

CFTC's Massad "Hopeful" on EU Recognition of U.S. Clearinghouses

On Sept. 17, CFTC Chairman Tim Massad gave an update on the status of his talks with European regulators on the issue of clearinghouse recognition. Massad reaffirmed the CFTC's view that "dual registration" is the right approach and said that the talks are now focused on avoiding conflicts and inconsistencies within that framework.

"We are looking at whether particular regulatory objectives that we have can be met through the regulation and oversight of the home country regulator," Massad said. "We are also exploring ways to enhance cooperation in the joint supervision of dually registered clearinghouses. I am hopeful we can reach agreement soon."

As required by the European Market Infrastructure Regulation, European regulators are assessing whether the regulation and oversight of clearinghouses in foreign jurisdictions is "equivalent" to the regulatory regime in Europe.

European regulators have indicated that the decision to grant equivalence to the U.S. is tied to a corresponding willingness by the U.S. to recognize European clearinghouses without requiring those clearinghouses to register with the CFTC or comply with duplicative CFTC rules.

The European Commission has until Dec. 15 to make these determinations. If equivalence is not granted by this time, European banks that are members of U.S. clearinghouses will become subject to much higher capital requirements, which may cause some of these clearing firms to pull back from the U.S. markets.

European officials are considering an extension, however. Martin Merlin, the EC's director for financial markets, revealed this

policy in a speech in Geneva at the annual Bürgenstock conference sponsored by FIA, FIA Europe and the Swiss Futures and Options Association. Merlin acknowledged that the assessment process has taken longer than expected. As a result, the EC "is considering a further six-month extension of the deadline," he said.

J. Christopher Giancarlo, a commissioner at the CFTC, criticized European and U.S. regulators for failing to reach an agreement on this issue, attacking both sides for engaging in a "cross-Atlantic trade war" regarding swap market oversight.

Speaking in Geneva, Giancarlo said the rift began with the CFTC's July 2013 cross-border interpretive guidance, but he also pointed to the EU's unwillingness to recognize U.S. clearinghouses as equivalent.

Giancarlo called on U.S. and EU regulators to "reset" their cross-border regulatory relationship in the spirit of the Pittsburgh G20 accord and establish a "sound and practical basis for regulatory and supervisory cooperation" in the oversight of global clearinghouses.

U.S. Regulators Propose New Margin Requirements, Leverage Ratio Treatment

In September, U.S. regulators including the Commodity Futures Trading Commission issued new rulemakings that affect clearing firms, including a proposed rule for setting margin requirements for uncleared swaps.

Banking regulators also approved a final rule requiring banks to hold enough liquid assets to meet their cash needs for 30 days, and a final rule modifying the way leverage ratios are calculated. The leverage ratio rule focuses on the treatment of client cash provided to clearing members as collateral to meet margin requirements

and the treatment of cleared written credit derivatives.

While banking regulators did not agree to a request made by FIA to exclude cash posted as collateral for cleared trades from the leverage ratio calculations, they did agree to change the treatment of credit derivatives if they are cleared.

CFTC Examines FX Clearing Mandate

On Oct. 9, the Commodity Futures Trading Commission hosted a discussion with market participants on a clearing mandate for non-deliverable forwards and the potential impact on the foreign exchange markets.

The discussion, which was held under the auspices of the CFTC's Global Markets Advisory Committee, revealed significant disagreement about the timing of such a mandate. While some participants emphasized that mandatory clearing could be put into effect relatively easily, others raised concerns about the potential for a clearing mandate to lead very quickly to a trading mandate.

Once a clearing mandate takes effect, market participants would have to start using swap execution facilities or their European equivalent within a short period of time. According to several participants in the discussion, this would probably lead to the fragmentation of liquidity in the NDF market and higher costs for U.S. market participants.

The CFTC has not yet proposed a mandatory clearing rule, but staff at the meeting said they are currently considering a proposal covering 12 currency pairs with tenors ranging from three days to two years.

A senior official from the European Securities and Markets Authority also spoke at the meeting and described ESMA's recently issued proposal for NDF clearing. The official

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noted that under the timetable prescribed by EU rules, mandatory trading for NDFs is likely to take effect in Europe in early 2017.

CFTC Extends Relief for the Clearing of Package Transactions

On Sept. 29, the CFTC issued a staff letter extending certain parts of previous no-action relief until Feb. 16, 2015 for so-called "package transactions" that involve multiple swap contracts.

The relief allows a swap execution facility or a designated contract market to continue to use a "new trade, old terms" procedure for these types of trades. Effectively, the relief permits a package trade to be re-submitted for clearing if one of the legs fails to clear, rather than declaring the trade "void *ab initio*."

On May 1, 2014 the CFTC granted temporary relief to enable the industry to develop technology solutions that would allow the legs of a package transaction to be measured together. In its most recent letter, CFTC staff explained that the additional time will allow market participants more time to develop these solutions.

FIA Responds to Draft U.S. Ownership Identification Rule

The Financial Crimes Enforcement Network, the anti-money laundering arm of the U.S. Treasury Department, issued a proposal on July 30 that would require financial institutions to look through the companies they serve and identify the ultimate owners. One of the provisions would require futures commission merchants and introducing brokers to identify and verify any individual who owns 25% or more of a legal entity that is a customer.

On Oct. 2, FIA filed a comment letter responding to the proposed rule. The comment letter:

- asks for clarification on the treatment of intermediated accounts;
- requests additional exemptions to the customer definition and suggests additions to the text of the rule;
- proposes enhancements to customer due diligence procedures;
- questions the need to make customer due diligence a "fifth pillar" of anti-money laundering program requirements; and
- recommends expanding the implementation time frame to 24 months.

FIA PTG Recommends Structural Improvements to Promote Accessibility and Transparency in U.S. Equity Markets

In September FIA Principal Traders Group joined the ongoing debate on potential reforms to the U.S. equity markets, releasing a position paper that sets out its views on several policy ideas raised by Securities and Exchange Commission Chair Mary Jo White. FIA PTG's position paper offered specific recommendations on several points addressed in Chair White's speech, such as market data, co-location, timestamps, order protection and pilot programs.

FIA PTG also urged regulators to consider market structure reforms within a broader framework of principles, notably protecting fair and open access to markets, reducing the regulatory incentives for market fragmentation, reducing the complexity of markets, and making greater use of data in market oversight and public policy. [fif](#)