



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

6 June 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 which was discussed at the recent meeting of the Asia Pacific Regional Committee (APRC) of the International Organization of Securities Commissions (IOSCO). Members of the APRC, which consist of 25 capital market regulators from the Asia Pacific region, agreed to send this letter to express our collective concern about the recognition of Asia Pacific CCPs under the EMIR.

We support and encourage the efforts made by the European Commission (EC) and European Securities and Markets Authority (ESMA) in bringing to fruition rules to improve derivatives markets. We share a common commitment to a level regulatory playing field across jurisdictions.

We are concerned, however, that the recognition process for Asia Pacific CCPs could be improved both from the perspective of how that process is conducted procedurally and how ESMA and the EC substantively assess our regulatory frameworks.

Our concerns derive from the importance of the recognition status of Asia Pacific CCPs by EMIR. This directly impacts on EU established financial institutions carrying on business in the Asia Pacific region as well as the Asia Pacific markets in which they operate.

Should Asia Pacific CCPs fail, or not seek to, obtain recognition, EU institutions would no longer be able to benefit from the services provided by them (pursuant to Article 25 of EMIR). We also understand that an EU institution will incur a special capital charge under CRD IV if it clears trades with non-EU CCPs not recognised by ESMA, irrespective of whether the EU institution is a CCP member via its branch or subsidiary. We therefore would

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like to share with you our collective concerns and to engage in dialogue with you to mitigate and address these concerns.

On procedure, we believe that to encourage Asia Pacific CCPs to seek recognition under EMIR, greater transparency in the assessment methodologies and parameters in determining equivalence is required. This is now particularly pressing with a September 2013 deadline fast approaching. We understand that there are some Asia Pacific CCPs that are being deterred from seeking recognition due to the potential risk arising from being rejected.

We believe that the assessment process will need to be cognisant of the potential for negative market impact arising from either uncertainty as to how the process works or is progressing and from potential negative assessments.

In the process of conducting the assessment, where the EC determines there are gaps in the legal and supervisory requirements of the jurisdiction in which a non-EU CCP applicant is established, we believe that the parties should work towards common solutions.

Accordingly, to facilitate Asia Pacific CCPs to seek recognition under EMIR, we urge the EC to utilise a holistic approach in the assessment methodologies and parameters used to determine equivalence with EMIR requirements.

Due consideration should also be given to the varied and rapidly growing markets in Asia Pacific with differing levels of development and priorities. We do not believe that a "one size fits all" approach towards equivalence assessment using EMIR requirements is appropriate or feasible.

We believe that international standards should be a core component of any assessment of a jurisdiction by another. We therefore strongly recommend that sufficiently granular international standards, such as the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMI), be used as the benchmark or proxy for equivalence assessments for Asia Pacific CCPs.

Asia Pacific jurisdictions setting up their domestic CCPs have based their framework on the international standards set by the PFMI standards, and have not sought to mimic EMIR or Dodd Frank, not least because both EMIR and Dodd Frank reflect local requirements and policy discussions in which Asia Pacific jurisdictions have not participated. We believe that imposing standards which are not required by the globally applicable PFMI standards would risk reducing the value of the standards and the incentive for jurisdictions to implement them.

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Lastly, as far as possible within the applicable legal framework, regulatory guidance and the CCP's own rules and regulations (where subject to official powers of approval or disapproval) should be able to be taken into account in the final analysis.

We believe the resolution of the issues outlined above would help avoid unnecessary market fragmentation and facilitate EU institutions to continue doing business in the growth markets of the Asia Pacific. We hope to work with you closely to achieve this common goal and we look forward to further cooperation and dialogue. We would also be happy to organise a meeting between the EC and the Asia Pacific jurisdictions with a view to addressing outstanding issues.

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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