European Forum of Securities Associations

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Paris, 27 November 2012

Subject: Coherent European implementation timeframes

Dear Commissioner Barnier,

Dear Chairwoman Bowles,

Dear Minister Shiarly,

The European Union, in its response to the financial crisis, is implementing a programme of reforms on an unprecedented scale. In this context, some European financial regulations have recently been adopted and are being implemented at levels 2 and 3 (EMIR, short-selling ...) whilst some others are being discussed and are likely to be finalised in the course of 2013 (MiFID II, MAR/MAD, CRD IV, CSDR …). All of them are complex and technical pieces of legislation and their cumulative implementation will have a far-reaching and profound impact on the shape and the operations of the European financial services industry. Some measures, included in CRD IV and Solvency II, will result in the increased use of financial markets to finance business needs when those needs were up to now (at least in Continental Europe), largely met by bank financing. Given the increasing emphasis on efficient financial markets, it would be particularly inconsistent and counter-productive if the constraints applicable to market participants are raised without ensuring that such constraints are careful calibrated as regards their defined objectives. Furthermore, regulatory measures need to ensure that the needs of a wide range of markets participants are properly assessed and taken into account.

Regulators need to be conscious that unless regulation is adequately designed and implemented, there is a risk that the European financial sector could become less competitive and, simultaneously, that Europe could become more dependent on market participants and markets outside the EU for financing its economy and investing its savings.

EFSA members[1] are fully supportive of the policy objectives of the current regulatory process being implemented. However, and taking into consideration what has just been mentioned above, we ask the European Commission as well as the European co-legislators to take into consideration the necessity to set, from the outset, coherent and realistic implementation timeframes. This is needed in order to allow sufficient time for European Supervisory Authorities (ESAs) to consult with markets participants in a proper way and to produce high quality advice for delegated acts and proposals for technical standards. It is also necessary to allow implementation of the EU-legislation by market participants in an organized and orderly fashion. The impact of the legislation and the final details of implementation can only be fully assessed when the level 2 legislation or even the level 3 rules are enacted and published. In the case of the short selling regulation for example the necessary adaptations include a rethinking of the market-making business with client impact as regards facilitation, changes to IT systems or even the development of a new specific service attached to the locate requirement.

It should also be noted, that even if the European legislation is in a form of a regulation, changes may be necessary in the national legislation. If the implementation time is too short, discrepancies may occur between the EU-legislation and the national one, which can produce legal and practical problems.

In this respect, we believe that a minimum period of 12 months should be granted to ESAs to draft level 2 standards and that a similar implemention period of 12 months should be granted to market participants after the final level 2 legislation is published. Relative dates should also be the rule so as to avoid what has happened with the short-selling regulation where delays in the publication of level 2 measures have led to a 6-week period of time between their publication (18 September 2012) and their date of effective application (1 November 2012).

As representatives of securities markets' participants active in several European jurisdictions, our main concern is to ensure that a sound European regulatory framework is implemented while preserving the competitiveness of the European financial services industry. We firmly believe that it is the political responsibility of our European Institutions to take due care of this.

We would be very happy to discuss this matter further with you at your convenience.

Yours sincerely,

Pierre de Lauzun, acting on behalf of EFSA

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[1] * The European Forum of Securities Associations (EFSA) comprises the Association for Financial Markets in Europe ('AFME'), the French Association of Financial markets ('AMAFI'), the Italian Association of Financial Intermediaries ('ASSOSIM'), the Swedish Securities Dealers Association ('SSDA'), the Danish Securities Dealers Association ('DSDA'), the Spanish Asociacion de Mercados Financieros ('AMF') and the German Federal Association of Securities Trading Firms ('BWF') EFSA focuses on policy issues concerning European securities markets where working together adds value. See www.efsa-securities.eu

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