Vice-President Valdis Dombrovskis
Vice-President for the Euro and Social Dialogue, Financial Stability, Financial Services and Capital Markets Union
European Commission
Rue de la Loi 200/Wetstraat 200
1049 Bruxelles/Brussel

17 March 2017

Dear Vice-President Dombrovskis,

Re: Capital Markets Union mid-term review 2017

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 a better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2016 and directly supports more than 4.5 million jobs in Europe.

AmCham EU has been, and continues to be, a strong proponent of the establishment of a Capital Markets Union (CMU) within the EU. We welcome the opportunity to take stock of the progress made and provide feedback on the developments to date as part of the Commission's mid-term review. We believe that this must take into account the current political climate which has been significantly altered since the CMU was first launched in 2015. As a result of the outcome of the UK-EU referendum, the EU's largest capital market will leave the Union as early as 2019. Therefore it is now of even greater importance to accelerate the completion of the 33 actions to build a strong, thriving and resilient CMU.

We commend the Commission on the CMU actions executed so far but are concerned that the momentum of these has slowed or stagnated. A marked example of this is the proposal on simple, transparent and standardised (STS) securitisations which was published in September 2015 but has yet to be finalised. Furthermore, the proposal is at risk of being adopted without an equivalence clause, which would limit the attractiveness of STS and will divide the markets. We believe non-EU securitisations should be eligible for STS recognition, and UCITS funds should not be unduly restricted from investing in non-EU assets.

Furthermore, when presented in September 2015, the CMU Action Plan recognised the existence of barriers to the cross -border distribution of funds, yet we are still awaiting concrete measures to address these obstacles. Whilst we broadly support this work, we are concerned about the work stream recently announced by the European Securities and Markets Authority (ESMA) to conduct an assessment of EU Member States' application and enforcement of outsourcing rules under the UCITS Directive, the Alternative Investment Fund Managers Directive (AIFMD), and the Directive on Markets in Financial Instruments (MiFID). Funds frameworks, like UCITS and AIFMD, have been great success stories for EU legislation as they have led to the creation of truly global funds frameworks. Any moves to restrict the functioning of UCITS or AIFMD and the delegation of fund management would likely damage the success of UCITS at a global level.

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We urge the Commission and the co-legislators to reinvigorate discussions on STS and barriers to cross-border capital flows and to avoid similar hold-ups on upcoming proposals including on the European Personal Pensions Framework and the Action Plan on Retail Financial Services. We also note the recently launched consultation on the conflict of law rules on securities and claims on ownership and encourage swift progress on this matter.

Notably, the consultation document on the mid-term review as well as the Commission Communication on the Call for Evidence recognise the possible negative impacts of regulatory change on liquidity in some markets including corporate bonds markets. We welcome the Commission's efforts to determine which measures may have a detrimental effect on liquidity and to identify solutions. However, we would urge the Commission to also consider the impact of existing, ongoing and future legislation, including level 2 measures, on the 'market maker model' which is the key distribution model of securities and is therefore critical to liquidity provision. An examination of regulatory coherence, specifically the coherence of the leverage ratio, the liquidity coverage ratio (LCR), and the net stable funding ratio (NSFR), and their collective impact on liquidity provision in fixed income markets, should be undertaken. This examination of coherence should also be utilised in international fora to influence international rule-setting so as to ensure coherence when ultimately transposed into EU law.

Similarly, the consultation document highlights a drop in venture capital funding and deals in the EU during 2016 and the market still lags behind the US considerably. We recognise that the Commission is taking steps to boost investment into venture capital, including a revision of the EuVECA legislation. However, we would encourage the Commission to consider additional measures to promote investment in venture capital for example by taking steps to promote the IPO market.

Additionally, the Commission should continue to make efforts to improve predictability and certainty in the uniform application of EU legislation, both at Level 1 and Level 2. We would also propose that the Commission considers addressing measures which result in double taxation for funds and other investments which are a major deterrent for international investment.

Finally, we would like to reiterate the global nature of financial markets. Despite the current political climate, we believe that it is critical that the EU shuns a protectionist approach and that markets remain open with a global outlook. For example, we are concerned that the requirement to have a single intermediate EU parent undertaking, proposed in Article 21b of the amendments to the "Capital Requirements Directive" (CRDV), creates a barrier for cross-border activity. As it is currently drafted, it will likely have cost implications that third-country firms will have to consider when deciding to provide services to clients.

Creating a CMU which is attractive to investors and issuers internationally can only serve to deepen, strengthen and increase the competitiveness of European capital markets. With this in mind, we would echo the view of Steven Maijoor, Chairman of ESMA, when he advocated for a coherent and more efficient approach to third-country equivalence. Moreover, we would encourage the Commission to continue engaging in international fora and implementing international standards whilst avoiding duplicative or conflicting rules.

We recognise that the ambitious nature of the Capital Markets Union, as a flagship initiative of the Commission, has at times led to the slowing of its progress. Nevertheless, we encourage the Commission to continue all efforts to ensure completion. We will continue to support and engage with the Commission throughout and remain at your disposal should you wish to discuss in greater detail.

Yours sincerely,

Richard Kaye

Richard Kaye
Chair of the Financial Services Committee
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