

Issuers



Investors



Brokers and market intermediaries



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Michel Barnier,
Commissioner for the Internal Market and Services,
The European Commission,
BERL 10/034,
B-1049 Brussels,
Belgium

Dear Commissioner Barnier,

Non-discriminatory clearing access to market infrastructure providers

We are concerned that the forthcoming European Markets and Infrastructure Regulation (EMIR) does not take proper account of the likely concentration of clearing provision. It may thus inadvertently, through legislation, embed lack of choice in European financial markets. The signatories to this letter reflect the span of market participants, across the corporate user community, investors, brokers and market intermediaries. All concur that this is an issue of significant concern.

The trading and clearing landscape in Europe is being changed dramatically through a number of new legislative proposals, including EMIR, MiFID2 and CRDIV. These proposals aim to make financial markets safer for all participants, in line with commitments made by the G20. Whilst we support this objective, insufficient attention has been given to how key elements of EMIR may work in practice.

In particular, we consider that choice and efficiency in clearing services in the EU may diminish dramatically if the current trend towards concentration in the provision of clearing (and trading) services continues, and if this remains essentially unchecked by regulation that ensures access to such infrastructures by other infrastructures. Amongst other things, this is likely to act as a drag on EU growth.

Specifically we believe that EMIR contains insufficient safeguards in this respect. A fundamental shortcoming in the EMIR text is that such safeguards as exist are not applied across all financial instruments but only to a limited set of OTC derivatives.

EMIR mandates central clearing for OTC derivatives and over time it is expected that cleared derivatives will be the dominant model, with no more than a fringe of bilateral trades remaining. Furthermore, the MiFID review looks set to require many derivatives to be traded on 'organised trading facilities', MTFs or exchanges. Users are therefore likely to have very limited choice between clearing houses and choice will be further curtailed in regard to the limited number of venues on which to trade.

We therefore urge the Commission to introduce explicit and detailed open access requirements – governing clearing of all financial instruments - in EMIR now, and in MiFID in due course. Such open access requirements should ensure that a clearing house must accept instruments for clearing regardless of the venue on which they are traded, and that a venue must provide data feeds and other assistance to any clearing house that wants to clear the instrument in question.

A mismatch in implementation deadlines means that the clearing landscape is likely to have re-organised itself by the time MIFID2 rules are in force. This time delay will also unduly favour incumbents in the clearing space and thus impact on choice.

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We would welcome the opportunity to discuss these issues further, noting that time is of the essence in relation to EMIR.

Yours sincerely,

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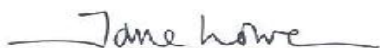
Martin O'Donovan, Deputy Policy & Technical Director, The Association of Corporate Treasurers



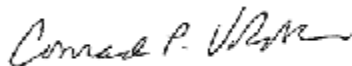
Richard Raeburn, Chairman, European Association of Corporate Treasurers (EACT)



Peter de Profit, Director General, European Fund and Asset Management Association (EFAMA)



Jane Lowe, Director, Markets, Investment Management Association (IMA)



Conrad P. Voldstad, CEO International Swaps and Derivatives Association (ISDA)



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Cc:

Commissioner Joaquin Almunia, Competition DG
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