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Keynote Address of Commissioner Brian Quintenz before FIA Annual Meeting, Boca Raton, Florida

March 14, 2018

Introduction

Thank you for that very kind introduction. I am honored to join you today at the 43rd annual FIA international conference. Before I begin, let me quickly say that the views contained in this speech are my own and do not represent the views of the CFTC.

I. The 2016 Equivalence Agreement

Trust is fundamental and essential to our international engagements. It is the foundation of successful collaboration and goodwill between regulators. Participation in international standards-setting bodies and bilateral discussions with foreign regulators depend on trust.

The CFTC has had a positive and constructive cross-border relationship with the European Union. Together we have accomplished a number of important swaps market reforms. In fact, tomorrow, March 15th, marks the second anniversary of our most important accomplishment—the 2016 CCP equivalence determination, which established a common approach to the regulation and supervision of cross-border CCPs.

The agreement is built on two central components. The first is the CFTC's comparability determination for EU-domiciled clearinghouses registered with the CFTC. Those clearinghouses are deemed compliant with certain CFTC requirements if they satisfy corresponding European laws, lessening the regulatory burden on EU CCPs. The determination also streamlines the registration process for EU-domiciled clearinghouses wishing to register with the CFTC. Currently, four European clearinghouses benefit from the CFTC's determination.[1]

The second component is the European Commission's equivalence determination for US clearinghouses registered with the CFTC, which serves as the basis for recognition by the European Securities Markets Authority, or ESMA. Recognition is required for any foreign clearinghouse—a "third-country CCP"—to operate in the EU. Today, five CFTC-registered US clearinghouses are recognized to provide clearing services directly to EU market participants.[2]

Our agreement with the European Commission was a significant achievement. Generally, I have been pleased with the outcomes. Increased regulatory coordination allows market participants to hedge risk in efficient and resilient global markets, and it also promotes financial stability by holding CCPs on both sides of the Atlantic to high standards.

II. The European Commission's Proposed Legislation to Amend EMIR Threatens to Nullify the 2016 Equivalence Agreement

Recently, the European Commission introduced legislation to revise the European Market Infrastructure Regulation—EMIR. That legislation aims to reassess the recognition status of all third-country CCPs and determine whether any clearinghouse is systemically important to the EU. Such designation would impose increased regulatory and supervisory burdens. Any third-country CCP deemed systemically important will be required to adopt all of EMIR and accept enhanced oversight by ESMA and the oversight of the European Central Bank. If a previously-recognized CFTC-registered US clearinghouse is considered systemically important, it will be required to submit to additional EU law outside the terms of the 2016 equivalence determination.

In the proposed legislation, the European Commission is unilaterally abandoning the "recognition conditions" set forth in the 2016 equivalence agreement.

The CFTC sees this as a clear breach and violation of our agreement.

III. Consequences for Reneging on Commitments

It is common knowledge that Brexit motivated the European Commission's new CCP framework proposal.[3] Once the United Kingdom leaves the EU, that framework would authorize the EU to either regulate UK clearinghouses from afar or force them to relocate to the continent; noncompliance would be met with exclusion from the EU marketplace. I recognize that any jurisdiction may amend its laws as the result of major economic and/or political developments. While Brexit presents significant challenges to the EU, it would be foolish for the EU to react by reneging on its agreement with the CFTC, the regulator of the world's largest derivatives market. Yet that is exactly what the EU would be doing.

Chairman Giancarlo has insisted the 2016 agreement is retained in the new EU CCP supervision framework. He has never insisted the 2016 agreement is immutable—it has always contemplated revision and change. The specific triggers contemplated are a significant change in the CFTC's regulatory regime or a significant increased risk posed to the EU by a recognized US clearinghouse. Neither condition exists.

Since 2016, no market developments have changed the risk US clearinghouses pose to the EU.[4] The CFTC has made no material revision to its CCP regulatory or supervisory approach. The only change has been Brexit, a development irrelevant to the United States. The 2016 agreement is not predicated on the EU's member-state composure. No justification exists for the EU to now renege on the 2016 agreement. We must not make a scarecrow of our accords.[5]

The EC's proposal is unacceptable to the CFTC. It is unacceptable to the United States Treasury Department. It is unacceptable to senior United States Senators. And it is unacceptable to the White House, itself. The entire United States Government is steadfast in its opposition to the EC's proposal.

Indeed, Chairman Pat Roberts (R-KS) and Ranking Member Debbie Stabenow (D-MI) of the Senate Agriculture Committee—the CFTC's oversight committee—have made their criticism quite public.[6] To dis-incentivize the EU from reneging on its promises, they have recommended the CFTC seriously reconsider the existing accommodations it extends to EU firms, exchanges, and CCPs doing business in US markets. I agree with that recommendation and am prepared to go even farther.

First, in my capacity as a Commissioner, I will vote against any additional EU equivalence determinations until we have specific assurance from European authorities they will honor their current commitments to the US. At this point, I see no reason for the CFTC to further pursue any cross-border harmonization with the EU.

Second, in recent weeks, a number of European national market regulators have approached the CFTC seeking no action relief from various CFTC rules and orders. I am now unwilling to support any effort by the CFTC to provide exemptive relief requested by EU authorities.

The EU must realize that there is a limit to our patience with their unwillingness to stand behind a deal.

Conclusion

My strong feelings on this matter are informed and reinforced by the extraordinary and repeated efforts I've seen Chairman Giancarlo make to explain our concerns to European authorities and the European Commission. Those were easy opportunities for the EU to reaffirm the cooperation we all want and expect. In each case, no reaffirmation was given.

I now have serious questions about our counterpart's trustworthiness as well as their priorities. Is the EU still committed to minimizing cross-border burdens, market fragmentation, and protectionism? Or, as it appears, is Europe intent on creating a

closed, self-contained environment in which they can operate without the support or engagement of outside regulators and businesses.

If it is indeed Europe's intent, in response to recent events, to create a self-contained environment and close itself off, I say this: great, good luck, and guess what…I'll help. On the contrary, if Europe is seeking an open relationship with the world markets, international businesses, and other regulators where ideas and competition can flourish, I would tell them: great, good news, and guess what…I'll help.

I want a good, healthy, cooperative, productive and trustworthy relationship with the European Union. That is an outcome in which both the EU and US markets would thrive. But, it is not a condition upon which the success of US markets depends.

Let me close by stating that I have not wavered from my belief that cross-border deference provides an avenue for growth, resilience, and efficiency in our financial markets. I wonder if our EU counterparts could say the same.

Today the EC can state clearly its proposed legislation is not an abrogation of the 2016 equivalence agreement and we can move forward from this unfortunate episode.

1 Eurex Clearing AG, ICE Clear Europe Ltd., LCH.Clearnet Ltd., and LCH.Clearnet SA.

2 CME Inc., ICE Clear Credit LLC, ICE Clear US Inc., Minneapolis Grain Exchange Inc., and Nodal Clear LLC.

3 "An E.U. Plan to Invade US Markets" by Chairman Giancarlo, Wall St. Journal (Nov. 6, 2017).

4 "An E.U. Plan to Invade US Markets" by Chairman Giancarlo, Wall St. Journal (Nov. 6, 2017).

Written Testimony of Chairman Giancarlo before the US Senate Agriculture, Nutrition, and Forestry Committee (Feb. 15, 2018).

5 As adapted from William Shakespeare's Measure for Measure, Act II, scene 1, where Angelo argues that a weak enforcement of the law would lead to its general disregard: "We must not make a scarecrow of the law, setting it up to fear the birds of prey, and let it keep one shape till custom make it their perch and not their terror."

6 Letter from Senators Roberts and Stabenow to CFTC Chairman Giancarlo, dated Jan. 8, 2018.

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