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The Bank of England has given 12 months' notice of its intention to end elements of its Asset Purchase Facility which was set up at the height of the financial crisis to inject liquidity into certain funding markets used by non-financial companies. It will withdraw the Commercial Paper Facility, and already there is no outstanding stock held.

The Bank notes that conditions in the sterling corporate bond market have also improved substantially since introducing the Corporate Bond Secondary Market Scheme in March 2009. The scheme will continue to offer to both buy and sell corporate bonds to serve a useful role as a backstop, particularly during periods of increased market uncertainty. In so doing the Bank would be fulfilling a form of "market maker of last resort" function as mentioned by Paul Fisher, executive director, markets, at the ACT Winter Paper.

The Bank's Secured Commercial Paper Facility was announced in July 2009 to allow purchase of asset-backed sterling commercial paper securities that support the financing of working capital, and so channel funds to a broad range of corporates and smaller companies. Until November 2010 no programmes had been approved as eligible, but the first such programme has now been approved by the Bank and will be funding a supply chain finance arrangement.

Legal Professional Privilege (LPP) does not extend to communications by accountants giving legal tax advice according to a ruling from the Court of Appeal in England. Communications between a lawyer and its client are protected by LPP and cannot be required to be disclosed. This clarification has arisen from a case between HMRC and Prudential who had sought to withhold tax advice documents on the basis that they were legal advice albeit not from a lawyer.

Increased cost clauses. The LMA (Loan Market Association) recommended facility agreements include a footnote excluding Basle II costs from being included on the basis that such costs are already known. The LMA has issued further wording to ensure that Basle III increased costs are not inadvertently excluded too. The ACT is working with the LMA so that once the impact of Basle III is sufficiently clear any increased costs arising will be excluded from subsequent increased cost clauses.

INTRODUCTION

By Martin O'Donovan
ACT assistant director, policy and technical

During the course of the ACT's efforts to explain the non-financial corporate point of view to regulators and legislators we have met a small number of MPs and MEPs and been impressed by their grasp of quite complicated financial markets and their interest in creating good regulation. Yet from somewhere the most hare-brained ideas can creep into proposed law, such as the idea that any information given to a rating agency must be made public (explained below) or that issuers be banned from paying for ratings.

Both of these would completely change the ratings industry and materially reduce the quality and coverage of ratings. We expect that through our efforts and those of others this drafting will end up deleted, but it is scary to think what other wilder proposals might be hidden within EU legislation.

Yet another review of credit rating agencies

The European Commission is again consulting on credit rating agencies (CRAs). There is concern that mechanistic and parallel reliance on external ratings by market participants may lead to herding when an issue is downgraded and that selling pressure aggravates the problem. The consultation considers:

- Measures to reduce overreliance on external credit ratings;
- Improvements to transparency, monitoring, methodology and process of sovereign debt ratings in the EU;
- Measures to enhance competition among credit rating agencies such as introducing new players into the sector and lowering barriers to entry for new and existing credit rating agencies;
- Introducing a civil liability regime for CRAs;
- Measures to reduce conflicts of interest due to the "issuer-pays" model and preventing rating shopping.

For corporate issuers and users of ratings some of the concepts being introduced could, if extended, have material consequences. One idea is to discourage the use of external ratings in the mandates and investment policies of investment managers, without banning it. Another concept under review is to ban the issuer pays model, although that would end any commercial incentive for CRAs to rate smaller or infrequent issuers.

To encourage competition an EC amendment to the 2009 CRA Regulation has been tabled to require issuers of structured finance instruments who have provided information to one rating agency, to make it available to all others. Subsequently, some MEPs have put down amendments to widen this to all issuers, with one wanting to make any information given to a CRA publicly available! The ACT has alerted UK MEPs on the ECON committee to the repercussions of such a move – that issuers would give no confidential information to a CRA which would eventually dimish quality. Latest indications are that the committee will be deflected from requiring all rating information to be publicly available but might still want it disseminated to all registered credit rating agencies. With the increased risk of leaks even that would make treasurers very wary of disclosing non-public information. ■

D&O insurance

Directors' and officers' liability insurance is a topic that treasurers may have a very personal interest in, particularly if they are directors of finance subsidiaries or seeking non-exec roles. And quite justifiably so, since Company Law on liability and indemnities is complicated – as is getting the structure of your insurance right. **http://tinyurl.com/37uoccb**

New takeover rules proposed

The Takeover Panel is to implement a raft of new measures designed to redress the balance between bidder and target, in favour of the target, following the controversy surrounding the Kraft takeover of Cadbury earlier this year. Formal consultations and approval are yet to be completed but the proposals are clear. Revisions to the Takeover Code will:

- give added protection for targets subject to virtual bids where a potential bidder announces its intention to make an offer but does not commit itself to do so. The bidder will have a four week period to announce its clear intentions to proceed or not;
- ban deal protection measures and inducement fees except in limited cases;
- clarify that target company boards are not limited in the factors that they may take into account in giving their opinion and recommendation on the offer, in particular that the offer price need not be seen as the determining factor;
- require the disclosure of offer-related fees; and
- improve the quality of disclosure in relation to the offeror's intentions regarding the target company and its employees and expect that these will hold true for a period of at least one year;

The code committee has decided not to:

- raise the minimum acceptance condition threshold for offers above the current level of '50% plus one';
- to disenfranchise shares acquired during the offer period; or
- shorten the offer timetable from 28 days. ■

Renewed focus on OTC derivatives

Just when you thought the evolution of EU regulation of OTC derivatives was nearing its final vote in the ECON committee of the European parliament, due on 22 March 2011, many of the same issues get reopened by the Financial Stability Board (FSB). The FSB has been established to co-ordinate at international level the work of national financial authorities and international standard setting bodies. An FSB working group has reported on "Implementing OTC derivatives market reforms" and come up with 21 recommendations including ideas like central clearing which are already being addressed by the EU. However the new focus seems to be on pushing for more standardisation of products and for exchange trading. To that end The International Organization of Securities Commissions (IOSCO) will complete an analysis by the end of January 2011 identifying actions to achieve the G20 commitment that all standardised products be traded on exchanges or electronic trading platforms, where appropriate.

The EU OTC derivatives regulation includes certain carve-outs for non-financial companies so the new worry is that many of the improvements gained on that front will in time be nullified if more and more deals have to be traded on exchanges. Having won the non-financial counterparty exemptions the fine detail remains to be negotiated and agreed. Improvements are still being sought by the ACT and EACT on the definition of the hedging transactions that get disregarded and ensuring it is by reference to hedging group risks rather than single entity risks and clarification on the treatment of pension funds and the way the thresholds for reporting or clearing will operate.

Moody's MMF rating proposals

The ACT has responded to the consultation from Moody's on its new approach to rating money market funds (MMFs) (See *Technical Update,* October 2010). The ACT welcomed the separate rating scale for MMFs running from MF1+ down to MF4 as funds have different characteristics from other investment instruments.

The new methodology is based on a relatively equal weighting between the portfolio credit profile and the fund's stability and redemption risk profile (made up of asset profile, fund liquidity and the fund's exposure to market risk). While the ACT welcomes the inclusion of the portfolio stabilities, we wonder whether the underlying credit strength of the portfolio should remain the predominant driver of the overall rating. In addition, Moody's proposes including sponsor support in the qualitative assessment. We are aware that companies already take account of the sponsor name (often looking to their key relationship banks) and likely support in deciding which MMF to invest in but we questioned whether this aspect was being given disproportionate weighting in the overall assessment. ■

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▸ A simplified UK accounting standard for smaller companies has been proposed by the **ASB (Accounting Standards Board)** as part of an exposure draft specifying a three-tier UK reporting framework. This has been developed and consulted on over the past six years and builds on the existing system. Quoted groups will continue to report under international financial reporting standards (IFRS), as adopted by the EU. The smallest companies will continue to use the simplified version of UK standards, known as the FRSSE. Those in between would report under a new standard based on the IFRS for SMEs, which is considerably shorter and less complicated than current UK standards. The FRSME, as it would be called, would be modified to comply with UK and EU law and to ease tax reporting.

▸ From 1 November 2010, **EU law** required all banks in the euro area to be reachable for cross-border direct debits; ie SEPA Core Direct Debit (SDD Core), making it easier for companies to collect payments by SDD across the euro area. Throughout SEPA, a total of 3,384 payment service providers offer SDD Core services. Of those, 3,364 payment service providers offer SDD B2B services. SDD Core as a percentage of the total volume of direct debits generated by bank customers amounts to 0.07 per cent as of August 2010. As of October 2010, nearly 4,500 banks in 32 countries offer SEPA Credit Transfer (SCT) services for euro payments.

▸ Following its Green Paper on financing a private sector recovery, the government intends to introduce two of the changes to the **EU's Prospectus Directive** ahead of schedule. It will exempt from the requirement to produce a prospectus any offers which go to fewer than 150 investors in any member state (rather than the current 100) and exempt offers for up to €5m (rather than the current €2.5m). The Enterprise Finance Guarantee, which helps many smaller firms access the finance, will be extended to 2015, a new £1.5bn Business Growth Fund will provide flexible equity finance for established businesses and the programme of the Enterprise Capital Fund will be increased by £200m providing investment into the equity gap for early stage innovative SMEs.