

SPEECHES & TESTIMONY

Remarks of CFTC Chairman J. Christopher Giancarlo before the Eurofi Financial Forum

“Future of CFTC-EU Regulatory Coordination in the Financial Sector”

Tallinn, Estonia - September 14, 2017

I. Introduction

Good afternoon. I want to thank David Wright for the opportunity to speak to you at EuroFi. This remarkable conference is the result of an enormous amount of hard work by many people, especially David, Didier Cahan and Marc Truchet. I am very grateful to be here.

I am especially pleased to be here with European Commission Vice President Valdis Dombrovskis. I have great respect for Vice President Dombrovskis. He is a reason for the increasingly strong relationship between the European Commission and the CFTC.

It is an honor for me to follow US Vice President Pence in visiting Tallinn. When Vice President Pence came to Tallinn in July, he reaffirmed the United States' commitment to the Baltic States through NATO and its mutual defense accords. The United States stands behind Estonia. Prime Minister Ratas also visited the United States and the Vice President's home state of Indiana. This good will between our nations is vitally important in today's uncertain world.

The beautiful city of Tallinn reveals the past, present and the future - an historic, thriving, compelling city that is on the cutting-edge in technology. But, not only in technology. The world looks to Estonia for music, culture, education, and lifestyle. In many areas, Estonia is a world leader.

There is much to learn here. One of Estonia's great contributions has been in literature. Estonia has many fine poets and writers. One of them, Viivi Luik, described Estonia as a place where “time ... has revealed itself...has given...a sign of its nature and its power.”¹

I think we see that in the town square, or at the university in Tartu, or gazing out over the Gulf of Finland. Here, there is a timelessness.

And this setting — away from Washington or Brussels — provides the perfect place to reflect on the past, present and future of CFTC-EU regulatory coordination.

So, let's do that. I want to discuss the CFTC's policies of substituted compliance and regulatory coordination for the global swaps markets, particularly as those policies relate to the European Union.

As I said in my commentary in *Les Echos* on Monday, the global nature of derivatives markets calls for an international perspective. As you know, swaps markets enable counterparties to manage cross-border risks through cross-border transactions. Long before the 2009 Pittsburgh Accords and the Dodd-Frank Act, the world's swaps markets had developed in a generally uniform manner due to private law requirements developed by ISDA that became a *de facto* international standard.

Therefore, regulators must take a cooperative and global approach to pursuing market integrity and customer protection. And, we must keep in mind that competition, growth, and innovation are stifled if we impose piecemeal or inconsistent regulatory requirements. That is why the optimal approach to reconcile these considerations is deference to comparable foreign regulatory frameworks – an approach the CFTC pioneered and an approach I champion as CFTC Chairman.

II. Comparability in the Futures Markets

Let's take a moment to examine the past.

From its early days, the CFTC has embraced the idea of deference to strong foreign regulatory regimes and applied it in a substantial and continuous manner.

In 1987, the CFTC was the first major international financial regulator to use comparability determinations when it initiated its Part 30 program for listed futures, which permits non-U.S. intermediaries to deal directly with U.S. persons on the basis of compliance with rules of their home jurisdictions. To date, well over one hundred firms domiciled outside of the U.S. have access to U.S. customers through relief the CFTC has given to exchanges based in France, Germany, Spain, the UK, and Asia.

In 1996, through a no-action relief program, the CFTC permitted direct screen access from the United States to bona fide foreign markets, in reliance on the foreign market's home regulatory regime. In 2011, the CFTC updated this program by implementing more streamlined registration procedures through which Foreign Boards of Trade or FBOTS may offer direct access to U.S. participants.

III. Comparability in the Swaps Markets

In enacting swaps market reforms in the Dodd-Frank Act, the U.S. Congress endorsed the recognition and coordination programs previously adopted by the CFTC for futures.

The CFTC has used this framework successfully in two important instances in the past.

First, in July 2013, the CFTC set forth Guidance on swap dealing activity outside of the United States. In general, the Commission said that it would consider a *substituted compliance program* in lieu of CFTC regulations for third-country entities. This applies in cases where there are comparable regulations in the third-country jurisdiction that serve as a reasonable substitute for compliance with CFTC rules.

And in December 2013 the Commission approved permanent relief from a broad range of entity-level and transaction level requirements for non-U.S. swap dealers and major swap participants in the European Union.

And we should have done even more. I have made clear as a Commissioner -- before I became Chairman -- that the CFTC needs to go even further in applying deference to how we regulate cross-border entities and transactions. Now that I am Chairman, it is my intention to have the CFTC make more explicit in our cross-border rules that the CFTC will defer to the rules of comparable foreign jurisdictions. Such an approach will bring the CFTC back to its traditional approach to cross-border regulation and accord with the spirit of the Dodd-Frank Act.

Second, in 2016, the European Commission and the CFTC agreed to a common approach in the regulation and supervision of cross-border CCPs to support cross-border activity and to ensure the financial stability of derivatives markets.

While the CCP agreement took a prolonged time to negotiate, it ultimately recognized the high degree of similarity between CFTC and EU regimes for regulation of CCPs. The fundamental elements of this agreement are:

- the EC's equivalence determination for U.S. clearinghouses registered with the CFTC, which in turn served as the basis for recognition under the European Market Infrastructure Regulation (EMIR); and
- the CFTC's issuance of a substituted compliance regime for EU-based clearinghouses registered with the CFTC or seeking registration.

The substituted compliance regime permits these CCPs to comply with certain CFTC requirements for financial resources, risk management, settlement procedures and default rules and procedures by complying with the corresponding EMIR requirements. The substituted compliance framework also contains a streamlined registration process for EU-based CCPs that apply for CFTC registration.

This historic agreement increases regulatory coordination, allowing market participants to hedge their risks in efficient and resilient global markets. It also promotes financial stability by helping to ensure that CCPs on both sides of the Atlantic are held to high standards.

IV. Current Comparability Discussions – Margin, Trading and Data

The past is prelude. Let's talk about current matters.

Productive work continues between the US and Europe on comparability analyses of margin and trading requirements. Success is critical. Otherwise, many firms operating in the EU could be required to comply with U.S. and European rules concurrently at enormous cost and economic inefficiency.

Accordingly, on February 1, CFTC staff issued no-action relief from compliance with the CFTC margin rules for swap dealers that comply with margin requirements under EMIR. This relief was necessary to provide an opportunity for CFTC and EC staff to complete their assessments and to secure the issuance of the requisite comparability and equivalence determinations.

As I believe Vice President Dombrovskis will agree, the CFTC and the European Commission are making good progress toward the issuance of complementary equivalence and comparability determinations to enable counterparties to satisfy either CFTC or EMIR margin requirements.

The CFTC and EC staff are also working constructively toward equivalence and comparability determinations for the regulation of trading venues. Such a positive decision will mean that CFTC platforms may satisfy the EU trading obligations as of January, 2018. I also hope that this determination will be concluded in short order to avoid unnecessary disruption of cross-border swaps trading activity.

And, the CFTC is working side-by-side with international regulators, including many European regulators, on harmonization of key data standards for swaps trade reporting. This critical technical work is in support of the G20 mandate for greater transparency and ability to aggregate swaps data globally for systemic risk analysis. The CFTC co-chairs, with the European Central Bank, the Financial Stability Board's work on governance for a data standard that would uniquely identify each swap (the Unique Transaction Identifier) and a data standard that would permit regulators to group like swap products together (the Unique Product Identifier).

V. Looking forward – challenges and potential progress

And let us now look to the future.

The EC has recently proposed amending its recognition framework under EMIR for third-country CCPs. I understand that most attention has been on whether UK CCPs should have to re-locate to the EU after Brexit. Yet, the real importance of the proposal to the CFTC is whether the EU will seek to exercise direct oversight over third-country CCPs – including those in the United States.

I hope the EU will continue to follow the path of deference and regulatory cooperation to encourage growth, innovation, and stability of our markets.

For over four decades, the CFTC has regulated and supervised derivatives CCPs. We currently oversee sixteen registered CCPs, many of whom have global footprints. Our supervision of CCPs is principles-based and highly effective. No CCP subject to our oversight has ever failed to meet a financial obligation to one of its clearing members. We intend to continue this successful approach.

Undoubtedly, I understand and respect European authorities' need to appropriately supervise CCPs to ensure that their activities do not import unacceptable systemic risk into Europe. The CFTC has a similar responsibility.

Yet, we spent three years discussing those concerns at length. We reached a hard negotiated equivalence agreement addressing them. We made concessions to reach a successful outcome. We adopted a time-tested, principles-based approach to CCP oversight. We got it right.

The current equivalence agreement ensures that swaps CCP remain financially sound while fostering cross-border trade flow and risk mitigation. We are not inclined to reopen it.

Yet, the current European Commission proposal to amend EMIR has the potential to reopen our agreement by proposing that European authorities exercise new direct oversight over U.S. CCPs. We do not support this.

What is the right approach?

First, every CCP should be subject to a comprehensive supervisory framework in its home jurisdiction that ensures an appropriate amount of oversight. Such a framework would include the following:

- Extensive risk surveillance. Daily monitoring of risk exposures should be conducted by all registered CCPs. This requires CCPs to be subject to data reporting requirements - daily, quarterly, annually and even event-specific.
- Examination authority. Annual examinations should be conducted that include in-depth analyses of rules and procedures as well as staff discussions on the application of CCP rules and procedures.
- Rule review mechanism. Advance review should be conducted on proposed rule amendments or new rules that will have a material impact on the registered CCP's business.

This is the CFTC approach. Our supervisory framework enables us to monitor risk by entity and across markets providing an appropriate level of oversight for each of our registered CCPs.

The way we view deference is that once a home country authority implements a comprehensive supervisory framework, it should have primary oversight over its domestic CCPs to which other foreign regulators should defer. Such deference should be underpinned by a robust, outcomes-based comparability assessment of the consistency of the home regulator's relevant regulations and supervisory programs.

The challenge of cross-border supervision of large cross-border CCPs is a true test as to whether U.S. and European authorities are serious about regulatory coordination. Without such coordination, overlapping regulatory burdens, inconsistencies, and legal uncertainty will very likely threaten the financial stability of our markets, dampen our prosperity and reverse the progress we have made since the 2008 financial crisis.

VI. Conclusion

I am optimistic about the future relationship of the CFTC and Europe. Our efforts to work together, in a coordinated manner, will allow our markets to continue to compete and grow, serving the needs in Europe and the United States.

International cooperation is more essential than ever. I began with Estonian poet Viivi Luik. She reminds us, "Everything is still ahead. Including the future..." The poet is right.

Together, let's work to ensure the future is one of greater financial stability, more vibrant markets and greater prosperity for our fellow citizens.

Thank you.

[1](#) Viivi Luik, "The Beauty of History," translated by Hildi Hawkins. Norwich (UK): Norvik Press, 2007.

Last Updated: September 14, 2017