MEMO

Position Paper EBA Consultation Regulatory Technical Standards on prudential requirements for investment firms

1. On June 7th the European Banking Authority (**EBA**) published Draft Regulatory Technical Standards on the reclassification of investment firms as credit institutions in accordance with Article 8a (6)(b) of Directive 2013/36/EU (**the Consultation**).

2. Euronext is an operator of Regulated Markets, MTFs, a CCP and CSDs located in 8 EEA countries. As an operator of trading venues, Euronext supports transparent, orderly and liquid markets that support a price formation process serving a diverse range of investors.

3. Euronext's concerns with the Consultation focuses on the proposed calculation method underpinning the **classification of investment firms**. As the current proposals stand we share the concern of market participants that the proposal runs the risk of negatively impacting available liquidity on European Capital Markets and consequently the functioning of the Capital Markets Union (**CMU**).

A. Stable Financial Markets - A key to a Strong Economy

4. Euronext's fundamental mission is the provision of strong, stable and transparent capital markets to power the real economy, providing access to finance for companies as well transparent and stable venues for investors. Moreover, Euronext's derivatives' markets allow equity investors to hedge their portfolios in a regulated, diversified and transparent manner.

Liquidity provision on regulated and transparent markets

5. Liquidity is the cornerstone of transparent markets, supporting the price formation process for all securities and issuers. Liquidity not only supports a stable flow, but also provides investors with the confidence that there will always be a counterparty to their trading intentions. This liquidity and the confidence it supports drives public capital markets.

The role of investment firms, including proprietary trading firms carrying out liquidity provision functions

6. Market makers and liquidity providers - operating within the regulated framework of MiFID/MiFIR - play a key role in establishing and maintaining diverse, deep and liquid capital markets. The following points on their role are worthy of highlighting in the context of the current Consultation:

    - While liquidity providers are not necessarily focused on providing long-term investments, they do play a pivotal part in the long-term resilience and overall attractiveness of European capital markets. This is, in particular, due to their role in supporting liquidity on capital markets – a critical element in maintaining fair, orderly, safe and sound markets.

- In the course of their trading activity, market makers accumulate extensive, yet balanced and effectively hedged portfolios. Any market risk is managed by margin posted to the general clearing member, and ultimately to a CCP, as all transactions are centrally cleared.

- Furthermore, under MiFID II/MiFIR, market makers are under the obligation to provide liquidity on a regular and predictable basis: even in stressed conditions where other market participants may withdraw from the market, market makers are required to continue to maintain a presence and support liquidity. This presence and the flow it underpins matters to the market as the liquidity provision supports a transparent and fair price formation process, which in turn provides end investors with the best possible transparent and regulated prices for their investments.

- In addition, transparent liquidity in share trading (especially where it concerns SMEs) increases the visibility of listed companies. Moreover, in cases where stock markets are supported by exchange-traded derivatives markets (ETD), launching individual equity options on shares can lead to both an increase in liquidity and the ready availability of hedging tools. This positively impacts the visibility of the underlying company and investors' risk management capabilities. Given the post MiFID II environment where it has become challenging for smaller companies to obtain coverage from independent research analysts, visibility has become even more essential to future growth and access to capital.

B. The Scope as proposed may negatively impact the Capital Markets Union and financing opportunities

Impact assessment

7. Under the published approach by EBA, all global qualifying assets would contribute towards the calculation of the threshold to become a Class 1 firm. We have been approached by a significant part of our member community voicing surprise and concerns about the approach. As a starting point, we share their view that it would be helpful to understand the impact assessment conducted to support this proposal as we understand this policy choice **could significantly impact the future liquidity of European capital markets** and consequently the financing opportunities available to companies raising capital in Europe.

8. In short, the concern is that the proposal could significantly increase the costs, complexity and regulatory burdens resulting from having an investment firm presence in the EU. We believe such an effect would be counter to the purpose of IFR/IFD, which was to establish a prudential regime **proportional to the specific risks posed by the activities and business of investment firms operating in the EU**.

Disproportionate impact on international firms

9. As currently drafted, the proposal would result in EU investment firms with small balance sheets, with relatively little activity in the EU and which are of no systemic importance, having to become licensed as a credit institution in the EU simply because

of the balance sheet size of non-EU affiliates which have no activity in, nor pose risk to, the EU.

10. This is because the Consultation proposes that group assets are calculated under IFRS accounting standards. **This means having to apply IFRS to all group investment firms, which will be complex and costly**. The EU calculating entity would be responsible for calculating the total value of the assets **of all relevant subsidiaries in the group**. Where the group includes non-EU parent companies and non-EU subsidiaries of non-EU parents, it is unclear how the EBA and relevant NCAs will be able to verify and enforce this calculation obligation. More importantly, we believe that this obligation will give rise to a number of practical difficulties:

    - Some non-EU entities may not be obliged to publish annual accounts.

    - The regulated EU entity may not have sufficient knowledge of or access to its affiliates' accounts in order to prepare accounts for the purposes of the calculation, in particular as this is a rolling requirement.

    - Non-EU affiliates may be reluctant to provide account details that may be made available to regulatory authorities that do not have jurisdiction over them.

11. The proposed extension of the EUR 30bn threshold calculation to include non-EU based entities within a group that carry out relevant activities regardless of geographical location **could lead to a disproportionate impact and we question the need for such an extensive scope**. As the regulation is intended to mitigate risk of European activities, firms should only be included in the group calculation if they indeed pose a risk to the EU.

Impact on funding availabilities in the EU

12. In addition to the explicit intent of policymakers to further the Capital Markets Union, allowing for more companies to access public capital financing, we believe the proposal as it currently stands could lead to a **decreased presence of available capital in public markets**, which in turn could negatively impact the growth of the European economy and CMU.

13. We are concerned that, should the proposal be adopted in its current form, some non-EU headquartered investment firms with operations in the EU **will be forced either to stop operating in the EU or to cease undertaking dealing as principal / underwriting activities,** as a result of not wishing to bear the capital, liquidity, supervisory and prudential consequences of being regulated in the EU as if they were a bank.

14. This would directly **impact the ability of companies seeking capital in the European Union** and should be carefully considered. In addition, aside from potentially reducing competition in EU markets and available liquidity as a result of a decreased number of market participants trading in the EU, it would also be to the detriment of (retail) investors on public transparent markets seeking liquidity and proper pricing for their investments as liquidity on markets could decrease.

C. Recommendation to change the scope of the Consultation

15. In order to prevent reduced activity and available capital on EU markets, specific attention needs to be given to the proposal of the EUR 30bn group calculation threshold

test. We support those recommending taking into account **only assets held by EU investment firms and/or EU branches.**

16. In order to remain an attractive capital market and offer investment opportunities to investors and access to capital to companies, it is vital that international firms remain active in Europe. We call on the EBA to provide more details on the impact assessment supporting the proposals, with a consideration of the issues raised above.