MFA POLICY BRIEF

MFA December 2014 Policy Brief

MFA Reiterates Call for Fair, Stable Uncleared Swaps Market and Responds to U.S. Prudential Regulators

MFA underscored the need for the Commodity Futures Trading Commission (CFTC) to issue final margin requirements that promote a consistent, fair, and stable global market for uncleared swaps that is commercially viable for financial end users. MFA's letter outlined similar concerns and recommendations to the CFTC on most aspects of its re-proposed margin rules as MFA expressed in an earlier letter to U.S. prudential regulators on their re-proposed margin requirements.

MFA's letter also responded to the CFTC's advance notice of proposed rulemaking on three alternative approaches to cross-border application of its uncleared margin requirements.

MFA also sent a comment letter outlining the need for U.S. prudential regulators to promote consistent, fair and stable global markets for non-cleared swaps and non-cleared security-based swaps. This letter outlined the need for those same criteria to apply to non-cleared security-based swaps utilized by financial end users to protect against risk. MFA's letter went to representatives with the Federal Reserve, Federal Deposit Insurance Corporation, Treasury's Office of the Comptroller of the Currency, Farm Credit Administration and the Federal Housing Finance Agency and was in response to their proposed rules on margin and capital requirements for prudentially regulated covered swap entities related to Title VII of the Dodd-Frank. MFA's comments focused on the proposed margin requirements.

Among other main positions in both letters, MFA expressed support for mandatory bilateral initial margin exchange, but requested modifications to the proposed thresholds for consistency with the final Basel-IOSCO international margin framework. The letters also requested that the U.S. regulators work together, along with foreign regulators, to develop a single, unified regulatory framework.

Click here to read MFA's letter to the CFTC.

Click here for more information or here to read the full text of the letter MFA sent to the U.S. Prudential Regulators.

Hong Kong Monetary Authority and the Securities and Futures Commission Issue Guidance on Reporting of OTC Derivatives

The Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) have issued their collective conclusion on reporting of OTC derivatives transactions in Hong Kong, based on feedback received, on the agency's July 2014 joint consultation paper on Securities and Futures (OTC Derivatives Transactions – Reporting and Record Keeping) Rules.

The agencies determined not to require reporting of OTC derivatives transactions by fund managers with Type 9 licenses at this time. Instead, the HKMA and SFC will take into consideration the comments received on this issue when they decide to implement this reporting obligation in the future. Delaying the reporting obligation for Type 9 fund managers addresses concerns raised by MFA

in its August comment letter about the burdens that would result if the HKMA and SFC placed a reporting obligation on fund managers licensed in Hong Kong when the funds that manage trade with non-Hong Kong dealer counterparties.
Click here to read MFA's August Comment Letter.

Click here to read the conclusion report from HKMA and SFC.

MFA Comments on U.K. BIS Public Registry Proposal

MFA submitted a letter to the U.K. Department of Business Innovation and Skills (BIS) on the proposed creation of a public registry for people with significant control (PSC) of U.K. companies.

The BIS issued a discussion paper outlining the registry in October of this year. MFA's most recent comment letter echoed earlier points made to the BIS on this issue.

In the letter, MFA states support for the objectives of PSC registration to prevent abuse, but also outlines several key concerns with public disclosure of certain information. U.S. investment advisers registered with the Securities and Exchange Commission and U.K. businesses regulated by the Financial Conduct Authority already report information about their owners. Requiring this information to be made publicly available could open individuals to the real and increased risk of identity theft or fraud.

Click here to read the full text of MFA's letter.

European Commission to Delay U.S. Clearing Rules Decision

The European Commission has announced a six-month delay in determining the equivalency of regulations overseeing U.S. clearing houses. The new deadline is June 15, 2015, instead of the end of this month.

According to Reuters, the Commission is expected to recognize that U.S. clearinghouses are appropriately regulated. Rules governing clearing houses in Japan, Hong Kong and Australia have already been recognized, which means European banks doing businesses with counterparties in these countries do not have to hold extra capital in reserve as a safeguard. Reuters also reports that some believe the delay could be an effort to gain leverage in ongoing discussions surrounding derivative rules.

The new regulations came about following the global financial crisis in 2008. The goal is to guarantee clearing houses – which facilitate deals between the two sides of a stock, bond or derivative trade – have adequate capital to complete a transaction should one of the parties go into default.

European banks will likely choose to do business only in countries the European Commission has granted equivalence certifications to in an effort to avoid holding extra capital reserves.

Click here to read the Reuters article.

Proposed EU Benchmarks Could Impact, Fragment Markets

Commodity Futures Trading Commission Chairman Tim Massad believes markets in the United States could have "adverse market consequences" if the European Union goes forward with a set of draft rules designed to regulate market risk.

The new rules, proposed by the European Commission, go further than the International Organization of Securities Commissions' (IOSC)previously agreed upon standards. The IOSC are currently applied in the U.S.
In a letter to U.S. lawmakers obtained by Reuters, Massad wrote that he shares concerns " that, if adopted in its current form, the E.C. benchmark proposal would have adverse market consequences" and the new E.U. rules could block access to European markets.

The IOSC secretary-general said the new E.U. standards went further than any country's current benchmarks and would fragment or disrupt markets.

The new rules come among ongoing talks between the E.U. and U.S. to develop a cohesive plan on how best to supervise derivatives.

Click here to read the Reuters article.

MFA Submits Comments on FSB Consultation on Cross-Border Recognition of Resolution Actions

MFA submitted a comment letter to the Financial Stability Board (FSB) that responded to proposals for recognizing statutory suspensions of early termination rights on a cross-border basis. The letter stated MFA's view that adopting statutory recognition frameworks in FSB member jurisdictions was the only appropriate solution.

With respect to adoption of the statutory recognition frameworks, MFA urged the FSB to ensure that:

- The frameworks are crafted carefully and fairly to include all parties and provide no favorable treatment for different types of parties; and
- It remains clear that only one jurisdiction has ultimate authority over the resolution of the failing institution and that affected market participants know which jurisdiction has that authority.

MFA objected to the FSB alternative proposal to have its members adopt prudential regulations and to use the ISDA Resolution Stay Protocol to recognize suspensions on a cross-border basis. MFA explained that this approach would require customers and investors to waive important rights that protect them during resolution actions and could potentially make the financial system more volatile by forcing investors to act before regulators have an opportunity to examine failing institutions.

Click here for more information or to read the full text of MFA's letter.

Click here to read an earlier joint coalition letter to FSB on suspension of early termination rights.

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