



June 29, 2012

The Honorable Ron Kirk
United States Trade Representative
Office of the U.S. Trade Representative
1724 F Street, N.W.
Washington, DC 20508

Dear Ambassador Kirk:

Re: Financial Services Protections in the Trans-Pacific Partnership Agreement

The Securities Industry and Financial Markets Association (SIFMA) and the Financial Services Forum (FSF) write to reiterate our support for the conclusion of a high-standard, 21st-century Trans-Pacific Partnership (TPP) agreement and a robust financial services chapter. To achieve this, we believe the administration must build on “best of breed” provisions from recent agreements, such as those in the U.S.-Korea Free Trade Agreement, rather than simply inventorying provisions from existing FTAs with TPP countries. As the 13th negotiating round in San Diego approaches, we are concerned that a final TPP financial services chapter may fail to meet the high-standards established by past FTAs, including full market access, national treatment, and a clear and enforceable commitment to permit cross-border data transfer and processing. Accepting lesser standards would fail to reflect the global and rapidly changing nature of the financial services sector, omit important protections for firms operating on a cross-border basis, and set unnecessarily low standards for additional countries seeking to join the agreement.

Free trade agreements and the market access they provide are vital for the continued success of the financial services industry, its customers, shareholders and employees in the United States. The financial services industry plays a key role in the U.S. economy and is an integral part of its current trade agenda. Notably, the U.S. is the strongest single services exporter with exports reaching \$588 billion with a surplus of \$193.5 billion in 2011. Further, the financial services industry accounts for more than 10 percent of U.S. services exports and directly employs 7.6 million Americans.



Importantly, the administration’s National Export Initiative (NEI) identifies financial services as a key part of the “essential infrastructure of a modern, increasingly digital economy, enhancing growth and increasing productivity across all sectors.” The NEI also notes that “market access and national treatment barriers often hamper U.S. services exports and foreign investment by U.S. service providers; economists estimate these barriers to be several times the value of current barriers to merchandise trade.”

In order to maintain and strengthen the competitiveness of the U.S. financial services industry, a successful financial services chapter must contain the following commitments: 1) full market access commitments, including for commercial presence, cross-border access, 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) improving investment protections for U.S. 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. We outline further in Annex A the core elements of a successful financial services chapter.

While a high-standard financial services chapter that includes these core elements remains 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 commitments, are also important for firms operating on a cross-border basis. The ability to store and process data from a central regional location, rather than establishing a facility in each TPP nation, 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 the TPP agreement in which barriers to trade and investment are removed in commerce between the TPP parties. Such a precedent in an agreement of this size and scope will encourage other countries to enact similar measures.

In order to emphasize and make clear the U.S. financial services industry’s expectations regarding this point, we recommend adoption of a provision in the financial services chapter that requires any signatory to carry the burden of proof that an act, policy or practice of the signatory country that restrains cross border data transfers or processing is in conformity with generally-accepted data protection principles and practices and does not constitute an unnecessary restraint



of trade or investment in light of viable alternative means to achieve the objective of the generally-accepted data protection principles and practices.

Additionally, Australia's ongoing refusal to agree to one of the most widely-adopted core enforcement tools in international commerce – investor-state dispute settlement – is of significant concern. Australia, like the United States and the other TPP countries, has already agreed to investor-state dispute settlement mechanisms in numerous other agreements. Failure to secure this important protection could have serious negative consequences for our member firms, many of whom operate on a cross-border basis.

As the 13th negotiating round approaches and negotiations move toward conclusion, we urge you to ensure that the TPP agreement and financial services chapter achieve, if not exceed, the high-standards established by recent FTA agreements. We look forward to an ongoing cooperative and constructive dialogue as negotiations progress.

Sincerely,

Kenneth E. Bentsen, Jr.
EVP, Public Policy and Advocacy
Securities Industry and Financial Markets Association

Robert S. Nichols
President and CEO
Financial Services Forum

cc:

The Honorable Michael Froman
Christine Bliss
Sharon Yuan

Annex A

Core Elements of Financial and Securities Industry Priorities

The following criteria are essential components of a successful financial services chapter of the TPP:

- Allow foreign securities firms to establish a new commercial presence or acquire an existing commercial presence;
- Permit 100% ownership, as well as the right to establish in corporate form of choice;
- Provide national treatment (i.e., treat foreign financial sector participants and investors on the same basis as domestic investors for regulatory and other purposes);
- Allow TPP firms established in a TPP signatory country to provide services cross-border to sophisticated clients (i.e., “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;
- Permit consumers to travel outside their territories to obtain any capital markets related service;
- Commit to procedural aspects of regulatory transparency (including commitments of adequate lead time for prior comment, and access to review other comments submitted for the public record) to allow both suppliers and consumers of capital markets related services to know what the rules are and have confidence that the rules will be applied consistently and fairly;
- Eliminate economic needs tests; and
- Permit dissemination and processing (within country and cross-border) of financial information to provide clients with services necessary for the conduct of ordinary business.



A strong investment chapter that applies equally to financial services investors, including with respect to core protections and investor-state dispute settlement, is vital given reaching foreign customers most often requires foreign investment.