

21 December 2020

Detrimental impact of conflicting application of EU and UK derivatives trading obligations on EU capital markets

Dear Mr. Berrigan,

Less than two weeks before the end of the Brexit transition period, and whereas the risk of a “no-deal” is far from remote, the undersigned associations¹ are writing to you in relation to the derivatives trading obligations (**DTO**) and the detrimental impact and disruption that the overlapping application of EU and UK DTOs in some situations will have on the functioning of the European Union capital markets.

Since this specific topic has not been considered within the *Capital Markets Recovery Package*, meaning that no targeted adjustments will be made to the scope of the EU DTO in the short-term, we respectfully urge the European Commission to find another regulatory solution, even temporary, to address this matter before the end of 2020.

The DTO represents a critical issue, not only for European financial institutions but also for the European Union itself:

- First, it is crucial to avoid that European financial institutions acting in the United Kingdom through local branches be subject to a simultaneous application of overlapping and potentially conflicting EU and UK DTOs, which would generate an unlevel playing field between them and their non-EU competitors.
- Beyond local competition considerations, enabling UK branches of EU financial institutions to continue their business with UK and third countries counterparties without additional constraints compared to their local competitors is critical. Indeed, overlapping DTOs for their UK branches would (i) endanger the global competitiveness of EU institutions in the derivatives markets and (ii) push them to move their business to US SEFs, potentially making the perspective of a relocation of trading and clearing of derivatives in the European Union delusive. Such a situation is unfortunate when the stakes for the sovereignty of the European Union are clearly identified, particularly with regards to the financing of its economy through the collectively shared desire to ensure the success of the Capital Markets Union.

¹ More information about each association is available in Appendix.

In light of the issues at stake and the impossibility to amend MiFIR with very little time left, we consider the best option would be as of 1st January 2021 for the European Commission to adopt temporary forbearance of the EU DTO imposed on UK branches of EU financial institutions for their derivatives activities entered into with non-EU counterparties for a period of at least 12 months. This proposal will not hinder the development of EU trading venues since all the transactions entered into with EU clients concerning derivatives subject to the EU DTO will be traded on EU trading venues as from 1st January 2021.

We remain at your disposal to further elaborate on this issue and other options that you might consider as a way forward.

Sincerely yours,

Stéphane GIORDANO
President
AMAFI

Gianluigi GUGLIOTTA
General Secretary
ASSOSIM

Brian HAYES
Chief Executive Officer
BPMI

Andreas KRAUTSCHEID
Chief Executive
BdB

Etienne BAREL
Director General Delegate
FBF

To the attention of:

Mr John BERRIGAN
Director General
DG FISMA
European Commission

Appendix – Information about signatory organisations

The Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. AMAFI has more than 150 members operating for their own account or for clients in equities, fixed-income, structured products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located.

The Italian Financial Markets Intermediaries Association (Associazione Intermediari Mercati Finanziari – 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 on the Italian stock markets as from Italy, and more than 80% when considering cross border transactions.

The Banking and Payments Federation Ireland (BPFI) is the principal voice and representative body of the banking, payments and fintech sectors in Ireland, with offices in Dublin, Brussels and Frankfurt. Together with its affiliates the Federation of International Banks in Ireland (FIBI) and the Fintech & Payments Association of Ireland (FPAI), BPFI represents over 100 financial institutions operating in Ireland. Specifically, BPFI membership includes domestic banks offering retail financial services to clients and customers across Ireland, international banks engaged in capital markets and corporate banking services. It also includes fintech and payments institutions with propositions spanning a wide range of product areas including payments, regtech, distributed ledger technology and cyber-security among others.

The Bundesverband Deutscher Banken (BDB) is the voice of the private banks in Germany. As a leading trade association, it coordinates, shapes and represents the interests of the private banking industry and acts as a mediator. The BdB represents more than 170 private commercial banks, 30 associated members as FinTechs and eleven member associations. The private commercial banks affiliated to the association compete keenly with one another. They include both big and small banks, banks operating worldwide and banks with a regional focus, universal banks and banks specialising in individual lines of business.

The Fédération bancaire française (FBF) has for mission to promote the banking and financial industry in France, Europe and around the world. It determines the profession's positions and makes proposals to public authorities and economic/financial authorities. FBF has 340 member banks including 115 foreign banks. Regardless of their size and status, credit institutions licensed as banks and the branch offices of credit institutions in the European Economic Area can, if they wish, become fully-fledged members of the FBF. The central bodies of cooperative or mutual banking groups are also fully-fledged members. The FBF is member of the European Banking Federation (EBF).