

The United States Commodity Futures Trading Commission and the European Commission: A Common Approach on Certain Derivatives Trading Venues

The European Commission ("EC") Vice President for Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, and United States Commodity Futures Trading Commission ("CFTC") Chairman J. Christopher Giancarlo today announced a common approach regarding certain derivatives trading venues authorized in the European Union ("EU") and in the United States of America.

The Approach

The aim of the common approach is to ensure that EU counterparties are able to comply with the trading obligation under Article 28 of the Markets in Financial Instruments Regulation ("MiFIR") by executing mandated derivatives on EU authorized trading venues or CFTC-authorized swap execution facilities ("SEFs") and designated contract markets ("DCMs"), while ensuring 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), as well as on SEFs and DCMs.

The Vice President intends to propose that the EC adopts an equivalence decision to recognize CFTC-authorized SEFs and DCMs that operate in the United States as eligible venues for the execution of those derivatives transactions that will be subject to the EU trading obligation, provided the requirements of MiFIR, the Markets in Financial Instruments Directive ("MiFID II") and the Market Abuse Regulation ("MAR") are met.

CFTC staff intends to propose, and the Chairman will support putting before his fellow Commissioners for a vote, the exemption by the CFTC of 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, provided that they satisfy the standard set forth in CEA Section 5h(g). This will render the exempt EU venues operating in the EU eligible venues for purposes of complying with the CFTC trade execution requirement.

Key elements of the approach:

1. Equivalence

The Vice President intends to propose that the EC adopts an equivalence decision covering the CFTC-authorized SEFs and DCMs that are notified to it by the CFTC. The EC's authority to adopt an equivalence decision derives from Article 28(4) of MiFIR, which empowers the EC to adopt an equivalence decision should it deem that the legal and supervisory framework applicable to trading venues in a third country is considered to have equivalent effect to the rules in MiFID II/MiFIR and MAR.

CFTC staff intends to propose, and the Chairman will support, the CFTC's exemption from the SEF registration requirement, through a single exemption order, of the trading venues authorized in accordance with the MiFID II/MiFIR requirements that have been notified to the CFTC by the EC. The CFTC's exemption authority derives from CEA Section 5h(g), which empowers the CFTC to grant an exemption where it determines that a swap execution facility "is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the appropriate governmental authorities in the home country of the facility."

The EC would be able to request an update to the venues covered by the CFTC's exemption. The CFTC would be able to request an update to the venues covered by the EC's equivalence decision.

2. *The applicable standards*

The EC will assess equivalence under MiFIR Article 28 leading to the recognition of CFTC-authorized SEFs and DCMs on the basis of the CEA and the relevant CFTC regulations. The CFTC's assessment of EU trading venues under CEA Section 5h(g) will concentrate on the EU-wide standards established pursuant to the MiFID II/MiFIR and MAR. The EC will act as the "primary point of contact" during the CFTC's assessment of the EU regulatory framework and will make available to the CFTC, where necessary, national implementing measures adopted in the EU Member States whose venues are proposed to be recognized by the CFTC pursuant to the exempt SEF regime under CEA Section 5h(g). The EC, acting in accordance with the powers granted to it by the Treaty on the Functioning of the European Union ("TFEU") and the Treaty on European Union ("TEU"), and in particular Article 17 of TEU, will oversee the application of Union law, such as MiFID II, MiFIR and MAR, including by national competent authorities, as applicable, in the EU under the control of the Court of Justice of the EU.

3. *Next Steps*

The CFTC staff and the EC services¹ will work as expeditiously as practicable to ensure that this arrangement is put into place and operating in a coordinated manner, and will continuously monitor the impacts resulting from the implementation to assess whether any further action is appropriate. The next steps foreseen are that the CFTC staff will notify the EC of its list of eligible SEFs and DCMs while the EC will notify the CFTC of its list of eligible MiFID II/MiFIR and MAR compliant trading venues. The CFTC staff and the staff of relevant national competent authorities under the coordination of the EC will also work towards concluding cooperation arrangements to ensure the effective exchange of information and coordination of supervisory activities.

¹ The responsible service in the European Commission is the Directorate-General for Financial Stability, Financial Services and Capital Markets Union.