ANNEX 2

Reasoned opinion from the Swedish Parliament

The Swedish Parliament welcomes the Commission’s regulatory activities to improve the single market for investment services and to reduce the risks of future financial crises and increase the opportunities for managing such crises as will inevitably occur. The proposal is, in general, well formulated. Nevertheless, the Swedish Parliament has objections with regard to the mandatory borrowing mechanism proposed by the Commission.

Following the check on the application of the principle of subsidiarity in the Commission’s proposal to amend Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes (COM(2010) 371), which is outlined in the Finance Committee’s Opinion 2009/10:FiU43 concerning a subsidiarity check on the proposal for a Directive on investor-compensation schemes, the Swedish Parliament is of the view that those parts of the proposal that concern a mandatory borrowing mechanism between different national schemes for investor compensation breach the principle of subsidiarity.

In Parliament’s view, a scheme with a mandatory borrowing mechanism between the different national compensation schemes risks creating an incentive structure whereby some countries may underfund their compensation schemes in the knowledge that there is a last resort for funding in the form of a loan from a guarantee scheme in another Member State. Action along these lines could be compared to what in economic literature and research is called moral hazard.

If a financial crisis is international, one potential scenario is that it hits all Member States to differing degrees simultaneously. There may be cases of difficulties and bankruptcy among securities institutions and fund-managers at the same time in all Member States. In a situation like that, all the compensation schemes may need to meet their commitments. Against this background, it is an unsatisfactory arrangement for an investor-compensation scheme to be able, as a last resort, to rely on borrowing funds from another such scheme.

Parliament is of the opinion that the Member States should not be satisfied if the investor-compensation schemes merely have funds corresponding to the minimum requirements laid down in the proposal. There must be incentives for such schemes to be adequately funded at national level. Parliament also believes that it must ultimately be the responsibility of the State to ensure that an investor-compensation scheme is able to meet its commitments.

In Parliament’s view, the objective of the Commission’s proposal — which, ultimately, is financial stability — can therefore better, or perhaps only, be achieved if responsibility for funding the compensation schemes lies fully at the national level. In order to avoid potential problems with moral hazard and to give the Member States the incentive to set up adequately funded compensation schemes, each Member State should have full responsibility for the funding. The rules for the Member States’ compensation schemes should therefore not include any funding obligations between States. However, EU law should, in the manner proposed by the Commission, include rules on *ex ante* funding, etc., which would make the national schemes sufficiently similar and robust.

As far as the other parts of the proposed Directive are concerned, Parliament is of the view that it does not breach the principle of subsidiarity.

In Parliament’s view, the Commission should submit a new proposal corresponding to the proposal in question here, except as regards the proposed mandatory borrowing mechanism.