Recent Policy Developments in Financial Services

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 4 FEBRUARY, 2013

ASIA

Australian Securities & Investments Commission (ASIC)

- ASIC intends to begin consultations regarding it trade repository (TR) framework in the coming months, with implementation of the new reporting regime later in the year. The regulator has made clear that it does not intend to pursue its own independent TR, but rather a TR licensing regime similar to the Singaporean proposal.
- Over the next 18 months, Australia will phase in new market integrity rules designed to address risks emerging from the increased use of automated trading and dark liquidity. The new requirements include volatility controls for extreme price movements and kill switches for high frequency trading, as well as dark liquidity rules requiring meaningful price improvement and reporting and a tiered threshold for block trades. Following the publication of the new ASIC rules, the Minister for Financial Services and Superannuation, Bill Shorten, released a report entitled *Australia's Financial Market Licensing Regime: Addressing Market Evolution,* which discusses options for reforming Australia's financial market licensing regime.

Hong Kong Monetary Authority

- With Hong Kong's Trade Repository expected to be operational by mid-2013, the HKMA has updated its website to include further details of its proposed TR service, including fee scales (fees still TBD) and additional information related to its trade confirmation and matching services. The HKMA plans to begin enrolling members and testing in April or May of this year.

Monetary Authority of Singapore

- MAS issued a consultation on draft regulations for trade repositories (TRs) and clearing facilities, which include a minimum base capital requirement of $10 million for "licensed TRs" and "approved clearing houses" (locally incorporated) and $5 million for "foreign licensed TRs" and "recognized clearing houses" (incorporated overseas). The regulations also require these entities to demonstrate their ability to fulfill their statutory obligations as TR or clearing house. Licensed TRs and approved clearing houses – entities regulated by the MAS – will also be required to submit recovery and resolution plans in line with CPSS-IOSCO standards. Comments are requested by 8 February.
- Also this month, the MAS issued a monograph entitled *Supervision of Financial Market Infrastructures in Singapore,* which spells out their plans for the adoption of the CPSS-IOSCO *Principles for Financial Market Infrastructures* dossier. According to the MAS, the monograph "articulates our supervisory approach to systemically-important FMIs and our supervisory toolkit which includes regular monitoring, dialogues with the FMIs, and reviews of risk areas."

EUROPE

Council of the EU

- Despite indicating that the MiFID/R proposal will not be a top priority during its six month tenure, the new Irish Presidency of the Council is expected to restart negotiations on the dossier in February with an aim to reach a political agreement. The outstanding issues remain CCP access to trading venues, pre-trade transparency waivers, the proposed Organised Trading Facility (OTF) platform, and third-country (non-EU entities regime) rules. Finalisation of the legislative text is expected in the first half of 2013 with implementation in early/mid 2015.

European Parliament

- Following the Commission's adoption of the ESMA Regulatory and Technical Standards in late 2012, the Parliament began scrutinising the standards and has since raised concerns over the corporate end-user and CCP related provisions. In response, the ECON Committee drafted a resolution to reject the two standards – a move that enjoys cross-party support in the Parliament. The objections focus on the threshold for non-financial user exemption and timely confirmation, as well as bank guarantees in the context of eligible collateral for CCPs. The ECON Committee will hold its vote on 4 February, followed by a Plenary vote on 6/7 February. The Parliament and Council have until February 19 to either reject or adopt the rest of the standards. If neither the Parliament nor the Council reject the delegated Regulations will be published in the Official Journal of the European Union by the end of February and enter into force 20 days following the publication. The earliest day for entry into force is mid-March 2013. Industry questions and clarifications would be addressed in a Q&A document, due to be published once the standards come into force.
- ECON Committee MEPs submitted over 500 amendments to Dr Swinburne's CSDR Report, including compromise amendments agreed in order to vote a final report on 4 February 2013. Several amendments address settlement failures and there seems to be a consensus on the need to simplify the authorisation of CSD links (requiring a notification rather than a pre-authorisation when there is no transfer of risk).

European Commission / European Securities Market Authority (ESMA)

- ESMA published a consultation on guidelines regarding the assessment of CCP interoperability arrangements and industry comments were received by 31 January 2013. ESMA will adopt its guidelines by March 2013 and then will send to the Commission for approval before the guidelines are communicated to the national regulatory authorities.

DTCC

- The Commission officially asked ESMA to draft standards on equivalence of foreign jurisdictions (''3rd country'' part of EMIR). Following a step-by-step approach, ESMA is expected to provide advice in two phases: on 15 March and by June 2013 regarding different foreign jurisdictions. For trade repositories, ESMA should provide equivalence advice on the US by 15 March 2012 and on Hong Kong by 15 June 2013. For CCPs, ESMA should provide equivalence advice on US and Japan by 15 March and on Switzerland, Australia, Dubai, India, Singapore and Hong Kong by 15 June.

What is 'Brussels' talking about?

Britain and the EU: In a long-awaited speech, UK's Prime Minister Cameron confirmed the UK wishes to reframe its relationship with the EU by promising an 'in or out' referendum on the UK's membership by 2017. Mr Cameron promised to re-negotiate Britain's EU membership terms followed by a public vote if his Conservative party is re-elected in the 2015 election. The speech was received with skepticism by prominent business and political leaders.

Towards a Eurozone banking union: Following a marathon 15 hour negotiation in late December, EU finance ministers reached an agreement on the Single Supervisory Mechanism (SSM) for European banks. The EU is now attempting to hammer out the details of the first step towards a Eurozone Banking Union. The SSM confers a wide range of powers on the ECB and creates an integrated supervision of the Eurozone banks. The ECB will directly supervise approximately 150 to 200 Eurozone banks and once the SSM is established, it will be possible for the European Stability Mechanism, the Eurozone's permanent bailout fund, to recapitalize banks directly, rather than through national funds. The EU Member States whose currency is not the Euro will be able to participate in the Mechanism through close cooperation arrangements. Nevertheless, the UK, Sweden and the Czech Republic have decided to opt-out from the mechanism. The mechanism is expected to be fully operational by 1 March 2014 but this could be pushed back to Summer 2014.

Paving way for an EU FTT by 2014: The Council approved the use of enhanced cooperation for financial transaction tax (FTT), with a FTT proposal now expected in the coming weeks. The tax would apply in 11 EU states, namely Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia. Four countries, the UK, Luxembourg, Malta and the Czech Republic, have criticised the Commission over the FTT's potential extraterritorial effects. The FTT will be built on the 'place of residence' principle, so that the tax would be levied if the seller or buyer is established in the territory of the 11 Member States, irrespective of where the transaction takes place. The Commission proposal will be similar to the original presented in September 2011, with a harmonised minimum 0.1% tax rate for transactions in all types of financial instruments except for derivatives, which would be taxed at a rate of 0.01%. the tax's implementation is expected by Q1 2014.

UNITED STATES

Commodity Futures Trading Commission

- On 31 December, real-time public reporting of swap transactions and swap dealer registration began. In a 3 January press release, DTCC announced that all registered swap dealers active in credit and interest rate trading are sending information to DTCC's swap data repository (SDR), DTCC Data Repository (DDR).
- Foreign exchange (FX), equity and other commodity swaps were originally required to begin reporting on 10 January, although no-action relief was provided until 28 February. On 10 January, DTCC began receiving derivatives clearing organization (DCO) cleared transactions for FX derivatives.
- The CFTC held a public roundtable on 31 January to discuss the "futurization" of the swaps market. Discussion topics included general industry views and concerns regarding the conversion of swaps to futures in each asset class; clearing and different margin requirements for swaps and futures; transaction-related matters including appropriate block rules for swaps and futures; and the effect of the conversion of swaps to futures on end-users.
- On 24 January, Commissioner Jill Sommers announced her resignation from the CFTC.

Department of Treasury

- On 10 January, Treasury Secretary Timothy Geithner announced his resignation. President Obama nominated Jack Lew, current White House Chief of Staff, to serve as Treasury Secretary.
- Richard Berner was confirmed by the Senate to serve a six-year term as the first Director of the Office of Financial Research (OFR).

Securities and Exchange Commission (SEC)

- In December, the SEC unanimously approved new rules requiring broker-dealers to conduct searches for holders of securities with whom they have lost contact. The rules also require broker-dealers and other securities market participants to provide notifications to persons who have not processed checks that they have received in connection with their securities holdings.
- President Obama recently announced his plan to nominate former federal prosecutor Mary Jo White as the next chairman of the Securities and Exchange Commission.

What is Washington Talking About?

Future of CFTC and SEC: The future of the CFTC is a frequent topic of discussion given the vacancy that Commissioner Sommers' resignation causes and the unknown future of Commissioner Gary Gensler as Chairman. At the SEC, there is talk of Chairman Elisse Walter potentially departing.

Rate of Average Time Execution (RATE) Act: On January 14, Congressman David Schweikert (R-AZ) introduced H.R. 246, the Rate of Average Time Execution (RATE) Act. The act would require the Board of Governors of the Federal Reserve System to collect, publish, and update an objective index of dollar-denominated market executed loan interest rates of various maturities.

Cyber Security: With the aim of better protecting critical infrastructures in the United States, including financial services institutions and systems, Senators John D. (Jay) Rockefeller IV, Chairman of the Senate Commerce, Science, and Transportation Committee, Dianne Feinstein, Chairman of the Senate Select Committee on Intelligence, and Tom Carper, incoming Chairman of the Senate Homeland Security and Governmental Affairs Committee, recently stated that *S. 21, the Cybersecurity and American Cyber Competitiveness Act of 2013* is a priority for the current Congress. Members of Congress are waiting for the Obama Administration to release an Executive Order (EO) on cybersecurity, which is expected to be released in the near future.

DTCC