

EUROPEAN COMMISSION

Directorate General Financial Stability, Financial Services and Capital Markets Union

Director General

Brussels, 12.08.2015 - 3363813
FISMA C2 HP/acg (2015) 3446528

Mr Scott O'Malia
CEO of ISDA

Daniel Godfrey
CEO of the Investment Association

Simon Puleston Jones
CEO of FIA European

Jack Inglis
CEO of AIMA

Richard Baker
President & CEO of MFA

By e-mail : RCogan@isda.org

Subject : Reply to your letter dated 22 June 2015

Dear Sirs,

Thank you for your letter of 22 June 2015, regarding EMIR article 13 and MIFID article 33. Commissioner Hill has asked me to respond on his behalf.

Let me begin by thanking you for your support as concerns the usefulness of the equivalence mechanisms of Article 13 of EMIR and Article 33 of MIFIR for EU market participants in addressing conflicting or duplicative rules when transacting with counterparties in third countries.

With regards to your first question concerning when counterparties may be able to rely on an implementing act of equivalence, Article 13 of EMIR and Article 33 of MIFIR both provide that counterparties entering into a transaction subject to EMIR shall be deemed to have fulfilled the conditions of EMIR where at least one of the counterparties is *established* in that third country. While neither regulation sets out any specific requirements as to when an EU counterparty engaging in a transaction with a third country counterparty may choose to comply with the equivalent third country rules instead of complying with EU requirements, at least one of the counterparties must be *established* in the third country in order for the relevant EU requirements to be deemed to have been fulfilled.

With regards to your second question as to whether all relevant transactions requirements (margin, clearing, risk mitigation and reporting) need to be equivalent in the third country for an implementing act to be adopted under Article 13 of EMIR, we will endeavour to take as pragmatic an approach as possible. This may mean moving ahead with equivalence in some areas whilst not others.

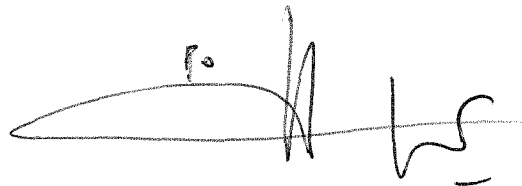
With regards to your third question, we will take an “outcomes based” approach to these assessments as we have done with our equivalence work in the area of CCP requirements, working closely with third country authorities to better understand their regimes.

On your question regarding timing, DG FISMA staff stand ready to assess the requirements of third country jurisdictions which have their rules in place. I can confirm though that no formal application is required to trigger the process for such an assessment.

Finally, with regard to the treatment of intragroup transactions under the upcoming margin requirements, we would note that the European Supervisory Authorities (the ESAs) are in the process of finalising their proposals for regulatory technical standards in this area. We are confident that any feedback the ESAs receive on this point as part of their consultation will be duly considered.

I hope that this letter assures you of our attention to the matters raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Faull', with a long horizontal stroke extending to the left.

Jonathan Faull

Contact:

Hannah Pinkarchevski, Telephone: +32-2-292.10.09, hannah.pinkarchevski@ec.europa.eu