order to mitigate this evasion risk we would advise to mandate ESMA to develop additional conditions when needed.

Suggested amendments

Article 4, paragraph 2, point 30a and 30b MIFID II (based on amendment proposed by MEP Ferber)

30a) 'High-frequency trading' means trading in financial instruments at speeds where the physical latency of the mechanism for transmitting, cancelling or modifying orders becomes the determining factor in the time taken to communicate the instruction to a trading venue or to execute a transaction;"

(30b) 'High-frequency trading strategy' means a trading strategy for dealing on own-account in a financial instrument which involves high-frequency trading and has at least four of the following characteristics:

(i) it uses co-location facilities;

(ii) it relates to a daily portfolio turnover of at least 50 %;

(iii) the ratio of orders to trades exceeds 4:1;

(iv) the proportion of orders cancelled exceeds 20 %;

(v) the majority of positions taken are unwound within the same day;

(vi) over 50 % of the orders or transactions are made on trading venues offering discounts or rebates to orders which provide liquidity are eligible for such rebates;

ESMA may develop draft technical standards specifying the characteristics, including the percentages above, or setting additional characteristics. Power is delegated to the Commission to adopt the technical standards in accordance with articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 17 MIFID II

(....)

7. Orders of investment firms that engage in high frequency trading shall rest on the order book for a minimum period of time and shall be made subject to cancellation rates. ESMA shall develop draft regulatory standards to determine this minimum period and the cancellation rates. ESMA shall submit those draft regulatory standards to the Commission by [] at the latest. Powers are delegated to the Commission to adopt the regulatory standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. Organised trading facilties (OTFs)

Eumedion welcomes in principle the introduction of the Organised Trading Facility (OTF) categorisation but firmly oppose the exclusion on the use of proprietary capital in OTFs and EP rapporteur Ferber's proposals to limit OTFs to non-equity instruments. The exclusion of proprietary capital is onerous and disruptive, and is likely to prove damaging to dealer liquidity. It would require investment firms that both match client orders and act as market makers to split out their trading operations into entities fulfilling the Systematic Internaliser (SI) and OTF activities, fragmenting liquidity and reducing market efficiency. This is likely to reduce trading opportunities and increase the cost of transactions in these instruments for long term institutional investors. This will also have a direct impact on the pensions, insurance schemes and savings of the underlying beneficiaries of pension funds, insurers and mutual funds. Eumedion stresses that the operator of the OTF should be able to use its own capital as investors seek to use this liquidity. Certain fund structures, used by long term investors, need market makers, particularly in smaller and illiquid markets, for example fixed income markets. If the use of broker capital results in better execution for long term investors such as pension funds, it should not be prohibited and not be considered to be against public good. Instead such brokers should be required to disclose to their clients the use of its own capital.

Suggested amendment

Article 20 paragraph 1 MIFID

1. ~~Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF.~~ The investment firm **operating an OTF** shall not act as a systematic internaliser in an OTF operated by itself, and **shall not be prohibited from using its own capital in the execution of client orders if the conditions listed in Article 5(2) of Directive 2006/49/EC[3] are met.** An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

2. Investments firms and market operators operating an OTF that execute client orders in an OTF against their own capital shall inform clients prior to doing so.

5. Systemic internalisers (SIs)

Likewise, the proposed requirement to disclose quotes under the systemic internalisers will in practice result in a diminution of liquidity provision as buyers and sellers would be less willing to reveal large or illiquid potential trades prior to their execution, for fears of prices developing against them between the trade being made public and execution. The proposed disclosure requirements would interfere with the current practice in which long term institutional investors seek for the best price, in particular in relation to illiquid financial instruments. The loss of liquidity under SIs would in turn directly impact capital flows to companies issuing corporate bonds.

Article 13, paragraph 2. MIFIR

2. This Article and Articles 14, 15 and 16 shall apply to systematic internalisers when dealing for sizes up to standard market size. Systematic internalisers that only deal in sizes above standard market size shall not be subject to the provisions of this Article.**This article and Articles 14, 15 and 16 shall not apply to systemic internalisers when dealing large in scale or illiquid shares, depository receipts, exchange traded funds, certificates and other financial instruments. ESMA shall develop draft regulatory standards to further specify the definition of illiquid and large in scale. The definition of large in scale with respect to the financial instruments referred to under paragraph 1 shall be linked to daily average volume ESMA shall submit those draft regulatory standards to the Commission by [] at the latest. Powers are delegated to the Commission to adopt the regulatory standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**

Article 17, paragraph 5 MIFIR (SI regime bonds and derivatives)

5. The quotes made pursuant to paragraph 1 and at or below the size mentioned in paragraph 3 shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis. **This Article shall not apply to systemic internalisers that have quoted for large in scale or illiquid blocks in instruments as referred to in paragraph 1 of this Article. ESMA shall develop draft regulatory standards to further specify the definition of illiquid and large in scale. ESMA shall submit those draft regulatory standards to the Commission by [] at the latest. Powers are delegated to the Commission to adopt the regulatory standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**

6. OTC derivatives

The financial crisis has revealed a lack of transparency, price information and oversight on OTC derivatives trading. Increasing the proportion of derivatives being traded on qualified trading platforms (including regulated markets and MTFs) would undoubtedly contribute to a sound and efficient derivative market. However, long term institutional investors, like pension funds, long only fund managers and insurers, use substantial amounts of OTC derivatives with the objective of meeting the prudential obligations of pension plans, long term saving plans and life insurance schemes (by hedging asset or liability risks with the aim of minimising volatility between assets and liabilities).

[3] To be replaced by Article 29 (2) of Directive No….[CRD IV].

They hedge their liabilities (pension and insurance cash flows) against inflation and interest rate risks to offer regulatory protection for pension beneficiaries. Long term investors have legitimate reasons to enter into OTC derivatives contracts that are larger or smaller than the standard size, or that need customising in order to match the underlying risks. Their hedges must frequently be tailor-made. If the hedges cannot be customised, the intended risk mitigation is imperfect. Reducing or eliminating the possibility of long term institutional investors to use customised derivatives will be harmful, in the first place for current and future ultimate beneficiaries, since this may have a negative impact on the return on investments. Therefore, it is important that long term institutional investors' access to bilateral bespoke OTC derivatives deals will not be reduced by mandating trading of OTC derivatives on trading platforms. Those platforms are able to handle standard transactions, but will not be able to offer the same level of customisation currently available on a bilateral basis.

Without amending, draft article 24 of MIFIR will, if enacted, restrict the ability of long term institutional investors to use customised OTC derivatives. It is crucial that their access to customised risk management tools is not restricted.

Suggested amendment

<u>Article 24 paragraph 1 MIFIR</u>

1. Financial counterparties as defined in Article 2(6) and non financial counterparties that meet the conditions referred to in Article [**10**(1b)] of Regulation [ ] (EMIR) shall conclude transactions which are not intragroup transactions as defined in Article 2a of Regulation [ ] (EMIR) with other financial counterparties as defined in Article 2(6)**,** non financial counterparties that meet the conditions referred to in Article [**10**(1b) of Regulation [ ] (EMIR) in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 26 and listed in the register referred to in Article 27 only on:

(a) regulated markets;

(b) MTFs;

(c) OTFs; or

(d) third country trading venues, provided that the Commission has adopted a decision inaccordance with paragraph 4 and provided that the third country provides an equivalent reciprocal recognition of trading venues authorised under Directive [new MiFID] to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

This Article shall neither apply to transactions as referred to in Article 89, paragraph 1, Regulation [ ] (EMIR), to transactions that are illiquid and/or large in scale or to small order transactions of large in scale investors which are executed as part of a large in scale order.

7. Pre-trade transparency

For equity, we believe that market participants currently receive sufficient pre-trade transparency to make suitable and appropriate trade decisions. Additional pre transparency rules as proposed will seriously damage the interests of long term institutional investors and European citizens as their clients.

The Commission's proposals in relation to pre-trade transparency on equity do not sufficiently take into account the market practice of large in scale institutional investors slicing their "parent" orders into smaller "child" orders. Any waivers for large in scale investors should apply to such smaller orders as well. Otherwise, high frequency traders and other short-term speculators would use the information on the smaller child orders to detect the larger parent order and front-run the parent order by doing so. The proposed pre-trade transparency requirements need to be calibrated appropriately, or there is the potential for harm to long term investors' use of equity OTFs. As a minimum we would like the large-in-scale, illiquid and reference price waivers left as they are across all markets.

The increased pre-trade transparency requirements in relation to other instruments than equity instruments will obviously affect long term institutional investors, as they typically have large and/or illiquid positions in bonds and derivatives. In the bond markets – particularly in the wholesale corporate bond market – there are significant concerns that increased pre-trade transparency will result in a diminution of liquidity provision as it will significantly increase the risk of making a market in these names. A key consideration in relation to pre-trade transparency relates to open ended investment vehicles (vehicles that are used by members of the public to save for retirement, etc.), which need liquidity to be provided for them to operate.

Suggested amendments

Article 4 paragraph 1 MIFIR (equity and equity like instruments)
Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in Article 3(1) based on the market model, ~~or~~ the type and size of orders **or the size and type of the investor** in the cases defined in accordance with paragraph 3. In particular, the competent authorities shall be able to waive the obligation in respect **of orders in illiquid financial instruments and/or** orders that are large in scale compared with normal market size for the share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument in question. **This shall also apply to large in scale investors that execute small orders as part of a large in scale order or actionable indications of interest.**

3(b) the size and type of orders **and the size and type of investors** for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instruments concerned;

Article 8 MIFIR (bonds, derivatives)
1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in Article 7(1) for specific **type of large in scale investors,** sets of products based on the market model, the specfic characteristics of trading activity in a product and the liquidity in the cases defined in accordance with paragraph 4.

2. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in paragraph 1 of Article 7 based on the type and size of orders, **or based on the size and type of investor** and method of trading in accordance with paragraph 4. In particular, the competent authorities shall be able to waive the obligation in respect of **orders in illiquid financial instruments and/or** orders that are large in scale compared with normal market size for the bond, structured finance product, emission allowance or derivative or type of bond, structured finance product, emission allowance or derivative in question. **This shall also apply to large in scale investors that execute small orders as part of a large in scale order** or **actionable indications of interest.**

(…….)

4(b) the conditions under which pre-trade disclosure may be waived for each class of financial instrument concerned in accordance with paragraphs 1 and 2, based on the following:

(i) the market model;

(ii) the specific characteristics of trading activity in a product;

(iii) the liquidity profile, including the number and type of market participants in a given market and any other relevant criteria for assessing liquidity;

(iv) the size or type of orders**, the size and type of investors** and the size and type of an issue of a financial instrument.

8. Post-trade transparency

We are generally in favour of the proposals on post-trade transparency, but believe MiFIR should leave more flexibility to long term institutional investors to defer publications in respect of the typical type or size of their orders and instruments they trade. The purpose of deferred publication of post-trade data is to allow institutional investors to trade on markets without their order flow being detected by high frequency traders and short-term speculators, without having market impact. The deferred publication should apply to large parent orders as well as smaller child orders linked to such parent orders. Otherwise, the presence of a child order would be inferred by speculators or high frequency traders, resulting in front-running of the parent order. This would increase the cost of trading for large institutional investors. By amalgamating the child transaction data at the above venues before disclosing it to the public, the order flow of institutions is less likely to be detected and exploited by high frequency traders and short-term speculators.

The proposed immediate disclosure requirements of OTC derivatives trades will damage the interests of long term institutional investors. Due to the large and one sided OTC derivatives positions of large long term institutional investors immediate disclosure of the data in respect of their positions to their competitors and/or other market participants will have severe adverse effects on their ability to trade. Other market participants may use the position data to plan their trades, which could be extremely costly and disruptive. OTC derivatives position data should only be disclosed to the public on an aggregated basis and with an appropriate delay period. The confidentiality of institutional investors trade confirmation should be guaranteed. We also note the necessity to align the different post trade transaction reporting mechanisms as incorporated in EMIR on the on hand and MIFIR on the other.

Suggested amendments

Article 5 MIFIR (equities and equity like instruments)

1. Regulated markets and investment firms and market operators operating an MTF or an OTF shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading or which are traded on an MTF or an OTF. Regulated markets and investment firms and market operators operating an MTF or an OTF shall make details of all such transactions public as close to real time as is technically possible. **Regulated markets and investment firms and market operators operating an MTF or an OTF shall defer the publication to the public of any trades greater than or equal to 15% of average daily volume for up to 3 business days. Regulated markets and investment firms and market operators operating an MTF or an OTF shall be allowed to publish amalgamated trading data instead of individual trading data of large in scale investors.**

Article 6 MIFIR (equities and equity like instruments)

1. Competent authorities shall be able to authorise regulated markets to provide for deferred publication of the details of transactions based on their type or size **or based on the size and type of investor**. In particular, the competent authorities may authorise the deferred publication in respect of **large in scale investors that execute small orders as part of a large in scale order or** transactions that are large in scale compared with the normal market size for that share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or that class of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument. **Competent authorities shall not only consider the size of the order when authorizing deferred publication, but also the *intent* of the order. Orders of large institutional investors who are seeking to accumulate or divest blocks of shares, typically equal to or greater than to 15% of average daily volume, shall be granted deferred publication. This article shall not apply to investment firms that engage in high frequency trading as defined under article 4, paragraph 2, under point 30.** Regulated markets and investment firms and market operators operating an MTF or an OTF shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the public. ESMA shall monitor the application of these arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are applied in practice.

2. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying:

(a) the details that need to be specified by regulated markets, investment firms, including systemic internalisers and investment firms and regulated markets operating a MTF or an OTF in the information to be made available to the public for each class of financial instruments concerned;

(b) the conditions for authorising a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due **to the size of type of investors or** their size or the type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

<u>Article 9 (bonds, derivatives)</u>
1. Regulated markets and investment firms and market operators operating an MTF or an OTF shall make public the price, volume and time of the transactions executed in respect of bonds and structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and for derivatives admitted to trading or which are traded on an MTF or an OTF. Regulated markets and investment firms and market operators operating an MTF or an OTF shall make details of all such transactions public as close to real-time as is technically possible. **Regulated markets and investment firms and market operators operating an MTF or an OTF shall be allowed to publish amalgamated trading data instead of individual trading data of large in scale investors.**

<u>Article 10 MIFIR (bonds, derivatives)</u>

1. Competent authorities shall be able to authorise regulated markets and investment firms and market operators operating an MTF or an OTF to provide for deferred publication of the details of transactions based on their type or size **or based on the size and type of investor**. In particular, the competent authorities may authorise the deferred publication in respect of **large in scale investors that execute small orders as part of a large in scale order or** transactions that are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative or that class of bond, structured finance product, emission allowance or derivative. **The deferred publication will be based on the liquidity of the underlying markets and instruments and could be up to months for illiquid instruments, in case publication of details of transactions in illiquid instruments could harm the investor concerned.** Regulated markets and investment firms and market operators operating an MTF or an OTF shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the investing public. ESMA shall monitor the application of these arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are used in practice.

2. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying:

(a) the details that need to be specified by regulated markets, investment firms, including systemic internalisers and investment firms and regulated markets operating a MTF or an OTF in the information to be made available to the public for each class of financial instruments concerned;

(b) the conditions for authorising for each class of financial instruments concerned a deferred publication pf trades for a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due **to the size o type of investors or** the~~ir~~ size or the type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

We hope that our suggestions and clarifications are of assistance. If you would like to discuss our views in further detail, please do not hesitate to contact us. (Wouter Kuijpers, Eumedion, PO Box 75926, 1070 AX AMSTERDAM, The Netherlands, tel. +31 20 708 5882, e-mail wouter.kuijpers@eumedion.nl)

Yours sincerely,

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