Ministerstvo financí České republiky
Ministry of Finance of the Czech Republic

Prague, 1 February 2011

Please find bellow our responses to questions included in the consultation paper on Review of the Markets in Financial Instruments Directive. These comments are only an indication of the possible approach by the Ministry of Finance of the Czech Republic and they are not meant as our final official policy position.

Section 2 – Developments in market structures

2.1 Defining admission to trading

Question 1: What is your opinion on the suggested definition of admission to trading? Please explain the reasons for your views.

We have no comments to the definition of admission to trading. We believe that the definition is sufficiently clear and precise.

2.2 Organised trading facilities

2.1.1. General requirements for all organised trading facilities

Question 2: What is your opinion on the introduction of, and suggested requirements for, a broad category of organised trading facility to apply to all organised trading functionalities outside the current range of trading venues recognised by MiFID? Please explain the reasons for your views.

Question 3: What is your opinion on the proposed definition of an organised trading facility? What should be included and excluded?

Question 4: What is your opinion about creating a separate investment service for operating an organised trading facility? Do you consider that such an operator could passport the facility?

Question 5: What is your opinion about converting all alternative organised trading facilities to MTFs after reaching a specific threshold? How should this threshold be calculated, e.g. assessing the volume of trading per facility/venue compared with the global volume of trading per asset class/financial instrument? Should the activity outside regulated markets and MTFs be capped globally? Please explain the reasons for your views.

We do not support the introduction of organised trading facility as a new category of regulated trading platform (and an investment service requiring authorisation). We believe that the purpose of introducing the category of regulated markets and MTFs was to provide both investors and issuers with an option whether they wish to access a broadly regulated and therefore secure, but also costly, kind of trading venue, or whether they prefer an alternative

possibility which might hypothetically mean higher risks, less transparency and so forth, but at the same time offers them potentially higher gains and other advantages. The suggested introduction of a new regulated category of trading venue represents a step back in the development of financial markets. It aims at capturing basically all OTC trading and diverting it towards regulated trading facilities, since it includes among others systems for matching client orders within one investment firm.

We believe that the rules of conduct, especially best execution obligation, post-trade transparency requirements and transaction reporting are sufficient to ensure the soundness of the practices mentioned in the paper and protection of investors.

We do not see the point of converting all alternative organised facilities into MTFs after reaching a specific threshold either. The category of MTF was introduced to offer advantages to the operators of such facilities, when they wish to succumb to a higher level of regulation in return for the possibility of using EU passport and enjoying higher level of confidence thanks to improved transparency and introduction of wider safeguards to protect investors´ interests. We think that the obligation to turn an organised trading facility into an MTF after reaching certain threshold goes against this objective, which was based on voluntary decision of the operator in question.

We do not think that the argumentation of the Commission, as presented in the paper, sufficiently justifies further increase in regulation of financial markets. It shows neither any potential gains of the proposal, nor does it put forward any indication of the fact that the present situation is causing serious risks for the investors or for the stability and integrity of markets. On the contrary, the suggested steps would, according to our opinion, increase transaction costs for end-clients and reduce efficiency of the markets.

2.2.2. Crossing systems

Question 6: What is your opinion on the introduction of, and suggested requirements for, a new sub-regime for crossing networks? Please explain the reasons for your views.

Question 7: What is your opinion on the suggested clarification that if a crossing system is executing its own proprietary share orders against client orders in the system then it would prima facie be treated as being a systematic internaliser and that if more than one firm is able to enter orders into a system it would be prima facie be treated as a MTF? Please explain the reasons for your views.

The same, or even stronger, arguments apply to the suggestion of introducing a new sub-regime for crossing networks, which is supposed to be even more stringent and onerous than the one for other organised platforms. An example is the requirement of obligatory conversion of a crossing network into MTF in case that orders are entered into the system not only by the operator but also by a third party. Such an obligation is not suggested for other trading platforms, which should, according to the proposal, be converted into MTF only in case the trades reach specific threshold. As stated in the paper itself, the investment firms operating crossing systems are already subject to conduct of business rules, best execution obligation, requirements to prevent conflict of interests,

reporting obligations towards competent authorities and so forth. We believe that these obligations are sufficient to safeguard proper and sound performance of these investment services.

2.2.3. Trading of standardised OTC derivatives on exchanges or electronic trading platforms where appropriate.

Question 8: What is your opinion of the introduction of a requirement that all clearing eligible and sufficiently liquid derivatives should trade exclusively on regulated markets, MTFs, or organised trading facilities satisfying the conditions above? Please explain the reasons for your views.

Question 9: Are the above conditions for an organised trading facility appropriate? Please explain the reasons for your views.

Question 10: Which criteria could determine whether a derivative is sufficiently liquid to be required to be traded on such systems? Please explain the reasons for your views.

Question 11: Which market features could additionally be taken into account in order to achieve benefits in terms of better transparency, competition, market oversight, and price formation? Please be specific whether this could consider for instance, a high rate of concentration of dealers in a specific financial instruments, a clear need from buy-side institutions for further transparency, or on demonstrable obstacles to effective oversight in a derivative trading OTC, etc.

Question 12: Are there existing OTC derivatives that could be required to be traded on regulated markets, MTFs or organised trading facilities? If yes, please justify. Are there some OTC derivatives for which mandatory trading on a regulated market, MTF, or organised trading facility would be seriously damaging to investors or market participants? Please explain the reasons for your views.

A "standardised OTC derivative" is hardly to define. Derivatives, which are standardised, sufficiently liquid and clearing eligible, are already being traded on organised trading venues. The reason why derivatives stay OTC is that they are not and often cannot be standardised (e.g. futures vs. forwards). Therefore, it is difficult to see a point in the proposal. Furthermore, if the obligation to trade these derivatives exclusively on regulated markets, MTFs or organised trading facilities, as proposed in the paper, is introduced, it means that derivatives would be subjected to more stringent regime than shares or bonds, which can be traded OTC.

2.3 Automated trading and related issues

Question 13: Is the definition of automated and high frequency trading provided above appropriate?

Question 14: What is your opinion of the suggestion that all high frequency traders over a specified minimum quantitative threshold would be required to be authorised?

Question 15: What is your opinion of the suggestions to require specific risk controls to be put in place by firms engaged in automated trading or by firms who allow their systems to be used by other traders?

Question 16: What is your opinion of the suggestion for risk controls (such as circuit breakers) to be put in place by trading venues?

Question 17: What is your opinion about co-location facilities needing to be offered on a non-discriminatory basis?

Question 18: Is it necessary that minimum tick sizes are prescribed? Please explain why.

Question 19: What is your opinion of the suggestion that high frequency traders might be required to provide liquidity on an ongoing basis where they actively trade in a financial instrument under similar conditions as apply to market makers? Under what conditions should this be required?

Question 20: What is your opinion about requiring orders to rest on the order book for a minimum period of time? How should the minimum period be prescribed? What is your opinion of the alternative, namely of introducing requirements to limit the ratio of orders to transactions executed by any given participant? What would be the impact on market efficiency of such a requirement?

We have no objections to the proposed definition of automated trading. As to high frequency trading, we believe that a more precise definition than "a subcategory of automated trading" is needed.

We also don't oppose the suggestion that co-location facilities should be offered on a non-discriminatory basis and that high frequency traders might be required to provide liquidity on an ongoing basis when they trade under similar conditions as apply to market makers.

As to the prescribed minimum tick sizes, we would like to stress the need to ensure proportionality in case such a rule is to be introduced, since the prices of financial instruments vary significantly, the minimum tick size should take into account the value of the instrument and therefore be based on sorting the financial instruments into categories based on their type and price (this principle is already applied by regulated markets).

2.4 Systematic internalisers

Question 21: What is your opinion about clarifying the criteria for determining when a firm is a SI? If you are in favour of quantitative thresholds, how could these be articulated? Please explain the reasons for your views.

Question 22: What is your opinion about requiring SIs to publish two sided quotes and about establishing a minimum quote size? Please explain the reasons for your views.

We do not have any objections to the suggested clarification of the criteria for determining when an investment firm is a systematic internaliser. We agree that the current criteria may be regarded as vague and thus causing complications when determining the firms that fall within the definition.

We do not have any comments to the suggestion that systematic internalisers should be required to publish two sided quotes. The paper does not contain any reasoning behind this proposal. As regards the minimum quote size, we agree that without setting a minimum quote size the status of systematic internaliser might become pointless since the quoted size might be so low that no market participant will be willing to enter into such transaction. On the other hand, a generally applicable minimum quote size might prove to be inadequate and should take into account also the size of the firm in question.

2.5 Further alignment and reinforcement of organisational and market surveillance requirements for MTFs and regulated markets as well as organised trading facilities

Question 23: What is your opinion of the suggestions to further align organisational requirements for regulated markets and MTFs? Please explain the reasons for your views.

Question 24: What is your opinion of the suggestion to require regulated markets, MTFs and organised trading facilities trading the same financial instruments to cooperate in an immediate manner on market surveillance, including informing one another on trade disruptions, suspensions and conduct involving market abuse?

We do not agree with the proposed alignment of organisational requirements for regulated markets and MTFs. We believe that the original goal was to provide for two clearly distinguishable types of trading venues, each of them intended for other type of investors and financial instruments and therefore subjected to different level of regulation. It was one of the measures that should have removed concentration of trading, as one of the main objectives of MiFID. We then believe that the distinction between regulated markets and MTF´s would loose any sense at all.
We have no objections regarding the suggested cooperation between various trading venues.

2.6 SME markets

Question 25: What is your opinion of the suggestion to introduce a new definition of SME market and a tailored regime for SME markets under the framework of regulated markets and MTFs? What would be the potential benefits of creating such a regime?

Question 26: Do you consider that the criteria suggested for differentiating the SME markets (i.e. thresholds, market capitalisation) are adequate and sufficient?

We agree with the proposal to establish special trading venues specialized in SMEs. This would allow EU law to set proportionately lighter obligations for such issuers without stigmatizing them as something less reliable compared to others,

since the market will be clearly distinguishable but still have the credit of being regulated by EU law. We consider the suggested criteria for differentiation adequate. We want to point out just the need to retain the option for SMEs to enter "standard" regulated market or MTF if they wish to do so.

Section 3 – Pre- and Post-trade transparency

3.1 Equity Markets

3.1.1. Pre-trade transparency

Question 27: What is your opinion of the suggested changes to the framework directive to ensure that waivers are applied more consistently?

Question 28: What is your opinion about providing that actionable indications of interest would be treated as orders and required to be pre-trade transparent? Please explain the reasons for your views.

Question 29: What is your opinion about the treatment of order stubs? Should they not benefit from the large in scale waiver? Please explain the reasons for your views.

Question 30: What is your opinion about prohibiting embedding of fees in prices in the price reference waiver? What is your opinion about subjecting the use of the waiver to a minimum order size? If so, please explain why and how the size should be calculated.

Question 31: What is your opinion about keeping the large in scale waiver thresholds in their current format? Please explain the reasons for your views.

We generally agree with the changes to the MiFID in order to ensure its consistent application across the EU. However, we are not sure if the actionable indication of interest can be treated as orders without adding too much complexity to the system. We believe that it is not possible to provide for clear criteria defining the "interest" as such. The scope of such obligation would always remain too unclear.

3.1.2. Post trade transparency

Question 32: What is your opinion about the suggestions for reducing delays in the publication of trade data? Please explain the reasons for your views.

From our point of view there is no pressing need to change the current regulation as regard to the delays in the publication of trade date.

3.2 Equity-like instruments

Questions 33: What is your opinion about extending transparency requirements to depositary receipts, exchange traded funds and certificates issued by companies? Are there any further products (e.g. UCITS) which could be considered? Please explain the reasons for your views.

Questions 34: Can the transparency requirements be articulated along the same system of thresholds used for equities? If not, how could specific thresholds be defined? Can you provide criteria for the definition of these thresholds for each of the categories of instruments mentioned above?

We would generally agree with the extending transparency requirements to depositary receipts and certificates issued by companies. Regarding exchange traded funds and UCITS we do not see any reason for inclusion due to our current legal framework for these entities.

3.3 Trade transparency regime for shares traded only on MTFs or organised trading facilities

Questions 35: What is your opinion about reinforcing and harmonising the trade transparency requirements for shares traded only on MTFs or organised trading facilities? Please explain the reasons for your views.

Questions 36: What is your opinion about introducing a calibrated approach for SME markets? What should be the specific conditions attached to SME markets?

The transparency regime on the regulated market and on the MTF or organised trading facility should reflect the nature of these trading venues. One of the reasons to trade shares or other instruments on MTF instead of regulated market could be exactly lesser complexity of transparency requirements. This is especially true for the SME markets. Therefore we are not in favour of proposed approach.

3.4 Non equity markets/ Over the counter trading

Questions 37: What is your opinion on the suggested modification to the MiFID framework directive in terms of scope of instruments and content of overarching transparency requirements? Please explain the reasons for your views.

Questions 38: What is your opinion about the precise pre-trade information that regulated markets, MTFs and organised trading facilities as per section 2.2.3 above would have to publish on non-equity instruments traded on their system? Please be specific in terms of asset-class and nature of the trading system (e.g. order or quote driven).

Questions 39: What is your opinion about applying requirements to investment firms executing trades OTC to ensure that their quotes are accessible to a large number of investors, reflect a price which is not too far from market value for comparable or identical instrument traded on organised venues, and are binding below a certain transaction size? Please indicate what transaction size would be appropriate for the various asset classes.

Questions 40: In view of calibrating the exact post-trade transparency obligations for each asset class and type, what is your opinion of the suggested parameters, namely that the regime be transaction-based, and predicated on a set of thresholds by transaction size? Please explain the reasons for your views.

Questions 41: What is your opinion about factoring in another measure besides transaction size to account for liquidity? What is your opinion about whether a specific additional factor (e.g. issuance size, frequency of trading) could be considered for determining when the regime or a threshold applies? Please justify.

3.5 Over the counter trading

Questions 42: Could further identification and flagging of OTC trades be useful? Please explain the reasons.

The proposal to subject some asset classes to the full pre- and post-trade transparency requirements as provided by MiFID seems to be not reasonable. The fears that such a step would have a negative impact on liquidity on the markets are grounded.

As regards the OTC trades, especially forcing the OTC trades to be moved on any type of organised trading facility as suggested by the consultation paper and increasing the transparency level above current MiFID requirements, we are generally of the opinion that further regulation of this area is not justified. Applying stricter regulation could render the OTC trades useless for the market participants.

Section 4 – Data consolidation

4.1 Improving the quality of raw data and ensuring it is provided in consistent format

Questions 43: What is your opinion of the suggestions regarding reporting to be through approved publication arrangements (APAs)? Please explain the reasons for your views.

Questions 44: What is your opinion of the criteria identified for an APA to be approved by competent authorities? Please explain the reasons for your views.

Questions 45: What is your opinion of the suggestions for improving the quality and format of post trade reports? Please explain the reasons for your views.

Questions 46: What is your opinion about applying these suggestions to non-equity markets? Please explain the reasons for your views.

We are supporting standardisation of the content and format of the information reported to the market.

However, we would doubt any other regulatory measure on the grounds of its cost efficiency. In our view the proposed "APAs" framework would restrict the investment firms`s choice of the most cost effective way to publish the transaction report. Alternatively we would suggest to amend the MiFID

regulation to further specify which party of the trade is primary responsible to report.

4. 2 Reducing the cost of post trade data for investors

Questions 47: What is your opinion of the suggestions for reducing the cost of trade data? Please explain the reasons for your views.

Questions 48: In your view, how far data would need to be disaggregated? Please explain the reasons for your views.

Questions 49: In your view, what would constitute a "reasonable" cost for the selling or dissemination of data? Please provide the rationale/criteria for such a cost.

Questions 50: What is your opinion about applying any of these suggestions to nonequity markets? Please explain the reasons for your views.

We are of the opinion that the proposed measures could indeed reduce the cost of trade data. However, we would not support harmonized definition of a "reasonable" cost. The costs and bases for their calculation are in our opinion too diverse, thus it would be not possible to find any common formula fitting every Member State alike.

4.3 A European Consolidated tape

Questions 51: What is your opinion of the suggestion for the introduction of a European Consolidated Tape for post-trade transparency? Please explain the reasons for your views, including the advantages and disadvantages you see in introducing a consolidated tape.

Questions 52: If a post-trade consolidated tape was to be introduced which option (A, B or C) do you consider most appropriate regarding how a consolidated tape should be operated and who should operate it? Please explain the reasons for your view

Questions 53: If you prefer option A please outline which entity you believe would be best placed to operate the consolidated tape (e.g. public authority, new entity or an industry body).

Questions 54: On Options A and B, what would be the conditions to make sure that such an entity would be commercially viable? In order to make operating a European consolidated tape commercially viable and thus attaining the regulatory goal of improving quality and supply of post-trade data, should market participants be obliged to acquire data from the European single entity as it is the case with the US regime?

Questions 55: On Option B, which of the two sub-options discussed for revenue distribution for the data appears more appropriate and would ensure that the single entity described would be commercially viable?

Questions 56: Are there any additional factors that need to be taken into account in deciding who should operate the consolidated tape (e.g. latency, expertise, independence, experience, competition)?

Questions 57: Which timeframe do you envisage as appropriate for establishing a consolidated tape under each of the three options described?

Questions 58: Do you have any views on a consolidated tape for pre-trade transparency data?

Questions 59: What is your opinion about the introduction of a consolidated tape for non-equity trades? Please explain the reasons for your views.

We are not against the idea of a European Consolidated tape if it`s establishing or operation does not require any contribution from public budgets, be it from EU or Member States.
We believe that the consolidated tape has to be driven by actual demand of the trading venues and the market participants. No market venue should be forced to disclose data to the consolidated tape operator for free. It is important not to create an "information monopoly". The best possibility would be to support a creation of a single point collecting and re-publishing information which has been already disclosed in various Member States, so it can be easily researched. Commercial viability of the consolidated tape is tightly interconnected with the actual need of the market to receive consolidated data from such system. The consolidated tape should rather prove its right to existence by its success with market participants. If the consolidated tape operator would not be able to run the system on commercial basis, the consolidated tape probably has no reason to exist.

It should be also noted that the system consolidating information disclosed under the Transparency Directive has not been created yet and it is not sure whether there is any genuine interest to have one. This could be the case of the European Consolidated tape as well.

Section 5 – Measures specific to commodity derivative markets

5.1 Specific requirements for commodity derivative exchanges

Question 60: What is your opinion about requiring organised trading venues which admit commodity derivatives to trading to make available to regulators (in detail) and the public (in aggregate) harmonised position information by type of regulated entity? Please explain the reasons for your views.

Question 61: What is your opinion about the categorisation of traders by type of regulated entity? Could the different categories of traders be defined in another way (e.g. by trading activity based on the definition of hedge accounting under international accounting standards, other)? Please explain the reasons for your views.
Question 62: What is your opinion about extending the disclosure of harmonised position information by type of regulated entity to all OTC commodity derivatives? Please explain the reasons for your views.

Question 63: What is your opinion about requiring organised commodity derivative trading venues to design contracts in a way that ensures convergence between futures and spot prices? What is your opinion about other possible requirements for such venues, including introducing limits to how much prices can vary in given timeframe? Please explain the reasons for your views.

The paper states that the commodity derivative exchanges do already monitor positions taken by their members and other traders. If that is the case, we have no objection to the introduction of a harmonised position reporting obligation. But if the proposed reporting obligation would mean a necessity for the trading venues to establish new arrangements and procedures, which would bring additional costs for the venues and subsequently to the end-client, we emphasize that it is necessary to compare the possible gains of such new obligation with the overall costs. The same applies to the third question in this section, to which we would like to add that the paper does not express any reasons for such a proposal, nor does it explain how and by whom exactly should be such reporting obligation fulfilled.

We think that the suggested categorisation of traders is not suitable. It would lead to the classification of all traders who are not a regulated financial institution as commercial traders. That would not, according to our opinion, correspond with reality. There might be traders not regulated as a financial institution whose trades in commodity derivatives are purely speculative. The use of international accounting standards does not seem to be adequate either. The paper is not clear in the method how the classification would be effected, namely whether the trading venues should rely on the information provided by the traders or should classify the trade themselves. Further, it is not clear whether the distinction would be based on the fact that the trade qualifies for hedge accounting, or on the fact that it is really being accounted for as hedge transaction, since not all derivatives actually held for hedging purposes are accounted for as such.

5.2 MiFID exemptions for commodity firms

Question 64: What is your opinion on the three suggested modifications to the exemptions? Please explain the reasons for your views.

We agree with the suggested modifications to the exemptions. We support the reasons expressed in the paper.

5.3 Definition of other derivative financial instrument

Question 65: What is your opinion about removing the criterion of whether the contract is cleared by a CCP or subject to margining from the definition of other derivative financial instrument in the framework directive and implementing regulation? Please explain the reasons for your views.

We agree with the suggested removal of this criterion from the definition of other derivative financial instrument. We think that the argumentation expressed in the paper is valid.

5.4 Emission allowances

Question 66: What is your opinion on whether to classify emission allowances as financial instruments? Please explain the reasons for your views.

We welcome the discussion about the possibility to classify emission allowances as financial instruments, but we agree with the Commission that first it is necessary to carry out an in-depth analysis of the overall implications of such a classification.

SECTION 6 – Transaction reporting

Question 67: What is your opinion on the extension of the transaction reporting regime to transactions in all financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

Question 68: What is your opinion on the extension of the transaction reporting regime to transactions in all financial instruments the value of which correlates with the value of financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

Question 69: What is your opinion on the extension of the transaction reporting regime to transactions in depositary receipts that are related to financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

Question 70: What is your opinion on the extension of the transaction reporting regime to transactions in all commodity derivatives? Please explain the reasons for your views.

Question 71: Do you consider that the extension of transaction reporting to all correlated instruments and to all commodity derivatives captures all relevant OTC trading? Please explain the reasons for your views.

As regards all suggested extensions of reporting obligations, we do not have any particular objections. We just want to stress that the effects of any additional reporting obligations should be carefully analysed, so that the costs such new reporting obligations will bring to market participants and especially end-clients will not outweigh the benefits achieved in terms of enhanced supervision.

Question 72: What is your opinion of an obligation for regulated markets, MTFs and other alternative trading venues to report the transactions of nonauthorised members or participants under MiFID? Please explain the reasons for your views.

We agree with the proposal. It is truth that the transactions carried out by such persons should be subject to the reporting obligation and because it would be problematic to impose such an obligation on the traders themselves, since they are not subject to MiFID in general, the best solution is to impose such obligation on the trading venues.

Question 73: What is your opinion on the introduction of an obligation to store order data? Please explain the reasons for your views.

Question 74: What is your opinion on requiring greater harmonisation of the storage of order data? Please explain the reasons for your views.

We do not object to the proposal to introduce a minimally harmonised obligation to store order data. We support the reasons expressed in the paper.

6.2 Content of reporting

Question 75: What is your opinion on the suggested specification of what constitutes a transaction for reporting purposes? Please explain the reasons for your views.

Question 76: How do you consider that the use of client identifiers may best be further harmonised? Please explain the reasons for your views.

Question 77: What is your opinion on the introduction of an obligation to transmit required details of orders when not subject to a reporting obligation? Please explain the reasons for your views.

Question 78: What is your opinion on the introduction of a separate trader ID? Please explain the reasons for your views.

Question 79: What is your opinion on introducing implementing acts on a common European transaction reporting format and content? Please explain the reasons for your views.

We agree with the suggested specification of transaction for the purposes of transaction reporting. We believe that the clarification is necessary to ensure uniformity of reporting and efficiency of supervision based on the reports.

We support the proposed requirement that the transaction reports should include client identifier.

We believe that the most effective option for harmonisation would be to introduce a unique harmonised coding rule, but we understand the difficulties such a project would face at present. Should that code exist at some point in the future, we think a completely new code should be introduced, which would be homogenous for all Member States and anonymous (not using any data allowing for identification of the subject in question to third persons) so that it would not raise data protection issues and could not be misused. For present, we think every Member State should choose an identifier applicable for the transactions carried out on its territory, based on some existing code, such as taxpayer number or personal identification number.

On the contrary, we do not see any particular benefit of the proposal to include a trader ID. When the competent authority identifies an irregularity in the

activities of a particular investment firm, it should not be difficult to find out which trader carried out the trades in question, on an ad hoc basis.

We agree with the introduction of a uniform obligation to transmit order details when not subject to a reporting obligation. That would enhance the uniformity of reporting and its usefulness for supervision purposes.

We support the introduction of a common European transaction format and content. We think that the transaction report is one of the documents, which should and can be easily standardised on EU level.

6.3 Reporting channels

Question 80: What is your opinion on the possibility of transaction reporting directly to a reporting mechanism at EU level? Please explain the reasons for your views.

Question 81: What is your opinion on clarifying that third parties reporting on behalf of investment firms need to be approved by the supervisor as an Approved Reporting Mechanism? Please explain the reasons for your views.

Question 82: What is your opinion on waiving the MiFID reporting obligation on an investment firm which has already reported an OTC contract to a trade repository or competent authority under EMIR? Please explain the reasons for your views.

Question 83: What is your opinion on requiring trade repositories under EMIR to be approved as an ARM under MiFID? Please explain the reasons for your views.

Concentration of transaction reporting to a single reporting mechanism at EU level would facilitate the reporting procedure itself and the access of competent authorities to reports from other Member States as well. But we want to emphasise that the basic question of financing operation of the mechanism has to be resolved at first. Only after the principles of financing such a project are clearly set, it is possible to express definite opinion.

We agree that additional reporting obligation should not be imposed on investment firms which have already reported an OTC contract under EMIR, since that would cause unnecessary double reporting.

On the contrary, we do not see the necessity to introduce the requirement that third parties reporting on behalf of investment firms need to be approved as an ARM. We think that the fact that the third party is reporting "on behalf" of investment firm should infer that in case such a third party breaches the MiFID rules, the investment firm itself will incur liability towards the competent authorities and the third party will be liable only for a breach of contract.

Section7 – Investor protection and provision of investment services

7.1 Scope of the Directive

7.1.1. Optional exemptions for some investment service providers

Question 84: What is your opinion about limiting the optional exemptions under Article 3 of MiFID? What is your opinion about obliging Member States to apply to the exempted entities requirements analogous to the MiFID conduct of business rules for the provision of investment advice and fit and proper criteria? Please explain the reasons for your views.

We agree with the necessity to set such regulatory standards and investor protection to the firms that utilize the exemption from MiFID directive.

7.1.2. Application of MiFID to structured deposits

Question 85: What is your opinion on extending MiFID to cover the sale of structured deposits by credit institutions? Do you consider that other categories of products could be covered? Please explain the reasons for your views.

We support the proposed change. We agree that the structured deposits should be subject to the similar investor protection provisions as other comparable retail-oriented products, which are targeted by the PRIPs initiative.

7.1.3. Direct sales by investment firms and credit institutions

Question 86: What is your opinion about applying MiFID rules to credit institutions and investment firms when, in the issuance phase, they sell financial instruments they issue, even when advice is not provided? What is your opinion on whether, to this end, the definition of the service of execution of orders would include direct sales of financial instruments by banks and investment firms? Please explain the reasons for your views.

We support the view of the Commission. In our opinion, the issuance of financial instrument by credit institution to a client should be always regarded as the "execution of orders" investment service, even when there is no advice from the issuer. We are of the opinion that in aforementioned trades, retail customers of the credit institutions and investment firms issuing new securities should benefit from additional protection resulting from automatic client classification, especially in relation of securities that wouldn't have been covered by prospectus directive thanks to an exemption. Such additional protection would be comparable to the fact that other issuers than credit institutions and investment firms usually have to place their issues via intermediary network or via regulated markets, where the retail client protection is assured by the credit institutions and investment firms acting as intermediaries or brokers.

7.2 Conduct of business obligations

7.2.1. "Execution only" services

Question 87: What is your opinion of the suggested modifications of certain categories of instruments (notably shares, money market instruments, bonds and securitised debt), in the context of so-called "execution only" services? Please explain the reasons for your views.

Question 88: What is your opinion about the exclusion of the provision of "execution-only" services when the ancillary service of granting credits or loans to the client (Annex I, section B (2) of MiFID) is also provided? Please explain the reasons for your views.

Question 89: Do you consider that all or some UCITS could be excluded from the list of non-complex financial instruments? In the case of a partial exclusion of certain UCITS, what criteria could be adopted to identify more complex UCITS within the overall population of UCITS? Please explain the reasons for your views.

Question 90: Do you consider that, in the light of the intrinsic complexity of investment services, the "execution-only" regime should be abolished? Please explain the reasons for your views.

We consider current system of "execution only" investment services regarding the non-complex instruments (shares, bonds, money market instruments) as sufficient. We are of the opinion that there's no necessity for change. We strongly oppose the idea of abolishing the "execution-only" regime.

As for the non-complex v. complex instrument classification, we are looking forward to participate in a discussion about new classification. We agree with the basic criterion for this classification, however we would like to propose some exemption from this "rule of thumb", as some of the instruments, which are classified as "complex" by the proposal, actually improve the position (and protection) of the investor rather than deteriorate it. Convertible bond or share does not expose investor to a greater risk due to the "embedded derivative", on the contrary, allows them to choose money or stock if held to maturity.
As for the collective investment units, we believe that these units are covered sufficiently by current legislation; therefore there is no need to further tighten the regime for some of those units by classifying them as complex instruments.

7.2.2. Investment advice

Question 91: What is your opinion of the suggestion that intermediaries providing investment advice should:

1) inform the client, prior to the provision of the service, about the basis on which advice is provided;

2) in the case of advice based on a fair analysis of the market, consider a sufficiently large number of financial instruments from different providers?

Please explain the reasons for your views.

Question 92: What is your opinion about obliging intermediaries to provide advice to specify in writing to the client the underlying reasons for the advice provided, including the explanation on how the advice meets the client's profile? Please explain the reasons for your views.

Question 93: What is your opinion about obliging intermediaries to inform the clients about any relevant modifications in the situation of the financial instruments pertaining to them? Please explain the reasons for your views.

Question 94: What is your opinion about introducing an obligation for intermediaries providing advice to keep the situation of clients and financial instruments under review in order to confirm the continued suitability of the investments? Do you consider this obligation be limited to longer term investments? Do you consider this could be applied to all situations where advice has been provided or could the intermediary maintain the possibility not to offer this additional service? Please explain the reasons for your views.

We agree with the short info on how the advice meets the client's profile in such case and with strengthening of transparency of advice as much as possible.

On the contrary, we don't support the proposed obligation of the ongoing monitoring of client's situation and suitability of advised instrument, especially in cases where the advice was given once, not on the regular basis. The regime proposed in this part of paper convenes strongly to the portfolio management service, which is different investment service. We believe that the regime of intermediary-client relation should be kept on the agreement between those parties, not imposed by legislation.

7.2.3. Informing clients on complex products

Question 95: What is your opinion about obliging intermediaries to provide clients, prior to the transaction, with a risk/gain and valuation profile of the instrument in different market conditions? Please explain the reasons for your views.

Question 96: What is your opinion about obliging intermediaries also to provide clients with independent quarterly valuations of such complex products? In that case, what criteria should be adopted to ensure the independence and the integrity of the valuations?

Question 97: What is your opinion about obliging intermediaries also to provide clients with quarterly reporting on the evolution of the underlying assets of structured finance products? Please explain the reasons for your views.

Question 98: What is your opinion about introducing an obligation to inform clients about any material modification in the situation of the financial instruments held by firms on their behalf? Please explain the reasons for your views

Question 99: What is your opinion about applying the information and reporting requirements concerning complex products and material modifications in the

situation of financial instruments also to the relationship with eligible counterparties? Please explain the reasons for your views.

Question 100: What is your opinion of, in the case of products adopting ethical or socially oriented investment, obliging investment firms to inform clients thereof?

Again, we would like to point out the difference between portfolio management and investment advice services. We believe that proposed changes lead to the unifying of those services, which will lead to higher prices of investment advice service provision and to the client's inability to obtain one-time investment advice instead of "portfolio management light" kind of service. We don't support this part of proposal.

As for the proposed documents to be distributed with the investment advice, we are of the opinion that most of investment instruments in question is subject to some "key information overview" kind of similar disclosure duty (under UCITS, Prospectus Directive or PRIPs), which will contain comparable information as proposed document. Providing such a new document to clients would be counterproductive, as flooding clients with many repeating information acts distracts clients rather than help them.

Finally, regarding the proposed obligation to inform clients on ethical or socially oriented investment products, investment firms have already to inform their clients about proposed investment strategies and products, therefore we don't believe any amendments in this area is needed.

7.2.4. Inducements

Question 101: What is your opinion of the removal of the possibility to provide a summary disclosure concerning inducements? Please explain the reasons for your views.

Question 102: Do you consider that additional ex-post disclosure of inducements could be required when ex-ante disclosure has been limited to information methods of calculating inducements? Please explain the reasons for your views.

Question 103: What is your opinion about banning inducements in the case of portfolio management and in the case of advice provided on an independent basis due to the specific nature of these services? Alternatively, what is your opinion about banning them in the case of all investment services? Please explain the reasons for your views.

We are of the opinion that the current regime of ex-ante inducement disclosure is the only feasible solution, though we support the idea of further supplementation of such information by proper ex-post disclosure. However we foresee that in many cases it will be extremely difficult for investment firms and tied agents to calculate the proper amount of inducement provided in connection to one given client due to difficult system of provisions calculation.

As for banning all inducements, we don't support this as the only option. We generally support the idea of differentiation between "paid-by-client" regime, with fair market assessment, which is already possible under MiFID, and "paid-by-institution" regime, where the client is informed that intermediary considers only some of the investment instruments. The clients, however, must have the option to choose between those two regimes.

7.2.5. Provision of services to non-retail clients and classification of clients

Question 104: What is your opinion about retaining the current client classification regime in its general approach involving three categories of clients (eligible counterparties, professional and retail clients)? Please explain the reasons for your views.

Question 105: What are your suggestions for modification in the following areas:
a) Introduce, for eligible counterparties, the high level principle to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading when informing the client;
b) Introduce some limitations in the eligible counterparties regime. Limitations may refer to entities covered (such as non-financial undertakings and/or certain financial institutions) or financial instruments traded (such as asset backed securities and nonstandard OTC derivatives); and/or
c) Clarify the list of eligible counterparties and professional clients per se in order to exclude local public authorities/municipalities?
Please explain the reasons for your views.

Question 106: Do you consider that the current presumption covering the professional clients' knowledge and experience, for the purpose of the appropriateness and suitability test, could be retained? Please explain the reasons for your views.

We are satisfied with current classification of clients under MiFID, but we don't oppose certain clarification for example as for 105/a) and c). As for 105/b) we don't see any reasoning for such changes.

7.2.6. Liability of firms providing services

Question 107: What is your opinion on introducing a principle of civil liability applicable to investment firms? Please explain the reasons for your views.

Question 108: What is your opinion of the following list of areas to be covered: information and reporting to clients, suitability and appropriateness test, best execution, client order handling? Please explain the reasons for your views.

We strongly oppose any introduction of unified civil liability regime into MiFID directive. Civil liability has always been regulated exclusively by each Member State's law system. Because of those differences in Member States' legal regimes, their customs and legal culture, which provide for different treatment, it would be impossible to set a common approach in this field.

7.2.7. Execution quality and best execution

Question 109: What is your opinion about requesting execution venues to publish data on execution quality concerning financial instruments they trade? What kind of information would be useful for firms executing client orders in order to facilitate compliance with best execution obligations? Please explain the reasons for your views.

Question 110: What is your opinion of the requirements concerning the content of execution policies and usability of information given to clients should be strengthened? Please explain the reasons for your views.

We are not sure of the added value of this proposal. Trading venues are already subjects of reporting obligation when trading in investment instruments. Investment firms can easily aggregate such information to obtain their own execution quality assessment on all trading venues they operate. Moreover, every investment firm may have different criteria for assessing execution quality, and data aggregated by trading venues would be a little to no use to them. The only "advantage" to investment firms would be the effective transmission of liability regarding best execution obligation to the trading venues, which would not be optimal solution. We are of the opinion that current provisions are sufficient and no change is needed.

7.2.8. Dealing on own account and execution of client orders

Question 111: What is your opinion on modifying the exemption regime in order to clarify that firms dealing on own account with clients are fully subject to MiFID requirements? Please explain the reasons for your views.

Question 112: What is your opinion on treating matched principal trades both as execution of client orders and as dealing on own account? Do you agree that this should not affect the treatment of such trading under the Capital Adequacy Directive? How should such trading be treated for the purposes of the systematic internaliser regime? Please explain the reasons for your views.

We support the proposed change. We agree that such a transaction should be always regarded as both "dealing on own account" and "order execution" service.

7.3 Authorisation and organisational requirements

7.3.1. Fit and proper criteria

Question 113: What is your opinion on possible MiFID modifications leading to the further strengthening of the fit and proper criteria, the role of directors and the role of supervisors? Please explain the reasons for your view.

We agree with the proposed modification that members of board of directors with supervisory function should be also covered by the similar "fit and proper" requirement as those members with executive powers.

7.3.2. Compliance, risk management and internal audit functions

Question 114: What is your opinion on possible MiFID modifications leading to the reinforcing of the requirements attached to the compliance, the risk management and the internal audit function? Please explain the reasons for your view.

We agree with the proposed clarification and further specification of compliance, risk management and internal audit function.

7.3.3. Organisational requirements for the launch of products, operations and services

Question 115: Do you consider that organisational requirements in the implementing directive could be further detailed in order to specifically cover and address the launch of new products, operations and services? Please explain the reasons for your views.

Question 116: Do you consider that this would imply modifying the general organisational requirements, the duties of the compliance function, the management of risks, the role of governing body members, the reporting to senior management and possibly to supervisors?

We are of the opinion that the directive already provides for a new service or product to be compliant with legislation as well as internal rules of each investment firm. Therefore we do not think there is need to amend MiFID in aspect, but we don't oppose further clarification of this matter. As for the reporting obligation of the compliance function to the senior management and supervisors, we support this idea.

7.3.4. Specific organisational requirements for the provision of the service of portfolio management

Question 117: Do you consider that specific organisational requirements could address the provision of the service of portfolio management? Please explain the reasons for your views.

We believe that portfolio management services are already sufficiently covered not by MiFID. These services are regulated by the code of conduct provisions as well as best execution obligation. Therefore we don't believe there is any need for introducing new rules in this area.

7.3.5. Conflicts of interest and sales process

Question 118: Do you consider that implementing measures are required for a more uniform application of the principles on conflicts of interest?

We believe that current principles, defied rather loosely than *in concreto*, are best approach to regulate conflict of interest. Further concretization will probably be detrimental to the application of these rules, as it might unintentionally

provide for "safe harbors", which shouldn't be introduced to the conflict of interest regime.

7.3.6. Segregation of client assets

Question 119: What is your opinion of the prohibition of title transfer collateral arrangements involving retail clients' assets? Please explain the reasons for your views.

Question 120: What is your opinion about Member States be granted the option to extend the prohibition above to the relationship between investment firms and their non retail clients? Please explain the reasons for your views.

Question 121: Do you consider that specific requirements could be introduced to protect retail clients in the case of securities financing transaction involving their financial instruments? Please explain the reasons for your views.

Question 122: Do you consider that information requirements concerning the use of client financial instruments could be extended to any category of clients?

Question 123: What is your opinion about the need to specify due diligence obligations in the choice of entities for the deposit of client funds?

We do not support those proposals. We believe that current regime of informing clients of the risks connected with providing collateral is sufficient and any further regulation would effectively render collateral agreements impossible for all parties concerned, investment firms and clients.

7.3.7. Underwriting and placing

Question 124: Do you consider that some aspects of the provision of underwriting and placing could be specified in the implementing legislation? Do you consider that the areas mentioned above (conflicts of interest, general organisational requirements, requirements concerning the allotment process) are the appropriate ones? Please explain the reasons for your views.

We consider that this area is sufficiently regulated by MiFID as is and there is no need for amendment.

Section 8 – Further convergence of the regulatory framework and of supervisory practices

8.1 Options and discretions

8.1.1. Tied agents

Questions 125: What is your opinion of Member States retaining the option not to allow the use of tied agents?

Questions 126: What is your opinion in relation to the prohibition for tied agents to handle clients' assets?

Questions 127: What is your opinion of the suggested clarifications and improvements of the requirements concerning the provision of services in other Member States through tied agents?

Questions 128: Do you consider that the tied agents regime require any major regulatory modifications? Please explain the reasons for your views.

We agree in general with the proposal to amend the regulatory framework of the tied agents. Czech law already allows tied agents to operate; we see them as an important part of the financial product distribution channel. We don't oppose, hence, abolition of the national discretion as proposed. Similarly, tied agents are under current Czech law prohibited to handle clients' assets; we see the restriction of the asset handling as unproblematic. We also would agree with the clarification of the requirements concerning the provision of services in other Member States as proposed.

8.1.2. Telephone and electronic recording

Questions 129: Do you consider that a common regulatory framework for telephone and electronic recording, which should comply with EU data protection legal provisions, could be introduced at EU level? Please explain the reasons for your views.
Questions 130: If it is introduced do you consider that it could cover at least the services of reception and transmission of orders, execution of orders and dealing on own account? Please explain the reasons for your views.
Questions 131: Do you consider that the obligation could apply to all forms of telephone conversation and electronic communications? Please explain the reasons for your views.
Questions 132: Do you consider that the relevant records could be kept at least for 3 years? Please explain the reasons for your views.

We would agree to have a recording requirement in a minimum harmonisation regime.

We agree with the recording requirement for conversations regarding the receipt of client orders. We believe that this kind of client conversation is vital for investment firms to fulfil their best execution duty and the duty to act in their clients' best interest.

As for the record of the conclusion of transaction when executing a client order (on investment firm's own account or other ways), we believe that content of such conversation is recorded in and kept sufficiently under the provisions regarding the transaction reporting without the need of recording the conversation.

The minimum time span of 3 years to keep the record seems to be sufficient.

8.1.3. Additional requirements on investment firms in exceptional cases

Question 133: What is your opinion on the abolition of Article 4 of the MiFID implementing directive and the introduction of an on-going obligation for Member States to communicate to the Commission any addition or modification

in national provisions in the field covered by MiFID? Please explain the reasons for your views.

As long as the obligation for the Member States to communicate to the Commission any addition or modification in national provision would not mean a substantial increase of administrative burden for the reporting authority, we are supportive of the proposal. However, the reporting method and details should be designed as simple as possible.

8.2 Supervisory powers and sanctions

Questions 134: Do you consider that appropriate administrative measures should have at least the effect of putting an end to a breach of the provisions of the national measures implementing MiFID and/or eliminating its effect? How the deterrent effect of administrative fines and periodic penalty payments can be enhanced? Please explain the reasons for your views.

Questions 135: What is your opinion on the deterrent effects of effective, proportionate and dissuasive criminal sanctions for the most serious infringements? Please explain the reasons for your views.

Questions 136: What are the benefits of the possible introduction of whistleblowing programs? Please explain the reasons for your views.

Questions 137: Do you think that the competent authorities should be obliged to disclose to the public every measure or sanction that would be imposed for infringement of the provisions adopted in the implementation of MiFID? Please explain the reasons for your views.

The harmonization of appropriate administrative measures is highly desirable. However, it could be difficult to establish the common grounds from which the unified the administrative fines and periodic penalty payments could be derived. The situation in every Member State is different and what seems to be a low fine in one MS could be inadequately high in another one. Therefore it makes sense to focus the harmonization efforts on the pure administrative measures, such as prohibition of activity and others.

The whistleblowing programs could certainly become one of the important tools to enforce the MiFID obligations, as the "inside information" of this kind is often the only way how the competent authority of a Member State can gain information necessary to prove a breach of rules.

The general obligation of a competent authority to disclose every measure or sanction imposed for infringement seems to be acceptable.

8.3 Access of third country firms to EU markets

Questions 138: In your opinion, is it necessary to introduce a third country regime in MiFID based on the principle of exemptive relief for equivalent jurisdictions? What is your opinion on the suggested equivalence mechanism?

Questions 139: In your opinion, which conditions and parameters in terms of applicable regulation and enforcement in a third country should inform the assessment of equivalence? Please be specific.

Questions 140: What is your opinion concerning the access to investment firms and market operators only for non-retail business?

We do not see any reason for harmonized approach to the access of third country firms to the market of each Member State.

Section 9 – Reinforcement of supervisory powers in key areas

9.1. Ban on specific activities, products or practices

Questions 142: What is your opinion on the possibility to ban products, practices or operations that raise significant investor protection concerns, generate market disorder or create serious systemic risk? Please explain the reasons for your views.

Questions 143: For example, could trading in OTC derivatives which competent authorities determine should be cleared on systemic risk grounds, but which no CCP offers to clear, be banned pending a CCP offering clearing in the instrument? Please explain the reasons for your views.

Questions 144: Are there other specific products which could face greater regulatory scrutiny? Please explain the reasons for your views.

In general, we support the idea to give powers to the national competent authorities to ban dangerous financial products and/or services. However, we see some potential problems related to this issue. Firstly, we support the idea to have appropriate evidence of risks and cost/benefit analysis. On the other hand, such requirement can lead to delays in imposing such measures, especially when there are no extraordinary circumstances and there is necessity to act swiftly. Secondly, there are already sufficient powers in MiFID (Art. 50(2)(e, g, j, k)). What will be the added value of such new power? If it will be related to OTC products, it may be difficult for the competent authority to supervise OTC trades. Thirdly, as it is proposed now, it seems that such measure will not affect one investment firm but will be of general application. In this relation we are not sure, if this will be consistent with the constitutions of Member States, because it will not be individual measure but in fact legal act of general application. Fourthly, we would ask the Commission to provide in the impact assessment specific examples of what services or products in the past would fall under this power. As we understand, it will not be related to credit default swaps or uncovered short selling as these products and activities are already covered by the proposal on Regulation on short selling and certain aspects of credit default swaps. Finally, we are not sure if national measures will be sufficient and will not lead to regulatory arbitrage. Will ESMA have similar powers? In emergency situations Art. 18 of ESMA regulation is applicable, but will there be possibility to use Art. 9(5) of ESMA Regulation in connection to MiFID? According to the mentioned Art. 9(5), ESMA can temporarily prohibit or restrict certain financial activities, but in our view this power does not cover banning or restricting financial products. To conclude, we would prefer to ban services, activities or products which are harmful to investors through legislative acts (preferably harmonised) and not through individual measures taken by the

competent authorities. In case of emergency situation, there is possibility to apply Art. 18 of ESMA Regulation, ensuring EU wide application of such measures.

In relation to OTC derivatives which should be cleared on systemic risk ground but no CCP wants to clear them, we do not agree with the proposed solution. Firstly, EMIR would be more suitable place to deal with such issues (and not MiFID). Secondly, as EMIR is drafted, such situation is almost inconceivable. In relation to the proposed wording of Articles 3 and 4 of EMIR, the CCP applies for authorisation for clearing of certain OTC derivatives. If ESMA after public consultation and consultation with ESRB identifies other instruments to be eligible for clearing, it will publish a call for development of proposals. Only in this case it may happen that no CCP would make the proposal. But allowing national competent authorities to ban trading in such derivatives should not be viewed as a solution. Firstly, it will certainly lead to regulatory arbitrage. Secondly, the standardised derivatives will be transformed to tailor made derivatives, which are not eligible for clearing. And finally, such a ban would be harmful to risk management of companies using the derivatives, as they will not be able to hedge themselves against the risks arising from their long positions.

We are not sure if there is a category of products which require greater regulatory scrutiny other than those already under the scrutiny. In relation to credit ratings and structured products, we consider the steps so far taken on the EU level to be sufficient. Also uncovered short selling is in our view sufficiently dealt with in the legislative draft. Many harmful practices fall under MAD (market manipulation). Also OTC derivatives are being dealt with under EMIR and consumer credit under Consumer Credit Directive 2008/48/EC.

9.2 Stronger oversight of positions in derivatives, including commodity derivatives

Questions 145: If regulators are given harmonised and effective powers to intervene during the life of any derivative contract in the MiFID framework directive do you consider that they could be given the powers to adopt hard position limits for some or all types of derivative contracts whether they are traded on exchange or OTC? Please explain the reasons for your views.

Questions 146: What is your opinion of using position limits as an efficient tool for some or all types of derivative contracts in view of any or all of the following objectives: (i) to combat market manipulation; (ii) to reduce systemic risk; (iii) to prevent disorderly markets and developments detrimental to investors; (iv) to safeguard the stability and delivery and settlement arrangements of physical commodity markets. Please explain the reasons for your views.

Questions 147: Are there some types of derivatives or market conditions which are more prone to market manipulation and/or disorderly markets? If yes, please justify and provide evidence to support your argument.

Questions 148: How could the above position limits be applied by regulators:
(a) To certain categories of market participants (e.g. some or all types of financial participants or investment vehicles)?
(b) To some types of activities (e.g. hedging versus non-hedging)?
(c) To the aggregate open interest/notional amount of a market?

In our view, it will be harmful if the competent authorities will be given powers to intervene during the life of a derivative contract. Any measures taken should apply *ex post* and should not interfere with derivative contracts already in force, especially not (as suggested in the footnote 282) to contracts approaching their expiry. This will cause significant disturbances on the market and lot of uncertainty of risk managers.

We think that the position limits may theoretically work in relation to commodity derivatives with physical settlement if they are adequately defined. However, it will be difficult to track the positions of a beneficiary, if he holds the aggregate position through several intermediaries. Therefore the calculation of the aggregate position has to be similar to the calculation of qualified holdings. Also the position limit would have to be calculated on a case by case basis and will be difficult to determine. The future supply of commodities (especially agricultural commodities) is always uncertain. Having this in mind, we do not consider position limits of derivatives to be an efficient tool. The costs for implementation will be high and the benefits uncertain.

In our view, only standardised derivatives traded on regulated markets can possibly lead to market manipulation, as any other financial instrument as defined in MAD. OTC derivatives cannot lead to market manipulation as they are not traded openly (transparently) on regulated markets and therefore they cannot contribute to price formation. Also in our view the underlying assets should influence the price of the derivatives but not *vice versa*. This is caused by the fact, that the value of the underlying asset is not linked to the value of the derivatives, but the value of the derivative is *per definitione* linked to the value of the underlying asset. In relation to the question on market conditions which are prone to disorderly markets, any disturbance on the market leads to disorderly markets but this is definition in circle. We can also say that markets in disorder are more prone to market manipulation than orderly functioning markets. We can try to protect markets from disorders, but we cannot completely prevent it. Every speculative bubble will be in the end followed by fall in the prices (corrections of the market). We can only speculate if speculative bubbles can be prevented, but the historical evidence proves that such speculation is purely hypothetical.

In relation to the question of hedging and non-hedging, we do not envisage any solution how this should apply in practice. Firstly, from the accounting books it cannot be determined whether the position in the derivative contract serves for hedging purposes or not. And secondly, if we limit positions in non-hedging derivatives, this will be harmful to the counterparty of such contract, because in each derivative contract one party is risk-seller whereas the other party is risk-taker. We therefore strongly oppose to any limits on positions in derivatives, regardless of the subject taking such positions or purposes for which the position is taken. Only for standardised derivatives we can calculate the aggregate amount of the market, but such information will never be complete as the positions in derivatives can be taken also outside the EU (and if taken only in EU, such positions can be taken in several Member States).