

[Securities Regulation Daily Wrap Up, CFTC NEWS AND SPEECHES—CFTC chairman, EC VP agree to common approach on trading venue, margin requirement equivalence, \(Oct. 13, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

In a significant development towards cross border harmonization with the European Commission, CFTC Chairman J. Christopher Giancarlo announced that the CFTC has agreed to a common approach with the European Commission regarding equivalence and comparability for derivatives trading platforms as well as a margin framework for uncleared derivatives. The chairman made the announcement at [a joint press conference](#) in Washington, D.C. with his counterpart, EC Vice President [Valdis Dombrovskis](#).

Under the contemplated derivatives platform equivalence arrangement, both European and U.S. firms will have assurances that they can trade on each other's registered derivatives platforms. Additionally, the European Commission has adopted an equivalence decision for the CFTC's margin framework for uncleared derivatives. At the same time, the CFTC has issued a decision today concluding that the EU margin rules are comparable to the CFTC rules. As a result, EU firms may rely on substituted compliance with EU margin rules to meet CFTC requirements.

In his [remarks](#) about these collaborative achievements, Chairman Giancarlo noted, "[t]oday marks a significant milestone in cross-border harmonization between the European Commission and the CFTC... These cross-border measures will provide certainty to market participants and also ensure that our global markets are not stifled by fragmentation, inefficiencies, and higher costs. Indeed these measures are critical to maintaining the integrity of our swaps markets," he added.

Common approach regarding derivatives trading venues. Under the common approach, Vice President Dombrovskis intends to propose that the EC adopt an equivalence decision covering CFTC-authorized SEFs and DCMs that are notified to it by the CFTC, provided that the requirements of the Markets in Financial Instruments Regulation (MiFIR), the Markets in Financial Instruments Directive (MiFID II), and the Market Abuse Regulation (MAR) are met.

At the same time, CFTC staff intends to propose an exemption from SEF registration requirements for trading venues that have been authorized in accordance with MiFID II/MiFIR requirements and that have been identified to the CFTC by the EC, as long as they satisfy the standard set forth in Commodity Exchange Act (CEA) Section 5h(g). Chairman Giancarlo indicated he will support this exemption.

Margin comparability and equivalence determinations. CFTC commissioners have unanimously approved a comparability determination finding the margin requirements for uncleared swaps under the laws and regulations of the EU comparable in outcome to those under the CEA and CFTC regulations. This determination is effective immediately.

Pursuant to this comparability determination, a swap dealer or major swap participant that is subject to the both CFTC and EC margin rules with respect to an uncleared swap may rely on substituted compliance wherever available under the CFTC's margin rules. Any such swap dealer or major swap participant that complies with the EU's margin rules would be deemed to be in compliance with the CFTC's margin rules, but would remain subject to the CFTC's examination and enforcement authority.

Likewise, the EC has recently announced its own equivalence decision which similarly finds that the CFTC's uncleared swap margin rules are comparable in outcome to the EU's corresponding margin requirements for uncleared OTC derivatives.

Commissioner comments. Commissioner Rostin Behnam observed, "[a]s important financial reforms are phased in across the globe, effective cross-border harmonization must be a top priority for all regulators." According to Behnam, "[t]oday's substituted compliance determination is a step towards harmonization." His fellow commissioner Brian Quintenz added, "this is a significant accomplishment that will help prevent fragmentation of the global derivatives market."

Chairman Giancarlo took a realistic but optimistic view in his closing comments at the press conference, observing, "I think what we've achieved today speaks very well for what we'll be able to achieve in the future. Invariably there will be additional issues come up. There are issues today, there will be issues in the future. What's important, though, is that we have a path to resolution of them. We have a methodology, we have staff-to-staff relationships all the way down the chain, and I think that bodes very well for the other issues that invariably will be ahead of us. But I think we have a path to success, and we've shown that today."

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