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The US must not override EU regulators

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By Michel Barnier

The US regulatory authorities held a public meeting on Thursday on how they intend to interpret the rules on cross-border trades in derivatives. We are now at a watershed in deciding if we want our combined regulatory efforts in the US and the EU to deliver what we set out to do together three years ago or if we will fail at the last hurdle. The biggest danger to success is that of excessive attempts by regulators to exercise authority beyond their normal boundaries.

When President Barack Obama hosted world leaders for a G20 summit in 2009, they recognised that unregulated derivatives markets had helped to whip up the storm that had hit financial markets. Although derivatives can help manage and lower risk for companies, they also increase risk in international financial businesses. JPMorgan's losses on derivatives show that the need for regulatory measures remains as pressing as ever.

Over the past two years many countries have made huge strides to regulate the opaque, $700tn "over the counter" derivatives market. Across the G20, regulations are or will soon be in place that will bring greater transparency and increase safety by requiring clearing, trading and reporting of the OTC market.

The direction and pace of those national measures have been co-ordinated by the Financial Stability Board. The content of national rules has been discussed in bilateral and multilateral meetings of regulators. I have personally engaged in these efforts with my American partners, Treasury secretary Tim Geithner, CFTC chairman Gary Gensler and SEC chairman Mary Schapiro, in order to create a transatlantic level playing field. We have made great progress together.

But our efforts will be in vain if we fail to realise that a global market can be regulated only by national rules that work together, closing gaps and avoiding overlaps. Fortunately, the US with the Dodd-Frank Act and the EU through its "Emir" derivatives regulation have laws in place to make this possible. The real danger we now face is that the national regulators who have been entrusted with interpreting and applying these laws may thwart our efforts.

US regulators are seriously considering a wide interpretation of who a "US person" is under the Dodd-Frank Act. The danger is that many of the requirements would apply to companies in the EU and to trades between the EU and US clients. American rules would take primacy over those in Europe.

Regulators of course have the responsibility to protect the interests of investors and markets. In doing so they must realise that financial instruments such as OTC derivatives are traded today without regard to geographical boundaries.

National laws, on the other hand, do have to respect geographical boundaries. The cross-border reach of the Dodd-Frank Act is extensive but, I have been assured, it will be applied in a reasonable manner in compliance with international law. Where the rules of another country are comparable and consistent with the objectives of US law, it is reasonable to expect US authorities to rely on those rules and recognise activities regulated under them as compliant. We in the EU can do exactly the same. That is how we must restore confidence and build transatlantic business.

This is reasonable because it accepts legal boundaries and the need for regulators to trust and rely on each other. It is effective because it achieves our common objective of mandatory clearing, trading and reporting of OTC derivatives: no trade will escape the regulation. It is efficient because it avoids subjecting the same trades and businesses to two different sets of rules simultaneously and expensively.

The US has shown initiative in developing rules for the derivatives market. I now call on US authorities to show leadership in applying them fairly. They must be prepared to rely on equivalent rules in host countries.

A narrow definition of what a "US person" is under the Dodd-Frank Act is the first place to start. If not, it will be difficult for the EU to accept US rules as equivalent to ours. Supervision of global markets will fail if regulators cannot work in harmony, particularly across the Atlantic. We will insist that the interests of the City of London and other European financial centres are respected. Above all, investors, savers – in short, all our citizens – expect us to have understood the lessons of the recent past and enforce rules that apply seamlessly in the world's main financial centres.

The writer is the EU commissioner overseeing financial services

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