ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

October 20, 2011
Issue 7

Regulatory Update – October 20, 2011

Commodity Futures Trading Commission

- On October 19, the CFTC approved its final rule related to Derivative Clearing Organization core principles, as well as the positions limits rule, which establishes limits on speculative positions in 28 selected physical commodity futures and swaps.
- At a recent meeting of the CFTC TAC Data Standardization Subcommittee, members signaled their support for the development of a global legal entity identifier system, while recommending the development of temporary LEIs for systemically important financial institutions to allow for testing of the new system.

Securities and Exchange Commission

- The SEC recently issued a proposed rule designed to prevent conflicts of interest in connection with certain securitizations by prohibiting those involved in the development and distribution of asset-backed securities from participating in transactions for a period of one year after the date of the sale of that security.
- The SEC recently issued a proposed rulemaking related to the registration of security-based swap dealers and major security-based swap participants. The public comment period will end on December 19, 2011.

Consumer Financial Protection Bureau

- The Senate Banking Committee approved the nomination of Richard Cordray to head the CFPB, which will now face a vote by the full Senate. Senate Republicans, concerned with the structure and overly broad mandate of the agency, have vowed to block the nomination.

The Volcker Rule

- The FDIC, OCC, SEC and Federal Reserve jointly issued the highly anticipated "Volcker Rule," which is designed to limit banks from investing in hedge funds and ban proprietary trading. The CFTC must also approve the rule, which is open for public comment before finalization.

Congressional Oversight

- Treasury Secretary Timothy Geithner testified before the House Financial Services and Senate Banking Committees on October 6th to provide the first annual report of the Financial Stability Oversight Council. Amongst other things, Geithner addressed the exposure of the U.S. financial system to European sovereign debt, while highlighting the Council's ongoing work to encourage European policymakers to move more forcefully to address the situation.
- Senate Banking Committee Chairman Tim Johnson (D-SD) and House Financial Services Committee Ranking Member Barney Frank (D-MA) recently sent a letter to U.S. regulators urging them to pursue greater regulatory comity, both domestically and overseas, to limit the unintended consequences of Dodd-Frank's implementation – namely the potential for regulatory arbitrage due to extraterritorial requirements, increased margin requirements, and the end-user exemption.
- Senate Banking Committee Ranking Member Richard Shelby (R-AL) recently introduced legislation designed to require regulatory agencies to carry out further cost-benefit analyses of Dodd-Frank related rules. The requirement would apply to 10 federal agencies, including the Federal Reserve, CFTC, and FDIC, among others.

What is Washington Talking About?

European Sovereign Debt – The U.S. continues to closely monitor Europe's sovereign debt crisis, and remains particularly interested in the strategy European leaders will ultimately pursue.

EMIR – The U.S. remains deeply curious about financial regulatory reform taking place elsewhere. Most recently, policymakers and market participants have been focused on the approaching finalization of the European Market Infrastructure Regulation and the impact it will have on American financial institutions operating overseas.

Obama Jobs Bill – The Senate voted down President Obama's Jobs Bill, and it is likely that it will now be broken up into smaller pieces in attempt to pass certain elements of the bill.

Do you Speak 'Dodd-Frank'?

Swap Execution Facility (SEF) – *The Dodd-Frank Act (DFA) requires the majority of OTC derivatives transactions to be executed on a platforms known as SEFs, which the DFA defines as "a facility, trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system." Identified as one of the "three pillars" of the DFA infrastructure, the CFTC and SEC are responsible for further refining the definition of a SEF, as well as developing rules to govern these entities. CFTC Chairman Gary Gensler recently indicated that the Commission would consider final SEF related rules in Q1 2012.*

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Recent European Policy Developments in Financial Services

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Council of the EU

- Following 11 months of negotiations, the Council, lead for the past 4 months by Poland, finally achieved political agreement on EMIR at the 4th October ECOFIN meeting. Hard bargaining meant the final text reintroduced CCP access to trade feeds allowing for competition among derivative CCPs and agreement that derivatives can effectively be cleared anywhere within the EU, with a unanimous vote by all 27 member states being required to block the authorisation of a CCP. It was noted that the third country issues will be addressed during trialogue.

European Parliament

- On October 10, following the 4 October agreement, MEPs began trialogue negotiations with the Council. Key issues that will dominate the discussions are ESMA's powers, extraterritoriality issues, definitions of pension funds and derivative CCP competition.

European Commission

- Commission services are working on the final version of MiFID/MiFIR scheduled for delivery Oct 19th.

ESMA

- Steven Maijoor, chair of ESMA, called for more robust transaction reporting and emphasised the key role of trade repositories as channel for reporting OTC derivatives transactions to regulators.

What is 'Brussels' talking about?

EMIR nearing the finish line? – EMIR trialogue negotiations will continue on 20 & 25 October as well as during November. After a whirlwind of planned meetings for the next three months, we expect final agreement on EMIR to be reached in early 2012. However, senior Brussels officials have indicated that Council and Parliament texts are aligned in many ways so an agreement by December 2011 could indeed be achieved.

MiFID 2 getting to the start line? – The draft proposal is anticipated on 19 October with Brussels policy circles emphasizing the political significance of the provisions on CCP competition, commodities, and post trade transparency (especially transaction reporting).

Financial transaction tax – The Commission presented a draft proposal which aims to levy a tax on all transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU. Shares and bonds would be taxed at a rate of 0.1% and derivative contracts, at a rate of 0.01%. The proposal is expected to become law by 2014 but is likely to be the subject of much debate between the member states.

DBAG/NYSE Euronext – Deutsche Börse and NYSE Euronext received the anticipated "Statement of Objections" on their planned merger from EU Competition authorities. The statement of objections does not contain suggested "remedies" and both exchanges groups have two weeks to respond. Brussels media suggests that the Commission services will only take the exchange traded derivatives market as the baseline for market share, it will not include OTC.

Do you speak 'European'?

ECON Committee (Economic and Monetary Affairs Committee of the European Parliament) – *The ECON Committee is one of the committees of the European Parliament, co-legislating on financial and economic issues (together with the Council of Ministers). It has responsibility for such matters as the economic and monetary policies of the EU including taxation and competition policies, and the regulation of financial services (banks, insurance, derivatives, and asset management). Moreover, as the great majority of Parliament's work is done at Committee level, it is ECON that does most Parliamentary work on these key economic and monetary policy areas. It consists of 46 MEPs and is chaired by the prominent British Liberal (ALDE) MEP, Mrs. Sharon Bowles.*

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