FIXED INCOME MARKET REGULATORY UPDATE

November 2017

Keeping you informed on recent policy and regulatory developments shaping credit markets in Canada & abroad

Canada

IIROC Proposal on Client Identifiers

On November 10, 2017, the Investment Industry Association of Canada (the IIAC) submitted its response to proposed provisions from the Investment Industry Regulatory Organization of Canada (IIROC) surrounding use of client identifiers. The proposal requires client identifiers on each order sent to a marketplace and on each reportable trade in a debt security. The identifier would take the form of a Legal Entity Identifier (LEI) or, for clients not eligible for an LEI, their account number.

The IIAC recognizes the potential benefits of the proposal, including improved surveillance, investigatory and data analysis capabilities, but calls on IIROC to carefully consider how to implement the client identifier framework without material disruption to market participants or market functioning. A major concern is that IIROC's proposal, as currently worded, may be overly broad and that numerous low-risk accounts may be unnecessarily caught up in the requirement to obtain an LEI, resulting in an administrative burden and unnecessary costs for member firms and some of their clients. The IIAC also requested clarification on several aspects of the proposals, including how client identifiers will apply to block transactions on behalf of multiple retail clients or large institutional investors with various sub-accounts, and measures IIROC will take to ensure client identifiers are safeguarded.

United States

SEC Creates Fixed Income Market Structure Advisory Committee

On November 9, 2017, the U.S. Securities and Exchange Commission (SEC) announced the formation of its Fixed Income Market Structure Committee (the Committee). According to the SEC's release, the initial focus of the Committee will be on the corporate bond and municipal securities market. Its role will be to provide the SEC advice on the efficiency and resiliency of these markets and to identify opportunities for regulatory improvements. Committee members include individuals representing the views of retail and institutional investors, small and large issuers, trading venues, dealers, self-regulatory organizations, and academia.

The Committee's creation is the latest in a series of similar initiatives undertaken by public authorities to seek out views on a more structured basis from fixed-income experts. In Canada, the Canadian Fixed Income Forum was established in 2015 by the Bank of Canada. Other examples include the European Central Bank's Bond Market Contact Group and the Federal Reserve's Treasury Market Practices Group.

Industry Concern with MSRB Proposal on Offering Practices

Notice 2017-19, issued earlier this year by the Municipal Securities Rulemaking Board (the MSRB), requested comment on a concept proposal regarding amendments to existing rules related to primary offerings of municipal securities. Specifically, the proposal looked for input on evolving primary offering practices and whether the current rules continue to operate effectively or whether rule changes were warranted. Included in the proposal was a requirement that members of syndicates make a public offering of bonds they are allocated at the public offering price. The industry was critical of the MSRB proposal; in its November submission, SIFMA argued that current primary offering practices have been effective and that existing rules work well in the vast majority of circumstances. SIFMA also states that the issuer has the right to determine whether it wants its new issue to be sold in a bona fide public offering or by some other means.

Europe

EU Recommendations to Strengthen Corporate Bond Markets

The European Commission (the Commission) published detailed recommendations to build a stronger corporate bond market across the European Union. The recommendations stem from the work of an Expert Group of market practitioners assembled by the Commission that analyzed the functioning of corporate bond markets from the perspectives of issuers, investors and intermediaries. In all, 22 recommendations were formulated, pursuing six objectives:

1. Making issuance easier for companies;
2. Increasing access and options for investors;
3. Ensuring the efficiency of intermediation and trading activities;
4. Fostering the development of new forms of trading and improving the post-trade environment;
5. Ensuring an appropriate level of information and transparency; and
6. Improving the supervisory and policy framework.

Among the Expert Group's recommendations is that deferral regimes be adopted across European jurisdictions regarding post-trade transparency requirements. This is to avoid fragmented liquidity and regulatory arbitrage across jurisdictions. In addition, to reduce the risk that post-trade transparency requirements create a disincentive to provide liquidity (by potentially putting at risk market makers executing trades), the obligation for execution venues to publish details of trades of all sizes should be either narrowed in scope and in depth of details provided, or replaced by an obligation to report aggregated information.

ESMA Proposed Guidelines for Derivatives Trade Reporting

The European Securities and Markets Authority (ESMA) published a consultation paper on proposed guidelines for the calculation of derivative positions by trade repositories (TRs). ESMA observed divergent and inconsistent approaches to position calculations by TRs, which it says hinders the successful aggregation of data across repositories for the purposes of monitoring systemic risks to financial stability. The purpose of these guidelines is to ensure that TRs calculate positions in derivatives in a harmonized and consistent manner, and in accordance with the regulations.

ESMA will consider the feedback it receives and expects to publish a final report of these guidelines during the first half of 2018.

International

LIBOR 2021

In a Statement published November 24, 2017 the UK's Financial Conduct Authority (FCA) confirmed that all 20 of the London interbank offered rate (Libor) panel banks have agreed to support the benchmark until 2021. The Statement will help alleviate concerns of disruption to global financial markets resulting from the abrupt disappearance of Libor. The FCA expects its focus now to turn towards developing alternative rates and working towards a transition that can be executed smoothly.

Regulators globally have placed increased emphasis on identifying and transitioning to alternative benchmarks based on market transactions. In April, the Risk-Free Rate Working Group in the UK selected reformed SONIA as its proposed alternative benchmark. In September, the European Central Bank and the European Commission announced the launch of a new working group to identify and explore adopting an alternate "risk-free overnight rate" to replace current benchmarks used in the euro area. In the United States, the ARRC (Alternative Reference Rates Committee) announced its support for a broad Treasuries repo financing rate – a secured overnight rate against U.S. treasuries. The Bank of Japan has also published its recommendation for a Japanese Yen risk-free rate.