ACROSS THE POND
Recent European Policy Developments in Financial Services

11 May, 2011
Issue 2

Across the Pond is a DTCC publication designed to provide a "thumbnail" sketch of financial regulatory reform activities in the United States and European Union. Detailed information on any topic highlighted in *Across the Pond* may be requested from DTCC Government Relations in Brussels or Washington, D.C.

Regulatory Update – 11 May, 2011

The **Council of the EU's** latest draft of EMIR includes the following:

- The scope of the clearing obligation (OTC or all derivatives) is still undecided but reporting obligation does apply to all derivatives.
- There is potential for pension funds to be exempt from clearing obligations for a minimum of three years after implementation.
- Cash equity CCP interoperability is subject to certain requirements such as the provision requiring the requesting CCP to pay for interoperability work.
- A recommendation that the **European Securities and Markets Authority (ESMA)** charge Repositories a 'licensing' fee and create a penalty regime for Repositories that do not adhere to the regulation.
- The role of ESMA and the supervisory colleges was downgraded in favour of local regulatory powers, especially with regard to CCP authorisation to operate.

Political agreement seems increasingly unlikely before the second half of 2011.

The **European Parliament** continues to discuss compromise amendments into the Parliamentary draft of EMIR. It is likely that the Parliament will discuss:

- The scope of clearing and reporting obligations – OTC only or all derivatives?
- The authorisation of CCPs and whether to reinforce the role for ESMA and the College of supervisors.
- Extraterritoriality and the potential inclusion of a regulator indemnity clause mirroring Dodd Frank.

Parliamentary Committee vote on EMIR is scheduled for 24th May while the Plenary is expected to vote by early July.

The **European Commission** continues to work on drafts of legislation expected later this year, e.g. MiFID 2 (Trading), CRD IV (Basel III implementation) and Crisis Resolution (failed Bank resolution).

What is 'Brussels' talking about?

- **Timeframes for agreeing on EMIR —** The prevailing sentiment is that it is more important to 'get it right' than to 'get it out', notwithstanding the impending 3rd anniversary of the demise of Lehman Brothers in September. It seems increasingly likely, for example, that the Council's agreement on EMIR may be much later in 2011 than originally expected.
- **The Deutsche Boerse/NYSE Euronext merger —** It is likely to be referred to the Competition authorities in June, which could delay approval until January 2012 should the Competition authorities follow through on their intention to conduct an 'in-depth review'.

Do you Speak 'European?'

The Council of the EU ('Council of Ministers'): *Not to be confused with The European Council or The Council of Europe, The Council of the EU comprises a ministerial representative (determined by the subject matter) from each of the 27 EU member states and negotiate on pan-EU legislation in key policy areas such a financial services, trade, energy, agriculture, etc. The Council is chaired on a 6-month rotating basis and the Presidency is currently held by Hungary until July 2011. The Council shares its legislative powers with the European Parliament.*

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Recent U.S. Policy Developments in Financial Services

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Regulatory Update – May 11, 2011

To effectively implement the myriad provisions of Dodd-Frank, U.S. regulatory agencies are in the process of promulgating a number of proposed rules including:

- On April 29, the **Treasury Department** issued a Notice of Proposed Determination providing that central clearing and exchange trading requirements would not apply to FX swaps and forwards. The Proposed Determination does not extend to other FX derivatives, such as FX options, currency swaps, and non-deliverable forwards, which will remain subject to clearing and exchange requirements.
- **Commodity Futures Trading Commission (CFTC)** and the **Securities and Exchange Commission (SEC)** continue promulgating proposed rules under Dodd-Frank, addressing many of the remaining topics in open meetings, including key product definitions. The CFTC also voted to extend by 30 days the comment period on most of its Dodd-Frank proposed rules.
- CFTC and prudential regulators including the **Federal Reserve Board (FRB)**, the **Office of the Comptroller of the Currency (OCC)** and the **Federal Deposit Insurance Corporation (FDIC)** issued proposed rules regarding capital and margin requirements for uncleared swaps entered into by swap dealers (SDs) and major swap participants (MSPs). While the CFTC would not require commercial end users to post margin, banking regulators would require margin for risk exposure above a certain level.
- **OCC** published a proposed rule that would authorize national banks, federal branches and agencies of foreign banks, and their operating subsidiaries to engage in certain off-exchange transactions in foreign currency with retail customers.
- **OCC** published a proposed rule jointly with FRB, FDIC, and the SEC, amongst others, that would apply to covered financial institutions with total consolidated assets of $1 billion or more and implement the incentive-based compensation provisions of section 956 of Dodd-Frank.

What is 'Washington' talking about?

- **The Debt Ceiling** – On May 2, Treasury Secretary Timothy Geithner sent a letter to Congress urging an increase in the statutory debt limit and announcing that the Treasury would suspend the issuance of State and Local Government Series Treasury securities.
- **Oversight of Dodd-Frank** – Congress continues to hold hearings related to the implementation, costs and benefits, and overall impact of Dodd-Frank. Key issues addressed during recent hearings include oversight of the Financial Stability Oversight Council (FSOC) and the proposed risk retention rules.
- **Title VII Implementation Deadline** – House Republicans have introduced legislation to extend by 18 months the deadline for implementing Title VII, which addresses regulation of OTC derivatives. The House Agriculture Committee "marked-up" legislation to delay implementation of the Dodd Frank Act during the week of May 2nd. The House Financial Services Committee is expected to do the same shortly, clearing the bill for full House consideration in late May or early June.
- **Indemnification related to Trade Repositories** – Representative Jack Kingston (R-GA) has called upon U.S. regulatory officials to fix the indemnification provisions of Dodd-Frank, or has suggested that a legislative remedy will come from Congress. Further, in remarks to DTCC's Board of Directors, SEC Chairman Mary Schapiro expressed her grave concern with the indemnity provisions of the DFA and expressed a need to find a remedy to avoid fragmentation issues.

Do you Speak 'American?'

Financial Stability Oversight Council (FSOC): *Established by Title I of Dodd-Frank, the FSOC is chaired by the Secretary of the Treasury and includes federal financial regulators, an insurance expert appointed by the President, and state regulators. The FSOC is responsible for identifying threats to the financial stability of the U.S. and the corresponding regulatory response, as well as promoting market discipline generally. The FSOC also has the authority to call for extra federal oversight to be imposed on nonbank financial companies that appear to pose a threat to U.S. financial stability.*

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