AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Rt. Hon. Lord Hill of Oareford, CBE
European Commission,
Rue de la Loi 200,
1040 Brussels, Belgium

Brussels, 21 November 2014

Dear Commissioner Hill,

The American Chamber of Commerce to the EU (AmCham EU) continues to follow with interest the implementation of existing and ongoing discussions on future EU rules in the financial services sector as regards "third country provisions". As we have stated previously, we consider a well-functioning and appropriately regulated transatlantic capital market to be an important driver of long-term economic growth and competitiveness in Europe and the US. We have been strong supporters of the EU-US Financial Markets Regulatory Dialogue over recent years but believe that the scale, complexity and possible economic consequences of a failure to agree on the detail of certain rules suggests that additional support for the process of transatlantic rule-making is necessary. Consequently, the American Chamber of Commerce to the EU has always been firmly committed to the inclusion of regulatory cooperation on financial services in the TTIP. We found the references you made during your hearing in the European Parliament to the need to deepen regulatory convergence and strengthen cooperation with the EU's international partners at both multilateral and bilateral levels most encouraging. We agree wholeheartedly that it would be a hugely retrograde step if the measures to deliver a stable and resilient financial system were undermined by diverging rules and implementation.

At this juncture in the EU's institutional process we thought it might be helpful to take stock of our experiences with the proposed third country regimes and make some suggestions how this part of EU rule making might be improved.

The members of AmCham EU have been strong supporters of the G20 process aimed at strengthening the regulatory framework around international financial markets. We believe that these rules will lead to increased resilience. Recognising the global nature of financial services, it had been our expectation that the G20 would also contribute to a consistent and unified international framework. On this account we have thus far been disappointed.

Let us mention just three recent concrete examples:

- Conformity of international standards: For instance, Basel III – the international capital and liquidity accord – has been implemented differently in some key respects in the U.S. and in Europe. For example, while there is an exemption regarding the credit valuation adjustment ("CVA") capital charge in the EU, the U.S. Federal Reserve has chosen not to exempt exposures to certain counterparties from the CVA capital charge. The result is an unlevel

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playing field. More recently, AmCham EU has been very concerned about EU plans to significantly diverge from some of the IOSCO Benchmark Principles.

- Ensuring an open transatlantic capital market: Given the international nature of the derivatives markets, EMIR contains provisions that have extra-territorial implications. Ensuring that non-EU CCPs will continue to be able to provide their services in the EU will be key to safeguarding the continued smooth functioning of the international derivatives markets. Objective, transparent and outcomes-based decision-making processes around equivalence and the authorisation of non-EU CCPs are crucial for maintaining free access to markets. This process should be completed in a way that causes no undue disruptions to existing global markets.
- Avoid duplicative or conflicting rules: One such example of regulatory inconsistency relates to the EMIR reporting provisions. While the U.S. Dodd Frank Act only requires one of the counterparties to a transaction to report, EMIR mandates both counterparties to report the details of the transaction to a Trade Repository. This so-called dual reporting requirement in turn gives rise to significant operational challenges in the implementation phase.

While we realise there might be instances where national specificities might be required we would urge the European Commission and EU institutions to try and adhere to the following principles:

- Where international standards are in existence any divergence in national or regional rules should be clearly explained and justified;
- Compliance by a third jurisdiction with the agreed international standards should be used as the determining factor for any equivalence determination;
- Where the political process permits national or regional jurisdictions should await the outcome of the discussions at international level before drafting their own legislation.

The American Chamber of Commerce to the EU does not believe the strict compliance with these rules in any way limits the accountability of the law making process, nor the ability of jurisdictions to respond to future regulatory requirements. Instead it would contribute to legal certainty, reduce compliance costs and contribute to the smooth functioning of appropriately regulated international financial markets.

The American Chamber of Commerce to the EU looks forward to our continued discussions on this important subject and would be delighted to provide you with any other material you might find useful.

Yours sincerely,

Richard Kaye

Richard Kaye
Chair
Financial Services & Company Law Committee
AmCham EU

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.

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