

ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

September 19, 2011

Issue 6

Regulatory Update – September 19, 2011

Commodity Futures Trading Commission

- At a meeting on September 8th, the CFTC announced a further delay in their rulemaking process, indicating that certain rules – most notably those governing so-called Swap Execution Facilities – will not be addressed until Q1 2012.
- The Commission approved proposed rules on mandatory clearing and trading implementation and documentation and margining. Additionally, the Commission adopted the CPSS-IOSCO Report on *Principles for the Regulation and Supervision of Commodity Derivatives Markets*
- Chairman Gensler also stated that the CFTC will consider final rules for clearing house core principles and position limits at its next meeting on September 22nd.

The Securities Exchange Commission

- The SEC has decided to seek public comment on whether new regulations are required to address the risks posed by mutual funds and other investment companies that use derivatives. The SEC is concerned that some companies might use derivatives to exceed borrowing rules and risk limits, while technically complying with the law.

Congressional Oversight

- Fresh from summer recess, the House Financial Services Committee hit the ground running, scheduling a total of 11 hearings – on topics ranging from terrorist financing to reform of the SEC – in the first week of September. The Senate Banking Committee is set to hold a hearing on Housing Finance Reform on September 13, while the House and Senate Agriculture committees have yet to release a schedule of upcoming hearings.
- Although many in Congress acknowledge the need for a technical corrections bill to address some of the unintended consequences of Dodd-Frank, the political reality suggests that such a measure is unlikely to develop until after the 2012 elections.

What is Washington Talking About?

EU Sovereign Debt – All eyes are on Europe this week as global markets continue to fluctuate in response to new developments regarding EU sovereign debt.

More Jobs, Please – Battered by the debt ceiling debate, a summer of dismal economic news, and waning public confidence, lawmakers on both sides of the aisle are determined to prevent further economic decline. Early signs indicate that both parties are willing to take a more conciliatory approach to the legislative process.

Obama's Deficit Plan – President Obama has unveiled an ambitious plan to reduce the country's deficit, which would see the nation's long term debt slashed by \$4 trillion through a combination of tax increases on wealthy Americans and savings generated from cuts to Medicare, Medicaid, and defense spending. Concerned about tax increases and what they view as insufficient cuts to entitlement programs, Republicans on Capitol Hill have already signalled their disapproval of the plan.

Super Committee – The so-called "Super Committee," the bipartisan "Select Joint Committee on Deficit Reduction" borne out the final debt ceiling deal, has begun to meet on its responsibility to identify \$1.5 trillion in spending cuts and/or revenue increases by Thanksgiving of this year.

GOP Presidential Hopefuls – Texas Gov. Rick Perry and Massachusetts Gov. Mitt Romney continue to lead the pack as Republican presidential hopefuls jockey for poll position in the lead up to the 2012 election.

A Look Ahead

The CFTC is set to hold open meetings on the following dates:

September 22 • October 3 • October 8 • November 1

To view the CFTC's proposed timeline for future rule makings, please visit:

<http://www.cftc.gov/PressRoom/SpeechesTestimony/genslerstatement090811c.html>



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Recent European Policy Developments in Financial Services

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Council of the EU:

- The Polish presidency continues to blaze a trail on resolving the outstanding issues around EMIR. The Council has been busy over the summer and apparently, very few issues remain outstanding. There is a tangible air of confidence about reaching political agreement at the 4 October ECOFIN and suddenly, finalising EMIR by year end is a real possibility. In addition, the trialogues on short selling show some progress with EU lawmakers moving closer to a deal before the end of 2011.

European Parliament

- On EMIR, the EU assembly still waits for Council to agree on its position so that trialogues can start. There is a feeling that Dr. Langen will call for the trialogue to start in mid-October regardless of the outcome of the Council negotiations. The bulk of work for MEPs is on economic governance and sovereign debt issues in relation to the discussions on the legislative 6-pack proposals on economic governance.

European Commission:

- Continues to work closely with the SEC and CFTC on extraterritoriality issues. The Commission President has committed to move boldly and respect the timeline for upcoming proposals on financial legislation, i.e. crisis management for banks, central securities depository, harmonising securities law directive, etc.

What is 'Brussels' talking about?

EMIR deadline: With progress in the Council, it seems that Poland will attempt to form a political compromise on key issues as soon as possible. Issues that dominate the Council discussions relate to pension fund definitions, ESMA's supervisory powers and derivative CCP access provisions which have been reopened by certain states.

MiFID 2: Rumours are that a MiFID/MiFIR draft proposal is circulating in Brussels. The recent draft suggests enhancing competition across Europe by proposing non-discriminatory CCP access to a trading venue (i.e. trading platforms should provide trade feeds to CCP's) and empowering users to choose CCPs based on their risk management techniques and cost. Regarding Trade Repositories, the Commission wishes to see them authorised as 'Approved Reporting Mechanisms' (ARM) for transaction reporting purposes.

Research project on the future of post trade infrastructure for the EU: DTCC is currently sponsoring a 12 month research fellowship under the auspices of the Centre for the Study of Financial Innovation for which the research Fellow is internationally renowned industry author Peter Norman. The latest event in the research program was held in Brussels and included representatives from the European Commission, Parliament, Council, former CESR members and senior industry members.

DBAG/NYSE Euronext: The deal has now been referred to the Commission, which has until August 4th to respond to under Phase 1 of the investigation. However, looking at all of the potential opportunities for extension and comments of the Competition authorities, it seems unlikely the review will be complete before the end of 2011.

Extraterritoriality: After extensive discussions over the summer between EU and US regulators, a more flexible approach to dealing with this issue has been identified, one which aims to propose extraterritoriality provisions that are conditional on the legislation of the other jurisdiction, or to use memoranda of understanding between relevant jurisdictions. The Council legal service prefers fully-fledged bilateral international agreements between the EU and other relevant jurisdictions, which whilst perhaps a correct solution, is surely the least likely to help bring an early conclusion to this thorny issue.

A Look Ahead

- **Mid-September 2011:** EU ambassadors (COREPER) meeting on EMIR
- **4 October 2011(tbc):** ECOFIN Council-Polish Presidency target to have a political agreement (general approach) on EMIR
- **Mid-October 2011:** Parliament Plenary vote on legislative report (Langen report) to agree general position;
- **21 October 2011:** Commission tables proposals on MiFID II
- **October to December 2011(tbc):** Commission, Parliament and Council to negotiate and finalise EMIR;
- **November 2011:** Commission tables proposals on Crisis management for banks and Central Securities Depositories
- **November 2011 to January 2012(tbc):** EMIR finalised?
- **Q3 2011-Q3 2012:** Parliament and Council to negotiate MiFID II
- **1 January 2012:** Denmark assumes Presidency of the Council of Ministers



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