An eleventh hour reprieve on margining rules

News

APRA announced on 22 August a delay in the commencement of the margining and risk mitigation requirements for non-centrally cleared derivatives following representations by members led by AFMA. This announcement was coordinated with the Monetary Authority of Singapore (MAS) and the Hong Kong Monetary Authority (HKMA) after close consultations between the three regulators. The initial margin requirements were being phased in from 1 September, but have now been deferred to an unspecified date.

This delay is welcomed by AFMA given the breakdown in global coordination around the timetable which has a made an already complex implementation exercise even more challenging. The original timetable had been set in place at a globally coordinated level in March 2015 through the Working Group on Margining Requirements (WGMR) of the BCBS-IOSCO process. Coordination broke down on 9 June when the European Union announced that its rules would not be finalised in time for a September launch. European authorities are aiming to deliver final standards by the end of 2016, pushing the start date in Europe to sometime in the middle of 2017. This announcement caused considerable consternation in the industry around the world. The United States and Japan remained firmly committed to the original timing. This led to concerns about further market fragmentation and disruption of cross-border trading and an uneven playing field for firms subject to the US timetable ahead of others.

In Australia, March 2017 was the more important date because that is when the new variation margin rules were to take effect and impact a much broader group of local covered entities. Given the long lead times for document preparation and negotiation with counterparties, which will take much more than six months, it is important that final rules are available so that legal drafting could go ahead and local protocols developed. APRA has been consulting on margining and risk mitigation for non-centrally cleared derivatives rules which will be contained in CPS 226. However, in the last week of August the final margining rules have not yet been settled. This lack of rules made commencement of the original implementation timetable starting from September very worrisome and impossible to meet in practice. The only sensible course of action in the circumstances was a deferral by the regulators. An important aspect of APRA’s announcement was their statement that the final version of CPS 226 will be released in the near future. AFMA looks forward to this being done as soon as possible so that preparation work may begin. At a technical level, the delay will occur because APRA will not set a commencement date for the CPS 226 rules when they are made.

It is good to see that key regulators in the Asia-Pacific are consulting and coordinating their actions. While the global OTC derivatives market is fragmenting under the pressure of imperfectly harmonised regulation, it is ever more critical that the Asia-Pacific authorities work together to maintain and foster market activity in the region by coordinating their regulation and actions.
The importance of these margining rules should not be underestimated. They are not mere technical rules of interest to operations and documentation teams. They are the last major cog of the OTC derivatives reforms which started in 2009. They are deliberately intended to affect the economics of providing non-cleared/non-standardised OTC derivatives and can be confidently predicted to change the market in a structural way. A likely and officially intended outcome is that uncleared bilateral derivative transactions will decline further and most will be centrally cleared. Collateral management is also needing to adapt to this much more demanding environment. AFMA will continue to work closely with members as we move from the policy and rule development phase to practical implementation phase with a focus on the operational, collateral management and documentation issues.