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ACP Autorité de Contrôle Prudentiel
BANQUE DE FRANCE

MINISTÈRE DE L'ÉCONOMIE ET DES FINANCES

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

Mr. Gary Gensler
Chairman
Commodity Futures Trading Commission
1155, 21st Street, NW
Washington, DC 20551

Paris, 27 JUL. 2012

Office of the Secretariat
2012 AUG -7 PM 3:01
Received CFTC

Subject: CFTC International Guidance and phased compliance program

Dear Chairman,

As Minister of Economy and Finance and as Chairmen of the *Autorité de contrôle prudentiel* ("ACP") and the *Autorité des marchés financiers* ("AMF"), we are writing to share our strong concerns regarding extraterritorial effects of the cross-border application of the swaps provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

This issue was raised last month in an open Letter published by Michel Barnier, the EU Commissioner in charge of the Internal Market and Services[1]. In February 2011, we also drew your attention as regards to credit institutions located in France that may have to register as Swap dealers or, from case to case, as Major Swap Participants, in the US[2].

In such a context, we welcome the CFTC's initiative aiming at defining through an Interpretative Guidance, the scope and the boundaries of the US legislation in a cross-border context, as well as the proposal for a phased compliance program. In particular, we support the concept of "substituted compliance" related to non-US Swap Dealers or non-US Major Swap Participants. We are firmly convinced that the equivalence system is the best way to prevent overlaps and to achieve an efficient regulation and oversight of OTC derivatives markets. Other upcoming European financial regulations propose to adopt a similar cross-border equivalence approach. As fertile as such the

[1] See Financial Times, 21 June 2012.

[2] See Annex I.

concept of "substituted compliance" may be, based on the EU legislation (EMIR)[3] and from a very practical point of view, we wish to emphasise that any entity-by-entity approach should be articulated with and complemented by the assessment, in a comprehensive perspective, of the rules applicable on both sides of the Atlantic. Indeed, such general approach, combined with an appropriate temporary exemptive relief (particularly for transactions between a non-US and a US entity and provided for an extended period of time), should facilitate the processing of the files (and reduce the costs for the firms) and avoid any distortion or discrepancies between the entities located in the same jurisdiction (*i.e.* EU or EEA).

Generally speaking, the mere extension of the scope of registration for Swap Dealers or Major Swap Participants to non-US entities would create regulatory and oversight overlaps which cause serious concerns for us and our industry.

In addition, we would like to point out the main legal impediments we will face, namely the professional secrecy rules and the protection of strategic data ("Blocking Law") which may prevent French entities from freely displaying information you may request (such concern should dully be considered, in particular, regarding Form 7-R). Similarly, you must consider clarifying the scope of the activities which would be concerned by the application of the Volcker rule in order to prevent significant extraterritorial consequences for the non-resident banking entities (*i.e.* functional and/or structural reorganization) that could induce unexpected impact for both US and EU economies.

Furthermore, we understand that the financial statements of EU Swap Dealers and Major Swap Participants which are prepared under IFRS, should be reconciled under US GAAP. Such requirements would be contrary to the process of reconciliation initiated a few years ago between the US and the EU accounting standards and inconsistent with mutual recognition commitments already taken on both sides of the Atlantic[4].

Finally, we consider that the specific issue related to the cross-border transactions should also be explicitly covered in the interpretative guidance, especially when such transactions occur between an EU and a US counterparty: according to the recognition of equivalence and, if appropriate, following the substituted compliance decision, authorities should be able to rely on each other, regardless of the type of rules concerned. Given the importance of these requirements for market participants, we would also strongly encourage you to adopt a strict and objective definition of the concept of "US person" without criteria that would be excessively subtle and difficult to implement and that could finally undermine the effectiveness of our common action to regulate OTC derivatives.

[3] See Annex II.

[4] Since 15 November 2007, the SEC has decided to remove the requirement for non-US companies reporting under International Financial Reporting Standards (IFRSs) as issued by the IASB to reconcile their financial statements to US Generally Accepted Accounting Principles (GAAP). In the same way, since December 2008, the European Commission has identified as equivalent to IFRS the US GAAPs for listed companies.

We believe our objectives are the same and are fully convinced that we will succeed in building a sound and coherent global framework leading to improve the transparency, the efficiency and the robustness of the OTC derivatives market, in accordance with the G20 commitments and based upon a sound transatlantic level playing field. We are aware of the current efforts undertaken by US authorities and are supportive on pursuing a constructive dialogue between our respective institutions.

Yours sincerely,

Pierre Moscovici
Minister
Ministère de l'économie
et des finances

Christian Noyer
Chairman
Autorité de contrôle prudentiel
(ACP)

Jacques Delmas-Marsalet
The interim Chairman
Autorité des marchés financiers
(AMF)

C/C: Mrs Mary L. Schapiro, Chairman of the Securities and Exchange Commission, Washington
Mr Timothy Geithner, Secretary of the Treasury, Washington

Annex I: Joint letter from the ACP and the AMF related to Title VII of the Dodd-Frank Act of 11 February 2011

R É P U B L I Q U E F R A N Ç A I S E

ACP Autorité de Contrôle Prudentiel
BANQUE DE FRANCE

Autorité des marchés financiers
AMF

Mr. Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155, 21st Street, N.W.
Washington, D.C. 20581
USA

Paris, 11 FEV. 2011

Re: Title VII of the Dodd-Frank Act

Dear Chairman,

As Chairmen of the *Autorité de contrôle prudentiel* ("ACP") and of the *Autorité des marchés financiers* ("AMF") we take the opportunity of the public consultation on your proposed rulemaking to raise specific concerns on the proposed rules related to Section 712(d)(1), Section 721(e) and Section 761(b) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). Although this is not a formal contribution to your consultations we would like to draw your attention specifically to the case of foreign-headquartered financial organizations and in particular French entities.

We understand that the CFTC and the SEC, in consultation with the Board of Governors of the Federal Reserve System ("Fed"), are proposing rules and interpretative guidance to further define the terms "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," and "eligible contract participant" which would not specifically take into account the case of the non-resident entities and, therefore, could have non-desirable extraterritorial effects on such entities.

Based on our common experience, especially in a cross-border prudential supervision and market regulation perspective, we believe that such unilateral approach could lead to regulatory overlaps and inconsistencies and therefore be counterproductive. Indeed, the articulation between the different legal and regulatory

frameworks is an international challenge and is undoubtedly a corner stone for the achievement of G20's commitments.

Therefore, from a practical point of view, we strongly support for foreign banking organizations and other financial institutions (such as asset management companies, investment advisers, private equity funds and other entities that might qualify as major swap participants) a mutual recognition regime built around an adequate and balanced symmetrical system taking into account the home and the host country regulatory regimes. Thus, without calling into question the registration of non-resident entities as "swap dealer", "security-based swap dealer", "major swap participant" or "major security-based swap participant", we expect that such registration will be limited to activities in relation with US counterparties and/or clients and will not involve similar obligations to the financial organizations as a whole. The obligations for non-resident entities should indeed be proportionate and take into equivalent requirements in their home jurisdiction. In this perspective, in order to prevent double and recursive regulation, Memoranda of Understanding (MoUs) signed between the regulatory authorities concerned could be very useful instruments. Having regard to Section 752 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, we understand that such an approach could be relevant.

Consequently, taking into consideration the short timeframe of the proposed rulemakings, we would be happy to explore with you various options in a constructive approach and we would be pleased to further discuss on this very important subject.

We look forward to our continued co-operation in this field.

With our best regards,

Mr. Christian Noyer
Chairman
Autorité de contrôle prudentiel (ACP)

Jean-Pierre Jouyet
Chairman
Autorité des marchés financiers (AMF)

C/C : Mrs Mary L. Schapiro, Chairman of the SEC, Washington
Mr William Dudley, Chairman of the Federal Reserve Bank of New York

Annex II: Article 13 of EMIR – Mechanism to avoid duplicative or conflicting rules:

1. The Commission shall be assisted by ESMA in monitoring and preparing reports to the European Parliament and to the Council on the international application of principles laid down in Articles 4 [clearing obligation], *9* [reporting obligation], *10* [non-financial counterparties] *and 11* [Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP], *in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible action.*

2. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country:
(a) are equivalent to the requirements laid down in this Regulation under Articles 4, 9, 10 and 11;
(b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation; and
(c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 86(2).

3. An implementing act on equivalence as referred to in paragraph 2 shall imply that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligations contained in Articles 4, 9, 10 and 11 where at least one of the counterparties is established in that third country.

4. The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those laid down in Articles 4, 9, 10 and 11 and regularly report, at least on an annual basis, to the European Parliament and the Council. Where the report reveals an insufficient or inconsistent application of the equivalent requirements by third country authorities, the Commission shall, within 30 calendar days of the presentation of the report, withdraw the recognition as equivalent of the third country legal framework in question. Where an implementing act on equivalence is withdrawn, counterparties shall automatically be subject again to all requirements laid down in this Regulation".