



Mr John Berrigan

Director-General of Financial Stability,
Financial Services and Capital Markets Union
European Commission
1049 Bruxelles
Belgium
Via email: John.berrigan@ec.europa.eu

Ms Verena Ross,

Executive Director
ESMA
201-203 rue de Bercy
CS 80910
75589 Paris Cedex 12
France
Via email: verena.ross@esma.europa.eu

1 March 2021

Dear Ms Ross, Dear Mr Berrigan,

MIFID Quick Fix; MIFID 2 review

As you know, the European Financial Markets Lawyers Group (the “**EFMLG**”) is a group of senior legal experts from the EU banking sector dedicated to making analysis and undertaking initiatives intended to foster the harmonisation of laws and market practices and facilitate the integration of financial markets in Europe. The members of the Group are selected on the basis of their personal experience amongst lawyers of major credit institutions based in the EU active in the European financial markets. The Group is hosted by the European Central Bank.

We refer to Directive 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2012/36/EU and (EU) 2019/878 as regards their application to investment firms to help the recovery from the COVID-crisis (commonly known as “**MIFID Quick Fix**”).

We would like to express our support to the policy direction which motivated the MIFID Quick Fix. The amendments introduced by MIFID Quick Fix are assessed very positively as they alleviate certain requirements which in practice have proven not to be especially useful for clients but were overly burdensome for investment firms. It is our opinion that these changes will certainly contribute to facilitate investments in the real economy and to a rapid recapitalization of

European companies. In addition, some of the amendments, such as the phase out of paper-based information, are assessed as especially convenient, not only in the current global context of COVID-19, but also in terms of the European Union's Green Deal.

While reiterating our support, we are concerned that the implementation period for the MIFID Quick Fix (i.e. one year from the entry into force of the Directive) may put at risk the real effectiveness of the agreed measures in the context of the COVID-19 recovery. We understand that the need to transpose the Directive to national legislations has led to delay the implementation date so that Member States have sufficient time to complete their own legislative proceedings.

However, it cannot be ignored that MIFID Quick Fix arises as an urgent reaction of the European authorities to support the financial markets, severely affected by the economic crisis resulting from the COVID-19. Moreover, the original legislative proposal published by the **European Commission** already highlighted the importance of an early implementation of the measures contained in the MIFID Quick Fix in order to mitigate the effects of the current pandemic¹.

In view of the above, it would be advisable that firms start applying the amendments contained in MIFID Quick Fix as soon as they are in a position to do so, even if this means applying the new framework before the transposition to national legislations has been completed. In this regard, a public statement from **ESMA** asking national competent authorities not to prioritise supervisory actions towards obligations that have been alleviated / removed by MIFID Quick Fix will certainly provide firms with additional comfort to proceed in this direction and, therefore, to contribute to the European Union recovery as soon as possible, as per the objectives of MIFID Quick Fix.

Of course, such a statement could be undertaken at the level of each national competent authority as well but it is clear that an ESMA public statement is preferable in terms of efficiency, integration of the EU financial market and level-playing field. It can be followed-up, as necessary, by statements made by the national competent authorities along the same lines than the ESMA one.

In addition to this EFMLG proposal, which seems easy to implement and may bring positive results aligned with the intention of the EU legislator immediately, we would like to take the opportunity to highlight that, although we believe that MIFID Quick Fix goes undoubtedly in the right direction, other important discussions have been left outside this review and should be considered in the near future.

For instance:

- A specific carve out of the underwriting and placing fees from the inducements regime would facilitate increased financing in the capital markets, something crucial in the current context and also within the framework of the Capital Markets Union;

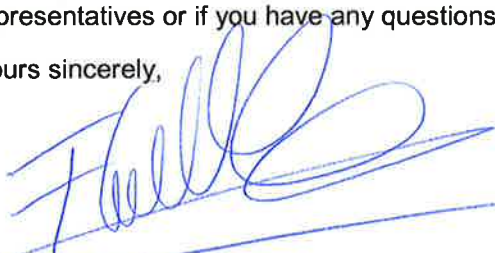
¹ "As the amendment aims at mitigating the effects of the COVID-19 pandemic an early application of the amendment would be most beneficial. It is therefore expected that the proposed amendment should start applying at the earliest opportunity" (EC proposal 24 July 2020).

- A further review of the product governance obligations to limit the scope only to complex products would also remove current administrative burdens and reduce investment firm's compliance cost without an impact in investor protection;
- The simplification of market infrastructure and transparency requirements also deserves a careful consideration² some years after the new MIFIR obligations already in force.
- Finally, we consider that the phase-out of paper-based information foreseen in MIFID Quick Fix is a very positive step, but it is important that it is followed by a similar measure in the PRIIPs Regulation³. Otherwise, it will have very limited effects. In this respect, we are aware of the opinion of the European Supervisory Authorities on the need to provide more of a balance between paper and other deliveries, such as via another durable medium or via a website⁴, but we would like to insist on the need to address this matter as soon as possible, so that the objectives pursued by MIFID Quick Fix and the European Union's Green Deal are actually achieved.

We know that some of these are complex discussions that were consciously left outside the MIFID Quick Fix process for that reason, but it would be crucial to take them into consideration within the planned **MIFID 2** review⁵ in order to continue with the simplification effort which is in line with the so-called "better law-making".

Please do not hesitate to contact us should you wish to arrange a virtual meeting with EFMLG representatives or if you have any questions.

Yours sincerely,



Fernando Conlledo Lantero

EFMLG Vice-Chairman

² In this regard, we fully support ESMA's objective to streamline the rather complex pre-trade transparency regime for non-equity systematic internalisers as stated in the ESMA's report on systematic internalisers in non-equity instruments and the proposal to remove the Share Trading Obligation for non-EU shares and EU shares denominated in third country currencies as per the ESMA's report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligation for shares. Similar positions in other obligations under assessment within the MiFID 2 review would contribute to reduce current burdens with very limited impact in market transparency.

³ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products.

⁴ As stated in the Joint Committee of the European Supervisory Authorities' Final Report following consultation on draft regulatory technical standards to amend PRIIPs KID

⁵ Or through any other regulation to be implemented in the near in the case of the PRIIPs amendment.