Recent Policy Developments in Financial Services

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 2 OCTOBER 2012

EUROPE

Council of the EU

- The Council continues to deliberate on MiFID II/R and is aiming to reach a political agreement by December 2012 and conclude negotiations by mid-2013. The current priority is to clarify definitions of High-Frequency Trading (HFT), OTF's, post-trade transparency, and the provisions around access to/from market infrastructure. Divisions in the Council regarding HFT, OTF, bond-trading and access continue to stall negotiations.
- The Financial Transaction Tax (FTT) plan is proceeding slowly as the European Commission continues to wait for at least 9 EU states to formally request and detail the scope of such a tax. Though the proposal for a pan-EU FTT is politically dead, a stamp duty-like tax is seen as one remedy to the austerity measures that debt-ridden states are implementing across the region.

European Parliament

- The Parliamentary Rapporteur on MiFID/R II, Markus Ferber, together with the Shadow Rapporteurs of other political groups, have reached a compromise despite the differences of political groups on definitions of algorithmic trading, commodities and OTF. The ECON vote took place on 26 September, while the Parliament will vote en masse in early January 2013.
- The ECON committee has published its draft report on shadow banking, which will feed into the legislative debate in the coming months. The report argues that it is necessary to extend the fourth Capital Requirements Directive to cover non-deposit taking financial institutions not covered by the Capital Requirements Regulation and suggests that the Commission legislate the creation of an ECB-run data warehouse for repos by the end of 2013.

European Commission (EC) /European Securities Market Authority (ESMA)

- The EC sent a letter to the CFTC asking for more clarity on the cross-border application of the Dodd-Frank Act, arguing that the Interpretative Guidance requires further review to avoid duplicative and conflicting rules, while also asking for more time to implement reforms.
- ESMA published its regulatory standards paper on 27 September. The paper will now go through an internal commission consultation before being approved by Parliament/Council in late 2012/early 2013.

What is 'Brussels' talking about?

- **A light at the end of the tunnel:** EU policymakers took some decisive steps after the summer recess that, if taken together, may usher in a new phase of the Euro crisis: Germany's constitutional court backed the European Stability Mechanism – now set for launch on 8 October; the Commission laid out a blueprint for joint European banking supervision; and the ECB announced its decision to buy unlimited amounts of the short-term debt of troubled euro-zone countries, paving the way for a Spanish bailout. These political actions could lay the foundation for a more sustainable monetary union supported by harmonised EU bank supervision by a central bank that is committed to being the lender of last resort and intervene if need be. Despite German and UK resistance to such a plan, it is clear that the survival of the common currency is assured – but the future shape of the EU will be determined by political decisions in the weeks to come.
- **A banking union:** The Commission's aforementioned proposal for a single banking supervisory union has received senior political backing from Commission President Barroso, European Council President Rumpoy and Single Market Commissioner Barnier. According to the proposals, the ECB will have supranational powers in the European banking space, including the authority to shut down Eurozone banks by withdrawing their banking license, as well as the ultimate authority to oversee some 6,000 banks across the region. The Commission aims to secure an agreement by 2013 and will publish a blueprint for deepening the economic and monetary union in the coming months.
- **Indexes and financial benchmarks:** Brussels engaged in a two-pronged fact-finding exercise in order to assess whether a fundamental review of the index calculation process is necessary. To this end, the European Parliament's ECON Committee issued a public consultation on Libor and benchmark manipulation, while the Commission launched a consultation on possible new rules for the production and use of indices serving as benchmarks in financial and other contracts, due in mid-November.
  The latter is wide-ranging, covering all benchmarks and tries to identify possible shortcomings in the production and use of benchmarks. The paper covers the scope, process and nature of indices and benchmarks, among other things.

DTCC

ASIA

Hong Kong Monetary Authority

- The HKMA recently announced that in December, the Hong Kong Trade Repository (HKTR) will begin providing a matching and confirmation service for OTC derivatives transactions for market participants and will begin submitting their transactions to the CCP being launched by HKEx for clearing.

Australian Securities & Investments Commission (ASIC)

- ASIC recently published a consultation paper outlining its proposed amendments to its regulations for clearing and settlement facilities to take into account updated international standards. The proposals seek to align with the recently finalised Principles for Financial Market Infrastructures, which was developed by the Committee on Payment and Settlement (CPSS) of the Bank for International Settlements and the International Organisation of Securities Commissions (IOSCO). Comments on the consultation are due 19 October 2012.

Monetary Authority of Singapore

- The MAS recently issued its revamped proposal to implement the Basel III capital requirements, which would see Singapore banks subject to higher requirements. The MAS initially distributed the proposal as a consultation and recently revised the package of amendments to respond to comments raised by market participants and other market stakeholders.

What is Asia talking about?

CFTC extraterritoriality – Letters from Asian regulators and industry associations were among the more than 250 responses filed with the CFTC on its proposed cross-border Interpretive Guidance, which spells out the extraterritorial scope of the Commission's new swaps regime. Among the letters were a joint letter filed by ASIC, the Reserve Bank of Australia, MAS, and the Hong Kong Monetary Authority and Securities and Futures Commission, and individual letters from a number of national banking associations, among others. Asian policymakers generally urged the CFTC to reconsider the timing and scope of its proposal in order to avoid duplicative and conflicting regulatory requirements and to clarify the details surrounding its "substituted compliance" policy.

UNITED STATES

Department of Treasury

- The Treasury is not expected to issue its final decision on which currency derivatives are exempt from new swaps rules until the end of 2012. The delay in finalization is seen as the product of a desire to harmonize with similar requirements being developed elsewhere and a widespread belief that the 2012 elections will likely delay certain key rulemakings in the United States.

Securities and Exchange Commission

- The SEC will hold its market technology roundtable on October 2, instead of September 14 as originally scheduled. The roundtable will consist of two panels focusing on the relationship between the operational stability and integrity of the securities markets and the ways that market participants design, implement, and manage complex and interconnected trading technologies.

Commodity Futures Trading Commission

- With a battery of new swaps regulations set to take effect on October 12, the CFTC recently announced that financial institutions will have two months to register as a swap dealer after they reach the $8 billion minimum threshold in swap dealing. The clarification effectively means that most large swaps traders will have until December 31 to register as a swap dealer.
- The US District Court for the District of Columbia struck down the CFTC's position limit rule, which was scheduled to go into effect on October 12. The court found that the CFTC "fundamentally misunderstood" the relevant provisions of Dodd-Frank and rejected the CFTC's interpretation that Dodd-Frank makes the imposition of position limits "mandatory," rather than "as appropriate" to prevent excessive speculation. CFTC Chairman Gary Gensler is "disappointed" and is reviewing options.
- CFTC Chairman Gensler recently testified before the European Parliament's ECON committee about the need to change or overhaul Libor, stating that any new or revised benchmark should be based in "actual, observable market transactions" rather than on estimates.
- The Commission recently granted DTCC Data Repository LCC provisional registration status to operate a multi-asset class swap data repository in the United States.

What is Washington Talking About?

Gearing up for the election: With the 2012 General Election less than two months away, Capitol Hill is buzzing with political energy. Nevertheless, lawmakers are unlikely to pass any major legislative packages or Dodd-Frank-related legislation before they break on October 5 to focus on constituent outreach until the election.

Extraterritoriality: The outpouring of response to the CFTC's cross-border Interpretive Guidance came as no surprise given the longstanding concerns of overseas supervisors and markets participants about the broad extraterritorial reach of the Commission's swaps proposals. CFTC Commissioner Mark Wetjen last week expressed some measure of sympathy with the myriad concerns. He also shared his insight on the Commission's proposed "substituted compliance" policy, under which overseas branches or subsidiaries registered as swap dealers or major swap participants can forgo compliance with CFTC swaps rules in favor of local regulations if those regulations are deemed comparable by the Commission. Wetjen indicated that the CFTC would continue to cooperate with their international counterparts to clarify the conditions under which the provision could apply. There is no indication of when the Commission will finalize the cross-border proposal, but firms were given a slight reprieve by the two month lead-in time for swap dealer registration under Dodd-Frank.

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