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The Looming Cross-Atlantic Derivatives Trade War: "A Return to Smoot-Hawley"

September 24, 2014

Introduction

Hello ladies and gentlemen. Thank you for your warm welcome. It is a pleasure to be with you today.

Thank you, Walt, for your kind introduction. I am honored to give this keynote address.

Let me start by saying that my remarks reflect my own views and do not necessarily constitute the views of the Commodity Futures Trading Commission (CFTC), my fellow CFTC Commissioners, or of the CFTC staff.

Today marks the fifth anniversary of the Pittsburgh G-20 Summit. At that critical meeting a year after the financial crisis, global leaders agreed to work together to support economic recovery through a "Framework for Strong, Sustainable and Balanced Growth."[1] The G-20 leaders agreed upon three fundamental principles[2] for over-the-counter (OTC) derivatives markets: One, when possible, trading all standardized OTC derivative contracts on regulated trading platforms; Two, moving many bilateral swaps to central counterparties (CCPs) for clearing; and Three, reporting swap trades to trade repositories.[3] To achieve these common goals, the Pittsburgh participants pledged to work together to "implement global standards" in financial markets, while rejecting "protectionism."[4]

So here we are today, five years after Pittsburgh at this important gathering of major participants and regulators in the global derivatives markets. Let us ask ourselves: Are we fully honoring the commitment to coordinate our efforts to reform the derivatives markets? Are we avoiding protectionism? Or are we, in fact, building a new 21st century protectionism around regional financial markets, especially in swaps and futures?

I am afraid many of you, based on your participation in the markets, already know the answers to those questions, and they do not inspire confidence for the future. But let us examine the state of each common goal from that G-20 summit in Pittsburgh.

Swaps Clearing

Let's start with the uncoordinated approach to swaps clearing.

The CFTC was one of the first regulators of the G-20 to implement clearing mandates. The CFTC also adopted the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs) last year.[5] The CFTC patterned its swaps clearing rules on its rules for clearing futures that have worked successfully for decades.[6] The CFTC's rules do not require that swaps clearing take place in the United States, even if the swap is in US dollars and between US persons. But the CFTC does require that swaps clearing take place on a CFTC-registered and supervised clearinghouse or CCP that meets core principles and basic standards, including the IOSCO PFMIs.

In spite of these steps by the CFTC, the European Commission (EC) has not recognized US CCPs as equivalent under the European Market Infrastructure Regulation (EMIR), as it reportedly plans to do for CCPs in India, Japan, Hong Kong, Australia and others.[7] As you know, if the EC does not recognize US CCPs as equivalent, they will not qualify as "qualifying" CCPs for purposes of Basel III risk-weighting for banking institutions. This will make it cost-prohibitive for EU banks to clear through US CCPs, which will be unable to maintain direct clearing member relationships with EU firms and will be ineligible to clear contracts subject to the EU clearing mandate next year.[8]

Needless to say, this outcome will be destructive to both US and European economic interests and lead to further market fragmentation and contraction of liquidity, market disruption and dislocation in the global derivatives markets.

Yet, this lack of coordination in swaps clearing does not exist in a vacuum. It is preceded by an uncoordinated approach to regulation of swaps trading.

Swaps Trading

I believe my agency, the CFTC, started the current rift in cross-Atlantic swaps cooperation with its July 2013 "Interpretative Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations" (Interpretive Guidance).[9] In essence, the Interpretative Guidance asserted that every single swap a US Person enters into, no matter where it is transacted, has a direct and significant connection with activities in, and effect on, commerce of the United States that requires imposing transaction rules of the CFTC.

Several months later, the CFTC issued a "Staff Advisory" that declared that, even if no US person is a party to the trade, CFTC trading rules apply if it is "arranged, negotiated, or executed" by personnel or agents of a non-US swap dealer located in the US.[10]

Taken together, these CFTC pronouncements say that CFTC trading rules apply anytime and anywhere a US Person is a party to a swaps trade or the trade is assisted from US shores.

Making things worse, the CFTC swaps trading rules contain a host of peculiar limitations based on practices in the US futures markets that have not been adopted in the EU[11] or anywhere else. Several of these peculiar CFTC swaps trading rules are contrary to common practice in global markets and are unlikely to be replicated by non-US regulators, including:

- Trading only on order books and request for quote (RFQ) systems to TWO then THREE counterparties;12
- Exchange-certified "made available to trade" determinations;13
- Swap Execution Facility (SEF) position-limit maintenance and enforcement;14
- Limitations on counterparty transparency;15 and
- Treating swaps not accepted for clearing as "void ab-initio."16

Now I have long been a critic of these rules. And so my criticism is not new and is not directed at the staff of the CFTC who worked hard to adapt existing trading models to meet greatly expedited implementation deadlines.

Nevertheless, the combined effect of the CFTC's Interpretative Guidance and Staff Advisory[17] – neither of which are formally adopted CFTC rules – is to dictate that non-US market operators and participants must abide by the CFTC's peculiar, one-size-fits-all swaps transaction-level rules for trades involving US persons or supported by US based personnel.

The avowed purpose of the CFTC's broad assertion of jurisdiction is to insulate the United States from systemic risk. Yet, on the ostensible grounds of ring-fencing the US economy from harm, the CFTC purports to tell global swaps markets involving US persons to adopt particular CFTC trading mechanics that do almost nothing to reduce counterparty risk. In the words of one former senior CFTC advisor, the Interpretative Guidance "yoked together rules designed to reduce risk with rules designed to promote market transparency. Yet it provided almost no guidance about how to think about the extraterritorial application of market transparency rules independent of risk. As a result, [the CFTC prescribed] how to apply US rules abroad based on considerations that are tangential to the purposes of those rules."[18]

Putting it another way, it's as if the US Center for Disease Control, in order to protect the US population from an offshore outbreak of a deadly virus, dictated that EU doctors could give vaccines to American patients only in accordance with US protocols for syringe sterilization and disposal. How would such a requirement prevent a contagion from spilling onto US shores? It's difficult to make the connection. Similarly, it's difficult to make the connection between the application of US trade execution rules to offshore trades and risk to the US economy. The prescription is unrelated to prevention of the disease.

Market Fragmentation

This uncoordinated approach to the regulation of swaps execution has fragmented global markets. Since the start of the CFTC's SEF regime in October 2013, and accelerating with mandatory SEF trading in February 2014, swaps markets have divided into separate trading and liquidity pools between those in which US persons are able to participate and those in which US persons are shunned. Liquidity has been fractured between an on-SEF, US person market on one side, and an off-SEF, non-US person market on the other. Non-US person market participants are curtailing transactions with US counterparties to avoid getting caught up in the CFTC's peculiar US swaps trading rules. Users of swaps products are choosing to do business with global financial institutions based more on the institution's regulatory jurisdiction than traditional factors such as quality of service, product expertise

and historic relationship.

According to a survey conducted by the International Swaps and Derivatives Association (ISDA), the market for US and euro interest rate swaps (IRS), two of the most widely used products for hedging, has split over the past 12 months.[19] Volumes between European and US dealers have declined 77% since the introduction of the US SEF regime.[20] The average cross-border volume of euro IRS transacted between European and US dealers as a percentage of total euro IRS volume was 25% before the CFTC put its SEF regime in place, and has fallen to just 9% since.[21]

Rather than controlling systemic risk, the fragmentation of global swaps markets into regional ones is increasing risk by Balkanizing pools of trading liquidity and market pricing.

With the CFTC's SEF regime dividing trading in global swaps markets between US persons and non-US persons, can we risk further dividing US and European markets in derivatives clearing? That would be the effect if the EU does not recognize US CCPs as equivalent under EMIR.

Now, I can fully understand if some observers of the European resistance to CCP equivalence are reminded of the old idiom: "turnabout is fair play." If the Americans can over-reach when it comes to swaps execution, why shouldn't the Europeans over-reach on swaps clearing?

American writer, Mark Twain, is said to have noted that "History does not always repeat itself, but it often rhymes." I think I hear a rhyming verse in the current dispute over regulatory jurisdiction that has played out before on a much bigger global economic stage.

The Smoot-Hawley Tariff Act of 1930

Let me pause for a moment and take us back over a century to the end of the 19th century and into the early 20th century. Then, North American and European trade in agricultural and manufactured goods grew from regional, national and continental markets to trans-Atlantic and trans-oceanic markets that transformed the European and American economies over the long term.

That process of market expansion came to a halt, however, following the US stock market crash of 1929. The reversal was initiated by the drafting and passage by the US Congress of the infamous Smoot-Hawley Tariff Act of 1930 that steeply hiked tariff rates on over 3,300 categories of imported agricultural and manufactured goods.[22] Smoot-Hawley came into effect just as the United States was descending into the Great Depression. Promoters of the law said it was necessary to raise US agricultural prices and help American farmers.[23] They gave little consideration to what the international reaction would be to the higher tariffs.[24]

Smoot-Hawley did not cause America's Great Depression, but it made it worse than it might otherwise have been by contracting both US imports and exports and inviting harsh retaliation.[25] It surely failed in its promised objective of increasing US farm income.[26]

Instead, Smoot-Hawley abdicated US economic leadership and poisoned commercial relations with its major trade partners.[27] Smoot-Hawley was interpreted as a declaration of trade war at a critical time in the world economy. Smoot-Hawley made the US a special target of discriminatory trade retaliation from some of the US' largest and most important trade partners.[28] It led other countries to form preferential trading blocs that discriminated against the United States, diverting world trade and delaying economic recovery on both sides of the Atlantic.[29] The formation of European trading blocs failed to stem Europe's trade deterioration. Rather, they worsened Europe's economic decline through the 1930s, culminating in a devastating world war and the annihilation of Europe's economy. This trade war was not fully reversed until the General Agreement on Tariffs and Trade a decade later.

Current Situation

Now, let me take us into more recent history.

Starting in the middle of the second half of the 20th century, regional and national markets for financial products expanded into global markets with the result of rising employment and standards of living for over a generation. The era produced a new term, "globalization," denoting increasing interdependence of economic and cultural activities.

Then the financial crisis of 2008 rocked world markets. Global trade in financial products was not the primary cause of the crisis, nor even, as some claim, was a lack of bank and financial regulation.[30] Certainly, however, deficiencies in the global swaps and derivatives market structure, regulation and supervision made the crisis harder to resolve. When swap

obligations of many of the world's major financial institutions threatened to default and trigger a domino effect of failing banks, a global financial panic ensued – a panic that only ended when the US, UK and other governments stepped in to backstop the banks' balance sheets and credit worthiness.

Return to the Spirit of Pittsburgh Accords

The question before us six years after the financial crisis is whether we will return to the path of global markets and growth for a more prosperous 21st century; or will we again fall into the 20th century trap of market protectionism with its devastation on prices, economic growth and jobs – devastation that will certainly fall hard on both sides of the Atlantic.

I am here today to call for a reset in the EU and CFTC cross-border regulatory relationship in the spirit of the Pittsburgh G-20 accord. I call for this reset to avoid a trade war in financial markets akin to that which worsened the Great Depression.

A trade war over swaps market clearing and execution will be harmful for the US

As the world's largest economy and largest debtor, the US must retain deep and liquid capital markets if it is to maintain its reserve currency status and its standard of living. Unfortunately, fragmentation of global swaps markets between US persons and non-US persons means smaller and disconnected liquidity pools and less efficient and more volatile pricing for market participants and their end-user customers. It also means greater risk of market failure in the event of economic crisis. By Balkanizing global swaps liquidity, the CFTC's Interpretative Guidance is actually increasing the systemic risk that it was predicated on reducing. Like Smoot-Hawley, the CFTC's Interpretative Guidance is ill-suited to its ostensible purpose of systemic risk reduction. It is, however, wreaking havoc and forcing US financial institutions to retreat from what were once global markets. We simply cannot allow uncoordinated regulatory reforms to permanently divide global swaps markets between US and non-US persons.

Similarly, a trade war in swaps markets will be a disaster for Europe

The EU has a serious growth problem. Except for Japan, the EU has had the weakest economic growth in the industrialized world.[31] In the words of Francois Heisboug, "The world is advancing, but not Europe."[32] Indeed, reports from Cairns, where G-20 finance ministers and central bankers are meeting indicate that "[G-20 nations] say they are tantalizingly close to adding an extra $2 trillion to the global economy and creating millions of new jobs, but Europe's extended stagnation remains a major stumbling block."[33] European Central Bank President Mario Draghi reportedly told a committee of the European Parliament earlier this week that EU governments were failing to take measures to create a better climate for business. Mr. Draghi's warning may be of little help if the debate over clearing equivalence remains unresolved hampering business access to liquid markets for investment risk hedging.[34]

Undeniably, the EU is in desperate need of investment in economic development and job creation. European investment capital comes overwhelmingly from banks. European banks are significant participants in the US derivatives markets, and the EU banks cannot afford to retreat from those markets.

Moreover, the process of bank deleveraging and overstretching of national governments means that Europe must look to a broader array of financing sources available in modern global financial systems, including private lending, securitized credit and private equity. To avail itself of these options, the EU must assure US capital access to European risk hedging markets. According to CFTC data, trading volume on European futures exchanges relies to a considerable extent on direct access from the US. EU markets cannot afford to jeopardize this US trading volume. Denying equivalence to US CCPs will not cure Europe's stagnant economic growth – IT WILL worsen it.

We must not let the current cross-border impasse over swaps markets persist and thwart European growth and, in turn, lead Europeans to conclude that the EU is not part of the solution but part of the problem.[35]

Call for New Spirit of Regulatory Comity and Cooperation

Ladies and gentlemen: flourishing capital markets are the answer to US and European 21st century economic woes, not trade wars and protectionism. The solution to sluggish growth in the developed economies is safe, sound and vibrant global markets for investment and risk management. We must maintain liquid and broad global derivatives markets. To do so, we must reach an accord on how to regulate derivatives execution and clearing in a harmonious manner across jurisdictions.

Let us start with the CFTC, where earlier this year former Acting Chairman Mark Wetjen gave renewed consideration to several important cross-border concerns.[36] Since then, we have three new Commissioners and a budding spirit of cooperation and pragmatism under new Chairman Timothy Massad. The CFTC staff is responding well to the priorities of the new Commission and I believe they will show increasing sensitivity to global concerns. This practicality was demonstrated just last week when my fellow Commissioners and I issued an advance notice of proposed rulemaking seeking comment on three different approaches to the cross-border application of CFTC rules for margin for uncleared swaps. I believe this shows a pragmatism and flexibility that belies the notion of CFTC rulemaking continuing to widely overreach in its assertion of extraterritorial jurisdiction. I commend it as a portent of greater accord with the CFTC in global regulatory reform.

But we can go further. I intend to do everything I can to encourage the CFTC to replace its cross-border Interpretative Guidance with a formal rulemaking that recognizes outcomes-based substituted compliance for competent non-US regulatory regimes. As part of that effort, I will seek the withdrawal of the CFTC staff's November 2013 Advisory that fails not only the letter and spirit of the "Path Forward," but also contradicts the conceptual underpinnings of the CFTC's Interpretive Guidance.

In short, I believe the best route to regulating the trading of swaps in global markets is deference to home country regulators within the Pittsburgh G-20 framework, especially in matters of market practices, transparency and price formation that have little to do with preventing global systemic risk.

When it comes to swaps clearing, it is not as simple as full deference to local jurisdictions. The scale and scope of several of the world's major clearing houses and the impact that the failure of any one would have on the global economy is too great to not be a common concern. It will require flexibility and cooperation among regulators on both sides of the Atlantic to strike the right regulatory and supervisory balance. I encourage staffs of the CFTC, EC, and ESMA to redouble their efforts to craft a workable basis for the EC to issue its equivalence determination for the United States.

In this regard, I am happy to report that Chairman Massad and EC leadership, including Vice-President Barnier and his team, continue to have a productive dialogue. Work continues on both sides to establish a sound and practical basis for regulatory and supervisory cooperation. I understand that discussions have recently focused on exploring ways to achieve greater streamlining and harmonization of regulatory requirements for CCPs that are registered by both the CFTC and a European regulatory authority. This is key to advancing our shared goal of promoting clearing through CCPs that are subject to a workable legal and supervisory framework that will promote financial strength and stability in the global swaps markets.

I believe that the current CFTC is more mindful of the regulatory concerns of its European counterparts. There can be no doubt that the issues raised by EC regulators are drawn from well considered views of optimal CCP prudential regulation and supervision. Similarly, European regulators must recognize that the CFTC's approach is naturally drawn from its successful record of respecting the integrity of the parallel regulatory regimes that govern the clearing activities of dually-registered US-EU CCPs.[37]

The CFTC is prepared to maintain and expand the scope of its current policy, which takes into account whether the regulatory objectives of financial integrity and risk management can be met through different approaches under the regulation and oversight of the European regulatory authority.

In addition to evaluating specific legal requirements, the CFTC is exploring ways to enhance existing cooperation in the joint supervision of dual registrants. There is already precedent for this in past collaborative examinations and information-sharing.

As both sides work through differences to find common – and solid – ground, it remains critically important to provide certainty to CCPs and market participants to prevent any potential disruption to their businesses. There has been dual registration for more than a decade, and dual regulation and oversight should not hinder liquid and vibrant markets. It should provide market participants with the added confidence of effective and practical regulatory oversight. I urge everyone here to communicate with regulators on both sides of the Atlantic reminding them of the critical importance of maintaining cohesive global markets in derivatives execution and clearing.

Conclusion

In closing, I sincerely hope that we can fulfill the important goals that the G-20 set for us in Pittsburgh and avoid falling into a misguided global trade war over regulation of derivative

financial products. A global economy that is just starting to show signs of recovering from the "Great Recession" cannot bear the reduction in trade and fragmented financial markets that is a looming possibility. We did that once in the last century and it led to enormous economic and social destruction on both sides of the Atlantic. It is not in the interest of the American or European people to do it again. The initiators of that 20th century trade war bear names that remain infamous more than eight decades later. We must not repeat their short-sightedness.

Instead, with fortitude and goodwill, with intelligence and cooperation, we can rebuild financial markets that are more durable, transparent, vibrant and, yes, global, than the ones that came before. Worldwide economic growth and prosperity depend on it. Let us work together for the good of the markets we serve, our national and regional economies, our families and their futures.

Thank you very much for your time.

[1] G-20 Leaders' Statement, The Pittsburgh Summit at 2 (Sept. 24-25, 2009) (G-20 Statement), *available at* **http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf**.

[2] In addition, the G-20 leaders agreed on a fourth principle: that non-centrally cleared derivatives should be subject to higher capital requirements.

[3] G-20 Statement at 9.

[4] *Id*. at 7.

[5] 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).

[6] *Id*.

[7] Lukas Becker and Peter Madigan, *EC to Snub US in First Wave CCP Equivalence Determinations*, Risk.net (Jun. 16, 2014), *available at* **http://www.risk.net/risk-magazine/news/2350239/ec-to-snub-us-in-first-wave-of-ccp-equivalence-decisions**. A recent Financial Stability Board report indicated that India, one of the countries the EC reportedly recommended for recognition, is one of only five jurisdictions in the world that has no capability to defer to the OTC derivatives regulations of other countries. Yet, the EC is reportedly willing to recognize India as equivalent, while delaying and perhaps denying such recognition to US CCPs. Financial Stability Board, *Jurisdictions Ability to Defer to Each Other's OTC Derivatives and Market Regulatory Reforms* at 2 (Sept. 18, 2014), *available at* **http://www.financialstabilityboard.org/publications/r_140918.pdf**.

[8] Article 4(88) of the EU Capital Requirements Regulation provides that a CCP is not qualified unless it is authorized in accordance with Article 14 of EMIR, or recognized pursuant to Article 25 of EMIR. Pursuant to EU CRD IV, trades cleared with a non-qualified CCP are subject to significant capital charges.

[9] 78 Fed. Reg. 45,292 (Jul. 26, 2013).

[10] CFTC Staff Advisory No. 13-69 (Nov. 14, 2013), *available at* **http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-69.pdf**.

[11] Consultations are still underway under MiFID II.

[12] 17 C.F.R. § 37.9(a)(2); Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (Jun. 4, 2013).

[13] 17 C.F.R. § 37.10 and § 38.12; Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. 33,606 (Jun. 4, 2013).

[14] 17 C.F.R. § 37.600.

[15] 17 C.F.R. § 43.3(b)(3).

[16] Staff Guidance on Swaps Straight-Through-Processing at 5-6 (Sept. 26, 2013), *available at* **http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/stpguidance.pdf**.

[17] In addition, the Division of Market Oversight issued Guidance on November 15, 2013 stating that it "expects that a multilateral swaps trading platform located outside the United States that provides U.S. persons or persons located in the U.S. (including personnel and agents of non-U.S. persons located in the United States) … with the ability to trade or execute swaps on or pursuant to the rules of the platform, either directly or indirectly through an intermediary, will register as a SEF or DCM." Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities at 2 (Nov. 15, 2013), *available at* **http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmosefguidance111**

[18] Timothy Karpoff, *The Smart Way to Regulate Overseas Swaps Trading*, American Banker (Jul. 21, 2014).

[19] *See* International Swaps and Derivatives Association, *Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-year 2014 Update, ISDA Research Note* (Jul. 2014) (ISDA Update), *available at* **http://www2.isda.org/functional-areas/research/research-notes/**. *See also* Phillip Stafford, *US Swaps Trading Rules Have "Split Market,"* Financial Times (Jan. 21, 2014), *available at* **http://www.ft.com/intl/cms/s/0/58251f84-82b8-11e3-8119-00144feab7de.html#axzz3CHQbMKxU**. Beginning in October 2013 after the SEF rules compliance date, European dealers began to trade exclusively with other European counterparties in the market for euro IRS and had dramatically moved away from trading with US counterparties. After October 2013, 91% of euro IRS trades were between two European counterparties while only 9% are between a US and a European dealer. By May 2014, 94% of euro IRS trades were between two European counterparties while only 6% of euro IRS trades were between a European and US counterparty. Compare these figures to those from a month before the SEF rules' compliance date, when 71% of euro IRS trades were between two European counterparties and 29% between a US and European dealer. This has been a clear shift in trading behavior for European dealers. This observation is also supported by an ISDA survey where 68% of non-US market participant respondents indicated they have reduced or ceased trading with US persons. ISDA Update.

[20] ISDA Update.

[21] *Id.*

[22] Douglas A. Irwin, *Peddling Protectionism: Smoot-Hawley and the Great Depression* at 89-91 (Princeton University Press 2011).

[23] *Id*. at 18-23.

[24] *Id*. at 145.

[25] *Id*. at 142-143.

[26] *Id*. at 218.

[27] *Id*. at 152.

[28] *Id*. at 183.

[29] *Id*.

[30] Niall Ferguson, *The Great Degeneration: How Institutions Decay and Economies Die* at 49-59 (Penguin Press 2013).

[31] Francois Heisbourg, *La Fin du Reve Europeen (the End of the European Dream*) (Editions Stock 2013).

[32] *Id*.

[33] Ian Chua and Cecile Lefort, *G20 says nearing growth goal, but more needed from Europe*, Reuters (Sept. 21, 2014), *available at* **http://www.reuters.com/article/2014/09/21/us-g20-australia-idUSKBN0HE0PD20140921**.

[34] *See* Jack Ewing, *Draghi Pessimism on European Recovery Stirs Expectations of a Stimulus,* International New York Times (Sept. 22, 2014), *available at* **http://www.nytimes.com/2014/09/23/business/international/draghi-pessimism-on-european-recovery-stirs-expectations-of-stimulus.html**.

[35] *Id*.

[36] On May 21, 2014, the CFTC's Global Markets Advisory Committee, under the sponsorship of Acting Chairman Mark Wetjen, held a meeting to discuss issues related to the CFTC's coordination with international regulators on the oversight of non-US swap clearinghouses and non-US SEFs. Transcript, *available at* **http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/gmac_052114_transc**

[37] The CFTC has not required that dually-registered US-EU CCPs apply what is referred to as the "FCM" or "agency" model of clearing, to intermediaries that are not CFTC-registered FCMs. This enables the non-US intermediaries of dual registrants to continue to clear "back-to-back" transactions. Similarly, while CFTC regulations prohibit a registered CCP from imposing a minimum capital requirement of more than $50 million on clearing members, the CFTC does not require that US-EU dual registrants apply this standard to non-US and non-FCM clearing members.

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