

# ACROSS THE POND

Recent U.S. Policy Developments in Financial Services

December 21, 2011

Issue 9

## Regulatory Update – December 21, 2011

### Commodity Futures Trading Commission

- At an Open Meeting on December 20th, the CFTC approved two final rules, including one regarding Real-time Reporting of Swap Transaction Data. The Commission also approved a rule regarding Swap Data Recordkeeping and Reporting Requirements, while recently extending the exemptive period for compliance with new swaps rules for an additional six months.

### Consumer Financial Protection Bureau

- The new watchdog consumer agency remains without a permanent director after Senate Republicans blocked the nomination of former Ohio Attorney General, Richard Cordray. Senate Republicans have vowed to oppose any nominee until significant changes are made to the agency's structure, including the use of a board of directors rather than a single agency chief.

### Office of Financial Research

- President Obama announced he will nominate Dick Berner to head the Treasury's Office of Financial Research – the newly created agency responsible for assisting the FSOC in analyzing systemic risk in the financial system.

### Congressional Oversight

- In early December, the House Financial Services Committee passed several bills related to Title VII of Dodd-Frank, including the previously reported SEF Clarification Act and an amendment to the Inter-affiliate swaps exemption Act. Also approved was a bill entitled the Business Risk Mitigation and Price Stabilization Act, which prohibits federal regulators from imposing margin requirements on end-users.
- The Senate Agriculture and Banking Committees recently held separate hearings on their continued oversight of the Dodd-Frank Act and featured testimony by CFTC Chairman Gary Gensler and SEC Chairwoman Mary Schapiro. Much of the proceedings, however, focused on the CFTC's handling of the collapse of MF Global – more specifically Gensler's decision to recuse himself from the investigation due to his previous professional relationship with former MF Global CEO, Jon Corzine.

### Securities Industry and Financial Markets Assoc. & International Swaps and Derivatives Assoc.

- SIFMA and ISDA recently filed a federal lawsuit challenging the CFTC's final position limits rule. According to a release issued by ISDA's executive office, the two organizations filed suit after concluding that the CFTC's rulemaking process had "prevented commenters from meaningfully participating." ISDA and SIFMA also asserted that the Commission failed to present a "reasoned analysis or consider all evidence in setting position limits," and that they "failed to conduct an adequate cost-benefit analysis as required by law."

## What is Washington Talking About?

**Euro Zone Debt Crisis** – Although recent data suggests that the US is now experiencing modest economic growth, US financial markets remain wary of "EU debt contagion" in the event that European leaders fail to reach an agreement on how to best resolve the ongoing EU sovereign debt crisis.

**Payroll tax-cut extension** – In the latest partisan battle on Capitol Hill, the House and Senate remain stalemated over whether to extend a payroll tax-cut, (and other items) for two months or the entire fiscal year. The current law is set to expire on December 31st.

**MF Global Fallout** – Amidst ongoing regulatory and criminal investigations into the matter, four Congressional committees recently held hearings related to the collapse of derivatives broker MF Global. Despite stiff questioning from both sides of the aisle, former MF Global executives, and most notably former CEO Jon Corzine, were unable to provide a definitive answer when pressed to explain the disappearance of approximately \$1.2 billion in customer funds.

## Do you Speak 'Dodd-Frank'?

**HOUSE FINANCIAL SERVICES COMMITTEE (HFSC)** – The HFSC is a committee of the US House of Representatives with jurisdiction over the capital markets, the banking industry, securities and exchanges, and the insurance and housing industries. The committee also oversees the majority of the nation's financial regulators, including the SEC and Federal Reserve. The committee is chaired by Rep. Spencer Bachus (R-AL) and is comprised of six subcommittees, each with its own unique jurisdiction. The HFSC was the primary committee responsible for the drafting of the Dodd-Frank Act, which still bears the name of the committee's ranking member (and former chairman) Rep. Barney Frank (D-MA). The committee remains actively involved in the oversight of the Act's implementation.

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## Recent European Policy Developments in Financial Services

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#### Council of the EU

- The Polish Presidency recently presented compromise language for EMIR on the controversial issues of ESMA's powers over CCPs, the third country regime (including extraterritoriality) and exemptions for FX, pension funds and intragroup transactions. Despite pressure to achieve political agreement, it will not be finalised until early 2012.
- Certain MiFID draft proposals have caused uncertainty with some member-states confused over the scope and extent of the proposal. With regards to timeline, Member State representatives have asserted that finalisation may take as long as 18 months. Denmark, assuming the Council's Presidency in January, plans to hold one meeting a month on MiFID and Member States are due to submit comments prior to the first meeting on 18 January. It is expected that the Danes will prepare a compromise text on the back of those submissions by the end of February 2012.

#### European Parliament

- Markus Ferber (Conservative-EPP, Germany), European Parliament's Rapporteur on MiFID, has made a questionnaire available to interested parties, with responses due 13 January 2012. MEPs continue to voice dissatisfaction with the Commission's proposal to define a new trading platform, known as an 'organized trading facility' (OTF), in MiFID. Both Ferber and the secondary rapporteur, Robert Goebbels (Socialist-S&D, Germany), have insisted that the OTF category will lead to market fragmentation, not greater transparency as the Commission insists.

#### European Commission

- The Commission recently decided to delay several legislative initiatives until Q1 2012, including the proposals for bank crisis resolution (now expected January 2012), Central Securities Depository (Q1 2012) and the market infrastructure crisis resolution proposal (now expected in Q1 2013).

#### ESMA

- Although EMIR will not be finalised until Q1 2012, ESMA has started work on rules to minimise delays to meeting the G-20's 2012 deadline for OTC derivatives market reforms. ESMA's post-trade division will deliver a position paper on options for preferred standards by early February 2012, while the final draft will be presented in May 2012, followed by a short consultation period.

### What is 'Brussels' talking about?

**Eurozone crisis** – At an EU summit on 8-9 December, an agreement to tighten fiscal discipline proved impossible due to a UK 'veto'. EU leaders instead agreed that a new inter-governmental treaty should be employed to tighten fiscal discipline in the Eurozone countries to address the region's sovereign debt problems. The new treaty will be drafted by March 2012 and will be enforced once nine countries ratify it. In total, the process of drafting, negotiating and approving the treaty will take several months but an EU summit will take place in January to review progress.

**UK isolation** – UK's Prime Minister Cameron said Britain refused to sacrifice sovereignty to save the Euro, remaining outside the above agreement by 26 EU nations to tighten budget rules. Cameron broke ranks after failing to secure guarantees that the powers of ESMA would not be expanded at the expense of the FSA/Bank of England, whilst also seeking assurances that the European Banking Authority would remain in London. Following the decision, the backlash in Brussels was immediate – including calls for the ouster of Sharon Bowles as chairwoman of the ECON Committee in the European Parliament.

**Danish Presidency of the Council** – The incoming Danish EU Presidency takes office on 1 January and has made it clear that its key priority will be to assist – not lead – negotiations for a new inter-governmental treaty aimed at tightening fiscal discipline in the Eurozone. Issues such as MiFID and the Capital requirements directive will be addressed but are not considered a top priority.

#### Do you speak 'European'?

**VETO IN EU DECISION MAKING** – A veto is the power of a EU member-state representative to unilaterally block an official action, particularly the enactment of a piece of legislation within the EU Council of Ministers. Decisions in the Council are reached by weighted votes (qualified majority) of Member States' ministers. Most decisions require support by a majority of Member States, representing at least 62% of the EU population. Unanimity is required in some areas, but the veto powers have always been a prominent bargaining chip, especially in areas that impinge on security or sovereignty.

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