GLOBAL REGULATORY UPDATE – 29 JULY 2013

ASIA

Australia

- The Australian Council of Financial Regulators released a Report on the Australian OTC Derivatives Market. The report addresses regulatory recommendations for trade reporting and platform trading of OTC derivatives, but focuses primarily on the case for mandatory central clearing. The report recommends that "the Government consider a central clearing mandate for US dollar, euro, British pound and yen-denominated interest rate derivatives, primarily on international consistency grounds. The initial focus of such a mandate should be dealers with significant cross-border activity in these products." Further, "the regulators do not see a case for mandating North American and European referenced credit derivatives at this time."
- ASIC recently published final rules and guidance governing OTC derivative transaction reporting as well as new requirements for trade repositories in Australia. The new regime requires Australian entities (and foreign subsidiaries of Australian entities) to report all OTC derivative transactions to a licensed trade repository, though the rules do not address reporting obligations for derivative end-users. ASIC will address these reporting obligations in a subsequent consultation. The new requirements will be phased in through an 'Opt-In Reporting Phase' and three mandatory reporting phases – the first beginning on 1 October 2013. ASIC also issued an FAQ on its new regime.

Hong Kong

- Hong Kong recently announced the gazettal of the Securities and Futures (Amendment) Bill 2013. The Bill introduces mandatory reporting, clearing and trading obligations in line with the G20 commitments, provides for the establishment and regulation of the necessary infrastructure through which the mandatory obligations will be fulfilled, and provides for the regulation and oversight of key players in the OTC derivative market.

Japan

- The Japanese Bankers Association, which represents 143 domestic banks and 49 foreign banks, announced that it is considering the establishment of a new organization within the JBA responsible for the management and administration of the Tokyo interbank offered rate (TIBOR). The JBA also announced its intention to establish an independent oversight committee "to supervise the management and administration of TIBOR, in order to further enhance the governance of benchmark administration." The JBA initially set up a working committee to review the operation and credibility of the benchmark in April 2013.

Singapore

- The Monetary Authority of Singapore (MAS) issued a consultation on draft regulations for the reporting of OTC derivatives. The consultation follows the Securities and Futures (Amendment) Act 2012 which was passed by Parliament on 15 November 2012. MAS proposes to require derivatives contracts "which are traded in Singapore and/or booked in Singapore by specified persons to be reported to a licensed trade repository or licensed foreign trade repository." For banks, reporting will commence for interest rate and credit derivatives in October 2013, other financial entities in January 2014, and non-financials over the specified threshold ($8 billion) in April 2014. The three remaining asset classes are mandated six months after the rates/credit start-up date for each type of entity. MAS also that it is "considering legislative changes to allow banks to report client identity in OTC derivatives transactions without breaching banking confidentiality".

What is Asia Talking About?

"A Path Forward" and Cross-border Issues: Despite the joint US/EU announcement on the cross-border regulation of OTC derivatives (more below), there remains some uncertainty around the regulatory recognition of Asian regimes under Dodd-Frank and EMIR. Moreover, concerns have been raised regarding the impact of the final US Commodity Futures Trading Commission cross-border guidance, which includes an exemptive order from Dodd-Frank requirements until 21 December for dealers in Hong Kong, Japan and Australia. The CFTC also indicated that these jurisdictions' would be eligible for consideration for substituted compliance beyond that time. However, other Asian jurisdictions were not included in the exemption, and as a result, dealers in these jurisdictions would face compliance with CFTC requirements as early as this fall. Although there are currently no US-registered swap dealers operating in these jurisdictions, their absence from the substituted compliance scheme has led to some uncertainty for market participants as they attempt to understand the Asian regulatory environment.

EUROPE

Council of the EU & European Parliament

- **MiFID II/MiFIR:** EU Finance Ministers (ECOFIN) reached a political agreement, thus paving the way for tripartite negotiations, which are expected to last until the end of 2013. The negotiations are likely to focus primarily on the issues of open access and waivers for pre-trade transparency as well as on the Organised Trading Facility category. The final legislative text will likely be approved by early 2014, standards by ESMA to be prepared in 18 months and implementation to start in H1 2016.
- **CSDR:** The Council continues discussions on the draft regulation for CSDs and is expected to reach a political agreement by September. The negotiations focus on non-EU CSD recognition as well as the separation of banking and depository services offered by CSDs.
- **Cyber security:** EU lawmakers continue discussions on the draft Commission proposals on Cyber security strategy and the Network and Information Security Directive (NIS). The EU proposals focus equally on critical infrastructure as well as on consumer protection and data privacy/internet freedom. The NIS platform (a public - private partnership) will be the key venue for sharing information and best practices among industry and national authorities. Decision making is expected to last until 2015/early 2016 as EU governments are still split over the legislative approach to cyber-security and the need to have binding rules in this policy area.

European Commission / European Securities Market Authority (ESMA) / European Central Bank

- Registration for EU trade repositories (TRs) is delayed and the first TR(s) will be registered on 23 September 2013. As a consequence, the EMIR reporting obligation for all asset classes of derivatives is now expected on 1 January 2014, though ESMA is considering pushing back the deadline for exchange-traded derivatives by one year.
- The Commission proposed a Single Resolution Mechanism (SRM) as the second step towards a Eurozone banking union. The draft proposal gives power to the European Commission to decide when systemic Eurozone banks need to be rescued or shut, while including a common resolution fund financed by levies on banks.

What is 'Brussels' talking about?

Towards an EU FTT: The EU States continue to negotiate the proposal, but an agreement is unlikely before Q4 2013. Therefore the Commission has pushed back the initial implementation date to H2 2014. In view of the reaction of central banks and industry to the original FTT proposal, the FTT discussion is shifting to how to coordinate national FTTs or stamp duty type taxes in 11 participating EU States rather than having a single FTT for 11 States. The scope of the original proposal is also likely to be scaled back so that the tax would first be applied to equities and only afterwards to derivatives. The exact scope of the tax will, nonetheless, depend on the on-going discussions between the Member States that will decide on the final legislative act.

Recovery and resolution framework for non-banks: The European Commission is due to propose a draft on recovery and resolution for CCPs by the end of 2013. The file is not expected to be agreed upon before the end of 2014. MEP Swinburne has drafted a non-legislative report for the European Parliament that is expected to be finalized by October, offering guidance to the Commission's draft.

EU – US Free Trade Agreement: The EU and US negotiators launched talks on a Free Trade Agreement which are likely to last for at least 2-3 years. The first round is likely to focus on the framework and the scope of the negotiations While it is still unclear exactly how financial services will be impacted by the deal, it is likely that trade talks could offer a venue to partially cover the EU's equivalence framework in financial services policy.

The European Union and Commodity Futures Trading Commission Common Path Forward on Derivatives

On 11 July, CFTC Chairman Gary Gensler and EU Commissioner Michel Barnier announced an approach for overseeing the global derivatives market, allowing jurisdictions and regulators substituted compliance. The CFTC subsequently finalized its cross-border guidance and cross-border phase-in exemptive order. Highlights of the agreement and guidance include:

- **Exemptive Order:** The Commission approved an exemptive order giving the industry 75 more days to comply with the new cross-border guidance. See CFTC Fact Sheet: Exemptive Order and CFTC Fact Sheet: Cross-Border Guidance.
- **Transaction-Level Requirements**: The CFTC issued no-action relief for certain transaction-based requirements for bilateral uncleared swaps, and clarifyied that where a swap is executed on an anonymous and cleared basis on a registered designated contract market (DCM), swap execution facility (SEF), or foreign board of trade (FBOT), the counterparties will have met transaction-level requirements. The CFTC also gave temporary relief to certain EU-regulated multilateral trading facilities.

- **Resolving Remaining Issues on Margins:** The CFTC and EU will harmonize rules on margins for uncleared swaps and resolve remaining issues such as consistent data fields, access to data, and other issues related to privacy, blocking, and secrecy laws. With regard to derivatives clearing organizations (DCOs) and central clearing counterparties (CCPs), the CFTC and EU will work together to reduce any regulatory arbitrage opportunities. The CFTC will ensure that DCOs/CCPs not yet been recognized or registered will be permitted to continue operations.
- **Approach to Offshore Guaranteed Affiliates, Branches, and Investment Vehicles:** The CFTC clarified that substituted compliance is permitted regarding transactions requirements for swaps between non-US swap dealers and US-persons or guaranteed affiliates of US persons, as well as swaps between two guaranteed affiliates that are not swap dealers. Foreign branches of US swap dealers may be able to comply with CFTC rules through substituted compliance, provided the foreign branch is bona fide and the swap is entered into by that branch.
- **Mandatory Clearing:** The announcement states that the CFTC and EU have similar mandatory clearing requirements. The CFTC and EU agreed to a 'stricter-rule-applies' approach to cross-border transactions where exemptions from mandatory clearing would exist in one jurisdiction but not in the other. For additional information, view CFTC Press Release.

UNITED STATES

Commodity Futures Trading Commission

- The CFTC expanded the list of Legal Entity Identifiers (LEIs) that can be used to comply with swap data reporting regulations by providing mutual acceptance with international regulators. The CFTC revised its previous order which directed all registered entities and swap counterparties required to use LEIs in swap recordkeeping and swap data reporting to use LEIs (known as CFTC Interim Compliant Identifiers or CICIs) provided by DTCC and SWIFT.
- Jill Sommers stepped down as a CFTC commissioner after having served since 2007.

Securities and Exchange Commission (SEC)

- The Senate Banking Committee voted unanimously to confirm SEC Democratic nominee Kara Stein and Republican nominee Michael Piwowar as SEC Commissioners, paving the way for a full Senate vote. The Committee also voted to confirm SEC Chair Mary Jo White for a full five-year term.

Federal Reserve

- The Federal Reserve voted to adopt final rules implementing the Basel III international bank capital agreement. On 9 July, the Federal Reserve, Federal Deposit Insurance Corp., and Office of the Comptroller of the Currency put out for comment a proposal for a stricter leverage ratio than the standard included in the Basel III agreement.

Congressional Activity

- The Senate Agriculture Committee recently held a hearing to consider CFTC reauthorization. The committee published letters from companies and interest groups, including DTCC, outlining recommendations on how the process should be handled.
- The House passed several bills related to derivatives and swaps regulation provisions under the Dodd-Frank Act, including the Swap Data Repository and Clearing House Indemnification Correction Act of 2013 (H.R. 742). The bipartisan legislation was passed in a 420-2 recorded vote.

What is Washington Talking About?

21st Century Glass-Steagall Act? Senators John McCain, Elizabeth Warren, Maria Cantwell and Angus King introduced legislation that would separate commercial and investment banking activities. The lawmakers say that the legislation would prevent risky financial institutions from relying on the Federal Deposit Insurance Corporation (FDIC) as a safety net for high-risk activities. Opponents state that reinstating a Depression-era law would not necessarily address the current threats to the financial system.

Immigration Standstill: While the U.S. Senate passed a bill to overhaul the nation's immigration laws, House Democrats are working to push immigration legislation through the Republican-controlled House. Over the last few weeks, House Republicans made it clear that the bipartisan Senate bill is dead on arrival in the House and announced that they would move forward in a piecemeal fashion, rather than attempting the Senate's comprehensive approach. The message from House Democrats is just as straightforward: Any immigration bill that passes the House needs to include a pathway to citizenship.