

EU and CFTC: Mutual Recognition of Derivatives Trading Venues

The European Commission has today adopted a decision recognising certain trading venues authorised by the Commodity Futures Trading Commission (CFTC) as eligible for compliance with the EU trading obligation for derivatives. This decision ensures that EU counterparties can trade the derivatives instruments that are subject to the trading obligation, such as interest rate swaps and index-based CDS, on CFTC-authorized Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs) in the United States. This decision does not affect the ability of EU counterparties to continue to trade on any CFTC-authorized SEF or DCM with respect to those derivatives which are not subject to the EU's trading obligation.

In line with the Common Approach between the European Commission and the CFTC announced on 13 October 2017, CFTC staff has recommended to the Commission that the CFTC issue an order of exemption from the CFTC's SEF registration requirement, with respect to MTFs and OTFs authorized in the EU. The order would enable US counterparties to comply with the CFTC's trade execution requirement, by executing swaps subject to that requirement on MTFs or OTFs that have been exempted by the order. These MTFs and OTFs also would be able to offer trading in swaps that are not subject to the CFTC's trade execution requirement to US counterparties.

Valdis Dombrovskis, European Commission Vice-President in charge of Financial Stability, Financial Services and Capital Markets Union, said: *"Today's decision on equivalence, together with the CFTC staff's recommendation for an exemption order, confirms how global cooperation can bring tangible benefits to market operators on both sides of the Atlantic. European firms can continue trading in derivatives on US trading platforms and effectively hedge against risk, setting conditions for stronger growth in Europe. On the other hand, US firms can hedge their exposures on EU platforms, facilitating trade and exchange between the EU and the US. This is an excellent example of how a safe, yet global, trading environment can be ensured in a spirit of open cooperation. Stability of global financial markets requires joint effort of regulators. I want to thank Chair Giancarlo and his team for working with us towards this mutually beneficial outcome."*

J. Christopher Giancarlo, Chairman of the CFTC, said: *"I welcome the European Commission's decision on equivalence for US trading venues regulated by the CFTC. It represents the third time in two years that the CFTC and the European Union have been able to work together to reach a positive equivalence decision -- first in 2016 with respect to central clearinghouses, earlier this year with respect to margin requirements for uncleared swaps, and today with respect to trading venues. These decisions, including all of their relevant conditions, are significant achievements, which should be enduring, as they are essential to ensuring a strong and stable trans-Atlantic derivatives market that supports economic growth both in the European Union and the United States. I thank Vice President Dombrovskis and his staff for all of their work in reaching this positive result. I also welcome and support the CFTC staff recommendation to the Commission for an exemption order applicable to EU trading venues and encourage my fellow Commissioners to act expeditiously in approving the order."*

Background

The EU and the CFTC have implemented the G20 commitment on derivatives trading by requiring that the most liquid derivative instruments be traded on authorised trading venues.

In the EU, the new MiFID II and MiFIR framework will apply as of 3 January 2018. As of that date, EU financial and non-financial counterparties are required to conclude transactions in derivatives declared subject to the trading obligation on EU trading venues or third-country trading venues recognised by the European Commission as equivalent. Derivatives that will be subject to the EU trading obligation have been designated by EU regulators and comprise of euro, dollar and pound interest rate swaps in the most common benchmark tenors, as well as index-based CDS.

Transactions involving swaps that are subject to the CFTC's trade execution requirement must be executed on a CFTC-authorized SEF or DCM, or on a trading venue that has been granted an exemption from the requirement to register with the CFTC as a SEF. The exemption recommendation for EU-authorized MTFs and OTFs that is currently before the CFTC, represents the first instance in which the CFTC has adjudicated an exemption from the SEF registration requirement. Swaps subject to the trade execution requirement include the most liquid benchmark tenors in interest rate swaps denominated in dollars, euros, and pounds and index CDS.

The agreed approach to mutual recognition will allow counterparties to satisfy the EU trading obligation for derivatives on the SEFs and DCMs that the European Commission has recognized as equivalent, and will allow counterparties to satisfy the CFTC's trade execution requirement on MTFs and OTFs that are granted exempt SEF status by the CFTC.