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April 3, 2013

The Honorable Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Re: Upcoming Visit with European Finance Officials

Dear Secretary Lew:

In advance of your upcoming meetings with European officials, I write to you to raise a number of important financial regulatory, tax and trade issues between the EU and U.S. While not mutually exclusive, I detail four areas of concern below, which include: the extraterritorial nature of the European Union's and member states' Financial Transaction Tax programs; the divergence from Basel III in the EU's implementation of CRD IV related to the Credit Valuation Adjustments (CVA); the lack of progress by the EU on cross-border resolution; and the need to include both market access and regulatory financial services issues in the Transatlantic Trade and Investment Partnership (TTIP) negotiations.

EU Financial Transaction Tax Proposal

We greatly appreciate the Treasury Department's recognition in February that EU member states' and the EU's new FTT proposals could have harmful extraterritorial impact here in the United States, harming U.S. investors. Nevertheless, our members remain concerned that certain EU member states are determined to advance extraterritorial FTT laws unilaterally, by adopting broad and unprecedented concepts of residency and issuance based tax jurisdiction. The recently enacted French and Italian FTT laws impose an unprecedented issuance based tax on secondary market trading within the U.S. in American Depository Receipts (ADRs). These newly taxable ADR transactions almost always occur within the United States, often between U.S. residents. More recently, in response to a request by eleven EU member states, the European Commission (EC) issued a proposed directive in February 2013 that would set uniform rules for FTT laws enacted in individual member states under the EU's "enhanced cooperation" procedure. The new directive would supersede the French and Italian laws and is broader than those laws in many respects.

We are deeply concerned that the EC's February FTT proposal is inherently extraterritorial, and that this broad global impact is part of the proposal's basic design. In addition to harming financial markets, individual investors and retirees, a global or broadly extraterritorial FTT, such as that in the EC's proposed directive, could lead to multiple levels of taxation and trade protectionism that would further impede global capital flows and harm domestic economies. Consequently, we respectfully request that you caution the EU to apply FTT laws on a national basis, consistent with past precedent in the area of excise tax law, and not extraterritorially. We attach our recent letter to European Commissioner for Taxation, Algirdas Šemeta, which outlines our concerns in further detail.

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Consistent Implementation of Credit Valuation Adjustments (CVA)
As you know, the Basel Committee on Banking Supervision adopted a new capital regime in response to the financial crisis in the form of Basel III to improve the quantity and quality of capital held by financial institutions. One of these steps was the introduction of a new Credit Valuation Adjustments capital charge intended to capture the potential for mark-to-market losses on un-cleared derivative trades from market volatility. Market participants believe the Basel III CVA charge is inappropriate, not fit for its intended purpose, and in need of recalibration. The EU has responded to the concern that the proposed CVA calibration is inappropriate by exempting application of the CVA to swaps between EU supervised banks and non-financial end users in CRD IV (the EU's implementing legislation for Basel III). While we share the concern that the CVA is incorrectly calibrated and in need of major revision, this action is a significant deviation from Basel III and the G-20 principles of uniform application.

Not only is this exemption inconsistent with implementation of the Basel III standard, it has the knock-on effect of placing non-EU banks on an unlevel playing field with EU supervised banks (we note that the Basel III Advanced Approaches NPR in the U.S. reflects the international Basel III rule with respect to CVA), and sets a precedent for other countries that may also have issues with implementation of specific areas in Basel III. Indeed, we understand that Canada has also decided to delay effectiveness of the CVA charge – while implementing the rest of Basel III effective January 1, 2013 – pending more clarity on its implementation internationally.

We would respectfully request that you raise with the EU that this difference in regulatory treatment runs counter to the Financial Stability Board's and G20's stated objectives of promoting internationally coordinated and consistent implementation of its regulatory action plan.

Cross-Border Resolution
Related to the new capital regime under Basel III, a crucial component of financial regulatory reform is resolution or Orderly Liquidation Authority (OLA) to mitigate systemic risk and end too big to fail. This too has been a key component of the G-20 principles. As you know, the U.S has made great progress in the implementation of OLA, and the U.S. and U.K. have been working to create a framework for the cross border resolution of systemically important financial institutions headquartered in each respective nation. The European Commission has proposed a similar framework for the EU, more broadly, but more progress is needed. We encourage you to underscore the importance of completing this process in a way that will allow all sides to work together on the supervision and resolution of systemically important firms without burdening taxpayers or impeding the ability of these firms to provide capital and financial products and services to their customers. Cooperation globally is necessary to ensure that global institutions can be resolved in an orderly fashion. We note with concern, however, that conflicting capital and supervision rules, as is being exhibited with increasing frequency, whether through "ring-fencing" or uneven application of similar rules, only serves to undermine these critical efforts to establish a workable cross-border resolution regime.

U.S. – EU Transatlantic Trade and Investment Partnership (TTIP)
Finally, SIFMA applauds the Administration's initiative to negotiate a comprehensive trade and investment partnership because it presents a unique opportunity to enhance the efficiency of

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transatlantic financial markets, facilitate trade, create jobs, and result in a more efficient delivery of products to investors and issuers in both jurisdictions. In order to deliver the TTIP's full potential, it is imperative that all market access issues, including those arising from overlapping, inconsistent, or conflicting regulation, affecting the financial services sector are considered in this agreement. The increasing divergence from a coordinated approach to financial regulations, as evidenced by the extraterritorial imposition of one jurisdiction's rules on others, and in the issues raised in this letter, is contrary to the principles of the G-20 in responding to the financial crisis. Establishing a mechanism within the TTIP to ensure coordination would not only bolster the goals of the proposed Partnership, but also the G-20 principles. Indeed, a joint statement (May 2010) by former Treasury Secretary Geithner and the European Commissioner for Internal Markets and Services Barnier noted that the "...United States and the European Union, as the world's two largest economies and financial systems, have a special responsibility to promote and implement stronger global financial standards, reduce the scope for regulatory arbitrage and work toward greater regulatory convergence."

Continuing to view the regulation of the U.S.-EU financial markets in isolation is no longer the appropriate regulatory approach. The experience following the financial crisis demonstrates the need to develop mechanisms for coordinating national regulatory policies in a more effective and efficient manner in order to ensure that regulation is consistent. Given the long-standing commercial and strategic relationship between the U.S. and the EU, we believe it is imperative that national leaders address these matters.

We appreciate your attention to these issues and look forward to further discussion with you and your staff upon your return.

Sincerely,

Kenneth E. Bentsen, Jr.
Acting President & CEO

c: The Honorable Neal Wolin
The Honorable Lael Brainard
The Honorable Mary John Miller
The Honorable Marisa Lago
Mark Sobel, Deputy Assistant Secretary
Sharon Yuan, Deputy Assistant Secretary

Attachment