Recent Policy Developments in Financial Services

ACROSS THE POND

GLOBAL REGULATORY UPDATE – JULY 17, 2012

ASIA

Japan Financial Services Agency

- The JFSA announced on July 11 its final version of new regulations for OTC derivatives. The final is largely consistent with earlier drafts, but significantly amends the timetable for the start-up of trade reporting. While the official launch of the system is scheduled for November 1, the JFSA will now give covered financial institutions until March 31, 2013 to fully comply.

Hong Kong Monetary Authority and the Securities and Futures Commission

- On July 11, the HKMA and SFC published a report outlining their conclusions to the proposed regulatory regime for OTC derivatives. While the agencies indicated broad support for the proposed mandatory obligations for the central clearing, reporting and trading of OTC derivatives, the new regime offers greater flexibility with regards to clearing and reporting requirements. Many of the technical details will be addressed in forthcoming consultations. Hong Kong aims to introduce the relevant legislation by the end of 2012, with implementation in mid-2013.
- The agencies also published a supplemental consultation paper which covers the "proposed scope of the new regulated activities to be introduced under the proposed OTC derivatives regulatory regime, and the proposed oversight of systemically important players."

Australian Securities & Investments Commission (ASIC)

- The ASIC released updated regulatory guides for the facilitation of cross-border regulation. According to Commissioner John Price, the updated policy guidance reflects ASIC's "support for more uniform regulatory approaches and strong supervisory and enforcement cooperation with our overseas counterpart regulators [and] is intended to minimize regulatory duplication…"

What is Asia talking about?

China growth slows – China's GDP grew at an annual rate of 7.6% in Q2 2012, down roughly two percentage points from the same period in 2011. Combined with the less than expected quarterly growth in Chinese imports, the reduced growth rate, the slowest since the 2008 financial crisis, helped to pile more anxiety on Asian and global markets.

EUROPE

Council of the EU

- The Cypriot Presidency took office on July 2 and is aiming to finalize the capital requirements dossier (CRDIV) – currently in the process of inter-institutional negotiations – and reach a political agreement on MiFID/R by the end of December.
- Progress on the MiFID/R debate is steady and the Cypriots will hold meetings on July 16&24, with the hope of making progress on the issues of OTFs, third country issues, HFT, and data consolidation.
- The idea of a pan-European FTT is dead. The only way forward seems to be the so-called 'enhanced cooperation' model, which means the tax will only apply in countries that specifically ask to join the pact. The Commission will move on with the FTT proposal should at least nine Member States demand it and so far, 10 Member States seem to be in favor. In France, policymakers are considering raising the French tax (effective from August 1, 2012) from 0.1% to 0.2% to generate an additional €350 million for the French public budget.

European Parliament

- The Parliamentary Rapporteur on MiFID/R II, Markus Ferber, together with the shadow rapporteurs of other political groups, has drafted compromise amendments to the original report, but has decided to postpone the ECON Committee vote on the report due July 10. The reason behind this postponement is the lack of consensus around the market structure issues (especially the new OTF category) and the principle of open access. The vote will now take place in early September, while the plenary vote, originally scheduled for October 22, will be postponed.

European Commission/European Securities Market Authority (ESMA)

- ESMA published its consultation on draft regulatory standards on EMIR, with comments due August 5. The standards are expected to be ready by September 30 before being sent to Commission for review and approval by Parliament and Council in late 2012. From a reporting standards perspective, the paper encourages use of

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global legal entity identifiers (LEI) whilst acknowledging that an "interim" solution in lieu of a globally agreed LEI might also be needed.

- The European Commission, tasked by the EU states, will formally submit a draft proposal on a banking union by October and will need all 27 EU members to approve it. EU finance ministers will discuss remaining issues during their summer meetings and will try to decide whether common supervision would be limited only to systemically important banks, and the extent to which powers to take binding decisions on troubled banks would be transferred from national regulators.

What is 'Brussels' talking about?

- **A more integrated Europe?** The European Council Summit on June 28-29 focused on European economic governance as well as the financial situations of Spain, Cyprus, and Greece. With Spain and Cyprus having officially asked for a bank bailout and Italy at the precipice, leaders agreed on action to lower the borrowing costs of Italy and Spain and create a single supervisory body for euro area banks by empowering the European Central Bank. While the European Stability Mechanism, the Eurozone's bailout fund, came into effect on July 9 and is set to lend directly to recapitalize banks without increasing a country's budget deficit, differences remain on emergency bond-buying measures.

- **Libor effect:** European policymakers have started looking into the interest rate-rigging scandal rocking Barclays and the City of London with a proposal to outlaw attempts to manipulate market indices across the EU, together with a fundamental review of the rules on how Libor is set.

UNITED STATES AND CANADA

Canadian Securities Administrators

- The CSA recently published a consultation laying out its recommendations for central counterparty clearing of OTC derivatives transactions through central counterparties (CCPs). The report addresses, among other things, the process for determining which OTC derivatives should be eligible for mandatory central clearing, governance of CCPs, member access, and risk management.

Securities and Exchange Commission & Commodity Futures Trading Commission

- **Swaps Final Rule:** In separate meetings, the Commissions recently approved final rules related to the definition of "swap," "security-based swap," "mixed-swaps," and "security-based swap agreement," setting in motion a countdown for compliance with nearly 20 Dodd-Frank derivatives rules, including transaction reporting to swap data repositories (SDRs) and rules for swap dealers (SDs) and major swap participants (MSPs). Market participants will also need to comply with rules such as the CFTC's commodity position limits rule within 60 days of the rule's publication in the Federal Register.

- **The Definition**: The rule establishes that FX swaps and forwards, foreign currency options, commodity options, cross-currency swaps, forward rate agreements, and interest rate swaps, among others, will all fall under the definition of swap and thus subject to relevant rules. Commodity forwards, certain insurance products, and consumer and commercial agreements will not be considered swaps

- **Reporting:** Regarding reporting, SEFs, DCMs, DCOs, SDs, major swap participants and SDRs are required to comply with new real-time public reporting and data recordkeeping and reporting requirements for interest rate and credit swaps within 60 days of the rules publication. Registration of SDRs for these asset classes is also required within 60 days. Compliance for FX, equity, commodities and all other asset classes will be required after 90 days.

- **End-User exemption also finalized:** During the CFTC's open meeting, the Commission also unanimously adopted their final rule for the end-user exception to the clearing requirement for swaps. Financial institutions with assets of $10 billion or less will be exempt from the requirement. The Commission expects that nearly 30,000 institutions will qualify for the exception. The CFTC also approved a proposed rule related to the clearing exemption for certain swaps entered into by cooperatives. This proposal will have a 30 day comment period.

Congressional Oversight

- The Senate Agriculture Committee is scheduled to hold a "Two Year Anniversary of the DFA" hearing on July 17, at which CFTC Chairman Gensler and SEC Director Robert Cook will testify, as well as Larry Thompson, DTCC General Counsel., and other industry representatives. Though witness testimony will focus largely on the implementation of Dodd-Frank, federal lawmakers are expected to aim most of their questions at the Libor and Peregrine Financial scandals. It is expected that other Congressional committees will hold hearings related to the scandals in the coming weeks.

What is Washington Talking About?

Dodd-Frank's 2nd birthday messaging: all about perspective – July 21 will mark the second anniversary of the passage of Dodd-Frank and the views from regulators, market participants, and federal lawmakers continue to differ dramatically. While hardly marching in lock-step, regulators remain confident that the implementation of new DFA rules is on track to improve the safety and stability of the financial system. But U.S. regulators are once again facing tough questions about their supervisory effectiveness from Congress and industry associations amidst the intensifying scandals of Libor and the futures brokerage firm, Peregrine Financial.

Peregrine CEO arrested – Peregrine Financial CEO, Russell Wasendorf Sr., was arrested after confessing to defrauding and embezzling more than $100 million from his customers and banks over the past two decades. On the same day, the CFTC published new rules designed to better protect customer funds like those misused by PFG and MF Global.