

# ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

April 4, 2012  
Issue 12

## Regulatory Update – April 4, 2012

### Commodity Futures Trading Commission

- The CFTC recently approved a [final rule](#) related to customer clearing documentation, timing of acceptance for clearing, and clearing member risk management. According to CFTC Chairman Gary Gensler, the rule's passage supports broad access to central clearing and makes way for the Commission to release its recommendations for swaps eligible to the new mandatory clearing requirement, which could happen as early as April.

### Federal Deposit Insurance Corporation

- The FDIC issued two proposed rules at a recent open meeting. The [first rule](#) would make changes to the deposit insurance assessment system for insured institutions with more than \$10 billion in assets. According to the FDIC, the rule “would fine tune the large-bank assessment system by amending the definitions of leveraged loans and subprime loans used to identify concentrations in higher-risk assets.”
- The second [proposed rule](#) would allow the FDIC as the receiver for a failed systemically important financial institution “to enforce and prevent termination of the contracts of the institution’s subsidiaries or affiliates.”

### Congressional Oversight

- Congressional oversight of the Dodd-Frank Act has focused primarily on the bill’s extraterritorial impact.
- Recently, the House Financial Services Committee approved bipartisan legislation to repeal the indemnification provision of Dodd-Frank. Foreign and domestic regulators have repeatedly raised concerns about the provision’s potential impact on global OTC data sharing and the development of a sound global trade repository environment. A House Agriculture Subcommittee, which has jurisdiction over derivatives products, also held a hearing to examine to the bill and plans to hold a “mark-up” shortly.
- The Senate Banking Committee held a hearing on March 22 to examine the international harmonization of Dodd-Frank. The hearing focused primarily on new derivatives rules, the Volcker Rule specifically, and the FDIC’s orderly liquidation authority. There is an expectation that the Volcker Rule may be reissued as a result of the hearing.
- A bipartisan group of Senators introduced legislation to delay the implementation deadline for the Volcker Rule. The proposed ban on proprietary trading is currently set to take effect on July 21, regardless of whether regulators have finalized the rule. The legislation would postpone the implementation until regulators have finalized the rule. Absent from the bill is any requirement for U.S. regulatory agencies to modify the proposal, though the measure would provide regulators with more time to analyze the rule’s potential impact and ultimately decide whether the rule should be scaled back, as some regulators and many market participants have suggested. Congressman Barney Frank (D-MA), Ranking Member of the House Financial Services Committee and one of the co-authors of Dodd-Frank, recently suggested that regulators should simplify and re-propose the rule.

## What is Washington Talking about?

**Big week for Health Care debate** – President Obama’s signature healthcare bill is at the center of a major legal battle as oral arguments before the U.S. Supreme Court concluded on Wednesday, March 28. At the center of the debate is whether the “individual mandate,” which requires all Americans to purchase health insurance, is unconstitutional.

**Romney pulling away** – Despite losing the Louisiana primary to Rick Santorum recently, Mitt Romney maintains a commanding and unassailable lead in the race for the Republican presidential nomination. The pressure will begin to mount on Santorum to tone down his rhetoric against Romney, let the campaign move towards the General election and to allow the GOP to focus squarely on the defeat of President Obama.

## Do you speak Dodd-Frank?

**INDEMNIFICATION** – In the context of Dodd-Frank, indemnification refers to provisions in Sections 728 and 763 of the law, which require U.S. registered swap data repositories (SDRs) to receive a written agreement from “third-party” non-U.S. regulators confirming that the supervisory agency requesting the information will abide by certain confidentiality requirements and indemnify the SDR and the regulating U.S. Commission(s) for any expenses arising from litigation relating to the information. Many regulators in Asia and Europe have indicated that they would be unwilling or unable to enter into such an agreement and have thus identified indemnification as among the most troubling extraterritorial provisions of the Act because of its potential to fragment the current global data set for OTC derivatives. The [Swap Data Repository and Clearinghouse Indemnification Correction Act \(H.R. 4235\)](#), co-sponsored by Congressmen Robert Dold (R-IL), Gwen Moore (D-WI), Terri Sewell (D-AL), and Rick Crawford (R-AR), would effectively repeal this provision.

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## Recent European Policy Developments in Financial Services

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### Regulatory Update – 4 April, 2012

#### ESMA and the drafting of the EMIR rules (Level 2)

- ESMA concluded its first consultation on the EMIR regulatory standards on 19 March and a second is expected by June. ESMA aims to have completed its rulemaking by 30 September. DTCC's clearing and repository businesses submitted responses to ESMA's first consultation and these can be found [here](#).

#### Council of the EU

- The Danish presidency has clarified it will not seek any political agreement on MiFID before the end of its term and it is therefore likely that the Cypriot (H2 2012) and the Irish Presidency (H1 2013) will lead the Council to its final position.

#### European Parliament

- ECON voted the final text of EMIR through on 29 March, although the date the legislative text will become enforceable remains unclear.
- A report on MiFID prepared by Mr. Ferber, the parliamentary rapporteur, has been published offering a series of amendments to the original proposal focusing mostly on issues of market structure (OTFs similar to SEFs), high frequency trading, and position limits on commodities. MEPs have until 10 May to submit amendments and the final report is scheduled to be voted on by September.

#### European Commission

- The Commission presented its plans on a draft regulation on Central Securities Depositories (CSD). The draft suggests that a CSD should separate banking from CSD activities and this ring-fencing is emerging as a major issue. Several legislative initiatives have been pushed back, including proposals for bank crisis resolution (likely Q3 2012) and market infrastructure resolution (likely Q1 2013).

#### What is 'Brussels' talking about?

- **EU sovereign crisis enters new phase:** Eurozone ministers formally agreed to release a 2nd bailout package for Greece and the €39.4 billion first installment will be paid over the next few months.
- **EU firewall set to exceed a trillion \$?:** Eurozone finance ministers finalised a deal to enlarge the EU's capacity to bail out debt ridden countries. Despite its initial resistance, the German government softened its stance and agreed an increase of the overall size of the fund up to €900bn (\$1.3trillion), though the effective lending capacity will be less.
- **EU remains divided over FTT:** EU finance ministers discussed the tax during their monthly meeting but found no agreement on how to move forward. France seems to be the only strong proponent of the tax but a stamp-duty like tax could be a palatable compromise for all EU states. The Commission published a report that estimates a pan European FTT could generate more than €80 billion per year by 2020 with two thirds going to Brussels and the rest to EU member states. In fact, the Commission suggested that member states will pay 50 % less into the general EU budget by 2020 if they agree to implement a financial transactions tax.
- **When will EMIR be enforceable?** Technically 20 days after EMIR is published in the Official EU journal, but in reality, not until the rules have been finalized (likely by end of 2012). There is also a 6 month period to seek authorization to operate under these new rules and it would seem logical that a CCP would apply for authorization only when it is compliant with the regulation. So the question is how long before the 6 month authorization window is opened and after the agreement of the rules will be allowed for CCPs to achieve compliance?
- **Extraterritoriality:** Discussed in detail during the recent Eurofi conference in Copenhagen. There seems to be some disconnect between the industry, which believes progress on resolving ET issues is insufficient, and regulators, who believe progress is being made. Concerns centre around the potential for regulatory 'nationalism' in the absence of a global regulatory blueprint and the fact that certain jurisdictions now have baked-in legislation that is potentially difficult to change.

#### Do you speak European?

**THE EUROPEAN COMMISSION:** The Commission is essentially the EU's executive branch with sole right of legislative initiative. It comprises 27 appointed Commissioners, one from each EU state, with responsibility for specific policy areas. It has four main roles: i) propose legislation to Parliament/Council; ii) manage/implement EU policies; iii) enforce EU law; iv) represent EU internationally. A new Commission is appointed every 5 years in a process involving Member States and the European Parliament. The Commission attends all Parliament and Council sessions and remains politically accountable to Parliament which has the power to dismiss it.

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