

Public Statements & Remarks

Statement of Commissioner Rostin Behnam Regarding Registration with Alternative Compliance for Non-U.S. DCOs

September 17, 2020

I support today's final rule permitting derivatives clearing organizations (DCOs) organized outside of the United States (non-U.S. DCOs) that the CFTC determines do not pose substantial risk to the U.S. financial system to register with the Commission and comply with the core principles applicable to DCOs (Core Principles) set forth in the Commodity Exchange Act (CEA) through compliance with their home country regulatory regime. This registration category establishes a new model for regulatory deference aimed at reducing regulatory burdens and ongoing compliance costs for non-U.S. clearing organizations.

As we move forward in executing this new framework, the Commission's evaluation of the suitability of any particular non-U.S. DCO and the comparability of its home country's regulatory regime to the Core Principles will be closely watched and analyzed by regulatory and supervisory bodies as well as market participants around the world. To the extent the Commission is codifying a definition for "substantial risk to the U.S. financial system" that commingles a bright-line test with autonomous agency discretion, its aptitude for exercising a policy rooted in relationships aimed at leveling the global playing field for all, with favoritism towards none will be routinely tested. As demand for U.S. customer swap clearing evolves and risk neither contemplated nor captured by the dual 20 percent criteria of the substantial risk threshold emerges, the CFTC's commitments to transparency, ongoing monitoring and market surveillance, preservation of customer protections, and coordination with home country regulators must not fall by the wayside.

I am encouraged by the Commission's efforts to take a leading role in injecting greater international coordination and mutual respect and deference into the supervision of DCOs, the majority of which operate on a cross-border basis. Inasmuch as the CFTC's registration of non-U.S. DCOs with alternative compliance is an expression of the CFTC's efforts to engage foreign regulators in establishing reciprocity regarding DCO supervision and regulatory oversight, delivering on comity should not overtake fulfilling the core purposes under the CEA, particularly in regard to the avoidance of systemic risk and protection of market participants. The decisions we make as a Commission, whether driven by policy, statute, regulatory agenda—or even budget—impact and alter risk profiles and interdependencies within the markets we oversee directly and in which U.S. persons participate. Our markets facilitate both the creation and management of risks in an interconnected web of systems and operations. It is critical that in all of our undertakings, we consider how our actions alter the landscape and ensure to the greatest extent possible that we build end-to-end resilience into the overall financial system.

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