European Banking Authority
Mr. Lars Overby

Date: 16 July 2021
Subject: **Reaction to the consultation on the Draft RTS on the reclassification of investment firms as credit institutions in accordance with Article 8a (6)(b) of Directive 2013/36/EU**

Dear Mr Overby,

The Association of Proprietary Traders appreciates the opportunity to respond to the consultation paper on the Draft RTS on the reclassification of investment firms as credit institutions.

On behalf of the Amsterdam based EU-investment firms that provide continuous liquidity on exchanges across the EU, we would like to raise concerns on the potential impact of the RTS and on a possible unintended consequence of the application of IFRS.

Potential impact of the RTS, disconnection from actual risks and suggested (alternative) solution
On the basis of the draft RTS, several liquidity providing EU investment firms conducting MiFID II activities in the EU will have to become a credit institution just by reason of being part of a non-EU headquartered group, even though this specific entity of the group operating in the EU might not pose a systemic risk to the Union's capital markets.

The fact that these specific entities are part of a larger international group, will in itself not lead to an increase of the risk the specific entity poses. These firms do not have clients or hold client money and the vast majority of relevant positions is fully hedged and CCP cleared.

Where a (smaller) EU investment firm becomes a credit institution, it will be subject to a prudential regime tailored to the activities and risks of credit institutions taking deposits and lending money. This will impede the ambitious MIFID and CMU objectives to the detriment of retail investors and pensions funds, as it will create costly barriers to entry, make the EU less attractive for firms that form part of an international group (not considered credit institutions in their home country), which ultimately will have a negative impact on liquidity provision.

Therefore, we believe the determination if a firm needs to be authorised as a credit institution should be a function of an EU instead of a global assets test, as was the intention of the original draft RTS. At least, an investment firm should not be automatically required to obtain authorization as a credit institution just because it is part of a larger international group for which the group test result in > EUR 30 bn in assets, but only in case of a specific and established systemic risk of the specific EU investment firm, assessed on a case-by-case basis.

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Unintended consequence of application of IFRS
Firms that provide liquidity and take up fully hedged positions will in accordance with IFRS have to account for both sides of such position on the balance sheet. As this prevents off-setting, this leads to an artificially large balance sheet, as the IFRS treatment of such positions is in fact not a true reflection of the actual risks that these positions pose. An unintended consequence of the RTS may be that these firms will choose to focus their liquidity provision on instruments such as futures that do not lead to significant balance sheet increases under IFRS and reduce market making activities in instruments that do (e.g. shares, options, government bonds).

We hope the above remarks will be helpful in the further process of finalizing this draft RTS. Of course, we are happy to provide you with a further explanation, answer questions and provide more information.

I am sending a copy of this reaction to Mr Joost Smits, director Financial Markets of the Dutch ministry of Finance and Mr Maarten Gelderman, director Supervisory Policy of De Nederlandsche Bank.

Best regards,

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