15 January 2016
Lord Jonathan Hill
Commissioner of Financial Stability, Financial Services and Capital Markets Union
European Commission

Dear Commissioner Hill,

ASIFMA/FIA/ISDA follow-up to industry roundtable in Hong Kong

On behalf of the Asia Securities Industry and Financial Markets Association (**"ASIFMA"**), the Futures Industry Association (**"FIA"**) and the International Swaps and Derivatives Association (**"ISDA"**), we would like to extend our appreciation for your time on 13 November 2015 in Hong Kong. We and our members found your openness and frankness extremely helpful.

We appreciate the European Commission's efforts to identify and proactively engage both collectively and individually with Asia-Pacific regulators and policy-makers. We also appreciated the opportunity to discuss these initiatives with you during your trip to Hong Kong. Additionally, we welcome your request for further feedback on European rules and their effects on Asia's developing markets.

We support your action plan for the Capital Markets Union (**"CMU"**), as well as the review of the cumulative impact of European regulation since the financial crisis. ASIFMA endorses the response to the Call for Evidence on the EU regulatory framework for financial services by ASIFMA's European sister organization, the Association for Financial Markets in Europe (**"AFME"**). FIA has also previously published a white paper titled *"A review of the cumulative effect of European derivatives law reform"* and will be shortly submitting its response to the Call for Evidence. In this letter, we will focus on our concerns about European regulations' effects on markets in the Asia-Pacific region.

We are concerned that recently adopted Level 1 text for a number of regulations could have material impact on Asia-Pacific markets, as this could alter the way in which EU and other international banks will be able to operate and the products and services which can be provided. We would also like to express our hope for further clarity around the equivalence process under Article 13 of the European Market Infrastructure Regulation ("**EMIR"**), and additional decisions on equivalence and recognition for Asia jurisdictions under Article 25 of EMIR. We are engaging with IOSCO's Asia-Pacific Regional Council and the Executives' Meeting of Asia-Pacific Central Banks (**"EMEAP"**) about our concerns about extraterritorial regulation in these areas.

As such, we would like to highlight some of the industry's key cross-border issues with respect to European regulation:

a) **Third country benchmarks' authorisation for use in the EU under the Regulation of financial benchmarks:** Political agreement has recently been reached on the Regulation of financial benchmarks. Its extraterritorial impact is vast. The use of benchmarks by EU financial firms is prohibited unless those benchmarks or their administrators are authorized in the EU, or if produced outside the EU, the third country benchmark administrator will need to apply for equivalence, recognition or endorsement. While many of the administrator and submitter proposals are in line with existing controls under IOSCO, we remain concerned about EU restrictions on users of benchmarks. We are concerned that this will have major extraterritorial

impacts, although we appreciate that the approach to equivalence has improved significantly during negotiations. We are pleased that the Regulation provides several methods for a third country benchmark or family of benchmarks to be authorised for use in the EU. However we would encourage the European Commission to work closely with third country regulators as they determine which of these options will be most appropriate for their markets.

b) **Further progress is encouraged on recognition of third country CCPs under Article 25 of EMIR:** We appreciate your emphasis on proportionality and regulatory outcomes when determining a jurisdiction's equivalence, and welcomed the equivalence decisions made for Australia, Hong Kong, Japan, Singapore, and, most recently, South Korea. We look forward to additional equivalence decisions being made for jurisdictions in the Asia-Pacific region who have applied for recognition, including India and Malaysia. We also strongly welcome the steps taken by the European Commission to extend the transitional period under Article 497 of the Capital Requirements Regulation to avoid significant increases in capital requirements while equivalence decisions are being made. However, it is important that additional equivalence and CCP recognition decisions be announced soon to avoid prolonged uncertainty as well as market disruption.

c) **Further clarity around equivalence under Article 13 of EMIR:** A positive country-specific equivalence decision by the European Commission under Article 13 would effectively mean that counterparties entering into a transaction subject to EMIR will be deemed to have fulfilled the obligations contained in EMIR Articles 4, 9, 10 and 11 where at least one of the counterparties is established in that third country. We understand the equivalence process for Article 13 is separate to that for Article 25, and therefore at this stage, no equivalence decisions under Article 13 have been made.

   We believe that the equivalence process under Article 13 of EMIR should be based on individual and separate decisions (versus a single all-encompassing equivalence act for each third country) for the obligations set out in EMIR Articles 4 (clearing), 9 (reporting), 10 (treatment of non-financial counterparties) and 11 (risk mitigation techniques for non-cleared OTC derivative contracts), determined by whether a country fulfills requirements in the aforementioned four Articles as it would be difficult to envision all jurisdictions receiving a positive equivalence decision if required to have equivalent requirements for all provisions embedded in the four Articles. Also, we would hope that partial equivalence decisions could be reached for individual Articles. As such, we welcome the Commission's willingness to adopt as pragmatic an approach as possible, which may mean moving ahead with equivalence in some areas but not others, as noted in a response by Jonathan Faull to a letter sent by ISDA, the Investment Association, FIA Europe, the Alternative Investment Management Association and the Managed Funds Association on 22 June 2015.

   Further, it would be helpful for the European Commission to engage with Asia-Pacific regulators to detail a roadmap and their commitments for this process, and ensure that it is an open and timely dialogue with them on this equivalence mechanism.

d) **The asymmetric treatment of EU and non-EU central banks and public bodies under the Regulation on transparency of securities financing transactions ("SFT") and of reuse:** The recently adopted Regulation on transparency of securities financing transactions and of reuse are an upcoming concern as they seem to replicate very closely the reporting regime under EMIR for

securities financing transactions. This carries with it the same implementation challenges. In particular, it exempts members of the European System of Central Banks, European public bodies managing public debt and the Bank of International Settlements, but requires assessments of non-EU central banks and public bodies before they can be granted similar exemptions. These exemptions are likely to be granted only where equivalent rules are in place. Given that few jurisdictions have started to implement Financial Stability Board requirements for SFT reporting regimes, it will be difficult in the short term for many jurisdictions to demonstrate equivalence and receive an exemption.

e) **Treatment of third-country issued securitisations under the Securitisation Regulation:** We strongly support the European Commission's open approach to third-country securitisations, both in terms of securitisations being able to receive Simple, Transparent and Standardised **("STS")** recognition , and in not requiring that the underlying exposures be located in the EU. However, we are concerned by the Council's general approach, which requires that the "originator, sponsor and SSPE involved in a securitisation considered STS shall be established within the Union". Such a requirement would limit EU investors' and companies' access to third-country issued securitisations, and reduce activity in the EU by non-EU originators and non-EU securitisations by requiring issuances via an EU branch or subsidiary. Excluding non-EU securitisation from STS recognition (and consequent reduced capital requirements) would also result in securitisation exposures with similar levels of credit risk – which could otherwise be STS-compliant – being treated differently for regulatory capital purposes. In order to maximize the potential of the STS as intended by the Commission's original proposal, we encourage EU legislators to maintain an open approach to third-country securitisation.

Following our above points, we welcome and support the CMU initiative to develop deep and liquid capital markets in the EU to complement the banking sector and to support growth in Europe.

ASIFMA's mandate is to support the development and deepening of Asia's capital markets. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. We believe that the creation of the CMU could provide a valuable example for developing markets in our region. We also hope that the development of EU capital markets will provide additional opportunities for the developing institutional investor base in the Asia-Pacific region.

In this context, we believe that the CMU should be created as far as possible without borders for non-EU countries, which would allow a CMU within Europe to benefit from the opportunities that can be generated through liquidity from capital markets outside the EU.

a) **Further engagement with international and, in particular, Asia-Pacific regulators:** We believe that further engagement with countries in the Asia-Pacific region would be essential to realizing the full potential of the CMU, and the CMU initiative promoting open access to financial resources and services across borders. As a result, we urge deeper institutionalized regulatory dialogues with third countries that take into account the international effects of new legislation and regulation on capital flows, facilitate open and transparent capital markets for international issuers and investors, as well as improve the provision of cross-border financial services between the EU and partner countries.

b) **Increasing market access for third countries:** We hope that further EU initiatives increase market access for third countries. These may include a pragmatic outcomes-based approach for equivalence assessment, favouring regulatory dialogue and international supervisory cooperation,

complemented by a transparent and comparable set of criteria for recognition of foreign regulation across all respective pieces of EU financial services legislation.

We believe that these principles will help the EU avoid creating new obstacles to fully functioning and efficient markets that may unintentionally deter investment from international participants and instead capture opportunities to facilitate capital flows.

From a broader global perspective, we believe it would be helpful if EU and Asia-Pacific regulators were to enhance their collaboration in Basel to help ensure that all regulatory proposals took sufficient account during their preparation of the views of all jurisdictions.

Thank you very much for your consideration of these important issues. If it would be helpful, we would be happy to organize a call or meeting with your staff to provide additional information on these priority concerns.

Yours sincerely,

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