ACI BRIEFING - Dubai Edition

3/2012

51st ACI World Congress

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1963 May 23-26, Hamburg - 7th Congress
1964 October 2-4, New York - 8th Congress
1966 June 10-12, Paris - 9th Congress
1967 June 8-10, Amsterdam - 10th Congress
1968 May 23-25, Torremolinos - 11th Congress
1969 November 28-30, Vienna - 12th Congress
1971 May 20-22, Copenhagen - 13th Congress
1972 May 19-21, London - 14th Congress
1973 May 31-June 3, Lisbon - 15th Congress
1974 May 23-25, Brussels - 16th Congress
1975 May 8-11, Venice - 17th Congress
1976 May 28-30, Washington - 18th Congress
1977 May 19-22, Montreux - 19th Congress
1978 June 1-4, Munich - 20th Congress
1979 May 24-27, The Hague - 21st Congress
1980 June 6-8, Singapore - 22nd Congress
1981 May 29-31, Paris (25th Ann.) - 23rd Congress
1982 May 20-23, London - 24th Congress
1983 June 3-5, Luxembourg - 25th Congress
1984 May 31-June 3, Belgrade - 26th Congress
1985 May 30-June 2, Toronto - 27th Congress

1991 June 5-8, Madrid - 33rd Congress
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1993 June 2-6, Helsinki - 35th Congress
1994 June 2-5, London - 36th Congress
1995 June 8-10, Osaka - 37th Congress
1996 May 16-18, Frankfurt - 38th Congress
1997 May 28-June 1, Toronto - 39th Congress
1998 June 4-6, Geneva - 40th Congress
2000 May 18-20, Paris - 41st Congress
2001 May 24-26, Singapore - 42nd Congress
2003 September 11-13, Beirut - 43rd Congress
2005 May 26-28, Stockholm - 44th Congress
2006 May 25-27, Philippines - 45th Congress
2007 May 3-5, Montreal - 46th Congress
2008 May 29-31, Vienna - 47th Congress
2009 March 12-15, Cape Town - 48th Congress
2010 March 25-28, Sydney - 49th Congress
2011 May 26-28, Budapest -50th Congress
2012 March 22-24, Dubai – 51st Congress
2013 March – Singapore – 52nd Congress
2014 May – Berlin – 53rd Congress
2015 May – Milano – 54th Congress (?)
2016 May – Indonesia – 55th Congress (?)

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ACI BRIEFING

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Dubai Ready to Host **ACI World Congress**

The 51st ACI World Congress is taking place from Thursday 22 March to Saturday 24 March in the Dubai Convention and Exhibition Centre (DICEC), located in Dubai's business district, between old and new Dubai.

The opening reception will be held on the evening on 22 March as delegates arrive, with the welcome address delivered by the President of the United Arab Emirates Financial Markets Association (UAEFMA), Mohammed Al Hashemi, and ACI President, Manfred Wiebogen.

"ACI has a long and beneficial relationship with the Gulf region – and this will be on display during the ACI World Congress in Dubai," says Wiebogen. "Dubai has become a significant financial hub in the Middle East region and is especially well placed as a bridge between Asia and Europe. The programme for this Congress will cover all the crucial issues facing our industry today, both globally and regionally, from regulation and taxation to global and regional financial tensions."

The business sessions of the Congress will begin with a welcome address from the UAE Central Bank Governor, His Excellency Sultan bin Nasser Al Suwaidi, before moving on to the keynote address from Rick Pudner, Group Chief Executive Officer of Emirates NBD Bank, who will examine the financial markets with a regional focus.

The first panel discussion of the event, 'Financial Market Opportunities Created by the Arab Spring', will include Brad Bourland,

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MOHAMMED AL HASHEMI, PRESIDENT UAEFMA

THURSDAY/ EXHIBITION & WELCOME RECEPTION

ACI MEETING WITH DUBIA INTERNATIONAL FINANCIAL CENTRE, A.M. SALEH, GOVERNOR DIFC

SATURDAY/GALA DINNER OPEN AIR AT BURJ KHALIFA

Message from the President

Just a few more days to go until we meet at our 51st ACI Congress in Dubai. The decision to meet in the Middle East was representative of the extraordinary development of financial markets in the Gulf region. This area, and in particular Dubai, has developed as a hub between Asia and Europe – a place which cannot be ignored.

The theme of the conference is therefore aiming to touch Islamic banking, the current market environment as well as regulation and taxation. It will provide plenty of opportunity to inform the industry about the latest trends; provide the opportunity to visit the exhibition show to refresh your network or make new contacts. So again, may I invite you to participate at our traditional networking event of the year – Dubai 22-24 March 2012.

At a regulatory level we from ACI are alarmed by what are mainly European initiatives such as EMIR (European Market Infrastructure Regulation) which look like they are calling for margin requirements for FX derivatives. As opposed to the Dodd-Frank Act in the US, the Europeans will not call for an exemption but additional margin requirements will increase banks' costs as well as increase collateral (placement) risks at CCPs.

The other European solo attempt will probably be the implementation of a Financial Transaction Tax (FTT) which would include FX Derivatives (such as FX forwards and FX swaps). Oliver Wyman recently analysed these

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PROFIT & LOSS IN THE CURRENCY & DERIVATIVE MARKETS

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costs at some EUR 279/ticket. By taking a EUR/USD 25 Mio swap this tax would increase costs by EUR 2,500 per leg (assumption 0,01% tax underlying), totaling EUR 5,000 in taxation if both partners are in the Eurozone area.

Given how most of the FX swaps traded are shorter than one week in duration and more aimed at liquidity exchange (they count for more than 50% of FX transactions), this methodology will have a hugely negative impact on the market's ability to manage liquidity effectively in the future.

Just these two examples highlight the potential disadvantages that might arise for the banking industry in particular within the Euro area. Together with our local ACI associations we are keeping in close contact with regulators and other authorities to ensure our views are heard and our market experience utilised.

Our call to the accountable authorities is for international consistency in regulation and supervision. After all, we are living in a globalised world!

Manfred Wiebogen
President ACI

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Chief Economist and Head of Proprietary Investments at Jadwa Investments; Farah Foustock, CEO of ING Investment Management; and Said Hirsh, Middle East and North Africa Economist at Capital Economics.

Professor Otmar Issing, President of the Centre for Financial Studies at Geothe University in Frankfurt and former Member of the Board of Deutsche Bundesbank and Member of the Executive Board of the European Central Bank, will then deliver his keynote speech on the Eurozone – a matter of high interest to all members of the financial markets.

After lunch, the afternoon programme will begin with a panel discussion on 'Sukuk Trading', with panellists including Rupesh Hindocha, Head of Credit Trading, Middle East and North Africa at Standard Chartered Bank; Nick Stadmiller, Head of Fixed Income Research at Emirates NBD; Yaser Abushaban, Director of Asset Management at Emirates Investment Bank, and Chavan Bhogaita, Head of Markets Strategy at National Bank of Abu Dhabi.

Day one will then conclude with a further panel discussing the future of the US dollar, the BRIC markets and commodities. Panellists will include Fiona Lake, an Economist for Global Markets at Goldman Sachs and Jeffrey Rhodes, Global Head of Precious Metals and CEO of INTL Commodities DMCC. Delegates will then be invited on a desert dune safari on the way to the UAEFMA Congress networking dinner.

Day two will begin with a keynote speech from Paul Mercier, Principle Advisor for Directorate General Market Operations at the European Central Bank, as he provides an update on Eurosystem Liquidity. The first panel of the day will be 'Development of the Islamic Banking Market: Hedging and New Initiatives', with the panel consisting of: Lawrence Oliver, Director and Deputy Chief Executive Officer at DDCAP; Dr Syed Farook, Global Head of Islamic Capital Markets at Thomson Reuters; Simon Eedle, Global Head of Islamic Banking at Credit Agricole CIB; and Lilian Le Falher, Executive Manager for Treasury, Financial Institutions and Capital Markets at Kuwait Finance House.

This panel will be followed by another keynote address as Robin Poynder, Head of Regulation at Thomson Reuters, Marketplaces, discusses "OTC Derivatives Trading Regulation: Threat or Opportunity".

The day will then move on to the ACI General Assembly before the final keynote address of the Congress from Andreas Gaus, Managing Director at Credit Suisse and Chair of the European Central Bank Operations Managers Group, on "The ACI Model Code: New FX Best Practice Operations".

The 51st ACI World Congress will conclude with a panel on a much- discussed topic globally – the financial transaction tax. The panel sees Guido Ravoet, Secretary General of the European Banking Federation, join Richard Middleton, Managing Director, Tax Division at AFME; Robert Mohamed, ICMA Representative for the Gulf Region; Richard Raeburn, Chairman EACT; Morgan McDonnell, President of ACI UK; and Luc van Laarhoven, from ACI's Committee for Professionalism, to discuss the potential global impact of the introduction of such a tax.

The second day of the Congress will culminate with an evening at the Burj Khalifa, the tallest building in the world, located in downtown Dubai, before moving down a few levels to the skyscraper's Armani Pavilion hotel terrace, overlooking the iconic Dubai Fountain, for the ACI World Congress gala dinner. At this event, one of the highlights of all ACI Congresses – the handing over of the ACI Flag, will take place.

Al Hashemi says, "The 51st ACI World Congress in Dubai provides a commercial hub of opportunity. In the last three decades Dubai has positioned itself on the map as one of the Middle East's respected markets for global banking and finance. A gate-way to the MENA region, Dubai facilitates a safe and well connected trade network and an established centre for Islamic banking services. A world class business environment and a wealth of opportunities are available for those wishing to tap into this dynamic and globally respected platform of commerce."

ACI FXC Adds Corporate Sector Members

ACI – The Financial Markets Association has expanded its lobby group, the ACI FX Committee (ACIFXC), with the inclusion of representatives from both the corporate sector and Asia region.

Brent Callinicos, Vice President and Treasurer at Google, Wolfgang Koester, Chief Executive Officer of FireApps, and Sven Carlsson, Head of Markets at Ericsson Treasury Services, have joined the committee to represent the corporate sector. Clifford Cheah, Deutsche Bank's Head of Global Finance and Foreign Exchange for Asia in Singapore, has joined to represent Asia.

Stephane Malrait, Chair of the ACI FX Committee, says, "We are proud to gather such a talented group of professionals together representing the geographical and sectional interests of the market. These additions to the ACIFXC will reinforce our mission statement to represent the entire professional FX Market."

ACI Foundation News

The trustees of the ACI Foundation met on 23 February at the London Capital Club to discuss the activities of 2011 and to look ahead to the future.

Established in 1996 the ACI Foundation is a UK registered Charity. The Foundation's objectives are to advance the education of the public in such subjects relating to Treasury financial markets' knowledge as the trustees shall determine. A key objective is the Bursary programme which sponsors ACI exam takers in mainly emerging countries with 50 per cent of the certification fees.

Composition of Trustees:
Manfred Wiebogen, President ACI
David Clark, Honorary President ACI
David Hastings, CEO BT Prim and Foundation Secretary
Martin Warmsley, Trustee

After several years at the Foundation Peter Searson, Secretary is leaving. ACI and the Foundation's Trustees owe special thanks to him for his contribution and dedication. He is handing over to David Hastings as the new Company Secretary.

The Foundation depends upon outside sponsorship. The biggest contributors in the past have been ACI UK, ACI Singapore and ACI Lebanon. Any sponsorship is welcome, however, and the trustees are searching for new ways to enrich sponsorship activities, with the eventual aim of providing sponsorship for wider educational training.

You want to learn more about the charity? Go to:
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For sponsoring contact:
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The Trustees

Bursary per year	Approved by Trustees	Vouchers issued
2011	35	9 *)
2010	55	31
2009	36	15
2008	42	15
2007	49	36

**) not the final figure*

The Buy-Side Bites Back: Square Mile Debate

At the second annual ACI UK Square Mile Debate on 2nd February, organised in partnership with City of London Corporation, a panel of experts from a clearing house, a policy think tank and two multinational corporations came together under the debate title, 'My flow, your rules: the buy-side bites back'.

Participating on the panel were Gavin Wells, Managing Director of Foreign Exchange at LCH.Clearnet, Wolfgang Koester, CEO of Rim Tec Inc/FireApps, James Barty, Senior Consultant to Policy Exchange, Financial Policy and Sven Carlsson, Head of Markets at Ericsson Group.

Held in the imposing Old Library at the Guildhall in London, after attendees were welcomed by Morgan McDonnell, President of ACI UK and Head of Global FX, Cash and Credit Markets at RBC Dexia Investor Services, the evening began with a rousing speech from Stuart Fraser, Chairman of the Policy and Resources Committee at the City of London Corporation.

Fraser argued that the foreign exchange market in London continues to be a real strength of the centre, and that it remains on a 'level-playing field' with other markets. The financial services are accused of causing the financial crisis by those beyond the market, therefore they are expected to be remorseful of the past, despite the fact that there is no one specific to blame, he added.

Fraser also put forward the notion that recent coverage on bonus pay-outs and systems in tabloid publications serve merely as a distraction from the greater issues to be discussed, such as the protestors that were then occupying St. Paul's Cathedral in the City of London.

Throughout the debate, topics including regulation, the Eurozone and clearing were discussed; as the potential introduction of regulation looms ever closer, the range of the panellists' backgrounds meant that subjects could be examined from various viewpoints.

The introduction of regulation is a big worry for some, not just in terms of costs, but there is also the chance that effective adherence to a plethora of new rules may prove difficult straight away, as the level of understanding varies across sectors and types of organisations. One panellist said, "Regulators don't think! The buy-side

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now wants a better understanding of clearing, in terms of their requirements and what they can expect; there is now a great hunger for an elevated understanding. Within the market there is currently a range of understanding – the consensus view is that most people understand that they will need support for access."

Koester added, "As a clearing house, these costs [of regulation] are justifiable; our understanding of counterparty risk is good. But the danger if governments start creating financial markets is that they become too political, not financially focused. Market participants on the buy-side require extra effort from clearers."

Indeed, another panellist spoke of the difficulty firms would experience following enforcement of new and unfamiliar regulatory frameworks, "The problem is that so much is coming in together. Regulation can be executed in each centre which will then follow all required regulation, but this will be difficult to live up to. However you approach things, you will break the new rules at some point if there is no unity. It seems to have turned into a political game with extremely high expectations."

The idea that discussions regarding regulation are being held by politicians beyond the financial markets, and by those without the required level of market knowledge was agreed by the panel. Although the speakers held varying degrees of concern over the introduction of clearing, Dodd Frank Basel III, etc., due to their backgrounds. One speaker said, "Politicians don't really understand financial markets and this causes a big problem as Merkel and the markets are working to completely different timeframes. We don't appreciate now just how difficult things could be."

Another added, "We are used to regulation and quick adoption and adherence when new rules are implemented, but we have to consider how our costs will be affected. Should banks be punished and charged? I don't know- it is easier to do this to smaller companies, rather than large multi-nationals."

Koester stated, "Multi-nationals need to be heard. We are worried about the Eurozone and feel that indecision is overshadowing Dodd Frank, but hasn't the buy-side been focused on Dodd Frank enough? There is a chance that regulation could be too extreme, do we know the true repercussions? We cannot automatically know the outcomes, why not start with a framework to build on?"

One panellist warned of possible fallout of bringing in new regulatory requirements as the, "policies [are] created by politicians. The problem with the introduction of regulation is that it will make a couple of particular banks even bigger – cash with these banks is then deemed as the safest. Subsequent counterparty risk and regulation may produce perverse results."

Another echoed this sentiment, stating, "The strong will become stronger. Flexibility is required in order to operate in all of the regulated markets."

One speaker put forward the notion that, "Regulators haven't considered the potential costs for the buy-side. It is understandable that there are costs but you have to know what you are paying for- why focus on something you can't change? But now there is more focus and clearer, more effective, information is available, therefore businesses can make informed choices. The heaviest cost expected is expected to be on posting collateral."

Following a question from the audience regarding clarity of clearing and the exemptions to clearing directives, Koester said, "There are concerns over counterparty credit and the cost of implementing Basel III. We want to have the choice to clear. I expect settlement to slow until Q3 2013. The uncertainty around financially settled swaps and forwards leads to an argument that you cannot prepare efficiently? But the argument is then that if these are not cleared, how are other products to be cleared chosen?"

Despite the feeling that those leading the finalisation of regulatory reform may not be the best-placed to do so, the panellists agreed that there will always be a way that firms can avoid the full impact of new rules, merely by changing particular processes and practices, as one speaker suggests, "Whatever regulation is included, the market will try to find a way around the rules, for example, the FTT."

Despite the fact that the general industry-wide consensus is that the FTT would not benefit the market, it was still seen as a severe threat to the markets. Following up on analysis from the Alternative Investment Management Association (AIMA) which used the European Commission's own figures, and found that the elevated costs would leave countries in the European Union worse off by tens of billions of euros annually, only causing more to support non-implementation, the panel discussed the implications for their businesses.

McDonnell said, "Banks from all over Europe base their trading operations in London. While there is a question mark over how much money this transaction tax will raise, there is no doubting the impact it will have on London as a place to do business and the effect on economic growth. We have to defend the importance of trading activities to London as the home of the EU's biggest financial services industry,"

When asked if the FTT would become law, one panellist said, "No, Sweden tried it and it didn't work there. If there is not a global solution, it won't work. One massive flaw, for example, is the fact that you can't track net transactions. There are a lot of ways around the FTT, even if it was implemented globally. Talk in Brussels demonstrates that something is expected to be done."

Another put forward the idea that, "You have to change the behaviour unless regulation is introduced on a global scale, therefore changing policies. One way to counteract the new charges to follow this could be to invoice in fewer currencies. Having said that, the FTT wouldn't be introduced on a global basis, there are too many stumbling blocks."

Koester added, "One country will always refuse the implementation, therefore another stumbling block appears. There will always be a way to circumvent new regulation while still carrying out legal activities."

The discussion then led on to the Eurozone crisis and how the panellists' firms are dealing with trading with these countries, and how the break-up of the Eurozone would affects those dealing within it. One speaker said, "You cannot just begin to change everything." Koester continued, "This seems to be the biggest topic for multinationals and banks. There are concerns over Italy and Spain across the board, there is the assumption that everyone will revert back to their home currencies if the Eurozone were to break up. This is a real issue but the recent focus has been on avoiding a recession or depression, Greece's hands are tied."

One speaker added that the break-up of the Eurozone isn't completely unlikely, although there are some caveats to this occurring, "The break-up of the Eurozone would be a complete disaster, and we shouldn't underestimate the influence from the US. If the Eurozone does break up, it should only happen by accident, it shouldn't be forced. Germany is the only country which could leave [but the] currency could still survive the appreciation against it, if any other country were to leave, it would go bust."

Support Stuart Attwood in the London Marathon

Alan Attwood, the former ACI UK president and long-time supporter of the ACI organisation, has been diagnosed with Alzheimer's disease. In honour of his father, and to raise money for the Alzheimer's Society - the support and research charity for people with dementia, and their families and carers - Stuart Attwood is running the Virgin London Marathon on 22 April 2012.

Attwood was a committee member of ACI UK for many years and also became a barker for the Sunshine Coach Appeal of the Royal Variety Club of Great Britain, after he retired from WestLB. If you would like to make a donation to Stuart's marathon effort, please go to **www.justgiving.com/Stuart-Attwood**

Financial Transaction Tax Could Raise FX Costs By Up to 18 Times

A proposed financial transaction tax levied across the European Union would increase foreign exchange transaction costs by up to 18 times and potentially relocate up to 75% of tax eligible transactions outside of the EU jurisdiction, according to the Global Financial Markets Association (GFMA).

A report compiled for the GFMA by independent research company Oliver Wyman says the tax would make all FX trades three to seven times more expensive and more liquid products up to 18 times more costly. The GFMA says the additional cost would largely be passed on to end-users such as Europe's pension funds, asset managers, insurers and corporates given the tight margins that already exist in the FX markets.

The proposal to tax FX trades is part of a wider financial transaction tax, mooted by the European Commission in September, which would levy 0.1% on stocks and bonds and 0.01% on derivatives trades between financial institutions when at least one party is located in the EU.

The EC would like the tax, which it says would raise around €57 billion per year to aid national and regional budgets, to start in January 2014.

While spot FX trading would be exempt from taxation, FX swap trading, which accounts for 45% of the $4 trillion a day global market, would not.

Using the example of the most liquid swap product – the EUR/USD one week swap with a notional value of €25 million, as transacted between a bank and end user such as a pension fund, the current transaction cost for the fund is €279, according to the report. If the transaction tax were to be added at 0.01% of notional value, both the bank and the end user would have to pay €2500 each, resulting in a total cost of €5,279, or an 18 fold increase, assuming all costs were passed onto the user.

The report, *Proposed EU Commission Financial Transaction Tax: Impact Analysis of FX Markets*, also suggests that up to three-quarters of tax eligible transactions could be relocated outside of the EU tax jurisdiction.

"Combined with reduced transaction volumes of approximately 5%, this could reduce market liquidity and increase indirect transaction costs by up to a further 110%," GFMA says. Customers would feel the pinch from wider bid/ask spreads due to the reduction in liquidity.

Market participants point to the inevitable impact the tax would have on banking profits with its knock-on effect upon banks' willingness and ability to lend to industry. Ultimately, they say, the tax would hit the real economy the hardest.

While any business can relocate to avoid the tax, for many corporates and pension funds domiciled in the EU, relocating is simply not an option.

The Global Financial Markets Association was not alone in releasing analysis on the impact of the proposed tax. According to the Alternative Investment Management Association, which analysed the European Commission's own figures, the tax could leave countries of the European Union worse off by tens of billions of euros annually and lead to a significant decrease in cross-border trading, undermining the single market.

AIMA says there would be a significant slowdown in trading of financial instruments like shares, bonds and derivatives in the EU and that introduction of the tax would have "widespread, unintended damaging consequences."

The hedge fund industry association says the FTT would likely reduce EU taxpayers' savings and pensioners' incomes and would lead to a reduction in the level of investment in the real economy, sending asset prices lower, widening spreads, hindering efficient price discovery and increasing market volatility.

"The Commission's own studies concluded that the FTT would leave the EU worse off by tens of billions of euros annually. It estimated that the FTT's annual revenues would be approximately €25billion-€43billion, but there would also be a reduction in EU-wide GDP of between 0.53% (€86 billion) and 1.76% (€286 billion)," AIMA says.

It adds that even this considerable cost may have been underestimated because it did not fully take account of the "cascade" effect of taxes being applied to every constituent part of a particular trade.

ACI continues to express concern over the proposed Transaction Tax in its meetings and contacts with senior policymakers.

The Association's primary concern is that unless such measures are globally applied, there is potential for fiscal and taxation arbitrage and such measures, at a time when the G20 is seeking to implement harmonisation of global financial markets regulation, are not conducive to financial market stability or cohesion.

ACI adds that the tax, rather than enhance the fiscal position of the Eurozone member nations, could in fact be detrimental to European economies and financial market in general.

ACI also expresses fears that rather than ensuring that the financial sector makes a fair contribution at a time of fiscal consolidation, the FTT would affect market behaviour and financial industry business models detrimentally.

ACI and its FX Committee is of the opin-

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ion that FX instruments are broadly used for hedging by end users such as corporations and real money funds.
Despite the EU commission's statement that the proposed tax would be aimed at banks, investment firms, insurance companies, pension funds, stockbrokers and hedge funds, among other types of financial firms, ACI believes that the proposed tax would inevitably be passed on to the end-customer through a widening of the current very fine spreads that benefit businesses and pension funds.
Additionally since the FX market is a payment mechanism, the imposition of a pan-EU FTT would increase the costs of doing cross border business. "Therefore, the EU FTT would be an obstacle for global trade, global financing and growth at a time when the EU member states need growth and economic re-generation," ACI states.
Through its FXC and National Associations, ACI - The Financial Markets Association will continue to make its members' voices heard in this ongoing debate.

SEF vs MTF : Alignment across the Atlantic (or not)

By Robin Poynder, Head of Regulation, Marketplaces, Thomson Reuters.

"We have proven on OTC derivatives regulation that close transatlantic cooperation can work. It's essential – across the board on all financial regulation – that the United States and Europe move in parallel and that we don't create new space for regulatory arbitrage. That's why I look forward to continuing to work closely together with Chairman Gensler, and his colleagues, to ensure robust implementation of the G-20 commitments." Michel Barnier, Commissioner of the European Commission
"...I commend the staff for their hard work to deliver unprecedented international coordination on broad policy questions. However, our effort to harmonize our rules and to enable mutual recognition or accommodation remains incomplete in both words and actions" - Scott D. O'Malia, Commissioner of the Commodity Futures Trading Commission
As the end of 2012 deadline for the implementation of G20 commitments to regulate the OTC market comes closer and closer, stakeholders from central bankers to politicians, from banks to their customers, are all focused on the potential implications for their markets – and for their business.
This article looks at proposals for the first level trading of OTC derivatives; how the regulations are playing out across both sides of the Atlantic and the future of organised trading venues.

Background
In September 2009, and in response to the [then] recent financial market crash, the G20 nations announced a new approach to the regulation of OTC markets. In the post summit statement the G20 countries committed that by the end of 2012 they would implement a series of measures establishing greater control and transparency over the markets including [the mandatory] clearing of trades in standardised derivative contracts and the reporting of all trades to either Swap Data Repositories (US) or Trade Repositories (EU). They are also committed to regulation of organised trading venues 'where appropriate'.
To date the G20 continue to be committed to the principles of centralised clearing and reporting of standardised OTC trades, while establishing the regulatory framework for a new breed of organised trading venues is being actively pursued by the US and EU.
There are many areas of similarity between the high level approaches taken by the US and the EU which demonstrate a targeted regulatory alignment; for example their rules or core principles for the operation of trading venues, the requirement for monitoring trading behaviour and management structure - however the devil has been in the detail and there are some key elements where the two approaches diverge. This article will attempt to summarise some of the differences between the approaches taken by the US regulatory bodies (CFTC, SEC through the Dodd Frank Act) and the EU regulatory bodies (ESMA through EMIR, MiFID and MiFIR) to establish the regulated execution of standardised derivative transactions.

Scope
The first key area of divergence has been the fact that the regulations seem to be targeted at certain asset classes and participant types. In brief, standardised derivative contracts (subject to certain thresholds) are required to be cleared, having been executed within an organised trading venue. However, some classes of derivative contract will be exempt: US Treasury Secretary Geithner has indicated that Spot and Forward FX transactions will be exempt, although his final pronouncement is still awaited, probably pending the final definition of a 'Swap' by the CFTC and SEC.
In the EU the regulatory regime broadly overs all derivative contracts within MiFID not executed on a regulated market but it is expected that spot and forward FX will remain outside the clearing obligation and will not be required to be executed on an organised trading venue. The wider G20 nations are expected to align on this issue.
Participants covered by these regulations include all banks and financial institutions as well as a substantial number of other market participants including buy-side counterparties who take substantial positions or who have substantial counterparty exposure in the derivatives markets. Exactly what constitutes a substantial position and the thresholds that trigger this category is not yet defined by the regulators but in terms of policy they would wish to regulate a market participant who would negatively impact the markets, should they or their trades fail.

Areas of difference
Some of the differences to organised trading venues stem from the initial position taken by the different jurisdictions: the US takes an institutional approach and Europe takes a functional approach. The Dodd Frank act defines a SEF as an institution and all such institutions are required to be registered with the relevant regulatory body. The EU MiFID creates the operation of a MTF or an OTF as an authorisable activity under the framework of the Level 1 Directive. Therefore investment firms or market operators may be subject to a wide range of other obligations which fall on investment firms in addition to those which fall on operator of an MTF or OTF.
In the US the SEF must be registered with either the SEC or CFTC (depending on the type of instruments to be traded).

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Whilst ESMA and the EU Commission are responsible for preparing and approving the technical details of an MTF and OTF the operators are authorised by the national regulatory authorities in each EU country and can operate in all other EEA states through the Single Market passport.

Definitions

While comparing the US and EU it is worth recognising that there are four comparisons to make. In the US the CFTC and SEC both interpret the Dodd Frank Act in slightly different ways with regards to SEF definition, although they are tasked with aligning eventually, and in the EU there are currently proposals for both MTF and OTF categories to consider.

In the US the Dodd Frank Act itself is relatively broad in definition and defines a SEF as "a facility, trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, through any means of interstate commerce including any trading facility, that—''(A) facilitates the execution of swaps between persons; and

''(B) is not a designated contract market.''

In drafting the proposed rules for the operation of a SEF, the CFTC would appear to have taken the equity exchange model as its starting point and written the rules with this in mind.

SEFs therefore must be trading systems or platforms in which multiple market participants can both:

View real-time electronic streaming quotes, both firm and indicative, from multiple potential counterparties on a centralised electronic screen; and

Have the option to complete a transaction by:

Accepting a firm streaming quote; or

Transmitting a request for quote to no less than five market participants, based upon an indicative streaming quote, taking into account any resting bids or offers that have been communicated to the requester along with any responsive quotes

Under current proposals a SEF will be required to provide a central display of executable bids and offers alongside any RFQ model. A user will also have to ask at least five other participants for a price when making a RFQ and any resulting price within a RFQ has to interact with the bids/offers in the central display as part of the execution model ("sweep the book"). Controversially the proposed rules also require that a trader who is executing on behalf of a customer must display the interest to the market for a minimum of 15 seconds before executing against their own book or another equal and opposite customer order.

These proposed rules were published in January 2011 and over the last year the CFTC has received a wealth of feedback and has re-proposed some elements of the proposed rules. The market is now waiting with bated breath to review the next iteration of SEF rule making.

In the EU, MiFID is also broad and defines an MTF as "a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provision of Title II".

The proposals in MiFID II retain the distinction between regulated markets (exchanges) and MTFs as organised trading venues but also introduce the OTF. In all three venues the operator of the platform is neutral. Regulated markets and MTFs are characterised by the non-discretionary execution of transactions. This means that transactions must be executed according to predetermined rules. They will also be required to compete by offering access to a broad membership provided they meet a transparent set of criteria.

By contrast, the current proposals provide that the operator of an OTF has a degree of discretion over how a transaction will be executed. Consequently, the operator of an OTF would be subject to investor protection, conduct of business, and best execution requirements towards the clients using the platform. Thus, while both the rules on access and execution methodology of an OTF have to be transparent and clear, they allow the operator to perform a service to clients which is qualitatively if not functionally different from the services provided by regulated markets and MTFs to their members and participants. Still, in order to ensure both the OTF operator's neutrality in relation to any transaction taking place and that the duties owed to clients thus brought together cannot be compromised by a possibility to profit at their expense, the regulations prohibit the OTF operator from having their own proprietary capital at risk within the OTF.

The detailed rules for the operation of a MTF and OTF have not yet been written and draft technical standards are to be drafted by ESMA in due course, for approval by the European Commission. However in discussion with the European Commission, current thinking appears to be drawn from the original MiFID requirements which applies only to equity or equity-like investment and requires firm pre-trade pricing. This means that a participant who is requested to make a price will substantiate (or improve) any pre-trade price they are displaying within the MTF/OTF. It does not require any interaction between the pre-trade price and the RFQ in some kind of quasi-exchange model.

Interestingly, there are murmurs from Brussels suggesting that the OTF category may be removed from the proposed regulation and that the MTF definition will be expanded to encompass any appropriate trading models that would have fallen under an OTF definition.

Third Country recognition – can the US trade with the EU?

Whilst the Dodd Frank Act allows for recognition of third country institutions, such as clearing houses and foreign regulated trading venues, SEC. 715 of the Act also permits the CFTC and SEC to prohibit an entity domiciled in a foreign country from participating in the United States in any swap or security-based swap activities if either of them determines that the regulation of swaps or security-based swaps markets in that foreign country undermines the stability of the United States financial system. Talking with the CFTC and SEC it appears that the criteria and proceduress for the recognition of third country firms is likely to follow only some time after the initial implementation of Dodd Frank, leaving a challenging time gap for foreign operators who are approved in a third country but are not explicitly within the US's recognition regime.

In the EU, MiFID and MiFIR have introduced provisions in relation to the carrying out of services and activities in the EU by third country firms both with and without a branch in an EU member state. Under MiFID, third country firms with a branch in the EU will be required to be authorised to carry out the activity of operating an MTF and may then use the Single Market passport to provide those services in other EU states. MiFIR provides that third country firms without branches in the EU may only provide services and activities to a limited class of eligible counterparties and then only if the

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Commission has made a decision that the third country firm operates from a state with an equivalent regulatory regime. Current interpretations of this approach question whether any third country could in fact meet these standards, providing significant challenge to any SEF operator.

Post-trade transparency

Dodd Frank provides that the CFTC and SEC may make rules requiring the 'real-time public reporting' of data relating to a swap transaction , including price and volume, to a real-time disseminator as soon as technologically practicable after the time at which the swap transaction has been executed in order to enhance price discovery. On 9th January the CFTC published its final rules on reporting of swap trades which sets this out in detail.

In the EU, the transparency requirements are aligned across different trading venues and vary by type of instruments, notably equity, bonds, and derivatives; and across different types of trading, notably order book and quote-driven systems. Trade information must be posted to the public 'as close to real-time as is technically possible'

Block-trade exceptions

Another contentious area in post-trade transparency is where larger than normal trades take place. Should the market become aware that a participant is holding a large position there is a possibility that the market will attempt to play against that holder of risk, to the detriment of that risk holder. If the post-trade transparency requirements do not sufficiently protect the ability to price in large size, the potential price makers will not take on that risk and liquidity will therefore be impacted negatively for genuine users of the market such as Pension Funds and Asset Managers, whose business frequently produces significant crystallised risk.

Both jurisdictions are proposing to allow for delay in publication of 'block' or 'large size' trades, however this in itself will not mitigate the liquidity challenge entirely for particularly large trades or options where the writer may be at risk through the life of the option should the strike price be close to the actual market price as maturity approaches.

Summary

The G20 commitments were designed to establish a strong policy response from each of the countries until a durable recovery in the global economy could be achieved. They were intended to align the different jurisdictions into a unified approach and to explicitly prevent regulatory arbitrage, where business might flow from one jurisdiction to another in order to take advantage of perceived efficiencies in a different regime. As can be seen from the high level comparison in the area of organised trading venues above, this aim has not necessarily been easy to achieve.

While the overall approach to encourage transparency and a 'fairer' playing field for wholesale market participants is admirable, the risk remains that an approach limited to only two of the G20 jurisdictions leaves the movement of trade flowing in a different direction a possibility – without considering the core differences in approach between the US and EU. The unintended consequences of misdirected regulation could have a profound negative effect on the liquidity available to users of the real economy (e.g. pension funds and through them those of us on "Main Street") and their customers. The CFTC is due to complete their rule-making in the next few months to allow Dodd Frank finally to come into effect this July with a subsequent 180 day implementation period, with Europe following suit through EMIR and ultimately MiFID and MiFIR in a similar way.

However, as the spectre of a global recession begins to recede, the differences between the US and Europe are if anything becoming more apparent. The proposed regulations continue to grate on one another and there is a real risk that the extra-territorial application of regulation may work against the targeted consistency of approach, leading to fragmentation of markets, protectionism, and ultimately the prospect of regulatory arbitrage.

Glossary

OTC – Over The Counter / CFTC – Commodities Futures Trading Commission / SEC – Securities Exchange Commission / ESMA – European Securities Markets Authority / EMIR – European Markets Infrastructure Regulation / MiFID – Markets in Financial Instruments Directive / MiFIR – Markets in Financial Markets Regulation / SEF – Swap Execution Facility / MTF – Multilateral Trading Facility / OTF – Organised Trading Facility /

CPSS -Iosco Publish Final Report on OTC Derivatives Reporting

The Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (Iosco) have published their final report on over-the-counter derivatives data that should be collected, stored and disseminated by trade repositories.

The committees support the view that trade repositories (TRs), by collecting such data centrally, would provide authorities and the public with better and more timely information on OTC derivatives. This would make markets more transparent, help to prevent market abuse, and promote financial stability, they say.

The final report reflects public comments received in response to a consultative version of the report published in August 2011. In the report, the Task Force recommends that, at a minimum, transaction-level data be reported to TRs and that such data include at least transaction economics, counterparty information, underlier information, operational data and event data.

It found that certain information, such as that contained in master agreements and credit support annexes, will be helpful for assessing systemic risk and financial stability but that at present such information is not supported by TRs.

The report notes that defining general principles or guidance on whether a type of authority – such as market regulators, central banks, prudential supervisors and resolution authorities –should have access to the relevant part or the whole range of data reported to TRs would be a significant step towards facilitating authorities' effective and practical access to data but is beyond the assigned scope of the report. The report recommends that TRs implement measures to provide effective and practical access to authorities, both for routine data to help them fulfil their responsibilities, as well as for non-routine

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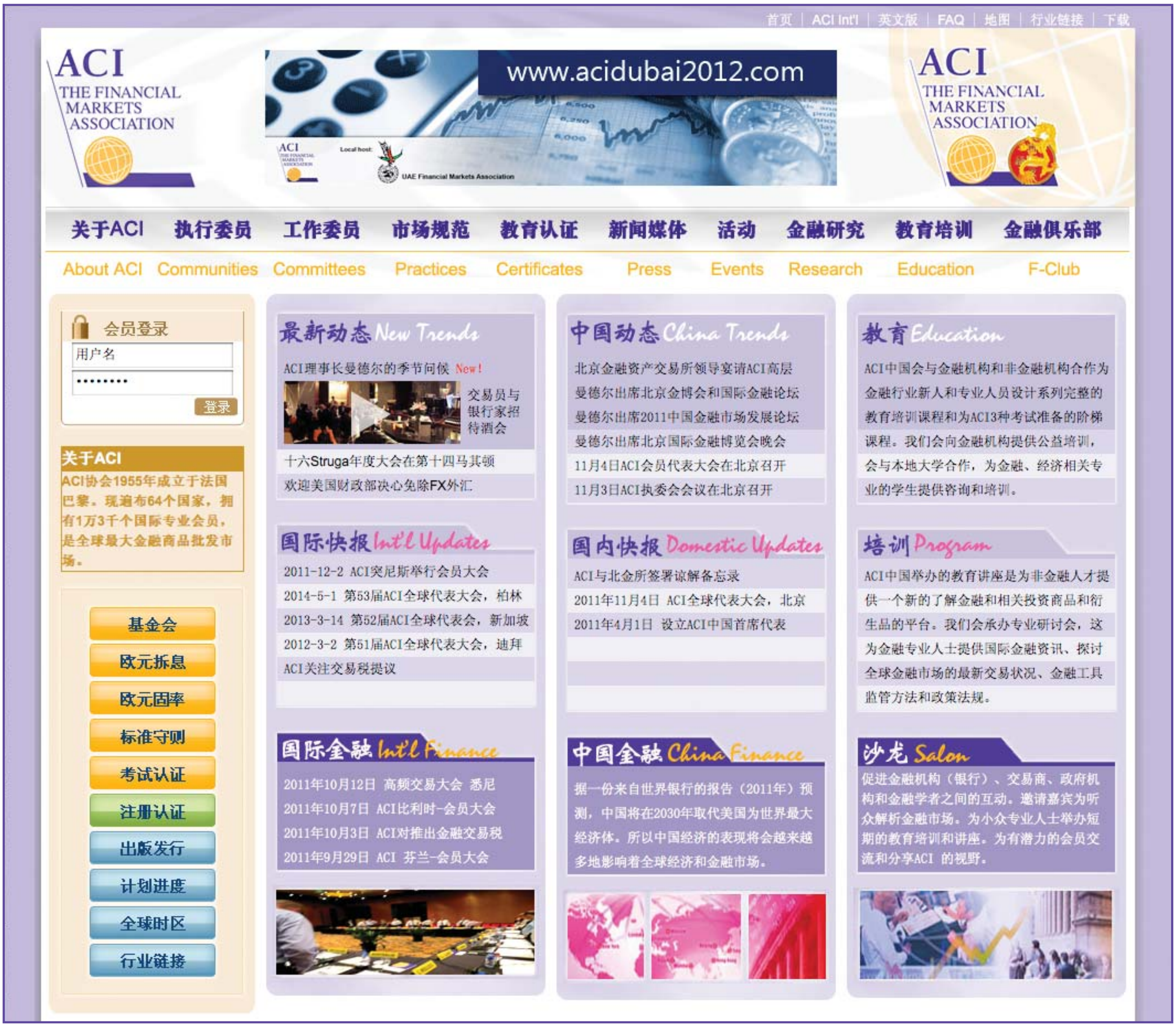
access in order to permit the authorities to address specific issues that might arise from time to time.
In addition, the report recommends that reporting entities and counterparties should have appropriate access to their own data, subject to confidentiality and other legal requirements.
The report notes that public dissemination of TR data could be done in aggregated form or, alternatively, the TR may be required in some jurisdictions to disseminate information to the public in a more granular form with the same regard for applicable confidentiality requirements. Data publicly disseminated by TRs should include information to facilitate an assessment of market activity and concentration of the market, the report says.
As mechanisms for aggregation of data, the report recommends the creation of a system of legal entity identifiers (LEIs) and notes the current industry efforts towards the creation of such an LEI system. To promote the timely development of an LEI system suitable for international use, the Task Force recommends that the industry process includes development of an LEI standard and issuance of LEIs under the auspices of an organisation with international membership and appropriate governance that develops and publishes international standards for the financial sector. The Task Force recommends that TRs support the establishment of the LEI system through active participation in development efforts and use of the system once it becomes available.
The G20 Leaders, at their November 2011 meeting in Cannes, France, declared support for the creation of a global LEI and called upon the Financial Stability Board to take the lead in helping coordinate work among the regulatory community to prepare recommendations for the appropriate governance framework for such a global LEI by the next G20 Summit.
In response to this mandate, at its December 2011 meeting, the FSB Steering Committee created a time-limited, ad hoc expert group of authorities to carry forward work on key outstanding issues relevant to the implementation of a global LEI in order to fulfil the mandate.
The Task Force recommends that CPSS-Iosco or the FSB make a public statement calling for timely industry-led development, in consultation with authorities, of a standard product classification system that can be used as a common basis for classifying and describing OTC derivative products.
The Task Force further recommends that the FSB direct consultation and coordination by financial and data experts drawn from both authorities and industry, on a timely basis, concerning this work.

FX Turnover Edges Higher

The latest semi-annual FX turnover surveys released by five of the world's FX committees indicates that turnover crept higher in October 2011 compared to April of that year, but was much stronger year-on-year following an admittedly weak October 2010 report.
Data from the FX committees of Australia, Canada, Singapore, UK and US indicate that total turnover across the five centres was $3.526 trillion per day in October 2011, just $43.2 billion higher than the revised April 2011 data from the same five centres. Year-on-year, however, turnover rose an impressive $355 billion per day, or 11.2%.
The headline data does hide the real story, however, for turnover fell in every centre except for the US, which saw a 22.3% or $178 billion per day rise in turnover from April 2011 to just shy of a trillion dollars per day at $976.7 billion. The UK remains comfortably the world's largest foreign exchange centre, although turnover did decline by 3.4% from April. At $1.972 trillion per day, however, it continues to see more than double the turnover of the next largest, the US.
Elsewhere, Singapore saw a slight 2% decline to $353.8 billion per day, but both Canada and Australia saw steeper declines, the former by 14.4% to $55.7 billion per day, the latter by a rather larger 23.3% to $167.9 billion. The drop continues what has been established as a rather volatile pattern for the Australian data, which until the 2010 data, failed to report two consecutive periods of growth in turnover. Also of note for the Australian data is that the centre was coming off by far its strongest showing in April 2011 when it breached the $200 billion per day barrier.
Year-on-year, a much different picture emerges from the data, with the US again performing strongest at +20.7%, the UK up 10.4%, and Singapore up 9.5%.
Again though, weakness can be seen in the Australian report, which records a 14.5% drop year-on-year, and Canada which falls 9%.
Pretty much the story of these reports is that of the US spot market, which saw average daily turnover increase from $395.6 billion per day in April to $564.5 billion in October 2011. This drove a $175.7 billion or 12.9% growth in spot business across the five centres, ensuring spot was the only growth product. Whilst outright forwards (including NDFs) was flat across the two surveys, FX swap activity dropped by $106.4 billion per day or 7.3%, while FX derivative activity (currency swaps and FX options) fell by $25.4 billion, or 9.5% per day.
Across the centres, spot activity was up, as mentioned in the US as well as in the UK and Australia, while Singapore spot activity was flat and it was down in Canada. In spite of a sharp overall drop in FX swap activity, the segment actually saw more activity in the US and Singapore but this was more than wiped out by declines of 9.1%, 18.5% and 30.1% in the UK, Canada and Australia respectively.
Probably the only black spot for the US report came in the derivatives section of the survey, which registered a 32.8% decline from April 2011 to $31.8 billion per day. Elsewhere, activity was slightly down in Canada, Singapore and the UK, but nearly halved, from $9.1 billion to $5.7 billion, in Australia.
The UK and US reports also break out execution methodologies in their surveys. In the UK, the use of electronic broking systems (across all FX products) was down 5.6% from April 2011; that of single bank portal fell by 2.8%, but the largest impact was undoubtedly felt by multibank platforms, which saw a 26% decline in activity. In the US survey, which breaks the data down differently, activity on the broking systems was up 28.3% and on electronic trading systems, which incorporates both multi- and single-bank offerings, rose by 22.1%.
In spot, the main e-product, in the UK the broking systems saw a decline of 1.5%, the single bank portals fell by 12.6% and the multibank models by 29.5%. Again though, the picture was reversed in the US, where activity on the broking systems rose 35.7% and on the trading systems by 32.9%.



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