Recent Policy Developments in Financial Services

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 3 DECEMBER 2013

ASIA

Singapore

- Singapore's trade reporting regime for OTC derivatives came into effect on 31 October 2013, starting with the reporting of interest rate and credit derivatives. According to the Monetary Authority of Singapore (MAS), while entities can choose to comply with the reporting requirements as of the regime's commencement, they are not required to do so until their respective reporting commencement dates, which will roll out over several phases. The reporting dates for banks, other financial entities, and significant derivatives holders are 1 April 2014, 1 July 2014, and 1 October 2014 respectively. However, ISDA submitted a letter on 5 November on behalf of 20 industry participants in which they committed to begin trade reporting by 3 February 2014, ahead of the mandatory reporting timeline.
- To support trade reporting, the MAS approved the DTCC Data Repository (Singapore) PTE Ltd. (DDRS) to operate a global trade repository in Singapore. The first bank commenced reporting to DDRS on 4 November and DTCC has begun on-boarding of MAS-regulated dealers and banks in preparation for mandatory reporting. The Singapore repository will also serve as a hub for supporting regulatory reporting for other jurisdictions in the region including Australia.
- The MAS announced that an assessment performed by the International Monetary Fund found Singapore's financial sector to be well-regulated and highly developed. Some highlights of the report include:
  - Singapore presents a very high level of compliance with international standards for the regulation and supervision of the banking, insurance and securities sectors, and financial market infrastructures.
  - Stress tests conducted under the assessment indicate that banks and insurers are resilient to adverse macroeconomic scenarios.
  - Crisis management and resolution arrangements are generally strong. The necessary legal framework is in place, with tools and responsibilities clearly allocated among public bodies and robust arrangements for information sharing and coordination.

South Korea

- In an effort to ensure the participation of European banks, South Korea's OTC derivatives clearing service is now set to begin on a voluntary basis in Q1 2014, with mandatory clearing expected by 30 June, 2014. The clearing mandate was originally set for October 2013, but was subsequently delayed because of uncertainty over whether the KRX central counterparty would be recognised as equivalent with European standards. Korea was initially granted third-country conditional equivalence by the European Securities and Markets Authority (ESMA) in October, and the European Commission is expected to use ESMA's advice to prepare final equivalence determinations in the coming months. KRX has also indicated that it will seek US recognition as a derivatives clearing organisation under Dodd-Frank in 2014.

What is 'Asia' talking about?

OTC market transparency in Asia – With the commencement of its new reporting regime Singapore joins a growing list of Asian jurisdictions who have implemented OTC derivative reporting requirements, including Japan and Australia, with more to come. Under Japan's reporting framework, reporting for OTC equity, FX, credit and interest rate derivatives went live in on 1 April, while five of the major Australian banks active in the OTC derivatives market began reporting their transactions on 1 October under trade reporting rules recently finalized by the Australian Securities and Investments Commission.

EUROPE

Council of the EU & European Parliament

- MiFID II/MiFIR: The EU institutions are continuing their trilogue negotiations in an attempt to reach afinal political agreement by the end of the year. The negotiations are focused on the issues of open access and waivers for pre-trade transparency as well as issues surrounding third (non-EU) countries. The final legislative text will likely be approved by early 2014, with standards by ESMA to be prepared in 18 months and implementation in H1 2016.
- **CSDR:** Tripartite negotiations between the EU institutions are underway and focus on the thorny issues of the separation of banking from depository services offered by CSDs as well as on settlement fines. Regarding non-EU CSDs, the institutions have reached a broad agreement and a reference to the CPSS-IOSCO principles is likely to be part of the final agreement. The negotiations are expected to be finalised by the end of 2013.
- **Benchmarks and indicies:** Following the publication of the Commission's draft, the European Parliament's ECON Committee adopted an ambitious timeline and held their first discussion on the draft Regulation on 'Indices used as benchmarks in financial instruments and financial contracts'. MEPs pledged for the rapid approval of the proposal, but disagreed on the scope. The Rapporteur of the dossier, MEP Bowles (liberal-ALDE, UK) has drafted her report and expects amendments by MEPs by mid-December with the aim of having the report voted on at the Committee level by 30 January. The Parliament is likely to divide benchmarks according to critical, major and others focusing on top interest rate and commodity benchmarks. On third countries, the Parliament would like to reference the current IOSCO equivalence standards.

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

- ESMA formally registered four EU trade repositories (TRs) on 7 November 2013 and consequently the EMIR reporting obligation for all asset classes of derivatives (OTC and Listed) is expected on 12 February 2014. DTCC's Derivatives Repository Ltd (DDRL) is one of the approved TRs for EMIR reporting. Two additional TRs were approved by ESMA on 28 November.
- The Financial Stability Board's ROC endorsed three pre-LOUs as solutions to the interim LEI regime. Consequently ESMA issued guidance on the adoption of the three approved pre-LOUs for EMIR reporting. DTCC's CICI code is one of the approved solutions for derivative reporting.
- ESMA published an updated version of EMIR FAQs covering issues around CCP segregation and portability as well as TR reporting of collateral and valuation. Other issues include the calculation of the clearing threshold, risk mitigation techniques for non-cleared OTC derivatives, portfolio reconciliation and pension scheme exemption from the clearing obligation. ESMA is expected to issue guidance on listed derivatives reporting in the coming weeks.
- ESMA published a list of the 30 non-European Economic Area CCPs that have so far applied for recognition by ESMA under EMIR. The list includes a number of clearinghouse providers from the US, Japan, Singapore, Australia, Hong Kong, Korea and Switzerland.
- The European Systemic Risk Board (ESRB) published its sixth Issue of Macro-Prudential Commentaries on "Central Counterparties and Systemic Risk" arguing that CCPs may be considered a central hub for systemic risk management, placing considerable responsibility on CCPs, their regulators and supervisors. The document provides an overview of the role of CCPs in the financial system and analyses the importance of CCPs' resilience for broader financial stability. The European Commission is expected to review the requirements imposed on CCPs under EMIR by 17 August 2015.

What is 'Brussels' talking about?

EU – US Free Trade Agreement: The EU and US negotiators continued to discuss the potential trade agreement and it is still unclear 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. To note that data privacy issues, following the Snowden allegations on spying activities, have influenced the talks while the European Parliament plenary voted in favour of a non-binding resolution to suspend the EU's Terrorist Finance Tracking Programme (TFTP) agreement with the US. The vote was a response to the allegations that the US NSA accessed EU citizens' bank data held by SWIFT.

UNITED STATES

Commodity Futures Trading Commission (CFTC)

- The CFTC is aggregating data from swap data repositories, including the DTCC Data Repository (U.S.) LLC (DDR), to compile a new swaps report in an effort to increase transparency on contract terms and pricing data. The report includes data on dollar volume and ticket volume of different types of swaps, including currency, equity, credit, commodity and interest-rate swaps
- On 14 November, the CFTC issued an advisory that foreign banks, whether or not they are an affiliate of a U.S. company, must comply with regulations under Dodd-Frank if their swap trades are arranged by someone in the United States. The clarification was in response to inquiries from swap market participants regarding the applicability of the CFTC's requirements for swaps. The move prompted criticism from top European regulators, including Commissioner Michel Barnier, who feel that the policy directly contradicts commitments made under the US/EU "Path Forward" derivatives agreement. On 26 November, CFTC staff issued a no-action letter that pushed back the deadline to comply with certain provisions of its cross-border guidance for OTC derivatives transactions to 14 January.
- On 12 November, President Obama nominated Timothy G. Massad to serve as Chairman of the CFTC. Massad currently serves as Assistant Secretary for Financial Stability at the Treasury Department and would replace current CFTC Chairman Gary Gensler. The nomination goes to the Senate Agriculture Committee for review before being sent to the full Senate for consideration.
- Last month, Commissioner Bart Chilton announced his intention to leave the CFTC. He has served on the five-member commission since 2007. President Obama has not yet announced a nominee to fill the open seat.
- The CFTC met on 5 November to consider proposed rules on position limits. The CFTC's 2011 position limits rule was thrown out by a court in 2012. The Commission approved a proposed regulation on position limits for derivatives and proposed regulations for aggregation of accounts under Part 150. For more information, view Fact Sheet: Proposed Regulations on Position Limits for Derivatives and Q&A: Position Limits for Derivatives.
- Agencies tasked with writing the Volcker Rule are in communication as the year-end deadline set by Treasury Secretary Jack Lew for finalizing the rule approaches. The Volcker Rule, as described in the Dodd-Frank Act, is intended to prohibit proprietary trading by banking institutions. Commissioners received a draft of the final rule and the CFTC is expected to vote on the final rule shortly. Commissioner Bart Chilton stated his opposition to the current draft rule, and SEC Commissioner Kara Stein has voiced concerns.

Congressional Activity

- The Senate Banking Committee approved the nomination of Janet Yellen to serve as Chair of the Board of Governors of the Federal Reserve System. She currently serves as Vice Chair and would replace current Chair Ben Bernanke. Yellen is expected to be confirmed by the full Senate but a vote has not been scheduled.
- On 13 November, the House Financial Services Subcommittee on Housing and Insurance examined the Terrorism Risk Insurance Act (TRIA) with a specific focus on whether private sector capital and innovation can be leveraged to limit current taxpayer exposure under the law. TRIA is presently set to expire at the end of 2014.
- On 31 October, Republican Senators blocked a vote on the nomination of Congressman Mel Watt (D-NC) to be director of the Federal Housing Finance Agency (FHFA), the conservator of Fannie Mae and Freddie Mac. The Senate voted 56-42 against advancing his nomination, just four votes short of the 60 needed at that time to limit debate and move to a vote.

What is Washington Talking About?

Nuclear Option: The Senate recently voted to change rules regarding presidential nominees. Under the new ruling dubbed the "Nuclear Option," presidential picks other than nominees for the Supreme Court will now require a majority vote in order to limit debate rather than the 60 votes previously required. The first nominees likely to be impacted include Janet Yellen (nominee to lead the Federal Reserve), and Congressman Mel Watt (nominee to lead the FHFA). The rules change also means that Timothy Massad (nominee for CFTC Chairman) may have a smooth path to confirmation unless Democratic opposition emerges.

CFTC Commissioner Vacancies: As the Senate Agriculture Committee is not expected to vote on nominees in 2013, the CFTC may be left with only two Commissioners in January: Democrat Mark Wetjen and Republican Scott O'Malia. The split is expected to restrict major policy decisions. Nominees Timothy Massad and J. Christopher Giancarlo (nominated to replace former Commissioner Jill Sommers) and Commissioner Bart Chilton's unnamed replacement require approval from the Committee before going to a full Senate floor vote.

Ongoing Budget Concerns: While some believe the impact of October's partial government shutdown appears to be less than feared, there are lingering concerns regarding what lies ahead. The shutdown led to the creation of a Senate-House conference committee to resolve fiscal disputes and the committee has until 13 December to provide recommendations. In addition, Treasury Secretary Lew recently urged Congress to raise the debt limit in advance of a February deadline. According to the Congressional Budget Office, the Treasury Department's use of "extraordinary measures" will likely give lawmakers an additional month to work through a deal to raise the debt ceiling.