



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

13 May 2015

Dear Commissioner,

Thank you for the opportunity to respond to the Commission's Green Paper on Building a Capital Markets Union. I welcome the intentions and ideas in the Green Paper.

In general, the Danish government is highly supportive of initiatives aimed at opening up a wider range of funding sources for businesses and generating further investment opportunities for investors through the capital markets in the EU with a view to promote economic growth and job creation. An EU Capital Markets Union for all 28 EU Member States which is tailor-made to the specificities of European markets has the potential to become a useful source of funding for businesses, including SMEs, in parallel to the banking sector. We agree with the Commission's approach of not harmonising for the sake of harmonisation itself but to identify and address the specific barriers for developing a truly single market for capital.

I agree with the approach of presenting possible new (legislative) initiatives where warranted as well as reviewing part of the existing EU legislation.

In terms of the more concrete initiatives mentioned in the Green Paper, I support a revision of the Prospectus Directive aiming at making prospectuses less of a burden to SMEs and thereby making it more attractive to seek funding via capital markets. The Capital Markets Union should ensure better functioning capital markets while at the same time safeguarding the investor protection provided for in the legislative work during the past few years.

I am also supportive of the development of simple, transparent and standardised securitisations to attract a broader investor base. Potential EU legislation supporting a sustainable market should be clear and simple for

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market participants to understand and act upon and sufficiently flexible to ensure applicability in multiple jurisdictions.

Crowdfunding could be promoted by a common EU framework as a way of giving entrepreneurs and SMEs easier access to capital. We have initiated an analysis of the potential barriers to crowdfunding in Denmark and of how crowdfunding can be promoted. The analysis concludes that the greatest barrier to crowdfunding is the uncertainty of how to comply with existing regulations. Therefore, we have developed clear guidelines for participants in the crowdfunding market to comply with the regulation while also introducing different initiatives to promote crowdfunding. We are supportive of an analysis on how the use of crowdfunding in the EU can be promoted.

Generally, we are positive towards initiatives aimed at increasing cross-border mobility in the EU. At the same time, it is important to underline that new legislative initiatives should leave sufficient flexibility for Member States since company law and corporate governance are heavily influenced by national regulatory tradition. We do not support further harmonisation of taxation. In these policy areas, the way forward should in any case be to begin by thoroughly identifying the specific issues that may hamper a well-functioning single capital market before proposing any further action. It may be that very specific and limited action has significant effects, without the need for broad-scope harmonisation.

The supervision of capital markets is currently undertaken by the national supervisory authorities who are well-suited as they have in-depth knowledge of the particular characteristics of the national markets. We do not see a need for extending the existing mandate of the European Supervisory Authorities in this area but fully support exploring how they may further contribute to the development of a single capital market within their existing mandate.

As for a possible initiative in relation to covered bonds regulation, I will stress that the Danish covered bonds market plays a major role in the Danish economy. I am open towards discussing the need for an EU legislative initiative based on experiences from well-functioning covered bonds markets, including the Danish. However, it is vital that the Danish mortgage credit system does not suffer negative consequences from any new initiatives within the area of covered bonds. We look forward to contributing further in an upcoming separate consultation on covered bonds.

Before being able to state any final position on possible future initiatives outlined in the Green Paper, we would naturally need to analyse them in detail. Our response, thus, constitutes our immediate viewpoints and con-

cerns which we encourage the Commission to take into account in its continued efforts to build a Capital Markets Union.

In the enclosed annex you will find answers to the specific questions posed in the Green Paper.

Yours sincerely,

Henrik Sass Larsen,  
Minster for Business and Growth

## **ANNEX – DANISH RESPONSE TO THE GREEN PAPER ON BUILDING A CAPITAL MARKETS UNION**

### ***1. Beyond the five priority areas identified for short term action, what other areas should be prioritised?***

The Danish government agrees that the identified five priorities could potentially contribute to the important goal of benefiting SME access to finance without lowering investor protection.

This is not least the case regarding a revision of the *Prospectus Directive*. A prospectus should ensure tailor-made and relevant information to investors and help retail investors assess the terms and risks. Today there is a tendency for prospectuses to be clouded by unnecessarily technical language with extensive disclaimers and unfocused information. If the administrative burden for companies, including SMEs, could be lessened while preserving investor protection and securing relevant and concise information to investors this could improve SME access to capital markets.

As regards *securitisation* the Danish government supports the development of an EU market based on simple, transparent and standardised securitisations. A potential EU framework supporting a sustainable market should be clear and simple for market participants to understand and act upon and sufficiently flexible to ensure applicability in multiple jurisdictions.

To enhance Danish credit institution's possibility of issuing securitisations, the Danish government has introduced a register-based system in order to make it possible for financial institutions to effectively transfer assets with a minimum of administrative burdens. Any new legislative initiative with regard to securitisation should be able to encompass different national approaches, including the Danish.

The development of a sustainable market for high quality securitisation can only be done with the support of market participants. Even though such a market will consist of simple, transparent and standardised securitisations, as a starting point I am unsure whether the market will be suitable for retail investors since securitisation often tend to be very complex.

Removal of the existing legal uncertainty when securities are traded cross-border would contribute to more efficient capital markets especially if based on existing international agreements such as Geneva Securities Convention and Hague Securities Convention. Therefore, the Danish

government is very supportive of the idea of a legislative initiative regarding *securities law* which could set out a horizontal approach for when securities are traded cross-border. This could be considered as part of the short-term or medium-term initiatives.

More broadly speaking, it is important that the Commission in coming initiatives seeks to promote the liquidity of capital markets in such a way that there is easy access for investors to resell securities. This would be beneficial for their readiness to invest and decrease capital costs for businesses seeking funding through the capital markets. Therefore, the connection between primary and secondary markets should be kept in mind. For example corporate bonds should be promoted without losing sight of the need not only to promote new issues but also the need to ensure liquidity in already issued bonds.

Recent years have seen the introduction of considerable amounts of new EU rules and revised legislation where the impact remains to be seen. These areas should not be the main focus of the Commission's initiatives in the short term. A good example is the question of pre- and post-trade transparency where it is necessary to first see the effects of the recent MiFIR/MIFID II legislation before engaging in possible new legislative initiatives. This being said, the Danish government is open to explore whether long-term investments, venture capital funds and social entrepreneurship funds could be promoted further beyond as the Commission proposes the three recently agreed regulations in this area.

## ***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 Danish government agrees that in order to help SMEs better access funding via capital markets it is essential that there is a regular flow of comparable information about businesses available to investors. At the same time, we agree with the goal of reducing the administrative burden for SMEs. However, this should be done in such a way that sufficient information is still provided. The international accounting standards (IFRS) could, in a modified and less complex version, be used for SMEs.

We support the efforts aimed at ensuring consistency when data and reporting tools are applied. This could be a useful way of reducing the administrative burden for SMEs. Efforts aimed at ensuring that sufficient information regarding SMEs is available to investors could therefore be developed in such a way that existing reporting requirements from SMEs to e.g. business, tax and statistical authorities are taken into account.

### ***3. What support can be given to ELTIFs to encourage their take up?***

The Danish government supports the Commission's intention to encourage long-term investments, such as through the European Long-Term Investment Funds (ELTIFs).

In order to encourage these funds, ELTIFs could be exempted from the Prospectus Directive since ELTIFs are already subject to prospectus and documentation requirements. Furthermore, the secondary markets for ELTIFs should be strengthened in order to attract e.g. retail investors. This could be done by the creation of a particular trading platform with the purpose of making investments in ELTIFs attractive to retail investors and more broadly promote the ELTIFs.

### ***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?***

Private placements could benefit from standardised documentation. Such market-led standardisation could lead to more investors being attracted to invest in the market. However, the Danish government supports the Commission's approach in terms of initially focusing on how to develop existing initiatives regarding private placements. Existing well-functioning markets should be analysed to inspire new initiatives in the longer-term.

### ***5. What further measures could help to increase access to funding and channelling of funds to those who need them?***

In order to increase access to funding, the liquidity of capital markets is of huge importance - in order for businesses to attract investors, the latter need certainty that they will be able to sell the securities they have purchased. If this is not the case, businesses will be less likely to attract investors via capital markets at competitive prices. This should be taken into account in both in level 1 and level 2 measures.

The Danish government suggests that the Commission looks further into well-functioning secondary markets in order to promote highly liquid secondary markets which are a precondition for attracting investors.

It could be considered to improve liquidity in non-equity markets by looking further into the market making function. In this context the Commission might consider (i) how to reduce the regulatory and administrative burdens in connection with market making within and outside trading venues, (ii) ways to ensure that e.g. trading mediators can manage their

risks without having to disclose positions, e.g. because the disclosure of positions could expose business strategies etc., and (iii) ways to give further incentives to market makers to provide liquidity by reducing costs related to their activities on the stock exchange on top of incentives in e.g. MiFID II and the short selling regulation.

**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?***

The Danish government generally supports initiatives and measures aimed at promoting greater liquidity in the corporate bond markets. To achieve this, investors need to be better able to quantify the credit risk of those issuing corporate bonds (the SMEs).

As a rule, SMEs in Denmark do not make use of corporate bonds as a source of funding. There may be various reasons for this. The most significant reason is believed to be the fact that it is too costly for SMEs to issue corporate bonds. This likely relates to e.g. the expenses for corporate financial advisers and the cost of having an individual ratings prepared by a rating agency. As a consequence, the issuers use other sources of funding, including primarily bank loans.

The Danish government believes it could significantly improve the incentives for SMEs to issue corporate bonds if it became easier for SMEs to obtain a credit rating as it would improve the investors' ability to quantify the credit risk. In order to promote liquidity in the corporate bond market the Danish government agrees that standardisation may be a way forward.

It may be considered whether – for instance in cooperation with bond owner representatives (“a trustee”) – common standardised collateral type can be developed which may optionally be attached to the individual bond issuers. This will ease the burden of the issuer in connection with preparation of prospectuses as the risk factors may similarly be fairly standardised.

**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 United Nations Principles for Responsible Investments represent a good tool for investors engaging in ESG investments. We would welcome initiatives at EU level which correspond to the UN principles and which

take into account the specificities of the EU capital markets. Also, the development of guidelines by the market should be supported.

Initiatives supporting issuance of green bonds have already been undertaken by e.g. the European Investment Bank (EIB) which has developed climate awareness bonds. Any additional initiatives from the Commission regarding green bonds should build on what has already been achieved.

***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?***

As opposed to the large and mid-cap segment, SMEs are generally not subject to the same degree of investment analyses (if any at all) from professional analysts. Therefore, it is up to the individual investor to analyse whether the SME in question is over- or underrated.

Presentation of financial accounting information according to different standards makes it difficult for investors to compare the financial performance and key figures of the SMEs and therefore to prepare the analysis.

Companies admitted to trading on a regulated market must prepare financial statements in accordance with the international accounting standards (IAS/IFRS). Although these standards ensure uniform accounting policies across segments and borders, preparing the financial statements in accordance with IAS/IFRS involve high costs.

The Danish government therefore supports that SMEs admitted to trading on the same type of market place (e.g. an SME growth market) are subject to requirements to prepare financial information according to uniform accounting standards. The generally applied accounting standards are IAS/IFRS. A similar set of rules, preferably in a light version, could be used in regard to SME financial accounting information when they trade on SME growth markets.

***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?***

We have initiated an analysis of the potential barriers to crowdfunding in Denmark and of how crowdfunding can be promoted. It concludes that the greatest barrier to crowdfunding is the uncertainty of how to comply with the existing regulations. We have developed instructions of how actors in the crowdfunding market comply with the regulation while also



introducing different initiatives to promote crowdfunding. We are supportive of an analysis on how the use of crowdfunding in the EU can be promoted.

A harmonized regime for regulation of crowdfunding across the EU would lower the barriers for cross border crowdfunding. A sufficient level of investor protection – particularly for retail investors – should be present in such a regime in order to secure the confidence of investors.

Using MiFID II as well as the common EU prospectus rules, payment service rules, consumer credit rules and money laundering rules as a natural starting point, it should be assessed to what extent these rules should equally apply to crowdfunding activities/platforms and in which areas the rules could meaningfully be adjusted in order to facilitate crowdfunding while preserving improvements in investor and consumer protection.

***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?***

Presumably, if SMEs (and especially start-ups) were admitted to trading on a regulated market, this could incentivise investments from institutional investors. However, this could have other implications. In particular, it is likely to be overly burdensome for SMEs to have to comply with the regulatory requirements for trading on a regulated market and the requirements of market operators. The matter, thus, requires further analysis.

***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?***

Further analysis should be made of whether there is room for more harmonisation of the requirements to become an authorized manager, setting up and marketing funds across the EU and other means to reduce the barriers from entering the market of alternative investment managers.

***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 CRD IV/CRR and Solvency II?***

The Danish government agrees that capital requirements potentially could have an impact on the level of infrastructure investments, since capital

requirements influence the incentives and behavior of financial institutions. We find that a particular focus on investments in digital infrastructure is very important and needed.

A favorable treatment of infrastructure investments is supported but this should not jeopardize the undertakings' incentives to act in the best interest of policyholders and should not be at the expense of ensuring effective risk management in financial institutions, which is at the core of CRD IV/CRR and Solvency II.

The Danish government believes it to be important to find a balanced solution, which ensures a prudent level of policyholder protection and incentives for effective risk management.

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

In principle, standardization could enhance consumer protection. However, this should be analyzed further before launching any new initiatives. In particular, analysis is needed of whether the standardization of products might clash with national legislative requirements.

***14. Would changes to 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 funds?***

The idea of the EuVECA and EuSEF Regulations is to promote these types of investments by reducing the requirements that such funds have to fulfil. In general, the EuVECA and EuSEF Regulations apply only to managers of collective investment undertakings with assets under management that do not exceed a certain threshold. Therefore, one way forward could be to either increase this threshold or simply do away with it. This could potentially increase the number of EuVECAs and EuSEFs.

However, allowing such a light regime for larger funds was not the original intention behind the EuVECA and EuSEF Regulations. Therefore, further analysis is needed before any changes to the existing framework are proposed.

***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?***

It needs to be analyzed further whether it is possible to further develop private equity and venture capital as an alternative source of finance, including the use of the venture capital funds.

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

In general, there should be room for increasing both bank and non-bank direct lending to companies that need finance. In our view, banks do not face significant impediments to lending safely to companies. As far as non-bank direct lending is concerned please refer to the answers provided throughout this annex.

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

It needs to be analyzed further whether there is room for more standardized requirements between Member States regarding the marketing of UCITS. The goal would be to improve the UCITS' possibilities to attract foreign capital.

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

Financial stability and a high level of investor confidence are necessary if capital markets are to be able to support growth and job creation. Therefore, strong supervision is essential and a consistent application and enforcement of EU law is necessary. Thus, we are of the opinion that the coordinating role of the ESAs within this area should be retained. For the time being, however, we do not see a need to strengthen their powers.

ESMA and the competent authorities already have important powers to protect investors e.g. in terms of managing licenses for trading. Furthermore, we find that the competent authorities basically have the necessary powers to detect and react towards firms operating without legally required authorization. The attention should be directed towards the appropriate use of those powers.

The investor and consumer protection work already being done in the ESAs, such as issuing warnings, is of high quality and very informative. However, we do question to which extent the information reaches the intended recipients (consumers and investors) and is actually used by the average retail investor and consumer. We therefore find that more focus and resources should be directed towards developing a strategy on how to reach the targeted audiences.

***19. What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?***

A prerequisite for increasing retail investment is the existence of investor protection rules installing a sufficient degree of confidence among investors. Therefore, we need to be very conscious about not rolling back the new and improved investor protection rules introduced in MiFID II in an attempt to create easier access to capital markets for retail investors. On the other hand, it would be equally inappropriate to introduce additional investor protection measures to supplement the ones already agreed upon in MiFID II before we have seen the effects of the new legislation.

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

At the time being we do not have any best practice to share.

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

Generally, the Danish government supports the work done by the Commission to ensure third country equivalence. This should be continued.

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

In order to facilitate the access of EU firms to investors and capital markets in third countries, it could be useful to find common ground with the third countries on which rules to apply. This could be done via trade agreements.

***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?***

Generally speaking, the Danish government finds that the Green Paper is the right starting point.

***24. In your view, are there areas where the single rulebook remains insufficiently developed?***

There is room for developing the single rulebook in further detail. We find that the short-term initiatives are the right place to start.

***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 Danish government agrees that if capital markets are to be able to support growth and job creation it is necessary to have financial stability, market integrity and investor confidence. Strengthened supervision is essential and a consistent application and enforcement of EU law necessary which is why ESMA's role in ensuring convergence and sharing best practices is vital. However, for the time being we do not see a need to expand ESMA's powers and mandate.

***26. Taking into account past experience, are there targeted changes to securities ownership rules that would contribute to more integrated capital markets within the EU?***

In order to achieve more integrated capital markets with regard to market infrastructure and securities law, the Danish government supports further legislative initiatives that build on the improvements already made to securities settlement in the EU through the CSD-regulation.

We would particularly welcome a solution to the issue of which legislation is applicable in cases of cross-border trade in securities. It is important to keep in mind that the Capital Markets Union will be part of a global financial market and in our opinion the Geneva Securities Convention and Hague Securities Convention are essential in securing a solution which is internationally compatible.

***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?***

Further analysis should be undertaken as to whether the area of financial collateral arrangements and close-out netting might benefit from further harmonisation.

***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?***

Generally, any initiatives from the Commission regarding company law, including corporate governance, would have to be analysed in detail, before the Danish government can state its position.

Corporate governance rules have already been incorporated into MIFIR/MIFID II. These rules are not yet fully implemented in the Member States and therefore their impact remains to be seen and explored.

The area of corporate governance and the implementation of guidelines and recommendations have traditionally been closely connected to Member States' own regulatory culture and traditions. The flexible approach in the area of corporate governance – where guidelines and recommendations are seen as a supplement to best practice in each Member State, and enforced through the comply-or-explain approach, seems to be highly appreciated by European companies. This approach does not seem to create severe obstacles to an integrated market for the European businesses.

In relation to company law, we find that there might be obstacles for cross-border establishment and need for a legislative initiative. It is important that the EU ensures trust when operating across borders whether as a company, a shareholder or a creditor of a company.

It should be underlined that possible new legislative initiatives should leave flexibility for Member States as company law and corporate governance are areas that are highly influenced by the existing national well-functioning regulatory traditions.

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

Any initiatives from the Commission regarding insolvency laws would have to be analysed in detail, before the Danish government can state its position in this regard.

***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 Danish government does not support further harmonisation of taxation.

**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?***

The Danish government welcomes the aim of ensuring consistency across the application of data and reporting tools. New initiatives in this area should be seen in connection with the reporting framework which has already been chosen for reporting in other EU matters, namely the standardised technical language (XBRL).

We believe that the data should be collected and/or made accessible at national level and then be transmitted further on to the European level (e.g. ESAs and the ECB). This would ensure that companies would not have to report data more than once.

**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?***

Bond owners are often a diversified group. As a result they find it difficult to coordinate their negotiation positions such as in connection with a bankruptcy. Thereby they de facto leave negotiations to other creditors. By making use of representatives, bond owners are better able to coordinate their positions and thereby ensure that their interests are duly represented and taken care of. Representatives are usually businesses which specialize in providing financial business services. They are made use of in Denmark and other EU Member States but rules on their rights and obligations vary cross-border.

The Danish government would encourage the Commission to consider common EU rules as part of creating a Capital Markets Union where the representatives could be given legal privilege to represent the bond owners in cases of default etc. It should also be considered to establish a European register of recognised representatives.