

Confidential

6 February 2015

European Banking Authority
Floor 46
One Canada Square
London
E14 5AA

Submitted via the EBA website

Consultation paper on Draft Guidelines on the treatment of shareholders in bail-in or the write-down and conversion of capital instruments under Directive 2014/59/EU (BRRD)

Dear Sir / Madam

Please find enclosed AFME's response to the EBA consultation paper on Draft Guidelines on the treatment of shareholders in bail-in or the write-down and conversion of capital instruments under Directive 2014/59/EU. Please do not hesitate to contact us if you have any questions.

Yours faithfully



Gilbey Strub

Managing Director, Resolution and Crisis Management

AFME

Association for Financial Markets in Europe

London Office: St. Michael's House, 1 George Yard, London EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard, London EC3V 9DH

www.afme.eu

Consultation response

EBA consultation paper on Draft guidelines on the treatment of shareholders in bail-in or the write-down and conversion of capital instruments under Directive 2014/59/EU

6 February 2015

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 Guidelines on the treatment of shareholders in bail-in or the write-down and conversion under Directive 2014/59/EU (BRRD).

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

General comments

We believe the approach you have taken regarding the treatment of shareholders in bail-in or the write-down and conversion of capital instruments is generally sensible, particularly in providing guidance on when the resolution authority may dilute existing shares or cancel them, in whole or in part. We have the following specific comments.

Paragraph 1.25 of the RTS provides that where shares of a public company are listed, transferring of shares rather than cancelling them “may be necessary to avoid an interruption of listings and discontinuity in valuation of the shares.” This is workable in the case of dilution, but may be very difficult depending on how the resolution authority approaches full cancellations / transfers, as the resolution authority would need to find a means either to:

- Cancel old shares for shareholders and issue new shares to bondholders (post-haircut), which may be fairly technically straightforward but may also be potentially inconsistent with avoiding discontinuity in valuation; or
- Transfer shares from old shareholders to the bondholders, which may be complicated as the authority would have to transfer from shareholders’ securities accounts into a pool under a trustee and then into bondholders’ securities accounts. There would be a time lag and no clarity on who owned the shares during this time.

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.

Direct transfers from shareholders to bondholders accounts, which is technically very difficult and would potentially give rise to unfair treatment (e.g. if some transfers didn't work out).

We support the EBA's intention under paragraph 1.25, but there are a number of operational issues that will need to be analysed first before undertaking this approach so perhaps paragraph 1.25 could acknowledge this by inserting "where it is operationally feasible" after the word "necessary."

Association for Financial Markets in Europe

London Office: St. Michael's House, 1 George Yard, London EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard, London EC3V 9DH

www.afme.eu