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17 February 2012

The Honorable Timothy F. Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Commissioner Michel Barnier  
EU Commissioner for Internal Markets and  
Services  
European Commission  
B-1049 Brussels

RE: Extraterritorial legislation: the problems posed for markets, clients and regulators

Dear Secretary Geithner and Commissioner Barnier:

On behalf of the Global Financial Markets Association (GFMA)<sup>1</sup>, whose members represent the common interests of the world's leading financial and capital market participants, we write to express strong concern that regulation in different G20 jurisdictions may be creating conditions which could result in a fragmented transatlantic capital market. Given your forthcoming meeting we wanted to take the opportunity to draw your attention to the numerous extraterritorial issues, both new and previously raised, that risk impeding or disrupting the efficient functioning of our global financial markets. In particular, we are concerned about duplicative, incompatible, or conflicting requirements, regulatory uncertainty, and the impact that these 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.

In April 2010, two of our member associations, AFME and SIFMA wrote to you – in the context of the US-EU Financial Markets Regulatory Dialogue (the “FMRD”) and the financial regulatory reform programme being developed in light of G20 priorities. We emphasized that such a programme should seek to achieve consistent results which do not

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<sup>1</sup> The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.

adversely affect our Members' ability to provide the products and services that their customers demand.

Since we last wrote the regulatory community has driven forward with the FSB reform programme, and we have been exploring the extent to which extraterritorial regulatory provisions are giving rise to difficulties in both interpretation and practice. Our present work follows on from the joint paper<sup>2</sup> on issues affecting derivatives, and we remain concerned that extraterritorial regulation may disrupt and fragment the operation of the global derivatives market, and distort competition in that market. However, the scope of our work is now broader and accordingly still very much underway. Moreover, we are concerned about the use of equivalence and other similar forms of determinations – they must be outcomes based, and not used as a tool to export regulations from one jurisdiction to another. Similarly, we believe that policies that promote the concept of reciprocity are equally dangerous and could cause a serious rift. Instead, we encourage use of three “gateways” for modernising the regulation of global business – regulatory recognition, exemptive relief and targeted rules convergence – in solving the difficulties to which extraterritorial measures give rise. Given our concerns, we are of course participating in the parallel follow-up work being taken forward by the EU-US Coalition<sup>3</sup> on these issues.

Through the FMRD, and other forums, we respectfully urge you to continue to explore the extent to which the issues that we have identified can be resolved and, to this end, we will be providing our findings to you in the near term. The key issues can be summarised as follows:

- Duplicative requirements;
- Incompatible or conflicting requirements;

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<sup>2</sup> [GFMA with Other Associations Comments to EU Commissioner and US Treasury Secretary Regarding EU Extraterritorial Effects and US Derivatives Regulation](#) (July 2011)

<sup>3</sup> In early 2005, a group of leading EU and US financial service industry associations agreed to work together to address the urgent need to simplify the regulation of wholesale Transatlantic financial services business; and subsequently agreed to form themselves into the EU/US Coalition on Financial Regulation. They comprise, currently: American Bankers Association Securities Association (ABASA), Association for Financial Markets in Europe (AFME), Bankers' Association for Finance and Trade (BAFT), British Bankers' Association (BBA), Futures Industry Association (FIA), Futures and Options Association (FOA), International Capital Market Association (ICMA), Investment Industry Association of Canada (IIAC), International Swaps and Derivatives Association (ISDA), Securities Industry and Financial Markets Association (SIFMA), Swiss Bankers Association (SBA) and Observer: European Banking Federation (EBF). The group submitted the following letter: <http://www.sifma.org/uploadedfiles/newsroom/2008/us-eucoalition-fin-regualtion-reportmar08.pdf> (March 2008)

- Reduction of consumer choice
- Distortion of competition;
- Market fragmentation
- Impact on clients/counterparties who are not directly subject to regulation;
- Aspects of mutual recognition in practice; and
- Regulatory uncertainty.

Our shared goal and interest is to implement reforms in a coordinated and consistent manner. We emphasize the urgency of addressing these issues and note that the most recent developments on Legal Entity Identifiers (LEIs) and the Foreign Account Tax Compliance Act (FATCA) demonstrate the extent to which the FMRD, and cooperative dialogue between the industry and regulators, can lead to solutions that meet policy objectives within a framework that allows global firms to respond to their clients' needs.

We appreciate your attention to these issues and look forward to continued dialogue on this ongoing endeavour.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Simon Lewis". The signature is fluid and cursive, with a large initial "S" and a distinct "L".

Simon Lewis  
CEO  
GFMA

CC: FSB Secretariat