



In June 2012, the EU-U.S. High Level Working Group on Jobs and Growth stated in its Interim Report, "...that a comprehensive transatlantic trade and investment agreement, if achievable, is the option that has the greatest potential for supporting jobs and promoting growth and competitiveness across the Atlantic." The Securities Industry and Financial Markets Association¹ (SIFMA) and the Association for Financial Markets in Europe² (AFME) share this view. We support efforts to initiate negotiations on a comprehensive trade and investment agreement because it presents a unique opportunity to enhance the efficiency of the transatlantic financial markets, facilitate trade, and result in lower cost products to investors and issuers. In order to deliver its full potential, it is imperative that provisions for the financial services sector are an integral part of this agreement.

The U.S. and EU have well-developed financial markets, so we emphasise that any agreement would be supported by already strong domestic regulatory traditions in addition to significant G20 regulatory reforms that are either underway or implemented. Given the global nature of the modern financial services markets and the way firms actually provide the capital markets services that their global customers demand, we urge for the agenda setting for these negotiations to be ambitious. Financial services liberalization is often incorrectly equated with deregulation. We support strong regulation and prudential standards. However, there is much to be gained by focusing on questions of market access, nondiscriminatory treatment, enhancing regulatory efficiency, and promoting appropriate recognition regimes. Opening markets can be done without prejudice to regulatory standards. Liberalizing trade in financial services is about open markets, clear rules and fair competition, not deregulation.

Strengthening economic ties between the U.S. and EU will contribute to economic growth and recovery and create new opportunities for job creation. An agreement that reduces and eliminates obstacles to trade would provide an economic boost for both

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² The Association for Financial Markets in Europe (AFME) advocates stable, competitive and sustainable European financial markets, which support economic growth and benefit society. AFME promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the U.S., and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. For more information please visit the AFME website, www.afme.eu

regions. A report³ by the European Commission's Directorate-General for Trade shows that annual-wide U.S. and EU economic gains could be as much as \$200 billion, with corresponding increases in household income and wages. These benefits, and support for increased economic ties, would also enhance the competitiveness of U.S. and EU based firms in fast-growing emerging markets.

By nearly every metric, the U.S. and EU economies are inextricably linked, with this vast trading and investment partnership directly and indirectly supporting tens of millions of jobs. All totaled, EU trade and investment in the U.S. helped support more than 3.2 million jobs (2008); while U.S. investment in the EU supported about 4.6 million jobs (2010). The U.S. and EU comprise the world's two largest economies and capital markets. The U.S. and EU financial markets are the most efficient, deep, and liquid in the world. Cross border portfolio flows between the two areas totals nearly \$32 trillion annually, or around \$87 billion daily. Direct investment – an important measure of the shared interests which both markets have – is equally impressive. U.S. direct investment in the EU totals \$2.2 trillion, while EU direct investment in the U.S. is \$1.6 trillion. The data for services trade flows are striking. For the most recent years in which data is available, nearly a third of U.S. services exports were to EU member states.

In order to strengthen the transatlantic trade and investment relationship, we believe it is essential to liberalize financial services trade and pursue compatible regulatory regimes within a U.S.-EU trade and investment agreement. To this end, SIFMA and AFME respectfully submit the following framework for consideration in the negotiations, which includes the following principles:

- 1) Full market access commitments, including provisions for commercial presence, cross-border business operations, consumption abroad, and regulatory transparency;
- 2) Regulatory coherence, including commitments that would incorporate the principles of financial regulatory reform negotiated through the G20; and
- 3) Ensuring appropriate investment protections for investors.

These commitments, when taken together, provide a framework where financial products and services can efficiently and effectively meet the needs of investors and issuers.

While high-standard financial services commitments that include these core protections remain a priority for the industry, other measures, such as the protection of cross-border data flows and transfers, and the inclusion of investor-state dispute settlement

³ European Commission, Directorate-General for Trade, "Non-Tariff Measures in EU-U.S. Trade and Investment – An Economic Analysis", 11 December 2009, Reference: OJ 2007/S 180-219493.

commitments, warrant closer attention and are important for firms operating in the transatlantic marketplace. The ability to store and process data from a central regional location, rather than establishing a local facility is essential. Forced localization of information will impede the economic efficiency of firms operating on a cross-border basis and clearly undermine the underlying premise of a comprehensive U.S.-EU trade and investment agreement in which barriers to trade and investment are removed in commerce between the parties. An agreement of this unique size and scope, we believe, will encourage other countries to enact similar measures.

Annex A

Core Elements of Financial and Securities Industry Priorities

The following criteria are essential components of a comprehensive trade and investment agreement between the U.S. and the EU:

Commercial Presence

Each Party should permit foreign suppliers of capital markets-related services to establish a new commercial presence or acquire an existing commercial presence in the other Party's territory. Such suppliers should be able to choose their corporate form (e.g., a 100%-owned subsidiary, a branch or a joint venture) and be treated no less favorably than domestic suppliers (i.e., national treatment).

Cross-Border Business Operations

In the financial services sector many types of services can be performed across borders, without sacrificing appropriate prudential supervision. These services include buying and selling financial products across borders, participating in and structuring transactions, and providing investment advice. The Agreement should permit firms established in a Party to provide services cross-border to sophisticated clients (e.g., "qualified investors") without establishing a commercial presence and without being subject to separate licensing and approval requirements of the type that generally apply to firms commercially present in a market.

Consumers Traveling Abroad

A Party should permit consumers traveling outside their territories to utilize any capital markets related service in the other Party's jurisdiction.

Information Processing

Each party should permit dissemination and processing of financial information to provide clients with services necessary for the conduct of ordinary business. The Parties should therefore agree not to adopt or maintain measures that prevent or restrict transfers of information or the processing of financial information, including transfers of data by electronic means, or that prevent transfers of equipment, where such transfers of information, processing of financial information, or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. This commitment would not seek to nullify the right of a relevant authority to protect personal data, personal privacy, and the confidentiality of individual records and accounts. However, the agreement should include a commitment that when an act, policy or

practice of a relevant authority seeks to restrain cross-border data transfers or processing, that that authority must demonstrate that the restriction is not an unnecessary restraint of trade or investment in light of alternative means by which to achieve the objective of protecting the identity of the customer, security of the data or the performance of prudential oversight.

Movement of Persons

Given the highly specialized nature of financial services work, the quality of service will depend to a great extent on a supplier's capacity to engage top managerial or other personnel without regard to their nationality. Each Party should permit temporary entry into their territories for persons who supply capital markets-related services to work with clients or to staff a commercial presence.

Codification of Existing Favorable Market Access Conditions

Each Party may currently provide market access that is consistent with some or all of the recommendations described above. In some cases, this level of access may not be reflected in their current GATS commitments. The Parties should at a minimum ensure that their commitments in any comprehensive trade and investment agreement reflect the level of market access afforded under their domestic laws. This will afford the legal certainty and predictability that stimulate economic activity.

New Services

The competitiveness of financial services firms depends on their ability to innovate, often rapidly in order to meet the special needs of customers by developing and offering new products and services. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Party but which is supplied in the territory of the other Party. Each Party should ensure that regulators allow private firms to meet these needs, while maintaining appropriate prudential supervision.

Regulatory Transparency

Regulation must be transparent: both suppliers and consumers of capital markets-related services must know what the rules are and have confidence that the rules will be applied consistently and fairly. Although there are different ways to achieve this, in general, regulators should: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations on a non-discriminatory basis, according to fair and transparent criteria. Consideration could be given to the development of a Transatlantic "Regulatory Gazette" where capital market participants could review legislative and regulatory financial services measures taken by either Member.

Investment Chapter

A strong investment chapter that applies equally to financial services investors, including with respect to core protections and investor-state dispute settlement, is vital. Such core protections would include ensuring that suppliers could establish a commercial presence, protection from expropriation, dispute settlement, and the free transfer of capital.

Intellectual Property Rights

Many financial services are providing and utilizing proprietary means and products that have been developed at considerable cost and need protection in order to maintain value and competitiveness for the property owner. As a result, it is important to ensure that intellectual property protection, including proprietary trade secrets, are adequately protected under the agreement.

Recognition Arrangements

The agreement should create a framework for developing recognition arrangements, which could include appropriate forms of substituted compliance focused on outcomes. Other steps might include consultation among capital markets participants and regulatory authorities which would lead to the development of a list of regulatory obstacles where recognition arrangements could be developed. For example, the U.S. and EU might seek to develop a common prospectus, or recognize current arrangements already in place for issuing a prospectus. We note that this can be accomplished while protecting investors and ensuring the integrity and stability of their financial systems.

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