JEAG Assessment of MEP amendments to Investment Firm Regulation and Directive (20 June 2018)

<u>Introduction</u>

We are supportive of all amendments tabled by MEP Ferber in its draft report of 11.4.2018 to the Investments Firm Regulation and Directive (IRF and IRD).
However, we urge that the IFR and IFD are more tailored to the specifics of commodity and emission allowances dealers belonging to an industrial group, whose main business consists in the hedging of intragroup commodity flows **Therefore, we support the following amendments tabled by MEPs on the IFR and IFD** (for a detailed analysis please see the attached table):

- **Fixed Overheads Requirements** ('FOR', Art. 13): As the current methodology leads to disproportionate high capital requirements for commodity dealers we welcome to discount variable costs for raw materials.
- **Market Risk** (Art. 22 (K-NPR) and Art. 23 (K-CMG)): We welcome the various clarifications on the relationship between K-NPR and K-CMG; as well as the removal of cross reference to FRTB and the removal of the threshold to apply the simplified standardized approach.
- **Credit and Concentration Risk**: We support the exemption for exposures towards clearing banks resp. central clearing houses within the context of central clearing (Art. 25 IFR, K-TCD) and Art. 40, K-CON).
- **Liquidity requirements** (Art. 42): The clarification that cash pooled at group level forms part of "unencumbered cash" is helpful to ensure a EU wide level playing field.
- **Review** (Art. 59): The review after 3 years of application (not after entry into force) is more meaningful.

In addition, we emphasise the key importance of an **exemption for (intragroup) hedging transactions** like in MiFID II and EMIR. The imposition of capital requirements on risk reducing (intragroup) transactions will increase substantially the related costs of performing such activities and ultimately the cost of energy and other commodities (such as power, gas, oil and agricultural products) for end consumers and industry. In addition, this considerable cost increase will reduce the competitiveness of the EU.
Finally there might be a drafting error with respect to article 36 IFR on concentration risk, which states that an exposure cannot exceed 25% of one's **regulatory capital** (as defined under article 4.1.(42) IFR), whereas we understand the 25% limit should be set against a company's **eligible capital** as per article 395 CRR in order to have a level playing field.
Also, **we have highlighted in the attached table the amendments to the IFR and IFD which**

are either positive or rather detrimental and/or disproportionate for investment firms dealing in commodities and emission allowances.		
MEP amendments to Investment Firm Regulation		
No. of amendment	**Description of content**	**Assessment of amendment** **Support** **Reject**
61, 62, 98, 99, 120, 121, 169-174, 188-193, 199-200, 204-205, 210 *(Anne Sander / A. Lamassoure/T.Cornillet)*	**Operational Risk**: Replacement K-DTF by K-OPR: K-OPR to be calculated based on CRR method	Reject: Not appropriate to apply CRR method to investment firms as this leads to disproportionate higher requirements. Current K-DTF method provides for sufficient level of capital to cover operational risks.
100-104 *(Lucke, Nagtegaal, Kofod, Torvalds)*	**Review of thresholds calibrating Class 2 vs Class 3 investment firms:** No longer zero threshold for K-NPR, K-CMG, K-TCD; K-DTF	Support
115 *(Lamassoure / Sander)*	**Fixed-Overheads Requirements:** EBA to consider the subtraction of raw materials	Support
145-150, 158-160 (Lucke, Delvaux, Ferber, Torvalds, Langen, Nagtegaal)	**Market risk:** Clarifications on relationship between K-NPR and K-CMG	Support
152-153 *(Ferber, Lucke)*	**Market risk (K-NPR):** Removal of threshold for application simplified standardized approach	Support
154-155, 157, 260 (Ferber, Lucke)	**Market risk (N-NPR):** Removal of cross reference to FRTB (no longer applicable) Ferber additional proposes a 65% discount factor (157)	Support
176, 177, 217, 218 *(Lucke, Sander, Lamassoure)*	**Credit Risk:** Exemption of exposure held against clearing members and clearinghouses (QCCPs)	Support
179-187 *(Sander, Lamassoure, Cornillet)*	**Credit Risk**: Apply alpha factor applicable to credit institutions under CRR shall be applied to Class 2 firms. Collateral is not recognized for the calculation of the credit exposure. In the reasoning it is argued that capital requirements should be imposed also on banking book positions.	Reject: Class 2 firms shall only be subject to capital requirements for trading book positions as provided in the IFR proposal to ensure a proportionate regime. A treatment based on CRR rules would contradict the differentiation between Class 1 and 2 firms. Collateral shall be recognised as provided in the IFR proposal as this is a generally accepted mean of credit risk mitigation (see Art. 30 IFR).
212 *(Tang, Delvaux)*	**Concentration Risk**: limitations on exposures against brown assets (cf sustainable finance initiatives)	Reject: Such exposures are not relevant for prudential regulation as they are not market, credit or operational risks. The regulatory aims of the recent sustainable finance proposals of the EC

		are fundamentally different and not related to prudential regulation.
220 *(Lucke)*	**Liquidity requirements:** Clarification that "unencumbered cash" includes cash pooled at group level	Support
227 *(Giegold)*	**Disclosure requirements:** Additional disclosure obligations on environmental, social and governance related factors and risk	Reject: Such disclosures are not relevant for prudential regulation as they are not market, credit or operational risks. Furthermore, they are very burdensome.
230, 238-244, 247 *(Ferber)*	**Disclosure requirements:** Removal of various disclosure obligations which contain commercially sensitive information or which are disproportionate	Support
261-262 *(Langen, Sander, Lamassoure)*	**Review Clause:** 3 years from the date of application instead of entry into force	Support
273 – 288 *(Cornillet, Berès, Lamassoure, Sander, Tang, Delvaux, Simon, Ferber, Giegold)*	**Review calibration threshold for allocation of Class 1 vs Class 2 firms**: Lower the threshold to determine Class 1 systemic important investment firms. All proposals provide that commodity and emission allowances dealers remain exempted	Support: If commodity and emission allowances dealers remain exempted as proposed in order not to affect real economy firms
MEP amendments to Investment Firm Directive		
23, 91, 92, 95, 96, 117 *(Viegas, Giegold)*	**Remuneration:** Limitation of variable remuneration vs fixed remuneration	Reject: We support rather the original EC proposal not to introduce a defined fixed limit.
29, 171 *(Cornillet, Giegold)*	**Pillar 2 capital requirements:** To grant NCA power to supplement the K-NPR by capital requirements on banking (non-trading) books	Reject: Class 2 firms should only be subject to capital requirements for trading book transactions. Additional and individual NCA requirements would create an unlevel playing field. This should only be permitted if additional risk are not yet covered by K-factors.
167 *(Ferber)*	**Pillar 2 capital requirements:** Limitation of NCA empowerment to supplement capital requirements based on K-factors . Only permitted in the case of additional risk are not already covered by K-factors.	Support
193 *(Cornillet)*	**Review calibration threshold for allocation of Class 1 vs Class 2 firms**: Application of Title VII of CRD IV (Title on prudential supervision) to certain investment firms below a defined lower threshold. All proposals provide that commodity and emission allowances dealers remain exempted from CRD IV.	Support: If commodity and emission allowances dealers remain exempted as proposed in order not to affect real economy firms

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