Recent Policy Developments in Financial Services

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 12 FEBRUARY 2014

INTERNATIONAL

Financial Stability Board (FSB)

• The FSB, in consultation with the International Organization of Securities Commissions (IOSCO), released a consultative document on "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions." The document proposes a methodology for identifying entities whose distress or failure, because of their size, complexity, and systemic interconnectedness, would cause "significant disruption to the global financial system and economic activity across jurisdictions." It sets out sector-specific methodologies for finance companies, securities broker-dealers, and investment funds. Public comments on the document are due 7 April.

• The FSB published a consultation on the feasibility of approaches to aggregate OTC derivatives data outlining the various options for aggregating derivatives data: a physically centralized model; a logically centralized model (federated); and the collection and aggregation by authorities themselves of raw data from trade repositoriess. The FSB seeks feedback by 28 February on the various considerations (legal, data, technical etc) for each option; list of criteria to assess the aggregation options; other models of aggregation; usage of the aggregated data. The final report will be ready by May 2014.

ASIA

Hong Kong

• The Government of Hong Kong and its financial regulators have launched a public consultation regarding the establishment of a resolution regime for financial institutions operating in the banking, securities and futures and insurance sectors, as well as for certain financial market infrastructures, in Hong Kong. The proposed regime outlines the legislative changes necessary to bring Hong Kong's existing standards in line with standards set forth by the Financial Stability Board. Hong Kong expects to undertake a second stage consultation during 2014, with a view to introducing a bill into the Hong Kong Legislative Council in 2015. Comments on the current proposal are requested by 6 April 2014.

• The Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission issued updated guidance regarding the reporting of OTC derivatives transactions to the HKMA trade repository. Changes include updates to the OTC Derivatives Trade Repository Reporting Service Reference Manual as well as the Administration and Interface Development Guide for the reporting service.

Singapore

• The Monetary Authority of Singapore and the US Commodity Futures Trading Commission signed a Memorandum of Understanding (MOU) regarding cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in Singapore and the US. Through the MOU, the Commission and MAS express their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates MOU includes markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers, and other market participants.

• Following approval by the US CFTC, the Singapore Exchange (SGX Derivatives Clearing) became the first Derivatives Clearing Organization authorized in Asia by the US regulator.

EUROPE

Council of the EU & European Parliament

• **MiFID II/MiFIR:** The EU institutions reached a political agreement following a whirlwind of negotiations, but technical work is still needed to truly close the file. ESMA has subsequently begun work on a plethora of technical standards and advise, which is expected to be delivered in the next 18 months. Implementation is envisaged for the middle to end of 2016. The new proposal creates a new trading platform known as Organised Trading Facilities (OTFs) for non-equity products similar to the SEF, while also dealing with dark pools, high frequency trading, position limits for commodity derivatives as well as non-discriminatory access to trading platforms, central counterparties, and benchmarks used for negotiating.

• **CSDR:** Tripartite negotiations between the EU institutions were finalised in late 2013 and a political agreement was reached. Implementation will gradually commence in 2015, but a shorter settlement cycle in T+2 in Europe is expected for October 2014 with dematerialization expected in Europe in 2020. The new rules will also introduce an additional capital charge for CSDs and banks providing these banking services to CSD users; enhanced cooperation of supervisors in authorizing and supervising securities lending, collateral management and asset servicing to CSD users and certain degree of flexibility on settlement fines. Non-EU CSDs will need to follow an authorisation process based on equivalence criteria in which ESMA will play a leading role, but the global principles of CPSS-IOSCO will be taken into consideration.

• **Financial Transaction Tax:** EU state representatives discussed briefly new revised proposals circulated by the Council Presidency and it is evident that there is political impetus to trim down the scope and impact of the proposed FTTl. The implementation timeframes are pushed to 2016 with national experts struggling to find common ground on a number, of areas. It is rumoured that the scope of the proposal will be narrowed, including clearing and settlement services exemptions; bond/ share conversion exclusion; collateral transfer exclusion; and repo/reverse repo exclusion.

• **Banking Union [Single Supervisory Mechanism (SSM) + Single Resolution Mechanism (SRM) + Deposit Guarantee Scheme (DGS)]:** The Banking Union would consist of three pillars: 1.) a Single Supervisory Mechanism (SSM) to monitor the health of euro-zone banks; 2.) a Deposit Guarantee Scheme (DGS) to protect depositors; and 3.) a Single Resolution Mechanism (SRM) to decide which banks need to be closed or restructured. The EU state representatives, Parliament and Commission have already agreed on the SSM (go live date is November 2014) and reached political agreement on the DGS in late 2013 with EU Finance Ministers reaching a political compromise on the SRM though the final agreement is elusive on the backstop facility. The SRM is now under tripartite discussions and is expected to be finalized in mid-2014.

European Commission / European Securities Market Authority (ESMA) / European Central Bank (ECB)/

• Representatives from ESMA, EBA, the European Commission, FCA, the US CFTC, the US SEC and the US Federal Reserve met in Washington DC to discuss progress on the “Path Forward” derivatives agreement. According to a joint statement, “participants reiterated the need for all G20 jurisdictions to address and implement in a timely manner the G20 commitments on OTC derivatives, including the agreement to trade standardized derivatives on organized platforms. The staff of the EC and ESAs and CFTC will intensify discussions on the scope for equivalence and comparability findings, including reporting to trade repositories and central counterparty recognition, and, when new initiatives are finalized by either jurisdiction, staff will seek to reach consensus in as many areas as possible, as envisaged by the Path Forward document.”

• ESMA formally registered six EU trade repositories (TRs) and consequently the EMIR reporting obligation for all asset classes of derivatives (OTC and Listed) is expected on 12 February 2014.

• ESMA delivered its second set of advice on EMIR equivalence for Japan with respect to the equivalence between the Japanese regulatory regime for commodity CCPs and the regulatory regime for CCPs under EMIR. ESMA advises the Commission to consider that Commodities CCPs are subject to effective supervision and enforcement in Japan.

• The Financial Stability Board’s ROC endorsed a total of 10 pre-LOUs as solutions to the interim LEI regime. Consequently ESMA is expected to issue guidance on the adoption of the approved pre-LOUs for EMIR reporting.

• Banking Structure: Commissioner Michel Barnier published the proposals on banking structure, which suggest that the EU’s largest banks would have to drop proprietary trading by 2018 and regulators would decide which banks need to split their trading activities.

What is ‘Brussels’ talking about?

EU elections Volume I: 2014 – a year of institutional change: In spring 2014, the European Parliament elections will take place and will decide the composition of the 8th legislature of the European Parliament from 2014 to 2019. In addition, the final months of 2014 will also see a new mandate of the European Commission and the end of the 2nd and final term of the President of the European Council (Herman van Rompuy). The European Parliament elections will take place on 22-25 May, with 751 new MEPs being directly elected by citizens in all 28 EU states. It is very possible that 50% or more of all MEPs will be ‘new’ to the European Parliament. They will start work on 1 July and decide their roles and responsibilities, before overseeing the Commission changeover. The elections will lead to new arrangements of the legislative Committees; the composition of the ECON Committee, their chair and vice-chairs and the (re)election of the various political group Coordinators will have a major impact. The outcome of the European Parliament elections will have a direct influence on the election of the Commission President. The election procedure will start in the summer of 2014 as a new Commission needs to be in place by 1 November 2014. 28 Commissioners (1 per Member State) will enter office after scrutiny and approval process by the newly elected Parliamentarians. Most will be new but a few might be returning (with another portfolio), as there is in principle no limit on the number of years they can keep the job.

UNITED STATES

Commodity Futures Trading Commission (CFTC)

• On 21 January, the CFTC announced the formation of a staff working group to review certain swaps transaction data recordkeeping and reporting provisions. The working group will recommend questions for public comment regarding, among other things, compliance with part 45 reporting rules, and related provisions, and consistency in regulatory reporting among market participants.

• The CFTC voted to push back the compliance date for a November staff advisory that stated swaps booked by foreign banks trading with foreign counterparties would trigger CFTC rules if they were "arranged, negotiated or executed" by an employee in the U.S. The CFTC is asking whether the commission should adopt the staff advisory and whether foreign banks in instances covered by the advisory should be able to rely on rules in their home country through substituted compliance. The CFTC is taking public comment and extended the compliance deadline to 15 September from 14 January.

• The CFTC approved comparability determinations on a rule-by-rule basis for Australia, Canada, the EU, Hong Kong, Japan, and Switzerland for substituted compliance purposes with respect to certain entity-level and transaction-level requirements. As a result of these determinations, non-U.S. swap dealers (SDs) and non-U.S. major swap participants (MSPs) may comply with regulations in their home jurisdictions as a substitute for complying with the specified CFTC regulations. The CFTC declined to issue a comparability determination with respect to SDR reporting requirements but issued time-limited relief for certain SDs and MSPs established in Australia, Canada, the EU, Japan, and Switzerland.

• Commissioner Mark Wetjen was appointed sponsor of the CFTC's Global Markets Advisory Committee (GMAC). The committee provides a forum to discuss the competitive and regulatory issues facing U.S. markets and firms engaged in providing financial services. Commissioner Wetjen takes over the sponsorship from Commissioner Bart Chilton who announced his intention to resign from the CFTC.

Federal Reserve

• Janet Yellen was sworn in as Chairman of the Federal Reserve. Her term as chairman ends 3 February 2018 and her term as a member of the board will end 31 January 2024. Chairman Yellen is scheduled to testify before the House Financial Services Committee on 11 February and the Senate Banking Committee 13 February.

Department of the Treasury

• On 17 December, the Office of Financial Research (OFR) released its second annual report which discussed cybersecurity attacks, swap data repository information, the global LEI system, and systemic risk mitigation (including the oversight of financial market utilities). The report discussed the framework OFR uses to assess and monitor threat to the U.S. financial system and reviewed data gaps and OFR's strategy for promoting data standards.

• Richard Berner, Director of the OFR, testified before a Senate Banking subcommittee on 29 January. In prepared remarks, he called on regulators to require the use of legal entity identifiers (LEI) and also stated that the OFR is engaging with the CFTC to improve the quality of data reported to swaps data repositories.

Congressional Activity

• Financial regulators appeared before the Senate Banking Committee on 6 February to discuss financial stability and data security issues. Treasury Under Secretary for Domestic Finance Mary Miller, Federal Reserve Governor Daniel Tarullo, FDIC Chairman Martin Gruenberg, Comptroller of the Currency Tom Curry, SEC Chair Mary Jo White and acting CFTC Chairman Mark Wetjen testified at the hearing.

• Senators John D. (Jay) Rockefeller IV (D-WV), Chairman of the Senate Committee on Commerce, Science, and Transportation; Dianne Feinstein (D-CA), Chairman of the Senate Select Intelligence Committee; Mark Pryor (D-AR), Chairman of the Commerce Subcommittee on Communications, Technology, and the Internet; and Bill Nelson (D-FL), Chairman of the Commerce Subcommittee on Science and Space, introduced the Data Security and Breach Notification Act. The proposed legislation would provide a federal standard for companies to safeguard consumers' personal information throughout their systems and to notify consumers if those systems are breached. It would require the Federal Trade Commission (FTC) to issue security standards for companies that hold consumers' personal and financial information.

• Several Congressional Committees held hearings regarding data breaches at Target, Neiman Marcus and other large companies. The hearings focused on how to prevent future data breaches and the appropriate course of action that companies should take if they experience a data breach. Officials from the Department of Homeland Security (DHS) testified at several of the hearings, as well as officials from Target, Neiman Marcus and other private sector representatives.

February 3: The Senate Banking, Housing and Urban Affairs Subcommittee on National Security and International Trade and Finance hearing, "Safeguarding Consumers' Financial Data."

February 4: The Senate Judiciary Committee hearing, "Privacy in the Digital Age: Preventing Data Breaches and Combating Cybercrime."

February 5: The House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade hearing, "Protecting Consumer Information: Can Data Breaches Be Prevented?"

• On 15 January, the House Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies Committee marked up H.R. 3696, the "National Cybersecurity and Critical Infrastructure Protection Act of 2013." The bipartisan bill addresses more comprehensive cybersecurity issues and seeks to codify existing U.S. Department of Homeland Security (DHS) cyber efforts with critical infrastructure. Various stakeholders, including DTCC, submitted letters of support for the legislation. H.R. 3696 was voted out of the Subcommittee and on 5 February, the House Homeland Security Committee passed the legislation by voice vote.

• On 10 December, the CFTC, SEC, Federal Reserve, FDIC, and OCC jointly approved the final Volcker Rule. The final rules generally would prohibit banking entities from 1) engaging in short-term proprietary trading of securities, derivatives, commodity futures and options on these instruments for their own account; and 2) owning, sponsoring, or having certain relationships with hedge funds or private equity funds, referred to as covered funds. See Fact Sheet: Final Rules to Implement the "Volcker Rule."

• On 5 February, the House Financial Services Committee held a hearing regarding the impact of the Volker Rule on job creators. Financial regulators including Daniel Tarullo, Governor, Federal Reserve Board, Mary Jo White, Chairman, Securities and Exchange Commission, Thomas Curry, Comptroller of the Currency, Office of the Comptroller of the Currency, Martin Gruenberg, Chairman, Federal Deposit Insurance Corporation and Mark Wetjen, Acting Chairman, Commodity Futures Trading Commission testified at the hearing.

What is 'Washington' Talking About?

• **Changes at the CFTC:** CFTC Commissioner Mark Wetjen took over as acting chairman on 3 January (Gary Gensler's last day at the agency). On 7 January, the White House sent the nomination of Sharon Bowen, a partner in the law firm of Latham and Watkins, to the Senate. If confirmed, she will fill a seat vacated by Bart Chilton. The White House also resubmitted the nominations of Tim Massad (to serve as CFTC chairman) and Chris Giancarlo. All three nominations will be considered by the Senate Agriculture Committee. The next step in the confirmation process will involve a public hearing which has not been scheduled yet.

• **CFTC Reauthorization:** With the Farm Bill on its way to President Obama, the House Agriculture Committee will likely turn its attention to the CFTC reauthorization process. The committee held several hearings regarding this issue last year and may focus on drafting bill text which could result in changes to the Commodity Exchange Act.