WASHINGTON, DC • BRUSSELS • LONDON • WWW.ICI.ORG

ICI VIEWPOINTS

DECEMBER 6, 2012

One Step Forward for Cross-Border OTC Derivative Regulatory Reform

By Giles Swan

International regulators recently published a statement updating the discussions amongst the main global financial centers about the framework that should regulate cross-border over-the-counter (OTC) derivative transactions. This is an important issue for asset management since fund managers use these investments to manage their funds efficiently on behalf of shareholders.

ICI Global believes this statement represents an important step toward the delivery of OTC derivative market reforms agreed to by G-20 leaders in 2009. We welcome the agreement to consult on clearing determinations, to cooperate on effective supervision and enforcement, and to institute a transition period for the cross-border application of regulations. We also appreciate the regulators' development of "areas of exploration" agreed to during the most recent discussions; moreover, we urge that this work be completed promptly to resolve the "potential conflicts, inconsistencies, and duplicative requirements" that are acknowledged to remain.

Regulated investment funds and their managers use OTC derivatives to pursue their stated investment objectives, policies, and strategies for efficient portfolio management on behalf of their shareholders—many of whom are seeking to meet vital investment goals, such as retail investors saving for their retirements. The investments made by funds often involve counterparties in different parts of the world. As such, it is imperative that there is certainty about how these cross-border transactions will be regulated. This certainty needs to be provided in two key areas: (i) the types of derivatives that are subject to new regulatory rules; and (ii) the country or region's rules under which such derivatives are to be regulated.

The reform of the regulation governing the OTC derivatives market represents a clear change. Certainty is needed as quickly as possible to provide sufficient time for fund managers, as counterparties to these transactions, to prepare for compliance with the new requirements. The timing of these requirements remains unclear but some regulators are hoping to put detailed rules in place as early as the end of the first quarter of next year, and to impose the first clearing obligations by the end of 2013. We therefore welcome the renewed commitment of the relevant legislative bodies to "finalize expeditiously relevant legislation and...promulgate promptly requirements in a form flexible enough to respond to cross-border consistency and other issues."

Failure to achieve a clear, workable, and coordinated framework for the regulation of OTC derivative transactions—one that respects the legislative and regulatory differences of countries and regions and acknowledges the global nature of OTC derivative transactions—will be detrimental to investors across the globe.

Giles Swan is director of global funds policy at ICI Global.