

SPEECHES & TESTIMONY

Remarks of Chairman J. Christopher Giancarlo at the Eurofi Financial Forum, Bucharest, Romania

“A New Vision For EU-US Regulatory and Supervisory Cooperation for Derivatives Markets”

April 4, 2019

Good afternoon. It is my great pleasure to be here again at Eurofi. I wish to thank David Wright, Didier Cahan and Marc Truchet for organizing once again a great conference.

I also wish to express my deep appreciation to the Romanian Presidency of the European Union, the Prime Minister, the Minister of Public Finance, and the Board of the National Bank of Romania for inviting all of us to Bucharest.

Being here in Bucharest, it seems fitting to begin my remarks by recalling the great wit of Romanian writer Ion Luca Caragiale, who joked:

“Opinions are free, but not mandatory.”

Since I am here in what is most likely my last appearance at Eurofi as Chairman of the U.S. Commodity Futures Trading Commission, I hope you will forgive me if I put forth a few free opinions. Of course, they are not mandatory!

I understand that Ion Luca Caragiale also said:

“Do you want to get to know things? Look at them closely. Do you want to like them? Look at them from afar.”

If you will permit me, I would like to use my time to look both from near and afar at EU-US regulatory and supervisory cooperation and lay out a vision for the future.

Having led the CFTC for the past two years, I have been very closely engaged in this cooperation, and I believe I see it clearly. But I also have the benefit of some distance which gives me great affection for its effectiveness and durability. From both vantages, I see its even greater potential.

Why It Matters

I am optimistic because I know it is a priority for European and U.S. policymakers to strengthen our regulatory and supervisory cooperation. Only through such cooperation can we ensure that our financial markets will continue to support the growth of our mature market economies and increase the prosperity of our citizens. Should we fail to cooperate, we will stunt the efficiency of our markets, producing fragmentation and denying our firms, businesses and farms the necessary capital and risk hedging tools needed to increase productivity, research and develop new technologies, hire more workers, and invest for the long-term.

Equally importantly, Europe and the United States must continue to show the world that we can work together. Europe invented entrepreneurship, and America embraced it. Together, we are champions of the rule of law, the protection of person and property, and free market economics. These attributes have made ours among the world's most important economies. That is why I am optimistic that, working together, we can show the rest of the world the benefits of free and open markets underpinned by sound regulation and strong enforcement.

What this means for financial regulation is that the standards and rules we – Europe and the United States – develop together to govern how we trade, invest and hedge set the standard for financial market conduct around the world. In this respect, cooperation between Europe and the United States represents a demonstration of leadership that goes well beyond our respective markets.

Overcoming History

I speak before an audience of experts of trans-Atlantic financial markets. You, of all people, know that Europe and the United States have not always found it easy to cooperate on matters of financial regulation. You know that **now** is the time to overcome any pessimism grounded in the disappointments of the past. **Now** is the time to focus on how we can work together now and in the future.

The first step to overcoming this history is by confronting it head on. Nearly five years ago when I joined the CFTC, I came to Europe and gave an honest assessment of the CFTC's cross-border policies.^[1] I admitted that the CFTC could well be seen to have started the current rift in cross-Atlantic swaps cooperation with its 2013 cross-border guidance imposing CFTC transaction rules on swaps traded by U.S. persons even in jurisdictions committed to implementing G-20 swaps reforms. That approach alienated many overseas regulatory counterparts and squandered important American leadership and influence in global reform efforts.

And two-and-a-half-years later when I became Chairman of the CFTC, and gained the authority to direct the CFTC staff to change policies, I took further steps to acknowledge the problems caused by the CFTC's expansive approach to applying its swaps rules to cross-border activities. I laid out a detailed program to remedy the errors of such past policies.^[2]

This openness to honestly assess how we have worked with each other in the past is something that I hope all authorities – here in Europe and in the United States – will do. Only through a willingness to change direction, when confronted by evidence showing that we may have been wrong, will we be able to overcome the past.

Building Trust

The time is at hand for Europe and the United States to take steps to rebuild trust. As CFTC Chairman, I am proud of the recent series of joint announcements and commitments with my counterparts in Europe and Asia on a range of regulatory actions.^[3] These joint statements are public commitments, which the CFTC has followed through on in concrete terms. They help build trust as they show we can make agreements and stand by them.

Transparency is also a key part of building trust. While at the CFTC, I have authored three detailed white papers laying out my views on the regulation of swaps execution facilities, the effectiveness of the CFTC's implementation of the Dodd-Frank Act, and cross-border policies.^[4]

Some people ask why I wrote these papers. There are many reasons, but one purpose was to inform global regulatory counterparts of the direction of our policies and the principles upon which that direction is set. It has enabled us to solicit thoughtful input from our global partners. In particular, it has allowed European and U.S. authorities to have substantive discussions about how to optimize global swaps reform and better calibrate it to maintain healthy financial markets across international borders. Being transparent in the regulatory course we follow encourages our overseas counterparts to anticipate and rely on the actions we take.

Moreover, I have sought to build trust by directing the CFTC to be an active, engaged and positive participant in international standards setting activities. Today, the CFTC participates in more international work streams than ever in its history. The agency is an active contributor to the International Organization of Securities Commissions (IOSCO), Financial Stability Board (FSB), and IOSCO's joint work with the Committee on Payments and Market Infrastructures and Basel Committee on Banking Supervision. More importantly, the CFTC chairs or co-chairs international working groups on market fragmentation, efficient resiliency of OTC derivatives reforms, commodity principles, cybersecurity, regulation of financial market infrastructures, international data standards, and implementation monitoring and assessment.

I am proud that CFTC leadership has made it possible to have IOSCO, the FSB and other groups produce international standards, guidance and reports that have substantially advanced the goal of a more resilient global financial system while supporting robust markets. And I am pleased to observe that often our closest partners in these groups are European authorities.

Commitment to Shared Principles

The last ingredient to successful regulatory and supervisory cooperation between Europe and United States is a commitment to shared principles.

First, we should share a commitment to market-based solutions. When facing common regulatory challenges, we should be looking to see how our rules and policies can help make our markets work better and more efficiently.

Internationally, the CFTC has been a strong supporter of the efforts in the FSB and IOSCO to review the effectiveness of the G20 reforms. Again, these reviews are not designed to weaken the reforms – I have always been a strong supporter of the G20 reforms – but to make sure they are implemented in ways that enhance derivatives markets, not stifle them.

At the CFTC, one of my early initiatives was Project KISS, which was a massive review of CFTC rules and regulations to make them simpler, less burdensome and less costly, but not less effective.

And consider the CFTC's approach to the development of new derivatives products on crypto-assets like Bitcoin. We have resisted calls to use our legal powers to suppress the development of crypto-assets and the underlying technologies that support them. Instead, we have favored close monitoring of market developments while not hindering the introduction of new products like bitcoin futures, which have proven invaluable in letting market forces determine the appropriate value of the bitcoin.^[5]

Second, we should share a commitment to open markets and competition. Both European and U.S. policymakers have a common interest to make our respective markets the most effective places to trade and to do business. They should be neither the least, nor the most, prescriptively regulated – but the **best** regulated for the unique characteristics of our marketplaces, balancing market oversight, health and vitality. This goal will not be achieved by setting up regulatory barriers and separating ourselves from our foreign counterparts, but by removing the barriers that stand in the way of global market participants choosing the best markets for their needs. Thus, our common approach to regulation should not be based on a crude measure of the quantity of regulation, but the quality of regulation and oversight. In this respect, regulatory and supervisory cooperation should lead to greater access to each other's markets.

Finally, we should share a commitment to outcomes-based deference. I am more convinced than ever that regulatory deference – whether it be through equivalence and recognition decisions or through substituted compliance orders and exemptions – is the only rational way to ensure that jurisdictional rules can work constructively to provide sound regulation for cross-border trade, investment and risk mitigation.

And what is most critical is the manner in which we apply such deference. Deference only can work if we seek comparable regulatory outcomes. It must be based on the understanding that each market has unique rules, practices, states of development and range of market participants. Thus, it is only right that regulators accept reasonable differences suitable to local conditions, law and traditions while achieving similar outcomes.

During my tenure as CFTC Chairman, the CFTC has made a series of deference decisions for Europe, Japan, Singapore and Australia, among others. In each case, we have accepted that the relevant foreign jurisdiction has requirements different from what we have in the United States. Still, we have felt comfortable acting with deference despite such differences.

To do otherwise, would be to tell other jurisdictions that all markets are the same and, therefore, everyone needs to conform to one way of doing things. This cannot be right. If we do not embrace in a meaningful way outcomes-based deference, then tools like equivalence become not bridges to build cross-border markets but cudgels to force rule taking. Such a tactic will never be successful between Europe and the United States.

Challenges

Improved regulatory and supervisory cooperation, however, will require effort. We must be cognizant of the challenges that have previously undermined, and will continue to pose a threat to, future regulatory and supervisory cooperation.

I spoke earlier of the importance of being able to build trust through agreements and public commitments. As many of you know, I have been vocal in expressing CFTC concerns with EMIR 2.2. One primary reason EMIR 2.2, and the manner by which it has been presented, has created such anxiety in the United States is that, for a long time, there was an unwillingness by the European Commission to acknowledge any commitment to the 2016 agreement between the CFTC and EC on CCPs.

Does Europe have the right to decide how it wishes to supervise CCPs? Yes. Does Europe have the right to consider how third country CCPs may pose a systemic risk to Europe? Certainly, it does. But should Europe do so without regard to past commitments to the CFTC? Not if it is serious about maintaining trust and recognizing the importance of regulatory and supervisory cooperation with the United States.

Another challenge is to insulate market regulation from politics. Market regulation must focus on objectives such as investor protection, the safety and soundness of market utilities, and the efficiency of trading markets. When, instead, domestic politics determines regulatory priorities, picks winners and losers and interferes with the operation of the market – then cross border regulatory and supervisory cooperation is challenged. Regulatory cooperation works best when it is conducted free of political considerations.

Finally, there is the challenge of communication. Regulatory and supervisory cooperation depends on honesty between regulators. Authorities are made up of people, and there needs to be frequent and forthright communication. So much depends on the day-to-day relationship of the people who serve the different authorities. Honest brokers and truthful interlocutors are essential. When they are not present, cooperation has little chance. When they communicate, as they do here at EuroFi, regulatory cooperation is strengthened and increased.

In all of our international engagements with fellow financial regulators and related regulatory bodies, I have made it my priority for the CFTC to act in a forthright and candid manner, displaying leadership when appropriate and respect and due consideration at all times. The CFTC aims to be considered a trusted and worthy counterparty by its overseas regulatory counterparts.

Conclusion

As I approach the end of my time at the CFTC, I wish to express my tremendous respect for my many counterparts in Europe – from the officials in the European Commission to the staff in ESMA and the ECB and the personnel in the range of national authorities with whom the CFTC works with on a regular basis. Everyone I have encountered has been intelligent, thoughtful and professional. And I pay them my highest compliment when I say that they are dedicated public servants who work tirelessly to do what is best for European markets and European interests.

That is why I conclude on an optimistic note. Romania's great son, Ion Luca Caragiale, told us to be thoughtful in how we look at things.

I look at a future where Europe and the United States grow markets that support prosperity and encourage innovation. I look at a future of shared principles of market-based solutions, healthy competition and regulatory deference. I look at a future where the problems we face, whether economic, social or environmental, are addressed with the help of creative entrepreneurship, free enterprise and most essentially, well-ordered and vibrant trading markets.

As I come here to Eurofi and hear talk about Capital Markets Union, digital distribution, and fintech, I know European policymakers share this vision, a vision in which US and EU markets continue to develop in their own unique ways, reflecting the different legal, commercial and social characteristics of Europe and America, while drawing on common principles and pursuing similar regulatory outcomes.

Moreover, it is a future in which our markets actively support each other with knowledge, skill and capital flowing freely between them, making both stronger and more vibrant, under the thoughtful oversight of European and U.S. regulators working cooperatively with one another.

I see a bright and prosperous future, one of courage, confidence and commonality.

I look forward to this future. With your help and leadership, we shall see it together.

Thank you very much.

[1] See Keynote Address of CFTC Commissioner J. Christopher Giancarlo at The Global Forum for Derivatives Markets, 35th Annual Burgenstock Conference, Geneva, Switzerland (September 24, 2014), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlos-1>.

[2] See CFTC Chairman J. Christopher Giancarlo, Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-U.S. Regulation (Oct. 1, 2018), available at: https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118_0.pdf [hereinafter Cross-Border White Paper].

[3] See, e.g., Joint European Commission and CFTC Statement on EMIR 2.2 (March 13, 2019), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/jointeuropeanandcftcstatement031319>; Joint Statement of the CFTC and the Monetary Authority of Singapore Regarding the Mutual Recognition of Certain Derivatives Trading Venues in the United States and Singapore (March 13, 2019), available at <https://www.cftc.gov/PressRoom/PressReleases/7887-19>; Joint Statement by UK and US Authorities on Continuity of Derivatives Trading and Clearing Post-Brexit (February 25, 2019), available at <https://www.cftc.gov/PressRoom/PressReleases/7876-19>; CFTC Comparability Determination on EU Margin Requirements and a Common Approach on Trading Venues (October 13, 2017), available at <https://www.cftc.gov/PressRoom/PressReleases/pr7629-17>.

[4] See Commissioner J. Christopher Giancarlo, Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank (Jan. 29, 2015), available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>; CFTC Chairman J. Christopher Giancarlo and CFTC Chief Economist Bruce Tuckman, Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposals for Next Steps (Apr. 26, 2018) (April 2018 White Paper), available at: https://www.cftc.gov/sites/default/files/2018-05/oce_chairman_swapregversion2whitepaper_042618.pdf; Cross-Border White Paper, *supra* note 2.

[5] See Galina B. Hale, Federal Reserve Bank of San Francisco, Economic Letter, “How Futures Trading Changed Bitcoin Prices” (May 7, 2018), at: <https://www.frbsf.org/economic-research/publications/economic-letter/2018/may/how-futures-trading-changed-bitcoin-prices/>.