Public Statements & Remarks

Statement of Commissioner Dawn D. Stump Regarding Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations

September 17, 2020

Throughout my tenure at the Commodity Futures Trading Commission (CFTC or Commission), I have discussed the benefits of shared goals, cooperation, and mutual recognition (often referred to as "deference") among regulators. In early 2019, I wrote an opinion piece in the Financial Times in which I appealed to our international regulatory partners to recommit to a coordinated approach in order to ensure that our alliance remains strong rather than fractured. [1] When the CFTC proposed this rulemaking last summer, I committed to advancing a coordinated approach to the regulation of global central counterparties (CCPs). I expressed both my belief that the proposal we put forward was an important first step in that process, and my sincere hope that our international regulatory partners would also take the opportunity to reset and recognize that our shared interest in advancing derivatives clearing would be best achieved by respecting each jurisdiction's successful implementation of the principles agreed to by the Group of 20 Nations (G-20) in 2009.[2]

I believe that we are in a better position today than we were just a year and a half ago. Earlier this summer, the European Commission adopted three Delegated Acts regarding the European Union's (EU) supervision of third-country CCPs.[3] This week, the European Parliament's no-objection period for those Delegated Acts concluded, and they are expected to come into force later this month. I am pleased that under those Delegated Acts, we do not expect that any U.S. derivatives clearing organization (DCO) will be designated as a Tier 2 third country CCP. And we at the CFTC are now adopting a rule that would allow a registered DCO organized outside of the United States to comply with the Commodity Exchange Act's (CEA) DCO core principles by complying with its home country regulatory regime.

Furthermore, in connection with finalizing this rule, staff of the Division of Clearing and Risk has already conducted an analysis of EU legal requirements that correspond to specific DCO core principles. We have included that analysis in an appendix to this rule to assist EU-based CCPs wishing to avail themselves of this rule. I am pleased that in so doing, we are taking a principles-based approach that assesses comparability at the core principle level rather than conducting a line-by-line comparison of each jurisdiction's regulations. As I have said before, deference is a two way street, and I appreciate that we and our European colleagues have advanced measures that respect each other's regulatory interests and expertise.

But we must not rest on our laurels. Our work here is not done. We are still requiring that registered DCOs availing themselves of this rule comply with the swap data reporting requirements in Part 45 of the Commission's regulations as well as certain ongoing and event-specific reporting requirements.[4] I hope that the CFTC will soon turn to considering substituted compliance for our reporting rules, which we are amending today. I am heartened by the acknowledgment in the preamble to today's Part 45 rulemaking that we are "open to further ways to cooperate with our foreign regulatory counterparts in the supervision of [trade repositories]"[5]including, for example, "when and how the Commission should grant swap data reporting substituted compliance determinations for… DCOs domiciled in non-U.S. jurisdictions with similar swap data reporting requirements, permitting reporting of swap data to a foreign [trade repository] to satisfy Commission swap data requirements under appropriate circumstances."[6]

Furthermore, finalizing this rule does not eliminate the need to consider exempting foreign CCPs from registration with the CFTC, pursuant to the express authority provided for in the CEA.[7] I anticipate that the Commission will soon consider finalizing the rule we proposed last summer, whereby U.S. customers would be allowed to use a foreign intermediary, but not a futures commission merchant (FCM), to access a foreign CCP that is exempt from registration with the CFTC.[8] But I still maintain that U.S. customers deserve optionality in how they access a third country CCP that does not present substantial risk to the U.S. financial system and is subject to regulation that is comprehensive and comparable to our own. To that end, I hope that the Commission will consider an approach that would allow U.S. customers to utilize an FCM to access an exempt DCO.

Thank you to the staff of the Division of Clearing and Risk for their efforts on cross-border clearing issues over the past several years and, in particular, the amount of time and energy they have spent working with me and my office over the past two years. I look forward to continuing our engagement on these topics.

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[1] Dawn DeBerry Stump, Opinion, We Must Rethink Our Clearinghouse Rules, FIN. TIMES (Jan. 24, 2019).

[2] Statement of Commissioner Dawn D. Stump for the CFTC Open Meeting, July 11, 2019 (July 11, 2019), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement071119.

[3] Provisional versions of the Delegated Acts are available at https://ec.europa.eu/info/law/derivatives-emir-regulation-eu-no-648-2012/amending-and-supplementary-acts/implementing-and-delegated-acts_en.

[4] Regulation 39.51(b)(1) and Regulation 39.51(c), 17 CFR 39.51(b)(1) and 39.51(c).

[5] Swap Data Recordkeeping and Reporting Requirements (Sept. 17, 2020).

[6] Id.

[7] 7 U.S.C. § 7a-1(h) (2012).

[8] See Exemption from Derivatives Clearing Organization Registration, 84 Fed. Reg. 35456 (proposed July 23, 2019).

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