Recent Policy Developments in Financial Services

ACROSS THE POND

# GLOBAL REGULATORY UPDATE – 22 OCTOBER 2013

## ASIA

### Australia

- Five of the major Australian banks active in the over-the-counter (OTC) derivatives market began reporting their transactions to DTCC's Global Trade Repository on 1 October under trade reporting rules recently finalized by the Australian Securities and Investments Commission (ASIC). Under the new requirements Australian financial institutions registered as swap dealers with the US Commodity Futures Trading Commission (CFTC) were required to report their OTC derivatives transactions by the 1 October (Phase 1) deadline. Phase 2 requires major financial institutions with total gross notional outstanding positions of AUD50 billion or more to report OTC credit and interest rate derivatives by 1 April, 2014, and other OTC derivative instruments (other than electricity derivatives) by 1 October, 2014. Phase 3 requires other Australian Authorized Deposit-taking Institutions (ADI), Australian financial services (AFS) licensees, clearing and settlement (CS) facility licensee or an exempt foreign licensee to report OTC credit and interest rate derivatives by 1 October, 2014, and by 1 April, 2015, for all other OTC derivative asset classes.
- ASIC published a report examining the Australian hedge fund sector and its impact on systemic risk. The report concluded that a) "the hedge funds ASIC identified manage only a small share of Australia's $2.1 trillion managed funds industry with more than half of these holding less than $50 million each"; b) "Australian hedge funds do not currently appear to pose a systemic risk to the Australian financial system"; and c) "listed equities represent surveyed hedge fund managers' greatest asset exposure, with 32% of this being in Australian-listed shares."
- The Australian Stock Exchange's new OTC Derivatives Clearing Service successfully cleared its first Australian dollar interest rate swap trade in an OTC transaction between the Commonwealth Bank of Australia and Deutsche Bank. The centralised clearing service will ultimately be extended to additional currencies and derivatives instruments and client clearing will be implemented by the end of 2013.

### Hong Kong

- The HKMA and the Securities and Futures Commission (SFC) jointly published their conclusions to responses received to their supplemental consultation regarding the proposed scope of activities to be regulated under new OTC derivatives rules, as well as regulatory oversight of systemically important participants.
- The HKMA also released a series of FAQs addressing the counterparty credit risk framework under the Basel III capital rules. The HKMA intends to release further FAQs, with the next series set to address the revised definition of capital under Basel III.

### 'What is Asia talking about'?

**EMIR equivalence:** ESMA issued additional technical advice to the European Commission on the equivalence of the regulatory regimes of Hong Kong, Singapore and Australia with EMIR, following an initial round of assessments released in September. ESMA also issued its first round of technical advice for South Korea and India for CCPs. Highlights include:

- **Singapore:** ESMA proposed conditional equivalence with EMIR. ESMA's mandate on equivalence for Singapore covers both the recognition of third country CCPs and the recognition of third country trade repositories (TRs). Singapore's CCP rules were recommended for conditional equivalence in the first round of advice issued in September. In its latest supplement, ESMA recommended Singapore's TR regime be considered equivalent with EMIR.
- **Hong Kong:** The equivalency mandate for Hong Kong covers the recognition of third country CCPs; the recognition of third country TRs; and the identification of potentially duplicative or conflicting requirements. Regarding TRs and duplicative requirements, ESMA advised that it was unable to "perform a conclusive analysis and to deliver technical advice" because Hong Kong is still in the process of finalizing its regulatory regime. However, ESMA indicated that it "stands ready to receive a new mandate from the Commission" in order to carry out an equivalency determination in the future. Hong Kong CCPs were recommended for conditional equivalence in ESMA's September release.

- **Australia:** ESMA proposed that Australia's CCP regime be considered equivalent with EMIR in September and, in its latest round of technical advice, recommended Australia's TR regime also be considered equivalent.
- **South Korea and India:** ESMA determined that the respective rules for CCPs were broadly equivalent to EMIR, while raising concerns that not all CCPs meet the same level of standards. As a result, ESMA noted that if a "CCP authorised in India [or South Korea] that was granted recognition by ESMA subsequently made changes to its internal policies, procedures, rules, models and methodologies in a way which meant that the CCP no longer complied with standards that were broadly equivalent to the legally binding requirements for CCPs under EMIR, then that CCP would no longer qualify for recognition…"
- The European Commission is expected to use ESMA's advice to prepare formal equivalence decisions in the coming months.

## EUROPE

### Council of the EU & European Parliament

- **MiFID II/MiFIR:** EU institutions launched tripartite negotiations in order to reach a final political agreement on the file by the end of the year. The negotiations are focusing 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 mid-2014, standards by ESMA to be prepared in 18 months and implementation to start in H1 2016.
- **CSDR:** The Council reached a partial agreement on the draft regulation on CSDs and is now expected to kick off tripartite negotiations with the Parliament and the Commission. The focus of the State negotiations is on separation of banking and depository services offered by CSDs. Issues related to non-EU CSDs will also be discussed during the trialogues, which are likely to conclude by the end of 2013.
- **Cyber security:** Lawmakers made some progress on the draft Commission proposals on Cyber security strategy and the Network and Information Security Directive (NIS), but it is unlikely that the legislative file will be concluded before the end of this Parliament and Commission (April 2014). EU lawmakers remain divided over the need for a legislative approach to cyber security. The decision making process is expected to last until 2015 and implementation is envisaged for 2016.

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

- Registration for EU trade repositories (TRs) is further delayed and the first TR(s) will be registered on 8 November 2013. As a result, the EMIR reporting obligation for all derivative asset classes is now expected on 12 February 2014.
- ESMA issued their advice to the Commission on equivalence for the clearing and reporting regimes of non-EU countries (more information above).
- The Commission proposed a draft proposal for a Regulation on indices used as benchmarks in financial instruments and financial contracts. The proposal covers all benchmarks that are used to reference financial instruments admitted to trading or traded on a regulated venue; those that are used in financial contracts; and those that are used to measure the performance of investment funds. The European Parliament and the Council will now consider the proposal, which is unlikely to be finalized before the end of 2014/early 2015 as it will picked up by the new Parliament in July 2014.

### What is 'Brussels' talking about?

**EU – US Free Trade Agreement:** The EU and US negotiations were launched and are likely to last for at least 2-3 years. 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 EU institutions and key state officials are firmly in favor of the inclusion of both market access and regulatory convergence issues in the discussions.

## UNITED STATES

### Commodity Futures Trading Commission (CFTC)

- The CFTC postponed certain swap data reporting requirements for swap-execution facilities (SEFs) that took effect on the 2 October compliance date. Foreign exchange trade reporting was delayed until 30 October while commodity and equity reporting was postponed until 2 December. There is no delay for credit and interest rate products. Mandatory trade execution is not yet in place as the CFTC has not made a "made available to trade" determination.
- On 12 September, proposed legislation regarding CFTC derivatives transaction fees for futures, options on commodities, and swaps was submitted to the House and Senate. Firms using derivatives to hedge business risks would be exempt from the charges under the plan. The CFTC would set a fee to fund the agency although Congressional approval is required before it could take effect.
- On 9 September, the CFTC approved for publication in the Federal Register a concept release on risk controls and system safeguards for

automated trading environments. It provides an overview of the automated trading environment and requests public comment regarding (1) pre-trade risk controls; (2) post-trade reports and other measures; (3) system safeguards related to the design, testing and supervision of automated trading systems (ATSs); and (4) additional protections designed to promote safe and orderly markets.

- On 1 August, the White House announced that President Obama plans to nominate J. Christopher Giancarlo to serve as a CFTC Commissioner. Mr. Giancarlo currently serves as Executive Vice President at GFI Group.

## Securities and Exchange Commission (SEC)

- In August, SEC Commissioner Kara Stein and Commissioner Michael Piwowar were sworn into office. Earlier that month, the Senate confirmed SEC Chairman Mary Jo White to serve a five-year term that lasts until June 2019. The Senate previously confirmed a partial term that ends next year.
- The SEC requested public comment regarding its cross-border security-based (SB) swap activities and re-proposal of Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information. In total, 29 letters were filed, including from foreign regulators, trade groups, dealers, buy-side firms and Senators.

## Federal Reserve

- On 9 October, President Obama nominated Dr. Janet Yellen to serve as Chair of the Board of Governors of the Federal Reserve. Dr. Yellen has served in leadership positions at the Fed for more than a decade, including Vice Chair. If confirmed by the Senate, Dr. Yellin would be the first woman to hold the position of Chair of the Board of Governors of the Federal Reserve.

## Congressional Activity

- The House Agriculture Subcommittee on General Farm Commodities and Risk Management and the Senate Agriculture Committee held hearings regarding reauthorization of the Commodity Exchange Act (CEA) and the CFTC. While the CFTC's authorizing legislation expired 30 September, the commission can continue to operate despite the delayed reauthorization process. Various industry stakeholders, including DTCC, submitted statements for the record.
- The House and Senate are reviewing the Terrorism Risk Insurance Act (TRIA), which is set to sunset at the end of 2013 without an extension. The act provides a federal backstop for the insurance industry in regards to acts of terrorism.
- Cyber security and best practices for critical infrastructures remain a legislative priority. On 25 July, the Senate Commerce, Science and Transportation Committee held a hearing on improving cyber security through the NIST and private sector partnership. Mark Clancy, DTCC's Corporate Information Security Officer, testified at the hearing. In August, DTCC released an industry white paper on systemic risk that identified emerging trends that could potentially impact the industry's ability to protect against threats to the financial system. Potential threats include a rise in cyber-attacks that could thwart industry safeguards and laws. View the Systemic Risk Briefing Paper for more information.

## What is Washington Talking About?

- **Congress ends government shutdown and avoids default:** After a two-week government shut down and one day before the U.S. Treasury said it would exhaust its ability to borrow new funds, Congress approved a deal allowing the government to avoid a debt default and end the shutdown. On 16 October, President Obama signed the spending measure which passed the Senate and House of Representatives. The deal offers only a temporary fix – it funds the government until 15 January 2014 and raises the debt ceiling until 7 February 2014, so Americans face the possibility of another budget fight and potential government shutdown early next year.