

# SECURITIES OPERATIONS WEEK

www.SecuritiesOperations.com

## ► TABLE OF CONTENTS

### IN THIS ISSUE

|   |   |
|---|---|
| <b>Corporate Actions</b>  | 1 |
| Asset Managers Forum Joins Campaign for Corporate Actions Standardization             |   |
| <b>Global Operations</b>  | 1 |
| EC Issues Endorsment and 'How-to' on Cross-Border Tax Withholding Relief              |   |
| <b>Securities Lending</b>   | 2 |
| JPMorgan Adds Securities Lending Ops to Online Platform                               |   |
| <b>Settlement</b>   | 2 |
| Markit and DTCC Team Up to Service Syndicated Lending                                 |   |
| <b>Fixed Income Operations</b>  | 3 |
| ELX Challenges DTCC-NYSE Plan   |   |
| <b>Clearance and Settlement</b>   | 3 |
| Credit Suisse Goes Live With Omgeo's New Trade Matching                               |   |
| <b>Securities Lending Operations</b>  | 4 |
| The Back-Office Debate on Short-Sale Restrictions                                     |   |
| <b>Industry Briefs</b>  | 5 |
| J.P. Morgan to Provide Global Custody to Jackson National                             |   |
| State Street to Service \$2.2 Billion in Assets for Saskatchewan Teachers' Federation |   |
| <b>Risk Management</b>  | 8 |
| Clearstream in Deal With Luxembourg's Central Bank                                    |   |
| <b>Securities Operations Calendar</b>   | 8 |

(c) Copyright 2009 Capital Markets World Inc. No part of this publication may be copied, photocopied or duplicated in any form or by any means without Capital Markets World's prior written consent. Any copying of this publication, electronic or otherwise, is in violation of the Federal Copyright Law and may subject violators to criminal penalties as well as civil damages including statutory damages up to \$100,000 per infringement. All rights reserved. For information regarding subscription rates and reprints, please contact us at (973) 710-1536 x801

## ► CORPORATE ACTIONS

### ASSET MANAGERS FORUM JOINS CAMPAIGN FOR CORPORATE ACTIONS STANDARDIZATION

Pressing the campaign for globally standardized processing of corporate actions, SIFMA's Asset Managers Forum has formally asked the Securities and Exchange Commission to support the initiative.

The request, in a letter from the forum's corporate actions committee, echoes arguments previously stated by the Depository Trust and Clearing Corporation, SWIFT and XBRL US, the organization that promotes adoption in the U.S. of the XBRL standard for business-information reporting. The forum is the operational-oriented division of SIFMA.

The committee in 2008 came out with a list of what it called the five corporate-action event types "with highest volume and risk for proof of concept." They were: tender offers, Dutch auctions, rights offerings,

optional dividends and mergers.

The Oct. 26 letter to the SEC makes the case for standardized reporting by issuers by pointing to what proponents say are numerous flaws in the status quo, including:

- The potential for misinterpretation: "Uncertainty is prevalent in the investing community concerning how intermediaries (such as custodians and data vendors) have interpreted the issuer's intentions," leaving asset managers to decipher and reconcile "several feeds to determine the best and most accurate version, in absence of definitive source data."
- The potential for errors: "Corporate-action information passes through many entities as it makes its way

*continued on page 5*

## ► GLOBAL OPERATIONS

### EC ISSUES ENDORSMENT AND 'HOW-TO' ON CROSS-BORDER TAX WITHHOLDING RELIEF

The European Commission has given a lift to the movement toward cross-border tax-withholding relief on securities income in a recent recommendation that member states comply with reforms.

The EC guidelines follows a January report by the influential Paris-based Organization for Economic Co-operation and Development, which called for an untangling of Byzantine tax-withholding laws that are common across Europe and that affect investors in the European Union and elsewhere. OCED's members include Australia, Japan, Korea and every country in the European Union and North America.

The EC in an endorsement published in October argues for streamlining an antiquated tax-withholding system on securities dividend and interest that can be so difficult or expensive to navigate that investors sometimes simply forego hopes of reclaiming withholdings that should be returned. Acupay, a New York and London-based company that specializes in cross-border tax issues, estimated this year that investors collectively lose as much as \$8 billion annually.

William Salva, a New York-based international tax specialist who co-

*continued on page 6*

## JPMORGAN ADDS SECURITIES LENDING OPS TO ONLINE PLATFORM

J.P. Morgan Worldwide Securities is the latest big industry player to upgrade its Web portal, allowing investors real-time analysis of their securities-lending operations.

The roll-out follows similar efforts this fall by Bank of America-Merrill Lynch and Citi in a broad industry trend toward Web-based asset-management and operations tools.

J.P. Morgan's new "enhanced dashboard," called ACCESSM, is meant to give customers – including alternative-asset managers, broker-dealers and institutional investors – deeper transparency into and a more customized view of their securities lending. (In mid-September, Jacob Jegher, a senior analyst at consulting firm Celent, wrote that banks that serve such clients are paying unprecedented attention to the online "customer experience")

"Clients are able to set snapshot filters to provide information and metrics such as loans outstanding by asset class, collateral by collateral type, non-cash collateral by rating, top securities by earnings, top borrowers by loan balances, and more," the firm said in a news release. "Market news and information are also available and continuously updated."

Paul Wilson, global head of securities lending relationship management and sales, said the improved "dashboard" builds on services provided already the firm's three-year-old commercial/corporate Web portal.

"Transparency, risk management and customization are at the core of our philosophy and the dashboard has evolved with these principles at its heart, allowing clients full visibility into all aspects of lending activity," Wilson said.

The firm counts about \$15 trillion in assets under

custody and \$5 trillion in assets under administration.

In October, Bank of America-Merrill Lynch said that this month it would begin operating CashPro Online for commercial and corporate clients. The bank is promoting the portal as "a single point of access to global treasury, debt, cash management, investments, trade finance, foreign exchange services and other financial capabilities."

In September, Citi announced the launch of CitiDirect BE, pronouncing it "its next-generation collaborative online banking platform for institution" and explaining that the service is geared toward reducing "the paper and duplication associated with account related events such as incremental account openings, signatory management and account maintenance across multiple legal entities and/or accounts." ✍

---

► SETTLEMENT

## MARKIT AND DTCC TEAM UP TO SERVICE SYNDICATED LENDING

Markit, the London-based financial data provider, is forming a syndicated-loan servicing company with New York-based Depository Trust and Clearing Corporation. The deal brings together two big utilities that offer separate loan-serving components: DTCC's Loan/SERV messaging system and Markit's loan-settlement platform.

The venture is being launched as the syndicated-loan market struggles to recover from what has been a dismal year.

Armins Ruis, Markit's global co-head of fixed income, said the arrangement would "connect buy- and sell-side participants electronically for the first time."

In September, the two companies launched a similarly symbiotic venture called MarkitSERV, combining DTCC's electronic messaging and Markit's workflow platform in a single gateway for processing over-the-counter derivatives tied to interest rates, equity and commodities. That initiative was announced in July 2008, suggesting that the syndicated-lending won't launch until sometime in 2010.

The syndicated-loan processing partnership would leverage DTCC's existing Loan/SERV messaging service, which was rolled out last year. The Web-based straight-through processing is meant to "eliminate faxes and associated back-office costs," according to Michael C. Bodson, a DTCC managing director of business management and strategy.

Andrew Gordon, chief executive and president of \$4 billion New York-based Octagon Credit Investors, said the service would also add transparency to closing and settlement and said the DTCC/Markit venture was "a positive step in that direction, as long as the majority of the loan community adopts the solution."

Markit said its platform would be "enhanced further"

*continued on page 7*

### Securities Operations Week

*A Publication of Capital Markets World Inc.*

784 Morris Turnpike #394

Short Hills, NJ 07078

Tel: 973-710-1536

Fax: 973-758-6750

[www.securitiesoperations.com](http://www.securitiesoperations.com)

#### Editorial

Executive Editor: Scott Porter, ext. 801

Deputy Editor: Karl Cates, ext. 804

Assistant Editor: Lee Titone

Director of Research: Vikram Singh

#### Business

Publisher: Scott Porter, ext. 801

Marketing: Min Yang, ext. 809

Sales/Business Development: Aruna Singh, ext. 803

Director of IT: Dennis Vaque

Annual subscription: US\$695

## ELX CHALLENGES DTCC-NYSE TREASURY-CLEARING PARTNERSHIP

ELX Futures, a two-year-old futures-clearing venture, has asked the Securities and Exchange Commission to block a proposed rival joint venture between NYSE Euronext and the Depository Trust & Clearing Corporation.

In a letter filed with the SEC last week, a lawyer for ELX said the NYSE/DTCC venture, which would clear Treasuries and Treasury futures, would violate antitrust statutes. DTCC, a user-owned company that handles most of the securities clearing business in the U.S., had sought an exclusive partner in an effort to challenge the Chicago-based CME Group, which dominates the Treasuries-clearing market. This month DTCC said it had chosen NYSE Euronext. The company declined to comment on the ELX complaint.

Murray Pozmanter, DTCC's managing director for its Fixed-Income Clearance and Settlement Group, said at the time that the company had shopped around for the most suitable partner for the venture, called New York Portfolio Clearing. "DTCC looked at several potential providers of derivatives-clearing technology," Pozmanter said. "We decided after careful review that NYSE Euronext has the robust, proven and ready technology and appropriate

safeguards to ensure a successful launch of this initiative. The other providers did not have the technology to meet those criteria."

Though ELX is a relative upstart, its members include Bank of America, Barclays Capital, Citi, Credit Suisse, Deutsche Bank, Goldman Sachs, JPMorgan, Morgan Stanley and the Royal Bank of Scotland.

ELX in its letter asserts that because the DTCC/NYSE arrangement would likely be exclusive for its first two years, it could well shut ELX out of the market. ELX also argues that DTCC shouldn't be able to strike such a deal because it is a government-sanctioned organization collectively owned by the securities industry.

DTCC and NYSE/Euronext have said they want the exclusive arrangement in order to establish a business before inviting in companies like ELX.

ELX's letter asks the SEC not to treat the DTCC/NYSE plan as a *fait accompli* and to open it to public input. New York-based ELX controls about 3 percent of the cash Treasuries and Treasuries futures clearing market. ✍

## CREDIT SUISSE GOES LIVE WITH OMGEO'S NEW TRADE MATCHING

Credit Suisse is the first broker to go live with Omgeo's new cross-border central trade-matching engine.

Omgeo, the Boston-based joint venture of Thompson Reuters and the Depository Trust and Clearing Corporation, announced in June it had signed 12 firms to the service, called Omgeo Central Trade Manager. Clients include Bank of America-Merrill Lynch, Deutsche Bank and NewEdge Europe. Credit Suisse's launch begins a pilot program that Omgeo executives hope will add other customers in the next few weeks and, ultimately, bring in institutional investors via their executing brokers.

The service is part of broader industry efforts to expand straight-through processing. Omgeo CTM promises a common platform on which broker-dealers and investment managers can interact in both domestic and foreign markets. The company says Omgeo CTM will also bring greater transparency to trading by helping broker-dealers "fully participate in the matching process and take a more proactive role in exception processing."

"The result is mitigated operational risk through improved same-day affirmation and response times, giving brokers a competitive advantage."

The company says Omgeo CTM will be especially effective in streamlining buy-side transactions, in

particular "the hedge fund/prime broker/executing broker processing chain."

Central matching is promoted in general as a way to speed the post-trade, pre-settlement process by ensuring same-day trade affirmation. It is meant to replace local matching, or electronic trade matching, which relies on

traditional message flows, in which — as Omgeo puts it — "trade information is provided in a set order, thus adding time to trade settlement."

"Central trade matching results in a reduction in trade failures and operating costs of up to 70 percent; meanwhile SDA rates soar to 94 percent," Omgeo says. "Central matching also allows firms to achieve 97 percent affirmation rates by T+1 and 99 percent by T+2."

EuroCCP, the pan-European clearing and settlement house that clears trades in 15 markets, is a partner in the project.

Omgeo has not named all the participants in the service, but says they come from locales that include — in addition to the U.S. and the U.K. — Brazil, Canada, France, Korea and Spain.

The service is the company's "flagship central-matching offer," said Leigh Walters, executive director of global sales at Omgeo. ✍

*"The result is mitigated operational risk through improved same-day affirmation and response times, giving brokers a competitive advantage."*

## THE BACK-OFFICE DEBATE ON SHORT-SALE RESTRICTIONS

The fear among securities-industry professionals over government proposals to restrict short-selling is palpable in the long string of comment letters posted with the Securities and Exchange Commission. Some opponents paint the issue in stark but broad philosophical strokes, others in narrow arguments over technicalities. Perhaps the most fundamental missives, however, are the ones that raise questions about impacts on operations.

“All proposals require system changes that will include analysis, development, testing, deployment and ongoing maintenance,” wrote Manisha Kimmel, executive director of the New York-based Financial Information Forum, a trade group whose members include big investment banks, discount brokerages and stock exchanges. “Based on a sampling of data from FIF members, timeframes for implementing any of the proposals ranged from 6-15 months. Please note none of these estimates consider preparation for and execution of industry testing.”

In three sentences, Kimmel captured the gist of what back offices may be required to do – and how long it may take for them to comply – if the Securities and Exchange Commission goes through with its proposal to reinstate some version of the uptick rule and, in a separate initiative, require short-sellers to “pre-borrow” securities.

It’ll take more than a flick of a switch, in other words, and although Kimmel was talking solely about the uptick proposal, opponents of a pre-borrow requirement say it, too, would create similar compliance issues. By way of evidence, Kimmel cited the industry’s heave in adjusting to Reg NMS, a voluminous rule imposed by the SEC in 2005.

“Implementing any short-sale rule represents a new and significant effort requiring rigorous analysis, development and testing,” she wrote, arguing that it would involve more than just going back to uptick restrictions that were repealed two years ago. “Dusting off code that was in place in 2007... is simply not an option.”

Ronald C. Long, the St. Louis-based directory of regulatory affairs for Wells Fargo Advisors, which runs more than \$900 billion in assets, wrote in favor of reinstating a new version of the uptick rule but added this: “Most firms would prefer to avoid making short-sale systems changes every eighteen to thirty months.”

### PRE-BORROWING: TOO BURDENSOME?

Implementation issues aside, the bigger debate over short-selling – and its regulation – is predictably divisive.

“Terrible ideas,” says Greg Hold, chief executive of Jersey City-based Hold Brothers, a global day-trading company, broker-dealer and software developer that supports a network of 1,300 day traders. Hold says the proposed restrictions would only hamper what he and other advocates for years have argued are the vital services short-sellers bring to the marketplace, namely liquidity and price discovery.

Those in Hold’s camp typically argue also that the government sometimes wades in over its head. “Regulators often put laws on the books in haste,” says Ron S. Geffner, a partner at Sadis & Goldberg, a New York law firm whose clients include scores of hedge funds. Geffner notes that the pre-borrow proposal is meant to stop naked short-selling, the abusive practice by which traders short securities without properly borrowing them first. “It’s already against the law,” he argues. “Why do we need another law?”

Perrie M. Weiner, the Los Angeles-based co-chairman of DLA Piper’s securities litigation practice, says a pre-borrow requirement – also known as a “hard locate” – would be costly and cumbersome. “It’s one thing to require locating a borrow before a short is put on,” Weiner says. “But forcing the actual transaction of a pre-borrow is an unnecessary added transactional expense.”

The SEC is feeling populist pressure, however, to impose new restrictions, whether or not the industry likes it. One common characteristic of the hue and cry for more short-sale regulation posted on its public-comment pages is this one: “By and large, short selling is NOT a Main Street American investment vehicle. ... It’s time that rules and regulations were made for the American investor and not for the benefit of Wall Street.”

### A PUBLIC RELATIONS CHALLENGE

Indeed, the Washington-based Managed Funds Association, which dubs itself “the voice of the global alternative investment industry,” conceded in published comments that big investors have a public-relations problem when it comes to short selling.

“There appears to be substantial confusion among the general public and some commentators over the role of legitimate short selling and the illegal practice of so-called naked short selling, especially since the empirical evidence does not support the claims that short selling or naked short selling were responsible for declining stock prices,” Stuart J. Kaswell, the association’s general counsel, wrote in a letter this summer to the SEC. “We believe greater market information would help dispel the public’s misperception of short selling.”

Kaswell outlined the standard argument against imposing a pre-borrow requirement, saying it “would impose additional financing costs, increase operational and settlement costs, as well as impose administration and record-keeping costs related to corporate actions.”

Those costs, he said, “would significantly outweigh the benefits,” and he laid out in painstaking detail what the process would entail, envisioning an expensive book-keeping tangle: “Along with the transfer of securities to a broker-dealer’s account is the transfer of title, or ownership. Such ownership may provide the broker-dealer

*continued on page 7*

## ► INDUSTRY BRIEFS

### J.P. MORGAN TO PROVIDE GLOBAL CUSTODY TO JACKSON NATIONAL

J.P. Morgan has been selected to provide global custody and securities lending services for the variable annuity and variable life insurance contracts offered by Jackson National Life Insurance Company. The investment options in this mandate total approximately \$38 billion of net assets as of September 30, 2009.

“To support Jackson’s growth agenda, it is important to align with a trusted service partner who can best support our global custody and securities lending needs,” said Mark Nerud, president of JNAM. “J.P. Morgan’s custody services deliver efficiencies, and the customized securities lending model met our requirements for transparency and control over cash collateral reinvestments.”

Mark Kelley, asset gatherer segment executive for J.P. Morgan Worldwide Securities Services, emphasized that the investment manager segment is an important market for them, and the Jackson mandate is “an excellent example of our ability to provide unique and creative service solutions for global fund managers.”

### STATE STREET TO SERVICE CAD\$2.2 BILLION IN ASSETS FOR SASKATCHEWAN TEACHERS’ FEDERATION

State Street Corporation confirmed last week that it has been appointed by the Saskatchewan Teachers’ Federation to provide a range of investment services for CAD\$2.2 billion in pension and group benefit fund assets. State Street will provide custody, fund accounting, and securities lending services to the Federation.

“State Street’s proven track record of delivering superior service with advanced technology was the critical factor in our decision,” said Gwen Dueck, general secretary of the Saskatchewan Teachers’ Federation. “Efficient, cost-effective servicing is vital to the operations of pension, disability, and health benefit funds.”

State Street, which has \$17.9 trillion in assets under custody and administration and \$1.7 trillion in assets under management, said it provides services to the ten largest pension plans in Canada. ✍

## ASSET MANAGERS FORUM

*continued from page 1*

from the issuer to our investor accounts. With each entity checking and changing data there are points where that data could be incorrectly re-keyed.”

- Widespread delays in processing, which the forum calls “a consequence of the interpretation and accuracy risks” that create bottlenecks from issuers to custodial and asset-servicing institutions. “Inevitably, the investing community is negatively affected as the checked information can be delivered to us, the investor, considerably later than intended by the issuer.”
- Costs in both human resources and technology: “AMF member firms are forced to allocate considerable resources to enter, validate and manage information that could be reduced or even avoided if there was an increased certainty of the accuracy of the data we received from our custodians and data vendors.”

One of the summary points of the letter is what amounts to a practical pitch for modernization. “The key data elements of corporate action announcement information should be provided electronically and in a standard format from the source, (i.e., the issuer), to allow asset management firms to maximize any benefits associated with straight-through-processing, without wasteful and risky manual interpretation, rekeying, and reconciliation,” it says.

It was signed by Tina Davis, a vice president and client liaison/inquiry-support business manager for Bank of New York Mellon and Joseph Sack, a managing director for SIFMA’s Asset Management Group.

A whitepaper published by the group three years ago laid out corporate-action processing problems in considerable detail. The paper, citing a study produced by U.K.-based consultants Oxera and commissioned by the DTCC, argued that corporate actions lost to both operational and front-office failures and oversights could create “sizable financial losses” globally totaling several billions of dollars annually.

“The DTCC/Oxera study measures two types of risk,” the paper noted. “Back-office processing risk, which consists of losses resulting from mishandling a single, complex corporate action event, and front-office trading risk, where a failure to act on information may lead to suboptimal trading decisions.”

“For individual firms,” it added, “the potential risk can run into millions of euros for one complex corporate action event.”

The paper split operational corporation-action risk into two main areas:

- Errors in the downstream flow of information (no standard way for issuers to announce events, multiple information sources which may be inconsistent, processing details and terminology differ by asset class or instrument).
- Errors in the upstream flow of instructions (large number of financial intermediaries involved, thus many instructions for each action, instructions delivered via phone, fax, unformatted e-mail and processed manually).

✍

# EC ISSUES 'HOW-TO' ON CROSS-BORDER TAX WITHHOLDING RELIEF

*continued from page 1*

authored the OECD report, said efforts toward reform aim to harmonize a process that varies from country to country.

"What has historically been the case is that if you own a security from a local market and are taxed at a high rate you have to file in that local market to get a refund," Salva said. The process typically is slow and costly. Salva cited estimates that put the price-per-claim at from \$50 to \$200. "If you have to do that to get \$100 worth of relief, what's the point?"

Salva, who is also a former director of tax services for the Depository Trust and Clearing Corporation, notes that the EC initiative is modeled in some ways after programs pioneered at DTCC. The New York-based company, owned by user banks and institutions, offers products that include TaxRelief, TaxInfo, and U.S. Tax Withholding Service, which provide streamlined ways around cross-border tax withholdings.

"What we did at DTCC was push forward a process to get tax relief that made it much more economical, and we increased the value reclaimed from \$150 million to \$2.5 billion," Salva said. "The idea there was to encourage foreign tax authorities to allow for electronic instructioning, to trust financial institutions to make proper representations, to avoid the tax-reclaim filing processing."

## WEEKS OF PROCEDURAL WORK

Shahzad Malik, an international tax-law partner at Century City, Calif.-based TroyGould, said the paperwork difficulties under the current system are a barrier as well.

"I do a lot of work for people in the U.S. who have investments or who manage investments in Europe, where one of the big stumbling blocks on this is that you have to prove residency (in the U.S.)," Malik said.

"It can take weeks of procedural work – it gets very messy," he said, explaining that a U.S. citizen who owns an Italian security, for example, may be required to provide the Italian authorities with a "residency certificate" in order to reclaim a withholding. The residency certificate – which because it is temporary has to be renewed – is passed along with other paperwork through a global bureaucracy that can take months, at best, to process it.

Under the scheme put forth by the EC, Malik said a more reasonable proof of residency would be acceptable – perhaps something as straightforward as a passport.

Among the most significant of the recommendations is one that would have member states apply tax withholding at the source – the brokerage or bank where an investment is made – rather than in countries where securities are domiciled. The practice would vastly speed up the rate at which withholdings can be reclaimed, Malik said.

Salva, the former DTCC executive, noted that the EC recommendations would help advance cross-border harmonization.

The European Commission in its summation includes these points:

- Endorsement of implementation of "quick and standardized refund procedures where they cannot provide relief at source, for example, because the investor has not provided all necessary information."
- A call for "greater acceptance by member states of electronic rather than paper information."
- Guidelines on setting up a variety of audits "to investigate the compliance of financial intermediaries with obligations created in line with the recommendation."

## SHORT OF A DIRECTIVE

Malik said there was little to quibble with. "They all make sense to me," he said. "It's an antiquated system."

He and others note, however, that by offering recommendations, the EC was stopping short of issuing a directive, which would mandate compliance. In a Web page devoted to frequently asked questions on the recommendations, the commission said its intent was to support a movement already in progress – not just in Europe but elsewhere as well: "The commission welcomes this trend and aims with this recommendation to stimulate the debate further, share information on best practices and provide a forum for further discussion."

The EC on its Web site also argues that change "would benefit investors in the first place because it suggests that member states should apply at source (i.e. at the time of payment of the securities income), rather than by refund, any withholding tax relief to which an investor is entitled."

"Second," it adds, "in cases where investors are not able to obtain withholding tax relief at source, the recommendation encourages member states to apply quicker and simpler tax refund procedures."

Among them:

- "Use of a single contact point for the introduction and handling of all the refund applications and publication of the relevant information on refund procedures on a Web site."
- "Use of common formats for refund applications, and permission to file them electronically."
- "Refunding in a reasonable period of time, i.e. normally within 6 months."

The EC also says the recommendations would make life easier for financial intermediaries because it would allow them "to become involved in providing withholding tax relief services in the single market."

"Currently many member states only allow resident financial intermediaries to provide such services. The recommendation suggests that foreign financial intermediaries in a custody chain should, subject to

*continued on page 7*

---

## MARKIT AND DTCC TEAM UP TO SERVICE SYNDICATED LENDING

*continued from page 2*

once the company closes on its acquisition from Fidelity Information Services of ClearPar, a Valley Cottage, New York-based automated syndicated-loan operations platform. Since its founding in 2000, ClearPar says it has settled primary and secondary-market syndicated loans for more than 300 institutional investors.

Syndicated lending, which brings banks together to share the underwriting of corporate and government financing, has shown a marked contraction this year compared with last year, according to research provider Dealogic, which put global activity at \$1.26 trillion for the first nine months of 2009, off 50 percent from 2008.

In testimony on Tuesday to a congressional subcommittee, Jon D. Greenlee, associate director of the Federal Reserve's Division of Banking Supervision and Regulation warned of a "deterioration in large syndicated

loans," in what he said was a likely harbinger of further difficulties in commercial lending.

Some countries – notably India and Japan – have shown recent bounces in syndicated lending. Most other have not. Dealogic reports emerging-market syndicated lending in the first three quarters of this year totaled \$154 billion, down from \$361 billion last year. The contraction has been especially sharp in Russia.

According to Thomson Reuters, syndicated lending is also in a deep slump in the Middle East, where it is off by 73 percent, to \$26 billion from \$94.5 billion.

The U.S. Office of the Comptroller of the Currency says the quality of existing loans has also dropped. The agency estimates that 22.3 percent of syndicated loans can now be considered questionable, up from 13.4 percent this time last year. ✍

---

## THE BACK-OFFICE DEBATE ON SHORT-SALE RESTRICTIONS

*continued from page 4*

with voting rights, the legal right to dividends, and other shareholder benefits, but also introduces a new set of administration costs."

Ultimately, Kaswell asserted, customers would pay the higher price of doing business.

### RESURRECTING THE UPTICK RULE

Most SEC watchers appear to expect the agency to impose some version of an uptick-rule reinstatement. Prospects for a pre-borrowing requirement are less certain.

Jane Sterero, a partner in the Philadelphia office of Blank Rome who specializes in securities offerings by middle-market public companies, noted that the clamor for resurrecting the uptick rule grew dramatically last fall, when the SEC temporarily banned the short sale of financial stocks.

"Microcap companies have been complaining for years – if I said shorts were destroying some of my little microcap clients, nobody did anything about it – but everybody took notice when hedge funds starting shorting the stocks of the largest banks and threatened to topple the whole system."

"The huge rise in hedge funds in the last 10 or 15 years — and of professional traders — has changed the dynamic of the market, and regulation has to catch up with it," added Sterero, who said she thought an uptick-rule restoration was likely.

Alex Montano, chief executive of C.K. Cooper & Co., a boutique investment bank based in Irvine, California, said he was opposed to either a pre-borrow rule or an uptick revival, but seemed resigned to the latter. Montano said an uptick regulation would probably require banks to jump through some as-yet unknown hoops and that it would have a noticeable impact on operations.

"What it probably means is we ask somebody to wear another hat for the time being until we get clarity for what we need," he said.

Weiner, the DLA Piper lawyer, said he thought whatever short-sale rule shifts are coming would be manageable.

"You'll see some sort of change, but it's not going to be anything really draconian at the end of the day," he said. "Everybody appreciates that a well-run marketplace requires liquidity." ✍

--Karl Cates

---

## EC ISSUES 'HOW-TO' ON CROSS-BORDER TAX WITHHOLDING RELIEF

*continued from page 6*

authorization by the source member state, be allowed to take part in the relief procedures by acting as 'withholding agents' or as 'information agents'."

The commission says that "withholding agents" would grant withholding tax relief at source by deducting the appropriate amount. "Information agents," it says, "would provide information on the correct rate of withholding tax

applicable to given investments up the custody chain so as to reach the withholding agent."

Experts says widespread adoption would be a natural part of the ongoing evolution of the 27-member European Union, which is considering expanding to include Croatia, Macedonia and Turkey. ✍

--Karl Cates

► **RISK MANAGEMENT**

## **CLEARSTREAM IN DEAL WITH LUXEMBOURG'S CENTRAL BANK**

Clearstream, the Luxembourg-based international clearinghouse, has signed a deal to offer services to banks in its own backyard.

The pact, with Banque Centrale du Luxembourg, allows Clearstream to act as the third-party clearing and settlement agency for Eurosystem operations involving banks based in the tiny country.

Clearstream, which is owned by Deutsche Borse, will handle one central, multipurpose collateral pool in an arrangement meant to help members manage liquidity and maintain intraday operations in TARGET2, the real-time cross settlement system for the euro.

Clearstream is promoting the deal as a way for Luxembourg banks "to benefit from the flexibility of Clearstream's fully automated CmaX (collateral management eXchange) system. This includes automatic allocation of collateral, eligibility checks, substitutions of collateral, mark-to-market valuation, margin calls, re-use of collateral and reporting facilities."

The arrangement mirrors ones Clearstream has with other banks, allowing BCL to communicate electronically on collateral pledges. The clearinghouse notes that it maintains collateral from various parties on trades involving some 40,000 securities. It is also the depository for more than 300,000 domestic and internationally traded bonds, equities and investment funds.

In its most recent asset report, Clearstream said that in September it held assets worth nearly \$16 trillion,

marking an increase in that figure for the seventh month in a row. The number was about 2 percent less than in September 2008, the clearinghouse said, "primarily due to lower equity market valuations and despite an increase in the new issuance of bonds the assets under custody."

Internationally, settlement transactions in September increased by 10 percent (2.63 million) compared with September 2008 (2.38 million), driven in part by Clearstream's effort to expand operations in Asia. In September the clearinghouse opened a branch in Singapore, an occasion noted with some fanfare by Chief Executive Jeffrey Tessler.

"Asia-Pacific is the growth engine of the world," Tessler said.

Clearstream and other clearinghouses for some months have marketed their services as remedies to some of the problems that led to the global market crisis that began last year.

"The financial crisis and the subsequent freeze on money markets have shed light on the importance of accessing central banks liquidity as well as on the crucial role of securities financing mechanisms and infrastructures which provide much of the liquidity to the world's capital market," reads a statement posted on the clearinghouse's Web site.

The Eurosystem is made up of the European Central Bank and the central banks in states that are part of the Eurozone. ✍

► **SECURITIES OPERATIONS CALENDAR**

Securities Operations BootCamp  
Financial Markets World  
November 18 – 19, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

Fixed Income 101  
Financial Markets World  
December 8, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

Fixed Income Trade Lifecycle  
Financial Markets World  
December 9, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

MBS: Securitization & Processing  
Financial Markets World  
December 10, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

SWIFT Operations Forum  
SWIFT  
December 14 – 15, 2009  
La Hulpe, Belgium  
[www.swift.com](http://www.swift.com)

Securities Custody Services  
Financial Markets World  
December 14, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

Corporate Actions Processing  
Financial Markets World  
December 15, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

SEC Net Capital Rule 15c3-1  
Financial Markets World  
December 16, 2009  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

SEC Customer Protection Rule 15c3-3  
Financial Markets World  
January 28, 2010  
New York City, NY  
[www.fmwonline.com](http://www.fmwonline.com)

Annual Operations Conference  
NCSA  
February 14 – 17, 2010  
Miami, FL  
[www.nicsa.org](http://www.nicsa.org)

Operations Conference & Exhibit  
SIFMA  
May 4 – 7, 2010  
Desert Springs, CA  
[www.sifma.org](http://www.sifma.org)

SIBOS  
SWIFT  
October 25 – 29, 2010  
Amsterdam, The Netherlands  
[www.swift.com](http://www.swift.com)