Alert 10-122 [Mobile and Print-friendly version]

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Financial Industry Group Alert

The FSA has published its Markets Regulatory Agenda

Click here for commentary by Jacqui Hatfield, partner and head of the UK Financial Services Regulatory Group.

Key focus of the FSA in this area will be on: reforming OTC derivative markets; stronger global standards for clearing houses; better arrangements for handling defaults in the clearing and settlement system; greater transparency in non-equity markets; and establishing the regime for oversight of credit rating agencies.

Notable points are:

The focus is on the need for international agreement and standards. This was highlighted in terms of setting standards for clearing houses, regulatory requirements for trade repositories, OTC contracts which are eligible for clearing and bans on naked shorts.

The FSA has emphasised again that it is not in favour of forcing OTC derivatives on exchanges (different from US approach) and is not in favour of a ban on naked shorts.

The FSA is not in favour of ESMA regulating and supervising central clearing houses. It should be a matter for national supervisors. The EU Council supports this.

The FSA supports the use of OTC trade data by national supervisors to monitor positions at firms they supervise but not for market monitoring purposes. It will be too cumbersome on a global basis to do this.

The FSA is not in favour of position limits for commodities either on exchange or OTC (different to US approach).

IOSCO is reviewing the workings of the commodities markets, seeking to improve transparency.

EU CRA's must register between 7 June 2010 and 7 September 2010. Only registered CRA's will be able to be used within the EU from 7 December 2010. The registration will be at the subsidiary level. Parent CRA's will need to get the EU registered subsidiary to endorse its rating. ESMA will be responsible for supervising CRAs from January 2011. The FSA wants national authorities to have an overseeing role of CRA's under overall responsibility of ESMA.

The FSA is focusing on transaction reporting breaches in terms of enforcement action. It relies on correct transaction reporting and on firms reporting STRs to monitor for market abuse.

The FSA are currently consulting on a requirement to tape mobile phone customer transactions order calls as they now have the technology. This is not new but of interest is that they are thinking of having a rule requiring firms to prevent employees from making transaction order calls using private communications. This is likely to be difficult to police.

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Comments

Of importance is that there is a recognition by the FSA that any new standards will be applied at the EU or wider International level now. The FSA are moving away from taking individual initiatives in isolation (it did this with liquidity and remuneration) and are focusing on engaging more deeply with foreign counterparts.

Whilst this was stated in relation to standards in relation to markets, it could signify that the FSA will not take any isolative measure in other areas. Therefore in future, we may not see the FSA taking any more isolative measures such as in relation to liquidity and remuneration.

This is a good thing in my view as countries taking protectionist measures (such as Greek national ban of naked shorts) derail much needed International/EU proposals which are on the table for agreement and protectionist measures can lead to business being driven away.

The Agenda confirms that the FSA does not have much power on policy in market reform. However, this affects all areas, not just in relation to markets. The regulatory agenda and new standards generally are set by the EU or Internationally by Basel/IOSCO/ OTC Derivatives Regulatory Forum/ Financial Stability Board/G20 etc. and implemented in the EU.

This just leaves supervision responsibilities - which will be macro to Bank of England and day to day micro in the short term at least, to the FSA, with oversight by the Bank of England.

If there is a pan-European rulebook (which is likely in the future) and supervision responsibilities are given to the pan European regulators, initially for SIFs and perhaps later for the rest of the regulated community, the UK regulators (Bank of England and FSA) will be left with merely an overseeing agency role and potentially no role at all.