

TESTIMONY OF  
THOMAS L. FARMER  
AMERICAN BANKERS ASSOCIATION  
And the  
BANKERS ASSOCIATION FOR FINANCE AND TRADE

“U.S. – EU COOPERATION ON REGULATORY AFFAIRS”

BEFORE THE  
SENATE FOREIGN RELATIONS COMMITTEE  
SUBCOMMITTEE ON EUROPEAN AFFAIRS

October 16, 2003

Chairman Allen and Members of the Committee:

Good Afternoon, I am Thomas L. Farmer, General Counsel of the Bankers' Association for Finance and Trade (BAFT) an affiliate of the American Bankers Association (ABA). My testimony is on behalf of both BAFT and ABA.

First, I want to commend the Committee for holding hearings at this time on this subject. At a time when transatlantic political collaboration is strained, good economic relations become even more crucial. US-EU regulatory cooperation is a central element in the transatlantic economic relationship, which merits special attention. Second, I would like to thank the Committee for inviting BAFT to testify about the financial services aspect of that relationship. I want focus my comments on a few aspects, which are unique to the financial markets.

In many respects, the transatlantic capital market is already an integrated market. There are numerous examples of US and European firms competing actively and successfully in one another's markets. There is considerable data, which indicates that progressive steps to integrate these markets have served to lower the cost of capital both in Europe and the US - thus benefiting economic growth on both continents. Furthermore, the financial service industry is a highly regulated industry on both sides of the Atlantic and thus highly sensitive to regulatory conflicts which may prevent effective cross-border activities by either US or European firms. Finally, the regulatory framework for financial services has, in recent years, undergone far-reaching changes both in the US and Europe. In the US, the regulatory landscape was dramatically altered by enactment of the Gramm Leach Bliley Act in 1999 and the Sarbanes-Oxley Act in 2002. Meanwhile, the European capital market is being restructured even more extensively and more rapidly than the US market. US firms and regulators are especially alert to detect and to hopefully prevent potential conflicts in regulatory architecture, which could hinder the competitiveness of US firms in the European market.

In the development of a single European financial market, it is important to recognize that the integration of the capital markets has lagged behind the integration of other European

markets. When the EU finally adopted its Financial Services Action Plan (FSAP) in 1999, efforts to create an integrated European capital market began to make significant headway. The self-imposed objective of the FSAP to develop a single integrated EU capital market by 2005 indicates the determination of the Commission and the member states to move forward expeditiously with this complex project. The plan envisages 43 separate legislative and non-legislative measures in banking, securities and insurance. Within the 2005 overall deadline, there are benchmarks for the completion of individual measures. Somewhat surprisingly, the EU has managed to keep pace with this ambitious timetable and has promulgated various parts of the FSAP much more rapidly than is normal for EU legislation and rule making.

The US banking industry considers the FSAP highly beneficial for the European, US and global economies and supports its objectives. At the same time there is the realization that “all politics is local” and that the primarily the FSAP is designed to address domestic European requirements. We were, nevertheless, pleased to see that in a formal report released in June 2003, the European Commission emphasized the transatlantic and global impact of its policymaking on financial markets and urged that this aspect of its work receive special attention in the development of the next phase of policy. The cross-border impacts of the FSAP were well defined by the Commission report:

‘Financial services are increasingly delivered on a global scale. The regulation and supervision of financial markets can no longer ignore the reality that measures taken by any country or group of countries may have consequences on business undertaken outside that jurisdiction. Measures intended for a purely domestic context may unintentionally require compliance by market operators in other jurisdictions with only a marginal or indirect presence in that jurisdiction.

Bilateral regulatory dialogues on financial services may provide a means for managing regulatory spill-over that may occur in highly inter-dependent financial markets; especially with the EU’s major commercial partner, the US. We need to cooperate through a continuous and informal dialogue on how to enhance transatlantic integration of financial markets and how to deal with global financial issues.’

As a potential victim of the “spill over” effect that concerns the Commission, the banking industry welcomes the Commission’s call for regulatory dialogue with the US on integration of financial markets and global financial issues.

Fortunately, there already exists a broad and sophisticated transatlantic dialogue on financial markets, which deserves the attention of your Committee. This transatlantic dialogue functions on several levels –i.e. among governments and regulators, among private sector financial firms and trade associations and among European Parliamentarians and Members of Congress. Furthermore, the governmental regulatory dialogue on financial services has been active and important for many years. Until recently, however, it was conducted largely as bilateral exchanges between Central Bank Governors and regulators in the US and counterparts in EU member states. More recently, the EU Commission has become the principal partner of the US in this dialogue on regulatory issues.

Even more importantly the US-EU regulatory dialogue has become, in recent years,

significantly deepened and institutionalized to the point that both governments now refer to this process of consultation officially as the “US-EU Financial Market Dialogue”. The US Secretary of the Treasury and the EU Commissioner responsible for the Internal Market and Taxation lead the Dialogue on the Cabinet level. At the working level, senior officials of the Treasury, the Federal Reserve and the SEC coordinate US participation. On the European side, the participants consist of the Director of the Internal Market and his staff. At present, the Dialogue appears informal and open ended and additional issues are put on the agenda as required. Consultations in this framework have become more frequent so that currently formal dialogue meetings, at one level or another, occur four or five times a year

Consultations on regulatory issues have also intensified among US and European banks. For some years, the President of the ABA has met twice yearly with the heads of the national banking associations of the OECD member countries and the European Banking Federation. Progressively these consultations have focused on US-EU regulatory issues to the point where recently the group has issued joint statements on important regulatory concerns. Additionally, BAFT’s European Advisory Council was, in part, established to start a facilitate a discussion of transatlantic regulatory concerns encounter by both our European member bankers and the BAFT Board of Directors, who are practicing bankers, in their day work experience. Then jointly advocate agreed solutions to the respective governmental bodies in both the US and the EU. To a limited extent the transatlantic dialogue on financial services has also included discussions between the US Congress and the European Parliament. However, these contacts have been essentially limited to a few members of the House of Representatives and members of the European Parliament’s Economic Monetary Affairs Committee. The European Commission continues to encourage expansion of these parliamentary contacts but so far discussions in this forum are not very substantive or regular.

In conclusion I want to say that while the transatlantic dialogue on regulation of financial services is going well, it could be strengthened. Although the US-EU Financial Market Dialogue is still in its early stages, it has already influenced awareness regarding the regulatory philosophy prevailing on the other side. Additionally, the governmental dialogue appears to have brought about a certain level of regulatory convergence, which the financial services industry certainly welcomes. It must, however, be noted that the agenda and the thrust of the consultation has little transparency. The governmental participants appear to feel that this is necessary to preserve informality and fluidity in these talks. Nevertheless, this lack of transparency makes it difficult for the private sector to make a contribution to these talks. Both parties to the Dialogue have indicated a desire to consider issues or possible areas of conflict, which have not yet become the subject of legislation – whether in draft or enacted. Such anticipatory discussions are particularly useful in avoiding regulatory conflicts, which impact the private sector. But it is precisely in this area where the private sector, with its sophisticated knowledge of business trends, can make a uniquely useful contribution. A process of informal but structured consultations with the private sector might be a way for governments to access private sector knowledge without encumbering the governmental consultations. As for strengthening the dialogue between Congress and the European Parliament it is our view that familiarity with each others regulatory architecture and philosophy might well contribute to avoidance of conflicting legislation not only with respect to financial services.