



**EUROPEAN COMMISSION**  
Directorate General Internal Market and Services  
**Director General**

Brussels, 16. 03. 2012  
DG Markt EP/PP/acg (2012) 328059

The Honourable Gary Gensler  
Chairman, U.S. Commodity Futures  
Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington D.C. 20036  
United States of America

Dear Mr Gensler,

We have been working closely and constructively over the past 24 months to implement the G20 commitments on OTC derivatives markets. The regulatory dialogue we entered into last June, has allowed us to reach a good understanding of our respective approaches, identify potential issues and possible ways forward.

In this context, we have also agreed to work together to keep any exemptions to the clearing obligation as comparable and as limited as possible. From the outset, you have noted our concerns about a possible small-bank exemption in the USA from the clearing and reporting obligations, as well as from any bilateral margining requirements. I have always understood that the CFTC would approach any such exemption with great caution.

The EU Regulation on OTC derivatives, central counterparties and trade repositories (EMIR), on which political agreement was reached between the European Parliament and the Council on 9 February does not include such an exemption.

I understand that suggestions have been made to limit the scope of application of the Dodd-Frank Act, either by introducing a permanent small bank exemption for banks with a balance sheet of up to \$50 BN, or by widening the definition of a *de minimis* exemption of the definition of a 'swap dealer'.

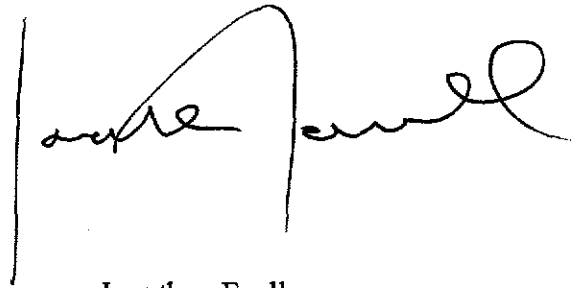
The adoption of a small-bank exemption would cause serious concern. This would lead to a significant increase in systemic risk, a potential for unlevel playing-fields between US and EU banks, and scope for regulatory arbitrage.

The European Union values solutions based on the recognition of the equivalence of foreign rules to address issues linked to the cross-border application of EU legislation.

A small bank exemption would complicate such an equivalence assessment between the Dodd-Frank implementing rules and EMIR.

I would therefore strongly urge you to reconsider carefully the introduction of a small bank exemption. I would be happy to discuss this issue further with you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Faull', written in a cursive style. The signature is positioned above the printed name.

Jonathan Faull