

MEMO# 30917

October 18, 2017

CFTC and European Commission Agree on Comparability and Equivalence of Margin Requirements for Uncleared Swaps and a Common Approach for Certain Derivatives Trading Venues

[30917]

October 18, 2017 TO: ICI Members

ICI Global Members SUBJECTS: Derivatives

International/Global

Trading and Markets RE: CFTC and European Commission Agree on Comparability and Equivalence of Margin Requirements for Uncleared Swaps and a Common Approach for Certain Derivatives Trading Venues

Recently, the US Commodity Futures Trading Commission (CFTC) and the European Commission (EC) jointly took action to increase cross-border harmonization of derivatives regulation between the European Union and United States. Specifically, the two regulators adopted equivalence and comparability determinations regarding margin requirements for uncleared swaps and agreed to a common approach to certain CFTC- and EU-authorized derivatives trading venues.[\[1\]](#) The details related to each action are provided below.

Equivalence and Comparability Determinations Regarding Margin Requirements for Uncleared Swaps

The equivalence and comparability decisions adopted by the EC and the CFTC will allow market participants to avoid a duplicative regulatory burden for non-cleared, over-the-counter (OTC) swaps, both in the EU and in the US. Specifically, the EC's decision finds that CFTC rules on risk monitoring and mitigation for uncleared derivative contracts are equivalent to EU rules. It also determines that US margin rules are equivalent to EU rules. Similarly, the CFTC's comparability determination deems a swap dealer or major swap participant to be in compliance with the CFTC's margin rules if it is subject to both the CFTC's and EU's margin rules with respect to an uncleared swap and if it complies with the EU's margin rules.[\[2\]](#)

Common Approach to Certain CFTC and EU Authorized Derivatives Trading Venues

The CFTC and the EU agreed to a common approach to derivatives trading venues to ensure that counterparties in the US and EU can satisfy derivatives trading obligations in both jurisdictions. Without a common approach, liquidity would fragment regionally because cross-border trading of derivatives that are subject to a trading mandate in both jurisdictions would need to be conducted on a venue that satisfies the laws of both jurisdictions. (Currently, there are no trading venues that would fall within this category.) Under the common approach, EU counterparties can comply with trading obligations under Article 28 of the markets in financial instruments regulation (MiFIR) by executing mandated derivatives on CFTC-authorized swap execution facilities (SEFs) and designated contract markets (DCMs). The approach likewise ensures that US counterparties can comply with the trade execution requirement under Section 2(h)(8) of the Commodity Exchange Act (CEA) by executing swaps on certain EU-authorized trading venues that are exempted from SEF registration pursuant to CEA Section 5h(g).

Vice President Valdis Dombrovskis of the EC intends to propose that the EC adopt an equivalence decision to recognize CFTC-authorized SEFs and DCMs as eligible venues for the execution of those derivatives transactions that will be subject to the EU trading obligation. The CFTC also intends to exempt certain EU-authorized swap trading venues (for this purpose, multilateral trading facilities (MTFs) and organized trading facilities (OTFs)), from the requirement to register with the CFTC as SEFs.

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endnotes

[1] See EC Press Release, Vice President for Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, The United States Commodity Futures Trading Commission and the European Commission: A Common Approach on Certain Derivatives Trading Venues (October 13, 2017), *available* at https://ec.europa.eu/info/sites/info/files/171013-joint-statement-ec-cftc_en.pdf; see also CFTC Press Release, CFTC Comparability Determination on EU Margin Requirements and a Common Approach on Trading Venues (October 13, 2017), *available* at <http://www.cftc.gov/PressRoom/PressReleases/pr7629-17>; EC Press Release, Vice President for Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, Vice-President Valdis Dombrovskis' press statement with the US Commodity Futures Trading Commission (CFTC) (October 13, 2017), *available* at http://europa.eu/rapid/press-release_SPEECH-17-3949_en.htm.

[2] Under substituted compliance, these entities would remain subject to the CFTC's examination and enforcement authority.

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