



Deutsches Aktieninstitut

ISDA  
Safe,  
Efficient  
Markets

afme/  
Finance for Europe

EDMA  
EUROPE

ICMA  
International  
Capital  
Market  
Association



SwissFinanceCouncil  
Fostering International Dialogue

8 November 2018

**Valdis Dombrovskis**  
**Vice-President in charge of Financial Stability,**  
**Financial Services and Capital Markets Union**  
**European Commission**  
**200 Rue de la Loi, B-1049**  
**Brussels, Belgium**  
**[cab-dombrovskis-contact@ec.europa.eu](mailto:cab-dombrovskis-contact@ec.europa.eu)**

**RE: Investment Firm Regulation – third country firm regime**

Dear Vice-President Dombrovskis,

FIA, Deutsches Aktieninstitut, AFME, EDMA, ICMA, Swiss Finance Council and ISDA (together “the Associations”) welcome the debate about equivalence and support the reforms to promote the safety and transparency of markets globally. A stable and robust equivalence framework is critical to preserve the integrity of and access to EU capital markets, facilitating European financing and growth. Consistent with ensuring a level playing field and without jeopardising the integrity of the Single Market, EU capital markets must remain open and accessible.

EU financial market participants need to be able to trade with financial market participants around the world to diversify risk, to access liquidity, and for investment opportunities.

We also believe that the common practice of cross-border trading and clearing activity result in better outcomes for the real economy by providing end users with access to greater pools of liquidity than may be available simply domestically and/or regionally. Furthermore, EU based companies regularly depend upon accessing non-EU primary markets for needed capital formation, expansion of their businesses and job creation.

Capital markets are global in nature and separating the EU from other markets would be a significant backwards step for the development of EU capital markets.

Imposing new limits on the scope of equivalence will be to the detriment of EU markets. If market access to third country firms by EU issuers and investors becomes more difficult this would make EU markets less attractive and be at odds with the aim of enhancing their capacity to attract external capital. It is important that the EU’s equivalence regime does not become so restrictive that it unduly restricts normal and needed capital flows within the EU or between the EU and other regions or is detrimental to end-users of financial products and services in Europe.

The Associations support the Commission’s report when it calls for the EU to develop the capacity to monitor non-EU firms in order for EU authorities to manage cross-border risks, rather than trying to prevent cross-border business.

## Investment Firm Review (IFR)

The Associations agree with the Commission's proposed changes to MiFIR Article 47, which strengthen the equivalence determination process and the assessment criteria for third country firms likely to be of systemic importance to the EU, but do not limit cross-border access of third country firms into the EU. These more granular and detailed assessments should not require the Commission to rely on strict line-by-line comparability in its assessments as equivalence frameworks have a track record of being effective with the use of outcomes-based approaches to assessing comparability amongst jurisdictions.

We also note the Commission's changes to Article 46 and agree that although it is important for ESMA to have access to up-to-date information to monitor on a regular basis the relevance of the equivalence granted, we believe these changes should be proportionate and should be based on the current cooperation arrangements already in existence under MiFID/R.

However, this enhancement of the equivalence regime would be undermined by other proposals in the IFR debate, including proposals to introduce an EU branch/subsidiary requirement for third country investment firms underwriting and dealing on own account (e.g. providing client clearing services to EU clients, positions arising from market-making, where a firm act as a SI or executes an order by taking a market or 'unmatched principal' position on its books, etc.) and in MiFID II instruments with EU (per se) professional clients and/or eligible counterparties.

This requirement would severely narrow the capacity of EU-based banks, broker dealers, asset managers, corporates and other financial market participants to access market liquidity outside of Europe. Limiting the ties between EU and non-EU market participants would be a backwards step for EU capital markets and their connection to the world. In particular, it would:

- Disadvantage EU banks, broker-dealers and asset managers who wish to manage global funds, access global markets to finance large transactions, hedge risks including in the global markets or more generally participate in global capital markets as centres of liquidity;
- Disadvantage EU corporates who wish to operate their treasury and foreign exchange operations in a competitive way, or who wish to have their own issuances underwritten by non-EU providers in order to access non-EU capital markets;
- Reduce global offerings to wholesale clients based in the EU;
- Result in duplicative supervision/authorisation in some areas; and
- Risk negatively impacting EU trading venues' ability to on-board third country participants and would make EU-based trading venues less competitive.

Specifically, if dealing on own account for firms and underwriting for regulated firms are restricted, the impact will be significant and will be felt across the board by market participants, including corporates, pension funds and sovereigns:

- Market-makers are essential providers of liquidity, buying or selling when markets are imbalanced and building and holding inventory; and
- In many markets, market-makers provide the majority of the liquidity. Liquidity provision is especially critical in periods of market dislocation, when other market participants may withdraw. Without it, volatility can increase substantially. When an asset is illiquid, trading is more costly, and fees or spreads are higher.

We believe the market and European economy would benefit from current MiFIR equivalence regime determinations, rather than the regime being limited in scope.

The Associations' members are concerned that the proposed amendments to limit the scope of the equivalence regime could lead to less competition for investment services and trading venues within the EU and reduced provision of external capital available to the European economy. As with more explicit forms of capital controls, this could result in EU markets being isolated, less liquid and inefficient with increased costs for the real economy in Europe, contrary to the objectives of the EU's CMU initiative. Fragmentation of liquidity increases costs of trading which in turn may be passed on to the end consumers ranging from pension fund beneficiaries or corporates finding it more difficult to participate in financial intermediation.

We support ESMA being involved in the monitoring and implementation of equivalence decisions, which should be achieved by establishing strong and continuous engagement with third country regulators. Regulatory and supervisory coordination and cooperation within the EU and with third countries is important to ensure a robust and coherent global regulatory system.

### Conclusion

We support the targeted amendments to the existing MiFIR equivalence regime for third country firms (Article 47) as proposed by the Commission and believe they will ensure the provision of cross-border services into the EU is done on a level playing field with EU incumbents. We therefore strongly oppose far-reaching changes to the equivalence regime that would effectively remove the ability to provide certain investment services on a cross-border basis to European clients by third-country firms.

Important reforms coordinated at the global level and delivered since the crisis have made systemically important financial institutions more resilient and markets safer. Authorities should continue to strengthen global cooperation channels to address common challenges and risks to financial stability. A trend towards regulatory divergence and supervisory fragmentation threatens to undermine progress made in recent years.

The EU equivalence approach is a key component of the framework regulating relationships with third countries in financial services. It is vital that equivalence regimes – including for investment firms and market infrastructures – remain fit for purpose and continue to balance the need of preserving financial stability and the integrity of markets in the EU on the one hand with the benefits of maintaining open, competitive and globally integrated financial markets on the other.

We look forward to continued engagement on these important issues.

Sincerely,



Walt Lukken  
President & CEO  
FIA



Dr. Franz-Josef Leven  
Deputy Managing Director  
Deutsches Aktieninstitut



Scott O'Malia  
CEO  
ISDA



Simon Lewis  
CEO  
AFME



David Bullen  
Secretary-General  
EDMA Europe



Martin Scheck  
CEO  
ICMA



Thomas Pohl  
Secretary of the Board  
Swiss Finance Council

#### **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 more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry.  
[www.fia.org](http://www.fia.org)

#### **About Deutsches Aktieninstitut**

Deutsches Aktieninstitut represents the entire German economy interested in the capital markets. Its approx. 200 members are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut has offices in Frankfurt am Main, Brussels and Berlin.  
[www.dai.de/en/](http://www.dai.de/en/)

#### **About AFME**

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

[www.afme.eu](http://www.afme.eu)

#### **About ICMA**

ICMA is the trade association for the international capital market with some 550 member firms from more than 60 countries, including banks, issuers, asset managers, 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, helping to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market.

[www.icmagroup.org](http://www.icmagroup.org)

#### **About EDMA Europe**

Electronic Debt Markets Association represents the interests of companies whose primary business is the operation of regulated electronic fixed income multilateral trading facilities in Europe (regulated markets and/or trading venues) and act as a source of consultation between the members in their roles as operators of such venues in order to project collective views on regulatory, compliance and market structure topics for the benefit of the electronic fixed income markets.

More information at [www.edmae.org](http://www.edmae.org)

#### **About Swiss Finance Council**

The Swiss Finance Council (SFC) was established in November 2013 to engage in dialogue around policy developments in finance at a European and international level. It represents the interests of internationally active Swiss financial institutions and provides a platform to share their experience, expertise and knowledge through a permanent representative office in Brussels.

[www.swissfinancecouncil.org/en/](http://www.swissfinancecouncil.org/en/)

#### **About ISDA**

Since 1985, the International Swaps and Derivatives Association has worked to make the global derivatives markets safer and more efficient.

ISDA's pioneering work in developing the ISDA Master Agreement and a wide range of related documentation materials, and in ensuring the enforceability of their netting and collateral provisions, has helped to significantly reduce credit and legal risk. The Association has been a leader in promoting sound risk management practices and processes, and engages constructively with policymakers and legislators around the world to advance the understanding and treatment of derivatives as a risk management tool.

ISDA has over 900 member institutions from 70 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.

ISDA's work in three key areas – reducing counterparty credit risk, increasing transparency, and improving the industry's operational infrastructure – show the strong commitment of the Association toward its primary goals; to build robust, stable financial markets and a strong financial regulatory framework.

[www.isda.org](http://www.isda.org)