AmCham EU

Building a Transatlantic Capital Markets Union is key to achieving much needed growth in Europe

Executive summary

The American Chamber of Commerce to the European Union (AmCham EU) is a long-standing supporter of the European Commission's Capital Markets Union (CMU) as we believe this project has an unprecedented potential to fund the real economy and boost jobs and economic growth in Europe. Keeping the important transatlantic and global financial markets in mind while building an open CMU will be key to its success. We believe it is crucial that transatlantic financial services activities are not constrained or complicated by legislative developments which could discourage transatlantic investment and damage economic growth. As a global securitisation framework has not yet been completed, we believe an open third country regime for EU securitisations is needed to stimulate inward investment in Europe. It will be imperative for the Commission to start the equivalence determination process under MiFIDII/R for key EU trading partners such as the US as soon as possible, and we encourage aligning the EU European Market Infrastructure Regulation (EMIR) reporting regime with prevailing standards in the US, Canada and Asia-Pacific markets. We would also welcome efforts to avoid exemptions from globally agreed prudential rules which could lead to regulatory arbitrage or distortions in transatlantic competition or financial services. AmCham EU urges policymakers to not neglect the important roles played by outside investors while moving forward with the CMU project, as we are convinced that building a transatlantic CMU will be key to achieving much needed growth in Europe.

*   *   *

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 more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

*   *   *

American Chamber of Commerce to the European Union (AmCham EU)
Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium
Register ID: 5265780509-97
Tel: +32 (0)2 513 68 92 | www.amchameu.eu

Secretariat Point of Contact: Emilia Jeppsson; eje@amchameu.eu, +32 (0)2 289 10 36

POSITION PAPER

3 June 2016

Introduction
The American Chamber of Commerce to the European Union (AmCham EU) is a strong supporter of the European Commission's Capital Markets Union (CMU), as outlined in our previous position papers. Our membership, comprised of over 160 companies from a broad range of sectors, has been supportive of a single European financial market for over two decades and remains as committed as ever to its success. We have fully supported the regulatory reform agenda to date and believe that the financial system is now safer and more resilient, and that capital markets are more robust and transparent than ever before. We believe that an imaginative and truly EU-wide CMU can offer all Member States a once-in-a-generation platform for unlocking funding for businesses, improving the capacity of financial markets to fund the real economy and boosting jobs and economic growth, without diluting resiliency of the financial system. In this context, we also urge policymakers not to neglect the important roles played by those from outside the EU who invest in Europe, EU investors, companies outside the EU and non-European financial market participants in Europe.

While recognising that it is a European initiative, we do not feel that the CMU should end at the external borders of the EU. As noted above, we are huge supporters of further integration of the EU's single market for financial services. We believe that bolstering the single market *within* Europe should not come at the expense of making the EU's outer periphery impenetrable or more difficult to access for investment *to* and *from* the EU. In fact, we believe keeping the important transatlantic and global financial markets in mind while building a more open CMU will be crucial. Building a more transatlantic, and even global, CMU will be key to achieving much needed growth in Europe.

We therefore believe it is important to look at CMU in the context of a global network of finance. To this end, the Commission should continue to play an active role in international fora such as Basel and the International Organisation of Securities Commissions (IOSCO), to develop convergent policy responses. By intervening effectively and early at these global fora, Europe would ensure that the lessons learned from CMU make it into global standards, while avoiding having to take recourse to harmfully divergent legislation later on in the implementation process.

There are recent legislative developments that concern us because they risk constraining or complicating transatlantic financial services activities, which in turn can discourage transatlantic investment and damage economic growth. These are summarised briefly below:

Simple, Transparent and Standardised (STS) Securitisation
As the first prominent legislative proposal to be launched as part of the CMU, it would be damaging if Europe was perceived to building a closed CMU or taking a 'Fortress Europe' approach. At AmCham EU, we believe it is important to send a message of openness to help encourage more investment from abroad in and out of Europe.

- We are fully supportive of EU and other international efforts to revitalise the securitisation markets and therefore welcome the Commission's proposal for STS securitisations. A harmonisation of previously scattered requirements together with the adoption of a single STS definition will bring much needed clarity and create a common language that will help stimulate market interest around securitisation. However, with a global securitisation framework not yet completed, and in the absence of other jurisdictions looking to adopt a similar framework, an open third country regime will be more conducive to creating global momentum to invest in EU securitisations. Non-EU securitisations should be allowed to get STS recognition, and underlying exposures should not be required to be located in the EU. Secluding EU markets for entities in third countries appears highly inconsistent with the CMU objective to promote inward investments.

- Also contained within the new securitisation regulation are new requirements for UCITS funds to acquire securitisation exposures, unconnected with the STS framework. We are concerned that these new rules could make it more difficult or impossible for European investment funds to invest in non-EU securitisation going forward.

Markets in Financial Instruments Directive (MiFID)

AmCham EU welcomes the MiFIDII/R third country regime, allowing firms to access the EU under a harmonised regime, while recognising it is vital that the details of such a regime are correctly calibrated. These principles will have a significant beneficial impact in the establishment of a harmonised regime for the access of third country firms to the European markets and vice versa. This will help create a level playing field and reduce the costs and risks associated with the management of European business. Consumers and investors will benefit from the competition this regime will encourage as it will bring opportunities to EU financial institutions. Of particular importance will be the practical implementation of the requirements for equivalence of third country regimes;

- We believe any equivalence assessment should be based on pragmatic general principles rather than an assessment of line-by-line equivalence. Further, we welcome MiFIR Recital 41 which urges the Commission and Member States to prioritise areas covered by the G-20 commitments and agreements with the EU's largest trading partners. Therefore, we ask that the Commission begins the equivalence determination process for key EU trading partners, such as the US, as soon as possible.

- We agree it is important to ensure EU firms are still able to access, on a reverse solicitation basis, services provided by third country firms who may not have equivalent regulatory regimes, such as firms based in emerging markets. Issuers still need a means of accessing capital in those markets and investors and firms remain reliant on third country service providers to access global markets. Any third country regime should balance appropriate regulation of third country firms providing services into the EU without unduly restricting access by firms, investors and issuers in the EU to services provided by third country firms.

European Market Infrastructure Regulation (EMIR)

We believe that a move towards a more global CMU will expand trade in financial goods and services, improve cross-border investment opportunities, and enhance liquidity for the real economy, improving growth and jobs. Consistent with this view, we urge that European policymakers and regulators to consider the following issues arising under the EMIR regime, and take these into account in the on-going EMIR review.

- EMIR - Dual-sided reporting: Unlike the US Dodd Frank Act and the laws of most other developed markets, EMIR mandates both counterparties of a trade transaction to report daily the details of that transaction to a trade repository (TR). This results in unnecessary operational complications for both firms and non-financial end users of financial markets (NFCs). The dual sided reporting (DSR) process is not only costly in systems and resources, but it is also duplicative and does not add to the quality of the data available to regulators. As a result, businesses are facing disproportionate cost burdens. Nearly 134 000 new reporting counterparties will be required to report, of which around 76% are NFCs that predominantly use derivatives to hedge or mitigate commercial risks (NFC-s).[1] These NFCs represent only 2% of the total notional amount of derivatives reported under EMIR. These reporting obligations represent a disproportionate burden on all NFCs and in particular, on NFCs who do not contribute to systemic risk. As recent studies suggest that the current European DSR regime imposes significant costs on corporates, we recommend consideration be given to entity level reporting that could avoid these costs, actually improve transparency and accuracy of data on derivatives, and importantly, align the European reporting regime with prevailing standards in the US, Canada, and Asia-Pacific markets, thus simplifying and facilitating global capital market flows.

- EMIR - Intragroup reporting: the intragroup reporting regime unfairly punishes NFCs from a cost perspective and could discourage them from mitigating risk, further increasing internal risk and stifling corporate growth. As EMIR's dual reporting imposes a reporting obligation on each NFC affiliate, each EU affiliate must separately report the intragroup transaction to a TR, and the NFC that then hedges that risk externally with a third party must also report that same transaction – resulting in four reports to a TR for the same transaction. Delegation is not an option, as these are transactions that are within a NFC corporate group and counterparties are unable or unwilling to report them. We recommend that Europe follow the example of other jurisdictions who have exempted intragroup reporting in recognition that intragroup transactions are of little empirical value to the public and to regulators.

- EMIR - Recalibration of threshold calculation: we are aware that European Securities and Markets Authority (ESMA) has recently contemplated recalibrating the threshold calculation for determining when NFCs exceed the clearing thresholds by suggesting that 'hedging transactions' be included in such calculation. Such a 'hedging penalty' would result in 'real economy' companies losing clearing and margin exemptions, which would needlessly divert capital and liquidity away from economic growth, resulting in a direct negative impact on

[1] European Securities and Markets Authority, 'EMIR Review Report no. 1: Review on the use of OTC derivatives by non-financial counterparties', 13 August 2015, available at https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1251_-_emir_review_report_no.1_on_non_financial_firms.pdf

growth in the EU and reduced participation in markets. We therefore strongly oppose changes to include hedging transactions in the NFC threshold calculations.

Prudential regulatory agenda

- We support the aim of CMU to introduce greater proportionality in financial services regulation. We note Commissioner Hill's recent statement that a future review of the Capital Requirements Directive/ Regulation (CRD V/ R II) could seek to introduce more proportionality in areas like disclosure requirements and capital calculations, especially for smaller banks. These are laudable goals.
- While we fully support a review aimed at addressing any inconsistencies, inefficiencies or disproportionate measures in these prudential requirements for banks, we would like to urge EU policymakers to stay committed to the globally agreed Basel agenda. We would encourage that improvements also be sought at a global level.
- In improving prudential rules in Europe, we should avoid simple exemptions from certain globally agreed rules which could lead to regulatory arbitrage or distortions in transatlantic competition or financial activities.

Conclusion

In conclusion, these are just a few of examples of areas where AmCham EU believes policymakers could focus to ensure we are building an open CMU. We encourage the Commission to investigate and assess these issues further following the European Commission's recent call for evidence on the EU regulatory framework for financial services which we wholeheartedly support. More broadly, we believe that as the CMU work stream develops further, it is imperative that careful consideration be given to the important 'third country' issues and that transatlantic investment is promoted wherever possible. While encouraging further integration of the EU single market in financial services is a laudable goal, imposing greater fragmentation of global markets in the process would harm Europe's economic growth. Instead, instituting an open CMU could encourage greater competition between the two jurisdictions most dedicated to ensuring the safety and soundness of their financial regulatory regimes, the US and EU. This will inevitably lead to greater choice and investment opportunities for Europe's investors and corporate community as a whole. Ultimately it will benefit Europe's capital markets and Europe's businesses, leading to greater investment thus helping to create much-needed jobs and growth.