

# ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

June 6, 2011

Issue 3

Across the Pond is a DTCC publication designed to provide a “thumbnail” sketch of financial regulatory reform activities in the United States and European Union. Detailed information on any topic highlighted in Across the Pond may be requested from DTCC Government Relations in Brussels or Washington, D.C.

## Regulatory Update – June 6, 2011

To effectively implement the myriad provisions of Dodd-Frank, U.S. regulatory agencies are in the process of promulgating a number of proposed rules including:

- The CFTC published a proposed rule jointly with the **Securities and Exchange Commission (SEC)**, in consultation with the **Federal Reserve Board (FRB)**, to further define the terms “swap,” “security-based swap,” and “security-based swap agreement” regarding “mixed swaps” and governing books and records with respect to “security-based swap agreements.”
- The CFTC adopted final rules relieving commodity pool operators from certain disclosure, reporting, and recordkeeping requirements for pools whose units are listed and traded on a national securities exchange.
- The **Office of the Comptroller of the Currency (OCC)** published a proposed rule to transfer functions from the **Office of Thrift Supervision (OTS)** to the OCC, amend the OCC’s assessment fee rule, and implement certain changes to the OCC’s regulations to revise the banking laws that took effect with the enactment of the Dodd-Frank Act.

## What is Washington talking about?

- **The debt ceiling** – The debate continues in both the public and political realm. A vote on a “clean” extension of the Debt Ceiling failed as expected by a wide margin. It was a political statement and is not indicative of what is expected for final action in late July.
- **Regulatory nominations** – President Obama recently nominated Senate Democratic staffer Mark Wetjen to the position of CFTC commissioner and Elizabeth Warren to head the new Consumer Financial Protection Bureau—both may face difficult confirmations in Congress.
- A **bipartisan collection of House lawmakers** introduced legislation on May 16 to improve the CFTC’s existing cost-benefit analysis of its regulations and orders.
- **New York lawmakers**, led by Senator Charles Schumer (D-NY), recently sent a letter to the Federal Reserve, and others, warning that U.S. banks will face “significant competitive disadvantages” from proposed margin rules requiring their foreign subsidiaries to demand collateral from non U.S. customers. CFTC Commissioner Scott O’Malia echoed this concern at an event hosted by the Heritage Foundation.
- **Extraterritoriality and indemnification** – Representatives Jack Kingston (R-GA) and Sam Farr (D-CA) recently sent a letter to prominent European MEPs in an effort to build awareness of the unintended consequences of indemnity provisions on transparency and risk mitigation in the OTC derivatives markets.
- **Congressional oversight of Dodd-Frank** – Key issues addressed during recent hearings include opportunities and challenges related to derivatives clearinghouses, regulatory harmonization, and the impact of Dodd-Frank on U.S. competitiveness and market stability.
- **Title VII implementation deadline** – House Republicans introduced legislation to extend the deadline for implementing Title VII, which addresses regulation of OTC derivatives. The House Agriculture Committee “marked-up” the legislation during the week of May 2nd and the House Financial Services Committee followed suit on May 24th. A vote is expected in late June

## Do you Speak ‘Dodd-Frank’?

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)** – Created by Title X of Dodd-Frank, the CFPB will regulate consumer financial products in compliance with federal law to help ensure that these products are working in a fair and effective manner for the American public. The Bureau will be divided into five divisions including (i) community affairs, (ii) research, (iii) complaint tracking and collection, (iv) the office of fair lending and equal opportunity, and (v) the office of financial literacy.



The Depository Trust & Clearing Corporation

For more information, please contact Dan Cohen at [dcohen1@dtcc.com](mailto:dcohen1@dtcc.com).

# ACROSS THE POND

## Recent European Policy Developments in Financial Services

6 June, 2011  
Issue 3

*Across the Pond* is a DTCC publication designed to provide a “thumbnail” sketch of financial regulatory reform activities in the United States and European Union. Detailed information on any topic highlighted in *Across the Pond* may be requested from DTCC Government Relations in Brussels or Washington, D.C.

### Regulatory Update – 6 June, 2011

The **Council of the EU** recently produced a new draft of EMIR, which included:

- The scope of clearing obligations remains unresolved. The list of unresolved and politically charged issues (scope, exemptions, extraterritoriality, counterparty risk, etc) may make it difficult to expect agreement before the end of the Hungarian Presidency.
- EMIR seems likely to become the responsibility of the Polish Presidency in July 2011. If this is the case, despite Parliament’s clear desire to move things along, the implementation date of EMIR could be delayed.
- The Council recently agreed on its general position on Short Selling, enabling this to move to the trialogue process. Under the compromise reached, certain types of naked short selling will be banned.

The **European Parliament** voted through, on 24th May, the text proposed by Dr. Werner Langen MEP, which included:

- The scope of clearing and reporting obligations requires all derivatives transactions be reported – only OTC derivatives must be cleared.
- The role of ESMA and the supervisory college (maximum of 7 members) is reinforced in its role of authorising CCPs to operate within the EU.
- The interoperability of CCPs applies to cash instruments only, not the derivative CCPs.
- A provision that allows regulators to impose fines on trade repositories – proportional to repository data turnover – that fail to comply with regulations.
- A regulator indemnity clause for SDR’s that effectively mirrors Dodd-Frank.

Commissioner Michel Barnier of the **European Commission** confirmed the MiFID proposal, which was expected in July will now not be delivered until October 2011.

### What is Brussels talking about?

- **Regulators don’t write regulation** – Legislators do. There have been increasing calls for greater collaboration between lawmakers in the US and EU to help avoid some of the unintended issues presented by financial regulatory legislation. While lessons can be learned from the drafting and implementation process of Dodd-Frank, communication between lawmakers is seen as critical.
- **Legislative harmonisation** – The EU continues to emphasize the importance of ‘getting it right’ [regulation], rather than simply ‘getting it out’. There is a growing sense in Europe that the EU can demonstrate global leadership on key issues such as extraterritoriality by encouraging harmonisation on the ‘right’ regulation, rather than copying the US.
- **Drafting logjams** – The news that MiFID is further delayed raises questions of whether there will be delays to other draft regulations expected during the year.
- **BATS beats EMIR** – Well ahead of the interoperability requirements outlined in EMIR, BATS announced its plan to implement a ‘preferred CCP’ model which supports interoperability and presents users with some flexibility in the selection of clearing venue.

### Do you Speak ‘European’?

**TRIA/TRIFLOGUE** (TRÍ LÓG, -LÄG) NOUN: AN INTERCHANGE AND DISCUSSION OF IDEAS AMONG THREE GROUPS HAVING DIFFERENT ORIGINS, PHILOSOPHIES, PRINCIPLES, ETC. **ORIGIN:** < TRI- + -LOGUE

*In the case of EU, the three groups are European Parliament, the Council of Ministers and the Commission. There is no ‘standard’ trialogue process and the attendance, content and purpose will vary from very technical to highly political depending on the dossier under consideration. The purpose of trialogue, however, remains constant and that is to agree a final form of a regulation that is acceptable to the Council and the Parliament. The process is moderated and endorsed by the European Commission. Any agreement in trialogue is informal and the regulation then needs to be approved by the formal procedures applicable within each of the three institutions although this could be considered a formality.*



The Depository Trust &  
Clearing Corporation

For more information, please contact Andrew W. Douglas at [awdouglas@dtcc.com](mailto:awdouglas@dtcc.com).