ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

November 23, 2011
Issue 8

Regulatory Update – November 23, 2011

Commodity Futures Trading Commission

- Congressional lawmakers recently approved a $205 million budget for the CFTC for fiscal 2012. The figure fell short of the $308 million requested by the Obama Administration and CFTC. The CFTC has warned that without adequate funding, it may be forced to make personnel cuts, thus undercutting its ability to carry out DFA rulemakings.

Securities and Exchange Commission

- The SEC and CFTC approved a final rule requiring U.S hedge funds with $1.5 billion or more in assets, and private equity funds with $2 billion or more, to report financial information to the government annually for use in monitoring systemic risk.

Congressional Oversight

- The Senate confirmed the nominations of Daniel Gallagher and incumbent Luis Aguilar to serve as SEC commissioners and Mark Wetjen to serve as Commissioner at the CFTC. Wetjen will replace Commissioner Michael Dunn.
- Senate Banking Committee Chairman Tim Johnson (D-SD) recently sent a letter to US regulatory agencies urging them to streamline new regulations to effectively reduce compliance costs. Sen. Johnson also requested that the agencies provide details regarding their rulemaking process, including the economic factors taken into account during this process. Johnson also sought feedback on how the agencies encourage public participation in the rulemaking process, how they plan to address the unique challenges faced by smaller institutions regarding compliance, and the state of intra-agency coordination since the formation of the FSOC.
- Committees in the House and Senate continue to hold hearings related to oversight of Dodd-Frank. Upcoming hearings include a Dec. 1 Senate Agriculture Committee hearing entitled "Continuing Oversight of the Wall Street Reform and Consumer Protection Act" (Dodd-Frank). Chairman Schapiro and Chairman Gensler are expected to testify.
- The HFSC's subcommittee on Capital Markets and Government Sponsored Enterprises recently approved five bills related to Title VII of Dodd-Frank, including one entitled the SEC Clarification Act, designed to clarify congressional intent behind the SEF provisions of Dodd-Frank. The subcommittee also approved a measure which would exempt certain derivatives transactions within a parent company and among its subsidiaries, known as inter-affiliate transactions, from the margin, clearing and reporting requirements under the Dodd-Frank Act. All five measures will now move to the full committee for mark up in early 2012.

What is Washington Talking About?

Euro Zone Debt Crisis – The deepening euro zone debt crisis continues to keep U.S. markets and policymakers on edge – particularly after Fitch Ratings announced last week that the credit outlook for the largest U.S. banks could deteriorate if the crisis is not "resolved in a timely and orderly manner."

Supercommittee: No Deal – The bipartisan Select Joint Committee on Deficit Reduction – the so-called "Supercommittee" – recently announced that it had failed to reach an agreement to cut $1.2 trillion from the federal deficit over the course of the next decade. It now remains to be seen whether Congress will take legislative action to reign in the $1.2 trillion in automatic spending cuts – over half of which target military programs – which are now set to kick in 2013. President Obama has already vowed to veto any legislation aimed at rolling back the automatic cuts.

MF Global Fallout – Amidst ongoing investigations into the highly publicized demise of MF Global, major dealers are urging the CFTC to reconsider a rule promulgated last December that prohibits CCPs from requiring clearing members to maintain more than $50 million in capital.

Do you Speak 'Dodd-Frank'?

Derivatives Clearing Organization – *One of the "three pillars" of the Dodd-Frank infrastructure requirements, a derivatives clearing organization (DCO) is, according to the CFTC, "a clearinghouse, clearing association, clearing corporation, or similar entity that enables the parties to a contract or transaction to substitute the credit of the DCO for the credit of the parties. A DCO also arranges or provides for the settlement or netting of obligations; or otherwise provides clearing services or arrangements that mutualize or transfer credit risk among participants. Any clearinghouse that seeks to provide clearing services with respect to futures contracts, options on futures contracts, or swaps must register with the CFTC as a DCO before it can begin providing such services."*

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Recent European Policy Developments in Financial Services

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Council of the EU

- Following a number of political trialogues between the Council, Parliament and Commission, finalization of EMIR now seems likely to occur in Q1 2012.Outstanding issues include ESMA powers on CCP supervision, third country issues and extraterritoriality, intragroup transaction exemptions and the pension fund regime. The Council has also started general discussions of MiFID 2/MiFIR, although the Polish Presidency has openly acknowledged that it will only discuss it in general terms before handing over to Denmark in January.

European Parliament

- There is talk that Parliament may accept much of the Council's EMIR drafting on 3rd country issues with a view to seeking Council approval to extended ESMA powers and elimination of derivative CCP access rights to trading venues. This appears unlikely given the recent ECOFIN agreement to maintain CCP access to trade feeds in their text, supported by the fact that this competitive element is one of the key principles outlined in the recent draft of MIFIR.

European Commission

- The Commission presented proposals on MiFID 2/MiFIR, and in several key areas, such as the freedom of access to trade feeds, the aims of MiFID 2/MiFIR are clearly aligned with EMIR.

ESMA

- ESMA is now openly questioning its ability to develop all Level 2 rules and allow time for implementation before December 2012. Delays to the finalisation of EMIR are clearly a contributory factor, as are resource constraints.

What is 'Brussels' talking about?

Deepening divisions – In the debate regarding how the euro zone crisis should be resolved, questions abound. Should the ECB take a stronger role in shoring up weak Eurozone economies? Should there be a 'Eurobond' program? Should the Eurozone exclude Greece, Italy, Spain, Portugal, Malta and Cyprus? Amidst this intensifying debate, Asian investors appear to be withdrawing from the EU due to concerns that EU leaders may be unable to resolve the crisis.

A true Eurobond? – Eurobonds have existed since the 1960's, but these referred to bonds issued by a country in a currency other than its own. Now a true Euro-bond – a bond jointly issued by all Eurozone countries – seems like a real possibility. The European Commission will present a non-legislative proposal for 'euro stability bonds' on 23 November.

Homo technocraticus – Two key eurozone states now have a government headed by a well-respected, but nonetheless, non-elected technocrat. Indeed, the entire Italian cabinet is now non-elected. Europe continues to debate their legitimacy to govern vs. the need to resolve the debt crisis and avoid further contagion.

The Hellenic technocrat – New Greek PM, Mr. Lucas Papademos won a crucial confidence vote with an overwhelming majority – 255 out of 300 MPs. The next IMF tranche (8bn euros) is expected in mid-December while details of a private investors debt swap will be agreed in the coming weeks.

The Italian technocrat – Italy formed a cabinet under the leadership of new PM Mario Monti. Monti, a former European commissioner, has formed his government with nine apolitical experts to steer the country out of its economic crisis. As well as leading the government, Monti will take on the role of economics and finance minister.

More change – After witnessing changes in leadership in Greece and Italy, Spanish voters ushered in a new centre-right government committed to debt reduction. After initial positive reactions, market sentiment for Spain, Greece and Italy remains relatively unchanged and their long term lending rates remain high.

Do you speak 'European'?

The European Central Bank (ECB) *was established by the Treaty of Amsterdam in 1998 and is based in Frankfurt. Unlike other central banks, the ECB has a single primary objective: to maintain Eurozone price stability defined as keeping inflation at around 2%. To achieve this, ECB defines and administers monetary policy for the 17 Eurozone states. It carries out foreign exchange operations related to the Euro and safeguards the foreign reserves of the European System of Central Banks. ECB also operates the pan-European Target payments system and is developing a pan-European securities settlement system, Target 2 for Securities or T2S. Only ECB is permitted to print euro notes but member states can issue coins with ECB consent.*

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