

**European Financial
Markets Lawyers Group**

Holger Hartenfels

c/o

**EFMLG Secretariat
Kaiserstraße 29
60311 Frankfurt am
Main
Germany**

Your letter from 16 August 2013 regarding issues of Legal Uncertainty and the European Market Infrastructure Regulation (“EMIR”)

Dear Mr Hartenfels,

We would like to thank you for your letter to Steven Maijoor, ESMA Chair, and Verena Ross, ESMA Executive Director, addressing the issue of legal uncertainty and EMIR.

We are indeed aware of the concerns that you raised in this respect and discussed the issue further with national competent authorities.

However, we consider that the matter does not relate to the consistent application of EMIR among different EU Member States which could be addressed by ESMA.

As your request relates to the scope of application of the Regulation we believe that it can best be addressed by the European Commission.

With regard to the specific issue of guidance on legislative texts, we would like to stress that ESMA assesses carefully when to make use of a given guidance instrument so as to always use the best suited instrument for each particular situation. The regulation establishing ESMA gives the Authority the power to develop new practical instruments and convergence tools to promote



common supervisory approaches and practices (such as Q&As and Opinions, see Article 29).
ESMA endeavours to make use of this power in the best interest of supervisory convergence.

Please do not hesitate to contact us if you have further input and suggestions.

Yours sincerely,

A handwritten signature in blue ink that reads 'S. Karas'.

Stephan Karas

Acting Head of Legal, Convergence and Co-operation Unit

CC: Mr Patrick Pearson, Acting Director DG Financial Markets, European Commission