European Banking Federation

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Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.

EBF POSITION ON THE REVIEW OF THE MIFID

Key Points

The EBF is pleased with a fair deal of the proposed changes to the MiFID framework. More signposting at Level 1 is necessary to ensure that important matters of principle are clear. Present uncertainty as to the timeline to implement any new changes needs to be addressed and the banking sector be given the time to adjust efficiently.

The EBF understands the Commission's intention in introducing a new category of Organised Trading Facilities (OTFs). OTFs should be regulated in way that permits OTFs and existing venues to compete fairly for business. Most EBF members consider, for example, that the OTF operator should not be prohibited from trading against proprietary capital as a service to clients.

The EBF supports the introduction of new organisational safeguards and risk-controls on investment firms engaged in "algo" trading and on trading venues (e.g. circuit breakers). The imposition of "market-making type" obligations on all "algo" traders will not prove effective, given the myriad of "algo" strategies used.

The EBF considers that the scope of non-equity instruments to which pre and post trade transparency requirements would be extended is too broad. The EBF suggests defining pre and post trade transparency requirements in a way that could be adjusted and calibrated, yet in a harmonised manner.

The EBF welcomes the introduction of more disclosure around the characteristics of the advice provided. The proposed labelling of different kinds of advice (i.e. independent versus non independent) raises questions. The EBF considers that the proposal should stipulate in a non-equivocal manner that different kinds of advice may persist within one and the same financial intermediary.

The EBF is concerned that the catalogue of products that can be sold on an execution-only basis is too narrow. The EBF considers that an assessment of various elements – risk, complexity and liquidity – is necessary to properly determine the selling regime for each product.

The EBF considers it key that EU clients and counterparties have access to a full range of choice of EU and non-EU originated products and services. The EBF is concerned about the meaning of "equivalence assessment". Any equivalence assessment of third country

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legislation should be a "top down" approach based on approximation in regulatory outputs, principles and objectives. Market access for EU banks to countries that have committed to a common set of regulatory principles for financial services reform (i.e. the members of the G20) should remain a primary policy objective in the review of MiFID.

Preliminary remarks

The **EBF is pleased with a number of the proposed changes to the MiFID framework.** However, there remain some significant areas of concern which will need amendments to ensure the legislation is well adapted to the needs of investors and issuers who use the markets.

The EBF believes that **more signposting at Level 1 is necessary to ensure that important matters of principle are clear**. The market and transparency regime is a case in point.

Present uncertainty **as to the timeline to implement any new changes** needs to be addressed. As the experience with MiFID I suggests, the banking sector needs time to adjust to the changes and efficiently implement the new framework.

Full and thorough industry consultation remains of the essence. Adequate consultation processes tend to accelerate efficient implementation. At least three months should be earmarked for all MiFID-related Level 2 and European Securities and Markets Authority (ESMA) consultations.

EBF's key areas of concern (see section below) **are by no means exhaustive of individual EBF Members' views**. They represent, however, the consensus concerns of 31 European national banking associations whose members regularly operate in the market on behalf of investors and issuers and who are concerned that specific aspects of the proposals could have a detrimental impact on European investors and issuers, on Europe as a centre of financial markets, and thus ultimately on European prosperity and growth.

Priority topics

1. On the structure of the market

a) Organised Trading Facilities (OTFs)

The **EBF understands the Commission's intention in introducing a new category of Organised Trading Facilities (OTFs)** to regulate diverse organised trading activity currently falling outside the scope of MiFID's pre-trade transparency and market integrity rules and, at the same time, contribute to the fulfilment of the G20 commitment on OTC derivatives trading (and clearing).

The proposals, however, state that the use of OTFs is dependent upon the provision of a detailed explanation as to why the system does not correspond to and cannot operate as either as regulated market, MTFs or a systematic internaliser. This request implies that OTFs are proposed as a "de facto" residual or catch-all category. The EBF opposes this view as OTFs are equally valid methods of trading to Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs). **OTFs should be regulated in way that permits OTFs and existing venues to compete fairly for business**.

The design of the OTF regime gives rise to three important considerations for market participants[1]:

- While it is essential that **OTF operators** have the **right to determine participants' access** based on their specific business model as a general rule, market participants other than the OTF operator expect the latter **not to unduly restrict access to the facility,** particularly where an instrument is required to be traded on a RM, MTF or OTF, and in fact is only traded on the OTF. Should concerns around the market power built up by some providers arise in the future, these should be addressed through other means, especially measures to be taken by the European Commission's DG Competition.

- As the Commission has explained in its proposal, whereas RMs and MTFs are characterised by non-discretionary execution of transactions, OTFs operators would have certain **discretion** over how **the order is executed**. The EBF considers that such discretion would allow OTFs to provide tailored outcomes for clients. It is, however, important that market users are **not disadvantaged** and that the underlying best execution obligations that investment firms operating OTFs have towards their clients are not impaired.

- Furthermore, the EBF notes that the OTF operator would be prohibited from trading against its own **proprietary capital**. The lack of a harmonized, legally consistent definition of "trading against proprietary capital" across the EU makes it difficult to assess the proposed ban. Therefore, to clarify these issues and consequently give legal certainty to OTFs, further work is required. A working distinction would be whether proprietary trading has the purpose of servicing clients or not. It is clear for EBF members that the less liquid an instrument is, the more clients will have to rely on the provision of liquidity by the operator of the OTF. This can particularly be an issue in some segments of the bond and (former OTC-) derivative markets. Allowing clients to interact with proprietary capital of the platform operator helps liquidity and thus makes it easier for clients to buy and sell financial instruments, and, in the case of derivatives, to hedge their risks**.** Therefore, as a **service to clients**, **trading against proprietary capital should not be prohibited.** Potential conflicts of interest between the OTF operator and clients in transactions over bonds and derivatives should not be addressed through a ban but, rather, by means of appropriate management and disclosure under MiFID's conflict of interest rules**.**

b) Systematic Internalisers (SIs)

The Commission proposes to extend a Systematic Internaliser regime from equities to non-equities. As a result, **no bank involved in bilateral, organised, frequent and systematic dealing on own account by executing client orders outside an RM, MTF or OTF will be able to escape the status of SI**. The EBF questions whether this outcome was expected as a result of such extension.

Furthermore, the Commission proposes to apply SI requirements to non-equity instruments. As a result, **there is a serious risk that the SI obligations will harm the liquidity of the bond**

[1] This section is not supported by the Danish Bankers Association, the Federation of Finnish Financial Services and the Swedish Bankers Association.

markets with the result that banks will not be able to quote prices on bonds to their customers at the large scale they do currently. The end result would be higher costs for issuers (often governments and mortgage, i.e. higher cost for home owners) and riskier and less good investments for investors.

The **extension of SI equity-like obligations to derivatives is also a matter of concern**. The requirement for SIs to publish binding quotes and enter into derivatives transactions under the very same conditions with other clients is way too burdensome. SIs could be forced to take on risk positions which are not under their control. Furthermore, as counterparty credit risk is a major part of pricing non-CCP clearable derivatives, it is hardly possible for SIs to offer the very same conditions to different clients.

As a result, the EBF considers that a **number of amendments** are likely to be needed. In particular:

- It will be important **to limit the requirements for instruments for which there is a liquid market**, analogous to the equity SI rules.
- It will also be important to introduce a **more precisely defined exemption for transactions above a measure of standard market size**, and for firms that only deal in transactions above such a size.
- The **publication of quotes for derivatives and bonds** – whilst onerous and possibly unnecessary – **should certainly not be binding and, if they eventually are, then adequate defences for SIs should be considered** (e.g. SIs may refuse to enter or discontinue business relationships with investors on the basis of commercial considerations such as the investor's credit status and its counterparty risk, among others).
- It is also crucial to include, whenever a reference to "quotes" is mentioned, that this **"quotes" are those provided under an execution of client orders service**, in order to distinguish them from the quotes provided when entities are just "dealing on own account" with other firms.

All of these issues will require much technical work, and will therefore need involvement from ESMA, but the Level 1 text should clearly point to them.

c) OTC Derivatives trading

The EBF supports the G20-driven objective that standardised and sufficiently liquid derivatives are traded on regulated markets, MTFs or organised trading facilities. As stated above, OTFs should not be forbidden to trade against their own capital in derivatives trading.

The EBF also supports the involvement of ESMA in the determination of "sufficiently liquid" derivatives.

The EBF notes that there may be circumstances where it is **not always appropriate to trade standardised and sufficiently liquid derivatives exclusively on regulated markets, MTFs, or organised trading** facilities. Market participants should retain a choice between executing on a trading facility or OTC, to reflect their particular needs.

d) Competition in clearing services

The **EBF clearly supports language in the proposed Regulation calling for the removal of barriers and discriminatory practices that that can be used to prevent competition in the provision of clearing services** for all financial instruments. In particular, the EBF strongly supports the introduction of explicit and detailed requirements for open access by trading venues to clearing services.

e) Algorithmic ("algo") trading and direct market access

The EBF supports the introduction of new organisational safeguards and risk-controls on investment firms engaged in "algo" trading. Such controls should reflect, where possible, existing market best practices.

The EBF shares the Commission's concerns about withdrawal of High Frequency Trading (HFT) liquidity in times of stress. This is a complex issue which needs a well adapted solution. **The imposition of "market-making type" obligations on all of "algo" traders** may have a detrimental impact on the level of liquidity in the market as the benefits of the liquidity that these traders currently provide voluntarily, might disappear. Moreover, **a general imposition will not prove effective, given the myriad of "algo" strategies used.** Algorithmic trading strategies with the purpose of order facilitation should not be mandated to act as market maker.

Furthermore, the EBF supports the introduction of well-designed, flexible and dynamic **markets safeguards** such as those proposed by the European Commission (e.g. circuit breakers).

Finally, **EBF supports that firms who provide direct electronic access to clients have in place robust risk controls and filters to detect errors or attempts to misuse their facilities**.

2. Pre- and Post-trade transparency for equity-like and non equity instruments

a) Equity markets

The **EBF understands the Commission's proposed extension of transparency obligations to depositary receipts, exchange traded funds and certificates issued by companies**. However a lot will depend on Level 2. As currently drafted, quoting obligations for equities (and non-equities) at the level of detail articulated, appear onerous. The EBF considers that the announced extension should be consistently defined and interpreted by all Member States, and be implemented on a timescale which allows sufficient time for the required system amendments.

The **EBF also agrees with extending the trade transparency regime to actionable indications of interest**, as it should not be tolerated that certain advertised information is only available to a limited number of market participants, on a discriminatory basis.

b) Non-equity Markets

The EBF considers that the **scope of non-equity instruments to which pre and post trade transparency requirements would be extended is too broad**. The Level 1 text could be signposted to limit the scope to a definition of product liquidity which is more narrowly based than a bond's or structured finance product's admission to a regulated markets or the fact it has a prospectus or a derivative's admission to a trading venue or the even broader requirement for post trade transparency to be reported to a trade repository. One possible way could be to limit pre trade transparency for derivatives, at least to those instruments that are required to being transacted on trading venues, because these requirements are contingent on liquidity.

The **EBF suggests defining pre and post trade transparency requirements in a way that could be adjusted and calibrated, yet in a harmonised manner**, according to (i) the specific type of instrument, (ii) the main features of their relevant markets, (iii) the size of the transactions and the type of operators and investors.

(See above for further precisions on the transparency regime for SIs).

3. *Transaction reporting*

The **EBF is in principle supportive of the extension of transaction reporting** to include all MiFID instruments except those neither easily susceptible to market abuse nor capable or being used to abuse regulated trading venues. Nonetheless, the EBF considers that **the extension of the transaction reporting regime should not include transactions in all commodity derivatives** as position reports would appear a more appropriate tool for detecting market abuse through these instruments. Additionally, the volume of activity which would arise, if FX derivatives and IR derivatives were reported, would create such significant traffic that it is hard to envisage the benefit to regulators for oversight purposes and, therefore, the EBF questions the need to transaction report them.

In connection with the **identification in the reports of the relevant client and the person responsible for the transaction, the EBF considers that any systematic request** should be replaced by ad-hoc requests from the competent authorities when necessary. Nonetheless, if the request is kept, the EBF **considers that only technical information on the relevant client would be necessary**, as ultimately it is the client who has made the investment decision.

The EBF considers that any **report content harmonisation should be carefully addressed**. Whilst full harmonisation of transaction reporting format and content across the EU remains a long term objective, arriving at such objective calls for an intense and continued dialogue between the Commission and ESMA, on one side, and investment firms, on the other. Three conditions for effective progress would be:

- the gradual alignment of existing, diverse national market microstructures that currently justify different reporting formats and contents;
- industry convergence towards a common language reporting standard;
- a consideration of the costs to, and benefits for regulators to spot the potential market abuse that such harmonisation would place on reporting firms, particularly those active in smaller EEA markets.

Finally, the EBF is very encouraged by the stated objective of avoiding possible double reporting of trades under MiFID, and the recently proposed reporting requirements to trade repositories (EMIR). It is important that **reporting obligations in these two pieces of legislation are sequenced sensibly**.

4. Conduct of business rules

a) Advice

The **EBF believes that investors should be able to have access to the best possible advice**. It should be recalled that MiFID's suitability obligation already applies to banks in relation to the provision of advice to clients. The **quality of the advice provided to a client is, therefore, not dependent on whether or not the adviser accepts or receives fees, commissions or any monetary benefits** paid or provided by any third party. Rather, the EBF believes that the quality of the advice is related to the underpinning analysis to the advice. In other words, the suitability test (if completed in a proper manner) and organisational requirements should be sufficient to ensure an appropriate level of investor protection.

For the above-mentioned reason, **the proposed labelling of different kinds of advice** (i.e. independent versus non independent) **raises questions**. The EBF opposes the use of terms that inherently imply a value judgment. "Dependent" or not "independent" advice, for example, is likely to be perceived as being by definition of a lower quality or not fair. The EBF supports clear, neutral and less discriminatory wording to distinguish the different kinds of services. In this regard, the **introduction of more disclosure around the characteristics of the advice provided is to be welcomed**. Circumstances such as the range and diversity of instruments, issuers and / or product providers upon which the firm's analysis is prepared and the possible reception of fees, commissions or any monetary benefits paid or provided should be of mandatory disclosure.

Furthermore, **the EBF considers that the proposal should stipulate in a non-equivocal manner that different kinds of advice may persist within one and the same financial intermediary**. Intermediaries should be free to choose a given business model for a particular client.

b) Ongoing assessment

In connection with the provision of suitability monitoring of advised products in the longer term (i.e. ongoing advice), **the EBF questions whether it is realistic to expect intermediaries to conduct an on-going assessment of the suitability of investment products for clients** whose personal circumstances, investment objectives, risk appetite / aversion, etc. may quickly evolve, particularly in situations of high market volatility. If the client asks for such a service, one that is portfolio monitoring rather than advice, the appropriate level of service should be specifically agreed upon.

An on-going suitability monitoring of the investment products advised should in no circumstance be a requisite of independent advice.

c) Inducements

The EBF ackowledges that the **ban on inducements in the provision of portfolio management services** (and independent advice) **is not absolute**. Article 24(5)(ii) and Article 24(6) contemplate that "non-monetary benefits" (i.e. "soft commissions") are allowed. Recital 52 seems, however, to reduce admitted non-monetary benefits to "limited" types and cites, as an example, "training on the features of the products". As the last sentence of **Recital 52**[2] **is not in line with the mentioned articles, that sentence should be deleted from Recital 52**.

Furthermore, the **EBF considers that a portfolio manager should be able to receive fees** (i.e. monetary benefits) **for portfolio services** (management or advice) offered to a product provider (most typical an investment fund) and still offer portfolio management or investment advice to clients that includes products issued by the product provider in question. It should be recalled that all applicable safeguards such as suitability tests fully apply in this situation. Besides, as it currently stands, investment firms often pass on inducement payments to the investor. As opposed to this, a ban would likely mean that payments that would otherwise have been made as inducements remain with the issuer, rather than being of benefit to the client.

The **same principle should apply to a portfolio manager who, within the same legal entity offers custodian services to product providers**. Such portfolio manager should be able to receive payments for the custodian services and at the same time - within the same legal entity - offer portfolio management to other clients on products issued by that product provider.

The EBF recalls in this context the good work done by the Committee of European Securities Regulators (CESR) in clarifying the types of entity behaviour that European securities regulators encourage (good practices) and discourage (poor practices) in the context of inducements[3]. Where appropriate, the EBF recommends this work to be wired into hard law in the MiFID II framework, possibly in Level 2 regulation.

d) Execution-only

The EBF is concerned that the catalogue of products that can be sold on an execution-only basis is too narrow.

On the one hand, complex products would be excluded. The EBF recalls, however, that products are made complex so as to reduce the risks for investors. Consequently, complexity may be necessary to enhance investor's confidence in the performance of the offered product. Structured

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2 "In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC".

3 http://www.cesr.eu/popup2.php?id=6561

UCITS are a case in point. It should not be systematically considered that a financial product is complex by the only observation that it contains a derivative. Such criterium is too restrictive.

On the other hand, EBF´s concerns also relate to the exclusion of bonds not listed on a regulated market or MTF from the list of non-complex products. The EBF believes that the liquidity condition of a bond could also be guaranteed through the buy-back commitment of the issuer or an intermediary, based on pre-defined criteria and mechanisms, consistent with those that led to the product's pricing on the primary market.

As a result of the above, **the EBF considers that an assessment of various elements – risk, complexity and liquidity – is necessary to properly determine the selling regime for each product.** The EBF considers, therefore, that the most appropriate way to properly determine the scope of the execution-only regime would be:

- in level 1, to permit execution-only business on all shares, bonds, money market instruments, shares in UCITS and other non-complex financial instruments.
- to mandate ESMA to develop guidelines for the assessment of all the above financial instruments that embed a derivative, incorporate a structure (i.e. are complex) or may be considered illiquid. **Products where complexity does not add risk to investors - as compared to their vanilla versions - could be sold on an execution-only basis**.

e) Telephone and electronic recording

The EBF acknowledges the introduction of principles for a general regime concerning the recording of telephone conversations or electronic communications involving client orders.

A preliminary **distinction needs to be made between applicability of this regime to calls / communications between professional traders** – where such common regime would be seen as an effective means to help the fight against market abuse – **and calls / communications with retail clients** – where any regime should be optional for Member States.

In connection to the regime itself, the EBF notes that the principles are very few. As for the maintenance of telephone recordings, the Commission’s proposal of three years is not necessary: usually, where orders are initially recorded, they are subsequently confirmed in writing. Therefore, a **default retention period of e.g. six months** would be entirely sufficient. Where supervisors believe that certain recordings should be kept for longer, this can be required case-by-case.

Furthermore, the EBF points to a potential inconsistency between the recording obligation under article 16.7 of the draft Directive (3-year term) and the maintenance period imposed for transaction data under article 22 of the Regulation (5 years).

f) Best execution

There is a requirement for investment firms to summarise, for each class of financial instruments, and make public on an annual basis, the top five execution venues from whence their client orders were executed in the preceding year. This is based on the assumption that it is in the clients' interest to execute transactions on many execution venues. The **EBF proposes that such an obligation exists only where the investment firm selected more than five execution venues for a certain financial instrument class.** And this, notwithstanding the right of the investment firm, as is currently the case, to select particular execution venues for a certain asset class.

g) Reinforcement of supervisory powers

The EBF considers that supervisory authorities should be sufficiently equipped to prevent a threat to financial stability or market integrity and, therefore, should be able to act in the context of MiFID. Nonetheless, **the EBF believes that prohibitions or restrictions should be seen as a last resort measure**. The EBF considers that the use of current incentives/disincentives to encourage/discourage market behaviour may be a more effective way to address any specific market concerns.

5. Third-country access

The EBF considers that, in the interest of integrated, global financial markets **it is very important that EU clients and counterparties have access to the international market, and to a full range of choice of EU and non-EU originated products and services**. At the same time, the EBF is supportive of the Commission's intention to introduce more harmonization in the way third country firms access the EU markets.

The Commission's proposals have been seen, however, as a surprise to many as they had not been consulted on previously. For a third country firm to fall within the regime, the Commission will need to have assessed the legal and regulatory regime of the third country as equivalent to the EU regime and as giving reciprocal access to EU firms. This is an entirely new regime and one that presents significant practical challenges given the shear scope of MiFID.

a) Equivalence

The **EBF is concerned that access to the EU is made conditional on a positive equivalence assessment of a third country's financial services law with MiFID/MiFIR/CAD**. The EBF considers that such a request would, de facto, prevent non-EU firms which are willing and able to render MiFID/MiFIR compliant services to access the EU financial market. Such firms may have limited impact on the development of their home country's financial services law. Such exclusion of third country service providers would in effect have a negative impact on consumer choice and reduce competition without this being justified from a consumer protection point of view. Consequently, **the EBF is amongst those that caution against strict equivalence requirements**. Any equivalence assessment should be a "top down" approach based on approximation in regulatory outputs, principles and objectives and not "bottom up" measures such as assessing and requiring rules to be identical.

As the Commission itself has recognised in its impact assessment, there are known difficulties in negotiating any equivalence regime. Moreover, these schemes may be marred by political reticence. The situation in the context of the negotiations on the European Markets Infrastructure Regulation (EMIR) is a case in point. As previous experience shows, third-country issues have proven to be issues of contention in the negotiation of financial services sectoral legislation.

As the issues involved are complex, the EBF recommends that negotiations and assessments of regulatory equivalence be approached in a horizontal way, in separation from MiFID. This was the line that the EBF already supported the MiFID Review consultation process and is till upheld by the vast majority of EBF members. A **carefully structured approach, possibly involving different elements, and reconciling the following aspects, among others, that EBF members have raised would be needed**:

- the scope and dynamics for legislative equivalence, taking note of the G20 commitments and their disciplining effects;
- the ability of third-country based firms to comply with EU relevant applicable legislation, notwithstanding the equivalence process;
- the differentiation between active and passive servicing activities, the latter including the possibility for EU investors to request continued and ongoing services;
- the nature of the EU recipient of the service and the corresponding calibration of client-protecting safeguards;
- the selective specific parts of EU and third country's legislation that should be subject to the equivalence assessment, with a particular emphasis on investor protection-related provisions;
- the scope for exemptions for intra-group transactions;
- and the powers of the different components of the European System of Financial Supervision (ESFS) to ensure a harmonised EU approach.

b) Reciprocity

The EBF believes in global, open markets. Third country issuer and investors should be able to participate in the European markets. Likewise, access to foreign markets for European banks should be ensured. According to the current MiFID, the Commission can ask the Council for a mandate for pursuing negotiations with third countries in order to obtain, in those countries, comparable competitive opportunities for EU firms. **Market access for EU banks to countries that have committed to a common set of regulatory principles for financial services reform (i.e. the members of the G20) should remain a primary policy objective in the review of MiFID.**

Advancing access to third country markets without regulatory equivalence may lead, however, to an unlevel playing field for EU banks or unnecessary, duplicative standards. For this reason, the EBF sees the debate over reciprocity as conceptually different from the one on equivalence and pertinent if and when satisfactory progress on regulatory comparability has been made.

Finally, the EBF would like to recall that market access rights are traditionally discussed in the context of (multilateral) trade and eventually underpinned by the appropriate legal instruments, to ensure legal certainty.

6. Scope issues

a) Structured deposits

The European banking industry has supported an extension of the MiFID's information requirements to structured deposits, in order to support consumers in their investment choice. However, **not all EBF members believe that it is appropriate to apply all other MiFID requirements for financial instruments to structured deposits**. An extension of the MiFID requirements to structured deposits could impose a significant adjustment burden on firms that sell investment products and structured deposits through different business lines. At the very least, an extension of securities law to products where capital risk is completely excluded by deposit protection may be disproportionate. Furthermore, completely blurring the differences between structured deposits and MiFID-regulated products may lead investor to lose sight of important differences i.e. that deposits – whether structured or not – benefit from deposit protection.

b) Safekeeping and administration of financial instruments for the accounts of clients

The **EBF shares the view of the Commission that entities holding securities accounts for their clients must be subject to a specific authorisation**. In general, custodians are credit institutions that provide other investment services and are thus authorised under MiFID. As a result, the proposed reclassification of the safekeeping and administration of financial instruments services as investment services will lead to neither stricter authorisation nor a stricter supervisory regime.

The reclassification would, however, submit custodians and their clients to new requirements that are materially not applicable to custodian activities, thus leading to important uncertainties and additional costs also for the investors. The EBF would like to stress that safekeeping and the provision of custody services differ significantly from the trading and distribution of financial instruments targeted by MiFID. These services are only very loosely associated with the investment decisions of clients. Placing safekeeping and custody firms under MiFID obligations such as suitability or assessment of appropriateness would not enhance investor protection. The protection of custody clients, the obligations of intermediaries and custodians towards these clients, the protection of clients financial instruments and the entire holding chain of securities are expected to be further addressed in future regulations.

The **amendment introduced in this respect to Annex 1 should, therefore, be undone**.