

18 December 2014

European Banking Authority
Tower 42
25 Old Broad Street
London EC2N 1HQ

Submitted via the EBA website

Consultation paper on Draft Regulatory Technical Standards and Draft Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU (EBA/CP/2014/30)

Dear Sir / Madam

Please find enclosed AFME's response to the EBA consultation paper on Draft Regulatory Technical Standards and Draft Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU (EBA/CP/2014/30).

Please do not hesitate to contact us if you have any questions.

Yours faithfully



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Consultation response

EBA consultation paper on Draft Regulatory Technical Standards and Draft Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU (EBA/CP/2014/30)

18 December 2014

The Association for Financial Markets in Europe (“AFME”) welcomes the opportunity to comment on the European Banking Authority (“EBA”) Consultation Paper (the “CP”) on Draft Regulatory Technical Standards and Draft Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU (EBA/CP/2014/29).

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.¹

We set out below our general comments in response to the CP. References to articles are to articles of the Bank Recovery and Resolution Directive 2014/59/EU (“Directive”). We have no responses to the specific questions raised in the CP.

General comments

Chapter III of the Directive sets out harmonised rules for intra-group financial support in the early intervention phase. The rationale for the harmonisation is to overcome legal obstacles under national law to an optimal allocation of liquidity and available collateral in groups in distress, especially cross-border groups, resulting from Member States’ national laws, which do not take into account the specific needs of banking groups, and diverging national regulatory requirements concerning intra-group agreements. The Directive recognises the objective of restoring the financial stability of the group as a whole, while maintaining adequate safeguards. Member States are directed to remove any legal impediment in national law to such group financial support transactions.

An intra-group financial support (IGFS) agreement entered into in the meaning of Chapter III is not, however, a condition for providing intra-group liquidity under ordinary circumstances. It should also not affect existing contractual (e.g. guarantees) and statutory (e.g. waivers) arrangements for intra-group financial support. It is helpful that this point is made clear in the Executive Summary and in the Background sections of the consultation but to avoid confusion we think this point should also be stated in the RTS and guidelines themselves (ie in a recital). It should also be clearly stated that no institution can be required to adopt these IGFS agreements.

¹ 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.

While it is helpful to remove any hurdles under national law to entering into these arrangements we do not expect financial institutions to necessarily use them on a widespread basis given the potential difficulty of obtaining the various shareholder and other approvals. Therefore, we would encourage the EBA to refrain from making the RTS and the guidelines overly prescriptive or from inadvertently introducing further disincentives to use these support arrangements. For example, the EBA is directed to specify the form and content of disclosure but it possibly goes too far in the implementing TS. For example, it may not be possible for both institutions that are party to an arrangement to actually post to their websites because not all institutions within a group may necessarily have their own website. Information on the arrangement disclosed as a part of institutions' regular annual or periodic financial disclosure requirements should be adequate. The implementing TS should probably not require disclosure on websites in any event unless all Member States already require all financial institutions to post their financial reports to their websites.

A further general comment is that intra-group financial arrangements should not be considered necessary in light of the home / host coordination process in the Directive for group recovery and resolution plans.

Finally, we note a typographical error in the RTS on page 11 in recital 5: "and" should be inserted in the second to last line prior to "where applicable" and insert a comma following "applicable."