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

Steven Maijoor
Chair of the European Securities and Markets Authority
201-203 Rue de Bercy
75012 Paris

CC: Sean Berrigan, Director-General, DG FISMA; Fabrizio Planta, Head of Markets, ESMA; Jenny Robertson, Acting Head of Financial Market Infrastructures and Derivatives, DG FISMA; Tatyana Panova, Head of Capital Markets Union, DG FISMA;

Via email.

11 March, 2021

Joint Trade Association Letter regarding Implementation of the CSDR Settlement Discipline Regime

Dear Commissioner McGuinness and Chairman Maijoor,

We write to you on a time sensitive matter relating to the implementation of Regulation (EU) No 909/2014 and the Commission Delegated Regulation (EU) 2018/1229 (together, 'CSDR').

The CSDR sets out an objective to improve efficiency and safety in European capital markets. This aspiration is shared by members of the Joint Associations[1]. As described in our respective submissions to the recent targeted review of CSDR[2], whilst we agree that many features of the Settlement Discipline regime will drive greater settlement efficiency and improved operational processes, the mandatory buy-in regime, as currently conceived by CSDR, requires thorough reassessment as to its appropriateness.

We are encouraged by the fact that the Commission has provided the opportunity to suggest constructive, and necessary, revisions to the mandatory buy-in provisions via the Review and look forward to continued engagement on the outcome of this process. The purpose of this letter is not to restate arguments made in industry submissions to the Review but to highlight a critical timing issue related to the CSDR mandatory buy-in regime implementation schedule.

As the Commission and ESMA are aware, the implementation of the CSDR mandatory buy-in regime is a significant undertaking for the entire financial market, not only in Europe, but globally. This involves not only extensive system developments, but also major client outreach across multiple markets and jurisdictions to undertake contractual papering and remediation[3] in line with the requirements set out in Article 25 of the Commission Delegated Regulation (EU) 2018/1229 ('RTS').

A key concern for our respective members is that the current legislative timetable requires market participants to proceed with a major implementation exercise without any indication of the scope or timing of the Review process - noting that some revisions to the mandatory buy-in regime are essential. At best this will result in ongoing implementation efforts and investment being rendered redundant; at worst it will mean repeating the exercise. Creating such uncertainty around a regulatory implementation project of this profile and scale is damaging to the development and reputation of the EU's financial markets.

We respectfully suggest that a far more robust approach would be to make the required revisions to the CSDR mandatory buy-in regime before attempting implementation. We see no reason why this should affect the implementation of other aspects of the Settlement Discipline regime in February 2022, assuming no fundamental changes thereto are proposed as a result of the Review.

We understand that prior to the Review proposals, the Commission will prepare a report to be published in Q2 2021. The industry would welcome clarity on the Review and implementation schedule of the CSDR Settlement Discipline Regime as part of this communication.

We remain at your disposal should you require further information, and reiterate our desire to work collaboratively to improve the safety and efficiency of Europe's capital markets.

Yours sincerely,

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[1] The contributing associations are AFME, AGC, ASSOSIM, EACB, EAPB, EBF, EDMA, EFAMA, EVIA, FIA, FIA EPTA, ICI GLOBAL, ICMA, ISDA and ISLA.

[2] Targeted review of regulation on improving securities settlement in the European Union and on Central Securities Depositories (the 'Review')

[3] For example, in markets where contractual buy-in remedies or the equivalent already exist, such as for bonds or Securities Financing Transactions, these contracts will need to be revised to accommodate the regulatory requirements. This can run into thousands of agreements per firm which would require client outreach, bilateral contractual amendment and associated legal due diligence.

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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 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 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 co-operative 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 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

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 FIA EPTA:
The FIA European Principal Traders Association (FIA EPTA) represents 30 independent European Principal Trading Firms (PTFs) which deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of financial instruments, including shares, options, futures, bonds and ETFs. Our members are independent market makers and providers of liquidity and risk transfer for exchanges and end-investors across Europe, including the UK.

About ICI Global:
The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$28.5 trillion in the United States,

serving more than 100 million US shareholders, and US$9.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in Washington, DC, London, Brussels, and Hong Kong.

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/