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Joint statement by UK and US authorities on continuity of derivatives trading and clearing post-Brexit

Market participants can be assured of the continuity of derivatives trading and clearing activities between the UK and US, after the UK's withdrawal from the EU, following this joint statement by the Bank of England including the Prudential Regulation Authority (BoE), Financial Conduct Authority (FCA), and the US Commodity Futures Trading Commission (CFTC).

UK and US authorities are taking measures to ensure the UK's withdrawal from the EU, in whatever form it takes, will not create regulatory uncertainty regarding derivatives market activity between the UK and US. These measures will help support financial stability and the sound functioning of financial markets. They also will give confidence to market participants about their ability to trade and manage risk through these markets.

Governor of the Bank of England, Mark Carney, said:

“Derivatives can seem far removed from the everyday concerns of households and businesses, but they are essential for everyone to save and invest with confidence.

As host of the world's largest and most sophisticated derivative markets, the US and UK have special responsibilities to keep their markets resilient, efficient and open. The measures we are announcing today will do that. Market participants can be confident that the clearing and trading of derivatives between the UK and US will maintain the high standards of today when the UK leaves the EU”

J. Christopher Giancarlo, Chairman of the CFTC, said:

“London is, and will remain, a global center for derivatives trading and clearing. Given the long-established cooperation between the CFTC and the Bank of England, the Financial Conduct Authority, and Her Majesty's Treasury, I am pleased to announce these important measures. They provide a bridge over Brexit through a durable regulatory framework upon which the thriving derivatives market between the United Kingdom and the United States may continue and endure.”

Andrew Bailey, Chief Executive of the FCA, said:

“We have worked closely with the CFTC and other UK authorities on these measures to ensure continuity and stability for consumers, investors and other market participants, regardless of the outcome of the UK’s withdrawal from the EU. Cooperation with our international partners has always been an important part of our work, and it will remain so after Brexit. This partnership will support our day-to-day supervisory activities and rule-making, as well as encouraging open markets and the development of rigorous global standards, by ensuring that wherever firms operate, they are regulated on a consistent basis.”

Philip Hammond, Chancellor of the Exchequer, said:

“The US and UK are fundamental to the smooth functioning of the world’s multi-trillion pound derivatives markets, with around 97% of the centrally cleared interest rate derivatives market located in London. The action we have taken today with our partners in the US will ensure that markets can continue to thrive without disruption, and is yet another example of the special relationship between our two countries.”

The BoE, FCA and CFTC, as the relevant regulators of UK and US derivatives markets, reaffirm their commitment to close cooperation and, with support from HM Treasury, have agreed to coordinate on the following measures, where necessary to provide continuity, by the end of March 2019:

- **Continued supervisory co-operation.** The BoE, FCA and CFTC have in place information-sharing and cooperation arrangements to support the effective cross-border oversight of derivatives markets and participants and to promote market orderliness, confidence and financial stability. As part of this:
 - The BoE and CFTC are in the process of updating, in connection with the UK’s forthcoming recognition of CFTC-registered central counterparties (CCPs), their Memorandum of Understanding (MoU) covering clearing activity which was originally signed in 2009.
 - The FCA and CFTC are in the process of updating their MoUs covering certain firms in the derivatives and the alternative investment fund industry. These MoUs were originally signed in 2013 and 2016.
- **Extension of existing CFTC relief and comparability for the UK.** CFTC intends that existing regulatory relief granted by the CFTC to EU firms, including UK firms, will be extended to UK firms at the point of the UK’s withdrawal from the EU by means of the following measures:
 - The CFTC staff will issue new no-action letters to UK market participants confirming the continued application of existing no-action letters directed at EU market participants. These no-action letters will permit UK market participants to rely on longstanding CFTC staff relief related to a series of issues including, but not limited to, introducing broker registration, swap data reporting, and the trading and clearing of inter-affiliate swaps.

- The CFTC intends to grant new substituted compliance and exemption orders to confirm that existing orders directed at the EU also will be accompanied by new orders directed at the UK. These orders will permit firms to satisfy certain CFTC entity-level and transaction level requirements and margin requirements for uncleared swaps by complying with relevant UK laws, and to satisfy CFTC trade execution requirements by using eligible UK trading venues. In order to ensure there is no interruption in the applicability of such relief at the time of the UK's withdrawal from the EU, the CFTC staff will, if necessary, issue temporary no-action relief to cover a transition period until the relevant CFTC orders can be finalized. During this transition period, the CFTC will prioritize the completion of such orders.
- The CFTC also has confirmed that UK CCPs currently registered with the CFTC will be able to continue providing services in the US on the same basis they do now.
- **UK equivalence for the US.** UK authorities have confirmed that US trading venues, firms and CCPs will be able to continue providing services in the UK. The basis on which these trading venues, firms and CCPs currently provide services in the EU and to EU firms is as a result of various decisions taken by the European Commission in declaring the CFTC regulatory framework equivalent. UK firms will continue to be able to access these entities on the same basis as EU firms do today by means of the following measures:
 - HM Treasury has confirmed that the European Commission's decisions declaring the CFTC regulatory framework equivalent in relation to risk mitigation requirements, including margin requirements for uncleared derivatives, and in relation to trading venues, will continue to apply as a matter of UK law after the UK's withdrawal from the EU. These measures will provide critical continuity, including the ability for UK firms to apply CFTC margin rules for contracts with US counterparties regulated by the CFTC. UK firms will also be able to access and use CFTC regulated trading venues to satisfy their regulatory obligations, including derivatives trading obligations.
 - HM Treasury, the BoE and the CFTC are co-operating closely on the process of making equivalence and recognition decisions in relation to CFTC-registered CCPs. UK authorities have already stated their presumption that clearing regimes, which have been found equivalent by the European Commission, will be found equivalent by HM Treasury. In light of the systemic importance of the clearing activity provided by CFTC-registered CCPs to UK firms, HM Treasury and the BoE expect to announce these decisions regarding the CFTC regime and CFTC-registered CCPs as a matter of priority.

In the meantime, the BoE has confirmed that, if the UK withdraws from the EU with no deal, US CCPs will be able to continue providing services in the UK and to UK firms on the same basis as they do now using the UK's 'temporary recognition regime' for non-UK CCPs. To date, four CFTC-registered CCPs have notified the BoE of their intention to enter this regime which lasts for up to three years and is extendable if required.

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Selected existing cooperation arrangements between the authorities

1. The BoE, FCA and CFTC, as the relevant regulators of UK and US derivatives markets, have the following memoranda of understanding in place. This is a non-exhaustive list covering only those most relevant to this announcement.
 - Memorandum of Understanding concerning cooperation and the exchange of information related to the supervision of cross-border clearing organizations, September 14, 2009 (Financial Services Authority (FSA) (now BoE).
 - Memorandum of Understanding concerning consultation, cooperation and the exchange of information related to the supervision of covered entities in the alternative investment fund industry, July 22, 2013 (FCA).
 - Memorandum of Understanding concerning cooperation and the exchange of information in the context of supervising covered firms, October 6, 2016 (FCA).

Relevant CFTC No-Action Letters

2. Letter 12-70: Relief for Certain Swap Dealers, De Minimis Dealers, Agent Affiliates, and Associated Persons from Registration as an Introducing Broker under Section 4d or a Commodity Trading Advisor under Section 4m of the Commodity Exchange Act, and Interpretation that Certain Employees of De Minimis Dealers are not an Introducing Broker as defined in Section 1a(31) of the Commodity Exchange Act.

3. Letter 13-45: No-Action Relief for Registered Swap Dealers and Major Swap Participants from Certain Requirements under Subpart I of Part 23 of Commission Regulations in Connection with Uncleared Swaps Subject to Risk Mitigation Techniques under EMIR.
4. Letter 17-64: Extension of Time-Limited No-Action Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations, for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan or Switzerland.
5. Letter 17-66: No-Action Relief from Certain Provisions of the Outward-Facing Swaps Condition in the Inter-Affiliate Exemption from the Clearing Requirement.
6. Letter 17-67: Extension of No-Action Relief from Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities that Are Not Exempt from Clearing Under Commission Regulation 50.52.

Relevant CFTC Substituted Compliance and Exemption Orders

7. Substituted compliance for EU entity-level and transaction-level requirements (December 27, 2013).
8. Substituted compliance EU margin requirements for uncleared swaps (October 18, 2017).
9. Exemption of multilateral trading facilities and organized trading facilities authorized within the EU from the requirement to register as swap execution facilities (December 8, 2017).

Selected EU legislation and European Commission Implementing Decisions

10. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
11. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
12. Commission Implementing Decision (EU) 2016/377 of 15 March 2016 on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the Commodity Futures Trading Commission to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council.

13. Commission Implementing Decision (EU) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.
14. Commission Implementing Decision (EU) 2017/1857 of 13 October 2017 on the recognition of the legal, supervisory and enforcement arrangements of the United States of America for derivatives transactions supervised by the Commodity Futures Trading Commission as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories.
15. Commission Implementing Decision (EU) 2017/2238 of 5 December 2017 on the equivalence of the legal and supervisory framework applicable to designated contract markets and swap execution facilities in the United States of America in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council.

Selected UK legislation amending EU law

16. The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018
17. Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019.
18. Draft Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (Schedule 2 amending the Commission Implementing Decision (EU) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2017/2238 of 5 December 2017 on the equivalence of the legal and supervisory framework applicable to designated contract markets and swap execution facilities in the United States of America in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council)

Temporary recognition regime

19. The temporary recognition regime is provided for by the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.
20. The interim list of non-UK CCPs that have notified the BoE they intend to enter the temporary recognition regime if the UK withdraws from the EU with no implementation period. The temporary

recognition regime will enable eligible non-UK CCPs to provide clearing services and activities in the UK for up to three years and is extendable if required.