

# Public Statements & Remarks

## Supporting Statement of Commissioner Brian D. Quintenz Regarding Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations

September 17, 2020

Today's final rule providing for registration with alternative compliance for non-U.S. derivatives clearing organizations (DCOs) is a significant milestone in the CFTC's policy of deferring to foreign regulatory counterparts that have taken a serious and committed approach, similar to the CFTC's, to adopting the swaps reforms called for by the 2009 G20 Summit in Pittsburgh and championed by important international bodies like the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB). Like the CFTC, several foreign regulatory authorities have issued numerous regulations over the past decade regulating the swaps markets at clearinghouses, exchanges, and dealers. [\[1\]](#) Specific to CCP oversight, numerous jurisdictions, including the CFTC, have implemented the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs). [\[2\]](#) Throughout my tenure at the Commission, I have stated that deference to our foreign counterparts is a necessary way to reduce compliance burdens for industry and to conserve the Commission's precious resources. [\[3\]](#) Previous CFTC Chairman Giancarlo promoted a workable deference policy, as evidenced by the publication, during his chairmanship, of the proposed version of the final rule before the Commission today. [\[4\]](#) I am pleased to see Chairman Tarbert continue this policy, exemplified not only with this final rule, but also with the final rule published by this Commission in July, which sets forth the cross-border application of many of the Commission's regulations for swap dealers (SDs). [\[5\]](#)

The alternative registration rule for non-U.S. DCOs will prevent non-U.S. DCOs registered with the CFTC from being subject to unnecessary duplicative regulation by both the CFTC and their home country regulator that has issued comparable rules. The rule will permit a non-U.S. DCOs that does not pose "substantial risk to the U.S. financial system" to be registered with the CFTC but comply with regulations issued by its home country regulator instead of with CFTC regulations, with the limited exception of certain CFTC customer protection and swap data reporting requirements. The rule recognizes that non-U.S. regulators have a substantial regulatory interest in supervising the DCOs located in their home jurisdictions and appropriately defers to their oversight when compliance with the home country regulatory regime would constitute compliance with DCO core principles. I note that this rule is consistent with, and an expansion of, the CFTC's 2016 Equivalence Agreement with the European Union (E.U.), pursuant to which the CFTC granted substituted compliance to dually-registered DCOs based in the E.U. [\[6\]](#)

While the alternative DCO registration rule would provide for a deference-based approach for certain clearinghouses organized abroad, it would not be available to a non-U.S. clearinghouse posing “substantial risk to the U.S. financial system.” The final rule, like the proposal which I supported, defines this term according to two simple criteria: (i) the foreign DCO holds 20 percent or more of the required initial margin U.S. clearing members for swaps across all registered and exempt DCOs; and (ii) 20 percent or more of the initial margin requirements for swaps at that foreign DCO is attributable to U.S. clearing members. [7] I believe this two-prong test correctly assesses the DCO’s focus on U.S. firms and impact on the U.S. marketplace.

In voting to adopt the alternative DCO registration final rule, I recognize that E.U. authorities have recently adopted regulations for clearinghouses located outside of the E.U. that access the E.U. market, which are in the spirit of the 2016 agreement on CCPs between the CFTC and the European Commission.[8] These regulations, issued by the European Commission in July, will only require a U.S. CCP to be generally subject to E.U. regulation and supervision (as a “tier 2 CCP”) if its E.U. presence exceeds certain clear thresholds.[9] I am pleased that these regulations have now been agreed to by the European Council and by the European Parliament. The adoption of these regulations represents a marked shift in E.U. policy from the one that existed at the beginning of my term as CFTC Commissioner. In March of 2018, I stated that I would neither support the CFTC granting additional equivalence determinations within the E.U., nor would I support any relief requested by E.U. authorities, until the E.U. recommitted to honoring its 2016 agreements with the CFTC on CCP oversight.[10] That agreement had been in jeopardy since the E.U.’s issuance of a revised European Market Infrastructure Regulation (“EMIR 2.2”) in 2017, which raised the possibility of E.U. authorities directly supervising US clearinghouses and requiring them to comply with EMIR. I am very pleased to see this shift in E.U. policy, which I already recognized in July when voting to expand the Commission’s exemption registration for E.U.-recognized swap trading platforms for additional platforms in several E.U. member states. [11]

In conclusion, I look forward to the CFTC continuing to work cooperatively with our E.U. counterparts in the crucial area of CCP oversight, in a manner that eliminates unnecessary duplicative burdens at both the regulator and registered entity.

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[1] See, e.g., FSB OTC Derivatives Market Reforms: 2019 Progress Report on Implementation (Oct. 15, 2019), <https://www.fsb.org/wp-content/uploads/P280519-2.pdf> and FSB, *Implementation and Effects of the G20 Financial Regulatory Reforms: Fifth Annual Report* (Oct. 16, 2019), <https://www.fsb.org/2019/10/implementation-and-effects-of-the-g20-financial-regulatory-reforms-fifth-annual-report/>.

[2] PFMI Implementation Database, <https://www.bis.org/pfmi/index.htm>.

[3] See, e.g., Remarks of CFTC Commissioner Brian Quintenz at 2019 ISDA Annual Japan Conference, “Significant’s Significance” (Oct. 25, 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz20>.

[4] Registration with Alternative Compliance for Non-U.S. DCOs, 84 Fed. Reg. 34,819 (July 19, 2019).

[5] Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to SDs and MSPs, 85 Fed. Reg. 56,924 (Sept. 14, 2020).

[6] Comparability Determination for the European Union: Dually-Registered Derivatives Clearing Organizations and Central Counterparties, 81 Fed. Reg. 15260 (March 22, 2016).

[7] Regulation 39.2.

[8] 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>.

[9] European Commission Delegated Regulation (“Delegated Acts”), dated July 14, 2020, supplementing Regulation (EU) No. 648/2012 of the European Parliament...with regard to the criteria that ESMA should take into account to determine whether a CCP established in a third-country is systemically important...for the financial stability of the Union..., <https://webgate.ec.europa.eu/regdel/#/delegatedActs/1382>.

[10] Keynote Address of Commissioner Brian Quintenz before FIA Annual Meeting, Boca Raton, Florida (March 14, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz9>.

[11] Supporting Statement of Commissioner Brian Quintenz Regarding the Amendment to the Commission’s Order Exempting EU Swap Trading Facilities from SEF Registration (July 23, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement072320b>.

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