

SPEECHES & TESTIMONY

Statement of Commissioner Brian Quintenz on Staff No-Action Relief for Eurex Clearing AG

December 20, 2018

Over two years ago, the European Commission (EC) and the CFTC agreed to a common approach to the regulation and supervision of cross-border CCPs (CCP Agreement).^[1] The CCP Agreement was intensely negotiated for three years, and, in my opinion, the end result produced an agreement that promoted regulatory deference as well as prioritized supporting the vibrancy and liquidity of our global derivatives markets. Shortly after the announcement of the CCP Agreement in February 2016, the EC found the CFTC regime equivalent, the CFTC granted substituted compliance to dually-registered EU-domiciled CCPs, and the European Securities and Markets Authority (ESMA) made positive recognition decisions for several U.S. CCPs.

Unfortunately, in June 2017, the EC introduced legislation (known as EMIR 2.2), which has the effect of abandoning the CCP Agreement by requiring all CCPs, including those U.S. CCPs already recognized, to re-apply for recognition, and which refused to acknowledge the commitment made to the CFTC only a year before.

In response, this past March, I articulated my view that, since the EU's proposal would renege on the CCP Agreement, the agreement's current and future reliability was unclear. As a consequence, I declared I would neither support the CFTC granting additional equivalence determinations with the EU nor would I support any relief requested by EU authorities until the EU re-commits to honoring the agreement.^[2] I felt this position was warranted in light of the EU's violation of our trust and cooperation. I was not alone in calling for such consequences. Senators Pat Roberts (R-KS) and Debbie Stabenow (D-MI), Chairman and Ranking Member of the Senate Agriculture Committee, respectively, publicly recommended that if the EU moved away from the CCP Agreement the CFTC should reconsider *existing* accommodations it has granted to EU entities.^[3]

Disappointingly, since that time, the EC has not provided any public or private assurances on the status of the CCP Agreement such that the treatment of U.S. CCPs will not materially change under EMIR 2.2 in the absence of significant developments in the U.S.-EU derivatives markets. Furthermore, the EU legislative bodies have not taken any steps throughout the three-part legislative process to meaningfully limit the scope of the EC's proposal. Therefore, in accordance with the declaration I made in March, I must object to today's set of staff no-action letters for Eurex Clearing AG.

I would like to note, however, my objection does not apply to the manner in which the agency considered this request nor does it constitute opposition to Chairman Giancarlo's position on the EU's proposed legislation. In a recent appearance before the House of Representatives Committee on Agriculture, and then again at FIA Expo two months ago, the Chairman issued his own set of potential consequences should the EU decide to unilaterally impose additional substantial legal or supervisory obligations upon U.S. CCPs.^[4] While Chairman Giancarlo and I potentially differ in our interpretations of the current status of the CCP Agreement and the associated impact it should have on requests for staff no-action relief, the Chairman's stated feelings and proposed consequences on this matter are equally as strong, if not stronger, than my own.

In addition, I would like to recognize and commend the Chairman and the staff for conditioning today's relief on the absence of any material increase in EU legal or supervisory obligations imposed on U.S. derivatives clearing organizations and further requiring agency staff to determine regularly whether any such increase has occurred. This condition is appropriate due to the uncertainty of the EU's future cross-border supervisory framework.

Objecting to relief that provides U.S. firms more options in selecting risk management services and that promotes a vibrant global marketplace is not a position in which I ever expected to find myself as a CFTC Commissioner. It is my hope that the CFTC's codification of principles articulated in Chairman Giancarlo's recent Cross-Border White Paper,^[5] as well as the further development, refinement, and application of EMIR 2.2, will yield appropriate, deferential cross-border regulatory frameworks, which minimize cross-border burdens, alleviate market fragmentation, and enhance regulatory cooperation.

- [1] Joint Statement from CFTC Chairman Timothy Massad and European Commissioner Jonathan Hill, CFTC and the European Commission: Common approach for transatlantic CCPs (February 10, 2016),
<https://www.cftc.gov/PressRoom/PressReleases/pr7342-16>.
- [2] Keynote Address of Commissioner Brian Quintenz before FIA Annual Meeting, Boca Raton, Florida (March 14, 2018),
<https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz9>.
- [3] Letter from Senators Roberts and Stabenow to CFTC Chairman J. Christopher Giancarlo, dated January 8, 2018,
<https://www.agriculture.senate.gov/newsroom/rep/press/release/roberts-stabenow-support-cftcs-efforts-to-uphold-european-agreement>.
- [4] House Committee on Agriculture, “Full Committee Hearing: Examining the Upcoming Agenda for the Commodity Futures Trading Commission” October 11, 2017,
https://agriculture.house.gov/UploadedFiles/115-15_-_30977.pdf, pages 10-11, 22-23 and Remarks of CFTC Chairman J. Christopher Giancarlo at FIA Expo, Chicago, October 17, 2018, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo58>.
- [5] Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-US Regulation, by CFTC Chairman J. Christopher Giancarlo,
<https://www.cftc.gov/About/Commissioners/JChristopherGiancarlo/index.htm>.