Recent Policy Developments in Financial Services

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 12 MARCH, 2013

ASIA

Australia

- The Reserve Bank of Australia and the Australian Securities and Investments Commission jointly issued an information paper that outlines how the Australian authorities will implement the CPSS-IOSCO Principles for Financial Market Infrastructures, including standards for central counterparties and trade repositories.

Hong Kong

- With financial market benchmarks continuing to draw attention from regulators globally, the Hong Kong Monetary Authority recently announced measures designed to strengthen the rate fixing process and improve the transparency and robustness of the Hong Kong Interbank Offered Rated (HIBOR). The Hong Kong Treasury Markets Association (TMA) and the Hong Kong Association of Banks now have six months to implement the proposals, which include a transfer of the administrative function of the HIBOR fixing process to the TMA, the establishment of a an effective surveillance and governance function for this function, and a phase-out of HIBOR "fixings with little market demand."

South Korea

- The Legislation and Judiciary Committee of the South Korean National Assembly approved a revised Financial Investment Services and Capital Markets Act (FSCMA), which provides for the introduction of a central counterparty for OTC transactions. According to the release, the introduction of CCPs "will help prevent the flight of clearing demands to overseas competitors" and "clearing business operators will be approved depending on the types of financial products they deal with."

Japan

- The Japan Financial Services Agency (J-FSA) has approved the DTCC Data Repository (Japan) KK for registration as a Japanese OTC derivatives trade repository. DTCC will begin operating this service ahead of the J-FSA's mandated 1 April deadline for market participants in Japan to begin reporting their OTC derivatives transactions. Based in Tokyo, this is first trade repository to be approved and established for the Japanese market.

EUROPE

Council of the EU

- The Irish Presidency has re-started negotiations with the aim to reach a political agreement on MiFID/R by May 2013. CCP access to trading venues and waivers for pre-trade transparency remain two of the most controversial aspects of the dossier with the latest compromise texts suggesting some changes to CCP access and interoperability provisions in order to align the text with EMIR. The changes follow arguments by some Member States that both direct and indirect interoperability is too risky for derivatives, especially for exchange traded derivatives. The finalisation of the legislative text is expected by the H2 2013 and implementation is expected in late 2015.

European Parliament

- The ECON Committee adopted its report on Securities Settlement and Central Securities Depositories (CSDs) Regulation and the Parliament will vote en masse in May 2013. General rules on settlement discipline are in line with the T+2 rule, penalties for late settlement would not apply to CCPs participating in CSDs, while transactions are excluded. Regarding CSD banking services, the Committee's position allows CSDs, for the purpose of commercial bank money settlement, to either designate a settlement bank, whether fully independent from the CSD or pertaining to the same corporate group, or to provide limited banking services directly.
- The Parliament has decided to draft a non-legislative report on recovery and resolution for non-banks focusing primarily on CCPs and CSDs. The report will inform the Commission's proposal that is due in Q4 2013. MEP Kay Swinburne has been appointed as the rapporteur for the file, which is expected by this summer.

European Commission/European Securities Market Authority (ESMA)

- The EMIR package was published in the official EU journal on 23 February and the legislation will come into force on 15 March. ESMA is expected to issue FAQs per issue in the coming months. Registration for repositories will be concluded by 25 June and reporting for credit and interest rate derivative will begin on 23 September. CCPs have 6 months to register and the clearing obligation will go live in mid-2014.
- ESMA's consultation on CCP interoperability guidelines recently concluded and the regulator will issue its final recommendations by 31 March. ESMA has also issued a consultation on trade repository fees and is expected to deliver its advise by end of March.
- The Commission extended the deadline for ESMA's standards on equivalence between non-EU legal and supervisory frameworks and EMIR by four months. ESMA will deliver its advice on Japan and the USA by 15 June 2013 and for Hong Kong, Switzerland, Canada and Australia by 15 July 2013.

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What is 'Brussels' talking about?

- **Basel III rules and CRD IV:** After a 10 months of negotiations, the Parliament, Council, and Commission reached an agreement on the revised Capital Requirements Directive (CRD IV). The agreed text includes a cap on bankers' bonuses, which will be based on the 1:1 (bonus/annual salary) ratio, though shareholders could decide to adopt a 2:1 ratio, while all banks must disclose the number of staff paid more than €1m. The Member States have won the flexibility to impose tougher capital requirements on their banks if they believe that the whole financial system is at risk. Both the European Parliament and the Council still have to officially endorse the legislation, which is expected within the coming months.
- **A bumpy road towards an EU FTT:** The Commission has presented its revised proposal on a European FTT for 11 participating states (i.e. Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia). The adoption is officially expected by 14 May, but given the reaction the FTT has already caused, any agreement cannot be realistically expected before summer 2013; implementation is expected by 1 January 2014, but could slip to H2 2014. The tax, which applies to virtually all financial transactions involving a financial institution in the EU-11, would cover the purchase and sale of financial instruments before netting and settlement and would be applied on the basis of a combination of the ''residence principle'' and the location of the where the financial instrument is issued. The tax will be applied at the gross amount (transaction level) and the intention is that post-trade infrastructures will be excluded, while the details on collection will be presented at a later stage by the Commission. The draft, which would have to be transposed to national law by these countries, sets floor rates of 0.1% (securities) and 0.01% (derivatives) to be applied to both sides of a transaction though rates could differ between countries.
- **A tidal change: EU-US Free Trade Agreement (FTA):** The EU and US will kick-off negotiations on a FTA by June 2013 aiming to create the largest free trade zone in the world that will include financial services. The Council of the EU Ministers is expected to grant a negotiation mandate in March 2013 and negotiations are envisaged to last at least 2 years. The agreement is expected to cover a wide range of issues from tariffs, public procurement, investment, and services to raw materials, energy, competition, and provisions on state-owned enterprises.
- **Cyber security:** The Commission published its Cyber security Strategy together with a proposal for a Directive to ensure Network and Information Security (NIS). The draft proposal affects a wide range of sectors, including financial market operators, banks, and all on-line services providers and proposes to apply a mandatory security breach notification regime.

UNITED STATES

Commodity Futures Trading Commission

- On February 26, the CFTC and the International Organization of Securities Commissioners (IOSCO) held a roundtable to discuss the IOSCO Consultation Report, "Financial Benchmarks." The roundtable centered on the principles of the benchmarks and whether all indices should be included under the principles. The group discussed whether the benchmarks should be anchored by observable transactions and how the market can transition away from relying on the benchmark(s) if regulators determine that LIBOR and/or other benchmark(s) should no longer be used.
- On February 28, registered swap dealers began reporting foreign exchange (FX), equity and other commodity OTC derivatives trades. Credit and interest rate derivatives began reporting on December 31, 2012.

Department of Treasury

- On February 28, Jack Lew as sworn in as the 76th Treasury Secretary. The Senate Finance Committee confirmed the nomination in a 71-26 vote.
- Matthew Reed, Chief Counsel of the Treasury Department's Office of Financial Research (OFR) was selected to serve as Chair of the Regulatory Oversight Committee (ROC), an international committee overseeing the launch of the legal entity identifier (LEI), a global standard for financial data.

Securities and Exchange Commission (SEC)

- Current SEC Chairwoman Elisse Walter plans to leave when her term runs out in December, leaving a vacant Republican slot at the Commission.
- The SEC published its examination priorities for 2013, which cover a range of issues at financial institutions, including broker-dealers, clearing agencies, exchanges and self-regulatory organizations, investment companies, hedge funds and private equity funds, and transfer agents. The market-wide priorities include fraud detection and prevention, corporate governance and enterprise risk management, conflicts of interest, and technology controls.

Congressional Oversight

- The Senate Agriculture Committee held a CFTC oversight hearing on February 27. CFTC Chairman Gary Gensler discussed the ongoing LIBOR investigation, Dodd-Frank implementation, and customer protection initiatives undertaken to protect against losses from events like MF Global and Peregrine Financial. During the hearing, Agriculture Committee Chairwoman Debbie Stabenow (D-MI) announced that she and Committee Ranking Member Thad Cochran (R-MS) would be releasing a joint letter to invite public comment on the legislation to reauthorize the Commodity Futures Trading Commission (CFTC), which will be an opportunity to discuss increased funding for the CFTC, and changes to certain CFTC rules.
- **Indemnification:** On February 15, HR 742, a bill to remove the indemnification provisions from Dodd-Frank, was introduced by Congressman Eric Crawford (R-AR), Congressman Bill Huizenga (R-MI), Congressman Sean Patrick Maloney (D-NY), and Congresswoman Gwen Moore (D-WI).

What is Washington Talking About?

- **Sequestration:** In an attempt to curb the U.S. national debt, a series of automatic, across-the-board cuts to U.S. government agencies went into effect on March 1. Congress may work to mitigate some of the impact of the $85 billion FY 2013 spending cuts by providing agencies flexibility in allocating the mandatory reductions. As the impacts of sequestration will not be immediate, there is room for continued negotiations. The most likely vehicle for any agreement is the upcoming FY 2013 appropriations package which must be enacted by March 27.
- **Cyber Security:** On February 12, President Obama issued the cyber security Executive Order (EO), which called for the development of a "cyber security framework" for critical infrastructure and increased information sharing and processing of security clearances for owners and operators of key sectors. In addition, cyber security information sharing legislation (the Cyber Intelligence Sharing and Protection Act) was recently reintroduced and may ultimately be part of a lengthy process to fill in the policy gaps from the EO.

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