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Response to Consultation Paper ESMA/2014/1570 – Annex B
"Regulatory technical standards on MiFID II/MiFIR"

Dear Sirs,

We would like to thank you very much for granting us the opportunity to submit this letter in response to the above mentioned Consultation Paper issued on December 19, 2014. We would be grateful if the following comment would be taken into due consideration.

We refer to the RTS 9: "Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives" and in particular to Annex III: "Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments" and would like to comment on Question 58 which reads as follows:

"Q58:
Do you agree with the definitions of the bond classes provided in ESMA's Q58. proposal (please refer to Annex III of RTS 9)? Please provide reasons for your answer."

We suggest to amend the definition of the bond class "Other European Public Bond" because those EU public law institutions that are comparable to the issuers yet included would otherwise be excluded from an adequate classification. Affected are especially those Public Sector Entities as defined in Article 4 (1) (8) of Regulation (EU) No 575/2013 whose exposures are treated as exposure to their central government in accordance with paragraph 4 of Article 116 of Regulation (EU) No 575/2013 – such as KfW.

We do not agree with the definitions of the bond classes provided in ESMA's Q58 proposal, because bonds issued by those EU public law institutions that do not fit into the categories of neither "European Sovereign Bond" nor "Other European Public Bond" (as defined in points 2 and 3 of Section 1 of Annex III) – such as KfW – would fall under bond type "Others" in Table 2 "Bonds – classes not having a liquid market" due to the manner the term "Corporate Bond" is defined. This classification would be applicable to all bonds issued by these institutions, regardless of the issue size (i.e. including bonds with an issue size exceeding EUR 2 billion) and the actual liquidity patterns, which we deem to be an inappropriate result for the purposes of RTS 9 in the context of the transparency requirements for non-equity instruments stipulated in Chapter 2 of Title II of MiFIR. We therefore propose to appropriately expand the definition of the term "Other European Public Bond" to include bonds issued by EU public law institutions that are currently not captured by the definition of the term "Other European Public Bond" as

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proposed by ESMA, but that are nevertheless comparable in issue size and liquidity patterns to the bonds of the issuers currently included in this definition.

The reason that the bonds issued by certain EU public law institutions - such as KfW - do not fall under the definition of a "Corporate Bond" is the reference within the "Corporate Bond" definition to Article 1 of Directive 2009/101/EC. Article 1 of Directive 2009/101/EC refers to certain types of companies only (for Germany "die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung"). By definition, public law institutions are not a type of company listed in Article 1 of Directive 2009/101/EC. KfW for example is an **„Anstalt des öffentlichen Rechts"** organized under its own statute, the Law Concerning KfW („Gesetz über die Kreditanstalt für Wiederaufbau", or „KfW Law"), but not an „Aktiengesellschaft", „Kommanditgesellschaft auf Aktien" or a „Gesellschaft mit beschränkter Haftung".

KfW issues large, benchmark-sized bond issues that are explicitly, unconditionally and irrevocably guaranteed by the Federal Republic of Germany according to Article 1a of the KfW Law. In 2014 KfW raised funds in the capital markets in the amount of EUR 57.4 billion equivalent. 56.5 per cent of its total capital markets funding (EUR 32.4 billion equivalent) was issued under KfW's benchmark programmes in EUR and USD, respectively, comprising two bond issues with notional sizes of EUR 5 billion each and two bond issues with notional sizes of EUR 3 billion each. In USD, KfW issued one USD 6 billion bond, one USD 5 billion bond, two USD 4 billion bonds and one USD 3 billion bond. Further, KfW issued four EUR 2 billion bonds outside its benchmark bond programs.

KfW's bonds referred to in the preceding paragraph are comparable with respect to their liquidity patterns to bonds issued by issuers falling under the category of "Other European Public Bond" in "Table 1 Bonds – liquid classes" and should therefore be subject to the same transparency requirements under MiFIR. We therefore suggest to amend the definition of the term "Other European Public Bond" in "Annex III: Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments, Section 1 Bonds and structured finance products" to include bonds issued by certain EU public law institutions - currently not contained in this definition - as follows:

"(3) 'Other European Public bond' means a bond issued by ~~a sovereign issuer which is either~~:

(a) A government department, an agency or a special purpose vehicle of the Member State;

(b) In the case of a Federal Member State, a member of the federation;

(c) A special purpose vehicle for several Member States;

(d) A European financial institution established by two or more Member States which has the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems; ~~or~~

(e) The European Investment Bank; or

(f) A public sector entity as defined in Article 4 (1) (8) of Regulation (EU) No 575/2013 provided that exposures to this public sector entity are treated as exposure to the central government in accordance with paragraph 4 of Article 116 of Regulation (EU) No 575/2013."

We note that the bonds issued by the EU public law institutions meeting the requirements of lit. (f) of the amended definition of the term "Other European Public bond" as proposed above are generally eligible as level 1 assets, i.e. assets of *extremely high liquidity* and credit quality, in accordance with Article 10 (1)(c)(v) of the Commission Delegated Regulation (EU) No 2015/61 of 10 October 2014.

Sincerely,

KfW

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