



ACROSS THE POND

GLOBAL REGULATORY UPDATE – 24 APRIL 2014

ASIA

Australian Securities & Investments Commission (ASIC)

- On 3 April, ASIC jointly published a [Report on the Australian OTC Derivatives Market](#) with The Reserve Bank of Australia and the Australian Prudential Regulation Authority. The new report “constitutes the latest advice from the Regulators...on mandatory requirements for central clearing, platform trading and trade reporting of over-the-counter (OTC) derivatives.”

Hong Kong Monetary Authority (HKMA)

- The HKMA recently announced the outcome of its investigation into the Hong Kong Interbank Offered Rate (HIBOR) fixing, which examined nine of the banks designated as HIBOR reference banks. The Hong Kong regulator found evidence of misconduct in the submission of HIBOR rates by only one bank – UBS AG – but no evidence of collusion.
- Mr Norman Chan was re-appointed as the Chief Executive of the HKMA through September 2019.

Japan Financial Services Agency (JFSA)

- The annual EU-Japan High Level Meeting on Financial Issues took place in March in Brussels and was co-hosted by Mr Masamichi Kono, Vice Commissioner for International Affairs of the JFSA and Mr Jonathan Faull, Director General, Directorate General for Internal Market and Services of the European Commission. The meeting provided a forum for senior officials from both sides to exchange views on recent financial reforms, including those on banks, insurance, benchmarks, derivatives, accounting and investment funds. According to the release, “both parties reiterated their pledge to implement G-20 commitments and agreed to jointly enhance regulatory cooperation, recognizing the importance of consistently implemented international standards and close supervisory cooperation which would enable the EU and Japan to rely on each other’s rules.”
- Also in March, the JFSA published [Comprehensive Guidelines for Supervision of Financial Market Infrastructures](#) designed to clarify the viewpoints, methods, etc. of supervision of financial market infrastructures in consideration of the new international standards. The Guidelines apply to Clearing Organizations, Fund Clearing Organizations, Book-entry Transfer Institutions, and Trade Repositories.

EUROPE

Council of the EU & European Parliament

- **MiFID II/MiFIR:** The European Parliament’s Plenary voted on the final legislative package and the revised Directive and Regulation is expected to be officially published in June. ESMA began working on the Level 2 measures and will issue a discussion paper in June presenting policy options on regulatory technical standards and implementing technical standards as well as a consultation. ESMA will then have until December 2014 to deliver its advice on Delegated Acts to the Commission, and in early January 2015 ESMA will present a further consultation paper on regulatory technical standards and implementing technical standards on the legislative texts of the Level 2 measures. ESMA’s deadline for regulatory technical standards is June 2015 and December 2015 for implementing technical standards. The implementation of MiFID/MiFIR is due in January 2017.
- **CSDR:** The final legislative text was approved and the official publication is expected in May/June. ESMA will work on technical standards and is expected to deliver them by Q4 of 2014. Implementation will kick in gradually from 2015, while the shortening of the settlement cycle in Europe will begin on 6 October 2014. The new rules will also introduce an additional capital charge for CSDs and banks providing these banking services to CSD users; enhanced cooperation of supervisors in authorizing and supervising securities lending, collateral management and asset servicing to CSD users and a certain degree of flexibility on settlement fines. Non-EU CSDs will need to follow an authorisation process based on equivalence criteria in which ESMA will play a leading role, but global principles of CPSS-IOSCO will be taken into consideration.
- **FTT:** EU states discussed the proposal, but progress has been limited, especially regarding the discussion of the scope, criteria, and procedural aspects of the proposed tax. There is, however, an agreement that the initial tax will aim at shares and equity with a gradual extension to other instruments. The Hellenic EU Presidency hopes to work out a political agreement at the 6 May Ministers Council in

light of the pressure from Germany and France, and ahead of the EU elections in May. The proposed tax, if it does see the light of day, will probably not be implemented before 2016.

- **Banking Union** [Single Supervisory Mechanism (SSM) + Single Resolution Mechanism (SRM) + Deposit Guarantee Scheme (DGS) plus rules on Bank recovery and Resolution]: The package has been approved and will gradually kick in from November 2014 with the establishment of the SSM, which will monitor the health of large Eurozone banks. The most controversial part of the package, the SRM, was finally agreed, albeit in a less ambitious fashion, and the transitional rules for the Resolution fund will come to an end by January 2024. The reform represents the most important development in EU's economic policy in recent years and is a step towards further integration of the Eurozone.

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

- The OTC Derivatives Regulators (ODRG) published its [first report on cross border issues](#) addressing issues of equivalence and trade reporting. The next report of the group is set for September 2014.
- ESMA has issued its authorization for four CCPs under EMIR: Eurex Clearing, NASDAQ OMX, KPDW and EuroCCP.
- The Commission launched a consultation to clarify FX derivatives definitions following ESMA's request and after EU state concerns about the lack of harmonisation between the EU states on the definition and coverage under EMIR.
- The European Supervisory Authorities launched a consultation on remaining parts of EMIR rules covering risk management procedures for non-centrally cleared OTC derivatives, the criteria concerning intragroup exemptions and the definitions of practical and legal impediments. The consultation focuses on the impact on small or medium-sized entities or entities from specific sectors, operational capabilities, the special treatment for covered bonds swaps, the use of internal models and concentration limits. In addition, the ESAs are proposing not to allow re-hypothecation of collateral collected for initial margins.
- The Commission proposed its draft Corporate Governance Package which includes: 1) a Revision of the Shareholder Rights Directive; 2) a Recommendation on the quality of corporate governance reporting; and 3) a Single-Member Companies Directive. In the Revision of the Shareholder Rights Directive, the Commission tackles the engagement of institutional investors and asset managers, the link between pay and directors' performance, the shareholder oversight on related party transactions, proxy advisors' transparency and the exercise of rights flowing from securities for investors. The proposal focuses on enhanced transparency when it comes to identifying shareholders and the usage of LEIs is encouraged to track companies in cross-border situations.

What is 'Brussels' talking about?

EU elections Volume II: 2014 – Candidates ready? GO

- Following a series of negotiations and compromises the EU's political groups have finalized their candidates for the Commission's Presidency race: Jean-Claude Juncker, conservative EPP; Martin Schulz, Socialist S+D; Guy Verhofstadt, Liberal ALDE; Alexis Tsipras, left wing GUE; and, for the European Green Party, José Bové and Ska Keller.

2014 is a year of change, uncertainty and renewal for the EU Institutions with a new European Parliament, a new European Commission and new President of the European Council. In May, the European Parliament elections will take place and will decide the composition of the 8th legislature of the European Parliament from 2014 to 2019. In addition, from November 2014 we will also see a new mandate of the European Commission and the end of the final term of the President of the European Council (Herman van Rompuy). The institutional changes will shake up the dynamics in Brussels and will have an impact on policy and legislative agenda (speed up, slow down and/or change of direction); potential new political constellation or alliances in the European Parliament with left and right-wing Eurosceptic winning significant power as well as new leading personalities at all three institutions and consequently re-directed policy agendas and political priorities.

UNITED STATES

Commodity Futures Trading Commission (CFTC)

- On 3 April, CFTC staff held a [public roundtable](#) to discuss end-user issues under the Dodd-Frank Act. The roundtable consisted of three panels, discussing: (1) obligations of end-users under Regulation 1.35 concerning recordkeeping for commodity interest and related cash or forward transactions; (2) appropriate regulatory treatment of forward contracts with embedded volumetric optionality; and (3) appropriate regulatory treatment for purposes of the \$25 million (special entity) de minimis threshold for swap dealing to government-owned electric utilities.
- On 26 March, the CFTC published a concept release requesting public comment on ways to improve the agency's data collection and quality standards for swap transactions. The [request for comment](#), which has a 27 May deadline, seeks input on approximately 70 questions addressing topics including data harmonization, the reporting of primary economic terms, confirmation and continuation data, the manner in which the reporting rules address different transaction types, business models and data flows present in swaps markets.
- Last month, the CFTC and Canadian officials agreed to cooperate on cross-border supervision of the derivatives market. Acting Commissioner Mark Wetjen and leaders of the Alberta Securities Commission, British Columbia Securities Commission, Ontario Securities Commission and the Autorité des marchés financiers in Quebec entered into a [memorandum of understanding](#), agreeing to cooperate and exchange information in the supervision of regulated entities that operate in the United States and in those Canadian jurisdictions. According to the CFTC, the scope of the MOU includes markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers and other participants.

Securities and Exchange Commission (SEC)

- The SEC recently proposed new rules for security-based swap dealers (SB SDs) and major security-based swap market participants (SB MSPs). The proposed rules cover recordkeeping, reporting, and notification requirements for SB SDs and SB MSPs and would establish additional recordkeeping requirements for broker-dealers to account for their SB swap activities.
- In March, the SEC [approved proposed rules](#) to enhance the oversight of “systemically important” clearing agencies or clearing agencies that clear security-based swaps. The rules regulate the clearing agency’s general organization, financial risk management, settlement and settlement systems, operational risk management, participation access, efficiency and transparency.
- Last month, the SEC [held a public roundtable discussion](#) regarding cybersecurity. Roundtable panelists, including Mark Clancy, DTCC Corporate Information Security Officer, discussed the cybersecurity landscape and issues faced by exchanges and other key market systems, broker-dealers, investment advisers, transfer agents, and public companies.

Department of the Treasury

- On 11 April, SIFMA sent a letter to Jacob Lew, U.S. Treasury Secretary and FSOC Chairman, to advocate for “a more fulsome adoption and use by the US regulatory community of the Legal Entity Identifier (LEI).” The letter goes on to state that “having a uniform, global legal entity identifier will help regulators and supervisors, researchers and firms to better measure and monitor systemic risk, as well as to more effectively measure and manage counterparty exposure and improve operational efficiencies...The global industry and regulatory community are strongly supportive of the Global LEI System (GLEIS) initiative and the benefits to operational efficiencies, systemic risk management and financial stability that it would provide.”
- On 31 March, the Treasury Department’s Office of Financial Research (OFR) and the CFTC announced a [memorandum of understanding](#) to begin a joint project to enhance the quality, types and formats of data collected from registered swap data repositories (SDR). The project will build on the CFTC’s work with SDRs, including DTCC Data Repository (U.S.) LLC (DDR), to harmonize data reporting and improve data quality, data standards and over-the-counter derivative product taxonomies.
- The Senate recently confirmed the nomination of [Sarah Bloom Raskin](#) as deputy Treasury secretary, the department’s number two official. Raskin previously served as a Governor of the Federal Reserve Board.

Federal Reserve

- On 3 April, Federal Reserve Board Governor Jeremy Stein announced his decision to leave the central bank next month. His departure will leave another vacancy, following the departures of Sarah Bloom Raskin and Elizabeth Duke. Former Bank of Israel Governor Stanley Fischer, former Treasury undersecretary Lael Brainard and current Fed Governor Jerome Powell (whose previous term expired in January) are currently awaiting confirmation by the Senate Banking Committee.

Congressional Activity

- On 9 April, the House Agriculture Committee unanimously approved bipartisan legislation that would reauthorize the CFTC through 2018. The Customer Protection and End-User Relief Act ([H.R. 4413](#)) would also amend certain CFTC provisions included in the Dodd-Frank Act. In advance of drafting legislation, the House Agriculture Committee, the Subcommittee on General Farm Commodities and Risk Management, and the Senate Agriculture Committee held a series of hearings with a variety of stakeholders to examine the future of the agency. A key component of H.R. 4413 is the addition of legislation that passed the House Agriculture Committee and/or the U.S. House of Representatives with overwhelming bipartisan support, including the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013 (H.R. 742). This proposed legislation, which [passed the House 420-2](#), would resolve issues surrounding the indemnification provisions and confidentiality requirements of Dodd-Frank.
- On 8 April, the Senate Agriculture Committee approved CFTC Chairman nominee Tim Massad and Commissioner nominees Sharon Bowen and J. Christopher Giancarlo, paving the way for full Senate confirmation.
- House Financial Services Subcommittee on Capital Markets Chairman Scott Garrett (R-NJ) introduced [legislation](#) that would allow all members of the Commissions and Boards represented in the Financial Stability Oversight Council (FSOC) to participate in meetings and vote. The legislation would also allow members of Congress on the committees overseeing FSOC to attend all FSOC meetings.
- On 2 April, the Senate Committee on Homeland Security and Government Affairs held a hearing, “[Data Breach on the Rise: Protecting Personal Information from Harm](#).” Panelists included Tim Pawlenty, Chief Executive Officer, Financial Services Roundtable.
- The Senate Commerce, Science, and Transportation Committee held a hearing on data security and the recent data breach at the Target Corporation. Many Senators expressed the need for a single data breach notification standard to ensure that companies are aware of their responsibilities when a breach occurs. Several pieces of legislation would establish a notification standard including Chairman John Rockefeller’s (D-WV) *Data Security and Breach Notification Act of 2014* ([S. 1976](#)), Senator Pat Toomey’s (R-PA) *Data Security and Breach Notification Act of 2013* ([S. 1193](#)) and HSGAC Chairman Tom Carper’s (D-DE) legislation that would require notice of security breaches ([S. 1927](#)).

What is Washington Talking About?

- **SCOTUS Ruling:** The U.S. Supreme Court ruled 5-4 in *McCutcheon v. Federal Election Commission*, overturning the aggregate contribution limits on the grounds that they violated the First Amendment, while the Democratic appointees dissented, stating that the limits guarded against corruption.
- **Ukraine-Related Sanctions:** The Senate Foreign Relations Committee passed a bill granting the Obama Administration the authority to impose economic sanctions on Russian officials responsible for the Ukraine military intervention. Last month, the [White House issued a new Executive Order](#) authorizing the Secretary of the Treasury to impose sanctions on named officials of the Russian government.