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econ-secretariat@europa.eu

Olten, 13. January 2012

Concerns: Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

Dear Madam

Dear Sir

marcel.gutknecht@alpiq.com
Our ref.: MG

Alpiq Trading AG has the pleasure to present its position on the Questionnaire on MiFID/MiFIR 2 by Markus Ferber and conveys its gratitude for having the opportunity to do so.

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Alpiq Trading AG (named hereafter "Alpiq") is the trading arm of the Alpiq Group. Headquartered in Switzerland and active in 31 European countries, the Alpiq group has subsidiaries in 27 countries, employs more than 10.000 staff and generated in 2009 consolidated annual revenues of CHF 15 billion. Alpiq specialises in electricity generation and transmission, sales and trading, as well as energy services, and is responsible for around one-third of Switzerland's electricity supplies.

Since Alpiq contributed to EFET's official response to Mr. Ferber's Questionnaire, we shall refer to this document as our official position and take this opportunity to emphasize our concerns regarding the envisaged process and highlight the main principles that should govern them:

- As all other EFET members we believe that it is important to exempt firms which are not financial institutes from regulations which are not proportionate to the risks they are exposed. This assumption is in line with recital (88) which states that it is necessary to provide a clear exemption for non-financial firms that actively participate in commodity derivatives and related markets for own account.
- Physically settled OTC commodity forward products should not be classified as financial instruments. Their inclusion under MiFID 2 would effectively extend its scope to purely commercial activities (gas/power contracts including physical delivery) which do not display the characteristics of traditional derivatives trading. This approach would reduce substantially the

scope of the ancillary activity exemption as this type of trading typically represents the main trading activity of energy firms. Hence, we support a better specification of the MiFID 2 perimeter to exclude all products with future delivery that are physically settled from the definition of financial instrument. This is the approach already used in the US under Dodd-Frank Act.

- OTC trading should continue to be defined as trading outside regulated markets, as currently defined in MiFID.
- Furthermore, for Alpiq it is also important that energy firms located in third countries shall have the possibility to trade in electricity and/or gas forward products in the EU – if in that third country an equivalent regulatory regime has been established. However, equivalence should be defined in terms of intent rather than in terms of specific rules.

If Alpiq falls under the MiFID 2 licensing regime by becoming an investment firm we would be subject to

- a multitude of organizational requirements under MiFID 2
- central clearing requirement under EMIR
- capital adequacy requirement under CRD – if the current exemption is not prolonged before end of 2014

These changes would lead to an increase in costs and reduction of liquidity and divert capital away from physical investments - hence, have also an impact on energy prices.

We remain at your disposal to further discuss these issues if needed,

Yours sincerely,
Alpiq Trading AG



Marcel Gutknecht
Head of Financial Regulations



Dr. Cornelia Kawann
Head of Financial Supervision Affairs