



**Mr. Michel Barnier**  
Commissioner for Internal Market  
and Services  
European Commission  
Rue de la Loi 200  
B-1049 Bruxelles

2 December 2013

Dear Commissioner,

I write to you regarding the current discussions on the Markets in Financial Instruments Directive II / Regulation (MiFID/MiFIR).

BUSINESSEUROPE has long been a supporter of MiFID and its objectives and has previously provided input to the policy making process for the new rules supporting transparency and stability in financial markets and emphasising the importance of ensuring that the rules are supportive of European businesses. We would like to point out that MiFID/MiFIR is primarily focussed on the investment sector and that it is important to avoid disproportionate impacts on other sectors.

MiFID/MiFIR should ensure a transparent and fair price formation process in liquid financial instruments as this is an important pre-requisite for companies seeking to finance their business through capital markets. Market financing is increasingly important as banks have and will become less able to lend given new capital and liquidity requirements. These should also provide access to products that enhance the stability and efficiency of financial management and help companies to reduce and manage risks associated with their underlying commercial business.

Extending transparency requirements and trading obligations to physically settled forward markets would hinder and/or reduce substantially the ability of many non-financial companies using such contracts to mitigate their underlying real economic risks. Therefore, we support the General Approach of the Council, which proposes an exemption of physically settled forwards traded over so-called OTFs from the definition of financial instruments. In this context we welcome also that the EU Parliament proposed an exemption of physically settled forwards independent of how and where they are traded.

It is crucial that non-financial companies should not be required to license as "investment firms" if they merely undertake hedging activity to manage their corporate risks and trade derivatives exclusively on their own account on an ancillary basis. It is important that these companies should not have to comply with many burdensome obligations of MiFID/MiFIR and also other rules such as those on capital requirements in the context of CRD IV/CRR. In addition, a firm would become a financial counterparty under the European Markets Infrastructure Regulation (EMIR) which would lead to it being subject to the clearing obligation or the obligation for bilateral collateralization.



This will lead to higher costs due to a large amount of capital and collateral required and the difficult task of managing this additional capital burden. Therefore, we strongly support the ancillary activity exemption as proposed by the General Approach of the Council as this proposal represents an appropriate further development of the original EU Commission proposal of 2011.

Non-financial companies mainly use physical forwards and derivatives for risk mitigation of underlying real economic risks. If physical forwards and derivatives are used for this reason and they are not material participants in markets, their activity is unlikely to present systemic risk. This has been acknowledged when the legislator adopted the clearing exemption for non-financial companies below a threshold contained in EMIR. It is crucial that new rules in the context of MiFID/MiFIR do not undercut this exemption and discourage end users from entering into "over-the-counter" derivative transactions. This would act as a deterrent to corporations hedging risks; increasing not only the risk for the single corporation concerned but also for the economy as a whole.

The rules concerning derivative markets in MiFID/MiFIR should reflect the specifics of derivatives used by non-financial companies to hedge risks and be consistent with EMIR. This includes accepting that derivatives which are not covered by the trading obligation under Art. 24 et seq. of the MiFIR proposal can continue to be traded 'over-the-counter'.

Further to this, it is important to maintain waivers for pre-trade transparency for request for quotation (RFQ) and voice trading. These methodologies are used often to trade illiquid corporate bonds. Price discovery will not be impacted as these trades will be made post-trade transparent. Finally, careful calibration of post-trade transparency is essential to preserve liquidity - in the corporate bond markets in particular.

In addition we believe that appropriate consideration should be given to the impact on corporate bond markets. The potential extension of the trading obligation to bonds would involve more stringent pre-trade transparency requirements which could negatively impact liquidity which will raise the cost of capital for corporates.

We hope that you share these concerns and will be able to ensure that MiFID/MiFIR will function effectively, encourage growth and prevent damage to businesses in the wider economy. For reference, we include our position paper from June 2012 which remains relevant and provides greater detail on our key concerns. We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Markus J. Beyrer