
**Wholesale Markets Brokers' Association and London Energy Brokers' Association
Response to the European Commission Consultation on Possible Recovery and Resolution
Framework for Financial Institutions other than Banks**

1. Key Points

- **The WMBA agrees with the Commission that for non-bank financial institutions, the advent of failure can, depending on the entity, assume varying proportions and, hence, considers that a *one size fits all* approach to the resolution of these entities is not appropriate.**
- **The potential scope of the Commission's consultation is very broad. The WMBA would encourage the Commission in the first instance to focus its proposals on a resolution regime for central clearing counterparties (CCPs). We believe CCPs should be prioritised because of their systemic importance, which will only increase following implementation of EMIR and mandatory clearing.**
- **In addition, we would encourage the Commission to consider developing proposals for central securities depositories (CSDs), which provide vital infrastructure for the orderly functioning of the financial system.**
- **The WMBA does not consider a resolution regime for other types of non-bank financial institution is warranted. In general, there is sufficient choice and substitutability between trading venues that the disruption of one platform is unlikely to pose a systemic risk.**

2. The Wholesale Markets Brokers' Association & London Energy Brokers' Association

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred in this document as "WMBA") are the European industry associations for the wholesale intermediation of Over-The-Counter (OTC) markets and trading venues in financial, energy, commodity and emissions markets and their traded derivatives. Our members act solely as intermediaries in the said wholesale financial markets and are nearly entirely Limited Activity and Limited Licence firms (as defined by the UK Financial Services Authority) in respect of the EU Capital Requirements Directive.

As Interdealer Brokers (IDBs), the WMBA members' principal client base is made up of global banks, primary dealers, large energy companies and other wholesale market participants. (Please see www.wmba.org.uk and www.leba.org.uk for information about the associations, its members and products).

WMBA members would appear to be included in both banking and non-banking regulations due to the models which are operated within the firms. Arranging is broadly captured as an investment firm activity whilst the operation of authorised matching platforms would appear to lie in both the scope of non-banking and investment firms in the cases of 730k platform operators in the UK. Member firms operate three models to facilitate trades: Name Give Up, Exchange Agency and Matched Principal. These models are detailed on our website.

3. Response

In their role as intermediaries in the wholesale markets, WMBA members are not central counterparties or central securities depository and do not provide a service in traditional insurance. Consequently, sections 3 and 4 of the consultation paper are not relevant to their business activities. The WMBA has therefore limited its response to the questions posed in relation to other non-bank financial institutions/entities in section 5 of the consultation.

Questions

1. Do you agree with the above assessment regarding payment systems, payment institutions and electronic money institutions? Alternatively, do you consider that either (or both) would merit further consideration as to their ability, first, to give rise to systemic risk and second, the need for possible recovery and resolution arrangements in response?

Not applicable to WMBA members.

2. Besides those covered in previous sections of this paper, which other non-bank financial institutions can become systemically relevant and how? Depending on the type of institutions, what are the main channels through which such systemic risks are transmitted or amplified?

Contrary to the view expressed in the consultation, the WMBA is of the opinion that unlike payment and settlement systems, there is a degree of choice and substitutability among trading venues (except those operated on a closed vertical silo model) and the scope for this is increasing as a result of the introduction of new trading venues under EMIR and the draft MiFID/R. This is particularly true in the IDB markets in which our member firms operate. The WMBA does not consider a resolution regime for trading venues to be necessary.

3. In your view, what could be meaningful thresholds in relation to the factors of size, interconnectedness, leverage, economic importance or any other factor to determine the critical relevance of any other nonbank financial institution?

The WMBA considers that i) market share in a particular sector; ii) the immediate impact of disruption on the retail/ 'real' economy; and iii) the substitutability between providers would be meaningful thresholds in determining the critical relevance of non bank financial institutions.

4. Do you think that recovery and resolution tools and powers other than existing insolvency rules should be introduced also for other non-bank financial institutions?

The WMBA agrees with the Commission that current national insolvency laws in the EU give rise to uncertainty and in the event of insolvency parallel procedures across borders. However, the WMBA considers that given the current diversity in the existing national insolvency laws it would be very difficult to adopt a common position in respect of recovery and resolution tools and powers that would be acceptable in all jurisdictions and, hence, WMBA does not support the adoption of a further initiative in this respect.

5. In your view, what could then be meaningful points of failure at which different types of other non-bank financial institution could be considered to fulfil the conditions for triggering:

- a) The activation of any pre-determined recovery measures; or**
- b) Intervention by authorities to resolve the entity?**

See response to 4 above.

6. With respect to possible preventive and preparatory measures:

- a) **Do existing regulatory frameworks applicable to other nonbank financial institutions provide for sufficient safeguards, in particular with respect to their governance structures, market/counterparty/liquidity risk management, transparency, reporting of relevant information and other etc.?**
- b) **Are supervisors equipped with sufficient powers to be able to collect information and monitor the various types of risks existing or building up in the particular non-bank financial sector/institution?**
- c) **Are additional supervisory powers needed to ensure de-risking and prevent overly complex and interlinked operations?**
- d) **Would recovery and resolution plans be necessary to be introduced for all or only some of these institutions? Why?**

The WMBA is of the opinion that any preventative and preparatory measures should be proportional to the risk involved and not overly complex. To this effect, the WMBA considers that the measures and reporting requirements currently provided in the Capital Resource Directive in respect of operational risk and Pillar 3 capital disclosures are at the appropriate levels for non-bank financial institutions. Specifically, these allow for firms to hold sufficient capital to finance an operational wind down before additional risk factors are taken into account.

7. With respect to possible early intervention powers and measures:

- a) **Do existing regulatory frameworks applicable to other nonbank financial institutions provide for effective early remedial actions of supervisors aimed at correcting solvency or operational problems at an early stage?**
- b) **What other early intervention powers could be introduced?**

WMBA consider that the current regulatory framework applicable to other financial institutions in respect of market failure and remedial action simulations currently provides supervisors with an adequate level of information to take effective intervention powers and measures.

8. With respect to possible resolution measures and tools:

- a) **Should administrative, non-judicial procedures and tools for the restructuring or managed dissolution of other failing non-bank financial institutions be introduced?**
- b) **Depending on the entity, what could be the appropriate and specific resolution tools to be used? For which institutions are certain resolution tools or techniques not relevant? Why?**

WMBA does not consider administrative, non-judicial procedures and tools for the restructuring or managed dissolution of other failing non-bank financial institutions should be introduced.

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