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Jonathan Hill
Commissioner for Financial Stability,
Financial Services and Capital Markets Union
European Commission

MINISTER FOR BUSINESS AND GROWTH

Slotsholmsgade 10-12
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Dear Commissioner Hill,

Thank you for the opportunity to respond to the consultation on the cumulative effects of financial regulation adopted as a follow-up to the financial crisis.

Following the financial crisis, rulemaking within financial services has been conducted at a rapid pace with significant reforms being passed in all key areas. Denmark has been and continues to be a strong supporter of these reforms which ensure that we now have a more resilient EU financial sector.

That being said, I believe it is important that EU legislation strikes the right balance between risk reduction and enabling growth. Therefore, I am very supportive of the Commission's review of the cumulative effects of this regulation which should identify potential unintended consequences, overlaps and excessive administrative burdens.

In addition to our responses to the specific questions, which you will find in Annex 1, I should like to point to a few issues of a more general nature.

First, I see a risk that very detailed rules without sufficient room for the specificities of different banking models might impede the diversity of the banking models in Europe. A “one-size-fits-all” approach risks undermining well-functioning national models such as the Danish mortgage credit system. To this effect, appropriate discretion and national options should be upheld in the regulation in order to retain the necessary flexibility for Member States to respond effectively to country-specific circumstances.

Secondly, I firmly believe that unnecessary regulatory burdens should be avoided. The rules should fit to the relevant financial institutions thus avoiding e.g. reporting obligations which are not proportionate compared to the risk profile. Reporting requirements should be limited to need-to-have instead of nice-to-have and there should be sufficient time for financial actors to implement new systems.

Thirdly, in regard to rules affecting the financing of the economy and supporting growth, it seems that both existing rules and the expectation among financial actors of rules to come have an effect on market liquidity. As banks adapt to new and potential future rules such as the liquidity coverage ratio (LCR), the leverage ratio and the net stable funding ratio (NSFR), there is a risk that market liquidity has been and further will be reduced. The impact on market functioning is important to keep in mind when assessing the legislation put in place. This aspect needs to be continuously monitored.

Fourthly, high levels of investor and consumer protection should continue to be sought. At the same time, however, I would urge that various information requirements vis-á-vis consumers are carefully calibrated to fulfil their purpose of informing consumers succinctly while avoiding information overload or disproportionate requirements. Consumer testing of future rules should be an integral part of the process.

Finally, looking ahead, some of the proposals which the Commission has indicated will be proposed in the near future should have a clear rationale and bring added value. New rules should be carefully assessed and should contribute to financial stability, employment and growth. A large part of the new regulatory regime has not been fully implemented and we have yet to see and assess its full effects. We acknowledge that there might be a need for further risk reduction as will be discussed in the newly established Council Ad Hoc Working Group on Strengthening of the Banking Union. However, the need for new legislative initiatives should be assessed in light of experiences with the current regulatory regime.

As you are aware, and as we discussed when we last met, the Danish government has particular concerns with regard to the Basel standards. The leverage ratio – if set too high – risks affecting low-risk business models. It would imply a movement away from risk based capital requirements to non-risk based. Equally, the NSFR, if not implemented in the right way, risks not taking into account the low risk embedded in the Danish system. Also, a revised standardised approach for credit risk and new capital floors based on the standardised approach risk having a negative effect on low risk business models. More generally, proposals to implement global standards in the EU should continue to take into account European specificities, including well-functioning national business models.

In terms of process, I would stress that rules and requirements to the largest degree possible should be agreed in the text negotiated between the Council, the Parliament and the Commission (level 1). Only non-essential issues of technical nature should be delegated to the Commission or the European Supervisory Authorities (level 2 and 3) in order for the Council

and the European Parliament to carry out its policy-making and coordinating functions as laid down in the Treaties. The desire for rapid finalisation of negotiations should not be at the expense of thorough level 1-regulation

Simultaneously, it is important to take into account that level 2 acts directly affect implementation of the primary legislation (level 1) and therefore enough time should be left for implementation of the primary legislation to take into account the subsequent level 2 acts. This should be seen as an important component of the Commission's better regulation agenda.

I would suggest that this exercise of reviewing the post-crisis regulation should be followed up in a few years' time when all rules have been implemented and we have an even clearer picture of their effect. It will be a continuous work to ensure that we have a set of rules, which support sound risk taking and best support financial stability, economic growth, job creation and the Single Market.

As always, I am at your disposal for any questions or comments that you might have. I look forward to a continuous fruitful dialogue on these issues.

Best regards,

Troels Lund Poulsen

Annex 1
The text below follows the structure of the Commission consultation with answers being provided to the questions posed under the various headings of the consultation where relevant from a Danish point of view.

ISSUE 1 – UNNECESSARY REGULATORY CONSTRAINTS ON FINANCING

Example 1: Ensuring financing to small and medium-sized enterprises SMEs

To which Directive(s)/Regulation(s) do you refer in your example?
CRR

Please provide us with an executive summary of your example:
SMEs represent a large part of European businesses and thus play a crucial role in supporting growth and job creation in the EU. When SMEs experience difficulties accessing finance it has an impact on the European economy as such. Therefore, it is important that the Commission in current and future financial regulation considers the impact on SMEs.

The capital requirements deduction introduced in CRR, Article 501, is currently under review with an upcoming report from EBA followed by a report by the Commission before June 28 2016. From a Danish perspective these analysis on both the evolution of the lending trends and conditions for SMEs as well as the effective riskiness of SME lending is much welcomed in order to progress the discussion on SME financing.

ISSUE 2 – MARKET LIQUIDITY

Example 1: Impact on market liquidity of current and new regulation

To which Directive(s)/Regulation(s) do you refer in your example?
CRR/CRD IV

Please provide us with an executive summary of your example:
The introduction of new regulatory measures developed to strengthen the banking sector's ability to absorb shocks arising from financial and economic stress could possibly affect market liquidity.

It is important to stress that the new rules have been introduced in order to enhance the resilience of banks. Greater resilience at the individual bank level reduces the risk of system wide shocks and increases financial stability. All together this leads to better functioning financial markets. However, the impact on market functioning is important to keep in mind when assessing the consequences of the new regulation.

A wide range of regulatory measures can influence market liquidity. According to the financial industry there are signs in the market that the existing LCR requirement and the adjustment to the expected future leverage ratio are reducing market liquidity. There is still no firm evidence regarding causality, but the first indications seem to point in the direction that both existing and future rules lead to portfolio shifts and changes in risk taking. Especially for large banks with many different types of financial transactions these adjustments are substantial. As banks adapt to the new rules there is a concern that it may have a negative impact on some markets where liquidity could be reduced.

For example, the new LCR requirement aims to reduce the liquidity risks of banks. Therefore, it differentiates between asset classes as some types of assets are regarded as being more liquid than others. Banks are required to hold a liquidity buffer and the composition of this should fulfill specific requirements. As a consequence, banks increasingly prefer holding assets that have the most favorable treatment in relation to the LCR requirement and therefore they tend to buy and hold these assets, which in turn could reduce market liquidity in other assets.

The LCR could also affect the liquidity in the repo market, ie. example 2 below.

Furthermore, the costs of holding inventories in relation to repo activities might rise due to the leverage ratio requirement being priced in. This is due to the fact that holding inventories leads to an increase in total assets which in turn increase the costs associated with the leverage ratio requirement correspondingly. The leverage ratio is calculated by dividing the Tier 1 capital by total consolidated assets and since size of the repo book affects the total consolidated assets it therefore affects the required amount of Tier 1 capital.

A balance between financial stability and market functioning is important to keep in mind when assessing the consequences of new rules. For a transitional period some volatility in market liquidity is expected as banks and financial markets adapt to new requirements. However, when newly adopted rules are reviewed and new rules considered it should be monitored that they do not have a disproportionately negative impact on financial markets in the longer term.

Example 2: LCR repo adjustment of the liquidity buffer

To which Directive(s)/ Regulation(s) do you refer in your example?
CRR/CRD IV

Please provide us with an executive summary of your example:
The LCR has introduced a liquidity buffer in order to ensure that a credit institution has an adequate stock of unencumbered liquid assets. The LCR requires the liquidity buffer to be diversified by setting limits on the proportion of different classes of asset which may be included herein. When calculating these limits, an institution's current holdings of liquid assets are adjusted to take into account any changes of asset holdings that will occur over the coming 30 days, due to already known contractual commitments in the form of secured funding transaction. This is primarily done to ensure, that institutions cannot circumvent the limits to particular classes of assets set in the LCR, by entering into short term secured funding contracts, giving them cash or government bonds in exchange for assets from lower liquidity categories in the LCR. Hence, any assets received in secured funding transactions with a maturity of less than 30 days, are removed from the current asset holdings, when the limits to classes of assets or caps are calculated.

In this calculation, it is implicitly assumed that any cash funds, which an institution receives from these short term secured funding transactions, are all placed in the liquidity buffer as cash. Hence when the limits to classes of assets are set, an amount equivalent to the sum of the cash that is part of the short term secured funding transactions, which the institution has entered into, is subtracted from the current holdings of level 1 assets. This is regardless of whether the cash received has actually been placed in the liquidity buffer as cash.

The different classes of assets, which the short term secured funding transactions are based on, are however not treated equally. For secured funding transactions where the collateral exchanged is a level 1 non-covered bond asset, for example a government bond, the net effect of this adjustment is zero. This is because these assets are placed in the same asset class as cash in the LCR buffer, hence both parts of the transaction are corrected for in the same asset class resulting in a net zero impact.

However, for secured funding transactions based on all other classes of assets, the effect is negative since the subtraction of cash is not equaled by the addition of assets in the same class of assets in the liquidity buffer. Here the collateral is instead added to one of the other asset classes in the liquidity buffer, or kept out entirely, if the collateral is a not defined as a liquid asset in the LCR. This calculation means that repo transactions with level 1 covered bonds and level 1 government bonds are not treated equally. Hence the short term repo trading with level 1 covered bond collateral is disincentivized. The calculation favors repo markets based pri-

marily on government bonds over repo markets based primarily on covered bonds.

In Denmark specifically, covered bonds are used more frequently as repo collateral than government bonds due to the large and liquid Danish covered bond market. Moreover, the repo market enhances the market liquidity of the Danish covered bond market by allowing market participants to not only trade covered bonds outright, but also use these as collateral in secured financing transactions. Therefore, the adjustment made to the liquid assets holdings in the LCR for short term repos based on covered bonds can have a very significant impact on the liquidity buffer of Danish credit institutions and hence their LCR. As a consequence repos will not contribute to market liquidity to the same extent as they did before the implementation of the LCR

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
To avoid this unintended effect, we suggest that:

- The calculation of the repo adjustment as defined in article 17 of the LCR regulation is changed such that only assets, which are actually placed in the institution's liquidity buffer, are subtracted if acquired through short term repo financing.

Example 3 Transparency and quoting obligations MiFIR

To which Directive(s)/ Regulation(s) do you refer in your example?
MiFIR

Please provide us with an executive summary of your example:
Too extensive transparency and quoting obligations in MiFIR risk hampering the secondary markets. As a consequence of MiFIR, market makers are requested to make their deals public together with the prices they are willing to pay. In other words, market makers are obliged to expose their trading interests and positions to such an extent that their market making activities become unprofitable.

Market makers serve a critical role in financial markets by providing liquidity to facilitate market efficiency and ensuring that both sides of the financing market are able to meet. This is not least the case in smaller financial markets such as the Danish. Disincentivising market making, thus, goes against the ambition of increased use of capital markets as a source of funding.

It is therefore important to ensure that the quoting obligations and pre- and post-trade transparency requirements for market makers are below

order and transaction sizes that will expose their trading interests and positions to a point where their market making activities become unprofitable. Also, market makers should be given enough deferral time to manage the risks following from their market making activities before the publication of the relevant transactions.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
To ensure that market liquidity is not hampered, we suggest that:

- The thresholds for quoting obligations and pre- and post-trade transparency requirements set in the regulatory technical standard regarding non-equity transparency which is not yet adopted by the Commission should be lower than those proposed by ESMA in the draft regulatory technical standard with the possibility to raise the thresholds on the basis of annual reviews by ESMA.
- The deferral period determined in the regulatory technical standard regarding the non-equity transparency shall be revised so as to allow market makers to manage risk better.

ISSUE 3 – INVESTOR AND CONSUMER PROTECTION

Example 1: Secure relevant information to consumers and retail investors

To which Directive(s)/ Regulation(s) do you refer in you example?
All directives and regulations obliging financial institutions to disclose specific information to consumers and retail investors, including the Packaged Retail Investment and Insurance-based Investment Products (PRIIPs) regulation, Mortgage Credit Directive (MCD) and UCITS.

Please provide us with an executive summary of your example:
Regulations and directives in the financial area often contain obligations for financial institutions to disclose specified information to consumers and investors. MCD, UCITS and PRIIPs are examples of pieces of EU legislation, which contain such information requirements for consumers (MCD) and retail investors (PRIIPs/UCITS).

MCD obliges creditors to provide consumers with a standardized information sheet (ESIS). The purpose is to give consumers a standardized document for comparing different loan offers. The form of the ESIS has a fixed structure with mandatory text and required information in order for the consumers to compare different products – also across borders.

PRIIPs requires a person that provides advice on, or sells, a packaged retail investment and insurance-based investment products (PRIIP) to provide retail investors with a key information document (KID). This document is a standardized information sheet with the purpose of enabling retail investors to understand and compare the key features and risks of the PRIIP. Equally, UCITS contains an obligation for UCITS-investment funds to provide a key investor information document (KIID) with the same aim of ensuring a better understanding of the content of the products and facilitate comparisons between products.

Information requirements according to European legislation have grown over the last decade. To ensure the best possible consumer protection, it is important to constantly ensure that rules entitle consumers to get exactly the information they need. A high level of consumer protection requires that consumers are well informed in order to enable them to make rational choices.

However, it is equally important to find the right balance between providing relevant information to consumers and retail investors while avoid creating an information overload. Information overload will risk having the exact opposite effect than the intended, because consumers will ignore the information in the first place and not try to understand it at all. Regulations and directives with disclosure requirements also place large administrative burdens on financial institutions. It is therefore of the utmost importance that the information requirements in fact meet the needs of consumers and are used by consumers.

Also, it is important that the documents are not unnecessarily comprehensive. The ESIS e.g. constitutes around 11 pages. Such an excessive and complicated document might in fact be an obstacle to many consumers.

Finally, it is important that the documents are to the largest degree possible aligned in order to ensure both the best possible overview and ability to compare products for retail investors as well as to reduce administrative burdens for issuers (in cases where they overlap). As both the KIID, the KID as well as the prospectus summary (currently under review in the Prospect Regulation proposal) serves the same basic purpose, issuers and investors would benefit from a higher degree of alignment. Such an alignment should naturally respect the specificity of the different products and thus the different information needs retail investors might have.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure relevant information to consumers and retail investors and avoid unnecessary administrative burdens, we suggest that any forth-

coming revisions or new regulations in consumer and retail investor related legislation should:

- Include consumer and retail investor testing to ensure that all information requirements are fitted to fulfill their purpose, e.g. whether consumers and retail investors do in fact read the required information or only part of it and whether all of the existing information requirements are needed.
- Take into consideration whether the information provided for the consumer and retail investors could be fully digitized whereby skipping the obligation to provide paper copies.
- Evaluate the current information sheets required in accordance with PRIIPs, UCITS and the upcoming Prospectus Regulation in order to ensure a greater alignment between these.

As for MCD specifically, we suggest that:

- The use of ESIS should be taken into careful examination in order to review whether the structure and/or content of ESIS provide consumers with optimal information relevant to them or whether improvements to ESIS can be made.

ISSUE 4 – PROPORTIONALITY/PRESERVING DIVERSITY IN THE EU FINANCIAL SECTOR

Example 1: New rules should take into account diversity in business models

To which Directive(s)/ Regulation(s) do you refer in your example?
CRR/ CRD IV

Please provide us with an executive summary of your example:
From the Commission Communication from 24 November 2015 it is clear that the Commission is intending to introduce the NSFR, the leverage ratio and the TLAC in the EU legislative framework. Also, we understand that a revised standardised approach, new capital floors and a fundamental review of the trading book might be included in the revision of CRR/CRD IV as well.

From a Danish perspective, the main priority is to ensure that the initiatives on which we have already agreed work. Furthermore, we should not introduce more legislation before it has been thoroughly analyzed whether it is needed and if we achieve the right policy mix regarding financial stability and growth and job creation.

Furthermore, we cannot commit to implementing Basel Committee proposals such as TLAC, NSFR, leverage ratio, capital floors and review of the trading book before a proper discussion at EU-level has taken place. It is important that these issues are discussed through the ordinary EU legislative process in order to get the right calibration of the initiatives. Special care needs to be taken in regard to European specificities.

In this regard, several of the proposed initiatives from the Basel Committee can have a severe negative impact on the Danish mortgage credit institutions.

For an example, the NSFR in the Basel committee's definition will have some undesired consequences on specialised business models like Danish mortgage credit institutions. Following this, we stress the importance of acknowledging that bonds with embedded extension triggers – such as the Danish mortgage bonds with a soft bullet structure – are stable funding in an NSFR perspective. The soft bullet structure of Danish mortgage bonds ensures funding of the assets for its entire term as the bond will be extended if it cannot be refinanced under ordinary terms. Therefore we believe that these bonds are qualified as stable funding as defined in the Basel NSFR.

In the same vein, as a potential leverage ratio per definition would not take into account risk, low-risk business models are more likely to be bound by a leverage ratio if the ratio is set too high. This would entail that Danish mortgage credit institutions are more likely to be restricted by a leverage requirement as these institutions have primarily low-risk assets on their balance sheet. The same problem occurs with the new capital floors. Depending on the exact implementation of TLAC in EU law, the TLAC might pose difficulties for Danish mortgage credit institutions as well, as these institutions are exempted from the MREL in the BRRD.

When discussing these new initiatives at EU level it is important that the business model of specialised institutions is carefully taken into account.

<u>Example 2: Maintaining different approaches to asset encumbrance</u>

To which Directive(s)/Regulation(s) do you refer in your example?
CRR and BRRD within

Please provide us with an executive summary of your example:
Asset encumbrance is defined differently in various parts of the new rules. One definition is used in the LCR calculation, while the asset encumbrance reporting (ie. CRR, article 100 and the related implementing act, (EU) 2015/79) and the BRDD define it in another way.

Going forward, it is important to maintain the different approaches, which recognize that different forms of asset encumbrance are relevant in different contexts. An asset, which is encumbered in the very broad sense defined in the asset encumbrance reporting framework, is not necessarily encumbered in a manner that inhibits it from being used to generate liquidity, which is the concern of the LCR.

Furthermore, if the Commission should decide to create a requirement limiting the level of asset encumbrance in credit institutions based on a very broad definition of encumbrance, it is important to recognize that the high levels of encumbrance of Danish mortgage credit institutions do not lead to structural subordination of simple creditors such as depositors, and hence a limit on asset encumbrance in these cases is not relevant. Danish mortgage banks use a direct pass through model in financing the mortgage loans as they do not take deposits.

ISSUE 5 – EXCESSIVE COMPLIANCE COSTS AND COMPLEXITY

Example 1: Proportional prudential requirements for investment firms

To which Directive(s)/ Regulation(s) do you refer in your example?
CRR/CRD IV

Please provide us with an executive summary of your example:
There is currently work ongoing in EBA and the Commission assessing whether the current prudential requirements applicable to investment firms laid down in CRR/CRD IV are appropriate or whether they should be modified and if so, how.

The first report has been sent from EBA to the Commission with a recommendation to simplify the prudential regime for investment firms and to develop a more proportionate and risk-based regime. Denmark supports this approach due to the significant differences among investment firms. This includes size (from 2 employees to a large number of employees), level of risk exposures the investment firms have (regarding for example market and credit risk) and the type of clients (retail clients or more professional clients).

It is necessary to make a distinction between investment firms, for which prudential requirements equivalent to the ones in force for credit institutions are necessary (the systemic and “bank-like” investment firms), and

investment firms, which are neither systemic nor “bank-like”, for which specific requirements that are more relevant could be developed.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure proportionality, we suggest:

- Developing a lighter regime for smaller investment firms including fewer reporting requirements. Such a regime for smaller investment firms could amongst other things consist of e.g.:
    - an exemption from the requirements regarding liquidity in part six of the CRR,
    - an exemption for smaller investment firms regarding inclusion of interim or year-end profits in Common Equity Tier 1 capital without the prior permission of the competent authority.

Example 2: Proportional reporting obligations

To which Directive(s)/ Regulation(s) do you refer in your example?
EMIR

Please provide us with an executive summary of your example:
EMIR requires that all counterparties, active and inactive, that are involved in a derivative transaction, which has not yet matured, have to report the details of the transaction to a trade repository in order to allow for a comprehensive overview of the market and assessing systemic risk in regard to both CCP-cleared and non-CCP-cleared derivative contracts.

The reporting obligations entail several types of costs. This includes costs to the Legal Entity Identifier (LEI) -distributor (both a one-time amount and an ongoing subscription), costs to the entity which performs the reporting on behalf of the non-financial counterparty and costs to legal and economic advice.

For a small non-financial counterparty that has entered into a single contract for hedge reasons and has made this contract before EMIR went into force and which is not active on the market nor will be active on the market (“inactive” non-financial counterparties), the reporting obligation seems inappropriately burdensome and expensive.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure reporting obligations are not excessive, we suggest that:

- The reporting obligations for “inactive” non-financial counterparties should be optional, as long as the derivative contract is entered into before EMIR. If the counterparty decides to become active again,

hence become active after the implementation of EMIR, the counterparty should be covered by the reporting obligations in EMIR.

Example 3: Requirements should be relevant

To which Directive(s)/Regulation(s) do you refer in your example?
Solvency II

Please provide us with an executive summary of your example:
Parts of Solvency II is unnecessarily complex, and in some areas there is a mismatch between the stipulated requirements and the ensuing supervision vis-à-vis the companies and the value added in respect of policyholder protection.

Solvency II contains a revision clause. The focus of such a revision should be on ensuring the potential of achieving the objectives of the regulation in a less burdensome way. This could e.g. be done by introducing opportunities to make use of eased or simpler ways to fulfill requirements, e.g. in relation to small or less complex companies. An evaluation of the administrative burdens for the financial companies would be useful with a view to the revision.

To this end, we would highlight a few examples: The SCR standard formula as well as the discount rate curve for calculating the technical provisions are unnecessarily complex and a less complex formula and curve should be considered. The requirements on e.g. internal audit cause difficulties and heavy burdens to small companies and a possibility to make exemptions based on proportionality could be considered. Finally, reporting requirements cause heavy burdens to especially small companies and a possibility to make exemptions based on proportionality could be considered

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to avoid excessive compliance requirements and unnecessary complexity, we suggest an evaluation of at least the following:

- The SCR standard formula,
- The discount rate curve for calculating the technical provisions,
- The requirements on internal audit,
- The reporting requirements.

ISSUE 6 – REPORTING AND DISCLOSURE OBLIGATIONS

Example 1: Clarity of relevance regarding reporting is needed

To which Directive(s)/ Regulation(s) do you refer in your example?
AIFMD

Please provide us with an executive summary of your example:
According to AIFMD, alternative investment fund managers (AIFMs) shall regularly report to the competent authorities of their home Member State. The reporting frequency and the information to be provided are set out in Annex IV of Regulation 231/2013. The competent authority of the home Member State shall ensure that the Annex IV reporting is made available to competent authorities in other relevant Member States, ESMA and the ESRB.

Many AIFMs have been struggling with the reporting obligations set out in Annex IV and how to interpret the specific reporting criteria.

ESMA has provided guidelines regarding the reporting obligations, but they are not nearly specific enough and do not explain in detail which information should be reported. Experience shows that without proper guidelines, the AIFMs find the reporting requirements unclear. This results in incorrect reporting or simply lack of reporting due to misinterpretation. It is a burden to the AIFMs to achieve the necessary level of understanding in order to report the correct information to the competent authorities. This undermines the quality of the reported data and makes it less useful for analysis of market developments.

AIFMs subject to article 3(d) of AIFMD (sub-threshold AIFMs) are also subject to reporting obligations set out in Annex IV, although these AIFMs are not subject to supervision. It seems unnecessarily burdensome for the sub-threshold AIFMs to be subject to extensive reporting requirements since these are not used in any supervisory process.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to use the reported information for analysis, we suggest that:

- More specific guidelines regarding the Annex IV-reporting requirements are required, so that the AIFMs easily and efficiently can achieve and file the correct information.
- The reporting obligations for sub-threshold AIFM's should be reconsidered and more specific information regarding use of these reporting should be available.

Example 2: Better framing of reporting obligations

To which Directive(s)/Regulation(s) do you refer in your example?

EMIR and MiFIR

Please provide us with an executive summary of your example:
EMIR requires that all counterparties involved in a derivative transaction have to report the details of the transaction to a trade repository. The reporting includes 59 fields of information about the trade. Several of these fields may be interpreted differently by the different counterparties.

The trade repositories reporting system for EMIR is perceived extensive and complex. The different interpretations and the extent of the data to be reported lead to a high degree of unmatched reports from counterparties. The quality and usability of the received data for the competent authority is therefore questionable. Consequently, care must be taken to ensure that future reporting requirements are well framed. This is in particular the case in relation to MiFID II and MiFIR with regard to the transaction reporting and data collection obligations (data related to transparency and best execution).

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure more proportionate reporting obligations, we suggest that:

- The fields to be reported in EMIR, article 9, and MIFIR, article 22, 26 and 27 should not be too comprehensive and have a clear definition, both regarding the reporting format and which details to be reported, so it is possible to harmonize and aggregate data.
- The competent authorities and ESMA should develop systems that can receive the data, and the industry should have time to test against this system.

<u>Example 3: Streamlining, and ensuring the relevance of reporting requirements</u>

To which Directive(s)/ Regulation(s) do you refer in your example?
EMIR and MiFIR/MiFID II

Please provide us with an executive summary of your example:
Under EMIR, the set-up and specification of trade reporting have in many cases been finalised late in the law making process leaving a limited amount of time for the industry to implement the changes needed. Also, the guidance provided to understand the trade reporting regime and technical details on how to fill in different fields have been accompanied by frequent changes and additions. For the industry, besides the initial cost of introducing a new reporting system, there is an extra cost incurred by frequent changes to the system.

There is a risk that similar problems will arise under MiFIR/MiFID II with regard to the collection of data for the purposes of transaction reporting, transparency and best execution. The amount of fields to be reported are very extensive and the time available for the industry to implement the changes short. Also, ESMA and the competent authorities have to develop complex systems that can receive the data and these systems have to be tested. This could lead to challenges similar to the ones under EMIR with frequent changes and short deadlines to be met and expensive and complex systems where the quality and usability of the received data are questionable.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order ensure that reporting requirements are relevant and proportionate, we suggest that as any new rules and legislation should be led by the following guidance principles:

- The reporting requirements for the relevant financial actors in the EU should be limited to need-to-have instead of nice-to-have (at level 1, 2 and 3),
- The reporting requirements should be less burdensome with fewer and less complex data points to fill in,
- The industry should be given sufficient time for the implementation process,
- There should be a quality and relevance check of the proposed fields by the industry and authorities in order to reduce the number of subsequent changes/additions.

<u>Example 4: Avoiding excessive reporting requirements on remuneration</u>

To which Directive(s)/ Regulation(s) do you refer in your example?
CRR/CRD IV

Please provide us with an executive summary of your example:
CRD IV introduced a new remuneration regime which included comprehensive reporting requirements. At this point it is still too early to assess the impacts, costs and benefits of the provisions.

We have not yet seen the full potential and consequences of the provisions provided by the directive. Consequently the Commission consultation on the remuneration rules recently finalised were perhaps premature.

That being said, we generally believe that the level of detail in the remuneration provisions causes great administrative challenges for the sector.

Any alterations should therefore be focused on simplifying the regulation thus making it less administrative burdensome.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure that reporting requirements are relevant and proportionate, we suggest that:

- The Commission initiates another review of the effectiveness of the remuneration rules once they have been in force for a longer period of time with an emphasis on reduction of burdens.

ISSUE 10 – LINKS BETWEEN INDIVIDUAL RULES AND OVERALL CUMULATIVE IMPACT

Example 1: Rules of CCR applicable to UCITS management companies and alternative investment fund managers

To which Directive(s)/ Regulation(s) do you refer in your example?
CRR, UCITS and AIFMD

Please provide us with an executive summary of your example:
It follows from references in UCITS and AIFMD that the rules in articles 25-88 of CRR regarding the elements of own funds are applicable to UCITS management companies and alternative investment fund managers (fund management companies).

The rules are designed to mitigate the risks connected with the activities carried out by credit institutions and investment firms. Fund management is the main activity of fund management companies. Such activities may not be carried out by credit institutions or investment firms, cf. UCITS and AIFMD.

The risks connected to fund management activities are not the same as the risks connected to the business of credit institutions and investment firms, and the activities of the fund management companies are not as complex as those of credit institutions or investment firms. The different risk exposure of fund management companies is also underlined by the fact that UCITS and AIFMD set out capital requirements which have been tailored to fit the risk exposure of fund management companies.

Accordingly, the application of the own funds rules (Articles 25-88 of CRR) for fund management companies seems to be unnecessarily burdensome and should be reviewed so they are proportionate related to the risks concerned UCITS and AIFMD.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to avoid unnecessary administrative burdens, we suggest that:

- A revision of articles 25-88 of CRR so for fund management companies so as to ensure a better alignment with UCTIS and AIFM.

The references in questions from UCITS and AIFMD to CRR can be found in articles 2(1)(k), 2(1)(l) and 2(6) of UCITS and articles 4(1)(s), 4(1)(ad) and 4(2) of AIFM.

Example 2: Exemption for non-financial counterparties regarding fully backed bank guarantee

To which Directive(s)/Regulation(s) do you refer in your example?
EMIR

Please provide us with an executive summary of your example:
In accordance with Article 46 paragraph 1 of EMIR a CCP may accept bank guarantees as collateral when the guarantee is issued on behalf of a non-financial counterparty.

The conditions under which commercial bank guarantees may be accepted as collateral is specified in the Commission delegated regulation 153/2013. One of the requirements is that a bank guarantee must be fully backed by highly liquid collateral. The requirement for a guarantee to be fully backed by collateral in the delegated regulation makes it more or less impossible to actually use bank guarantees as collateral. And in our view the wording goes beyond the wording of Article 46 in EMIR.

A temporary exemption is allowed for clearing of power and gas derivatives (Article 62). This exemption will however end on the 15 March 2016. When the exemption ends, non-financial clearing members will be required to use cash, highly liquid securities or fully backed bank guarantees as collateral for CCP clearing of power and gas derivatives.

If the current exemption is allowed to expire, clearing of power and gas derivatives contracts will become more expensive for non-financial market participants when this specific requirement enters into force. We fear that, as a consequence of higher costs of clearing, market participants will turn to less transparent non-cleared OTC trading. Non-financial counterparties that are managing risks directly related to their commercial activity will not be subject to mandatory clearing under EMIR. Hence, it is expected that they will be sensitive to economic incentives. In other words, this will – contrary to the purpose of EMIR - increase counterparty risks and reduce transparency in the market.

The reason behind the political agreement to allow the use of bank guarantees as collateral from non-financial counterparties was to avoid forcing the transparent energy markets into a less transparent market where derivative contracts will not be cleared through a CCP. This should be clarified.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order avoid any disruption to the market stability, we suggest that:

- It is clarified - either in EMIR or in delegated regulation 153/2013 - that the use of bank guarantees as collateral from non-financial counterparties should be possible on more appropriate terms by clarifying that the aim behind this possibility was to avoid forcing the transparent energy markets into a less transparent market where derivative contracts will not be cleared through a CCP.

ISSUE 14 – DEFINITIONS

Example 1: A new two-tier definition of covered bonds

To which Directive(s)/ Regulation(s) do you refer in your example?
Solvency II, CRR and UCITS

Please provide us with an executive summary of your example:
Covered bonds are treated and defined differently in Solvency II and CRR.

In Solvency II covered bonds are defined in terms of UCITS 52(4) and have preferential capital requirements when covered bonds have an external credit rating of at least AA-.

In CRR/CRD IV covered bonds are defined in article 129 and get a preferential treatment when they comply with UCITS 52(4), have an external rating of at least AA- and if extra collateral is added when loan-to-value (LTV) exceeds certain limits.

As mentioned in the Danish response to the covered bonds consultation, having a new single legal definition of covered bonds could be a useful element in ensuring the “covered bonds brand” while at the same time ensuring the role of covered bonds as e.g. instruments to place funds or handling liquidity risks. Such a definition would set out common standards where only covered bonds meeting the requirements in the given definition could make use of the term covered bonds.

When deciding on the specific elements of a covered bonds definition, Denmark would favour of a two-tier definition. This would include a broad basic definition of covered bonds plus an additional set of criteria giving the latter some more preferential treatment than covered bonds which only comply with the broad definition. Such a two-tier definition is already the case today with a broad basic definition of covered bonds as set out in article 52 (4) of the UCITS Directive plus an additional set of criteria as set out in article 129 of the CRR giving the latter some more preferential treatment than covered bonds which are only UCITS-compliant.

The LTV limit requirement in CRR (not present in UCITS) means that specialised institutions are required to fund additional cover assets (typically government bonds or other non-mortgage CRR eligible assets) when property prices are decreasing to the extent that the LTV-limits are exceeded.

If we take Denmark as a case, this would mean that in certain very stressed scenarios - although such a situation has never materialized in Denmark - it may turn impossible for the Danish mortgage credit institutions to continue to fund additional cover assets and it is in this situation imperative that the issued covered bonds remain UCITS-compliant as well as the institutions can continue to fund the real economy with only-UCITS-compliant covered bonds.

Therefore, a two-tier definition is preferred.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure the role of covered bonds as e.g. instruments to place funds or handle liquidity, we suggest that:

- There should be a new two-tiered legal definition of covered bonds with a broad basic definition of covered bonds (UCITS) plus an additional set of criteria (CRR) giving the latter a more preferential treatment.

Example 2: Alignment of definitions of short sale

To which Directive(s)/ Regulation(s) do you refer in your example?
Short selling regulation (SSR) and MiFIR

Please provide us with an executive summary of your example:
The definitions of short selling in SSR and MiFIR differ. According to SSR, the relevant time to calculate short selling is at midnight at the end

of trading day. In MiFIR, short selling is calculated at the time of execution of the transaction.

The difference in definitions might pose problems for the market participants. As an example, if there is a first sale of a government bond and immediately after a similar-sized buy of the same instrument, this would result in a short sale reporting according to MiFIR, but would not be calculated as a short sale according to the short selling regulation.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to enforce clarity and reduce administrative burdens, we suggest that:

- The definition of short sale should be the same in both the short selling regulation and in MiFIR.

ISSUE 14 – RISK

Example 1: Technical solutions for CCP's

To which Directive(s)/Regulation(s) do you refer in your example?
EMIR

Please provide us with an executive summary of your example:
EMIR introduces the obligation to clear certain classes of OTC derivatives in CCPs that have been authorized (European CCPs) or recognized (non-EU CCPs) under the EMIR framework. EMIR gives rise to some practical complications and unintentional discrepancies for e.g. insurance companies using derivatives when mitigating investment risks.

One of these is the fact that insurance companies encounter difficulties in meeting variation margin requirements of central counterparties in respect of transactions subject to mandatory clearing under EMIR because CCPs - for now - only accept cash. Insurance companies offering life insurance have to invest in the best interest of the insured. Since investing in cash is not in the best interest of the insured, insurance companies do not hold much cash and would therefore have to make use of e.g. the repo market in order to fulfill their variation margins in cash.

Another issue arising from the EMIR regulation is the fact that the contracts, which insurance companies enter into with CCPs, have shown to include terms that allow for the CCP to terminate the contract. This leaves insurance companies with very little incentive to actually reduce risks

through OTC derivatives since the uncertainty related to the possible termination is inconsistent with the need to reduce investment risks.

It is important that the OTC derivatives are handled in a proper manner e.g. by requiring central clearing in order to make the over the counter market on OTC derivatives safe and sound. However, it is equally important to have a proper balance between rules and a well-functioning market in mind when accessing consequences of new rules. It seems that the rules on clearing obligations for OTC derivatives have led to the before mentioned unintentional discrepancies on companies e.g. insurance companies that have to enter into agreements with CCP's on central clearing. As described above this poses a potential problem. Therefore, it needs to be closely monitored if the possibility of termination is used and if so, this possibility should be deleted in order to maintain the investment in OTC derivatives.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In order to ensure the proper level of risk aversion, we suggest that:

- The CCPs should be obliged to develop technical solutions for the transfer by pension scheme arrangements of non-cash collateral as variation margins under EMIR even after 2017. Furthermore, if the CCP's do not take the required steps, the exemption under article 89(1) should be made permanent in order to avoid the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners.
- More certainty related to the timeframe and the assurance of the contract entered into with the CCP is needed. It should be followed closely if the possibility of termination is used and if so, it should no longer be possible to delete in order to maintain the investment in OTC derivatives.