

Consultation response

EBA Consultation Paper on Draft Regulatory Technical Standards on Passport Notifications under Articles 35, 36 and 39 of the proposed Capital Requirements Directive

21 August 2013

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA Consultation Paper on Draft Regulatory Technical Standards on Passport Notifications under Articles 35, 36 and 39 of the proposed Capital Requirements Directive.

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.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

AFME members support the EBA's work on seeking to ensure coherence of the Technical Standards arising from these provisions and, in that light, developing a harmonised framework for passporting notifications. The proposals represent an important step in enhancing supervisory convergence, preventing regulatory arbitrage and achieving a level playing field for firms.

We agree that it is helpful to use the existing Passport Guidelines developed by the Committee of European Banking Supervisors (CEBS) as the basis, given firms' experience in utilising this framework. Overall we hope that the common templates will result in smoother and speedier flows of information between both firms and competent authorities. Members have highlighted that under the previous regime, some firms experienced a lack of certainty regarding the assessment criteria for their application and the exact date on which they were in a position to commence activities in the host member state so, with this feedback in mind, a more formalised protocol will be welcome.

We would hope that going forward and given the streamlining of information, competent authorities will be able to assess passporting applications even more quickly than the timelines mandated by the regulatory framework, with firms thus being able to provide cross-border services more quickly to the benefit of their clients.

We would be pleased, of course, to discuss with the EBA the range of issues covered in this consultation also e.g. to include communications between firms and host regulators, or to provide further information about any of the matters which our members have raised if that would be helpful.

Yours faithfully

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Detailed responses to the specific questions raised by the EBA:

Q1: To what extent will the information on core activities contribute to transparency and monitoring of activities in the host Member State?

The information provided in the accompanying documents to the draft RTS is helpful in understanding the EBA's rationale for asking firms to provide additional information on core services/activities and their intended start date. We do not object to this requirement as long as "core" is interpreted pragmatically by the regulator and a certain amount of flexibility is allowed for firms. For example, we believe that notifications of changes in branch particulars should focus on material changes to core activities. We would therefore suggest that there should be e.g. no requirement for firms to submit change of branch particulars notifications for a minor delay in the start date of a core activity or new core activities being carried out on a very small scale or pilot basis. In this context, any further acknowledgment EBA could provide of materiality considerations would be most helpful.

In order to ensure that firms complete the information accurately, we believe that further guidance/explanations should be included in the actual guidelines and/or templates drawing on the account in the consultation as not all firms will necessarily review this material and the explanations set out within it when completing their notifications in future.

Q2: Do you think that the information in case of planned termination of the operation of a branch will contribute to the transparency of related process and contribute to the protection of consumers?

Whilst we have no objection in principle to including this information, the provision needs to be interpreted flexibly and pragmatically. In many instances businesses will be wound down over time and, whilst it is reasonable to set out a schedule for the planned termination, it will not always be possible (or in the interests of clients) to strictly adhere to any pre-determined schedules. It is also not clear to what extent material changes to the already communicated termination schedule would need to be notified.