



International Organization of Securities Commissions
Organisation internationale des commissions de valeurs
Organização Internacional das Comissões de Valores
Organización Internacional de Comisiones de Valores

22 November 2013

Mr Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B – 1049 Brussels
Belgium

Dear Commissioner Barnier,

Recognition of Asia Pacific Central Counterparties (CCPs) under the European Market Infrastructure Regulations (EMIR)

We refer to the above matter, and to the previous correspondence between the Asia Pacific Regional Committee (APRC) of the International Organization of Securities Commissions (IOSCO) and the European Commission (EC), as well as the meeting amongst the APRC members, EC and the European Securities and Markets Authority (ESMA) held in Hong Kong in July 2013.

Pursuant to the 15 September 2013 deadline for application by non EU CCPs for recognition by ESMA under Article 25 of EMIR, applications have been submitted by a number of Asia Pacific CCPs to ESMA. We have since consulted members of the APRC as to whether there are any outstanding issues relating to these applications which members have in common and which they would like to raise collectively to the EC or ESMA.

We have received feedback that further guidance on certain matters would be useful in order to provide greater clarity about the process of non EU CCP recognition. These include further detailed information on (i) the contents, effect and purpose of the memorandum of understanding (MoU) with ESMA, including requirements from the home regulators, and the procedures for finalizing the MoU; and (ii) the approach to equivalence assessments for jurisdictions that are not currently covered by reports of technical advice on third country regulatory equivalence under EMIR published by ESMA.

Members appreciate the progress made to date by the EC and ESMA in the equivalence assessment, which has resulted in the publication of final reports of technical advice for various jurisdictions. At this point, we would like to summarize our collective views so that they can be taken into account when EC considers equivalence determinations, including conditions (if any) to the equivalence status of an Asia Pacific jurisdiction.

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We reiterate our previous points made in our 6 June 2013 letter on the importance of the recognition status of the Asia Pacific CCPs under EMIR. We further reiterate that Asia Pacific jurisdictions have based their regulatory framework for CCPs on the international standards set by CPSS-IOSCO Principles for Financial Market Infrastructures (PFMI).

In this regard, we note that the EC and ESMA are committed to a holistic approach when conducting equivalence assessments of non EU CCPs. We believe that this necessarily means that the equivalence assessment should be conducted by reference to “outcomes”: i.e. a non EU CCP would be deemed to be equivalent where requirements and standards to which it is subject, whilst different from those set out in EMIR, would nonetheless achieve similar regulatory outcomes.

We believe that where there are gaps or differences between the requirements and standards applicable to EU CCPs and non EU CCPs, parties should work together to find internationally-consistent solutions. In this regard, we believe that it is essential that solutions should be proportionate, and should take into account the specific domestic market characteristics of the non EU CCP as well as its international and domestic significance and stage of development. To the extent possible, PFMI standards which are sufficiently granular, should form a core component to achieve internationally-consistent solutions.

We further believe that, as far as possible, when conducting an equivalence assessment or setting any condition as part of the equivalence assessment, the EC and ESMA need to give weight to the rationale that requirements and standards which may be relevant, appropriate and feasible for an EU based CCP may not necessarily be relevant, appropriate or even feasible for a non EU CCP. Non EU CCPs providing services for traditional securities and futures products are subject to different market conditions, types of domestic products and market participants. Critically, these non EU CCPs serve mostly domestic market participants, and in respect of their services to EU financial institutions or subsidiaries, this is limited to such entities’ operations within the domestic markets. These non EU CCPs do not themselves operate in the EU markets.

Imposing conditions and standards that are not relevant, appropriate or even feasible for such non EU CCPs would give rise to severe problems. EU established financial institutions and subsidiaries would not be able or would find it prohibitively expensive to use the services provided by these non EU CCPs. This will further lead to market fragmentation, contraction of market liquidity and will directly impact on EU established financial institutions and subsidiaries carrying on business in the Asia Pacific region as well as the Asia Pacific markets in which they operate.

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We would further like to highlight how the timeline of the non EU CCP equivalence assessment would interact with the Capital Requirements Directive (CRD IV) which will commence in 2014. CRD IV will provide relief to non EU CCPs to qualify as qualifying CCPs (QCCPs) on an interim basis until 15 June 2014, or recognition is received from ESMA, whichever is earlier. We are concerned that the due process for the non EU CCP equivalence assessment may not be completed by 15 June 2014. Should the CRD IV requirements commence before EC and ESMA' due processes are complete, non EU CCPs will not be qualified as QCCPs for the purposes of CRD IV. If so, European banks with operations in Asia may not qualify for the risk weighting approach vis-à-vis non EU CCPs, potentially causing these banks to withdraw from clearing, and consequently trading, in Asia.

In this case, we urge the EC to exercise its discretion to adopt an implementing act to extend the transitional relief by a further six months so that non EU CCPs continue to qualify as QCCPs beyond 15 June 2014 and up to 15 December 2014. This will help to avoid any unintended industry restructuring of European businesses in Asia ahead of the commencement of the CRD IV requirements.

We believe that addressing the above concerns explicitly would help facilitate the progress of the equivalence assessments and provide certainty to European businesses operating in Asia. We look forward to receiving further guidance on these matters raised by members of the APRC, who look forward to continuing to working closely with EU authorities.

Yours sincerely,

Ashley Alder
Chairman
IOSCO Asia Pacific Regional Committee

Cc: Steven Maijoor, Chair, ESMA;
Michael Noonan, President, Economic and Financial Affairs Council,
Council of the European Union;
Sharon Bowles, Chair of the European Parliament Committee on Economic and
Monetary Affairs

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