



**Mr Valdis Dombrovskis**  
Vice-President  
Euro & Social Dialogue  
European Commission  
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Dear Vice-President, *Valdis Dombrovskis*

## **The European Market Infrastructure Regulation (EMIR)**

I write to you in view of the forthcoming review of the European Market Infrastructure Regulation (EMIR). I would like to stress the importance of upholding the existing corporate hedging exemption for non-financial counterparties. As you know, non-financial companies use 'over-the-counter' (OTC) derivatives for risk mitigation of underlying financial and economic risks, i.e. from their businesses. This is why the legislator granted the exemption for non-financial companies which use derivatives for risk mitigation of financial risks they are exposed to as a result of running their business in the "real economy".

Setting the clearing and margining thresholds irrespective of the hedging or non-hedging nature of the underlying derivative transactions would discourage end-users from entering into OTC derivative transactions for risk mitigation. Reduced hedging activity due to the related increase in costs and liquidity risk would increase the risk for the individual corporation concerned. It can also lead to a different risk assessment of the non-financial companies themselves by capital markets which will negatively affect the cost of equity and financing.

Furthermore, the current cross-asset class test under EMIR brings a non-financial counterparty into scope for clearing and margining across all asset classes if any one asset class is above the clearing threshold test. This means that an organisation's treasury hedging activities are brought into scope if the threshold is breached in another asset class. The practical impact of this cross-asset class test should be examined if there is no wholesale exemption, and it should be replaced with an asset class by asset class test. Otherwise, under current EMIR Regulatory Technical Standards, pure hedging activities such as interest rate and foreign exchange swaps and forwards (which mitigate corporates commercial risks) will be captured unnecessarily and result in cumbersome and costly clearing and margining with minimal contribution to reducing systemic risk.



In addition, it is important that reporting burdens for non-financial companies are reduced. We would recommend a single-sided entity-based reporting model in which the financial counterparty to the transaction is legally responsible for the reporting, including content and timing. A similar derivatives reporting model has been introduced in the US. In any case, whatever approach to reporting is taken, it should be clear that the ultimate legal responsibility for content and timing of reporting does not rest with the non-financial company and that it is combined with an intragroup transaction exemption for non-financial companies. Otherwise noteworthy savings could not be achieved.

We hope that you share these points of view and remain at your disposal should you wish to discuss this further.

Yours sincerely,



Markus J. Beyrer