BETTER FINANCE
The European Federation of Investors and Financial Services Users
Fédération Européenne des Épargnants et Usagers des Services Financiers

to the attention of

Ms. Irene Tinagli,
Chair of the Economic and Monetary Affairs (ECON) Committee of the European Parliament,

Mr. Markus Ferber, Rapporteur on the procedure file 2020/0152(COD),
Ms. Stéphanie Yon-Courtin,
Mr. Eero Heinäluoma,
Mr. Ernest Urtasun,
Mr. Maximilian Krah,
Mr. Derk Jan Eppink,

Members of the ECON Committee,

Brussels, 1 October 2020

Re: Harm Done to EU citizens as "Retail" Investors Through MiFID II "Quick Fixes"

Dear Honourable members of the Economic and Monetary Affairs (ECON) Committee of the European Parliament,

We are writing to you to in relation to the European Commission's (EC) proposal to amend the Markets in Financial Instruments Directive (MiFID II[1]) as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic (*procedure file 2020/0152(COD)*).[2]

We welcome the EC's initiative to alleviate some regulatory requirements enabling EU capital markets' potential to boost recovery from the COVID-19 induced economic downturn. However, we wish to **warn about the long-term detrimental effects** that several provisions and amendments **will have** on "retail" investor protection if done in "haste" and without proper scrutiny and attention to details.

To begin with, most amendments proposed to MiFID II ("quick fixes") **must be limited in time** exclusively to what is necessary to help recovery. In addition, these proposed amendments **should not**, in any way, **stand as** or **pre-empt** the full review of this cornerstone legislative instrument for EU capital markets that the EC planned for the fourth quarter of 2020.[3]

Second, we wish to highlight some proposals or amendments that would, beyond doubt, **harm "retail" investor protection** in the EU and constitute a step back from what has been achieved during the past 10 years:

1. Exempting cost and charges disclosures via-a-vis professional clients: this short-term exemption must be limited only to those clients that are "naturally" professional clients (Annex II, pt. I MiFID II) **and not to "retail" clients** who may opt-in for the professional client categorisation;

We highlight the importance of this clarification to prevent investment firms from persuading or proposing the "professional client" categorisation to "retail" clients in order to circumvent investor protection rules. Moreover, such a short-term change **must be limited to cost and charges disclosure**, not extended to investment advice and portfolio management as well. Moreover, we stress that any amendment concerning Article 24 of MiFID II applicable to "retail" clients should be strictly limited to product governance rules, and should not extend to information requirements, cost disclosures or investment advice. Also, this exemption should certainly not be extended to independent advisors and to portfolio management.

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, ELI: http://data.europa.eu/eli/dir/2014/65/oj.
[2] Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic, {SWD(2020)120final}.
[3] See European Commission, *Review of the Regulatory Framework for Investment Firms and Market Operators*, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12167-Review-of-the-regulatory-framework-for-investment-firms-and-market-operators-MiFID-2-1-.

2. Lowering thresholds for "professional client" categorisation: we wish to remind of the resolutions of the ECON Report on the Capital Markets Union[4] (para. 49) and of the recommendations made in the Final Report of the High-Level Forum on the Future of the Capital Markets Union[5] (p. 99) to create a category of *qualified/ nonprofessional investors*, with tailored information disclosure rules, rather than allowing "retail" clients to be categorised as "professional" clients.

In our view, introducing a new category of qualified investors is preferable and must be prescriptive so as to not allow a circumvention of "retail" investor protection rules by financial intermediaries. Moreover, we wish to remind that the EC in the recently published new CMU Action Plan indicated under Action 8.B that they will review "*the existing investor categorisation of retail vs. professional investors or the introduction of a new category of qualified investors*".

3. Exempt research as "inducements" for small- and mid-cap firms: we consider the rule introduced by MiFID II to separately charge clients for investment research to be **pivotal for making informed investment decisions**.

At the same time, we understand the need to stimulate small- and medium-sized enterprise (SMEs) equity research, reason for which we agree with the proposal to **temporarily** not consider "research" as inducements, or to disclose and charge it separately, but it must be **exclusively limited to companies defined as SMEs by the European Commission.**[6]

4. Suspend best execution reporting requirements for investment firms (RTS 28): we firmly believe that best execution reports under the Regulatory Technical Standards 28 of the European Securities and Markets Authority (RTS 28) should be improved and discontinuing them **would constitute a major step backwards in transparency and in the protection of retail investors, and have no added value** for economic recovery.

5. Retaining paper-based information as a choice: we agree with the wording of the EC to allow professionals to convey cost and charges information to "retail" clients in paper if they explicitly choose this option.

6. Loss reporting threshold: we believe that the new provision proposed by the EC for loss-reporting would be very helpful for "retail" investor protection and that the loss threshold **should be maintained at 10%**, not increased.

Yours sincerely,

Guillaume Prache
Managing Director, BETTER FINANCE

C/c:
Mr. Valdis Dombrovskis, Executive Vice-President of the European Commission,
Commissioner for An Economy That Works for People
Ad-Interim Commissioner for Trade

[4] Report on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation, (2020/2036(INI)).

[5] High-Level Forum on the Capital Markets Union, *A New Vision for Europe's Capital Markets: Final Report of the High-Level Forum on the Capital Markets Union* (June 2020).

[6] Small- and medium-sized enterprises (SMEs) are defined as having a staff headcount lower than 250 persons and either a turnover of equal or less than €50 million or a balance sheet total lower or less than €43 million: https://ec.europa.eu/growth/smes/sme-definition_en.