

## Regulatory Update

### Implementation Special

It's a busy time. In this edition, we describe how EU Council negotiations have picked up on the EU CSD Regulation, but with potentially disappointing effects.

Our current focus remains on implementation of the revised CPSS-IOSCO Principles for FMI and our application to ESMA for SIX x-clear's recognition under EMIR. Following the conclusion of discussions of our self-assessment under the Principles, we provided our comments on the Swiss National Bank's draft revised Banking Ordinance (NBO), which came into effect on 1 July, 2013.

We have a special feature on the impact of EMIR on SIX x-clear. There has been positive news here as well in that the deadline for the submission of ESMA's technical advice to the European Commission on the equivalence of Swiss rules to EMIR has been delayed yet again. This will ensure that we do not run into possibly conflicting deadlines for the submission of our application to ESMA.

All these changes at the European level also have an impact on the Swiss legislative framework, and we remain directly involved with the authorities' working groups around modernising the Swiss Financial Markets and Financial Infrastructure Laws: a consultation document is expected to be published in the Autumn.

As if all this was not enough we also have our T2S Direct project and our client road shows are underway.

And, finally, an optimistic note on which to end: it seems that the European authorities have recognised the flaws in their proposal for an EU-wide Financial Transactions Tax, and are down-scaling its scope and timing. So there is hope there too. As I said, it is, and will remain, a busy time!

I hope that you enjoy this issue of Oversight, and the updates. If you have any questions, please do not hesitate to contact us.

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> EU initiatives affecting the value chain	02
> Market infrastructure initiatives by the European Central Bank (ECB)	04
> Other legislative and regulatory initiatives impacting on market infrastructures and the value chain	05



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# EU initiatives affecting the value chain

Negotiations on the CSD Regulation in Council have resumed in earnest; the EMIR framework is nearly complete, and SIX x-clear is applying to ESMA; MiFID discussions continue to drag, amid signs that final agreement might drag into 2014; the Financial Transaction Tax proposal look likely to be reduced in scope.

## EU Legislative Programme affecting Market Infrastructures

Changes since the last edition of Oversight are highlighted in **bold** in the table below:

Segment of the Value Chain	Measure	Proposed (Published)	Adopted (Finalised)	Entry into Force (after Technical Standards)
Trading	Review of Market in Financial Instruments Directive (MiFIDII/MiFIR)	20 October 2011	<b>Q4 2013 / Q1 2014?</b>	2016?
Clearing	European Market Infrastructure Regulation (EMIR)	15 September 2010	July 2012	15 March 2013
Settlement	Central Securities Depositories Regulation (CSDR)	7 March 2012	End - 2013?	Mid - 2015
Underpinning Law	Securities Law Directive / Legislation (SLD/SLL)	<b>Q4 2013</b>	End - 2015?	2017 / 18?

### a) Central Securities Depositories Regulation (CSDR)

After a period of inactivity mentioned in the last issue, Council discussions resumed in earnest under the Irish Presidency, with the format of meetings moving to Financial Attachés, which means that Member State technical experts, such as regulators, are not present. The last meeting took place on 11 June, after which the Irish Presidency was unable to convince Member States to agree to a general approach for the 21 June Ecofin. This is just as well as the text is still undercooked; SIX SIS and its fellow ECSDA members have noted that a number of Articles still require refinement. Too much of the recent Council discussion appears to be in the abstract without much consideration of the practical and operational effects on CSDs. In particular, the Council's revised proposals in relation to settlement discipline (Article 7), free provision of services (Article 21) and CSD-to-CSD links (Article 17) are still not in the form we would like to see. Although an earlier Council proposal that Article 23, which governs the authorisation of supervision of Third Country CSDs, should be deleted has been obviated, the Article is still not in the right shape. While (the current proposal for TC CSDs) applying for recognition under ESMA is detailed and onerous (and we should know having to do it for SIX x-clear as a recognised CCP under EMIR), we think this is preferable to the alternative of forcing TC CSDs to

branch into the EU. In particular, we believe that the equivalence test mechanism ensures that there is legal certainty over the TC's regulatory regime and the ability of its institutions to provide services in the EU. We are discussing these aspects with the European Commission and Parliament and relevant authorities.

We also understand that, in the new text, the proposed date for the shortening of the settlement cycle to T+2 will be delayed by six months to the middle of 2015.

### b) The EU Regulation on OTC Derivatives, central counterparts, and trade repositories (EMIR)

The main focus for CCPs in Europe is now to become compliant with the revised prudential requirements in EMIR, as a precursor to submitting, by 15 September, their applications to national authorities and ESMA for recognition. In a parallel development, the European Commission has further extended the deadline for the submission of ESMA's technical advice on Third Country equivalence, also to 15 September. The Commission has also helpfully clarified in a guidance note issued on 16 May that the acceptance of CCP applications by ESMA is not dependent on the delivery of the Commission's equivalence decision.

In terms of completing the legal framework for EMIR, Regulatory Technical Standards are still awaited on the

standardised list of OTC products to be centrally-cleared, together with the capital treatment of non-centrally cleared contracts, which was the subject of a further consultation by the Basel Committee and IOSCO earlier this year. It is expected that these will be in place by September (revised from end-2012), as the new date for as many jurisdictions as possible to meet the G-20 commitment for the trading, central clearing and reporting of OTC derivative transactions.

The introduction of EMIR requirements, initially via a revision of the Swiss National Banks's Ordinance ("NBO"), which entered into force on 1 July, as it relates the oversight of financial market infrastructures, will be the main tool in Switzerland to introduce the Principles for FMIs. Within DSS, a project team has been formed to organise and supervise all the work that will be necessary to meet the revised requirements. It will incorporate the work that is being done on making SIX x-clear compliant with the new CCP requirements (see box below), and the wider cross-divisional regulatory implications of the Principles.

#### **FEATURE ON NEW CCP REQUIREMENTS IN EMIR: IMPACT ON SIX X-CLEAR**

The entry into force of EMIR and its accompanying Regulatory Technical Standards will lead to a significant uplift in regulatory requirements for CCPs in Europe. It will also require revision of the legal framework for SIX x-clear's authorization and supervision in Switzerland. Following examination of the contents of the revised NBO, and the requirements in EMIR, a remedial programme has been launched in DSS. Notably, enhancements will be undertaken in the areas of:

- **Governance** (ensuring appropriate Board arrangements and Chief Officer tasks)
  - **Segregation & Portability:** giving clients access to segregated accounts
  - Risk Management, notably in the area of developing an enhanced suite of **stress tests**
  - Formulating a **recovery** and **wind-up plan** (including access to additional financial resources); and
  - Re-calibration of **margin** and **default fund** requirements
- Changes will be put in place over the next year or so.

#### **c) Revision of the Market in the Financial Instruments Directive (MiFID II/MiFIR)**

The Ecofin on 21 June endorsed the provisional COREPER agreement reached earlier in the week, which mean that the dossier can now move to Trialogue discussions with the European Parliament, expected to start in the autumn, under the Lithuanian Presidency. The Council's position covers the decision to include equities within the new organised trading

facility (OTF) venue category, rules granting central counterparties non-discriminatory access to exchanges and rules governing dark pools. In particular, volume caps for use of the reference price waiver – which allows dark pool trades to execute using lit prices as a reference – were set in the Council position. Once 4% of total trading in a specific security has occurred on one dark trading venue, or 8% across all dark venues, use of the waiver will be barred for a period of six months. The indicative date for the European Parliament's Plenary discussion has been pushed back to the middle of December, rather suggesting that a final agreement between the EU institutions will not be reached until early 2014.

#### **d) Securities Law Legislation**

The European Commission held a meeting with Member States on 24 May on the basis of a new discussion paper outlining issues such as conflict of laws, securities holding and collateral transfers. Oversight understands that this meeting was less than consensual, and led to more questions than answers. As a result, a Commission proposal seems as far away as ever from seeing the light of day. There is still no clarity on the legal base, and whether a Regulation or Directive will issue.

#### **e) FMI Recovery and Resolution Plans**

More clarity has emerged on the European Commission's plans for extending, after banks, the requirement for selected categories of financial institutions to maintain RRRs. They have stated that a proposal for CPPs (only) will be made by the end of this year (possibly November). This will chime well with the potential conclusions of an own initiative report being drafted by Kay Swinburne of the European Parliament, which was published on 17 June. The report favours the prioritisation of CCPs, and accepts that requirements for CSDs should be calibrated accordingly, on account of the different risk profile.

#### **f) Fiscal Compliance Procedures related to Post-trading**

In a report released on 24 May, the European Commission's Tax Barriers Advisory Group ("T-BAG") has analysed and summarised some of the problems of differential legal bases and the absence of a consistent tax relief model in Europe. These issues have been around for a considerable period of time, and were first set out by the Giovannini reports in 2002 and 2003. The solution to all these ills is said to be for Member States to agree a common "Authorised Intermediary Agreement" ("AIA"), which would standardize documentation and information, introduce a common distribution mechanism, and identify beneficial owners.



#### **g) Financial Transaction Tax Directive**

Following widespread criticism about the considerable potential negative effects of the FTT (such as undermining the functioning of the fixed income, repo, collateral and securities lending and borrowing markets), Oversight understands that the European Commission is preparing to significantly water down its original proposal. The most favoured model, deemed now to be the first stage of the FTT, will involve the imposition of a levy – a bit like stamp duty – on share transactions. This could follow closely the model in United Kingdom, or that operating in France or Italy. Through its European Associations, ECSDA, EACH and FESE, SIX has been lobbying hard to mitigate the effects of this pernicious measure, in particular in relation to the potential for CSDs to be appointed as mandatory collecting agents. It now seems likely that any agreement on a revised proposal could mean that the implementation has slipped to mid-2014.

Work Programme) after the preceding summer (so July 2013). By tradition, MEPs leave for their constituencies to electioneer in the spring (March 2014), and proposals are not formally debated until after all the internal organisation (election of the EP President, Committee Chairs) and the confirmation hearings for Commissioners have taken place (usually by September/October, of 2014). So there will be something of a legislative hiatus in the EU's work between Q2-Q3 next year, potentially lasting until the end of 2014. One particular aspect which is not clear is the extent of the EP's capacity to deliver its opinions on Level 2 texts (see previous edition for explanation). Legislative consideration by the EP will also be hampered by an expected high turnover of the members of its Economic Affairs Committee (70% of members were new at the last election) and the retirement of key MEPs such as the ECON Chair, Sharon Bowles.

#### **h) EU Inter- Institutional Arrangements: Completing the 2009-2014 European Term**

In the last week of May 2014, the European Parliament will hold elections across the 28 Member States. A new European Commission will also be appointed and take office in September of next year. By convention, the European Commission does not adopt legislative proposals that have not been previously flagged (in its

If you would like to find out more on EU financial market infrastructure legislation or on any other regulatory topic, please contact: Alex Merriman, Head of Market Policy (Alexander.Merriman@six-group.com) or by 'phone to +44 (0)20 7550 5442. Previous editions of Oversight and other regulatory information about us are also available at: [www.six-securities-services.com](http://www.six-securities-services.com)

## **Market infrastructure initiatives by the European Central Bank (ECB)**

**Work on building SIX SIS's direct connection to T2S has started. We will also obtain a clearer perspective on the T2S link work. The ECB continues its efforts to identify and mitigate outstanding issues relating to the harmonisation of collateral frameworks in Europe**

#### **a) Target 2 Securities (T2S)**

The project to build SIX SIS's direct connection to T2S, dubbed "T2S Direct", from SIX SIS's operations centre in Olten has begun, and the project implementation structure has been put into place.

Christophe Lapaire will manage the project. The intention is still for SIX SIS to form part of the first migration wave in T2S, anticipated in July 2015 (assuming all is well with the adoption of the CSDR –



see above). A series of road shows to interested clients will be initiated in the near future. The Swiss Financial Community is represented on the "T2S Direct Committee" which met recently. Meanwhile, the ECB T2S project work is drawing towards the end of its technical development and specification phases, and will soon begin a comprehensive suite of testing.

As mentioned last time, we are also participating in the ECB's future work in relation to the assessment and "approval" of CSD links into T2S. Our European association, ECSDA, and its members (including SIX SIS) discussed this issue on 11 June in Frankfurt.

#### **b) Collateral Harmonisation**

We continue to closely follow the work of the ECB's COGESI ad-hoc working group on collateral harmonisation. The ECB will be publishing the results of this work in the summer at a public event. As before, the main improvements lie in the area of facilitating cross-border tri-party collateral management, for instance via the cancellation of the eurosystem's collateral repatriation requirement, the greater easing of repo transactions via later cut-off times, and notably an improvement in the bridge between Euroclear and Clearstream.

## **Other legislative and regulatory initiatives impacting on market infrastructures and the value chain**

**CPSS-IOSCO will soon be coming forward with revised proposals on FMI RRP. The IMF FSAPs will also focus on this aspect.**

#### **a) CPSS-IOSCO Work on Recovery and Resolution Plans for FMIs**

Following the consultation which finished at the end of 2012, Oversight understands that these authorities will soon be coming forward with a further set of proposals on RRP, and will possibly showcase these at an event in New York in September. This work will parallel that of the Financial Stability Board on further refining the key attributes of recovery and resolution plans for non-banks.

#### **b) IMF FSAPs**

In addition, during its Financial Sector Assessment Plan ("FSAP") visits, covering 20 jurisdictions (including Switzerland) during the course of this year, the International Monetary Fund will be prioritising aspects of financial stability, including the roll out of RRP for critical financial institutions, including infrastructures.

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