Negotiating the regulatory landscape

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Agenda

- Derivatives reform – EMIR
- CRD4 – impact on bank lending and credit
- Money market funds
- Financial transaction tax
- Bank finance: total loss absorbing capacity (TLAC)
- Markets in Financial Instruments Directive
- Other issues
  - Contractual clauses facilitating bank resolution
  - New Market Abuse rules
  - Benchmark regulation
  - Capital markets union

Derivatives reform - EMIR

- Key obligations
  - Operational risk mitigation: portfolio reconciliation, dispute resolution, valuation, compression
  - Reporting to trade repositories
  - Mandatory clearing of designated classes of OTC derivatives
  - Margining of uncleared OTC derivatives
  - Regulation of central counterparties and clearing members
- Non-financial counterparties (NFC-s) vs. NFCs over the clearing threshold (NFC+s)
- EMIR review
  - Reclassification of NFCs
  - Two sided reporting

CRD4 – bank credit

- Increased pressure on banks
  - More and better quality capital
  - Enhanced supervision e.g. ECB national options and discretions initiative
  - Forward looking stress tests
  - Leverage ratio
- Liquidity: liquidity coverage and net stable funding ratios
- Credit valuation adjustments for uncleared OTC derivatives
  - NFC- exemption and EBA proposals

Money market funds

- Commission proposal 2013
  - Harmonised regulation of EU MMFs
  - Investment policies: eligible assets, diversification, concentration, credit quality of investments
  - Risk management: maturity/liquidity profile of assets, soliciting of ratings, KYC policies and stress testing and valuation of assets
  - Special rules for constant net asset value (CNAV) funds: 3% NAV buffer

- Variable NAV v Constant NAV v Low Volatility NAV

Financial transactions tax

- 11 member states in enhanced co-operation
- Reported coverage
  - Equities plus derivatives, no market maker exemption
  - Exclusions for government and other bonds, repos and unlisted/small cap shares?
  - Other exemptions e.g. derivatives on government debt, pension funds, hedging?
  - Issuance vs. residence principle
- Target start date – January 2017

Bank finance – total loss absorbing capacity (TLAC)

- Bail-in requires adequate debt to absorb losses and convert into equity for recapitalisation
- FSB proposal for international TLAC standard for G-SIBs
  - 16-20% of risk weighted assets
  - Subordinated to other obligations (structurally or contractually)
  - Issued by “resolution entity”
  - Scheduled for substantial agreement by end 2015
- Bank recovery and resolution directive (BRRD) already contains rules on minimum own funds and eligible liabilities (MREL) from 2016
- Changes to bank creditor hierarchy, subordination, depositor preference and asset encumbrance

New Markets in Financial Instruments Directive (MiFID2)

- Implementation 3 January 2017
- Restriction on ability of EU corporates to participate on trading platforms without an authorised entity e.g. request for quote platforms for bonds/derivatives
- Restriction on ability of EU corporates to trade commodity derivatives
  - Authorisation requirements apply unless trading activities are “ancillary”
  - Tests: group “speculative” trading/total EU market and group “speculative” trading/all group trading
  - Annual notification requirement
- Extraterritorial position limits and reporting regime for EU commodity derivatives
- New pre- and post-trade transparency regimes for all financial instruments traded on venues
- Requirement to trade certain OTC derivatives on venue

Other issues

- Contractual clauses facilitating bank resolution
  - Contractual recognition of bail-in
  - Contractual recognition of resolution stays on termination
- New market abuse regulation – 3 July 2016
  - Broader scope insider dealing and market manipulation rules
  - New penalty regimes, including enhanced criminal regime
  - New rules on market soundings and changed announcement rules
  - Upgraded insider lists requirements
- Proposed rules on financial benchmarks
  - Regulation of EU administrators/contributors
  - Restrictions on use of non-EU benchmarks
- Capital markets union

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