THIS MONTH

FEEDBACK MATTERS

The ACT policy and technical team is striving to make the corporate treasury environment more congenial. We are seeking to preserve Libor; we provided pre-publication feedback to the International Valuation Standards Council on its credit valuation adjustment exposure draft; and we hope to give input to the UK Payments Council as it reviews remittance information sent with Bacs payments. We are infinitely more successful if we receive your views, so keep in touch with any feedback on what can be improved.

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{ IN DEPTH }

SEPA BEYOND 1 FEBRUARY 2014

Companies across Europe are rushing to complete their Single Euro Payments Area (SEPA) implementation projects ahead of the February 2014 changeover deadline. Despite the exceedingly low proportion of SEPA direct debits (SDDs) being transacted, the European Payments Council (EPC) seems to be expecting a last-minute pick-up as companies make the transition. We shall see.

Also, in an October 2013 letter, the EPC clarified the position on electronic mandates for SDD. It stated that the signature methods mentioned in the rule books are not an exhaustive list, so that SDD scheme participants may consider allowing other legally binding methods of signature, including those that were used under the local legacy scheme rules.

But the payments world does not stand still so that the next round of changes and developments is already in the pipeline, including the SEPA fixed amount direct debit (DD). This would be a DD with no refund rights for the payer. But to protect the payer, it would be just for a fixed amount that the payer's bank would have to check for amount and periodicity against the mandate.

The SDD Core Scheme does not provide a certainty of funds for the recipient since it provides an eight-week 'no questions asked' refund right for authorised transactions. This can make it inappropriate for certain service or product providers, where the product or service is consumed immediately, and where by their nature a physical return to the supplier of such product or service is very difficult or even impossible. Examples are the purchase of digital content on the internet, public transport cards, mobile phone credit, lottery tickets or tax payments. It is acknowledged that a no-refund DD would be an exception to the unconditional consumer right to refund and so will be limited to a strict number of well-identified niche markets. A list of the appropriate niche markets is to be prepared.

Meanwhile, the proposed Second Payment Services Directive or PSD2 was launched over the summer to expand the existing directive so as to cover new types of intermediary providers. It will introduce new terminology, specifically the 'third-party payment service provider' (TPP), which does not execute funds transfers, but rather provides 'payment initiation' or 'account information' services in relation to payment accounts provided by other PSPs (the account servicing payment service providers or ASPSPs). For treasurers, a particular concern is to ensure that shared service centres are not inadvertently brought into regulation as TPPs.

PSD2 will ensure that a payer has the right to use a TPP to obtain payment services that enable access to payment accounts and that, in effect, the ASPSP must give open access. Questions around security and authentication will need to be considered, as will the liability regime for these new participants in the regulated payments arena. PSD2 remains confusing on this, although it looks as if Article 63 effectively deems ASPSPs liable for unauthorised or incorrectly executed transactions even where a TPP is involved.

A no-refund DD would be an exception to the unconditional consumer right to refund

YOUR SHOUT

The ACT will be looking at remittance information sent with UK Bacs payments. If you have any comments, insights, ideas or complaints, please contact modonovan@treasurers.org

{ INTERNATIONAL }

NFCs GET HEDGING RIGHT

The Financial Conduct Authority (FCA) held discussions with non-financial counterparties (NFCs) in the period to September 2013 to review progress in complying with the European Market Infrastructure Regulation (EMIR). The FCA reports that:

- NFCs are accurately classifying hedging and non-hedging transactions, which is relevant in testing if derivative volumes exceed the threshold for clearing.
- Some NFCs were unaware that all OTC derivative transactions entered into by non-financial entities within the group, both EU and non-EU, must be included in the clearing threshold calculation (but excluding hedging transactions). NFCs found it particularly challenging to perform a group-wide threshold calculation when the UK NFC had relatively low volumes, but needed to include the derivatives activity of other larger entities outside of the EU in their calculation.
- Some NFCs used a combination of fixed-to-floating and floating-to-fixed interest swaps to achieve a desired balance of interest rate position. Those NFCs had not always considered adequately whether the fixed-to-floating component of such a strategy could legitimately be considered hedging, given that it appears to increase the NFCs' exposure to market movements.
- NFCs found it particularly challenging to meet their obligations on portfolio reconciliation, dispute resolution and portfolio compression where they are trading with non-EU firms that may not be aware of the EMIR requirements.
- NFCs with a central treasury function said they were unlikely to be able to delegate reporting of internal intragroup back-to-back derivative transactions, so they were implementing plans to develop systems to meet the reporting requirement.

NEW ON THE WEB

View the following technical updates, blogs and policy submissions at www.treasurers.org

EACT position paper on money market funds reform

UK banking reform secondary legislation – ACT response

ACT webinar: SEPA – realising the long-term benefits

ACT webinar: Monitoring your bank – spotlight on counterparty risk

{ WATCH THIS SPACE }

PUZZLED BY CVA AND DVA?

If your company holds derivative positions and you report under IFRS or US GAAP, you are now required to calculate credit and debit valuation adjustments (CVAs and DVAs) as part of your fair value calculations. Financial entities have been calculating these adjustments for years, however, new accounting standards require that all entities do this, even if they hold only one derivative contract. The International Valuation Standards Council (IVSC) has recently released for public comment an exposure draft on CVAs and DVAs. The IVSC is looking to provide guidance on the principles of CVA and DVA, techniques, inputs and key challenges for making adjustments, links with cost of funding, and practical implications in financial reporting and regulatory capital requirements.

The IVSC is a not-for-profit, private-sector organisation that develops international valuation standards and guidance, and seeks to assist professional valuers and users of valuation alike with information on appropriate valuation methods and their application. The exposure draft can be found at www.ivsc.org and the IVSC is inviting comment, particularly from the financial services 'buy side' and treasurers.

{ TECHNICAL ROUND-UP }

RELATIONSHIPS, RULES AND A REMINDER

Relationship and Transaction Lending in a Crisis is the title of a Bank for International Settlements paper at www.bis.org/publ/work417.pdf, which finds that relationship banking is an important mitigating factor of crises. Relationship banks charged a higher spread before the financial crisis, offered more favourable continuation-lending terms in response to the crisis, and suffered fewer defaults, thus confirming the informational advantage of relationship banking.

New guidance from the Financial Conduct Authority (FCA) for bond issuers is being proposed as a result of the revised objectives and statutory powers that have resulted from the Financial Services Authority transitioning into the FCA. The consumer protection objective requires the FCA to recognise the different needs of different types of consumer, so it is likely that wholesale and retail-denominated prospectuses may contain significantly different disclosures. FCA *Primary Market Bulletin No 7* explains that the FCA intends to tailor its vetting approach to more clearly take account of the end investor targeted by each prospectus. Its own comment period for draft retail prospectuses will be extended by one day. New guidance will be added to the FCA Knowledge Base.

Which legal entity identifier (LEI) to use? The European Securities and Markets Authority has updated its Q&As on EMIR and clarified that only LEIs issued by any of the endorsed pre-local operating units of the global legal entity identifier system are acceptable. By early November, only three issuers officially qualified, but other parties listed on the website www.leiroc.org are expected to be endorsed in due course.

Reminder: the *UK Corporate Governance Code*. For premium-listed companies preparing accounts for periods ending on or after 30 September 2013, the code requires that: "The board should present a fair, balanced and understandable assessment of the company's position and prospects." And that "the board should establish arrangements that will enable it to ensure that the information presented is fair, balanced and understandable". (Section C.1). All this requires a properly considered approach.