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The Honorable Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B - 1049 Brussels
Belgium

Dear Mr. Commissioner,

The International Reciprocal Trade Association represents the commercial trade exchange industry (sometimes known as the commercial barter industry) worldwide, and IRTA-Europe represents our European members consisting of 25 companies in 17 countries. Trade exchange operators, large and small, span every continent and there are almost 100 in Europe. Europe's Baltic countries have the distinction of originating the exchange of goods and services through clearinghouses when money is scarce, and the concept was reborn during the Great Depression in the WIR Economic Circle of Switzerland.

With the advent of the personal computer around 1970, trade clearing was greatly facilitated and trade exchanges sprung up as vehicles of business-to-business marketing without the use of cash, or a combination of in-kind payment plus cash. Multi-party exchange, where credits from a transaction with one party could be used as a means of payment to obtain goods or services from any other party in the trade network are used beneficially today by large and small businesses and are thoroughly integrated, legally and fiscally, into Europe's economy.

We are writing to ask two things, first, that you exempt trade clearinghouses whose purpose is the exchange of goods, from rules whose aim is to regulate financial clearinghouses. Second, that you caution regulation-writers to modify regulations that use overly broad language in drafting rules that might be construed as bringing trade clearinghouses under a regulatory scheme intended for financial clearinghouses.

On the first point, we should like to note out that while a trade clearinghouse—which acts as a third-party record keeper for exchange of goods and services—records units of account often denoted as "trade credits", and such credits have value and are accepted as final means of payment within the trade network, nevertheless such credits exist solely to denote the right of a network member to receive, or the obligation of a network member to pay, a certain value in goods and services. Transactions occurring between a trade clearinghouse and the network members are de minimus; virtually all transactions are between members, with the trade exchange serving as an arms-length third-party record keeper and not as guarantor of a trade or holder of collateral to guarantee a trade. The sole guarantee of a trade credit is a network member's contractual obligation to supply goods and services and accept payment in accordance with terms of the agreement.

Trade credits are not "money": they are not a standard of value because prices are set in local currency, and they are neither intended as a store of value nor effective as such, because they do not earn interest. They have transaction value only. Moreover, trade credits are not "securities" in the sense of transfers of debt and

equity capital, and we urge you to make this point explicit in Section C of Annex I to Directive 2004/39/EC which lists security instruments.

Regarding our second point, there are sections in regulations that are a continuing cause of concern. Settlement Financial Directive 2009/44/EC, which must be complied with by December 30, 2010, defines a "settlement account" to include a "settlement agent" or "central counterparty which hold funds or securities to settle transactions between participants in a system." This might be construed to include a trade exchange clearinghouse. The same directive goes on to provide national regulation of "interoperable systems" for settlement of accounts; the language clearly embraces trade exchange systems which are interoperable in the sense of one exchange network engaging in transactions with another.

"Transfer orders", as defined in the foregoing directive, could describe instruments used in a trade exchange's recordkeeping, i.e. "any instructions which results in assumption or discharge of a payment obligation as defined by the rules of the system." The definition of "credit institution" as defined in Article 4 (1) of Directive 2006/48/EC and related definition of "credit claims" are also overly broad and might be construed to encompass a trade exchange.

These ambiguities could also result in problems when EC member states undertake to implement regulations, as national governments are given broad discretion in their implementation. The Settlement Financial Directive states, "Member states shall specify the systems, and the respective system operators, which are to be included within the scope of this directive. . . .The system operator shall indicate to the Member State, whose law is applicable, the participants in the system, including any possible indirect participants, as well as any change in them." There is scope here for unintended consequences if such verbiage drawn for financial clearinghouses came mistakenly to be applied to business-to-business goods and services exchanges.

Thank you for the opportunity to bring these matters to your attention. We ask for your assurance that commercial trade exchanges which facilitate sales of goods and services are not intended to be covered by the cited regulations, nor by the pending regulations for financial clearinghouses.

Should you have any questions, we shall be pleased to assist you in any way.

Sincerely,

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