



**U.S. Commodity Futures Trading Commission**

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Mr. Michel Barnier  
European Commissioner for Internal Market and Services  
European Commission  
BERL 12/181  
B – 1049 Brussels  
(Belgium)

May 6, 2014

**RE: U.S. Equivalence Decision and Recognition of U.S. Central Counterparties (CCPs) under the European Market Infrastructure Regulation (EMIR)**

Dear Commissioner Barnier:

I write to you on a matter of significant concern and urgency regarding the upcoming deadline of June 15, 2014 for higher capital standards on all third country CCPs that are not recognized under EMIR, pursuant to the Capital Requirements Directive (CRD IV).

As you know, after June 15, third country CCPs that do not receive recognition will not qualify as Qualifying CCPs (QCCPs) for purposes of the Basel III risk-weighting approach for banking institutions. This undesirable result could potentially cause market disruption and dislocation due to the international nature of the swaps market and the prohibitive cost for EU banks to clear through third country CCPs.

In addition, without recognition, U.S. CCPs will be unable to maintain direct clearing member relationships with EU firms. U.S. CCPs would also be ineligible to clear contracts subject to the EU clearing mandate next year.

These scenarios would be detrimental to both U.S. and EU interests by leading to market fragmentation and contraction of liquidity.

Under the Path Forward of July 11, 2013, the U.S. and the EU reaffirmed their strong commitment to G20 principles to lower risk and promote transparency in the over-the-counter (OTC) derivatives markets in order to monitor systemic risk and prevent another great financial crisis. Together, the CFTC and the European Commission (EC) pledged to work closely and collaboratively to implement regulations to mandate swap data reporting, exchange trading, and CCP clearing through a system of substituted compliance or equivalence.

Although I am confident that the U.S. and the EU will successfully harmonize the implementation of G20 principles, I am concerned that the process for the EC's equivalence decision for the U.S. regulation of OTC derivatives, as established under Title VII of the Dodd-Frank Act, will impede the recognition of U.S. CCPs prior to the June 15 deadline. I would like to offer my services to assist you in finding the U.S. regulatory regime equivalent under EMIR in an expedient manner.

The Path Forward acknowledged that U.S. implementation of OTC derivatives reform is nearly complete. Last year, the CFTC finished adopting the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs).<sup>1</sup> Further, in keeping with the commitments made in the Path Forward, the CFTC has issued substituted compliance determinations and recently provided relief for EU-regulated multilateral trading facilities (MTFs).

It is my understanding that although over 33 non-EU CCPs from 15 jurisdictions filed for recognition last September, no application has yet been deemed complete. Given that there is only one month left before the June 15 QCCP relief expires, I hope that you will devote your attention to this important issue at this time.

I also note that other jurisdictions are looking to your decision on U.S. equivalence to see whether a holistic approach is being followed, and what they can expect for their own equivalence decisions.

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<sup>1</sup> CFTC regulations have fully implemented the PFMIs. *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69,334 (Nov. 8, 2011); Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 Fed. Reg. 49,663 (Aug. 15, 2013); Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 72,476 (Dec. 2, 2013).

Accordingly, I urge you to proceed with all diligence to find the U.S. regulatory regime equivalent under EMIR so that the European Securities Market Authority (ESMA) may recognize U.S. CCPs by June 15. Although there may be some nominal differences between our regimes, our respective rules comply with the PFMI and are essentially identical as a result of the collaboration, coordination, and cooperation between the CFTC and EC. I commend you for your leadership in this regard.

I reiterate my firm belief that the key to effective and efficient cross-border regulation of the swaps market is through an outcomes-based approach where regulators would defer to the other jurisdiction when it is justified by the quality of their respective regulation and enforcement regimes. The CFTC has made an initial start towards permitting foreign exchange trading by providing relief for Qualified MTFs.

While we are essentially agreed on higher capital and margin requirements for OTC derivatives, we still need to come to agreement on swap data reporting and international data sharing. Your initiative in promoting the recognition of U.S. CCPs would provide a much-needed push to the resolution of exchange trading and data sharing issues.

I am encouraged by the steadfast progress made by our two jurisdictions to implement the G20 principles while avoiding conflicts of law, inconsistencies, and legal uncertainty. In the spirit of the Path Forward, I hope that we can continue to find substituted compliance for your regulations, on the one hand, and equivalence for our regulations, on the other hand.

Thank you for your personal commitment to working through these important issues concerning U.S. equivalence and CCP recognition. I am happy to answer any questions you might have or discuss this further.

Sincerely,



Scott D. O'Malia

Commissioner

U.S. Commodity Futures Trading Commission

cc: Jonathan Faull  
Patrick Pearson  
Maria Teresa Fabregas Fernandez  
Mario Nava  
(European Commission)

Steven Maijoor  
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