



**Financial Services Agency
Government of Japan**

Mr. Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B – 1049 Brussels
Belgium

June 14, 2013

Dear Mr. Barnier

I would like to urgently request the EC to take immediate steps to extend the deadlines for the submission of the technical advice by ESMA to the EC, which is currently June 15. While discussions are underway between the US, EU and Japanese authorities to establish comparability and mutually recognize the rules applicable to such transaction under the respective laws of the US, EU and Japan on a bilateral basis, no set of rules have been assessed as comparable or equivalent, and it is clear that additional time is necessary in establishing such comparability or equivalence. This comparability or equivalence test is crucial in enabling each jurisdiction's regulator to rely upon each other's rules and supervision, and avoid conflicts, inconsistencies, duplications, and gaps. An additional point is that the relevant provisions should enter into force only after the details of their implementing rules are made available to market participants, not before they are made known.

When assessing equivalence or comparability, it will be vital to assess whether the outcome delivered by each legislative, regulatory and supervisory framework is equivalent in terms of the protections provided, and not to seek a precise rule-by-rule comparison. The details of the procedure in equivalence or comparability process should also be made clearer as much as possible. In addition, common international standards, such as the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMI), should be used as an essential element in assessing equivalence or comparability wherever possible. Otherwise, it would risk reducing the value of the standards and the incentive for jurisdictions to implement them.

As you may be aware, the prevailing uncertainty over the outcome of the discussions

above has prompted market participants to reduce, divert, or otherwise avoid the applicability of the relevant rules in each of our markets. Although we do not have accurate figures in terms of transaction volumes, there appears to have been a substantial reduction in those transactions in all of the major markets. Since it has always been our intention to incentivize centrally-cleared OTC derivatives transactions, and not to unduly suppress non-centrally-cleared transactions, the current situation has been totally unintended. If this situation persists, a sharp reduction in OTC derivatives transaction volumes could have harmful effects on recovery and growth in our economies, as they would render impossible or at least largely frustrate hedging operations by lenders of funds.

I would therefore like to call for your urgent action in taking the necessary short-term measures as well as to step up our efforts to resolve this issue. The G20/FSB should take the lead in agreeing on a common timeline for implementation among the major market jurisdictions, including the US, EU and Japan.

If we fail to establish a harmonized and coordinated regulatory approach amongst ourselves based upon mutual trust, there will be harmful and costly effects on market participants, and further aggravate the uncertainty in the markets. The OTC derivatives market is an essential financial market that enables market participants to hedge their risk exposures in an efficient and timely manner. We should be able to demonstrate that a coordinated approach by the US, EU and Japan is by far the best way forward, if there is a willingness to cooperate.

On the contrary, if the EC determines the Japanese legislative, regulatory and supervisory frameworks are not equivalent to those of EU, Japanese CCPs will not be able to obtain recognition and be forced to comply with multiple sets of rules, which will negatively affect transactions by EU financial institutions with Japanese counterparties. We in Japan will be forced to reconsider our regulatory approach based on international comity and harmonization of rules based on international standards, and may need to reconsider our regulatory approach towards foreign market participants and infrastructures.

Sincerely yours,



Masamichi Kono
Vice Commissioner for International Affairs
Financial Services Agency
Government of Japan

Cc : Steven Maijor, Chair, ESMA;

Mary Jo White, Chairman, SEC;
Gary Gensler, Chairman, CFTC