



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

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EFMLG Secretariat
c/o European Central Bank
DG-L / Legal Groups Team
Sonnemannstraße 20
60640 Frankfurt am Main
Germany

Dear Ms Senkovic,

Thank you for your letter concerning certain national developments which, in the opinion of EFMLG, would create an unlevel playing field for investment firms across the EU.

I have read your letter with great interest and would like to assure you that we will assess your observations carefully in light of our shared objective to build a functioning single market.

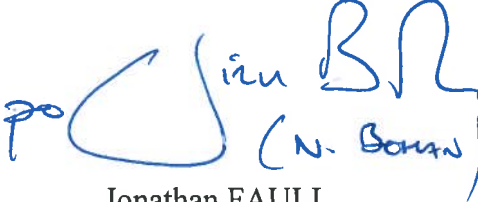
I take this opportunity to clarify certain concerns expressed in the letter. It is our belief that the ESAs' role, including by issuing guidelines or opinions, is essential to building a common Union supervisory culture and consistent application of Union law. In particular, the ESMA Opinions mentioned in your letter, clearly anchored in existing EU legislation, should contribute to enhancing investor protection and the integration of financial markets.

We are certainly vigilant as far as gold-plating and barriers to the opening of markets are concerned. As you rightly pointed out, certain obligations need to be followed by Member States, like those set in Article 4 of the MiFID 1 Implementing Directive 2006/73/EC. However, Member States have a margin of discretion when transposing a Directive. Certain national measures which do not amplify the obligation set by an EU Directive could still be considered in line with the Directive, thus not necessarily establishing additional obligations. For instance, with respect to national rules requiring firms to provide retail clients with a type of uniform label indicating the risk level of the product, Article 19(3) of MiFID leaves a certain margin of manoeuvre to Member States to ensure that investment firms provide information on risks associated with investments in financial instruments.

Finally, I would add that any additional requirements under the above mentioned Article 4 of the MiFID 1 Implementing Directive should only be imposed on firms that are

subject to the authorisation and supervision of the Member State which imposes those requirements. To this end, firms operating on a provision of services basis as well as branches for all the aspects which are not included in Article 32(7) of the MiFID 1 should not be subject to any additional requirements by the host competent authority.

I look forward to continuing our dialogue on these important issues and am confident that the future rules will create the conditions for a true single market.



The image shows a handwritten signature in blue ink. The signature is stylized and appears to read 'Jonathan Faull'. Below the signature, the name 'Jonathan FAULL' is printed in a standard black font.

Jonathan FAULL