Mairead McGuinness
European Commissioner for Financial Stability, Financial Services and the Capital Markets Union
European Commission
1049 Bruxelles / Brussels

Anneli Tuominen
Interim Chair of the European Securities and Markets Authority
201-203 Rue de Bercy
75012 Paris

CC: Natasha Cazenave, Executive Director, ESMA; Fabrizio Planta, Head of Markets, ESMA; Carmine Di Noia, Chair, Post-Trading Standing Committee, ESMA; Sean Berrigan, Director-General, DG-FISMA; Jennifer Robertson, Acting Head of Financial Market Infrastructures and Derivatives, DG FISMA.

via email

Wednesday 14th July 2021

Dear Commissioner McGuinness and Chair Tuominen,

We, the undersigned associations, write to you with respect to the review of the Central Securities Depositories Regulation (CSDR) and the implementation of the settlement discipline regime under the CSDR, which is currently due to enter into force by 1 February 2022.

We welcome the Report from the European Commission on the CSDR, published on 1 July 2021, in particular Section 4.4 on reducing disproportionate burdens and costs related to settlement discipline. We fully support the Commission's intention to consider amendments to the mandatory buy-in regime under the CSDR, subject to an impact assessment. The Commission's signal is a very positive step towards delivering an effective settlement discipline regime that achieves its objectives and avoids harmful consequences for Europe's capital markets and investors[1].

We believe that the appropriate and prudent course of action is to subject the mandatory buy-in rules to revision by the co-legislators, with a view to enacting the necessary amendments, before attempting implementation. Enforcing the current rules, only to revise them at a later date, would not only risk damaging the competitiveness of EU capital markets and increasing costs for investors, but would also lead to a duplication of efforts and significant unnecessary disruption for all market participants.

The Joint Associations therefore request ESMA and the Commission to take action to ensure that the mandatory buy-in rules for non-CCP transactions are not subject to application on 1 February 2022, when the relevant RTS is currently set to enter into force, and to provide clarity to market participants on the matter on an urgent basis.

The implementation of the current rules, in our view, would lead to reduced market liquidity, disproportionately increase costs for issuers and investors, and ultimately place EU financial institutions and their clients at a competitive disadvantage. This would have a particularly adverse impact on smaller market participants, including corporates trying to access capital markets on a less regular basis, like SMEs, which would not be in line with the objectives of the Capital Markets Union. The implementation is a considerable endeavour requiring major technology and operational changes, as well as a large-scale global contractual repapering exercise, that would potentially need to be carried out twice, once before February 2022 and a second time after the review is completed. As well as increasing costs, this will cause unnecessary disruption and legal uncertainty for both EU and non-EU investors. We note that for a contractual repapering exercise of this magnitude, firms typically begin this process an average of 10 months before an implementation deadline.

We note that action to provide legal certainty to market participants that they will not be required to duplicate implementation efforts would be in line with the European Commission's Better Regulation agenda, which seeks to "eliminat[e] unnecessary costs that are currently born by companies while making the EU financial market more integrated, efficient and safe to facilitate investment."

In addition, there are a substantial number of open questions pending with the European Commission and ESMA, which need to be answered well ahead of the current implementation date in order to make the necessary amendments to systems, processes and contractual arrangements. Without these answers, market participants are not able to fully implement the CSDR provisions, especially the mandatory buy-ins rules, and cannot complete their preparations.

We therefore believe that the implementation of the mandatory buy-in rules should be urgently disapplied through an appropriate regulatory mechanism that provides legal certainty to market participants. Subject to receiving the necessary clarifications, this should not affect the application in February 2022 of other appropriate aspects of the Settlement Discipline Regime that we believe will improve settlement efficiency in the EU, including cash penalties, where considerable progress has been made towards implementation.

The Joint Associations remain fully supportive of the Capital Markets Union project. As part of this, we are committed to further improving settlement efficiency in Europe's capital markets and are committed to achieving this in a way that preserves market liquidity, does not disproportionately increase costs for issuers and investors, and does not place EU capital markets at a competitive disadvantage.

We remain at your disposal should you require further information, and reiterate our desire to work collaboratively on this important topic.

[1] We also note and welcome that the European Parliament invited the Commission to review the settlement discipline regime in view of the COVID-19 crisis and Brexit in its resolution on further development of the Capital Markets Union (October 2020).

Yours sincerely,

Thalia Chryssikou
Chair
AFME

Stéphanie Saint-Pé
Déléguée Générale
AFTI

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Scott O'Malia
Chief Executive Officer
ISDA

Andrew Dyson
Chief Executive Officer
ISLA

Annex 1 – Information about signatory organisations

About AFME:

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent the leading global and European banks and other significant capital market players. We advocate for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. We aim to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work.

About AFTI:

The Association Française des Professionnels des Titres (AFTI), is the leading association representing post-trade businesses in France and Europe. AFTI has over 100 members covering a wide range of activities, including market infrastructures, custodians, account holders and depositaries, issuer services providers, as well as reporting and data providers. All together, they employ about 28,000 people in Europe of which 16,000 are in France. Members acting as financial intermediaries account for 26% of European custody activity, with €55.6 trillion in assets under custody and 25-30% of the European fund asset servicing sector (depositaries and fund administrators). In addition, in 2016, French market infrastructures settled 29 million instructions (CSD) and cleared 730 million transactions (CCP).

About AGC:

Established in 1996, the Association of Global Custodians (the "AGC") is a group of 12 global financial institutions that each provides securities custody and asset-servicing functions primarily to institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory matters and market structure. The member banks are competitors, and the Association does not involve itself in member commercial activities or take positions concerning how members should conduct their custody and related businesses. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

About AIMA:

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2 trillion in hedge fund and private credit assets.

About ASSOSIM:

ASSOSIM represents the interests of the intermediaries active on the Italian financial markets, namely, Italian investment firms, investment banks and subsidiaries of foreign investment services providers. Its members account for nearly the entire amount of the transactions carried out in the Italian stock markets as from Italy, and more than 80% when considering cross border transactions.

About EACB:

The European Association of Co-operative Banks (EACB) represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to cooperative legislation. Founded in 1970, today the EACB is a leading professional lobbying association in the European banking industry. Co-operative banks play a major role in the financial and economic system. They contribute widely to stability thanks to their anti-cyclical behaviour, they are driver of local and social growth with 2.700 locally operating banks and 43.000 outlets, they serve 214 million customers, mainly consumers, SMEs and communities. Europe's co-operative banks represent 85 million members and 705.000 employees and have an average market share in Europe of about 20%.

About EAPB:

The European Association of Public Banks (EAPB) gathers member organisations (financial institutions, funding agencies, public banks, associations of public banks and banks with similar interests) from 15 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders. With a combined balance sheet total of about EUR 3,500 billion and a market share of around 15%, EAPB members constitute an essential part of the European financial sector.

About EBF:

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

About EDMA:

Electronic Debt Markets Association represents the common interests of companies whose primary business is the operation of regulated electronic fixed income trading venues (multilateral trading facilities and regulated markets) in Europe. EDMA seeks to foster and promote liquid, transparent, safe and fair markets and act as the voice and a source of consultation between the members in their roles as operators of such venues. EDMA projects collective views on regulatory matters and market structure topics to governments, policy makers and regulators for the benefit of the electronic fixed income markets. Our 7 members are: BGC Fenics, Bloomberg, BrokerTec, Liquidnet, MarketAxess, MTS and Tradeweb. More information at www.edmae.org

About EFAMA:

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 57 Corporate Members and 23 Associate Members. At end Q4 2020, total net assets of European investment funds reached EUR 18.8 trillion. These assets were managed by more than 34,350 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,650 AIFs (Alternative Investment Funds). At the end of Q2 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 24.9 trillion. More information is available at www.efama.org

About EVIA:

The European Venues and Intermediaries' Association promotes and enhances the value and competitiveness of Wholesale Market Venues, Platforms and Arranging Intermediaries by providing members with co-ordination and a common voice to foster and promote liquid, transparent and fair markets. It maintains a clear focus and direction, building a credible reputation upon 50 years of history, by acting as a focal point for the industry and providing clear direction to their members when communicating with central banks, governments, policy makers, and regulators. Its core strength is the ability to consolidate views and data and act as a common voice for an industry operating in a complex and closely regulated environment, by acting as a central point for the industry and providing clear communication with central banks, governments, policy makers, and regulators. It provides specific standards and maintains a clear focus and direction for the participant s and stakeholders across the market ecosystem, building upon a credible reputation from over 50 years of experience.

About FIA:

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

About ICI Global:

ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US$40.7 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Brussels, Hong Kong, and Washington, DC.

About ICMA:

ICMA is the trade association for the international capital market with around 600 member firms in over 60 countries countries, including issuers, banks, asset managers, central banks, infrastructure providers and law firms. It performs a crucial central role in the market by providing industry-driven standards and recommendations for issuance, trading and settlement in international fixed income and related instruments. ICMA liaises closely with regulatory and governmental authorities, both at the national and supranational level, to help to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market. More information available at https://www.icmagroup.org/

About ISDA:

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

About ISLA:

International Securities Lending Association (ISLA) is a leading industry association, representing the common interests of securities lending and financing market participants across Europe, Middle East and Africa. Its geographically diverse membership of over 160 firms, includes institutional investors, asset managers, custodial banks, prime brokers and service providers. Working closely with the global industry as well as regulators and policymakers, ISLA advocates the importance of securities lending to the broader financial services industry. ISLA supports the development of a safe and efficient framework for the industry, by playing a pivotal role in promoting market best practice, amongst other things. ISLA sponsors the Global Market Securities Lending Agreement (GMSLA) and the annual enforceability review in over 60 jurisdictions globally. Through member working groups, industry guidance, consultations and first-class events and education, ISLA helps to steer the direction of the industry and is one of its most influential voices on the European and global stage. https://www.islaemea.org/