

ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

July 27, 2011

Issue 5

Regulatory Update – July 27, 2011

The Commodity Futures Trading Commission

- The CFTC recently extended the deadline to introduce new rules governing the \$600 trillion swaps market until the end of the year. The commission unanimously passed the extensions, which apply to rules such as the definition of a swap, exemptions for clearing, and capital and margin requirements for trades.
- At a meeting on July 19, the CFTC approved several final rules on clearing member risk management and the process for reviewing swaps for mandatory clearing. Also approved were proposed rules on customer clearing documentation and the timing of acceptance for clearing. Additionally, Chairman Gensler stated that the Commission will take up final rules on the Whistleblower provisions and swap data repository registration at an open meeting on August 4. He also estimated that final rules on entity definitions will likely be addressed in either September or October, while product definitions will not be taken up until November.

Financial Stability Oversight Council

- The FSOC recently approved a final rule on its authority to designate Financial Market Utilities as systemically important. Designation will be based on a determination that the failure or disruption of the FMU would create or increase the risk of significant liquidity or credit problems spreading among financial institutions, thereby threatening the stability of the financial system. To make this determination, the FSOC will analyze public data as well as data provided directly by the FMU before evaluating other qualitative factors

Congressional Oversight

- Major regulatory agency heads all testified recently at a Senate Banking Committee hearing entitled “Enhanced Oversight After the Financial Crisis: The Wall Street Reform Act at One Year.” The hearing served as a general overview of the work the regulatory agencies have undertaken under Dodd-Frank. In a separate hearing, the House Agriculture Committee addressed issues related to the impact on “main street” of new derivatives rules, including the proposed end-user exemption and the importance of domestic and international regulatory harmonization. Given all the rules yet to be written – including many of the definitions of critical terms – it’s a safe bet that regulators will continue to testify periodically on Capitol Hill in the coming year.
- Several top regulatory nominees faced confirmation hearings in the Senate, including former Senate staffer Mark Wetjen for Commissioner of the CFTC. In a separate hearing, the Senate Banking Committee considered the nominations for Martin Gruenberg to head the FDIC, Thomas Curry to be Comptroller of the Currency and S. Roy Woodall Jr. to be a member of FSOC.

What is Washington talking about?

- **The debt ceiling** – In the final days before the August 2 deadline, the debt ceiling negotiations are at a fever pitch. After Congressional leaders and the White House failed to reach an agreement on the debt ceiling over the weekend, Congress has taken the lead and House Speaker John Boehner and Senator Harry Reid are now working on separate plans to head off default. While Capitol Hill insists that a deal will be reached and a default avoided, the pressure is mounting.
- **CFPB Nominee** – President Obama nominated former Ohio Attorney General Richard Cordray to head the new Consumer Financial Protection Bureau. Although considered a compromise candidate to the nomination of Elizabeth Warren, Cordray is expected to face a tough confirmation process. Republican lawmakers, concerned with the structure and lack of accountability and oversight of the CFPB, are likely to block any nomination until their concerns have been adequately addressed.

Do you Speak ‘Dodd-Frank’?

SWAP DATA REPOSITORY (SDR) – In an effort to boost the transparency and regulatory oversight of OTC derivatives markets, Dodd-Frank requires that all OTC derivatives trades, whether cleared or uncleared, be reported to a swap data repository. SDRs will be responsible for housing transaction data related to derivatives, and are required to provide regulators access to such information consistent with their regulatory mandates. In addition, SDRs must make certain elements of the data publicly accessible in real time in order to improve market transparency. In European legislation, SDRs are known as trade repositories.



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Recent European Policy Developments in Financial Services

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The Council of the EU

- The Presidency has moved from Hungary to Poland, which will preside over Council meetings until the end of December 2011. Initial signs indicate that the EMIR finalisation process could pick up speed as the Polish presidency breaks the text into bite-size pieces and deals with short sections rather than reviewing the whole document each time.
- The two Council meetings held under the Polish Presidency resulted in some progress on the issues of scope, supervision and exemptions for intragroup transactions and pension funds. Poland is aiming for the 4 October ECOFIN meeting to get a political agreement on EMIR by EU member states.

European Parliament

- In a surprise move, Parliament decided not to vote through the ECON agreed text and postponed the final vote until October. This seems sensible as MEPs would like to follow the discussion in the Council referenced above and shows that MEPs acknowledge there are a number of critical and technical issues, including the scope of clearing obligations, supervisory responsibility of ESMA and extraterritoriality which still need to be addressed

European Commission

- The Commission continues to lead the charge on the key issues of extraterritoriality and scope, although it's still unclear where these issues will bottom out. The joint technical group which EU and US regulators recently set up to discuss OTC derivatives will continue meeting over the summer to discuss issues of extraterritoriality, off-shore collateral, trade repository access and indemnity.

What is 'Brussels' talking about?

- **The US process** – The debt ceiling discussions in the US continue to fascinate. Too many bills and not enough cash is a common enough problem in the European Union these days and it is interesting to see how the US deals with similar issues.
- **Drafting logjams 2** – It now seems clear that the legislation drafting process has slowed down – indicating growing support for the sentiment that it's 'better to get it right than to get it out'.
- **CRD IV** – Despite the logjam, the Commission did publish a draft of CRD IV on 20 July: 154 pages of directive, 537 pages of regulation and 432 pages of impact assessment.
- **Never let a crisis go to waste** – A recent analysis in Legal Business magazine revealed that the top 100 global law firms saw a profit increase of 7% during 2010.
- **DBAG/NYSE Euronext** – The deal has now been referred to the Commission which has until 4 August to respond for Phase 1 of the investigation. However, given all of the potential opportunities for extension and comments from Competition authorities, it seems unlikely the review will be complete before 31 December.
- **Extraterritoriality** – No visible progress on resolving this key issue although the transatlantic working group has held its first meetings.
- **Eurozone crisis and credit derivatives** – The Eurozone (the 17 EU member-states that have adopted the euro as a common currency) is struggling to find ways of stabilizing both peripheral and core EU economies.

Do you Speak 'European'?

BRUSSELS – Twinned with other global capitals such as Beijing, Berlin, Madrid, Moscow and, most appropriately, Washington, DC, Brussels is home to the European Parliament – for the majority of the year – and the permanent home to the European Commission, the European Council and NATO. Brussels is also the seat of the Belgian government – when it finally elects one – 1 August marks 400 days since the Belgian elections and the failure to form a government. Brussels is also home to the Permanent Representative offices to the European Union for each of the 27 EU member states as well as those who have trade and customs agreements with the EU (Switzerland, Iceland, Norway, Turkey, Croatia). For this reason, the last census of Brussels (1991) revealed that only 64% of the region's population was actually Belgian. The city is officially bi-lingual, French and Flemish, and unofficially trilingual. Almost everyone in the city speaks English to some extent. There is occasional talk about Brussels having the same status as Washington D.C., i.e. autonomy from member state rule and special status as the capital of Europe.



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