

ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

February 2, 2012

Issue 10

Regulatory Update – February 2, 2012

Commodity Futures Trading Commission

- At an Open Meeting on January 12, the CFTC approved final rules for the segregation and protection of customer collateral, business conduct standards for swap dealers and major swap participants (MSPs) as well as the final rule for the registration of swap dealers and MSPs. The Commission also approved its much anticipated version of the Volcker rule, which will be open for public comment upon publication in the *Federal Register*.
- The CFTC's January 25 meeting was postponed, at which the Commission was expected to consider CFTC-SEC final joint rules defining swap dealer and major swap participant. The next open meeting is tentatively scheduled for February 9.

Consumer Financial Protection Bureau

- Richard Cordray has taken his place at the head of the agency after President Obama circumvented Congressional opposition and installed Cordray in a controversial recess appointment. Though the move allows the agency to begin its work in earnest, Congressional Republicans, incensed by the move, have threatened legal action.

Federal Deposit Insurance Corporation (FDIC) & Office of the Comptroller of the Currency (OCC)

- Both the FDIC and OCC recently issued proposed rules that, when implemented, will require banks and savings associations with assets of \$10 billion or more to conduct capital stress tests. These stress tests are on top of those conducted at the bank holding company level at the behest of the Federal Reserve. In total, more than 200 institutions will be affected.

Congressional Oversight

- The House Agriculture Committee recently passed six bills amending Title VII (the derivatives Title) of Dodd-Frank (DF), including a bill that would exempt derivatives end-users from DF margin requirements. The bills will now move to the full House for consideration. Regardless of the outcome in the House, it is widely expected that the bills would effectively be “dead-on-arrival” in the Senate.
- Congressional lawmakers were quick to put the pressure on the CFPB's Cordray, summoning him to Capitol Hill for a succession of hearings related to both his plans for the agency and his controversial appointment.
- The House Financial Services Committee held a hearing on January 18th to examine the proposed Volcker Rule, at which all the major regulatory heads provided testimony. Despite strong questioning, US regulators emphasized their intention to implement the rule as it is currently written.

What is Washington Talking About?

Global reform – As the implementation of Dodd-Frank continues its slow progression, new developments in Europe and Asia are not going unnoticed. The impending finalization of EMIR and the accelerating pace of financial reform in Asia continue to capture the interest of parties who will ultimately operate under various new regulatory regimes globally.

Volcker push back intensifies – In addition to widespread opposition from financial institutions, industry associations and lawmakers on Capitol Hill, regulators seeking to implement the Volcker Rule are now facing challenges from overseas as well. Earlier this week, Federal Reserve Chairman Ben Bernanke received a letter from UK Chancellor of the Exchequer George Osborne, in which he suggested that US regulators facilitate a “more active dialogue on the Volcker rule and the implications for global financial markets.”

Republican Presidential Primaries – Despite his loss to Newt Gingrich in the South Carolina primary, Mitt Romney reestablished himself as the frontrunner candidate for the Republican presidential nomination with a victory in the recent Florida primary.

Regulatory Timeline

CFTC Tentative Title VII Rulemaking Timeline

- **January-March:** Rules related to Clearing Member Risk Management, the End-User Exemption, Entity and Product Definitions (jointly with SEC), and the regulations for Derivatives Contract Markets (DCMs), among others. • **April and Beyond:** Rules related to Block Trading, Capital and Margin requirements, SEFs, the Process for Making a Swap Available to Trade and Extraterritoriality, among others.

Tentative Timeline for Other Major Rulemakings

- **February 13th:** Deadline for submission of comments regarding the SEC, FDIC, OCC, and Federal Reserve's proposed Volcker rule.
- **February-March:** The Federal Reserve is expected to issue a proposal to institute fees on systemically important banks and nonbanks.
- **February – March:** The SEC, Federal Reserve, FDIC, and a variety of other regulatory agencies are expected to produce a final rule related to credit risk retention. • **July 16th, 2012:** CFTC and SEC deadline for completion of Title VII rules

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Recent European Policy Developments in Financial Services

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Council of the EU

- Following a series of meetings between Council officials, the Danish Presidency has brokered a deal on EMIR. The remaining issue about ESMA's supervisory role over CCPs was resolved by offering participating Member States two votes if the supervisory college consists of 12 members or less and 3 votes if the college is greater than 12. Third country CCP operators will be governed by a regime of equivalence (without reciprocity) with details to be hammered out by ESMA in the coming months.
- Pressure is mounting to get political agreement in Q1 though negotiations broke down in the final triologue session and the next session of tripartite negotiations is expected in the coming weeks.

European Parliament

- Many relevant stakeholders responded to the Parliamentary questionnaire on MiFID issued by Markus Ferber MEP. There seems to be broad dissatisfaction with the Commission's proposal to create a new trading platform, the 'organized trading facility' (OTF). In addition, stakeholders insist on avoiding duplicate reporting requirements and continue to emphasise the principles of access and competition set out in EMIR.

European Commission

- The Commission has pushed back several legislative initiatives such as the proposals for bank crisis resolution and Central Securities Depositories as well as the market infrastructure resolution proposal (now due end 2012 or Q1 2013).

What is Brussels talking about?

Eurozone crisis

- EU finance ministers have overcome Finnish objections to a permanent bail-out fund for the Eurozone, access to which will be made conditional on signing a new treaty on fiscal discipline – the Fiscal Compact. Several non-Eurozone countries have threatened to reject the treaty unless they can take part in future Eurozone summits, echoing the UK position. The Fiscal Compact is set to include proposals allowing deficit-cutting timeframes and automatic deficit correction whilst affirming that countries cannot get bail-outs unless they sign and apply the treaty.
- Germany continues to emerge as the only fiscally and economically strong state in the Eurozone, especially after consequent downgrades of a handful of EU states by S&P and the loss of one notch by the European Financial Stability Facility (EFSF). Chancellor Merkel called for more powers to be transferred to EU institutions rather than increasing the size of the Eurozone's future bail-out fund.

DBAG-NYSE (DBNY) – The European Commission has formally blocked the DBAG/NYSE merger, citing that the deal would significantly impede competition and create a quasi-monopoly. NYSE has indicated that it will now focus on developing a clearinghouse for its Liffe derivatives exchange, while Deutsche Borse is expected to roll out a European clearing house for OTC derivatives in the coming months.

ESMA Overload? – A number of industry associations noted in a public letter to the authorities that they felt that ESMA requires more time to complete its level 2 activities, especially given the delays in finalising EMIR. The Commission has delayed a number of its proposals and the new MiFID legislation may not be finalised until 2015 and the industry will require time to implement relevant changes. Do the authorities and the industry have sufficient capacity to deal with the torrent of legislation?

European Parliament's mid-term changes – Martin Schulz, the German leader of the Socialists and Democrats group of MEPs in the European Parliament, has been elected Parliament president for the coming 2 ½ years. Additionally, UK Liberal Sharon Bowles was re-elected as the chair of the ECON Committee.

Regulatory Timeline

EMIR

- **14 February 2012:** Parliament's plenary vote on EMIR • **March 2012:** EMIR becomes law and ESMA starts drafting regulatory standards • **Summer/Fall 2012:** ESMA delivers first part of regulatory standards in EMIR

(MiFID/MiFIR) & Market Abuse Directive/Regulation (MAD/MAR)

- **13 February 2012:** European Parliament's exchange of views on MiFID/R • **15 February 2012:** Council meeting on MiFID/R • **Summer/Fall 2012 (tbc):** Council – Parliament to finalise reports on MiFID • **End 2012 (tbc):** MiFID/R trialogues to finish

Central Securities Depository Regulation/Securities Law Directive:

- **February 2012:** Commission to propose draft CSD Regulation • **Summer 2012:** Commission to propose draft SLD proposal

Crisis Recovery/Resolution

- **Mid-February 2012:** Bank crisis management and resolution proposal expected
- **H2 2012/H1 2013:** Market infrastructure resolution proposal expected

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