Svenska Bankföreningen
Swedish Bankers' Association

SVENSKA FONDHANDLARE FÖRENINGEN

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Joint response from the Swedish Bankers' Association and the Swedish Securities Dealers Association to the Commission's Green Paper on the Capital Markets Union

Key issues

- The Swedish Bankers' Association (SBA) and the Swedish Securities Dealers Association (SSDA) support the intention behind the Capital Markets Union (CMU) to create more integrated and well-functioning capital markets in the EU. Well-functioning and efficiently regulated financial services are fundamental to improve economic growth in Europe.

- Given the very rapid development of financial market related European legislation, a first priority for the Commission should be to make sure that existing regulations of financial markets and market participants are sustainable, effective and well-balanced and not counterproductive to the intentions of the CMU. This also counts for regulations currently in progress.

- To that end the Commission should take early action and conduct a full impact analysis of existing regulations and regulations currently in progress. Two areas are of particular concern for us;

  - **Regulation that hinders banks' abilities to lend to SMEs.** There is in our view a risk that existing regulations and regulations in progress will create incentives for banks to increase margins and/or abstain from increasing their loan operations. Banks' lending to SMEs could thus become more expensive in the future which would be counterproductive to the Commission's ambition to improve access to financing for SMEs. For SMEs, banks are and should in the future remain – if not hampered by counterproductive regulations - a very cost efficient and important funding source.

  - **Regulation with negative effects on financial market liquidity.** Given the importance of liquidity for markets to function well, it should be a priority for the Commission to address all issues with negative effects on liquidity. In this, to safeguard market making and the possibility to hedge risks are very important. It should be ensured that the transparency regime in MiFIDII/MiFIR is balanced, for equity as well as for non-equity, and that it works also for smaller markets. It should also be ensured that CSDR does not introduce requirements that affect liquidity in the markets or are more detailed or very different from non-European countries so that they discourage global investments in Europe.

Furthermore, capital requirements on trading portfolios in CRR should not be developed in a way that decreases banks' ability to handle large flows of financial instruments and the liquidity in the capital markets. A bank structural reform that possibly leads to universal banks shrinking their capital markets operations to avoid separation (because supervisors are obliged to focus on size rather than on the riskiness of the trading according to new rules) will hurt liquidity. A financial transactions tax (FTT) would most likely slow down economic activity as it increases the cost of transactions and encourages evasive behaviour.

- We would further encourage the Commission to view integrated capital markets as a goal that can be achieved with market-driven initiatives or best practices, with full respect for well-functioning national market models. Any new regulations should aim at supporting market driven solutions and be limited to cases where market driven solutions otherwise are not likely to occur.

- What regards access to funding, we do not see a problem in Sweden. Swedish non-financial companies and SMEs with a sustainable economic plan do not have problems with funding. From a Swedish perspective it is hence important to maintain the current very stable, well working and resilient Swedish credit intermediation model.

- From a theoretical point of view a diversified funding system, where alternative funding sources are available, would serve economic growth. However, diversification must be created on a level playing field for all market participants and all channels must be appropriately regulated and subject to the principle of 'same risk, same rules'.

- It is not obvious to us that regulated harmonisation is the key measure for addressing shortage of funds. In this context it is worth mentioning that covered bonds, as they are regulated today, attract investors and there is no need for harmonisation from a market perspective. Bond market borrowers rather require solutions tailored to their particular needs. In the covered bond market there has for a long time been a market driven conversion of standards to the most investor-friendly rules and there has been a market based standardisation regarding transparency within ECBC's label.

- Finally, there is a need for the Commission to make short term and long term priorities. For the short term, the issues above should be addressed. The Commission should then look into the potential long term initiatives which we believe are issues such as harmonising taxation, insolvency law, corporate law and governance. When working with these long term initiatives it is essential to develop a process focusing on quality and adequacy rather than meeting tight deadlines.

Swedish bankers' association and Swedish Securities Dealers Association joint response

1) Beyond the five priority areas identified for short-term action, what other areas should be prioritised?

There is at least one additional area which the SBA and the SSDA consider important for short-term action; the Commission should make an assessment of the very demanding reporting obligations on both financial market actors and others (EMIR, SFT and MiFIDII/MiFIR) and make sure that these obligations taken together are efficient and serve their purpose. Whereas data of high quality is important for both regulators and financial market participants it needs to be ensured that the data collected is neither overlapping nor overly extensive. Otherwise, overly extensive and overlapping requirements lead to increased transaction costs and constitute a barrier to capital flows. Duplication of reporting obligations should be avoided and there should at least be thresholds to avoid reporting by non-financial firms and individuals. Furthermore, transactions without any interest for supervisory authorities should not be reported.

2) What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?

The SBA and the SSDA support initiatives that are aiming at improving availability of SME data, although we have several concerns regarding standardised credit scoring for SMEs in Europe. We do not think that creating a common European credit scoring model for SMEs is the best way. We think that a better solution is to promote national scoring systems. The reasons are the following:

First, it is not clear where the information for credit scoring would come from. If SMEs themselves should produce the information, it may prove to be an unnecessary large cost to many of them. If the information would come from SMEs financial institutions, they would find it difficult to provide information on their customers without either violating their customers' or the institution's secrecy.

Second, the scope of the information needed to produce a sufficient credit rating for SMEs is extensive. Indeed, the smaller and newer a company is, the more information is needed for potential investors in order to properly assess risk.

Furthermore, SMEs in Europe are currently not adhering to the same standards when it comes to for example accounting and reporting principles. To pull off a uniform set of data for credit scoring would thus be difficult.

Finally, credit scoring is not a homogeneous science, a single scoring model is not a good solution if authorities would like to keep a model of prudent banking. Rather, various sources of information should be allowed to be used.

3) What support can be given to ELTIFs to encourage their take up?
One alternative to encourage the take-up of ELTIFs is to consider letting UCITS funds invest in ELTIFs. An ESMA opinion from 2012 currently hinders UCITS to invest in units of collective investment vehicles. In order to activate funds available in the UCITS world, we support any endeavour to engage the Commission to discuss this opinion. Allowing the successful brand of UCITS to invest in an ELTIF will also give the new ELTIF brand a strong boost of support.

Also, the nature of an ELTIF often makes it a product with a long lifetime, locked-up and illiquid assets. This does not work well with a redemption possibility. To create some liquidity in an otherwise illiquid product, effort should be made to set up a working secondary market for such holdings. The ability for UCITS to participate in the market would provide liquidity.

4) Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?
The SBA and the SSDA agree with the Commission's assessment that differing national laws are barriers to a pan-European private placement market. Access to accurate, standardised and transparent information is important to achieve an effective, pan-European private placement market. Central to the success of a pan-European system is therefore the creation of a reliable, substantive information system and harmonisation of national laws so as to provide protection and predictability to investors. Moreover, a well-functioning secondary market is important to the initiative. Finally, any attempt to create a pan-European private placement market should not contradict global standards in the capital markets or other legal requirements that occur in the European capital market. Otherwise this would discourage non-European investors to invest in Europe.

5) What further measures could help to increase access to funding and channelling of funds to those who need them?
A diversified funding system, where alternative funding sources are available, would serve economic growth. In this it is however important to safeguard the European model with loans from banks to companies.

Companies need different funding and capitalisation in different stages of their developments. For the smallest ones the need for risk capital is important and must be delivered by investors that are prepared to take losses. That means mostly equity injections, not from banks, but more from investors in small caps etc. When companies grow and they get more credit worthy they will be able to borrow money from banks primarily. But to do so they need to support the lender with fundamental information. Obviously it is a connection between the possibility to get funding and the information that the company is able to give away. When a company has grown even further it is able to support a larger group of potential lenders and therefore it can be able to reach many more lenders.

6) Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?
Liquidity is fundamental to ensure well-functioning financial markets which is indeed a prerequisite for the CMU project. The SBA and the SSDA therefore support the focus on liquidity. Our overall suggestion to assess the implementation of all new rules is of great importance also for the corporate bond market. The Commission should review the potential counterproductive elements of certain existing regulatory initiatives to the success of CMU, such as CRR/CRDIV, CSDR, Solvency II and MiFIDII/MiFIR. Furthermore, the increased capital requirements on trading assets means that market makers may not able to act in a proper way which will hurt the corporate bond market. The proposed NSFR has regulations that will be negative for the repo market and that could hurt the corporate bond market if implemented in Europe.

What regards standardisation, we do not believe there is a one-size fits all for the corporate bond markets. On the contrary, there should be full respect for well-functioning national market models and standardisation should be undertaken voluntary and be market driven.

7) Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?
The market for ESG is relatively new and may need support in order to deliver long term benefits for stakeholders. There are existing market initiatives in this area that we support, and we consider a flexible market-driven process preferable to additional regulatory norm or label.

In addition, increased provision of non-biased information about these kind of investments would in our view serve the development of the market for ESG.
EU initiatives could promote a common methodology for product comparability and evaluation, from a consumer perspective. This would offer a counterpart to corporate product development and give consumers guidance on how to compare price and results from ESG investment products, primarily regarding the actual benefits to sustainable development generated by an investment.

8) Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?

According to our opinion, lowering transparency requirements for SMEs will definitely not increase investors' interest in these companies. Information needs are very high in order to be able to invest in more risky businesses. Less information available could lead to decreased possibilities for these companies to get funding. To develop special EU regulation in these areas would also mean less investor interest to invest in European assets.

9) Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?

10) What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

An assessment of all new rules in the financial area with the purpose to avoid obstacles to funding for long-term projects and SMEs would probably be the best way. In our opinion, more regulation is not motivated or needed. It is however important to understand that getting more funding from the financial sector to assets with substantial credit risk means that the financial stability will be at risk.

Calibration on capital requirements is probably the most efficient way to increase funding to SMEs and start-ups. Losing the time factor for credit assessment in Solvency II and in CRR may also lead to more funding for risky projects that can create economic growth in Europe.

11) What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

12) Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

13) Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

14) Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

15) How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

16) Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

For banks, there has been a huge amount of new regulation recently. Some of the new regulation, in particular the suggested risk-weight floors from Basel and the leverage ratio will remove risk sensitivity from the capital adequacy framework. This will most likely result in a significant increase in the capital requirements for the banks', from a risk perspective, best exposures. This in turn will force banks to increase their margins on lending to these customers which may hamper the economic activity in EU. It is important that, if floors or other non-risk sensitive capital requirements are to be introduced, an impact assessment is conducted. The new regulation could lead to more funding through the corporate bond market, either issued by the larger borrowers themselves or by the banks in securitisation deals. But, warehousing capacity within the banking system may at the same time decrease due to other new regulations in process, such as the Banking Structure Reform and the FTT. In a financial downturn, this new credit market structure may result in a significant shortage of financing available for the real economy, because credit intermediation outside the banking sector will disappear and the banks will not be able to compensate for that. Risk will hence not disappear, it will just show up in other, non-regulated parts of the economy. Well-balanced and efficient regulations for all participants is therefore of utmost concern.

17) How can cross border retail participation in UCITS be increased?

18) How can the ESAs further contribute to ensuring consumer and investor protection?

The SBA and the SSDA are of the opinion that ESAs need additional resources and sustainable long term financing to be able to fulfil their tasks, including ensuring consumer and investor protection.

The ESAs are independent agencies of the EU and should be treated as such. If the co-legislators and the Commission increase the workload of the ESAs without taking into account the resources available, this would jeopardise their independence. We therefore have the view that the Commission should explore options for new sustainable long term financing of the ESAs, with the aim to safeguard their independence.

19) What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?
Stronger investor protection rules can be achieved with a review of the Investor Compensation Scheme Directive (ICSD). The Commission should come up with a new proposal to update the current ICSD. The investor protection should in our view be at the same level as for bank clients in the Deposit Guarantee Schemes Directive.

The changes in ICSD should aim at increasing the investor protection and to create stronger common rules especially concerning the funding of the schemes at national level. Investors with cross border investments should have the same level of protection in all Member states.

20) Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

21) Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?

22) What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

23) Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?
Liquidity is key to the success of CMU. Therefore it should be a high priority for the Commission to address any issue that suppress liquidity to European markets. As stated previously, the Commission should review the potential counter-productive elements of certain existing regulatory initiatives to the success of CMU, such as CRDIV, CSDR, Solvency II and MiFIDII/MiFIR as well as the potential FTT and BSR.

In particular, we want to emphasise the importance of properly calibrating the transparency regime in MiFIDII/MiFIR for equities as well as for non-equities. We are concerned that a too broad definition of liquid market in MiFIDII/MiFIR could result in less liquid markets. In order to achieve a proper calibration, it is important to take the interests of investors and issuers as well as different market structures into account (recital 16 of MiFIR) and thereby ensure that the future Level II rules have an evidence-based footing.

24) In your view, are there areas where the single rulebook remains insufficiently developed?
The lack of harmonization regarding Insolvency Law and Company Law is troublesome for the single rulebook. See also our comments on the Securities Law legislation (Q 26).

25) Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?
The SBA and the SSDA are of the opinion that ESAs need additional resources and sustainable long term financing to be able to ensure consistent supervision as well as other tasks. Please see our answer to Q18.

26) Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?
To deliver more integrated capital markets as part of the Capital Markets Union, the EU should achieve more clarity, transparency and consistency on the rules applicable to cross-border transactions of book-entry securities. The EU-legislation regarding holdings and dispositions of book-entry securities is fragmented mainly because of the institutional approach in the legislation instead of a functional one. To achieve clarity and legal certainty the Commission should develop a proposal for a Securities Law legislation with a functional approach. This is a key issue in order to create the necessary legal certainty for cross-border securities holdings and dispositions and collateral management.

A Securities Law legislation would be a real benefit for the internal market and for the CMU. Such legislation would also make life easier for market participants and investors from outside the EU. It would also simplify forthcoming EU-legislation if there was a common legal base for book-entry securities regarding all dispositions (transfer of securities, collateral arrangements) and acquisitions of securities. An efficient and attractive CMU needs legal certainty regarding holdings and dispositions of book-entry securities. Securities Law legislation is of utmost importance for efficient securities markets providing certainty for all involved – inside and outside the EU - in dispositions over book-entry securities.

There have over the years been several attempts, all of which have failed, to harmonise the legislation on book-entry securities on a global level. Instead of a harmonized legislation, we have seen scattered legislation with impact on the book-entry securities. See for example the rules regarding shareholder identification and disclosure of information in the proposed amendments to the Shareholder Rights Directive, the new rules about re-us in the proposed legislation on Securities

Financing Transactions and the failed proposal on a conflict-of-laws rule for CSDs in CSDR.

Priority issues for futures Securities Law legislation are for example:

- Acquisition and disposition by debit and credit of book-entry securities
- The role of the account-holder and the account provider
- Common understanding of 'good-faith acquisition'

Even more important is to solve the conflict-of-laws issue as part of a Securities Law legislation or as a separate legislation. In the cross-border securities holding chain with multiple intermediaries as well as securities from several countries, the laws of several jurisdiction might interfere in determining the rights of securities. There are still severe problems in the EU to identify which law would apply to the legal position of the holder of securities and thereby determine what type of right an account holder acquires as a result of an acquisition of securities and the crediting of a securities account. There is a lack of general legislation regarding the conflict-of laws issue. Today, there is no general rule only fragmented legislation (i.e. for collateral arrangement and proceeding according to the Winding-Up Directive). A general conflict-of-laws rule would make life easier for both participants and investors inside or outside the EU and in line with the aim of CMU make EU an attractive market.

27) What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

The SBA and the SSDA are of the opinion that solving the conflict of laws issue and harmonize the book-entry system in the EU through Securities Law legislation would benefit the internal market and also improve the cross-border flow of collateral. Furthermore, improving the legal certainty for close-out netting arrangement would be beneficial for the Capital market in the EU.

28) What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

29) What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

In our opinion, the Commission should explore the possibilities of harmonising insolvency rules and create a more consolidated insolvency law legislation. We however recognise that such a project would be large and take very long time and therefore believe it should be handled outside the CMU. It could otherwise slow the CMU-process down.

30) What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

The SBA and the SSDA strongly oppose the potential introduction of a Financial Transaction Tax. An FTT will most likely reduce liquidity in financial markets and thereby trigger a demand for higher risk premiums among investors. This will slow down economic activity as it increases the cost of capital and encourages evasive behaviour. An FTT on equity will increase the cost of capital since holders will demand higher yield to offset the tax. A higher cost of capital reduces investments. Taken together, an FTT will be a barrier for free movement of capital and is therefore clearly counterproductive to the intentions of the CMU.

We therefore urge the Commission to withdraw its proposal.

31) How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

32) Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

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