PATTON BOGGS LLP

JULY 3, 2013

This Alert provides only general information and should not be relied upon as legal advice. This Alert may be considered attorney advertising under court and bar rules in certain jurisdictions.

For more information, contact your Patton Boggs LLP attorney or the authors listed below.

MICAH GREEN
msgreen@pattonboggs.com

FRANK SAMOLIS
fsamolis@pattonboggs.com

CAROLYN WALSH
cwalsh@pattonboggs.com

MARA GIORGIO
mgiorgio@pattonboggs.com

ABU DHABI
ANCHORAGE
DALLAS
DENVER
DOHA
DUBAI
NEW JERSEY
NEW YORK
RIYADH
WASHINGTON DC

GOVERNMENT RELATIONS AND LOBBYING, FINANCIAL SERVICES AND TAX , AND TRADE LAW AND POLICY CLIENT ALERT

FINANCIAL SERVICES IN THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

INCLUSION OF FINANCIAL SERVICES IN TTIP NEGOTIATIONS

As a result of continuing challenges to economic growth, the European Union (EU) and the United States (US) have agreed to launch negotiations for a Transatlantic Trade and Investment Partnership (TTIP), which if successful, would result in the biggest trade deal since the World Trade Organization (WTO) was founded 20 years ago. Over and above its potential economic value, there is common understanding that the deal represents a unique opportunity for the EU and the US to work together to define future global rules and standards. TTIP also presents an opportunity for the EU and the US to rebuild trust in each other's financial regulatory systems, opening the doors to cohesive financial reform without the risks that arise from fragmented regulation.

Negotiations on an agreement between the US and EU started at the beginning of the year, with the first formal round of negotiations to commence the week of July 8. One of the hot topics surrounding the TTIP negotiations is the financial services industry. Particularly, EU officials have pressed for inclusion of financial services regulations to be part of TTIP. Indeed, the final text of the EU's mandate for TTIP negotiations states, "with regard to financial services, negotiations should also aim at common frameworks for prudential cooperation."

In contrast, the Obama Administration appears hesitant to include financial services in TTIP, and US officials have instead stated that they hope the issue will be addressed in parallel to TTIP. However, the Administration continues to receive pressure from Congress and the EU to include financial services. On June 26, for example, the House Ways and Means Committee Members Erik Paulsen (R-MN) and Richard Neal (D-MA) circulated a letter regarding the importance of financial services discussions in TTIP. Additionally, four senior Republicans in the House, including Financial Services Committee Chairman Jeb Hensarling (R-TX), recently argued for the inclusion of financial services in TTIP.

CONTENT OF FINANCIAL SERVICES DISCUSSIONS IN TTIP

During the negotiations – commencing on July 8, the Office of the US Trade Representative (USTR) will lead the discussions, which will be divided into approximately 20 groups and subgroups. If the financial services industry is included as a discussion group, USTR and the Department of Treasury will lead such discussions. There will be several issues that the EU and the US will want to address related to financial services regulatory harmonization in areas such as the cross-border application of rules for swaps transactions, risk management requirements, enhanced prudential standards for certain systemically important institutions, and clearing and reporting requirements.

Financial services discussions in TTIP will be essential in ensuring that the global regulatory framework for the industry is implemented fairly and equally in the EU and the US Such discussions will also be important in avoiding risk fragmentation and improving regulatory cohesion for the EU and the US As Commodity Futures Trading Commission (CFTC) Commissioner Mark Wetjen stated in a recent International Derivatives Expo, "The plain truth is that risk associated with derivatives is mobile and can migrate rapidly across borders in modern financial markets. An equally plain truth is that any efforts to monitor and manage global systemic risk therefore must be global in nature. Yet another plain truth is that prudential regulation has taken into account the foregoing for decades. It alone has not always prevented risk-management failures and the resulting threats to the stability of the financial system."

While some argue that US derivatives regulation will put US companies at a disadvantage, some European authorities note that some EU regulations are stricter. EU regulations require financial companies of all sizes to clear their derivatives trades and report them to trade repositories, without an exemption for foreign-exchange transactions. There are also differences between the US and EU capital standards for clearing houses and pre- and post- trade transparency obligations. Further, as the deadline for the CFTC's cross-border guidance approaches on July 12, US regulators are receiving substantial pressure from Congress and the industry to delay implementation until there is better coordination on the guidance with the Securities and Exchange Commission (SEC) and foreign regulators.

HAVING A SEAT AT THE TABLE TO DISCUSS FINANCIAL SERVICES ISSUES DURING THE TTIP NEGOTIATIONS

After July 8, the next scheduled rounds of negotiations are in October and December. USTR has announced a stakeholder briefing open to the public on July 10 in order to learn about the US industry's views on the TTIP. Meanwhile, both chambers of Congress have been hosting hearings on TTIP-related issues. Congress has influence on TTIP issues particularly because, once the TTIP agreement is finalized, it will have to be enacted into law by Congress.

Thus, there is still some uncertainty in terms of the specific details of a potential financial services discussion within the TTIP negotiations. This uncertainty presents a unique opportunity for the private sector to get a seat at the table and voice its concerns and ideas regarding the proper global interpretation of US and EU financial regulations and the effect of Dodd-Frank rules beyond US borders. Moreover, the TTIP negotiations open a new possibility for discussion and resolving important issues such as:

→ Harmonizing systemically important bank and insurance designations and enhanced prudential standards for such designated companies;
→ Harmonizing resolution protocols for systemically important financial institutions;
→ Creating regulatory coherence on definitional rules for swaps, security-based swaps, dealers, and major participants;
→ Creating regulatory coherence with regard to mandatory clearing and trade reporting;
→ Eliminating data fragmentation that may result from the indemnification requirement for foreign regulators when accessing information from US-based swap data repositories;
→ Ensuring a level playing field in the treatment of foreign and domestic trade execution facilities; and
→ Avoiding discriminatory treatment for foreign insurers and reinsurers in the US and EU.

Patton Boggs' understanding of the complexities of Congress and the federal agencies enables us to provide expert advice and advocacy on issues such as those outlined above, in the context of the TTIP negotiations. Indeed, given our wealth of experience on the intersection of trade and financial services policy and regulatory affairs, we are exceptionally positioned to assist clients who want to shape the TTIP discussions. Our firm advises both US and non-US public and private corporations and trade associations on international trade legislation, free trade agreements (FTAs), WTO-related issues, and a host of other matters involving international trade and trade policy. Further, Patton Boggs has a robust financial services policy and regulatory practice, assisting derivatives market participants and newly created and regulated registered entities navigate the regulatory system created by the Dodd-Frank Act.

CONTACT

For additional information, please contact Micah Green at msgreen@pattonboggs.com, Carolyn Walsh at cwalsh@pattonboggs.com, Frank Samolis at fsamolis@pattonboggs.com, or Mara Giorgio at mgiorgio@pattonboggs.com.