

Mr John Berrigan
DG FISMA
European Commission
2, Rue de Spa
B-1000, Brussels

Mr Christopher Jones
DG ENER
European Commission
24-26, Rue de Mot
B-1049, Brussels

Brussels, 27 October 2017

Dear Mr Berrigan,
Dear Mr Jones,

EURELECTRIC, the sector association which represents the common interests of the electricity industry at pan-European level, is following with interest the work of the European Banking Authority (EBA) and the European Commission on developing a specific prudential regime that is distinct from the current CRD IV. The current framework provides important exemptions for MiFID authorised energy firms until end of 2020. These predominantly act as representatives of some legal entities in the commodity markets, principally for hedging purposes, and may also provide investment services, such as hedging of financial risks, to third parties. It is crucial that the considerations for the specifics of commodity / energy firms are also recognised in the proposed prudential regime.

EBA Scope, Findings and Impact

The EBA was given the specific task of considering whether the new regime it has designed should apply to commodity dealer investment firms:

“The second part of the Commission’s CfA (Call for Advice) in June 2016 sought advice regarding the new prudential regime for Class 2 and Class 3 firms, and in particular on:

“The suitability of the proposed prudential regime for specialised commodity derivatives firms and in case this is not possible an alternative new regime for these firms.”

In its advice to the European Commission, the EBA has recommended that the proposed new regime applies to commodity dealers in the same way as it would to an Asset Manager or Principal Trader even if there are obvious differences in their business models and in the risks that they pose, (in particular the fact that these firms do benefit from financial support from their respective parent group). This, however, has not been taken into account by the EBA.

If implemented without amendments, the EBA proposals would result in energy companies being subject to additional capital being ‘locked’, which could otherwise have been used to invest in green and sustainable energy. A consideration for the green transformation of energy consumption has been clearly expressed by the European Commission¹. In addition, making energy companies also subject to capital requirements ignores the fact that energy companies do not constitute a systemic risk for the financial system. For this reason, a MiFID licensed entity of an energy group should not be subject to significant capital requirements.

¹ CF. the speech made by Commissioner Valdis Dombrovskis (17 October 2017, ESMA Conference 2017): “In our review, we made ESAs active participants in the fight against climate change. There is a clear and urgent need to mobilise billions of euros of private investment towards green and sustainable goals. The proposal would require ESAs to integrate Environmental, Social and Governance considerations in their tasks.”

Therefore, capital requirement should in any case take into account the wider financial resources of the group in question. Against this background, we would like to propose the following two approaches for commodity dealers that will mitigate the impact of the EBA proposals:

Option 1: Once the small number of commodity dealer investment firms is considered in the context of their wider group it will be appropriate to exempt commodity dealers from this new prudential regime on the basis of the negligible risk of their falling insolvent. This exemption could be restricted to firms whose group has access to ancillary activity similar to exemption under MiFID II.

Option 2: If the European Commission would prefer, before deciding on this matter, to analyse the implementation of MiFID II, in particular how it impacts the number and type of commodity dealer investment firms, there is a case for exempting commodity firms until the EBA's recommended review is completed. It is recommended (see Recommendation 62) that this takes place three years after the date of application.

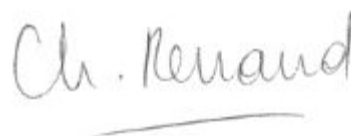
In case the European Commission comes to the conclusion that commodity dealers should be kept within the EBA's proposed new regime, we shall strongly underline that specific solutions should be found to mitigate the amount of capital unnecessarily set aside and to avoid a related high operational burden for the affected energy companies. This is particularly important concerning the exemption for transactions that are concluded for risk management purposes and intra-group transactions. This would reflect the respective considerations in other relevant financial legislations (i.e. MiFID, EMIR).

Kind regards,



Bernhard Walter

Chair of EURELECTRIC's WG Financial Regulation
and Market Integrity



Charlotte Renaud

Manager Wholesale & Retail Markets,
EURELECTRIC