

Mr. Valdis Dombrovskis
Vice President European Commission Euro and Social Dialogue
Financial Stability, Financial Services and CMU
Rue de la Loi/Wetstraat 200
B - 1049 Bruxelles, Belgium
Email: cab-dombrovskis-contact@ec.europa.eu

CAPITAL MARKETS UNION MID-TERM REVIEW 2017

Date
16 March 2017

General comments

The NSA welcomes the European Commission consultation "Capital Markets Union Mid-term Review 2017". The consultation constitutes a valuable opportunity to comment on the Capital Markets Union (CMU) review proposed measures.

The NSA supports the intention behind the CMU to create more integrated and well-functioning capital markets in the EU. Well-functioning and efficiently regulated markets are crucial to improving and supporting economic growth in Europe and will help protect against future shocks to the economy. Given the very rapid development of financial markets related European legislation in recent years, we believe that a priority should be to ensure that existing regulation of financial markets and participants is sustainable, effective and well-balanced, and not counterproductive to the intentions of the CMU.

The lack of market liquidity observed on non-equities as well as equities markets has become a concern for many financial markets participants and observers. Liquidity is crucial to orderly markets, both for those who trade directly but also more broadly for those who are affected by the values set by the market. The weakening of market liquidity is worrying.

Taken together, regulations introduced recently and those in the pipeline have had the effect of financial market participants withdrawing from some important functions such as market making as the costs of these functions have increased considerably. In this way, the supply of liquidity on important markets has been impaired. At the same time, the demand is unchanged or increasing.

Contact Kerstin Hermansson
Direct
Blasieholmsgatan 4b, 5tr
Box 1426, 111 84 Stockholm
Sweden
Tel +46 8 56 26 07 00,
e-mail
kerstin@fondhandlarna.se
www.nsa-securities.com

The amount of post-crisis regulation and the level of detail of these regulations together constitute severe barriers to entry for small entities or newcomers. This means that competition decreases which in turn may lead to less effective financial services being offered in the EU.

Page 2

The European Commission should assess the demanding reporting obligations on both financial market actors and others (EMIR, SFT and MiFIDII/MiFIR) and make sure that these obligations taken together are efficient and serve their purpose. Whereas data of high quality is important for both regulators and financial market participants it needs to be ensured that the data collected is neither overlapping nor overly extensive. Otherwise, overly extensive and overlapping requirements lead to increased transaction costs and constitute a barrier to capital flows. Duplication of reporting obligations should be avoided and there should at least be thresholds to avoid reporting by non-financial firms and individuals. Furthermore, transactions without any interest for supervisory authorities should not be reported.

File No 152/24

Doc. No 559068-v1

The NSA supports the objectives of the new Prospectus Regulation, to help improve access to finance and increase clarity for investors whilst balancing consumer protection concerns and helping lighten the regulatory burden on issuers. However, the final Level 2 legislation will need to be carefully calibrated to ensure that the new Regulation works as well as possible. We look forward to engaging with the Commission and ESMA further on this file.

While the NSA generally supports the proposal to revise insolvency proceedings, the Commission should consider the economic impact of the proposed regime on secured creditors and their ability to lend back into the economy and consider a balanced approach between the interests of both debtors and creditors. The proposal as it currently stands promotes one-dimensional, pro-borrower characteristics. This could lead to reduced recovery rates for creditors and reduce their ability to relend money back into the economy.

A part from the more general comments on CMU we would like to stress the importance of better consistency between the work of the ESAs and the legislation decided by the co-legislators. We believe that the CMU and the EU agenda on better regulation can contribute to ensuring this in the future. The CMU is closely linked with the European Commission's "Better Regulation" agenda. We are concerned that an increasing part of the regulation is being pushed from

level 1 to level 2 to achieve political agreements on level 1. Advices, proposals and guidelines from the ESAs should not go beyond the level 1 provision, and should respect the scope of different legislations. The supervisors should be obliged to take account of proportionality when issuing new guidelines on all matters. Furthermore, there is room for improvement of the process regarding questions & answers from the European Supervisors. Today, the process is non-transparent and opaque. It should be replaced with a transparent process with possibility for the market to react on draft answers.

The NSA have the opinion that solving the conflict of laws issue and harmonize the book-entry system in the EU through Securities Law legislation would benefit the internal market and improve the cross-border flow of collateral. Furthermore, improving the legal certainty for close-out netting arrangement would be beneficial for the Capital market in the EU.

To deliver more integrated capital markets as part of the Capital Markets Union, the EU should achieve more clarity, transparency and consistency on the rules applicable to cross-border transactions of book-entry securities. The EU-legislation regarding holdings and dispositions of book-entry securities is fragmented mainly because of the institutional approach in the legislation instead of a functional one.

To achieve clarity and legal certainty the Commission should develop a proposal for a Securities Law legislation with a functional approach. This is a key issue to create the necessary legal certainty for cross-border securities holdings and dispositions and collateral management.

A Securities Law legislation would be a real benefit for the internal market and for the CMU. Such legislation would also make life easier for market participants and investors from outside the EU. It would also simplify forthcoming EU-legislation if there was a common legal base for book-entry securities regarding all dispositions (transfer of securities, collateral arrangements) and acquisitions of securities. An efficient and attractive CMU needs legal certainty regarding holdings and dispositions of book-entry securities. Securities Law legislation is of utmost importance for efficient securities markets providing certainty for all involved – inside and outside the EU - in dispositions over book-entry securities.

Even more important is to solve the conflict-of-laws issue as

part of a Securities Law legislation or as a separate legislation. In the cross-border securities holding chain with multiple intermediaries as well as securities from several countries, the laws of several jurisdiction might interfere in determining the rights of securities. There are still severe problems in the EU to identify which law would apply to the legal position of the holder of securities and thereby determine what type of right an account holder acquires as a result of an acquisition of securities and the crediting of a securities account. There is a lack of general legislation regarding the conflict-of-laws issue. Today, there is no general rule only fragmented legislation (i.e. for collateral arrangement and proceeding according to the Winding-Up Directive). A general conflict-of-laws rule would make life easier for both participants and investors inside or outside the EU and in line with the aim of CMU make EU an attractive market.

Page 4

File No 152/24

Doc. No 559068-v1

We are at your disposal for any questions you may have.

On behalf to Nordic Securities Dealer Association.

Yours sincerely,

Kerstin Hermansson
Swedish Securities Dealers Association

Sindre Støer
Norwegian Securities Dealers Association, NSDA

Jakob Legård Jakobsen
Danish Securities Dealers Association, DSDA

Mari Pekonen-Ranta
Federation of Finnish Financial Services, FFI

A final word of caution. The NSA supports the ambition of increasing cross border equity investments in the EU. For smaller companies and smaller issues, though, there is a strong and reasonable 'home bias' in the investor base. A study of 110 Norwegian equity issues and placings over the last 7 years show that for equity issues under 40 MEUR, the domestic capital accounts for the bulk of the capital and the average is about 70% domestic uptake. This study, and these statistics, are not commonly available, as the process is manual work by highly experienced ECM professionals. Any effort involving detailed legislation to foster cross border equity issues for SME's should be held against this fact.

Page 5

File No 152/24

Doc. No 559068-v1

The Nordic region is naturally dominated by SME's and SME financing. We have very well developed financial markets and the combined average level of market capitalization of equities compared to the GDP level, ranks the Nordics at par with the UK and about 70% higher than the other major EU countries. We support the CMU initiative, but we fear overly detailed new legislation as the project matures.

We are at your disposal for any questions you may have.

On behalf to Nordic Securities Dealer Association,

Kerstin Hermansson
Swedish Securities Dealers Association

Sindre Støer
Norwegian Securities Dealers Association, NSDA

Jakob Legård Jakobsen
Danish Securities Dealers Association, DSDA

Mari Pekonen-Ranta
Federation of Finnish Financial Services, FFI