

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 25 APRIL 2013

ASIA

Australia

- The Australian Securities and Investments Commission (ASIC) issued two consultations on derivative trade repositories and trade reporting. They outline the information that Australian trade repository license applicants must include in their application, how ASIC intends to deal with these applications and address questions relating to exemptions and overseas trade repositories as well as who and what must be reported. Australia is expected to finalize and implement the new proposals later in the year.
- Following its Board meeting that took place in Sydney, IOSCO appointed Mr. Greg Medcraft, chair of ASIC, as the new chair of IOSCO. He succeeds Mr. Masamichi Kono of the Japan FSA. The Board also elected Ontario Securities Commission chairman Mr. Howard I. Wetston as IOSCO vice chair following the retirement of Mr. Ethiopis Tafara.

Hong Kong

- The Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) recently announced their commitment to comply with the CPSS-IOSCO Principles for financial market infrastructures. Both agencies announced that they intend to implement the Principles within their respective regulatory frameworks through their own regulatory guidelines; the HKMA has already revised its oversight guidelines based on input from the industry and the SFC will issue its guidelines for recognized clearing houses after consultation with relevant stakeholders. CPSS-IOSCO recently announced that they have started the process of monitoring implementation of the Principles, a process which will include reviews carried out in stages, assessing first whether a jurisdiction has completed the process of adopting the legislation and other policies that will enable it to implement the principles and subsequently whether these changes are complete and consistent with the principles and responsibilities.

Japan

- Reporting for OTC equity, FX, credit and interest rate derivatives went live in Japan on 1 April. Under Japan's OTC reporting framework, market participants were required to begin reporting their trades to the DTCC Data Repository Japan or directly to the Financial Services Agency of Japan.

Singapore

- The Basel Committee on Banking Supervision recently published its assessment of Singapore's progress in implementing the Basel capital standards, concluding that Singapore was compliant with the implementation framework. Teo Swee Lian, Deputy Managing Director, MAS said: "MAS is committed to ensuring full, timely and consistent implementation of Basel III in Singapore. Maintaining high standards of financial regulation in Singapore will strengthen the resilience of our banks and stability of our financial system."

Financial Integration in ASEAN

- The 3 April ASEAN Central Bank Governors' Meeting featured the release of a report entitled *The Road to ASEAN Financial Integration - A Combined Study on Assessing the Financial Landscape and Formulating Milestones for Monetary and Financial Integration in ASEAN*, considered by the group to be an important reference for ASEAN to further guide its financial integration process.

EUROPE

Council of the EU & the European Parliament

- **MiFID II/MiFIR:** The Council of Ministers have made progress regarding the MiFID II /R negotiations albeit with a lack of a final agreement on some provisions. The Irish Presidency hopes to reach a political agreement shortly with the aim of kicking off the trilogue negotiations in the coming months. However, issues around open access are still pending and as such any agreement would only be partial. The finalisation of the legislative text is expected by H2 2013 and implementation is expected in late 2015 or early 2016.
- **Single Supervisory Mechanism (SSM):** EU lawmakers took the first step towards establishing a banking union after reaching an agreement on a SSM. The SSM will give the European Central Bank oversight of major Eurozone banks and direct monitoring responsibilities for those with assets of more than €30 billion or assets constituting at least 20% of their home country's GDP. The Parliament will enjoy a greater role in appointing the chairman and vice-chairman of the supervisory board while the ECB will expand, aiming to recruit around 800 new supervision staff over the course of 2013 to fulfill its new role as Europe's single banking supervisor.

- **Parliament consultation on EU financial services legislation coherence:** The Parliament's Economic and Monetary Affairs Committee launched a consultation on ways to further enhance the coherence of EU financial services legislation. The consultation will feed into a 'programme of reflection' to determine future priorities for the remainder of the Parliament's mandate (until June 2014) and to inform the priorities for the next incoming Parliament.

European Commission, European Securities Market Authority (ESMA) & European Systemic Risk Board (ESRB)

- The EMIR package entered into force on 15 March with ESMA issuing its first explanatory FAQs. According to the official timeline, registration for EU trade repositories (TRs) is expected to conclude by 25 June and reporting for credit and interest rate derivatives will begin on 23 September. Reporting for all other asset classes is expected to start on 1 January 2014. European CCPs have 6 months to register and the clearing obligation is likely to go live in mid-2014.
- The Commission revised its work programme for 2013 and is now expected to produce a legislative proposal on EU Securities Law and a draft Framework for the Regulation of the production and use of indices serving as benchmarks in financial and other contracts in June 2013.
- The ESRB published a paper asserting that TRs are well placed to monitor securities lending and repurchase agreements in the EU. The paper also argues that repositories will be ideal for a comprehensive assessment of financial risks.

What is 'Brussels' talking about?

- **Towards an EU FTT:** Following the Commission's revision of a draft proposal for an FTT in 11 EU States, Member-States have entered into negotiations with the hope of reaching an agreement by late 2013. Though the deadline for implementation (1 January 2014) will likely be missed, interested parties are discussing the scope, rate and impact of the tax across the Union as well as clarifying methods for harmonising the tax collection mechanism under the proposal. In response to the proposal, the Parliament has called for, among other things, the creation of a pan-EU FTT Committee consisting of the European Commission, ESMA and the European Central Bank together with the tax authorities of the 11 participating states. Opponents of the tax include non-participating states such as the UK, Luxembourg, Malta and the Czech Republic who have expressed the need for further clarification of the FTT's potential extraterritorial effects and stated that they stand ready to take legal action against the Commission should the proposal go ahead in its current form. Indeed, the UK recently began legal action at the European Court of Justice to protect against future economic damage as a result of the FTT.
- **Recovery and resolution framework for non-banks:** A framework for crisis management and resolution for financial institutions other than banks is expected to be published in November 2013 by the European Commission. MEP Kay Swinburne will be drafting a non-legislative report for the Parliament that will inform the Commission's draft. The report is expected to be finalized by the end of 2013.
- **Preparing for the 2014 European elections:** EU leaders agreed that the next European Parliament elections will take place earlier than expected and are now scheduled for the week of 22 May 2014.

UNITED STATES

Commodity Futures Trading Commission (CFTC)

- The CFTC issued a no-action letter providing swap counterparties that are not swap dealers or major swap participants with certain relief from reporting requirements. Non-dealer, non-financial counterparties, or end users, have until 1 July to begin reporting interest rate and credit swaps and 19 August for equity, foreign exchange and other commodity swaps. Non-dealer financial firms began reporting rate and credit swaps on 10 April but have until 29 May to begin reporting for other categories. For the reporting of historical swaps (pre-Dodd-Frank), non-financial firms have until 31 October to begin reporting and financial firms have until 30 September.
- Commissioner Scott O'Malia issued a statement in response to recent no-action letters, stating that he is troubled by the arbitrary and ad-hoc manner in which relief was provided.
- 10 April was the deadline for all swap counterparties to obtain a CFTC Interim Compliant Identifier (CICI). The CICI utility, operated by DTCC and SWIFT, creates and assigns unique identifiers to any financial organization that engages in a transaction, and stores and validates the accuracy of the associated reference data.
- CFTC Chairman Gary Gensler gave remarks before the U.S. Chamber of Commerce Seventh Annual Capital Markets Summit, and stated that benchmark rates not anchored in actual transactions undermine market integrity.

Securities and Exchange Commission (SEC)

- SEC Chairman Mary Jo White was sworn in as the 31st Chair of the SEC on 10 April. Chairman White was nominated by President Obama on 7 February and confirmed by the Senate on 8 April.
- During an 6 April speech, Commissioner Elisse Walter (then SEC Chairman) reiterated the SEC's support for a legislative fix to the indemnification provisions of the Dodd-Frank Act.

Congressional Activity

- On 14 March, the House Committee on Agriculture held a hearing on potential legislative improvements to Title VII of the Dodd-Frank Act, including H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013. DTCC General Counsel Larry Thompson testified in support of the bill. On 20 March, the Committee approved H.R. 742 with bipartisan support.

- On 11 April, the House Financial Services Subcommittee on Capital Markets and Government-Sponsored Enterprises held a hearing to discuss legislative proposals to amend or repeal provisions in Title VII. H.R. 742 was discussed and Chris Childs, DTCC Data Repository (DDR) Chief Executive Officer reiterated DTCC's support for the legislation.
- On 12 April, the House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies held a hearing on the CFTC budget. CFTC Chairman Gary Gensler and Commissioner Scott O'Malia testified at the hearing, which centered on the role of and funding for technology in the CFTC's oversight activities. In his written statement, Commissioner O'Malia mentioned that "[t]he harmonization of data from dealers and end users into SDRs must be a top priority of the Commission." He also stated that "technology capabilities and reporting done by SDRs must be standardized to provide regulators a view across repositories that facilitate data aggregation and oversight."

What is Washington Talking About?

- **FY 2014 Budget:** On April 10, President Obama delivered his FY 2014 Budget Proposal to Congress. While typically viewed as a policy statement, the President's proposal may have a lessened impact on Capitol Hill as it comes weeks after the House and Senate each approved their own FY 2014 Budget Resolutions. The President's plan calls for \$3.77 trillion in spending and \$1.8 trillion in deficit reduction over the next 10 years. It includes increased funding levels for the CFTC and the SEC.
- **Cyber Security:** The House Intelligence Committee completed its markup of H.R. 624, the Cyber Intelligence Sharing and Protection Act of 2013 (CISPA). Six amendments were adopted by the committee and the bill passed with by a 18-2 vote. The information-sharing bill, which aims to help protect American businesses including financial services institutions and systems, was approved by the full House on 18 April, with additional amendments.