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Nordic Financial Unions
NFU

**NFU position paper on the Capital Markets Union Action Plan**

This document is an analysis by the NFU secretariat on the objectives of the upcoming legislation included in the investment package - the retail investment strategy and an analysis of the recently published capital markets union package. For NFU's members these legislative frameworks are of utmost importance as they set the scene for finance workers' every day working lives. Politics seeks to nudge retail investors' activity and thereby setting incentives for financial institutions to serve their own interests as well as for their clients. Those however who implement the rules have to reconcile these objectives seamlessly and all at the same time. We therefore provide an insight into the complexity of the existing framework and possible ways to amend current and upcoming legislative proposals.

On 24 September 2020, the European Commission published an action plan to make progress towards completing the Capital Markets Union. Now in 2023 substantial parts of this action plan are falling in place. The Nordic Financial Unions is providing its position to the recently published and future legislative measures, which will shape finance employees' daily operations. In December 2022, the European Commission complemented this first CMU package with an additional one, which consists of the harmonisation of certain aspects of **insolvency laws** within the EU in order to increase the efficiency and predictability of frameworks, in particular for cross-border investments, the **listing rules for companies**, particularly small and medium-sized enterprises (SMEs), with a view to reducing administrative burdens and red tape and making it easier for EU companies to go public. Outstanding however is the **retail investment strategy**, which the European Commission originally foresaw for the first half of 2022, and which intends to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. NFU's critical assessment and policy recommendations shall help policy makers to appreciate the view of Nordic finance workers, their experience and expectations on changes that will affect the financial markets and thus their daily lives.

## I. Retail Investment Strategy

1. Ban of inducements

Commissioner McGuinness, in charge of financial stability, financial services and the capital markets union expressed during an ECON committee at the European Parliament on 24 January 2023 that an EU-wide ban on inducements can enable greater retail investment in exchange traded funds, leading to better returns for consumers and can prevent conflicts of interests. Published on 17 March 2023 the European Commission's college agendas reveal that the college will discuss the Investment package, also entailing the retail investment strategy on 03 May 2023, which is indicative of a soon after publication of a legislative proposal.

If this proposal would include a prohibition of sales incentives for financial products, financial institutions would face substantial and seismic upheavals as they continue to base a relevant part of their profits on fees and commissions, on both services and investments after a protracted period of low -or below zero- interest rates.[1] Commissions-/inducements based models have been associated with inherent problems, including conflicts of interest, which allegedly prevent them from acting in the consumer's interest. Research suggests that the MiFID II regulatory framework, which has required investment firms to unbundle investment research from other costs they charge to clients, has succeeded solving one of these pitfalls by decreasing the overall demand for research and shifts asset managers' focus to quality and thereby shifting asset managers' focus to quality. [2] Notwithstanding these inherent problems a ban would mean an inappropriate response or cure for an ambiguous and complex problem. NFU as voice of Nordic finance employees would like to highlight the following three considerations, which shall clarify why an inducement plan is likely to be the cure which kills the patient along with the disease:

Firstly, inducements allow for human expert advice also for consumers with relatively low investment capacity. In the last years, the offer of investment products/funds in banks has grown more diversified, giving investors access to different products from different investment and insurance companies. Banning inducements would mean that consultants would be paid with fees directly charged to consumers. The prices for

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[1] EBA - Data risk dashboard, Q4, 2022; page 24(

[2] Yifeng Guoa, Lira Motab; *Should Information be Sold Separately? Evidence from MiFID II* in Journal of Financial Economics 2021, page 37

financial advice would automatically go up and thus groups of consumers of retail investment would be excluded from professional advice and help, such as household investors, as only the wealthiest retail investors would accept those higher prices. Consequently, banning inducements seems to have reverse effects and instead of fortifying investors it entails detrimental repercussions.[3]

This would lead to the second reason, why a ban would constitute an unproportionate measure. Household investors and thus often consumers would be left with robo-advisors, which do not represent a viable alternative. When confronted with the choice between a human and a machine, large scores of consumers do prefer to get their advice from another human. We can also report that the technological development of sophisticated AI and robo-advisors are still in its early stages and can only benefit consumers when they complement employees and work to support sustainable human-machine interaction, while wealthiest retail investors would accept higher prices and would continue to benefit from face-to-face advice.

In Sweden niche players in insurance-based investments have emerged operating as self-directed digital platforms. They convince a certain spectrum of customers through their simplicity and transparency. This development can be witnessed without any further change of the regulatory framework and on the basis of the current versions of IDD and MiFID II.

And thirdly, the risk of creating a gateway for circumvention is very high. Many financial institutions may simply enter into separate and general agreements with investment firms, that will pay them an annual/forfait fee for "exclusive distribution" of their products among their client bases. This will result in a lower price of investments, but the investors will have little choice, and they will mostly be directed towards products of these suppliers.

NFU members also see the risk that a ban can lead to fewer local financial actors and less competition in the market. No exceptions are made for small or medium-sized companies in the IDD and this has led to, as shown in the UK that markets competition has decreased, especially outside large banking groups. This is of our concern when it comes to smaller local financial actors who are playing an important role for local economies and regional development.

For these reasons, NFU strongly advocates for taking into account the complexity of the

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[3] George A. Papaconstantinou- *Investment Bankers in Conflict: The Regime of Inducements in MiFID II and the Member States' Struggle for Fairness* in ERCL 2016; 12(4): 356–390; page 389-390

situation by distinguishing between self-employed consultants and VS advisor/consultant employees of banks. Our goal is to preserve quality employment in the sector and the professional expertise of banking/insurance employees, who themselves do not benefit directly and promptly from sales and are thus more likely to offer professional, personalised and unbiased advice as well as a wide choice of products.

NFU highlights that the MiFID regime consisting of MiFID I and II as well the very latest review Directive are designed to achieve a high-level degree of investor protection. As to conflicts of interests MiFID has adopted a three-step procedure for dealing with this systematic problem: (1) identifying conflicts of interests, (2) managing them, and (3) disclosure to clients. Article 18 MiFID II is devoted specifically to conflict resolution, the MiFID Implementing Directive and also the European Commission's delegated acts supplementing MiFID II elaborate further on particular investment activities pertaining to conflict pf interest and the respective appropriate mitigating mechanisms. Likewise, according to Article 24, a precondition for a financial institution receiving inducements is that it delivers relevant and proportionate quality improving services to the customers. Also, the payment must not lead to conflicts of interest. Further the financial institution needs to document how it complies with these obligations. It is also emphasised that when providing investment services, the financial institution shall ensure that it does not remunerate or assess staff performance in conflict with the duty to act in the customers' best interest. This includes the obligation not to remunerate or set sales targets that could provide an incentive to staff to recommend a particular financial instrument to a customer, rather than another instrument better suiting the customer's needs. Also, the very latest legislative review proposes a reaffirmation of Article 27 on investors' protection. NFU therefore argues to let the effects of this legal framework develop first and foremost, before similar or identical regulatory subjects are being regulated in yet a fourth system, especially as MiFID II had to be implemented only by 2018.

NFU also firmly advises against the attempt to balance an earlier failure to harmonise or lack of harmonisation of inducements. Member States retained the possibility to impose additional requirements even under MiFID II. This forthcoming regime on inducements has unsurprisingly let to gold-plating practices in the UK and Netherlands and therefore the need for the European Commission to cut this Gordian knot by reverting to a different regulatory instrument outside of MiFID.

This however does not mean that NFU rejects the idea of overcoming silos of EU

Financial legislation regarding consumer- or end-user protection of financial services.[4] NFU recognises substantial differences between the Insurance Distribution Directive (IDD) and MiFID, especially when it comes to the rules on inducements: while MiFID II does restrict inducements and allows only for some exceptions, the IDD sets out that intermediaries receiving inducements are considered to be fulfilling their contractual obligations, if inducements do not have a detrimental impact on the quality of the service and do not impair compliance with the duty to act honestly, fairly, and professionally in accordance with the best interests of the customers. The regulatory approach is thus comparatively less stringent. At the same time does IDD mirror MiFID in almost any other regulatory aspect and while NFU argues for preserving the specific nature of insurance contracts in comparison to investment products, NFU also see benefit and opportunity of a coherent and harmonised regulatory framework with regard to retail investors.

2. Background of retail investment strategy

Various legislative proposals encompassed in CMU action plan refer back to the final report issued by TESG (Technical Expert Stakeholder Group on SMEs) in 2021, "Empowering EU Capital Markets for SMEs - Making listing cool again". Notably, TESG's Recommendation n. 12 aims at weakening the levels of protection for retail investors set up within MIFiD II, and extending the category of professional clients to a wider pool of investors, based on requirements (owning a financial portfolio of a given amount, being advised by professional financial consultants) that do not imply a professional knowledge in trading and finance.

## II. Insolvency Directive (2022/0408 (COD))

Albeit NFU's reservations to the retail investment strategy, we welcome the last package of legislative proposals within the Capital Markets Union. This package includes a proposal for a directive seeking to level the playing field across the EU Member States in relation to certain aspects of insolvency law and is seeking to converge insolvency rules, with the aim of making them more efficient and effective in terms of creditor recoveries. The aim is to encourage greater coherence between the national insolvency frameworks in order to reduce divergences and inefficiencies which hamper the early

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[4] EBI Working Paper Series; Filippo Annunziata *Towards an EU Charter for the Protection of End Users in Financial Markets* 25/08/2022, page 5 f.

restructuring of viable companies in financial difficulties and the possibility of a second chance for honest entrepreneurs, and thereby lower the cost of restructuring for both debtors and creditors.

The proposal marks an important step to overcome disparities in European insolvency laws. The question remains however why target harmonisation of insolvency procedures as proposed by the European Commission remains such a difficult problem to address and resolve if Member States wish to promote effective and profitable cross border business transactions that aligning those systems. To solve this question, one has to remember that the original goals of insolvency rules was to replace the chaos occasioned by the pursuit of individual claims with a statutory regime. Some national systems are geared toward maximising the return to creditors, whether this is through returning a company to profitable trading or dealing with the company's assets in such a way that creditors are able to regain the best possible return on their financial claims, while other jurisdictions have a more social approach to insolvency, which leaves scope for, and indeed justified, rescue activities to preserve jobs and livelihoods of business in difficulty.

These different levels of protection afforded to employees, creditors, shareholders and other stakeholders continues to vary, create an environment of mistrust owing to perceived unfairness between insolvency systems and the imbalance in competition it creates. It had been accepted until recently that a European insolvency regulation imposing procedural norms across all Member States is not possible owing to the individual character of state insolvency regimes and this disparity between insolvency systems therefore continued to be an obstacle to effective coordination. NFU firmly believes, that greater coherence and increased efficiency in those national insolvency rules would maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence would also facilitate the restructuring of groups of companies. This in turn benefits finance sector workers, who will have to apply these rules to customers and also benefit thus from a more coherent and systematic approach.

The proposal entails a range of regulatory areas, which fall under targeted harmonisation, as new European common rules from which Member States may not deviate:

**a. Directors' duty to request the opening of proceedings.**

The proposal will oblige Member States to ensure they have legislation in place which obliges directors where they are aware or can reasonably be expected to be aware of the insolvency to file for insolvency proceedings within 3 months. If they fail to do so

they will be liable to creditors for damages incurred as a result of their failure to commence insolvency proceedings.

### b. Simplified winding up procedures

These provisions are aimed at microenterprises and are designed to offer a streamlined route to realize and distribute assets, including the use of an electronic auction system for the sale of assets. Where there are no assets, or the assets are of a low value that do not justify the costs, the process allows for immediate closure. The simplified winding up proceedings shall ensure that microenterprises, when insolvent, have access to simplified winding-up proceedings. Member States can however specify circumstances where an insolvency practitioner can be appointed, where the decisions of the debtor are subject to an approval process, or the disposal is entrusted to a creditor. This also applies to financial contracts. In terms of the claims process, the debtor files the list of claims and creditors have a short window to file claims omitted or dispute the claims. Article 43 states that Member States shall ensure that debtors accessing simplified winding-up proceedings remain in control of their assets and the day-to-day operation of the business.

NFU acknowledges that this new debtor in possession concept has several benefits. First, the existing knowledge, knowhow, expertise and network of business contacts of the debtor's directors concerning the debtor's business and financial affairs can continue without disturbances which may be detrimental for the business' prospects. In addition, the right to stay in control may also work as a powerful incentive for debtors to initiate formal restructuring proceedings voluntarily and, thus, timely. On the other hand, leaving a debtor or manager in control of a business that has failed under their management may hinder other stakeholders to trust the restructuring efforts of the debtor. At times, failure is caused by bad management decisions and stakeholder may wish to investigate a possible director's liability rather than see the management remain in control. The proposal's debtor-in-possession (DIP) regime does however not address the latter. It aims to ensure that viable enterprises in financial difficulties, wherever they are located in the Union, have access to national insolvency frameworks which enable them to restructure at an early stage with a view to preventing their insolvency, and therefore maximise the total value to creditors, employees, owners and the economy as a whole. Article 38 in conjunction with Article 43 are set to provide bankrupt, but diligent entrepreneurs a second chance across the European Union.

### c. Transaction avoidance

The proposal addresses the following transactions that may be avoided on insolvency: Legal acts (such as payments and the granting of security) benefitting creditors can be declared void if they were perfected (i) within 3 months prior to the submission of the request for the opening of the insolvency proceedings, under the condition that the

debtor was unable to pay or (ii) after the submission of the request for the opening of insolvency proceedings. If a due claim of a creditor was satisfied or secured in the owed manner, the legal act can only be declared void if the preceding conditions were met and where the creditor knows or should have known that the debtor is unable to pay its mature debts or that a request for the opening of insolvency proceedings has been submitted. Legal acts by which the debtor has intentionally caused a detriment to the general body of creditors can also be declared void where (i) those acts were perfected either within 4 years prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request and (ii) the other party knew or ought to have known about the detriment to the general body of creditors.

NFU regrets that Member States may according to the proposal adopt or maintain rules regarding transaction avoidance. First, a common framework may facilitate credit because it increases the predictability of the outcomes of legal disputes. Second, harmonised rules will foster equality among creditors as the same rules would apply to all insolvency proceedings opened within the EU territory. Third, harmonised rules may overcome peculiarities of individual national systems that allow avoidance claims in limited circumstances. Fourth, harmonised rules could increase procedural efficiency both in terms of time and costs. Insolvency practitioners for instance would need to know only one set of rules to challenge any transaction regardless of the law applicable to the transaction. And lastly, harmonised rules might prevent forum shopping. If the reasons for moving the center of main interest of a company is to take advantage of more favourable avoidance rules, the harmonisation of those rules will provide a level playing field across the EU that may reduce forum shopping.[5]

### d) Creditors' committees

Under the proposals, Member States will facilitate the creation of creditors' committees which can be established by a general meeting of creditors or appointed by the court. Member States can exclude the formation of such committees where it is not cost effective to do so, or where there are only a limited number of creditors. Creditors' committees must fairly represent the different interests of creditors or groups. Under the proposal they are also obliged to act in the interests of the creditors as a whole and act independently of the insolvency practitioner. The proposal includes a list of rights, duties and powers which the committee has which include the duty to supervise the insolvency practitioner, the duty to report to creditors more widely and the right to

[5] Andrew Keay, 'Harmonisation of Avoidance Rules in European Union Insolvencies: the Critical Elements in Formulating a Scheme' (2018) Northern Ireland Legal 85, 99-102

receive information from them and, where Member States provide, approve certain decisions or legal acts. Members of the committee are exempt from individual liability unless they have committed grossly negligent, fraudulent conduct or willful misconduct to creditors they represent.

NFU agrees that the interests of relevant creditors are best served by coordinating their response to a debtor in financial difficulty through the establishment of at least one representative committee of creditors, especially as only very few jurisdictions do not allow for such a committee. At the same time NFU strongly supports the European Commission's proposal to leave it up to the Member States to allow for remuneration of members of the creditors' committee. Alternatively, this aspect could have been excluded from the proposal along with all other aspects, which do not fall under targeted harmonisation.

**Conclusion:** Overcoming the fragmentation of the European capital market, by harmonising the legal bases, for example in insolvency law, and reducing market opacity are the essential prerequisites for an efficient Capital Markets Union, which will enable financial intermediaries – institutions such as insurance, pension, banks, as well as mutual funds to develop and press ahead with successful investment strategies. Problematic is therefore in NFU's estimate that the European Commission continues with targeted harmonisation under Article 114 TFEU, which will not come in time to effectively achieve these objectives.

## III. The Listing Act 2022/0411(COD)

Undoubted need for capital – Brexit, climate change, the pandemic, war or energy policy. Investments in the transformation of the economy cannot be financed by bank loans and the public alone; enormous sums of money need to be mobilised at the same time on the capital market. This is why the European Commission wishes to enable European SMEs with increased access to market-based sources of financing. Allowing European SMEs and scale-ups to grow and develop their potential without being absorbed by larger firms because they cannot access the capital markets due to excessive listing costs and other administrative burdens. To achieve these aims, the EC has put forward three proposals within the Listing Act, two amendments of pre-existing directives as well as one amending regulation.

While NFU agrees that this legislative strategy may indeed encourage the consolidation of European real economy, wealth production and the creation of employment within

Member States, NFU remains concerned with regards to the following aspects of the legislative proposal:

1. Overall, SMEs are intrinsically a riskier investment sector compared to big undertakings, therefore their need to attract fresh investments should not hamper retail investors protection, which must remain a priority.

2. Banking and insurance employees act as a hinge between retail customers and the capital markets, so they should be adequately trained on regulation updates, and put in a position to provide customers correct and not misleading investment advice.

3. The offer of capital financial instruments to retail investors, particularly on SME markets, shall not lead to an erosion of protection levels, which have been built to minimise the risks of financial losses and offer each client investment solutions strictly commensurate with his/her financial education, risk appetite and propension, capacity to absorb losses as well as financial consistency.

NFU also remains skeptical as various components of the Listing Act, which refer to the above mentioned so called report: "Empowering EU Capital Markets for SMEs - Making listing cool again". In 2019 the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs, in charge of analysing "the appropriateness of the current regulatory framework for SMEs and SGM, identify further areas to improve the SGM framework as well as to foster SME access to public markets". The group was mainly composed of representatives of investment banks, associations of issuers, SME organisations, securities markets, and its final report of May 2021 proposed 12 recommendations for regulatory reforms, in order to increase the growth potential of SMEs on capital markets. NFU notes that the European Commission addressed several of the proposals advanced by TESG as so called "technical recommendations" within this legislative package, including the proposals on alleviating listing requirements, simplifying market abuse regime, giving issuers back control (multiple voting rights/ dual class shares) and supporting equity research. We think that TESG group lacked expertise as it did not include interests of employees of the financial sector and retail investors by excluding representatives of workers and consumers.

### a. Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market 2022/0406(COD)

The new directive proposal introduces in all Member States the possibility of adopting multiple votes shares for SMEs listing for the first time on SME growth markets.

At the moment, MVS are allowed in some countries, while in others the rule of "one

share-one vote" is used. This fragmentation in the different national legislations hampers free circulation of capitals and level playing field. Over the years some companies decided to move to countries where MVS are allowed to list, incurring in higher costs. Protection measures for minority shareholders differ from one State to another, thus creating uncertainty and operational obstacles for investors.

The proposal envisages the possibility of using a structure of MVS in all Member States. NFU notes however that the directive only applies to SME Growth Markets, and only to companies listing for the first time. The scope for this harmonisation remains thus relatively limited, but can serve as a coordination experiment, which NFU welcomes as MSV are a typical feature of the Nordic financial systems.

Art. 5 para 1 defines minimum safeguard measures for shareholders without multiple votes to be put in place by MS. Art. 5 para 2 lists several additional safeguard mechanisms that MS may choose to apply.

Again, NFU believes more effectiveness would require stronger harmonisation, same or similar rules/thresholds for all Member States. The proposal has chosen to apply a lower degree of harmonisation, and wider margins for each MS. It imposes general and non-quantitative obligations, de facto leaving a fairly wide margin of discretion and room for significant differences among regulatory regimes, thus weakening the desired effects of the directive.

NFU points out that the European Commission is applying here components of various Nordic legal framework, without counterbalancing MVS with strict disclosure requirements and minority rights, as done in most Nordic legislative frameworks.

E.g., in Denmark, companies are allowed to issue multiple voting shares, which grant the holder more voting rights than regular shares. However, there are certain rules and restrictions in place to ensure that the use of multiple voting shares is fair and transparent. Firstly, according to Danish company law, multiple voting shares cannot exceed 10 times the voting rights of regular shares. This means that a shareholder with multiple voting shares can have a maximum of 10 times the voting power of a shareholder with only regular shares.

Additionally, the use of multiple voting shares must be approved by at least two-thirds of the shareholders present at a general meeting of the company. This means that the decision to issue multiple voting shares must be made democratically and with the agreement of a qualified majority of shareholders. Furthermore, Danish companies are required to disclose in their annual reports the number of multiple voting shares in circulation and the voting rights attached to them. This ensures transparency and helps shareholders make informed decisions about their investment.

NFU considers necessary that effective and clear protection systems for all investors are

put in place, to avoid the risk of entrenchment of controlling shareholders. NFU therefore welcomes the transparency and disclosure provisions in Article 6 of the proposal.

### b. Amending Regulation to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises 2022/0411(COD)

aa) Prospectus simplification/exemptions

The prospectus is a document that must be compulsorily drawn up and published by an issuer listing financial instruments and has to be submitted to the approval of the national competent authority. It must inform fully and correctly the potential investors on the characteristics of the securities offered and on the economic and financial situation of the issuer, allowing for a full risk assessment. It is regulated by Directive 2003/71/EC and subsequent amendments.

Prospectus is addressed not only to markets and generic investors, but also to intermediaries/consultants, that will propose investment tools to retail customers. Clarity, reliability and legibility of the document must be ensured. Bank employees and financial advisors should receive assurances of adequate conditions to provide advice to their retail clients in a safe and correct manner, by pursuing the interests of the investors and ensuring that they do not assume risks disproportionate to their profile.

The preparation of the prospectus and documentation necessary to access the capital market can be extremely burdensome and costly, especially for smaller companies. For this reason, in several stages EU legislation has allowed exemptions and reliefs to these obligations under certain conditions.

NFU is of the view that the possibility of increased exemptions must be provided using prudential criteria, especially for SMEs, a market intrinsically riskier than others.

A reduction of red tape and simplification of listing burdens for small and medium enterprises can be seen as a positive goal in line with the objectives of this legislative package, but an appropriate level of transparency safeguards should be guaranteed at all times.

Regarding this, the proposal foresees that the Commission will streamline and improve convergence of the scrutiny and approval of the prospectus by NCAs *through delegated acts*.

This last measure could allow for more discretion to increase transparency and coordination, and a bigger role for ESMA as "super" Competent Authority.

The Regulation introduces in Article 1 more exemptions from the obligation to publish a prospectus for companies that already have securities admitted to the same SME Growth Market continuously for 18 months before the admission, for less than 40 % of the number of securities already admitted to trading on the same regulated market (the threshold is increased from 20% to 40%).

Exemption from publication of the prospectus for offers of companies already listed on the regulated markets or on an SME growth market for 18 months; instead of publication of the prospect, companies are required to publish and file with the NCA a short summary document that includes a statement of compliance with ongoing and periodic reporting and transparency obligations.

For public offers and listing in case of IPO, a limit of 300 pages is introduced for companies with a non-complex financial history.

The proposal introduces a standardised EU Growth issuance document only for companies listed on SME growth markets, replacing the EU Growth prospectus, with a limited number of pages (75), and releasable only in English, whereas only the summary will be releasable in the issuer's language.

bb) Amendments to the MAR (Market Abuse Regulation)

The proposal aims to alleviate the burdensome reporting obligations related to the MAR (Regulation 596/2014), as required by SME issuers.

MAR has the objective of increasing market integrity and investor protection. The regulation compels companies to disclose inside information and promptly send them to the competent authorities.

Following repeated financial scandals, MAR Regulation has been introduced to reduce information asymmetries within financial markets, and avoid cases of market manipulation and insider trading, preserve market integrity and investor confidence. Under MAR, issuers and those acting on their behalf (e.g. law firms) are obliged to keep lists of persons with access to inside information. Persons carrying out administrative, supervisory or management functions and individuals closely associated (e.g. spouses) must inform the issuer about relevant personal transactions they undertake, involving the issuer's financial instruments. The legislative proposal introduces modifications to sanctions system, to make it proportionate to the size of the undertaking, with the introduction of parameters with respect to turnover, with the possibility for the MS to apply lower penalties for SMEs.

The European Commission's proposal acknowledges that "*feedback from stakeholders indicated that some aspects of the MAR disclosure regime place a disproportionately high*

*burden on issuers (…). Current MAR rules also create a disproportionate sanctioning regime for disclosure-related infringements, in particular for SMEs, which may potentially be sanctioned at the same level as large companies"*.

NFU considers it necessary that the framework of requirements of the MAR, which aims to protect weaker investors, is alleviated only if adequately counterbalanced by protection and transparency measures.

In addition, the legislative proposal reinforces the capacity of market authorities, by creating a mechanism of exchange among market authorities on order book data (cross-market order book data surveillance).

NFU supports the attempt to favour coordination among national competent authorities in the implementation of MAR in order to preserve market integrity as well as the rationalisation and simplification of communications, especially as new technologies can facilitate the processes, increase transparency and support the work of the employees of the banking and finance sector.

**Conclusion:** In sum the proposal, anyway, lacks courage: For NFU a single European Prospectus scheme, approved by ESMA, would have constituted a viable legislative alternative alongside with stronger coordination of NCAs in the control action