



ACROSS THE POND

GLOBAL REGULATORY UPDATE – JUNE 2014

EUROPE

Legislators: Council of the EU & European Parliament

- **MiFID II/MiFIR:** ESMA is working on the draft standards and recently issued a discussion paper on the standards as well as a consultation document on its technical advice. ESMA has until December 2014 to deliver its guidance on Delegated Acts and in January 2015 it will present an additional consultation paper on regulatory and implementing technical standards. ESMA's deadline for regulatory technical standards is June 2015 and December 2015 for implementing technical standards. The implementation of MiFID II/MiFIR is due in January 2017, but given the volume of work delays, a phased implementation is expected.
- **FTT:** Ten EU States agreed to start a phased implementation of the FTT by January 2016, but continue to disagree on key aspects of the proposal such as the scope, criteria and certain procedural aspects. The future of the FTT proposal depends on its progress at the technical level as well as on who gets the Taxation portfolio in the new European Commission from November 2014 onwards.

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

- **Reporting:** Collateral and valuation reporting is due on 11 August. Meanwhile, ESMA is coordinating trade repository (TR) efforts towards common solutions related to data harmonization and inter-TR reconciliation.
- **CCPs:** ESMA has authorized several EU CCPs under EMIR, including Eurex Clearing, LCH, Clearnet, NASDAQ OMX, and EuroCCP, but large clearers are still missing. The Commission officially extended until 15 December 2014 the deadline for own funds requirements for Qualifying CCPs. With this decision, the Commission avoids penalizing firms by subjecting them to higher own funds requirements during the recognition of an existing CCP including non-EU CCPs as QCCPs under EMIR.
- **Bilateral margining and risk management:** The European Supervisory Authorities are working on draft standards for risk management procedures for non-centrally cleared OTC derivatives. The draft standards are expected by the end of 2014 with implementation foreseen for December 2015.

What is 'Brussels' talking about?

EU elections 2014: Following the most severe economic crisis since the creation of the European Union (EU), the European Parliament elections on May 22-25 served as a referendum on how lawmakers have handled the fallout as well as an opportunity for Europeans to express their views on the future role of the EU. The election results indicate that voters rejected the austerity measures implemented by the governmental and mainstream parties across Europe and remain uncertain about the benefits of the European Union as a whole. As a result, the next Parliament (2014-2019) is expected to focus on growth and social issues rather than on EU reform and integration, although work will continue on finalizing pending legislation on financial reform and economic governance. In addition, while the political upheavals at the national levels and the rise of Eurosceptic representation are not likely to change the majorities in the European Parliament, they will likely consolidate the power of mainstream parties and pave the way for a more consensus brand of politics, albeit one with a greater nationalist agenda. The latter will certainly have an impact on issues of transatlantic importance: namely cross-border data flows, trade negotiations and financial services/regulatory talks.

Institutional change: On 1 July, the first session of the European Parliament will be seated. Of the 751 MEPs, approximately 55% are expected to be new Members. Similar to the previous Parliament, the conservative European People's Party (EPP) will hold 221 seats. The remaining composition of the Parliament will be:

- Progressive Alliance of Socialists and Democrats (S&D) – 191 seats
- European Conservatives and Reformists (ECR) – 68 seats
- Alliance of Liberals and Democrats for Europe (ALDE) – 67 seats
- European United Left (GUE) – 52 seats
- Greens – 50 seats
- Europe of Freedom & Democracy Group (EFD) – 48
- Non-attached members – 43 seats
- Others – 11 seats

European Elections 2014 cont.: In addition, far-right Front National (France), UKIP (UK) and the Danish People's Parties (Denmark) secured large margins of victory while Greece, Austria, Sweden, Hungary and Germany returned far-right candidates. These results indicate that a new Eurosceptic far-right group will soon emerge in the European Parliament.

Impact on EU leadership: The outcome of the European elections affects the formation of Parliamentary Committees: the ECON Committee will likely attract high profile MEPs as well as reelected ECON members. Over half of the Members from the previous ECON Committee were reelected: 22 from the EPP, 13 from the Socialists, 5 from ALDE and ECR, and 4 from the Greens.

The next ECON Committee Chair – previously held by UK Liberal Sharon Bowles – is likely to be a German, but prominent Italian and French MEPs are also rumored to be interested in the position. The elections will also reshape the European Commission, including the make-up of its 27 Commissioners and its leadership. There is one Commissioner per EU Member State, with the candidates nominated by their national governments and requiring the approval of the European Parliament. The next President of the Commission – currently held by José Manuel Barroso – will likely be decided in the coming months and is the subject of intensive negotiations.

Meanwhile, the next Commissioner for Internal Market and Services, including Financial Services, is likely to come from either Germany, France, the Netherlands or a smaller Member State, (such as Finland, Latvia or Sweden). The position is currently held by EU Commissioner Michel Barnier of France. EU leaders have commenced negotiations to determine the new European Commission chief and its Commissioners and the process is expected to be finalized in July. The new European Commission will be sworn in, if approved by Parliament, on 3 November 2014. Parliamentary work is expected to fully resume in September-November 2014.

Political Impact: Due to the strong Eurosceptic vote and the cumulative effect of the Eurozone debt crisis, many expect a weakened European Commission and a more fragmented European Parliament, which could give the Council of the EU a larger voice in decision making. Regarding Parliament majorities, however, many expect a “business as usual” mentality due to the fact that the 2014-2019 Parliament will see broadly the same balance of power as in 2009-2014. As a result, alliances between the three largest groupings will be necessary for political agreement in the Committees.

Business Impact: There is an expectation that new MEPs (and the European Commission) will focus less on EU integration policies and more on reasserting national controls in areas such as cross-border investment, data flows, privacy and cybersecurity, mergers and acquisitions and trade negotiations. Additionally, the increased Parliamentary presence of Germany, coupled with the recent decrease in the influence of mainstream political parties in France and Britain, will likely enhance Germany's impact on EU policymaking. The influence of Italy and Poland is also likely to rise in the next five years.

The Economics of Collateral: On 18 June, DTCC announced that a comprehensive academic study published at the London School of Economics and Political Science ([LSE](#)) has revealed that although an overall shortage of collateral is unlikely despite new global regulatory obligations and tighter risk controls mandating increased collateral requirements, access to collateral could become a challenge as firms seek wider sources of liquidity and assets. The LSE study by Ronald Anderson and Karin Jøeveer, entitled “[The Economics of Collateral](#)”, finds that the supply of collateral, in principle, will be sufficient to meet growing demands expected as a result of regulatory reform and evolving market practice worldwide. However, the study cautions that access to collateral and the ability for collateral to circulate freely across the financial system could become challenging as market participants seek sources of liquidity and assets worldwide.

UNITED STATES

Commodity Futures Trading Commission (CFTC)

- On 4 June, the CFTC [extended](#) its [previously-issued](#) no-action [relief](#) to non-U.S. swap dealers (SDs) registered with the Commission from certain transaction-level requirements under the Commodity Exchange Act when these SDs enter into swaps with a certain category of non-U.S. counterparties. The relief, which expires on 31 December, temporarily exempts these SDs from a Nov. 2013 [staff advisory](#) regarding the “applicability of the Commission's Transaction-Level Requirements” to swaps between non-U.S. SDs and non-U.S. person counterparties where the swap is “arranged, negotiated, or executed by personnel or agents” of the non-U.S. SD located in the U.S.
- On 3 June the Senate confirmed Timothy Massad to serve as the Chairman of the CFTC in addition to Sharon Bowen and Christopher Giancarlo to serve as Commissioners. All three have been sworn in, bringing the Commission to its full five members.
- The CFTC held a 3 June [meeting of the Technology Advisory Committee](#) (TAC) that focused on issues related to high-frequency trading, the CFTC's surveillance program, and swap execution facilities (SEFs). The first panel focused on the impact of high-frequency trading on derivatives markets and advantages high-frequency trading firms may have over other market participants. The panel also highlighted differences between equities and futures markets, along with issues related to data fragmentation and cybersecurity. The second panel focused on the resources necessary to develop a surveillance program that enables the Commission to properly oversee the derivatives markets. During the third panel, participants discussed the level of buy-side participation on SEFs.
- On 20 May, the House Appropriations agriculture subcommittee approved by a voice vote the fiscal year 2014 [agriculture appropriations bill](#), which includes \$218 million to fund the CFTC. The funding is \$3 million above the current funding level of \$215 million for the CFTC and \$62 million below the president's budget request. The next step is for the full Appropriations Committee to consider the bill before it is considered by the full House. The Senate Appropriations Committee has not yet drafted a funding bill, although a draft is expected before July recess.

DTCC

Federal Reserve

- On 12 June, the Senate confirmed the nominations of Lael Brainard and Jerome Powell to terms on the Board of Governors of the Federal Reserve and Stanley Fischer to serve as Fed Vice Chairman. The board now has five governors, leaving two open seats.

Congressional Activity

- On 24 June, the House passed the *Customer Protection and End-User Relief Act (H.R. 4413)*, bipartisan legislation that would reauthorize the CFTC through 2018. A key component of H.R. 4413 is the inclusion of a provision that passed the House Agriculture Committee, the House Financial Services Committee, and then the full House with overwhelming bipartisan support – the *Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013 (H.R. 742)*.
- On 3 June, the Senate Banking, Housing, and Urban Affairs Committee held a markup of the Terrorism Risk Insurance Program Reauthorization Act of 2014 (S. 2244), which would extend the Terrorism Risk Insurance Act (TRIA) for seven years. The mark-up was a bipartisan effort, with members voting unanimously to favorably report the bill to the full Senate. On 20 June, the House Financial Services Committee approved TRIA legislation that would extend the programs for five years. While the bill is expected to pass the House, it differs significantly from the Senate Banking Committee proposal.
- Sen. Saxby Chambliss (R-GA) [introduced](#) the [End-User Protection Act of 2014 \(S. 2330\)](#), which would amend the Commodity Exchange Act (CEA) to establish certain exemptions from the Dodd-Frank swaps rules for derivatives end-users. The bill would set forth a new definition of “financial entity” under the CEA; clarify the treatment of inter-affiliate trades; clarify that Dodd-Frank’s margin requirements do not apply to “non-financial end-users”; address the automatic drop in the *de minimis* exception that is set to occur in 2017; amend the CFTC’s process for conducting cost-benefit analyses for new rulemakings; and clarify the definition of “bona fide hedging.”

What is Washington Talking About?

Primary Election Results: Following the surprise defeat of Majority Leader Eric Cantor (R-VA) in the primary election, House Republicans elected Rep. Kevin McCarthy (R-CA) as majority leader and Rep. Steve Scalise (R-LA) as whip on 19 June. Cantor’s loss has critical consequences for House Republican leadership as he was seen by many as the next Speaker of the House. His defeat to David Brat, a college professor who ran as an immigration opponent, could also further weaken prospects the House will consider immigration legislation this summer. Cantor has been a leader on policy issues important to the financial industry including the Terrorism Risk Insurance Act (TRIA) and an overhaul of Fannie Mae and Freddie Mac.