

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 rate of conversion of debt to equity in bail-in 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 rate of conversion of debt to equity 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 rate of conversion of debt to equity in bail-in under Directive 2014/59/EU for Bank Recovery and Resolution

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 rate of conversion of debt to equity in bail-in 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

References to articles are articles under the BRRD.

General comments

We believe it is correct that the BRRD allows resolution authorities to apply differential conversion rates to different classes of liabilities or capital instruments when necessary to compensate for any loss incurred owing to the exercise of the write down and conversion powers under articles 50 and 59, or to ensure the no creditor worse off in liquidation safeguard is met under article 75. It also makes sense that article 50 requires that when differential conversion rates are applied, the rates applied to senior liabilities should be higher than those for subordinated liabilities to reflect the value of seniority.

Differential conversion rates will be particularly relevant under the NCWOL safeguard in article 75 when equal ranking creditors have been excluded from bail-in, causing a greater level of write down or conversion to be required for liabilities not excluded.

These Guidelines will be relevant not just to resolution but also to recovery and resolution planning. We believe that although as drafted the Guidelines are useful at a conceptual level they could provide more detail and clarity at a practical level. We describe several areas where more clarity or detail would be useful.

Question 1: Do you agree that the Guiding Principles are sufficiently comprehensive? Would you add to or amend the description of how they should be applied?

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.

Recognising the complexity of the area, we believe the Guiding Principles would benefit from further clarity by providing some numerical examples and possibly models demonstrating how differential conversion rates might work in practice. Additional Guiding Principles may also be useful on how any “extra” value between creditors and the use and redistribution of any possible buffer.

Guiding Principle 1 seems to make a distinction between a situation where the bail-in tool is applied (1.16) and a situation where the article 50 write-down or conversion powers are used (1.17). It is not clear whether the NCWOL principle should be applied in the same way in both situations nor how the language in 1.17 “to the extent that is necessary to uphold fundamental property rights” would be interpreted.

Another area that would merit more guidance would be how to approach conversion rates for different types of liabilities. The CP deals with debt instruments but does not address other potential bail-inable liabilities such as trade finance, custody services and derivatives where the obligation may be dependent on future events for which it may be difficult to establish an insolvency counterfactual valuation.

Finally, we note the CP doesn’t make much reference to the need for speed in setting conversion rates to avoid uncertainty that may result from runs particularly in relation to corporate deposits.

We are happy to discuss further with you any of these issues.