

PUBLIC STATEMENTS & REMARKS

Statement of Support by Commissioner Brian Quintenz Regarding Amendments to the Clearing Exemption for Swaps; the Final Rule Excluding the European Stability Mechanism from CFTC Margin Requirements; and Related No-Action Relief

April 14, 2020

In March 2018, I articulated my approach to our current regulatory relationship with our European counterparts in light of their refusal to stand by or re-affirm their 2016 commitments in the CFTC's and European Commission's common approach to the regulation of cross-border central counterparties (CCPs) (CFTC-EC CCP Agreement).[1] Specifically, I believe that the absence of the agreement's re-affirmation in the European Market Infrastructure Regulation 2.2 (EMIR 2.2) directly implied the agreement's abrogation.[2] I therefore vowed that I would either object to or vote against any relief provided to, or requested by, European Union authorities until the agreement's clarity was restored. Since that time, I have consistently voted against, or objected to, any regulation or relief that provides special accommodations to European entities, including the proposed exemption from margin requirements for the European Stability Mechanism (ESM) that the Commission seeks to finalize today.[3]

However, the unprecedented devastating economic and social impacts of COVID-19 across the globe warrant a reprieve from that position. In the United States, financial regulators have acted swiftly, decisively, and boldly to mitigate economic disruptions and support market liquidity, including providing regulatory relief where necessary. I am very proud of the CFTC's decisive response to the COVID-19 pandemic, which promoted the full functioning of derivatives markets despite the extraordinary challenges facing exchanges, clearinghouses, and market intermediaries as a result of social distancing.[4] I know the Commission, under the strong leadership of Chairman Heath P. Tarbert, is committed to providing any additional relief necessary to ensure that U.S. markets remain accessible.

Our European counterparts are engaged in the same epic struggle as we are to lessen the extraordinary economic and social harms of this pandemic. Although I remain committed to ensuring the terms of the CFTC-EC CCP Agreement are ultimately upheld, I also recognize that issue is one facet of a much broader, deeper bond we share with the European Union—a relationship that has been grounded in goodwill, trust, and partnership. Many of the European institutions affected by the rules and no-action relief before the Commission today are likely to be central to the European Union's COVID-19 economic recovery efforts. As a result, I believe it is appropriate to support the items before the Commission today, which, by providing relief from CFTC clearing and margin requirements, may bolster the ability of EU institutions to provide critical financial assistance to their economies, businesses, and citizens.

For example, the European Commission, ESM, and European Investment Bank (EIB) are working in concert to take unprecedented actions at the European level to complement national measures to mitigate the impacts of COVID-19.[5] The ESM has many economic tools at its disposal, including making loans to Eurozone member states, purchasing the bonds of Eurozone members, providing precautionary credit lines that can be drawn upon if needed, and directly recapitalizing financial institutions.[6]

Similarly, the EIB, the lending arm of the European Union, and the European Investment Fund (EIF), which specializes in finance for small and medium sized businesses, are also working together to respond to COVID-19. Together, the EIB and the EIF have proposed a plan to provide immediate financing to combat the health and economic effects of the pandemic.^[7] Each of these EU institutions may seek to enter into swaps subject to the CFTC's clearing or uncleared margin requirements in order to hedge the risks associated with these lending and investment activities. Accordingly, I support today's measures that provide relief from those requirements, thereby freeing up additional capital that can be immediately deployed in the European economy.

When the present hardship caused by COVID-19 abates, I look forward to re-engaging with our European counterparts on the critical issue of the oversight of U.S. CCPs. I believe the possibility still exists for a successful implementation of EMIR 2.2 that fully respects the CFTC's ultimate authority over U.S. CCPs, and I am committed to doing everything in my power to achieve this outcome.

Amendments to Swap Clearing Requirement Exemptions Under Part 50

I am pleased to support this proposal, which codifies existing relief, from the Commission's requirement that certain commonly traded interest rate swaps and credit default swaps be cleared following their execution.^[8] The new exemptions could be elected by several classes of counterparties that may enter into these swaps, namely: *sovereign nations*; *central banks*; *"international financial institutions"* of which sovereign nations are members; *bank holding companies*, and *savings and loan holding companies*, whose assets total no more than \$10 billion; and *community development financial institutions* recognized by the U.S. Treasury Department. Today's proposal notes that many of these entities have actually relied on existing relief, electing not to clear swaps that are generally subject to the clearing requirement.

I strongly support the policy of international "comity" described in the proposal, recognizing that sovereign nations and their instrumentalities should generally not be subject to the Commission's regulations. I trust that by proposing this relief, the United States, the Federal Reserve, and other U.S. government instrumentalities will receive the same treatment in foreign jurisdictions. As noted above, this policy is timely in light of the current projects the ESM, the EIB, and the EIF are currently undertaking in response to the pandemic. I am pleased that the Commission can provide flexibility to these entities at this time when entering into swaps with U.S. swap dealers. To this end, I also support the decision of the Division of Clearing and Risk to extend the current, time-limited no-action relief provided to the ESM^[9] pending the finalization of the amendments to part 50. I note that the EIB, EIF, other international financial institutions, central banks, and sovereign entities currently have relief that is not time-limited.^[10]

As for the bank holding companies, savings and loan holding companies, and community development financial institutions that would be provided relief pursuant to this proposal, I am hopeful that the Commission will ultimately finalize this relief, which it first proposed for these entities in 2018.^[11] However, I note that these entities currently have relief pursuant to no-action letters issued in 2016 that have no expiration dates.^[12]

Final Rule Excluding the European Stability Mechanism from CFTC Margin Requirements for Uncleared Swaps

I support today's final rule that would exempt a swap between the European Stability Mechanism and a swap dealer from the Commission's margin requirements applicable to uncleared swaps. This rule is premised on the same policy of international comity referenced in today's proposed exemption from the swap clearing requirement. I would like to highlight that the EIB, EIF, and the other international financial institutions referenced by the proposed exemption from the swap clearing requirement, as well as sovereign entities and central banks, are already exempted from the Commission's margin requirements for uncleared swaps pursuant to Commission regulations.^[13] Finally, I am pleased that the Division of Swap Dealer and Intermediary Oversight is today extending previously granted, time-limited no-action relief to the ESM,^[14] pending the effective date of today's final rule.

-CFTC-

[1] Keynote Address of Commissioner Brian Quintenz before FIA Annual Meeting, Boca Raton, Florida (March 14, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz9>; and Joint Statement from CFTC Chairman Timothy Massad and European Commissioner Jonathan Hill, CFTC and the European Commission: Common approach for transatlantic CCPs (Feb. 10, 2016), <https://www.cftc.gov/PressRoom/PressReleases/pr7342-16>.

[2] The proposed implementation of EMIR 2.2 by ESMA is available at, <https://www.esma.europa.eu/press-news/esma-news/esma-consults-tiering-comparable-compliance-and-fees-under-emir-22>.

[3] Dissenting Statement by Commissioner Brian Quintenz before the Open Commission Meeting: FBOT Registration (Nov. 5, 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement110519>; Dissenting Statement by Commissioner Quintenz to the Proposed Exclusion for the European Stability Mechanism from the Commission's Margin Requirements for Uncleared Swaps (Oct. 16, 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement101619>; Statement of Commissioner Brian Quintenz on Staff No-Action Relief for Eurex Clearing AG (December 20, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement122018>.

[4] Statement of CFTC Commissioner Brian Quintenz on Current Market Dynamics and Commission Actions Related to COVID-19 (March 18, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement031820>.

[5] *The time for solidarity in Europe is now – a concerted European financial response to the corona-crisis*, <https://www.esm.europa.eu/blog/time-solidarity-europe-concerted-european-financial-response-corona-crisis> (April 2, 2020).

[6] European Stability Mechanism, Lending Toolkit, <https://www.esm.europa.eu/assistance/lending-toolkit>.

[7] Coronavirus outbreak: EIB Group's response to the pandemic, <https://www.eib.org/en/about/initiatives/covid-19-response/index.htm> (April 9, 2020).

[8] The swap clearing requirement is codified in part 50 of the Commission's regulations (17 CFR part 50).

[9] CFTC Letter 19-23 (Oct. 16, 2019).

[10] End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42,560, 42,561-62 (Jul. 19, 2012).

[11] Amendments to Clearing Exemption for Swaps Entered Into by Certain Bank Holding Companies, Savings and Loan Holding Companies, and Community Development Financial Institutions, 83 Fed. Reg. 44,001 (Aug. 29, 2018).

[12] CFTC Letters 16-01 and -02 (both Jan. 8, 2016).

[13] CFTC regulation 23.151.

[14] CFTC Letter 19-22 (Oct. 16, 2019).