

BETTER FINANCE

European Federation of Investors and Financial Services Users

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Belgium

Brussels, 4 April 2019

European Commission

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Mr Olivier Guersent, Director General

1049 Bruxelles/Brussel

Belgium

Subject: The risk of destroying the individual share ownership in Slovenia
Deficiencies of Slovenian Market in Financial Instruments Act (ZTFI-1) with Regulation (EU) No 909/2014

Dear Mr Director General,

As you know, the European Federation of Investors and Financial Services Users ("BETTER FINANCE") is the dedicated representative of users of financial services at European level. It comprises forty-two national and international member and sub-member organizations with more than 4 million individual members altogether. At BETTER FINANCE, we closely monitor various Member States' legal frameworks regarding the rights of individual investors and minority shareholders.

We firmly believe that among the most important rights of minority shareholders one has to include the right to organize collectively and the right to seek professional assistance. Such rights are often exercised through collective holding of shares with an attorney or public notary, i.e. safekeeping of shares on the fiduciary securities account of an attorney or public notary.

Our attention has been brought to the fact that Republic of Slovenia recently introduced Market in Financial Instruments Act (Zakon o trgu finančnih instrumentov, Uradni list RS, No 77/18, henceforth: ZTFI-1), which infringes on investors' rights granted by the provisions of the Regulation (EU) No 909/2014¹. Specifically, Paragraph 5 of the Article 38 of the said Regulation provides:

"A participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option. However, a CSD and its participants shall provide individual clients segregation for citizens and residents of, and legal persons established in, a Member State where required under the national law of the Member State under which the securities are constituted as it stands at 17 September 2014. That

¹ Regulation (EU) No 909/2014 of the European parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

obligation shall apply as long as the national law is not amended or repealed and its objectives are still valid.”

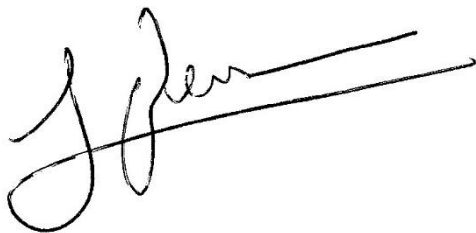
ZTFI-1 that has been adopted on 20 November 2018 and became effective on 15 December 2018 substantially limits the ability of attorneys and public notaries to keep fiduciary (omnibus) securities accounts. In particular, Paragraph 10 of Article 296 limits the duration of such an account to maximum period of 12 months, whereby the underlying purpose for such an account is limited to joint selling or buying of shares, thereby excluding the joint exercise of shareholders’ rights. This deviates substantially from common European efforts to foster greater participation of shareholders.

Such limitations of omnibus securities accounts were not effective on 17 September 2014 which is reference date with respect to the provisions of the abovementioned Article 38 of Regulation (EU) No 909/2014.

We believe that one of the main purposes of harmonization and unification of the European law is to ensure level playing field for all participants within EU's single market. **The European Commission is bestowed with the prerogative of being the guardian of the European Treaties. Hence, we encourage you to thoroughly assess this matter and – should you reach the same conclusions as we have – proceed in order to safeguard the full observance of Regulation (EU) No 909/2014 by the Republic of Slovenia.**

Please accept the expression of our highest consideration.

Yours truly,

A handwritten signature in black ink, appearing to read 'G. Prache', with a long horizontal line extending to the right.

Guillaume Prache
Managing Director of BETTER FINANCE