

**Mr Mark Wetjen
Acting Chair
Commodity Futures
Trading Commission
Three Lafayette Centre
1155 21st Street,
NW - Washington DC**

**Ref: 6351-01
Request for Comment on Application of Commission Regulations to Swaps
Between Non-U.S. Swap Dealers and non-U.S. Counterparties Involving Per-
sonnel or Agents of the Non-U.S. Swap Dealers Located in the United States.**

Dear Mr Wetjen,

The European Securities and Markets Authority (ESMA) welcomes the opportunity to comment on subjects addressed in the Staff Advisory No. 13-69 of the Commodity Futures Trading Commission (CFTC) of 14 November 2013.

ESMA believes it is of paramount importance to prevent the duplication of applicable rules to derivative transactions, in particular when the transactions have a strong local nature or only remote links with other jurisdictions, in order to support an efficient derivatives market.

For this purpose, and to promote a safe and efficient derivatives market, each regulatory framework should rely on the protective equivalent regulatory regime in place in other jurisdictions. This approach should apply on the regulatory regime as a whole and consider its outcome in order to avoid undue complexities for market participants while still reaching an appropriate level of protection.

Above all, ESMA believes that strong reliance on the regulatory framework and supervision by, and cooperation with, other regulators is needed and will contribute to achieve clear and efficient rules for the cross-border OTC derivatives market.

Finally, given that the ODRG is expected to conduct further work on the application of foreign rules to the activities of branches and subsidiaries, ESMA expects that any commonly agreed principle would be reflected in further guidance that the CFTC can provide in this respect.



You will find attached in Annex 1, some specific comments for your consideration.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'S/M'.

Steven Maijoor

Chair

European Securities and Markets Authority

ANNEX 1

CFTC consultation on an advisory issued by Commission staff on November 14, 2013: items for consideration

Swap between two non-US persons

ESMA has duly considered the scope of application of the rule and note that it would apply to transactions between two non-US persons. These transactions could be concluded between two counterparties of one single country which would make it very local in nature, or between counterparties that are both established in different countries outside of the US.

We believe that in order to apply third country rules (i.e. CFTC rules) to these transactions, they should imply a direct and significant risk for this third country. In this respect, the intervention of a person working out of the US, at one point in the transaction would not, in itself, results in a direct and significant risk for the US market.

As a result, we respectfully suggest considering that using personnel or agents located in the US would not be a sufficient criterion supporting the duplication of applicable sets of rules to transactions and ask you to consider not directly applying rules on this basis.

Substituted Compliance

ESMA understands that substituted compliance could apply to transactions concluded between two non-US persons. As a result, compliance with the regulatory requirement would be achieved by the application of a third country rule that would provide for a similar obligation.

ESMA welcomes the use of substituted compliance and believes that it is a technique that will indeed limit the duplication of applicable rules. However, ESMA further considers that regulators should rely on each other when an equivalent protective framework is in place in the relevant country, including when an agent located in the US is “involved” in the transaction as we understand that in such case, the non-US swap dealer would have to comply with CFTC transactional requirements. The local framework should be assessed on its outcome allowing for some flexibility i.e. to recognise specificities of a market, on the means to achieve the protection of an effective and efficient derivative market. As a result, transactions between non-US persons subject to a local regulatory framework that would be considered equivalent based on its outcome should not be required to comply at the same time with transaction-level requirements as applicable to US persons.