Dear Commissioner McGuinness,

We are writing to express our serious concerns regarding the extraterritorial application of the EU Corporate Sustainability Due Diligence Directive (CS3D) to, amongst others, the financial services sector. In particular, we are concerned that the EU CS3D may require the third-country parent companies of financial services providers to perform activities that may be inconsistent with their local legal requirements and could give rise to level playing field problems and international fragmentation.

To address these issues, we urge the EU and the US authorities to convene a dialogue on the potential risks of the current policy direction in order to preserve the fundamental principles of deference and respect for domestic regulation underpinning global and transatlantic financial services regulation. The application of the proposed requirements risks jeopardising the intricate regulatory architecture designed to allow EU and US financial services firms to perform services and channel capital across the Atlantic and around the world.

For example, as proposed, the CS3D would require a wide array of regulated US financial services firms, which provide services in the EU, to comply with specific due diligence obligations throughout their global business operations and value chains. For a non-EU headquartered financial services firm, this will mean that business operations, as well as value chains, without any EU nexus at all will be covered by the obligations. In practice, a financial service (eg a loan) from a US financial services provider to a US business with activities exclusively outside of the EU would be covered by the EU due diligence requirements irrespective of applicable local rules. Not only this, but civil liability provisions in CS3D risk triggering litigation action in the EU, even where all business activities occur exclusively outside the EU.

The fact that relationships that would not affect the EU internal market are currently included in the proposal places a disproportionate burden on non-EU headquartered firms active in the EU, which undermines the EU legal principle of proportionality. It also raises level playing field concerns because regional financial services providers would not have the same obligations. Moreover, there is potential for activity to move to non-CS3D financial services providers and thereby outside of the EU regulatory perimeter, which might give rise to financial stability risks.

The extraterritorial application of the CS3D is also likely to create overlapping and conflicting requirements for due diligence obligations. For example, the UK, Australia and Canada have different requirements for companies to examine, understand and disclose impacts on human rights issues within their supply chains. International fragmentation of due diligence standards would create significant complexity and compliance problems for global financial services companies without enhancing human rights or sustainability protections.

We believe a proportionate and workable solution for in-scope third-country financial services firms under CS3D would be to limit the provision's scope of application to services provided to clients in the EU. Furthermore, there are a number of existing relevant international frameworks which many US firms choose to adhere to, including the UN Guiding Principles on Business and Human Rights, the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises

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and the Responsible Business Alliance's Code of Conduct. We urge the EU, the US and other global policymakers to collaborate to enhance existing workable global frameworks governed by international standards.

The financial services sector is a heavily regulated industry, and firms operate in a multi-jurisdictional legal, regulatory and supervisory context. Coordination of applicable regulation and supervision is essential to ensure the functioning of transatlantic and global capital markets.

Yours sincerely,
AmCham EU