EU-US High Level Working Group (HLWG) on Jobs & Growth

Response by TheCityUK's Liberalisation of Trade in Services (LOTIS) Committee to the European Commission's Consultation

Introductory

This Note sets out views on behalf of TheCityUK in response to the Commission's public consultation on the approach to be taken in framing the work of the EU-US High Level Working Group (HLWG) on Jobs & Growth. TheCityUK is a member-based body representing UK-based financial services businesses and related professions competing in global markets, both developed and emerging. It coordinates its work on trade policy with its members through its Liberalisation of Trade in Services (LOTIS) Committee. Its views focus largely, but not exclusively, on trade in services.

Importance of the HLWG's Role

The establishment of the HLWG is important and imaginative, and presents a key opportunity. **The opportunity needs to be harnessed for the benefit of trade in financial and professional services – a sector in which both the EU and the US have global comparative and competitive advantage**. Reducing trade barriers in the sector, and curbing the threat of further barriers, would carry positive benefits for jobs and growth in both the EU and the US. TheCityUK's response therefore focuses on the need for the HLWG's work to cover regulatory and other barriers to transatlantic trade in **financial services** and **related professional services**. Here, as many business interests have pointed out, the HLWG's work could serve to:

- Build on the G20 reform agenda for financial services;
- Support the development of international standards;
- Coordinate the implementation of these standards where necessary into detailed local and regional rules and laws;
- Match the introduction of global standards with market-opening; and
- Link various reforms - international, regional, national - so that jurisdictions do not create widely different requirements.

In this way the HLWG could offer a route towards tackling head-on the widening gulf between the repeated G20 calls for internationally coordinated reforms and the reality of increasingly conflicting national/regional approaches, expressed in differences not just between the EU and US but also in other jurisdictions including

the BRICs and ASEAN jurisdictions. These points are developed in this submission and its Annex.

TheCityUK is aware that the European Services Forum (ESF) is also submitting a response to the Commission's Consultation. TheCityUK will not replicate the points made in the ESF's response, which covers services as a whole and sets out the issues in terms which TheCityUK sees no reason to repeat.

Breadth of the HLWG's Planned Remit

The HLWG (established 28 November 2011) has a remit to:

> "examine options in areas including, but not limited to, the following:
>
> - Conventional barriers to trade in goods, such as tariffs and tariff-rate quotas;
> - Reduction, elimination, or prevention of barriers to trade in goods, services, and investment;
> - Opportunities for enhancing the compatibility of regulations and standards;
> - Reduction, elimination, or prevention of unnecessary "behind the border" non-tariff barriers to trade in all categories;
> - Enhanced cooperation for the development of rules and principles on global issues of common concern and also for the achievement of shared economic goals relating to third countries.
>
> "For each option it assesses, the Working Group will take into consideration:
>
> - the short- and medium-term impact on economic growth, job creation, and competitiveness;
> - the feasibility of each option;
> - the implications for, and consistency with, bilateral and multilateral trade obligations.
>
> "Upon completing its analysis, the Working Group will also consider and recommend the practical means necessary to implement any policy measures identified. These could include a range of possible initiatives, from enhanced regulatory cooperation to negotiation of one or more bilateral trade agreements addressing the issues above.
>
> "The Working Group will provide an interim update to Leaders on the status of its work in June 2012. It will issue a report with findings, conclusions, and recommendations to the Leaders by the end of 2012."

Taking account of the broad terms of this remit, there seems ample reason to hope that trade in services in general, and financial and professional services in particular, can be included in the HLWG's work.

Scope and Form of a Transatlantic Trade Framework

The HLWG's establishment coincides with much new thinking in the wake of the current failure of multilateral trade negotiations in the Doha Round framework. In particular, the Report of the Transatlantic Taskforce on Trade (TATF), published in February 2012, has focused attention on the need for fresh thought about all aspects of the transatlantic relationship. As regards trade in services, the HLWG would have particular value if it could play a central role in developing:

(1) a bilateral EU-US agreement (or agreements) to which other WTO members could subsequently accede;
(2) enhanced EU-US cooperation over trade negotiations with third parties, particularly on "Twenty-First Century" barriers to trade in services;
(3) linkages between (1) and (2) as part of the development of a plurilateral International Services Agreement (possibly under Article V of the General Agreement on Trade in Services (GATS).

As far the **scope** of any framework is concerned, the establishment of the HLWG has been generally welcomed by business on both sides of the Atlantic. On 20 March 2012 the U.S. Chamber of Commerce, BusinessEurope and a dozen US and European business associations issued a Joint Statement in a letter to President Obama and Presidents Van Rompuy and Barroso. The Statement called for urgent action to create a barrier-free transatlantic market to drive job creation and economic growth in the United States and Europe, and asked for this to be endorsed at the G8 Summit in May 2012. TheCityUK's LOTIS Committee supports this broad objective, noting that it should apply to trade barriers on both sides of the Atlantic, whether at national, regional/sub-federal or local level.

As for the **form** of a transatlantic agreement, TheCityUK's LOTIS Committee supports a comprehensive approach embracing all aspects of a deep and comprehensive agreement. This could take the form of a classic bilateral Free Trade Agreement, i.e. including the following elements:

- Trade in goods, eliminating all industrial tariffs as well as non-tariffs barriers;
- Trade in services;
- Investment Protection;
- Trade and public procurement;
- Protection of Intellectual Property;
- Regulatory cooperation building on the Transatlantic Economic Council (TEC);
- The digital economy (on which an FTA could furnish a prototype for an international agreement, which is much needed).

As to whether such an approach needs to incorporate a **Single Undertaking**, TheCityUK is, for the time being, agnostic. True, a Single Undertaking could be effective in harnessing the substantial political will required, and focus it on a single transatlantic agreement, rather than diffusing it through dealing with multiple negotiations on different aspects of the commercial relationship. The result could well create the scope for bargaining between sectors, and create a negotiating

dynamic. On the other hand, there is the risk that progress in some sectors could fall victim to deadlock in others. In that case multiple agreements, negotiated in parallel, could prove preferable. Each agreement could then be concluded separately, and ratified and implemented, without waiting for the other negotiations to be concluded. In the case of services - TheCityUK's principal interest - such an approach has the benefit of freeing any services negotiations from blockages in other sectors (a key disadvantage for services in the Doha Round). The drawback is that a stand-alone services negotiation, or a series of services negotiations, might develop less traction for solving some of the most difficult regulatory issues. At this stage, TheCityUK will suspend judgment, pending a clearer idea of the scope and subject-matter of an agreement.

Potential Gains from a Transatlantic Agreement

Potential gains need to be viewed in terms of the **two-way services trade and investment** involved. These are very large, in overall terms (the ESF response quotes the relevant figures). It is difficult to establish accurate figures for financial services within the overall services trade figures. Some relative indicators are provided in TheCityUK's "Global Financial Markets: Regional Trends 2010" (copy attached).

Against that background, this response to the Commission Consultation offers an overview of policy priorities in the area of financial and professional services for inclusion in the work of the HLWG, together with a more detailed analysis of certain issues (see Annex). It does not therefore cover the myriad US and EU restrictions in other (non-financial and non-professional) areas of services (e.g., in the US case, telecommunications, aviation, shipping, media, satellite services and offshore oil servicing, all of which include overt US restrictions on foreign investment).

General

It is worth pointing out that there are, in many areas, more similarities between the US and the EU than there are between either and third countries. As a result, the US-EU HLWG could be well advised to focus a good deal of its attention on areas where the US and the EU can work together on third country issues. Many such issues concern discrepancies between rules in different countries, some caused by timing differences (different dates for implementation of international standards) and some resulting from unnecessary differences in the implementing rules themselves. There is a wealth of existing material, much of it very recent, concerned with transatlantic issues in the field of financial services regulation. This includes:

- Commissioner Barnier's letter of 8 February 2012 to the US Acting Chair of the Office of the Comptroller of the Currency on the operation of the Volcker Rule; and

- The Global Financial Markets Association (GFMA) letter of 17 February 2012 to Secretary Geithner and Commissioner Barnier on extraterritorial legislation and the problems posed for markets, clients and regulators

These texts are attached. It has to be said however that they are particularly concerned with problems of extraterritoriality. While extraterritoriality is an important matter, the transatlantic issues go wider than this, and cover other areas where regulation can give rise to trade barriers, including conflict of law, of policy and of regulatory substance and reach. There is also the issue of sub-federal regulation in the US (and also, US interests might argue, in the EU) which has a range of effects, particularly on market access into the US in insurance and legal services. The total impact of these issues is reflected in the commonly-stated view that an open market without barriers for investment and trade would add an estimated 1.5% to transatlantic GDP.

There is therefore huge scope for the HLWG to play a creative role in finding solutions that would bring real and measurable economic benefit. Regulatory fragmentation currently poses grave threats to trade and investment. The HLWG has a timely opportunity to put in place a framework to consider and mitigate these hazards. The task is not easy: it will involve patient seeking of consistency and mutual recognition in regulation-making. Effective moves against regulatory fragmentation are however essential. As an important first step, it would be useful if regulators could provide clarity on the geographical coverage of rules (where one regulation ends and another begins) and find ways of deciding together on that coverage. The EU-US HLWG could be potential framework to look into this issue. It may prove not to be the place to address all concerns (as its remit is so broad). But it offers an opportunity for both sides to recognise that regulatory fragmentation is a drag on growth, international competiveness and job creation, and to seek ways of reducing fragmentation.

Existing Degree of Consensus on Regulatory Solutions

Given that TheCityUK's principal interest is in the use of the HLWG for finding regulatory solutions to trade barriers, it is worth noting that there is quite a widespread consensus on solutions – even if not on how they should be reached. It was well set out in a paper (attached) by the American Chamber (AmCham EU) which stated its belief that the overriding aim of US and EU financial services regulatory reform should be to:

- Eliminate inefficiencies in the international flow of goods and services;
- Link national regulatory reforms in order to prevent the creation of opportunities for regulatory arbitrage in less well regulated jurisdictions, and the unnecessary cost of multiple approaches to tackling the same problem; and
- Find ways to cooperate and ensure that international financial institutions are well supervised and regulated in a manner that supports a safe, sound international financial system without limiting economic growth and its associated benefits;
- Develop agreed machinery for determining jurisdictional boundaries in a clearly delineated way. Global firms need legal certainty, and clarity on the reach of national rules, when planning their business operations. It appears unlikely that any sort of international cross-border regulatory consistency will be attained in the near future, particularly on cross border resolution of global firms; but there

needs at least to be clarity and guidance on jurisdictional reach of national regulatory authorities. The HLWG would offer a forum for making progress towards solutions.

Am Cham EU was also clear in saying that governments around the world, and specifically the US federal government and its EU counterparts, should take this opportunity to:

- Build on the G20 reform agenda for financial services;
- Support the development of international standards e.g., in the Financial Stability Board, Basel, International Organisation of Securities Commissions, etc.);
- Coordinate the implementation of these standards where necessary into detailed local and regional rules and laws; and
- Link various reforms - international, regional, national - so that jurisdictions do not create widely different requirements (e.g. Dodd-Frank and the Volcker Rule in the US, various EU reforms, and the proposed banking reforms in individual EU member-states).

All in all, the HLWG's potential area of work could offer broad scope for removal of barriers to trade in financial and professional services. The Annex lists areas of services trade in which such gains might be sought within the HLWG framework.

Conclusion

TheCityUK's LOTIS Committee strongly believes that the opportunity offered by the EU-US HLWG should be taken up and exploited as fully as possible. The potential gains are vast, particularly in the area of services, where both the EU and the US have comparative and competitive advantages in global trade which can only be strengthened if the two sides can remove barriers to trade between them.

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ANNEX

Specific Topics

This Annex is divided into two parts, **Part A** covering sectoral or other specific issues, and **Part B** identifying details of broader "framework" areas of subject-matter for the HLWG.

(A) Sectoral & Other Specific Issues

Accountancy

The main transatlantic barriers and related difficulties concern:

- ownership (nationality restrictions);
- liability; and
- legal environment and regulatory divergence (accounting standards, auditing standards, ethical standards and audit oversight);
- US federal and sub-federal public procurement (EU accountancy firms have great difficulty fronting public sector work in the US, whereas US firms can bid without restrictions for EU public sector contracts);
- differences in insolvency regimes between the EU and the US.

The following would be desirable:

- the US should adopt Intewrnational Financial Reporting Standards (IFRS) and International Standards of Auditing (ISAs);
- the EU should adopt ISAs fully (in the EU draft audit regulation);
- the EU and the US should both adopt international standards on ethics (governing independence etc.);
- the EU and the US should operate full and mutual equivalence in auditor oversight and inspection;
- the US and the EU should put in place a transatlantic equivalent of the EU Official Journal for the transatlantic public sector market;
- to remedy insolvency issues there need to be:
    - Rules of recognition of "foreign representatives", in particular office-holders appointed by the country of incorporation (e.g. certain Caribbean countries) under Chapter15 of the United States' Bankruptcy Code;
    - A solution to issues relating to the automatic stay in Chapter11 of the United States' Bankruptcy Code which may be used to try to override default and clearing house processes for set-off (e.g. bankers' set-off is thought to be prohibited under the stay);
    - Solutions to extra-territorial features of Chapter11;
    - Solutions to questions of treatment of corporate structures (e.g. in relation to groups of companies, administrative consolidation,

substantive consolidation, etc, where the legal entities may be treated in inconsistent ways by a US Court and by a UK or EU appointed Insolvency Practitioner).

Accountancy qualifications and related public practice and audit rights are an important issue. There are no agreements on qualifications and practice rights between the UK and the relevant US authorities. In the UK case this means, for example, that UK qualified chartered accountants are required to sit the US Certified Public Accountant (CPA) examination without the benefit of any credit for their UK qualification, if they wish to obtain a CPA licence. However, they are only eligible to sit this examination if they meet education and experience rules which are determined at state level, and which vary from one US state to another. The education requirements are frequently based on four or five years' study for a first degree (a requirement which the majority of UK graduates do not automatically fulfil), and entail relevant study rather than, for example, a liberal arts degree. It is even more difficult for the many qualified UK chartered accountants if they do not have a university first degree because they have studied accountancy without attending university. The UK accountancy professional bodies believe that, as a first step, UK chartered accountants should be eligible to sit the US CPA examination regardless of the route to acquiring their UK qualification. The UK accountancy professional bodies continue to seek solutions with the relevant authorities.

By contrast, UK experience requirements may be seen similarly as a barrier for US CPAs wishing to practise audit in the UK. The majority of States require only one year of work experience as compared with the three years required by the UK authorities.

Banking and Related Financial Services

Even before the 2008 crisis, there were longstanding complaints which were spelt out in successive EU reports on Barriers to Trade and Investment. Some key examples were (and are):

- the requirement that foreign broker dealers who provide global custody services must register with the US Securities & Exchange Commission (SEC) when their US counterparts are not required to do so

- the extraterritorial application of US sanctions policy to foreign banks

- the requirements that the boards of directors of US subsidiaries of foreign banks must be composed primarily of US citizens and residents

- the ban on foreign banks acquiring more than 5% or 10% of a US bank without the approval of the Federal regulator.

Since the crisis, other issues have also become prominent:

- Resolution of Cross-Border Firms: bank regulators from the EU, the US and other countries, working under the auspices of the Bank for International Settlements (BIS), need to develop a harmonized framework for cross-border resolution: this is an absolute prerequisite for addressing the next financial crisis, whatever form it may take. Such a harmonised framework must, among other things, recognise differences in bank structures and funding models (e.g. in the context of any bail-in proposals), avoiding the kind of divergences that are already coming to the fore (e.g., the new US "resolution plan" requirements under the Dodd-Frank Act, which capture many non-US banks with very limited US operations, the UK Vickers report which adopts its own national approach and will similarly capture non-UK banks, as well as the forthcoming EU Crisis Management proposal which will introduce new requirements in European jurisdictions).

- Systemically Important Financial Institutions: the implementation and interpretation of the Financial Stability Board (FSB) prudential standards for systemically important institutions, guided by BIS methodology and calibration, need to be internationally consistent. This will fundamentally underpin as well as complement the effectiveness of resolution plans.

- Markets Regulation: new regulation on the functioning of exchanges and trading platforms, and instruments that are traded. Needs to be consistent with the work done in global forums, such as the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS-IOSCO), given the inherent global nature of trading in financial instruments.

- Alternative Investment Funds: the EU must avoid limiting professional EU investors' access to investment opportunities and depriving EU companies of a valuable source of capital by introducing such additional criteria.

- Capital: the Basel III regulations should be implemented in an internationally consistent way. Joint mutual recognition of equivalent regimes in other jurisdictions is essential.

- Derivatives: given the global nature of the derivatives business, convergence in the delivery of G20 commitments is of key importance. This will be particularly important for transatlantic firms which fuel real economy needs, and their ability to ensure a seamless application of consistent clearing and collateral obligations for cross-border transactions.

    - Post-trade infrastructure: new regulation on the governance and operations of clearing houses and central securities depositories must strive to ensure that requirements for clearing members are consistently applied across EU and US jurisdictions.
    - Trade reporting: new reporting requirements must effectively support and facilitate cross-border data sharing, while avoiding divergent reporting regimes.

- Credit Rating Agencies: new regulation seeking to reduce reliance on credit ratings must ensure a well-managed transition, with appropriate third country equivalency provisions. Disruption of the flow of transatlantic financial services activities should be avoided.

- FATCA: Although recent joint-statement on FATCA was encouraging, no agreement has been signed nor have any specific details been released to the public – this is essential to give the clarity and certainty needed for it to be any use to US-UK banking and related financial services businesses (see also below).

Insurance

The two major issues in insurance between the EU and the US are:

- US rules on credit for reinsurance: The U.S. is currently reviewing regulations that make it more difficult and costly for non-admitted insurers and reinsurers to write U.S. risks. There have been two catalysts for change. First, an eventual appreciation by the NAIC and its membership that the current highly discriminatory rules are unfair, outmoded, out of line with generally accepted international practice and need to be reformed. Second, the Dodd-Frank Act, which established the Federal Insurance Office (alongside state regulators) with powers to enter into agreements with foreign governments which may override state laws that unfairly treat non-US insurers. Following on the Dodd-Frank Act only the regulator of the home state of a ceding company may now regulate its credit for reinsurance and only the home state of a foreign reinsurer may regulate its solvency.

  Changes have also been made to collateral requirements in four States: New Jersey and Florida have relaxed the requirement for non-US reinsurers to post 100% collateral on gross liabilities for American risks. But experience of painfully slow progress of state implementation of changes in collateralisation rules to date supports the view that the statutory collateral problem will not be resolved at individual State level. Even the two States to have implemented any reform so far (New York and Florida) have major inconsistencies in approach and in the vast majority of the other states, no reform proposals exist. There seems only one route by which this problem will be satisfactorily and uniformly resolved. The conclusion of a covered agreement on prudential issues between the US and the EU would open the way for the US Treasury to exercise its statutory powers to pre-empt provisions at State level which treat non-US reinsurers less favourably.

- Diverging views over insurers' solvency and the use of Solvency II: The EU's Solvency II regulations, which are due to be implemented from January 2014, have the principal objective of transforming the regulatory environment of the EU insurance industry. Insurers' solvency regulations will be more stringent, being risk-based. They will require insurers and reinsurers to implement systems for capital planning, the management of prudential risks and disclosure arrangements. However, the regulations will have an international dimension too

in that non-EU insurers will only be allowed to obtain authorisation for the establishment of branches in EU member states if they comply with specified conditions (Article 162). In particular a non-EU insurer will have to meet the same Minimum Capital and Solvency Capital requirements as EU companies (Article 163), or be supervised by equivalent and appropriate supervisory arrangements as EU companies. The EU Commission is negotiating with certain countries, including the US, as to whether their group solvency, group supervision and reinsurance supervisory regulations can be recognised as "equivalent." This may be a suitable subject for the EU-US HLWG.

There are however a range of other issues that are important to insurers. The Dodd-Frank Act, third country equivalence and FATCA are all headline issues for UK insurers in relation to transatlantic trade. Specifically:

- Dodd-Frank Title VII: this is a concern, as the derivatives clearing and trading rules imposed in the US will have an impact on insurers' UK business (e.g. which counterparties are used for derivatives transactions);

- Third country equivalence: this is a concern not just in Solvency II, but also in MiFID 2, which could impose severe restrictions on the ability of UK insurers to delegate tasks like brokerage or analysis to companies in third countries that are not equivalent to the MiFID legislation. Furthermore, if the US is not deemed equivalent, US companies will not be allowed to operate or market to EU companies or jurisdictions or may not be guaranteed equal treatment when trading into some Member States;

- FATCA: Although recent joint-statement on FATCA was encouraging, no agreement has been signed nor have any specific details been released to the public – this is essential to give the clarity and certainty needed for it to be any use to US-UK insurance businesses (see also below).

Legal Services

The key issue in the US (as in Canada) is the sub-federal issue. Each US state is a separate jurisdiction and as such has its own regulations where foreign lawyers are concerned. Further, there is no national body that is vested with the power to address these issues for lawyers nationally or internationally. The likelihood of achieving a level playing field is slim, but the issues are nevertheless worth noting.

Specific features arising from the US regime include the following:

- Requalification: the rules for solicitor eligibility to take the bar exam vary widely between US states. There is an issue in the state of New York, the main destination for Law Society members, as solicitors who qualified via the Graduate Diploma in Law or Common Professional Examination (GDL/CPE) (in other words, who do not have a law degree) must take a Master's Degree in Law (LLM) at an American Bar Association (ABA)-approved law school in the US in order to be

eligible to take the bar exam as their legal education in the UK is considered deficient in duration. The Law Society has been lobbying on this issue for years: most recently the Society's President wrote to the US Court of Appeals (the rule making body) to express disappointment with amendments to the rules during the summer of 2011 that made it even harder for these solicitors. It is highly unlikely that anything will change soon. Most of the queries received by the Law Society on this question come from individual UK solicitors who want to take the bar exam rather than UK law firms who want to move solicitors to New York and get them admitted locally. The Law Society's position is that all solicitors should be eligible to take the bar exam regardless of their route to qualification. Other states, such as Illinois, impose a minimum practice requirement before taking the bar (5 out of the last 7 years); and some (e.g. California) allow access on the basis of the solicitor qualification regardless of route/experience.

- "Foreign Legal Consultant" (FLC) status: Foreign lawyers can practice in 31 US states as a "foreign legal consultant" which permits the practice of their home law with some restrictions. There are some complaints that the application procedure is often overly bureaucratic but, other than that, it works quite well.

- Temporary practice as a FLC: only 6 states have this rule to permit foreign lawyers 'temporary and limited services in the United States'. This might be something to highlight to encourage wider adoption beyond the six states.

- Practice as in-house lawyer: 6 states have rules for foreign lawyers practising as in-house counsel.

- Setting up a law firm: there are UK firms established in the states of New York, California, and New Jersey, and Washington DC. The Law Society has not had any complaints about restrictions for them in these states as 'foreign' firms and many employ both English and US lawyers. It may be however that as UK firms convert to Alternative Business Structures (ABS) they may have issues with local compliance as ABSs are not allowed in the US with the exception of DC where limited non-lawyer ownership is permitted.

Tax: the US Foreign Account Tax Compliance Act (FATCA)

This was a major issue for the US and the UK until the two sides moved towards a bilateral solution. No agreement has however yet been signed nor have any specific details been released. As a tax matter it may well fall outside trade-related negotiations, particularly if these were conducted at EU level; but its significance as a barrier to transatlantic business is worth noting.

The aim of the disclosure and withholding regime under FATCA is to tax US taxable investors' income from foreign financial assets – and reduce tax evasion by US taxpayers. On 18th March 2010, President Obama signed into law a new section of the United States (U.S.) Internal Revenue Code that implements what is commonly referred to as the Foreign Account Tax Compliance Act (FATCA) provisions of the

Hiring Incentives to Restore Employment Act of 2010, with the regime becoming effective from 1 January 2013. The potential implications of FATCA are profound. Although its objective is acknowledged, there are very grave concerns about the method chosen by the US authorities to achieve this.

FATCA (Chapter 4 of the US Internal Revenue Code) requires non-US foreign financial institutions (FFIs), e.g. banks, brokers, investment funds, life insurance/reinsurance companies, and non-US non-financial entities (NFFEs) to identify and disclose the identity of US account holders/members or become subject to a new 30% withholding tax with respect to payments of US source income and proceeds from the sale or disposal of US stocks and securities. The nature and extent of these requirements are likely to bring FFIs and NFFEs into direct conflict with local laws in other countries unless satisfactory arrangements are concluded bilaterally or multilaterally (it is understood that the UK Treasury is exploring bilateral treaty options, whilst the European Commission has proposed a multilateral solution in connection with the European Savings Directive). Subject to the legal tensions between FATCA and UK/European law being satisfactorily resolved, the following priority issues require urgent attention to deliver a workable and proportionate FATCA regime.

- 'Passthru Payments': The Passthru payment rule is extremely broad. The rule, inter alia, likely will impact the smooth functioning of financial systems; is contrary to local law prohibitions on withholding "foreign" taxes; will impose expansive and costly compliance burdens on Participating FFIs and, through the publication of the Passthru Payment Percentage, will require FFIs to divulge information that may be viewed as proprietary with respect to their asset allocations.

- Exclusion of low-risk products/customers: Some concessions to proportionality have been made, such as the restriction of detailed reviews of individual customers to those classed as "private banking", but others have been sought and not granted. A proportionate regime would focus on where there is a material risk of tax evasion, excluding low risk products/customers.

- Timing: Affected businesses require a period of 18 months as a minimum transition period from the issuance of Regulations to implementation. The significant compliance costs of FATCA should not be increased by unnecessary and speculative preparatory work and systems build prior to Regulations being issued.

Unless mitigated effectively, FATCA conflicts directly with the domestic laws of almost every other nation – e.g. in the UK there is no statutory basis for a financial institution to withhold tax on behalf of a foreign country and there are UK and EU legal impediments to providing information directly to the US tax authorities. FATCA could expose financial institutions and entities worldwide and their accountholders to a punitive withholding tax on all US-source income and on the proceeds from the sale of U.S. investments. This would jeopardize the welfare of investors, businesses and financial institutions, and may very well jeopardize the

open flow of trade and investment between the U.S. and other nations, greatly impairing the efficiency of international capital markets.

(B) "Framework" Areas of Subject-Matter for the HLWG

Leaving aside specific trade barriers affecting financial and professional services, there are a number of other "framework" areas of subject matter on which there could usefully be other, related EU-US joint initiatives within the framework of the HLWG. These include:

- An EU-US Free Trade Agreement on Services: such an agreement, devoted specifically to services and covering trade in substantially all services, could be a "pathfinder project" for a wider agreement on trade in services between a greater number of WTO members (a "coalition of the willing") with characteristics including:
  - being multi-sectoral;
  - being multi-modal;
  - covering "Twenty-First Century" issues (see below);
  - diverging from the existing request/offer process;
  - improving clarity in scheduling commitments;
  - introducing options for negative listings;
  - focusing on domestic regulation;
  - aiming for iterative progress in a "living agreement" framework.

- A Bilateral EU-US Investment Protection Agreement: again, such an agreement, based on modern concepts of investment protection and incorporating provisions on, for instance, domestic regulation, could be a "pathfinder project" for a wider investment agreement between a greater number of WTO members;

- A Bilateral Agreement on Freedom of Data flows and Digital Trade: It is a commonplace that new agreements are needed to safeguard and guarantee cross-border data flows. There are a wide range of potential mechanisms to enable such flows. While including data flow provisions in new trade agreements is one option, a variety of other mechanisms might be used to address cross-border data flow issues, including binding and non-binding agreements carried out through various bilateral, regional, and multilateral channels. Again, such an agreement between the EU and the US could be a "pathfinder project" for a wider agreement on data-flows and digital trade between a greater number of WTO members;

- EU-US Collaboration tackling other "Twenty-First Century Barriers": these cover issues (mainly in third country markets) in fields including:

  - Unfair Competition from State-owned Domestic Businesses: this is widespread in a number of Asia markets, particularly from the state-owned Chinese insurers and banks. There are current discussions on how to tackle it through "Competitive Neutrality": i.e. strategies to meet the OECD principle

that business activities by state-owned or state-sponsored enterprises should not enjoy net competitive advantages over private sector competitors;

- "Forced Localisation": i.e. various measures through which a country constrains business by requiring it to be supported and conducted domestically rather than internationally (this has traditionally tended to focus on trade in goods, but is now spreading more systematically to services). In the financial services sector, it is particularly evident in requirements for business to abandon traditional branch-based business models in favour of more complex local structures such as wholly-owned subsidiaries with more onerous regulatory requirements.

TheCityUK

23 April 2012

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Membre de la Commission européenne

Brussels, 08. 02. 2012
PD/cq D (2012) 143359

Dear Chairman,

I take note of the recent consultation documents published by US banking and securities regulators concerning the so-called Volcker rule as set out in the Dodd-Frank Act. We welcome the possibility to provide the following observations.

The draft regulation is the result of extensive and impressive work. Here in Europe, a similar debate is taking place around the possible usefulness and design of structural measures imposed on banks with a view to reduce their risk profile and ensure an enhanced protection of depositors and taxpayers. In this context, the work carried out in the United States is extremely helpful.

That said, the proposed regulation raises, however, a number of concerns and would appear to have implications that are disproportionate in light of the objective that the rule is trying to achieve.

First of all, the draft rules as presented have an extensive, global scope. This would seem to lead to a number of unintended, non justifiable consequences for non-US banks, markets and institutions. Whilst fully appreciating the wish to avoid any loopholes or circumvention of the rules, I would invite you to reconsider this approach and limit the scope of the rule only to the territory of the United States. Moreover, the current exemption for non-US banks as well as for activities outside of the US would appear very restrictive. As a consequence, it would appear that the rule would be applied well beyond the US activities of non-US banks, without any justification being provided. I also observe that the rule could have significant ramifications for financial markets outside the US, in particular if some of its elements lead to uncertainty for financial intermediaries. This not only relates to proprietary trading outside the United States, but also to market making. Given the absence of a clear delimitation between what constitutes banned proprietary trading and allowed market making, there is a real risk that banks impacted by the rule would also significantly reduce their market making activities, reducing liquidity in many markets both within and outside the United States.

Mr John WALSH
Acting Chair
Office of the Comptroller of the Currency

Commission européenne - Berl 10/034, B-1049 Bruxelles - Belgique - Tél.: 00.32.2.298.17.51 - FAX 00.32.2.292.13.47

We would also like to signal a very strong concern about one particular exemption to the proprietary trading ban, notably as regards trading in US Government securities. It is not clear to us why this exemption should be limited to trade in US government bonds. All government bonds have similar features and functionalities. The absence of an exemption for non-US bonds would have a negative impact on the liquidity of non-US sovereign markets. This impact would be even more significant if the rule were to apply to foreign banks beyond their territorial presence in the United States. Against this background, we request that EU Government securities be given the same treatment as US Government securities.

Finally, we would like to stress that the principles of proportionality and non-discrimination should be respected throughout the regulation. It appears questionable to consider subjecting non-US banks with a minimal presence in the US to burdensome reporting and compliance requirements that would require them to actively demonstrate that they do not fall within the scope of the rule, or that the transactions they are involved in meet the requirements of the rule.

As you know, I fully share your commitment to financial reform, as agreed in the G20 context at the global level. However, I would insist that such reforms should be undertaken in a spirit of mutual trust and cooperation so that regulatory overlaps and direct implications for other jurisdictions are avoided.

We do of course stand ready to discuss this in further detail with you, on an ad hoc basis as well as within the framework of our regular financial regulatory dialogue and the work of the Financial Stability Board.

I have sent a corresponding letter to Secretary Geithner and Chairmen Bernanke, Shapiro, Gruenberg and Gensler.

Yours sincerely, et très cordialement

Michel BARNIER

afme/ asifma sifma

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)[1], 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

[1] 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[2] 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 [3] 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;

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

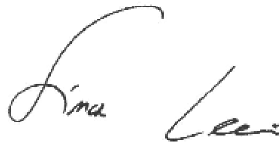
[3] In early 2005, a group of leading EU and US financial service industry associations agreed to work together to address the urgent need to simplify the regulation of wholesale Transatlantic financial services business; and subsequently agreed to form themselves into the EU/US Coalition on Financial 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,



Simon Lewis
CEO
GFMA

CC: FSB Secretariat

28 November 2011

AmCham EU calls for improved transatlantic cooperation in financial services regulatory reform

The American Chamber of Commerce to the European Union (AmCham EU) believes that cooperation between the US and EU remains critical in order to ensure that markets are safe, sound and well-regulated, while supporting and encouraging economic growth and the creation of jobs. The work of the G20 and other international bodies to encourage and establish global standards remains vital, and AmCham EU believes that such work will be impactful if the US and EU have similar views and approaches.

AmCham EU believes that a level playing field for the global financial services industry is essential. We believe that the best way to achieve this is to ensure that standards agreed on an international level are fully and consistently implemented on a local level, to maximise global convergence and eliminate systemic risk. Differences between regulatory regimes may occur as a result of variations in local market conditions, legal systems and stages of regulatory development. We believe that such differences should be kept within the narrowest possible band. Minimising differences between regulatory regimes will help to ensure a safe global financial system that supports international commerce and global growth, while simultaneously limiting the ability for barriers to entry and regulatory arbitrage, whereby operations are adapted so as to take advantage of loopholes in regulation.

Regulatory reform in a transatlantic framework: key concerns

AmCham EU believes that current reforms must take greater account of international companies' needs for international financial services (whether these are provided by banks, exchanges, insurance companies or other financial institutions). It has been demonstrated that global corporations, government enterprises and regional firms benefit significantly from the services that large cross-border financial services firms offer, with these services being indispensable for the efficient operation of businesses operating in multiple jurisdictions.

We believe that there is a real risk of uncoordinated legislative and regulatory reform as the local implementation of international standards gathers pace. Failing to correct this situation will lead to significant fragmentation of the regulatory environment, and the resulting differences in regimes will lead to regulatory barriers and an increase in the cost of capital and of providing financial services. In turn, this will directly impact the cost and availability of credit and reduce demand for investment and the ability to innovate. Without

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innovation and investment, it is unlikely that manufacturing and services firms will be able to compete globally, drive exports or boost the growth potential of the economy. This could undermine the tax revenues and jobs such companies provide.

AmCham EU understands and supports the intent behind current regulatory reform aimed at minimising systemic risk and shielding taxpayers from future bailouts of financial institutions. However, treating financial regulation in a purely national (or regional in the case of the EU) context only works if the implications are purely national. When markets and firms are international, nationalistic approaches will fail, and current regulatory reforms can only create safer and sounder markets if they take into account the continuing needs of global companies for cross-border financial services.

Recommendations

We believe that the overriding aim of US and EU financial services regulatory reform should be to:

- Eliminate inefficiencies in the international flow of goods and services;
- Link national regulatory reforms in order to prevent the creation of opportunities for regulatory arbitrage in less well regulated jurisdictions, and the unnecessary cost of multiple approaches to tackling the same problem; and
- Find ways to cooperate and ensure that international financial institutions are well supervised and regulated in a manner that supports a safe, sound international financial system without limiting economic growth and its associated benefits

The simultaneous re-writing of regulations and rules in the EU and US provides an unprecedented opportunity for both systems to work together and align in a legislative context, as well as to focus on the shared goals of minimised systemic risk and increased investor protection. It is most efficient to do this now while regulations are in transition and being shaped and passed, not once they have been finalised and implemented into local laws.

We believe that governments around the world, and specifically the US federal government and its EU counterparts, need to seize this opportunity to:

- Build on the G20 reform agenda for financial services;
- Support the development of international standards e.g., in the Financial Stability Board, Basel, International Organisation of Securities Commissions, etc.);
- Coordinate the implementation of these standards where necessary into detailed local and regional rules and laws; and
- Link various reforms- international, regional, national- so that jurisdictions do not create widely different requirements (e.g. Dodd-Frank and the Volcker Rule in the US, various EU reforms, and the proposed banking reforms in individual European states, most notably the United Kingdom).

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AmCham EU has been a long-standing supporter of transatlantic convergence. We believe it is vitally important to reiterate our support as the increased volume of regulatory change will challenge the regulators' ability to meet both domestic political pressures and the need for wider international convergence in an environment where the resources for such activities remain scarce.

Drivers of divergence

We believe the legislative process itself makes transatlantic cooperation more difficult. The primary legislation that has been drafted in both the US and EU has been much more restrictive than in the past, and has made it more difficult for regulators to find the flexibility to progress towards convergence. The Dodd-Frank legislation contains several very prescriptive provisions that allow US regulators little flexibility in their approach, while the EU has passed legislation that contains 'equivalence' provisions that seem to require foreign regulation to meet the requirements of the EU. In addition, the different timetables for implementing legislation on both sides of the Atlantic has and will continue to create difficulties for EU and US regulators to achieve common approaches.

We currently see three specific circumstances in which the EU and the US may diverge:

1. Areas where primary legislation creates stringent requirements that diverge;
2. Areas where the implementing regulations are crafted in a manner that creates divergences; and
3. Areas where the timing of EU and US actions create differences that encourage markets, consumers and practices to shift from one jurisdiction to another (e.g., because the other jurisdiction is delayed in making similar changes).

AmCham EU urges policy makers to reconsider methods of tackling these three drivers of divergence. The approach to coordination by the US and EU will need to evolve to incorporate more intensive dialogue between US Congress and EU lawmakers in order to ensure that concerns are addressed in the formation of primary legislation. US and EU regulators need to coordinate more effectively to ensure that more detailed regulations are as convergent as possible. In this regard, the work of the Financial Market Regulatory Dialogue (FMRD) will continue to be critical. In particular, different timings of reforms should be addressed; this is a particularly challenging issue that requires case-by-case examination so as to manage the various implementation schedules and minimise dislocation.

We wish to stress that convergence to slightly higher standards is preferable to having differences between regimes. That said, we do not agree that convergence to the maximum global standard for the sake of international convergence is necessarily appropriate. Some regimes are outliers for various local or historical reasons and in this context, the work of the US and EU should provide a strong basis for the work required at the global level. Despite some of

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the differences and disputes we have had, the US and the EU remain innately similar and, as such, should be able to find common ground when developing appropriate legislation, regulation and standards.

Diversification of regulatory tools

Despite the challenges that may face the EU and the US, AmCham EU will continue to press for the EU and US to redouble their efforts to act together and in a coordinated fashion. One way that governments can continue to pursue their mutual goals would be to look behind strict rules-based regulation and use the range of regulatory tools available to them in order to achieve greater transatlantic cooperation. This approach has been advanced by President Obama and the US Office of Management and Budget where, under two executive orders, independent regulators and agencies have been encouraged to look at stricter regulatory rules to 'identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public'.[1] In the past, AmCham EU has supported mutual recognition as one such tool, and while it may have fallen out of favour, we think it should be revisited in the coming years. Another possible tool could be to ensure that rule-makers on both sides of the Atlantic are explicitly required to consider and assess the risks associated with divergence from the approaches taken in other markets.

Stakeholder engagement

AmCham EU has been a long-standing supporter of the FMRD, but we believe that the dialogue between the EU and US should be deepened and broadened to include a wider range of stakeholders. The process should be opened to incorporate input from a broader range of interested parties. We understand that discussions between the EU and US take place on a regular basis at all levels, however, the final outcome of these discussions remain unclear to stakeholders. In addition, the process has become less transparent, in particular for stakeholders who do not have the capacity to follow the details of financial legislation. Financial regulation has been moving quickly, for understandable reasons, but the process has stretched the EU Better Regulation principles/US Administrative Procedure Act and made it challenging for interested parties to provide meaningful input into the process. As a result, we are concerned that the final outcome of any new financial services legislation will lack relevant input and may result in significant unintended consequences that will hinder economic recovery.

Specific areas of concern

AmCham EU would prefer to avoid lengthy equivalence processes wherever possible. We believe that automatic recognition should be achievable in many cases, such as with clearing houses. AmCham EU believes that there is a risk that equivalence provisions are used as protectionist tools and that end users will suffer from a lack of competition and choice as a result. US legislation is generally extra-territorial, and AmCham EU continues to press for some form of

[1] Section 4 of Executive Order 13563 and p.3-4 of EO13579

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simple recognition process. Below we list eight areas where we have specific concerns about divergence that exists between the US and the EU:

Accounting

AmCham EU calls on the EU and the US to continue cooperating on international accounting standards. The end goal of both the EU and the US must be one set of high-quality global accounting standards for multi-national companies. For this reason, we are supportive of a move to International Financial Reporting Standards (IFRS) in the US and we strongly believe that this move would encourage growth in transatlantic trade.

Alternative Investment Funds

AmCham EU believes that EU and US convergence is particularly important in Alternative Investment Funds and ongoing work on third-country issues will continue to be a main focus in this domain. AmCham EU is particularly concerned by recent proposals to introduce additional criteria for supervisory cooperation agreements that must be in place for marketing by third-country Alternative Investment Funds (through private placement, or eventually through a passport). In the aim of achieving a level playing field between the EU and US, AmCham EU urges the EU to avoid limiting professional EU investors' access to investment opportunities and depriving EU companies of a valuable source of capital by introducing such additional criteria.

Capital

AmCham EU supports international efforts to improve the quality and to increase the quantity of capital. We believe that the Basel III regulations should be implemented in an internationally consistent way. Divergences from Basel III should be kept to a minimum and mutual recognition of equivalent non-EU jurisdictions is essential.

Data

In both the US and the EU, industry will be required to provide extensive data sets to regulatory authorities, including reporting of data on swap transactions to repositories. It is in the interests of regulatory authorities and the industry that the data requirements are standardised, and in particular that there is convergence on a legal entity identification standard for inclusion in such reports.

Derivatives

AmCham EU has been a long-running supporter of the draft Regulation on Over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories (EMIR), and supports the move towards central clearing as required by the G20. Given the global nature of the derivatives business, convergence in the delivery of this commitment is especially important. We support a balanced and non-discriminatory approach to third-country regimes, founded upon

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recognition of those that achieve equivalent outcomes to European regulation, and allowing CCPs and trade repositories located outside the EU to provide services to EU customers.

AmCham EU was particularly concerned by recent proposals to introduce 'extraterritorial' provisions to EMIR, mirroring equally concerning provisions in the Dodd-Frank Act in the US. It is encouraging that a process has been established for discussion between EU and US rule-makers on the detail of the derivatives regime, and this represents an important test case for the capacity of policy-makers to deliver complementary regulatory regimes that avoid the erection of barriers, such as those that will arise if, for example, intra-group transactions are treated differently based on the location of one of the affiliates.

Insurance

Although currently at an early stage, AmCham EU welcomes enhanced dialogue on insurance regulation, namely Solvency II, and believes that equivalence discussions between the EU and US should be viewed as part of bilateral negotiations between equals. At present, group solvency and group supervision are elements of Solvency II in which EU and US regulatory approaches appear to diverge. AmCham EU notes that the more limited application of insurance regulation in the US (only operating insurance entities) may mean that over-prescriptive EU definitions of group solvency and group supervision would exacerbate divergence between the EU and the US. An outcomes-based approach which focuses on policy-holder protection would be more constructive. In the case of group supervision and risk management practices, AmCham EU notes that divergences in accounting standards may ultimately determine the level of convergence in insurer solvency, and without such convergence it will be difficult for EU and US regulation to be aligned.

Markets Regulation

Regulators both in the EU and US are in the process of setting up new regulation around the functioning of exchanges and trading platforms, and the instruments that are traded. Given the inherent global nature of trading in financial instruments, it is important to closely observe to the work done in global forums, such as the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS-IOSCO) working group. AmCham EU supports the recognition given to the differences between various financial instruments being traded on different trading platforms, although we note that in some cases the practical functioning and requirements of some proposed platforms in both jurisdictions remains ambiguous.

AmCham EU also recognises G20 concerns around trading in commodities, more specifically to tackle volatility in food and energy markets, but we underline that EU or US legislation in this field should be aligned with commitments made at the G20 level to ensure that approaches in both jurisdictions are harmonised to the greatest extent possible.

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Lastly, we support a balanced and non-discriminatory approach to access for third country firms to EU markets. There is a broad variety of circumstances in which investors, issuers and firms in the EU directly and indirectly interact with third country investment firms, highlighting the global nature of European capital markets when compared with the more domestic US capital markets. The regime put forward to deal with the treatment of third country issues needs to be sufficiently flexible so as to avoid restricting such interactions. This particularly applies to the imposition of burdensome licensing requirements on third country firms willing to operate in the EU. Rather than focusing on strict equivalence or the provision of exemptions to third country firms doing cross-border business, we consider that an appropriate way forward under the Markets in Financial Instruments Directive (MiFID) would be to introduce a uniform exemption allowing third country firms to meet certain minimum standards to deal with at least eligible counterparties and professional clients.

Resolution of Cross-Border Firms

AmCham EU supports the initiative of bank regulators from the EU, the US and other countries are working together under the auspices of the Bank for International Settlements to develop a harmonized framework to prepare for the risk of failure by systemically important banks. Unfortunately, significant divergences are already emerging; the new US requirement to prepare 'resolution plans' under the Dodd-Frank Act applies to systemically important banks, a term that captures mostly non-US banks, including many with very limited US operations.

Based on the European Commission's consultation papers published so far, it appears that the EU will take a very different approach, requiring development of both resolution and 'recovery' plans by all banks and investment firms, whether they are systemically significant or not. The new EU requirements will reportedly cover non-EU subsidiaries and branches of EU banks and investment firms. While both regimes have significant extraterritorial elements, neither regime sets out a workable system to ensure or facilitate international coordination. Meanwhile, the UK is considering pushing ahead with its own recovery and resolution plan requirements, as well as a major industry restructuring, without awaiting completion of the EU-level work on recovery and resolution plan requirements, or allowing sufficient time to receive and study the plans submitted by EU institutions to determine what structural changes are appropriate.[i]

While we understand the importance of improved recovery and resolution planning and support these regulatory initiatives, inconsistencies in the timing and scope of the new requirements are likely to lead to significant inefficiencies for global financial institutions. In addition, imposing new national or regional requirements without a meaningful framework for transatlantic coordination means that regulators have failed to learn from the collapse of Lehman Brothers. The US has failed to take international issues into account in the Dodd-Frank Act, and as representative of industry we urge the European Commission to take the lead in addressing this situation, for instance by

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proposing the negotiation of international agreements to enhance regulatory coordination in this area.

* * *

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totalled €1.4 trillion in 2009 and currently supports more than 4.5 million jobs in Europe.

* * *

[i] As proposed in the Independent Commission on Banking 'Vickers Report', September 2011.

POSITION STATEMENT

Global Financial Markets: Regional Trends
2010

TheCityUK
partnering prosperity

www.TheCityUK.com | **November 2010**

OVERVIEW

This new report from TheCityUK brings together and compares the size of 17 key financial markets across broad country and regional groupings.

Regional and markets breakdown The breakdown is based on the US, Europe, Japan, rest of Asia and rest of the world. The emphasis placed on Europe for this report reflects London's broader sphere of influence as Europe's global financial centre. Japan is separated out from the rest of Asia to draw attention to trends in emerging countries in Asia. The markets are a mix, firstly, of international or wholesale markets, such as investment banking, hedge funds, derivatives and foreign exchange; and secondly of markets with a stronger domestic and retail focus, such as commercial banking, life & general insurance, pension assets and mutual funds.

Developments in 2009 The global financial markets under review were almost equally divided with 9 showing growth between 2008 and 2009 and 8 showing a decline (Table 1). The repercussions of financial crisis and recession continued to weigh on some markets, such as commercial banking, insurance, equity issuance, private equity and exchange-traded derivatives. Those benefitting from recovery included investment banking, domestic debt (to finance fiscal deficits), turnover of equity markets, and assets of mutual and pension funds.

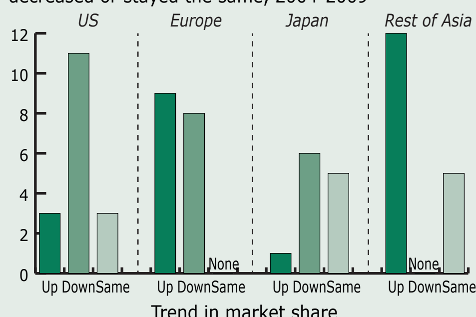
Medium term trends 2004-2009 Medium term trends over the five years between 2004 and 2009 in Charts 1 & 2 reveal that:

- Europe overall has held its own increasing its share in 9 markets while losing share in 8 markets.
- The US position overall has deteriorated having improved its relative position in just 3 markets but fallen back in 11 and stable in 3.
- Japan's position has declined in 5 of the 12 markets for which data are available; its share has been broadly stable in 6 and risen in 1.
- Meanwhile the position of the rest of Asia has markedly improved. Although market share is typically much lower than Europe and the US, between 5% to 20% in most markets, the share of the rest of Asia has increased in 12 of the 17 markets where data are available, and is broadly stable in the remaining 5.

Growth in Asia's share is in part due to growth in economies of China, India and other countries, which is generating more domestic demand for financial services, such as insurance, banking and equity finance. This trend has been emphasised in the past two years as many Asian countries have continued to grow while recession has affected Western countries. By contrast, the share of

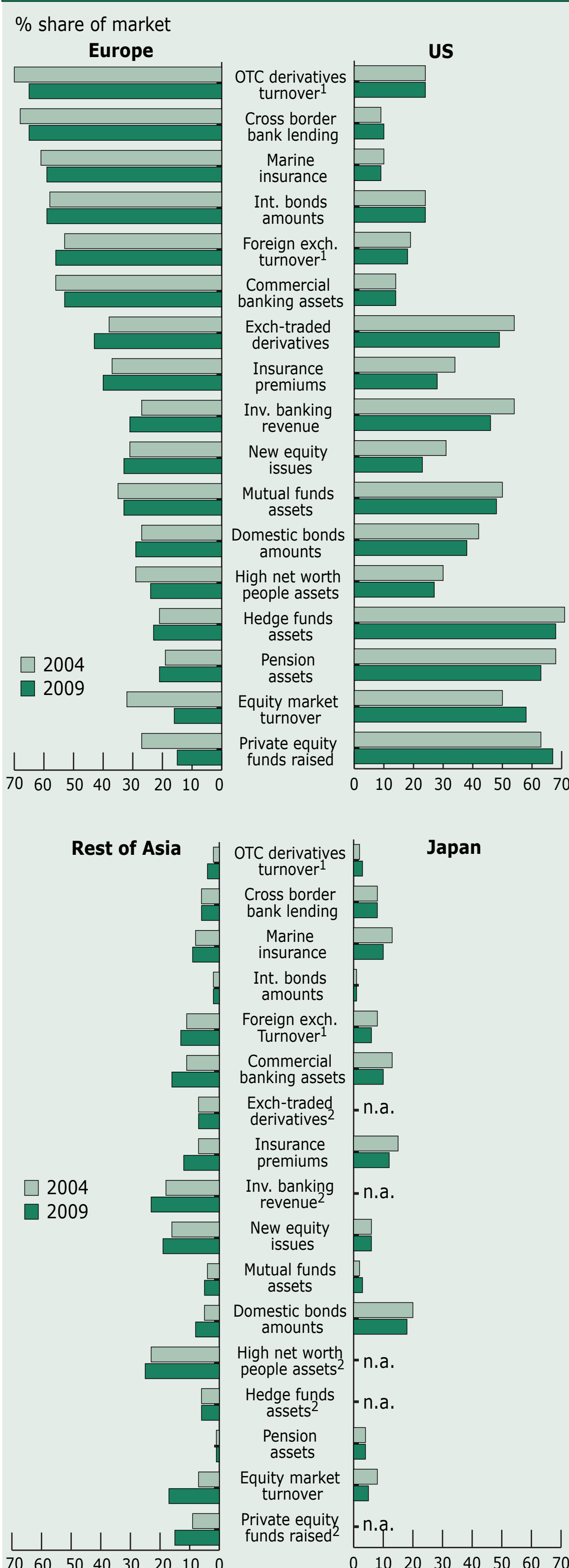
Chart 2 Regional trends in global market share

Number of markets where global share has increased, decreased or stayed the same, 2004-2009



Sources: Based on sources used in each section of report

Chart 1 Financial markets regional share



[1] *April 2007 & April 2010*
[2] *Rest of Asia includes Japan*
Sources as listed in charts in each section of the report

non-Japan Asia in wholesale and international financial markets has been relatively stable. For example, the region's share of international bank lending, international bond issuance and exchange-trade derivatives is unchanged over the past five years. In foreign exchange and OTC derivatives the share of non-Japan Asia has risen slightly to 13% and 3% respectively. This indicates that while the profile and importance of key regional centres, such as Hong Kong and Singapore is growing, the bulk of international business is still concentrated in Europe, particularly the UK, and the US.

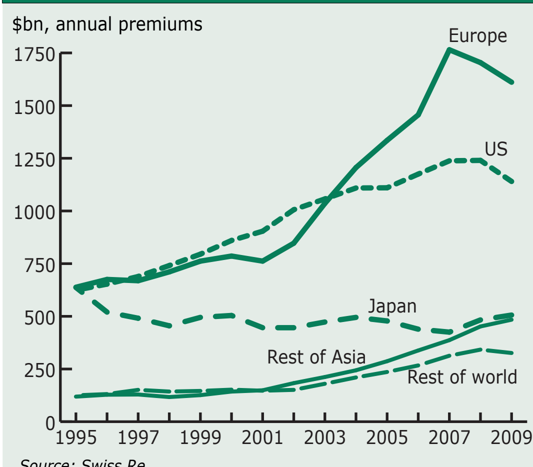
INSURANCE

The two indicators used for insurance are the total volume of insurance business undertaken and that portion of general insurance business that relates to higher risk marine business.

Global insurance Insurance undertaken globally includes both life insurance and non-life business, such as household and motor insurance, sold to individuals. The global market for insurance dropped by 4% from $4.22 trillion in 2009 to $4.07 trillion in 2008. Europe has been the largest market for life and non-life insurance since 2003 accounting for around 40% of the market in recent years. Insurance premiums in Europe dropped to $1,611bn in 2008, still well ahead of $1,140bn in the US (Chart 3). The biggest growth region has been Asia (excluding Japan) where the global market share has risen from 7.5% in 2004 to 11.9% in 2009. Market share of the US has declined from 34% to 28% and in Japan from 15% to 12% over the same period.

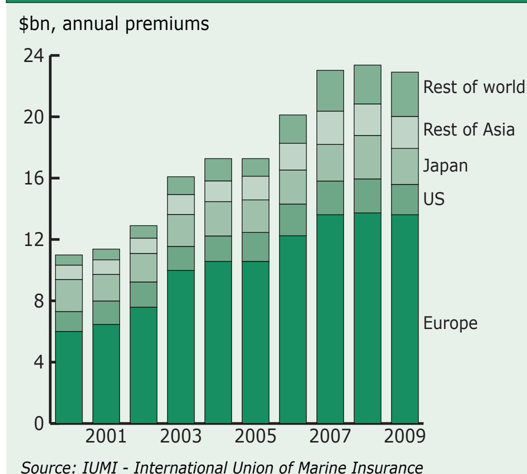
International marine insurance A minority of general insurance business relates to premiums on higher risk international insurance businessundertaken, for example, to insure marine and aviation risks as well asreinsurance business. International comparisons are only available for marine business and these show that marine insurance premiums fell by 2% in 2009 to $22.9bn. Market shares have generally been relatively stable over the past decade (Chart 4). In 2009 Europe's share was 59% down from a peak of 61% between 2004 and 2006. The shares of Japan and the US have each fallen by about 2% to 10% and 9% respectively. The

Chart 3 Life & non-life insurance premiums



Source: Swiss Re

Chart 4 Marine insurance



Source: IUMI - International Union of Marine Insurance

Table 2 Regional share of global financial markets

Sectors	Markets		2008	2009	---------- Europe	% share US	in 2009 Japan	--------- Rest of Asia	Rest of world
Banking	Investment banking revenue[2]	$bn	58.9	66.3	33	50	--	--	16
	Cross-border bank lending	$ trillion	31.2	30.0	65	10	8	6	11
	Commercial banking, assets	$ trillion	96.4	95.5	53	14	10	16	7
Insurance	Insurance, global premiums	$bn	4220	4066	40	28	12	12	8
	Marine insurance	$bn	23.4	22.9	59	9	10	9	13
Fund mgt.	Pension assets	$ trillion	25.9	28.8	21	63	4	1	12
	Mutual funds assets	$ trillion	18.9	23.0	33	48	3	5	11
	Assets of high net worth individuals[1]	$ trillion	32.8	39.0	24	27	--	25	24
	Hedge funds, assets under mgt.[1]	$bn	1500	1700	23	68	--	6	3
	Private equity, amounts invested[1]	$bn	181	91	15	67	--	15	3
Securities	Equity market turnover	$ trillion	114	81	16	58	5	17	4
	Domestic bonds, amounts outstanding	$ trillion	59.3	65.1	29	38	18	8	7
	Int. bonds, amounts outstanding	$ trillion	27	25.6	24	59	1	2	15
	New equity issues	$bn	1010	1054	33	23	6	19	19
Derivatives	OTC derivatives, av.daily turnover[3]	$bn	2173	2698	65	24	2	3	5
	Exchange-traded derivatives turnover[1]	$ trillion	2209	1660	43	49	--	7	1
Forex	Foreign exch. turnover, av.daily turnover[3]	$bn	4281	5056	56	18	6	13	8

[1]Japan included in Rest of Asia
[2]Asia included in Rest of world
[3]Data are for April 2007 & April 2010
Sources: Sources as listed in charts in each section of the report

UK remains the largest market in Europe and globally with a market share of 21% in 2009. Non-Japan Asia was at 9% in 2009 little changed from recent years while the share of the rest of the world was up to 13% in 2009.

BANKING

For comparators on banking three key indicators are considered: investment banking revenue, total commercial bank assets and international lending by commercial banks:

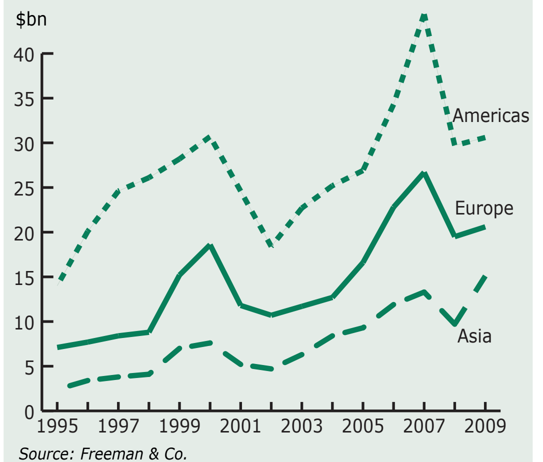
Investment banking Global revenue from investment banking recovered by 13% in 2009 following the steep decline of 30% in 2008 in the wake of the financial crisis and economic downturn. Based on customer location investment banking revenue generated in the US and Europe rose by 6% and 3% respectively but in Asia there was a substantial 55% rise from $9.7bn to $15.1bn (Chart 5). Having risen gradually in previous years, Asia's market share jumped from 17% in 2008 to 23% in 2009. The US remains the largest market with 46% of global revenue while Europe accounts for 31%.

Commercial banking Total global assets of commercial banks, based on the Banker's annual survey of the Top 1000 world banks, fell slightly to $95.5 trillion in 2009 from a high of $96.4 trillion. Europe remains the largest region for commercial banking with assets totalling $50.6 trillion in 2009, down from the peak of $56.3 trillion in 2007, and market share dropping from 61% to 53%. (Chart 6). By contrast, total assets in Asia, excluding Japan, have increased by 38% in the past two years from $11.1 trillion to $15.3 trillion, with market share up from 12% to 16%. Assets of US banks have also grown in the past two years from $10.2 trillion to $13.1 trillion, although the banking sector remains small relative to that in Europe.

The disparity between Europe and US is attributable to a number of factors, including the larger amount of international business undertaken by European banks and a lower savings ratio in the US, with savings there being more likely to be invested in equities and mutual funds than in bank deposits. In Europe banks are the main providers of mortgage finance, whereas much of the US mortgage market is financed outside the banking sector by the nationalised federal agencies.

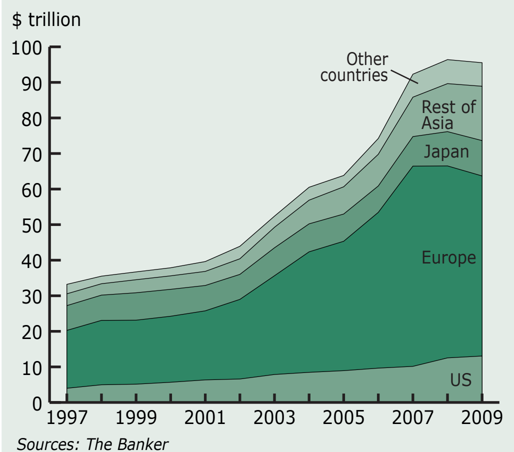
International bank lending The volume of international cross-border bank lending reported to the Bank for International Settlements has dropped by 10% from $33.4bn in 2007 to $30.0 trillion in 2009. Such lending is still dominated by European countries, although their share of such lending has eased from 69% to 65% between 2007 and 2009 (Chart 7). The share of the US and Japan has edged up to 10% and 6% over the past two years. The share in the rest of Asia has been relatively stable at 6% over the past five years and has declined from 9% in 2000.

Chart 5 Investment banking revenue by customer location



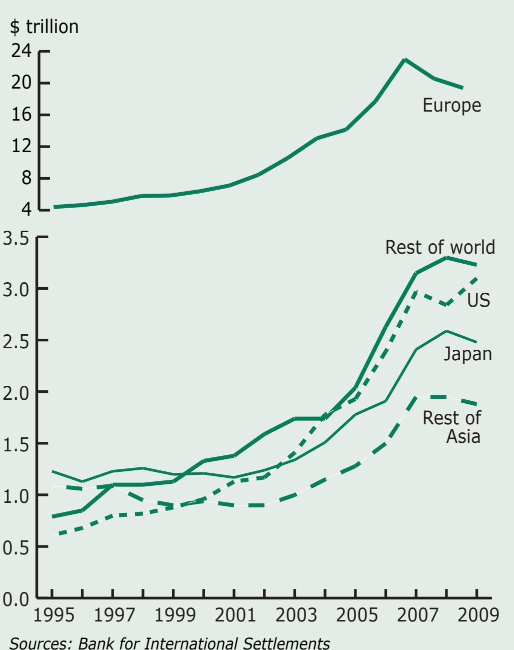
Source: Freeman & Co.

Chart 6 Commercial bank assets



Sources: The Banker

Chart 7 International bank lending



Sources: Bank for International Settlements

SECURITIES MARKETS

Equity markets *Equity turnover* in the US, Europe and Japan fell sharply in 2009, affected by economic recession. By contrast turnover in the rest of Asia picked up strongly: at $13.5 trillion it was slightly ahead of turnover in Europe totalling $13.0 trillion (Chart 8). Asia, excluding Japan, and Europe accounted for 17% and 16% of global turnover, with the US remaining the dominant market with 58% of turnover. Japan's share has been relatively stable at around 5% over the past decade, although much lower than the quarter of trading it accounted for in 1990. Europe's 16% share has nearly halved in the past three years.

New equity capital Funds raised worldwide through new equity capital have continued to rise in 2009, despite a downturn in the US, Europe and Japan (Chart 9). A third of equity capital was raised in Europe, the largest market despite falling 14% to $342bn. New equity in the US was down 16% to $242bn, just under a quarter of the total. Japan accounts for 6% of funds raise, the rest of Asia 19% and other countries a further 19%.

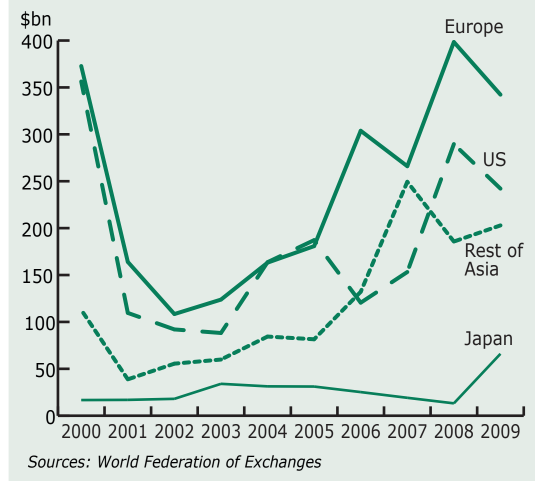
Bond markets The total amount outstanding of all *domestic bonds* issued by government, companies and other institutions globally rose by 10% to $65.1 trillion in 2009. The increase was mainly concentrated in Europe where bonds increased from $16.0 trillion to $18.9 trillion. US bonds rose slightly to $25.0 trillion at end-2009: the US share of domestic bonds fell from 41% to 38%, although it remained the biggest market (Chart 10). Japan accounts for 18% and the rest of Asia 8%, having risen from 5% over the previous five years.

International bonds With bonds issued and traded internationally governments and organisations in Europe had issued international bonds totalling $15.0 trillion outstanding at end-2009: 59% of international bonds worldwide nearly three times the $6.2 trillion of bonds outstanding of US issuers (Chart 11). Issuance of international bonds in Asia is limited at $0.5 trillion in total, partly a consequence of the large surpluses the main Asian countries run on their balance of payments current account.

Chart 8 Equity market turnover

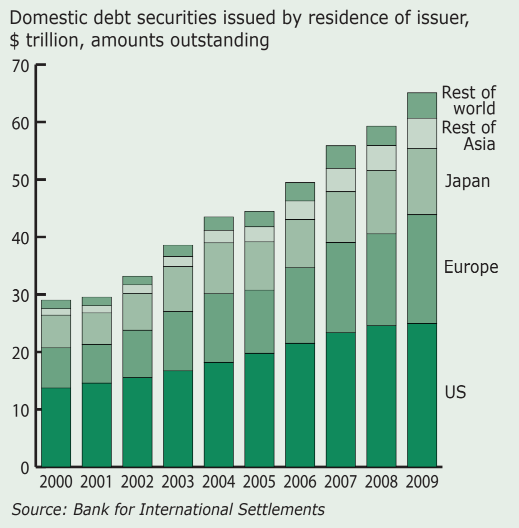
Source: World Federation of Exchanges

Chart 9 New equity capital raised



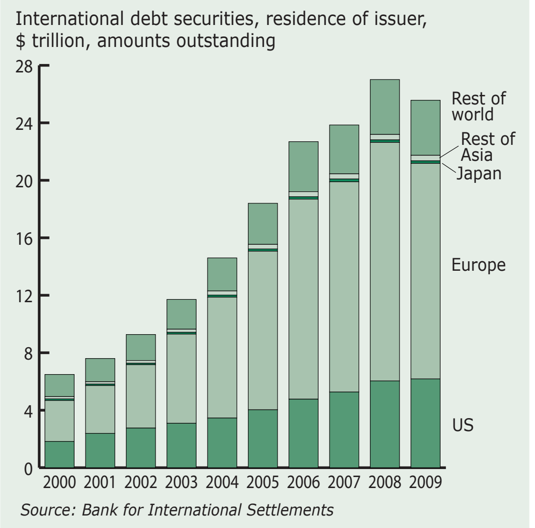
Sources: World Federation of Exchanges

Chart 10 Domestic debt securities



Source: Bank for International Settlements

Chart 11 International debt securities



Source: Bank for International Settlements

FUND MANAGEMENT

This section reviews the value of pension funds and mutual funds under management. Assets managed by the insurance industry are not included due to limited global coverage. Other areas of fund management featured include private wealth management, private equity and hedge funds.

Pension assets Global pension assets totalled an estimated $28.8 trillion at end-2009. The US remains by far the largest market with 63% of assets up on 60% in 2008, when the US was more affected by the drop in equity markets (Chart 12). Over the past decade the US share has dropped from 73% as assets in Europe have grown from $2.7bn to $6.0bn, generating a rise in global share from 16% to 21%. The smaller size of pension assets in Europe is largely a reflection of the traditional pay-as-you-go funding of pensions in the larger European economies of Germany, France and Italy. This has begun to change in these and other European countries following reform of pension provision, with greater emphasis on individual or corporate funding. Pre-funding of pensions in Europe traditionally has been confined mainly to the UK, Netherlands, Ireland, Switzerland and Sweden.

Pension assets of $1.0bn in Japan account for 4% of the world market, a share that has been relatively stable in recent years. In the rest of Asia assets have risen from $0.03bn to $0.32bn over the past decade, with a share of global market up from 0.2% to 1.1%. Pension assets in the rest of the world have grown from $1.1bn to $3.3bn, 12% of the total: Canada and Australia account for the majority of these assets, with growth also in emerging markets in Latin America and Asia.

Mutual funds The US accounts for about half of the global mutual fund assets totalling $23 trillion, with Europe accounting for a third (Chart 13). The greater size of mutual funds in the US is due to substantial investment in equities by US private investors. Mutual fund investments in Japan total $0.7bn, 3% of the global market. Some $1.1bn is invested in the rest of Asia, 5% of assets worldwide, a share that has risen from 3% in the early years of the decade.

Private wealth management High net worth individuals (NWIs) include those people with disposable assets in excess of $1m. The latest annual World Wealth report by Merrill Lynch Capgemini estimated that in 2009 assets of high NWIs increased by 19% to $39.0 trillion. Assets are relatively evenly divided between North America, Europe and Asia Pacific, each accounting for around $10bn equivalent to a quarter of assets. The share of assets in Europe has fallen from 32% to 24% over the past decade, while the share of assets in Asia Pacific increased from 20% to 25% (Chart 14).

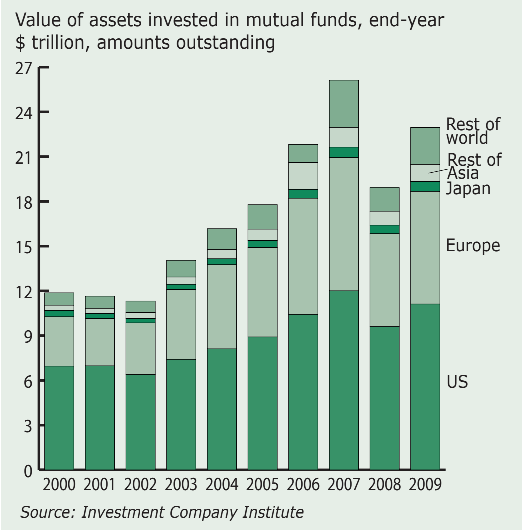
Hedge funds The global hedge fund industry has staged a recovery in 2009, having been heavily affected in 2008 by the economic downturn and by negative sentiment amongst investors. The US remains the dominant market with 68% share, followed by Europe with 23%, while Asia has 6% and rest of the world 3% (Chart 15). These shares have been largely unchanged in recent years.

Private equity The private equity market is a key source of funds for startup and young firms, firms in financial distress and those seeking

Chart 12 Pension assets

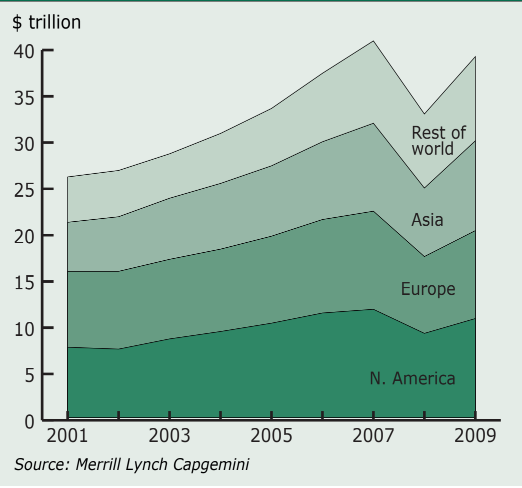
Source: OECD

Chart 13 Mutual funds



Source: Investment Company Institute

Chart 14 Assets of high net worth individuals



Source: Merrill Lynch Capgemini

buyout financing. The value of fund raised in the global private equity market dropped by two thirds to $150bn in 2009 from $459bn in 2008 (Chart 16). Funds raised in Europe slumped to $22bn from $113bn and accounted for only 15% of the global market, less than half its share in 2006. North America remains the dominant market with two thirds of funds raised. The share of Asia rose from 11% to 15%.

DERIVATIVES MARKETS

The volume of activity in Europe and the US can be compared in both the over-the-counter (OTC) and exchange-traded derivatives markets. Based on notional amounts outstanding, the OTC derivatives markets worldwide are about four times the size of the exchanges.

OTC derivatives markets Locational activity in OTC derivatives markets is measured in worldwide BIS-coordinated surveys every three years. Average daily turnover of interest rate derivatives rose by nearly a quarter to $2,698bn in the three years to April 2010. Europe's share of OTC derivatives has edged down over the past decade from 70% in April 2001 to 65%in April 2010. Activity in Europe has become increasingly concentrated in the UK, whose global share has risen from 35% to 46% during these nine years. The share of US and Japan has been relatively stable in the past three surveys, at 24% and 3% respectively, while that of the rest of Asia has edged up from 1.7% in 2004 to 4.3% in 2010.

Exchange traded derivatives markets Turnover of exchange traded derivatives peaked in 2007 at $2,288 trillion: before easing back 3% in 2008 and then declining a steep 25% in 2009 to $1,660 trillion. While there are around 75 derivatives exchanges globally, the value of global turnover on derivatives exchanges is heavily concentrated at CME Group in the US and at NYSE Liffe and Eurex in Europe (Chart 18). Consequently, 49% of turnover is in the US and 43% in Europe. Between 2005 and 2009 Europe's share has increased from 32% while that of the US has fallen from 59%. Asia's share has been stable at around 7% in recent years.

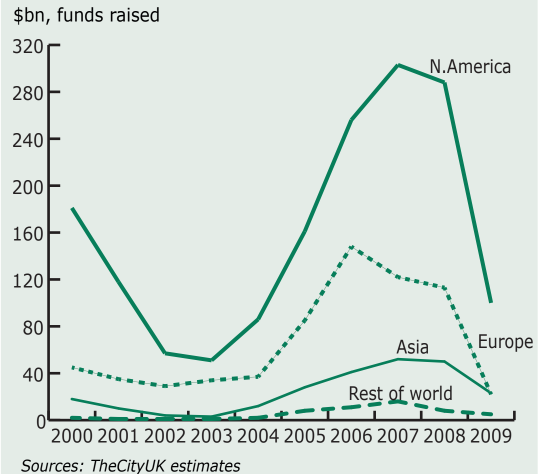
FOREIGN EXCHANGE

Results of the three-yearly BIS survey show foreign exchange trading rose by 18% from $4,281bn per day in April 2007 to $5,056 in April 2010. The regional breakdown is unchanged with Europe accounting for the majority of trading at 56%; the US 18%; and Asia, excluding Japan, 13% (Chart 19). The UK accounted for two thirds of turnover in Europe as its global share rose from 35% to 37%.

Chart 15 Hedge funds

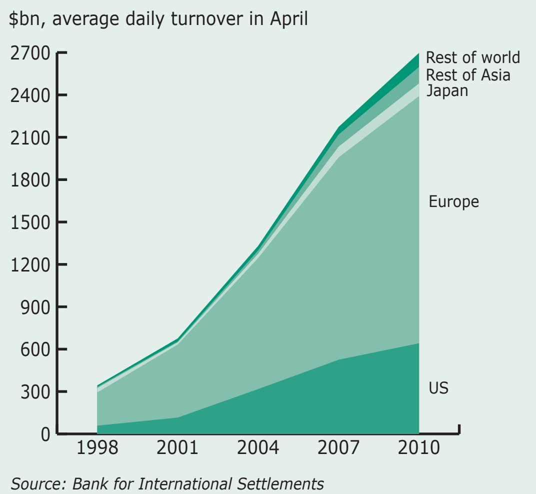
Sources: TheCityUK estimates

Chart 16 Private equity



Sources: TheCityUK estimates

Chart 17 Interest rate OTC derivatives markets



Source: Bank for International Settlements

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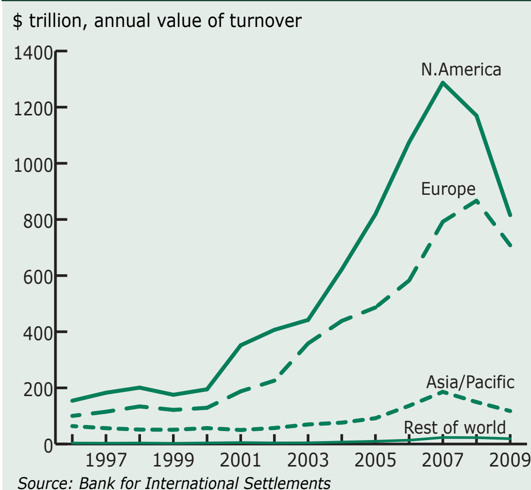
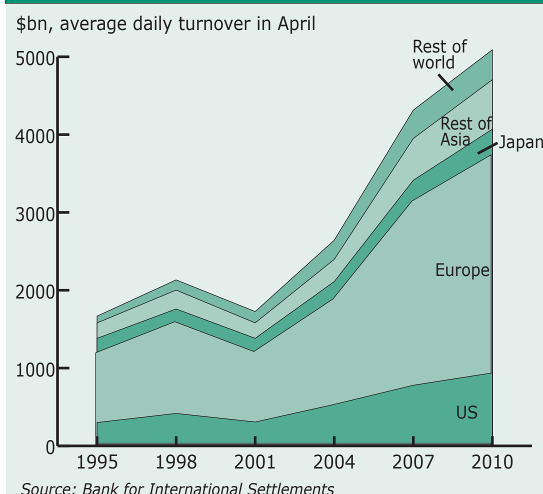
Chart 18 Exchange-traded derivatives markets



Source: Bank for International Settlements

Chart 19 Foreign exchange trading



Source: Bank for International Settlements

Data files

Datafiles in excel format for all charts and tables published in this report can be downloaded from the Reports section of TheCityUK's website **www.TheCityUK.com**

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