



The United States Commodity Futures Trading Commission and the European Commission: Common approach for transatlantic CCPs

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The European Commissioner for Financial Stability, Financial Services and Capital Markets Union, Jonathan Hill, and United States Commodity Futures Trading Commission (CFTC) Chairman Timothy Massad today announced a common approach regarding requirements for central clearing counterparties (CCPs).

Commissioner Hill said: *“This is an important step forward for global regulatory convergence. It means that European CCPs will be able to do business in the United States more easily and that US CCPs can continue to provide services to EU companies. It has taken a long time, but it is good news that after more than three years of discussion, we are now able to provide certainty for the marketplace. I am grateful to Chairman Massad and his team for all their work in helping us get to this point.”*

Chairman Massad said: *“Our agreement is critical to ensuring that our global derivatives markets remain robust, while keeping our financial system as stable and resilient as possible. It is a significant milestone in harmonizing regulation of these markets. I thank Commissioner Hill for working in a constructive and collaborative manner to resolve this issue.”*

The approach

Following this agreement the European Commission intends to adopt shortly an equivalence decision with respect to CFTC requirements for US CCPs which will allow ESMA to recognise US CCPs as soon as is practicable. Once recognised by ESMA, US CCPs may continue to provide services in the EU whilst complying with CFTC requirements. The CFTC staff will propose a determination of comparability with respect to EU requirements, which will permit EU CCPs to provide services to US clearing members and clients whilst complying with certain corresponding EU requirements. The CFTC staff will also propose to streamline the registration process for EU CCPs wishing to register with them.

Derivatives markets are global in nature. A common approach to their regulation and supervision is critical to supporting cross border activity and maintaining financial stability.

Both the CFTC and EU requirements are based on international principles, which accounts for the high degree of similarity between the two regimes. The CFTC staff and the European Commission will work together, along with counterparts across the global regulatory community, to enhance the granularity of these principles and further harmonise the standards to which internationally active CCPs are held.

The steps needed to implement this agreement will be put into place as soon as practicable. The CFTC staff and the European Commission Services will work to ensure that changes are implemented in a coordinated manner, and to monitor the impacts resulting from the sequencing of the changes and assess whether any further actions must be taken to ensure financial stability or prevent regulatory arbitrage.

The common approach follows detailed analysis of the CFTC and EU regulatory requirements and of the financial resources of EU and US CCPs.

Key elements of the approach:

1. EU Equivalence

The European Commission will shortly propose for adoption an equivalence decision in respect of US CCPs. Equivalence is necessary so that ESMA can recognise US CCPs wanting to serve EU markets. Once recognised by ESMA, a US CCP may continue to provide services in the EU by complying with US requirements. It will also become a *qualifying CCP* for the purpose of the EU Capital Requirements Regulation, lowering costs for EU banks and their subsidiaries.

The proposed determination of equivalence is based on the condition that CFTC-registered US CCPs seeking recognition in the EU confirm that their internal rules and procedures ensure:

- for clearing members' proprietary positions in exchange traded derivatives, the collection of initial margins that are sufficient to take into account a two day liquidation period.
- that initial margin models include measures to mitigate the risk of procyclicality.
- the maintenance of 'cover 2' default resources.

The conditions will not apply with respect to US agricultural commodity derivatives traded and cleared domestically within the US. This takes account of the significant nexus of these US contracts with the US economy, the importance of these contracts to US farmers and ranchers and recognises the low degree of systemic interconnectedness of these markets with the rest of the financial system.

In addition, the European Commission will shortly propose the adoption of an equivalence decision under EMIR to determine that US trading venues are equivalent to regulated markets in the EU, providing a level playing field between EU and US trading venues for the purposes of the MIFID I framework.

Before an equivalence decision is adopted by the Commission, Member State authorities must vote in the European Securities Committee. Once a decision is adopted, ESMA will proceed to complete the process for recognising applicant US CCPs, including the execution of a cooperation arrangement with the CFTC, providing for the ongoing sharing of information with respect to CFTC-registered US CCPs recognised in the EU. During the recognition process, CFTC-registered US CCPs will continue to benefit from any transitional relief under the Capital Requirements Regulation including any extensions that are granted.

2. CFTC Substituted Compliance

The CFTC staff will propose a determination of comparability, concluding that a majority of

EU requirements are comparable to CFTC requirements. This determination will provide a basis for both EU CCPs already registered with the CFTC as derivatives clearing organisations and those seeking registration to meet certain CFTC requirements by complying with the corresponding requirements as set forth in EMIR. In addition, the CFTC staff will propose to streamline the registration process for EU CCPs wishing to register with it, reflecting these similar requirements.

This process will be completed within the same timeframe as the process for EU equivalence and recognition of CFTC-registered US CCPs.

3. Next Steps

The steps required to implement this agreement will be put into place as soon as practicable. The CFTC staff and the European Commission Services will work to ensure that changes are implemented in a coordinated manner, and to monitor the impacts resulting from the sequencing of the changes and assess whether any appropriate action is needed.

The CFTC staff and the European Commission Services will continue to cooperate closely to ensure that the agreed approach is applied consistently and continues to be appropriate with respect to CFTC-registered US CCPs and EU CCPs. Moreover, we will monitor any potential regulatory arbitrage between CFTC-registered US CCPs and EU CCPs. Further, we will continue to monitor global trends and to cooperate closely with each other and with our counterparts across the global regulatory community to ensure that the development of internationally active CCPs outside the European Union and the United States do not create new scope for regulatory arbitrage. The European Commission will continue to monitor jurisdictions for which equivalence has been determined on the basis of proportionality or otherwise, to ensure that differences do not create an unlevel playing field across borders, and may take action accordingly.

EU Clearing Obligations

The European Commission Services recognise that EU market participants may wish to use CFTC-registered US CCPs to satisfy their upcoming central clearing obligations under EMIR. The first phase of clearing obligations for certain interest rate derivative contracts does not take legal effect until 21 June 2016. Market participants may choose to continue to clear these contracts in non-recognised CFTC-registered US CCPs up until that date. This includes contracts concluded on or after 21 February 2016 that are subject to the frontloading obligation. The European Commission Services and the CFTC anticipate that CFTC registered CCPs will be in a position to be recognised by that date and the CFTC will work closely with ESMA to facilitate this process.

Client margining standards

ESMA has recently consulted on the possibility for EU CCPs to apply an alternative standard for client margining. This would allow EU CCPs to comply with standards similar to CFTC requirements in this particular area. Such a change would reduce the possibility for regulatory arbitrage across jurisdictions whilst maintaining high regulatory standards. Therefore, it is necessary to proceed rapidly with the adoption of the relevant standard. The European Commission Services are of the view that any such alternative should also address the scope for regulatory arbitrage between US and EU standards with respect to margin obligations for clearing members and their affiliates.

Further work on international harmonisation

The CFTC staff and the European Commission recognise that the cleared derivatives markets are developing and expanding at a rapid pace across the globe.

CFTC requirements and EU requirements are both based on international minimum standards which accounts for the high degree of similarity between the two regimes. As part of this process, the CFTC staff and the services of the EC assessed differences where the CFTC requirements can be considered to be more stringent than the EU requirements and other differences where the EU requirements can be considered to be more stringent. Nevertheless, the CFTC staff and the European Commission Services believe that there is scope to expand the range of, and add further detail to, the international principles in this area. In particular, CPMI-IOSCO work on CCP resilience provides an opportunity to reflect on whether the standards contained in the PFMI for initial margin methodologies are sufficiently granular and robust.

ⁱ The common approach references only the CFTC's requirements for derivatives clearing organisations. It does not reference the United States Securities and Exchange Commission's (SEC) requirements for clearing agencies which is a separate and distinct regime. The European Commission continues to be in constructive and progressive discussions with SEC staff regarding the SEC's requirements, in the context of the European Commission's analysis of equivalence.