



Written Submission on behalf of the Securities Industry and Financial Markets
Association

United States Trade Representative's Request for Comment Concerning
Proposed Transatlantic Trade and Investment Partnership

FR Doc. 2013–07430



Via www.regulations.gov

Douglas Bell

Chair, Trade Policy Staff Committee

Office of the U.S. Trade Representative

1724 F Street, N.W.

Washington, DC 20508

**Re: SIFMA Response to Federal Register Request for Comments
Concerning Proposed Transatlantic Trade and Investment Partnership/Request to
Testify**

The Securities Industry and Financial Markets Association¹ (SIFMA) welcomes the opportunity to respond to the Office of the United States Trade Representative's (USTR) Federal Register notice requesting comments concerning the proposed Transatlantic Trade and Investment Partnership (TTIP). We support efforts to negotiate a comprehensive TTIP that includes, for financial services, conventional market access rules, and, as with other sectors, a mechanism to ensure an efficient, cost-effective and compatible regulatory framework. We outline below a proposed framework for enhancing financial regulatory cooperation that would facilitate and guide efforts to promote consistent high-quality regulatory standards in the transatlantic markets. We also request the opportunity to testify at the May 29 and 30 hearings.

By nearly every metric, the U.S. and EU economies and capital markets are inextricably linked. The U.S. and EU comprise the world's two largest economies and capital markets and the financial markets are the most efficient, deep, and liquid in the world. Cross-border portfolio flows between the two areas total 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.

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).



We believe a comprehensive trade and investment agreement presents a unique opportunity to enhance the efficiency of the transatlantic financial markets, facilitate trade, encourage economic growth and reduce costs for investors, issuers, and consumers. In order for the agreement to deliver its full potential, provisions for financial services must be an integral part of this Partnership. Financial services discussions would be in recognition of the integrated nature of the transatlantic financial markets, and the essential role they play in supporting trade and investment flows between the two regions. Moreover, consistent with the G20's mandate, the best approach to protecting investors, enhancing financial stability, promoting efficient and transparent markets, and facilitating capital formation, would be for the U.S. and EU to enhance current efforts for coordinated and consistent regulatory approaches.

The U.S. and EU financial services sectors are already heavily regulated industries. These strong domestic regulatory traditions complement significant G20 regulatory reforms that are either under discussion or have already been implemented. Such reforms are designed to strengthen regulation but the process has not resulted in coordinated or consistent approaches. In particular, we are concerned about duplicative, incompatible, or conflicting requirements, regulatory uncertainty, and the impact that these proposals will have on competition and consumer choice. Fragmented or conflicting regulation – even when the policy objectives are the same – would negatively impact the ability of market users and participants to raise capital, manage risk and contribute to economic growth. The TTIP offers a critically needed forum in which a framework can be established to coordinate the extensive, but too often disparate, array of regulatory efforts, on both sides of the Atlantic.

SIFMA believes the TTIP provides the best opportunity to take this work further to address existing and future issues by creating a process to discuss these issues at an early stage, with mechanisms to help resolve, or at least mitigate, the impact of regulatory differences. In addition, we believe the establishment of a process and framework for developing regulations that have a transatlantic impact on financial services would significantly enhance the efficacy of the financial reforms being adopted in conformity with G20 commitments. A financial services regulatory framework between the U.S. and EU would also provide an important and unique opportunity to facilitate and guide efforts to promote consistent high-quality regulatory standards in global markets, particularly among faster growing developing markets.

We would like to address arguments that have been made for excluding financial services from the regulatory discussion in TTIP. First, the financial services regulatory provisions in TTIP would facilitate, rather than replace, regulatory coordination in the U.S.-EU Financial Markets Regulatory Dialogue, G20, Financial Stability Board, and other



international standard-setting bodies. Second, the level of coordination (e.g., recognition or convergence) needed to minimize and avoid conflicts and differences in regulation would be guided by U.S. and EU financial regulators, and would not address issues unrelated to the ability of U.S. and EU firms to operate in the two markets. Finally, the financial services regulatory provisions, as with other financial services commitments in TTIP, would be subject to the prudential measures exception, which protects regulatory prerogatives related to financial stability and investor protection. Importantly, the writing of regulation and all decisions regarding consistency of regulation and recognition would remain with U.S. and EU financial sector regulators.

Sincerely,

A handwritten signature in black ink, which appears to read "Ken Bentsen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kenneth E. Bentsen, Jr.
Acting President and CEO
Securities Industry and Financial Markets Association



Framework and Process for Financial Regulatory Cooperation

Overview

The Transatlantic Trade and Investment Partnership provides an opportunity to deepen an economic relationship that already generates \$1.5 trillion in annual trade flows and accounts for nearly \$4 trillion in cross-border investment. As U.S. and EU tariffs are already low, the largest gains from a trade agreement will come from removing non-tariff barriers and improving regulatory cooperation.

Objective: The goal of the agreement is to increase market access and make cross-border regulation more efficient and effective for both U.S. and EU market regulators and participants by: (i) recognizing, as appropriate, each other's regulatory regimes as equivalent; and (ii) making the two regimes more compatible by reducing and/or eliminating unnecessary, inconsistent, or duplicative requirements. The goal of the agreement is not to weaken regulation, replace existing multilateral standard-setting bodies, or delay implementation of necessary reforms.

Scope of Negotiations: The framework for regulatory cooperation should include existing and future financial services laws and regulations that have significant transatlantic trade effects, significant extraterritorial effects, or both. As in all U.S. and EU trade agreements, any commitments would be subject to the exception for prudential measures, which allows regulators to adopt measures to protect consumers and ensure the safety and soundness of the financial system. Issues not related to the ability of U.S. and EU firms to access the two markets, such as capital and liquidity standards, would not be addressed by the agreement.

Scope of Coverage: Existing and any future dialogues between the U.S. and EU should operate within the regulatory framework outlined in this agreement.

Negotiating Outcomes

U.S. and EU regulatory and supervisory authorities each have regulatory systems tailored to their particular jurisdictions, based on differing regulatory philosophies, although sharing common objectives, which in turn justify differences in regulation. Accordingly, in assessing the compatibility of their regulatory frameworks, U.S. and EU regulatory and supervisory authorities should consider and analyze core securities regulatory principles, and the manner these principles are given effect via regulation within their respective jurisdictions.²

² US SEC and ASIC Mutual Recognition Arrangement, 25 August 2008



To avoid differences and conflicts in regulation before they arise, relevant U.S. and EU authorities should discuss proposed measures at the earliest practicable phase of their development. In addition, the U.S. and EU should notify each other of material changes within their respective regulatory systems. In all cases, significant regulatory proposals should be accompanied by a cost-benefit analysis.

Negotiations should seek to avoid, and at the very least mitigate, the adverse effects of conflicting and overlapping measures through one of the following mechanisms:

- **Equivalent Regulation:** A party determines that the regulatory regime of the other party achieves comparable outcomes to its regime with respect to safety and soundness and consumer protection and therefore agrees not to apply certain aspects of its regime to financial services firms regulated by the other party.
- **Equivalent Regulator:** A party determines that the regulator of the other party is comparable to its regulator, including with respect to resources, sophistication, and legal authorities, and therefore agrees not to apply aspects of its regulatory regime to financial services firms regulated by the other party.
- **Exemption:** A party agrees to exempt financial services firms of the other party from certain aspects of its regulatory regime with respect to certain transactions, such as those with sophisticated investors.
- **Convergence:** Where the parties cannot agree on equivalence or exemption, they should agree to modify their respective regimes to reduce the level of inconsistency or overlap.
- **Consultation:** Where the parties cannot agree on one of the outcomes above during the course of negotiations, they should agree on a mechanism to continue consultation with a view toward reaching agreement on one of the outcomes above.