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Re: **European Commission Green Paper on Building a Capital Markets Union**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking, insurance and pension funds, industry, appreciates the possibility to comment on the above cited Green Paper and would like to submit the following position:

First we would like to point out that we welcome the initiative of the European Commission regarding building up and strengthening a Capital Markets Union in Europe.

General observations:

In principle we share the view of the Commission that enhancing the flow of capital from investors to European business entities - mainly SMEs - could be a way to allow for a recovery of the European economy stimulating growth and creating more jobs in the Union. We agree with the conclusion that to date capital markets in Europe are fragmented, in most cases rather small and far away from a single, homogenous market ensuring the desired growth and fostering the competitiveness of Europe in a global context. Additionally, we would like to emphasize that it is the banking sector who has fulfilled his tasks in the aftermath of the financial crisis and contributed through a large number of measures to a more stable financial system.

Financing in Europe has been and still is bank driven, hence the aim of this CMU-initiative should be to complement these functions of banks by capital market tools.

Against the background of ongoing implementation of recent financial regulation initiatives, it is of utmost importance that banks can now enter a phase of planning reliability, not further impaired by a potentially again changing regulatory and economic environment.

It is important that banks should not be further impaired by too many new rules and by facing new competition in their deposit and loans business through the CMU-initiative. They are still in the process of implementing an increasing number of financial regulation

initiatives. Banks are essential for securing sustainable growth of the EU economy. Most importantly, banks should be relieved from certain obligations in prudential provisions. Thereby banks would be enabled to more easily finance (regional) enterprises. Sustainable economic growth is based on the strengthening of the financing of SMEs and regional enterprises. Banks are the ideal partners for the facilitation of financial instruments for them.

Especially, as regards long-term financing of the economy, the engagement of banks should be incentivised. Therefore, we plead for a holistic approach, which combines the advocacy for bank lending and capital markets based financing.

Additionally we would like to emphasize that there should be no further impairments on savings through deposits. We do not support ideas which have already been brought up in the Green Paper “Long-term financing of the EU economy” that are connected with the establishment of an EU savings book.

According to the Green Paper, capital markets are relatively underdeveloped in Europe. The Commission refers, especially, to the US, where medium-sized companies receive five times more funding from capital markets than they do in the EU. However, they have to take into consideration the different historical backgrounds when comparing the European continental model with other globally established forms of financing the economy especially the US. Differences are rooted in the historical development of preferences by market participants. Thus, striving for the best solution for Europe suggests combining the two different approaches. Improving the functioning of capital markets in the Union as well as fostering a favourable regulatory environment for bank financing models.

What we consider as important for this initiative is an approach regarding the needs of entities demanding and supplying capital, the important role of intermediaries that enable the necessary diversification as well as providing expertise through their products and services, the harmonisation and transparency of products and a substantial convergence in the involved national laws.

Channels of funding complementary to bank intermediation will be essential to create a CMU, however these channels must be appropriately regulated. The so-called ‘Shadow Banking’ activities should not benefit from less onerous or even preferential regulatory treatment, but should be subject to the principle of ‘same risks, same rules’.

In our view, the following components are key for the CMU initiative: (i) a holistic approach regarding the needs of entities demanding and supplying capital; (ii) acknowledging the important role of intermediaries enabling the necessary diversification as well as expertise through their products and services; (iii) the harmonisation and transparency of products and (iv) substantial convergence in the national laws involved.

Before going into details of the concrete questions we would like to emphasize the following principles which are important for the success of the CMU-initiative:

- **General principles for banks:**
 - Level-playing field: A level playing field between capital market oriented banks and non-capital market oriented banks is crucial. Legal changes in prudential rules or other legal changes must not lead to the discrimination of non-capital market oriented banks compared to capital market oriented banks. Member States must avoid a gold-plating legislation, which could disturb the single market.
 - Importance of deposits: We do not support ideas regarding an EU-savings book.
 - Proportionality: this must be a key principle of the CMU. According to the principle of proportionality, any rules, such as supervisory rules, need to be tailored to a bank's respective business model and risk profile, as well as to its size.

- **On the capital demand side:**
 - Facilitated access for SMEs to the desired funds either through equity or debt capital.
 - Better and harmonized information on SMEs provided through information platforms
 - Creation of a dedicated European securitisation framework addressing the inherent risks associated with securitisations.
 - Harmonisation/convergence of the legal framework for companies seeking for capital market financing, while at the same time avoiding additional administrative/cost burden. We would like to refer to the harmonisation processes that are already taking place in the field of company law and insolvency law on EU-level.
 - Harmonisation of the legal framework for “products” (e.g. securitisation, crowd funding, private placements ...).
 - The Commission should place market-making and the importance of providing liquidity at the forefront of the CMU. Liquid capital markets could boost the process of moving capital from slowly growing sectors to dynamic innovative industries and raise confidence of investors.

- **On the potential investors side:**

More consistency and coherence between those frameworks that are targeting at end-investors (such as institutional investors), the ones that regulate intermediaries (such as AIF and UCITS) and the frameworks governing the relationship with the clients (such as MiFID). This shall include not only similar terminology but also the same meaning, no disadvantage of collective investments compared to direct investments, and in particular no disadvantage for those players that are part of banking groups versus independent one.

- **Regarding the general environment:**
 - Creation of a positive sentiment for capital markets and investment supported by governments, regulators, supervisors and media.
 - Stimulating private sector driven capital markets.
 - Stimulating “financial literacy” initiatives throughout Europe targeting educational institutes and the broader society.

- Pension savings in the 2nd or 3rd pillar could play a role as investors. We believe it is essential to enhance both the awareness and subsequently the size of those funds. Also, the investment scope related to these funds should be broadened. Especially pension funds should be allowed to invest more in long term oriented and equity-linked assets in order to enable them to match their long-term liabilities.
- Principle of Subsidiarity (Art. 5 (3) EUV)
The Union can therefore only act in a policy area if the action forms part of the competences conferred upon the EU by the Treaties (principle of conferral), if in the context of competences shared with Member States, the European level is most relevant in order to meet the objectives set by the Treaties (principle of subsidiarity) and if the content and form of the action does not exceed what is necessary to achieve the objectives set by the Treaties (principle of proportionality).

In-depth analysis necessary:

Based on the diversity of business models in the European banking system it is, indeed, crucial to use a more targeted and proportional regulatory and legislative approach.

However, not only banking sectors are diverse, but also capital markets. Consequently, a comprehensive economic analysis is highly recommended in order to assess where and to which extent EU-wide impediments for capital market based investments exist and to indicate measures by which these barriers could be removed or minimised. Thus, it is essential to use a country-by-country approach when analysing the impacts of the upcoming concrete measures following this Green Paper on all 28 Member States.

Furthermore, when assessing potential follow-up measures it is of utmost importance to evaluate the macro economic situation of the Member States. Reasons for the lack of growth are complex and multi-faceted.

Regarding the questions raised in the Green Paper:

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

We agree to the view of the Commission that these 5 provisions should be the priority areas for the short term work. However, these priorities should be developed against the background of our three priorities as banks (see above: Level playing field between capital market oriented and non-capital market oriented banks, focus on small banks, importance of deposits). The banking sector is and will remain essential for the return to sustainable growth of the EU economy.

Additionally we suggest the revision of the legal framework for both the intermediaries and the end investors to ensure a broad access for a growing number of capital suppliers right from the beginning.

We believe that the mentioned provision should be completed in a short period of time, at the latest. At least during this legislative period of the EU-Commission.

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?

We are of the opinion that any changes of the legal framework for SME should not lead to further administrative burden or implementing costs for SME.

We would like to express our strong concern regarding additional obligations for banks with respect to the availability of credit information.

Furthermore we suggest that member states should facilitate (public) information platforms for SMEs in their countries in order to alleviate SMEs access and administrative obligations while searching for financing alternatives.

As regards the potential implementation of any credit registries or similar, we would like to underline that banks cannot be made liable for any credit information which might be delivered.

A compulsory introduction of the IFRS scheme for SMEs steps into the wrong direction.

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?

Market led efforts to establish common standards are of importance to ensure trust and to enable more cross border investments in this area.

The maximum amount of € 250 000 and 150 persons for an exception from the prospectus requirement should be evaluated.

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

Considering the access of SMEs to financing the CMU-initiative should emphasize on:

- reducing the administrative / cost burden for SMEs intending to issue securities;
- facilitating the (high quality and transparent) securitisation - intensifying the possibilities of intermediaries (UCITS, AIFs, ...) to acquire high quality securities from SMEs, listed/traded on public as well as on private markets.

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?

We strongly believe that more standardisation is a prerequisite to ensure more liquidity in corporate bond markets. To a large extent appropriate measures can be taken by the market itself and/or by best practice rules. We consider that these allow for improving transparency for corporate bonds.

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?

- We believe that the market forces are well performing regarding the development of ESG-investments and especially green bonds for which substantially rising demand can be observed.
The EU should look at the appropriateness of legal frameworks for institutional investors to acquire this kind of investment.
- A standardisation of what is called „Green Bonds“ or „Social Bonds“ would be desirable. Currently the issuance of each Green Bond has to be audited independently but there is no global standard yet. On global level, the United Nations-supported Principles for Responsible Investment (UN PRI) Initiative is working on the development of fixed income SRI (Socially Responsible Investing). As the PRI Initiative has quickly become the leading global network for investors to publicly demonstrate their commitment to responsible investment, we would like to recommend a cooperation with UN PRI to the European Institutions.

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 an SME growth market? If so, under which conditions?

We are sceptical of the idea to introduce the International Financial Reporting Standards (IFRS) as a single accounting approach in the EU. Such an introduction would need to go hand in hand with audit processes that analyse capital market suitability. It must be clear that costs and complexity for SMEs would increase. Equally, we are concerned that additional investor protection provisions for capital market products cannot be met by all SMEs without an increase of costs.

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?

For the time being we can observe divergent conditions for crowd-funding in the EU-Member States. In order to support the development of cross border platforms the Commission should look to the different approaches and identify best practice examples. Currently crowdfunding investors mostly have personal connections to or know the developer of the crowdfunded project personally. In order to facilitate cross-border crowdfunding the investor information gap needs to be closed. However, new risks for investors have to be avoided.

We urge the EU-Commission to keep in mind already existing legal frameworks when establishing a new common legal framework for crowdfunding.

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?

In a low yielding environment institutional investors are looking for higher returns. Unfortunately due to recently introduced or forthcoming legal restrictions they had to reduce the amount of “alternative investments” and are forced to invest mainly into government bonds preventing them from investing larger amounts into more “risky and volatile” assets. In addition due to accounting rules institutional investors are forced to look at more continuous performing assets - which imply they are dedicated to a rather short term investment focus - and in contradiction to their intrinsic business model matching long-term liabilities with long-term assets.

We would like to urge the Commission to look at the regulatory framework for institutional investors thus ensuring a balance between access to more risky capital market products and the respective capital requirements. We consider a broader scope for investments as another cornerstone for the development of a capital market union.

Furthermore we recommend eliminating the imparity in the tax treatment between debt and equity investments (e.g. the double taxation of dividends).

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 benefitting from economies of scale?

Recent regulation (e.g. AIFMD and UCITS V) has contributed a lot to raise the costs for fund managers in both setting up and marketing their products. The administrative burden for fund managers should be re-evaluated to distinguish between provisions which really improve investor protection and financial stability on one side and those who are of little help but have a substantial negative cost impact on fund managers on the other side.

Furthermore we would suggest that ESMA conveys a study throughout Member States to explore potential obstacles, gold plating for cross border marketing of funds (which still persists) and even tax-discrimination to protect their domestic financial industry. Last but not least recent financial regulation - especially MIFID II - contains provisions which will dilute the role of UCITS and AIFs as intermediaries and prevent especially smaller banks from actively offering them (e.g. due to stricter regulations regarding “inducements”). European investment funds are - compared to their US-counterparts - relatively small in size, regardless whether they are UCITS, AIFs, Private Equity Funds or Venture Capital Funds. This is the result of a large number of providers, fragmented markets and a lack of risk investment culture in Europe. Improvements to this situation are of very long term nature hence cannot be the immediate step to be taken by the CMU initiative. Instead we would recommend first to improve investment rules related to the acquisition of SME-securities in any form, to reduce unnecessary cost burdens for them and to take measures to raise their attractiveness to both retail and institutional investors.

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 CRDIV/CRR and Solvency II? There are elements of this question unclear: what kind of infrastructure investments are referred to by the EU-Commission, could the EU-Commission give examples? Who would bear the credit risk if such infrastructure projects run by Member States? In case of cross-border infrastructure projects, who would be the responsible authorities? When talking about changes in prudential rules in favour of the development of the EU capital markets union we would like to express our concern regarding the level playing field between capital market oriented companies and non-capital market oriented companies. Legal changes in prudential rules or other legal changes must not lead to the discrimination of non-capital market oriented banks compared to capital market oriented banks.

13) Would the introduction of a standardised product, or removing the existing obstacles to cross border access, strengthen the single market in pension provision? We are not entirely sure what is meant by standardised product. Any action reducing the obstacles to investments will be important for a dynamic recovery of the European Economy. The measures should however not reduce the multitude of products and should not lead to disadvantages for existing and well established products and products of smaller manufacturers.

14) Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU regulated funds to run these types of funds? What other changes if any should be made to increase the number of these types of fund? We believe that both regulations are sufficiently calibrated to enable the desired cross border investments in risk capital. We are not so sure about the demand-side for these products and assume that there is still need for adjustments in the (investment-) regulations of institutional investors to generate the desired funds.

EUVECA: Revise the requirement of Art 6: professional client and minimum amount of 100 000.- Euros.

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? We believe that through the framework of existing regulation (see above question 12) the necessary legal requirements for the development of private equity and venture capital funds are already in place.

Nevertheless the Commission should have a look at the regulation for intermediaries (UCITS, AIFs) or institutional investors (Solvency II, CRDIV/CRR) analysing whether they are allowed to invest (sufficiently) into those investment instruments. Last but not least an overhaul of tax regulation in the Member States providing for an equal treatment of debt and equity investments complemented by tax incentives for the returns of these

investment classes could contribute to a boost in the scale of private equity and venture capital funds.

Another important aspect is the potential exit scenario for firms investing in both private equity and venture capital funds. For that purpose the environment for IPOs and listing on stock exchanges as well as the general investment culture and attitude towards risk capital has to be significantly improved.

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

We emphasise that creating a level playing field among market participants needs to be an integral part of all actions linked to creating a genuine capital markets union.

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

We believe that already today UCITS are sold heavily cross border in the majority of EU-member states.

For further improvements we would recommend a harmonization in tax laws regarding domestic versus cross border UCITS considering there are still (direct or indirect) obstacles existing with the clear aim to protect the respective domestic fund industry.

18) How can the ESAs further implement their mandate to ensure investor protection?

We believe that current legislation for the particular products is more than sufficient to ensure appropriate investor protection. We are concerned that additional investor protection provisions for capital market products cannot be met by all SMEs without a huge increase of costs. In addition additional investor protection would hinder the aim of enhancing investments in SMEs. Therefore additional investor protection provisions should be avoided.

We would like to highlight that investor protection rules should apply to all financing models to the same extent. Hence, the ESAs should contribute to creating a level-playing-field between bank financing models and alternative non-bank financing models.

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

- We believe that besides investor education issues and cultural aspects the taxation of capital market investments (and their respective returns) plays a role in encouraging retail clients to invest more or less funds there. The idea of an additional Financial Transaction Tax is another step in the wrong direction. This tax would inhibit to a large extent retail investors from transferring their investments into capital markets thus reducing their potential pension savings through inferior investment results - irrespective of other detrimental consequences of this tax to capital markets and their stakeholders.

Furthermore we are of the opinion that retail investor should get access to capital markets through simple and well diversified products like UCITS, which means that UCITS (and maybe also some AIFs) are one of the cornerstones for a prospering capital markets union.

- Austria has been one of the pioneers with the implementation of the so-called “Umweltzeichen”, an ecology badge that can be given to investment products by the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water

Management. In France the Novethic-Label covers similar targets. In Germany a working group accompanied by Novethic and several asset managers are currently working on a project to launch a similar seal of quality later on this year. Besides, in certain countries national labels for sustainable investments exist which have to be checked regularly by the competent authority. Only in case all preconditions are met the competent authority allows the re-use of the label.

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

One of the simplest products for retail clients are funds of funds (funds of UCITS) which are offering in most cases a simple portfolio management for a variety of asset classes as well as a broad diversification effect thus offering a well-functioning protection mechanism.

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

We are of the opinion that investors from outside the EU would appreciate a more common EU-approach regarding capital markets in terms of harmonised products on a EU-level.

However, according to the principle of proportionality, any rules, such as supervisory rules, need to be tailored to a bank's respective business model and risk profile, in order to achieve a balance between credit funding and funding via the capital markets.

22) What measures can be taken to facilitate market access of EU firms in third countries?

- A first measure would therefore be to stop further dis-incentives for market making in any upcoming regulation or taxation. In that context, it is important to stress that market making should be rather defined on a macro level than on a micro level. Otherwise, an exemption might be meaningless.

Otherwise, an exemption might be meaningless.

- A second measure could be to incentivize banks to take over market maker roles.
- A third approach would be to introduce formal obligations for banks carrying out market maker activities.

- International securities settlement:

The settlement of securities could be further standardised by enhancing the cooperation between national and international custodians.

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?

Market making in debt securities:

Banks had been forced to curtail balance-sheet capacities through recently implemented and currently planned regulations (CRD III, CRD IV, CRR I, Fundamental Review of the Trading Book, Financial Transaction Tax, Prudent Valuation, Bank Structural Reform, MiFID II).

Even though exemptions for market making were sometimes embedded or foreseen, the overall regulatory impact on the liquidity in capital markets is high.

25) Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to national or EU level supervision would materially contribute to developing a capital markets union?

We believe that the powers of the ESAs to ensure consistent supervision are sufficient. ESAs should clearly follow the framework of L1 legislation and avoid any additional “policy-making” through L2 or L3-provisions not covered by the mandate of L1 - as consistency with Level 1 is a significant factor for planning reliability (see above General Comments).

In addition the ESAs should continue to work closely together and harmonise their frameworks and rules. Besides we would welcome more transparency in the work of the ESAs, e.g. explanations why suggestions received in the course of consultations were not taken into account into final documents. We would like to highlight that investor protection rules should apply to all financing models to the same extent. Hence, the ESAs should contribute to creating a level-playing-field between bank financing models and alternative non-bank financing models.

27) What measures should the EU take 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?

To ensure inexpensive exchange of liquidity in the markets (regarding price and RWAs) the exchange of collateral between the market participants should be enhanced. In this context collateral as such should be considered as another form of liquidity. Furthermore market participants require an easy exchange of collateral in order to adjust to the respective risk appetite (the collateral quality requirements vary significantly among banks) and to utilize excess collateral.

A potential measure to enhance collateral flow is to explicitly exempt collateralized trades from taxation (e.g. bank levy) in the same manner as money market (uncollateralized exchange of liquidity). Due to the low risk, low margin and high volume nature of the securities finance business (repos and securities lending) it is particularly vulnerable to external cost.

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?

As already mentioned above we would like to refer to the harmonization processes that are already taking place at the EU-level regarding company law. Any new legal frameworks must take into account national realities, such as voluntary national corporate governance codes.

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

As already mentioned above we would like to refer to the harmonization processes that are already taking place at the EU-level regarding insolvency law.

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 envisaged Financial Transaction Tax would work in contradiction to the objectives of the CMU and, therefore, negotiations on the FTT should be ceased.

Considering tax obstacles the EU should look at three main areas:

- Tax rules affecting companies looking for financing;
- Tax rules applying to potential investors, whether they are retail or institutional investors, endowments or HNIs regarding their investments/investment returns; (e.g. improvement of withholding tax relief on cross border interest and dividend payments)
- Tax rules concerning market transactions (like a FTT) ;
- Imposing tax incentives that support the goals of the Capital Market Union (e.g. tax deductions for earnings received from companies which were able to increase employment in the respective period....)

First of all the EU should urge Member States to get rid of any unequal treatment of debt and equity financing for companies to force more equity-like investments, this would unleash more capital resources for them. In addition, we recommend an overhaul of tax laws concerning the taxation of investment income for (all kinds of) investors to avoid distortions and provide the appropriate stimulus to further enhance capital markets. Furthermore, we are convinced that initiatives to introduce an FTT in a limited number of countries is absolutely counter-productive to the goals laid down in the CMU Green Paper. Considerations to implement an FTT should - if at all - be made at global level (OECD, IOSCO,...) to avoid any distortions particularly to European Capital Markets.

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?

We are convinced that new technologies could contribute a lot for the benefit of capital markets, e.g. through providing information tools to raise the transparency level of company data respectively credit information, the transparency of product data and features, providers and trading prices. Electronic trading platforms provide for more frequent trading, better transparency and ensure better liquidity to capital markets. Cross-border settlement facilities will improve cross-border trading both within the EU and from investors outside the EU.

In addition we believe that information platforms for companies (SMEs) seeking better access to finance, product-providers looking for investment opportunities and investors will offer substantial benefits for the development of capital markets.

32) Are there other issues, not identified in this Green Paper, which in your view require EU action to achieve a Capital Markets Union? If so, what are they and what form could EU action take?

We consider the following aspects as ancillary input for the capital market union initiative:

- The strengthening of capital markets requires financial knowledge and education on the connectivity between the economy and capital markets. It is necessary to implement broad educational initiatives at schools, at universities and for the general public. Financial literacy initiatives should contain basic information on the economic and financial circuits as well as information on capital markets. The goal should be

twofold: on the one hand to inform people about possibilities of investments, and on the other hand to inform about ways to finance businesses through capital market instruments.

- Apart from the positive sentiment for capital markets we suggest initiatives to strengthen the entrepreneurial spirit and motivate people to start their own business. Such rise in entrepreneurial spirit would have positive effects on the demand of capital market products.

We ask you to give our remarks due consideration.

Yours sincerely,

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