{ REGULATION }

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Treasurers are being swamped with waves of often-contradictory rules

There is a wave of regulatory change breaking over the treasury function. It is coming from different directions and represents, at times, overlapping and even contradictory instructions. On 23 July 2014, I testified on behalf of treasurers before the US House of Representatives' Committee on Financial Services. I advised the committee that, due to the lack of harmonisation among regulators in the US, Europe and the G20 generally, end users of derivatives now find themselves simultaneously subject to multiple regulatory regimes.

Let us consider the current asymmetries between the US and Europe on reporting requirements for derivative transactions to authorities and the trade repositories that they created with the aim of providing greater pricing transparency. Under the Dodd-Frank Act, the requirements fall on swap dealers to submit the required derivative trade reports to the repositories for trades with end user treasury departments. For inter-affiliate swaps among group members, the Commodity Futures Trading Commission (CFTC) has issued a 'no-action' letter that provides end user treasuries with conditional relief from the mandatory reporting requirements. But, under the European Market Infrastructure Regulation, the reporting requirements are generally more onerous, with end user treasuries reporting

their trades in duplicate with their bank counterparties' requirements. Furthermore, European regulators have not provided relief for inter-affiliate swaps along the lines of the CFTC's actions, so these, too, must be reported.

Another area of conflicting rules is in the implementation of the Basel Committee on Banking Supervision/International Organization of Securities Commissions working group on margining requirements (WGMR) for uncleared swaps. Even though there are agreed-upon standards from the WGMR, different jurisdictions are implementing the requirements in very different ways. In the US, there is even a lack of harmonisation between the banking regulators on the one hand and other key players, including the CFTC and the Securities and Exchange Commission (SEC), on the other. The banks are being told by their regulators to collect cash margin from end users, while the CFTC and the SEC are not requiring end users to post margin for trades with the entities that they regulate. European regulators are exempting non-financial end users from cash margin requirements within the EU, but they are requiring margin for non-financial end users outside the EU.

Finally, many corporate treasury departments have established group finance companies and other centralised treasury units to manage inter-affiliate exposures so that they can net out opposite-way trades and enter into smaller derivatives with their bank counterparties. But US rules tag these efficient, risk-reducing entities as non-exempt because of their financial nature – even if they are part of a qualified, non-financial end user group. Many such entities will have to clear swaps and post margin, even though their non-financial group parent is exempt and the non-financial entities on whose behalf they are hedging are themselves exempt. European regulators have noted that these activities are risk-reducing and have sensibly exempted them from mandatory clearing and margining.

I know I speak for all treasurers when I ask regulators around the world to make every effort to harmonise their actions with those of their international counterparts to minimise contradictory rules. One immediate step is for the US and European regulators to recognise the equivalency of their approaches and to allow substituted compliance to achieve the same ends, albeit by somewhat different means. In this way, we would all hope that treasurers can ride the regulatory wave, instead of having it break over them.

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