THIS MONTH

2013 TREASURY CHALLENGES

Life would be very dull if this year's work was identical to last year's. But fear not, 2013 will certainly bring lots of changes to occupy and stimulate you and your treasury team. Apart from having to cope with whatever market conditions throw up, I can confidently predict that the administrative burden around your company's derivative activity will massively increase, as outlined below. See the briefing note on the ACT website for the more complete story.

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{ IN DEPTH }

OTC DERIVATIVE REGULATION IS NOW LIVE

The new European Market Infrastructure Regulation (EMIR) affecting derivatives is already law. The Regulatory Technical Standards (RTS) have been approved by the European Commission and are awaiting approval by the European Council and Parliament. So the start date for reporting of all OTC derivatives undertaken by European companies was 16 August 2012. At present, the trade repositories (the databases that will hold records of all derivatives) are not yet set up and registered, but the obligation to backload all deals outstanding at 16 August and completed since then will still apply. The regulation covers all derivatives irrespective of size or purpose.

The expectation is that for derivatives carried out with banks, non-financial counterparties (NFCs) will find it convenient to appoint the bank to report on their behalf, assuming the bank is willing to take this on. The reporting obligation, however, also applies to derivative transactions conducted intra-group and these too must be reported. Extensive data fields must be captured, so you should check the adequacy of your internal systems urgently. The ACT has published a briefing note on the implications of EMIR for NFCs and this includes a table of the data that needs to be recorded and reported.

The reporting start dates will depend on when the repositories are registered, but will be no earlier than 1 July 2012 for credit and interest derivatives, and 1 January 2014 for all other categories. Derivatives outstanding on 16 August 2012 and still outstanding on the reporting start dates must be reported within 90 days of the reporting start date. Derivatives outstanding at 16 August 2012, but not outstanding on the reporting start date, must be reported within three years of the reporting start date. After the reporting start date, all subsequent derivatives must be reported by the next business day.

The RTS form the so-called 'Level 2' legislation and specify all the detail that has been deliberately left out of the primary 'Level 1' legislation. They are expected to come into force by the end of March 2013. A mandatory timetable for exchange of confirmations will follow. In the case of NFCs, this will initially be five business days for credit and interest swaps, and seven days for other derivatives, reducing to two business days for both from September 2014.

During the evolution of EMIR, NFCs were very concerned by the possible obligation to clear derivatives through a central counterparty and put up margin (ie collateral). In the event, only NFCs with group-wide derivatives over substantial thresholds (for example, over €3bn notional for FX) will be subject to mandatory clearing. Any derivatives 'objectively measurable as reducing risks' do not count towards the threshold, so only companies using derivatives for non-hedging purposes in significant volumes will be caught. Pension funds count as financial counterparties, however, and they will be subject to clearing and margining on all their derivatives with a three-year delayed start.

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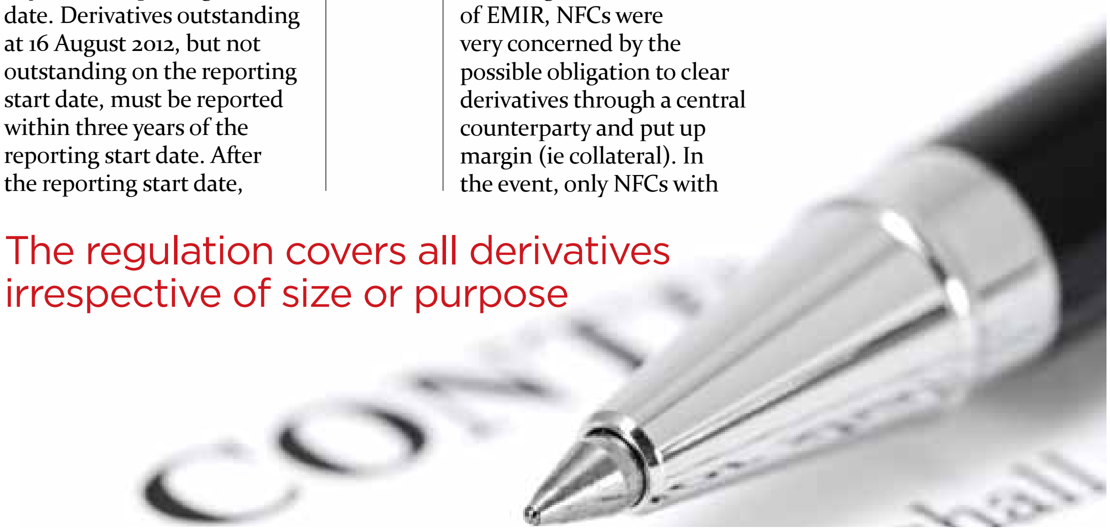

YOUR SHOUT

The ACT briefing note *European regulation of OTC derivatives: Implications for non-financial companies* is available at www.treasurers.org. If your company spots any omissions, or has practical experience to share in a second edition, contact us at technical@treasurers.org

{ INTERNATIONAL }

REVIEW OF EQUITY MARKETS

Last summer, Professor John Kay published his report on *UK equity markets and long-term decision making*. The government supports the report's focus on reversing the culture of short-termism in equity markets and restoring relationships of trust and confidence in the investment chain. Its official response explores whether changes in law or regulation are needed to implement Kay's principles in practice.

Proposals include:

- The UK working with EU counterparts to end mandatory quarterly reporting and to reduce the excessive focus on short-term earnings;
- Encouraging industry to establish an investors' forum to champion constructive engagement with companies; and
- Endorsing good practice statements for company directors, asset managers and asset holders.

The Kay review and government response are now the subject of an inquiry by the UK Parliament's Business, Innovation and Skills Committee. Feedback is sought on proposals including:

- Companies being obliged to consult their major long-term investors when making significant board appointments;
- Companies disengaging from the process of managing short-term earnings expectations and announcements; and
- The application of fiduciary standards to all relationships in the investment chain that involve discretion over the investments of others.

Addressing similar concerns, the European Commission adopted an action plan in December to improve and modernise company law and corporate governance.

NEW ON THE WEB

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

ACT report on developing a UK private placement market

ACT response to the IASB on an outstanding issue in IFRS 9 review draft

Briefing note on OTC derivative regulation

ACT response to BBA on proposed changes to Libor

{ WATCH THIS SPACE }

THIRD TIME ROUND ON RATING AGENCIES

Following two rounds of legislation to regulate credit rating agencies, the EU has now achieved agreement between the Council and Parliament on its third attempt. The impractical idea of forcing issuers to rotate the agencies that rate them has been dropped, except where issues exist with re-securitisation. But the bizarre (and perhaps politically motivated) rule remains that agencies can only announce rating changes on sovereign debt on three set dates per year. This will not prevent them from putting ratings on watch in between those times, however.

Under the rules, agencies will become more vulnerable to liability for their ratings. An investor or issuer will be able to claim damages where an agency has committed – intentionally or with gross negligence – any of the listed infringements that impact a credit rating. The more difficult issue of reducing reliance on ratings has been pushed forward. All references to 'external ratings' in EU law will be checked to see whether they trigger automatic reactions to ratings. If so, these references will be deleted by 2020 as long as alternative risk measures exist.

{ TECHNICAL ROUND-UP }

LIBOR AND GAAR

The British Bankers' Association is reducing the number of London Interbank Offered Rate (Libor) currencies and maturities that it publishes. Those tenors being removed from all currencies in the Libor framework will be stopped at the end of May 2013 to allow time for users to adapt and new protocols to be developed. The currencies being dropped completely have been postponed. The New Zealand dollar (NZD) will cease at the end of February, the Danish krone (DKK) and Swedish krona (SEK) at the end of March, and the Australian dollar (AUD) and Canadian dollar (CAD) at the end of May. Companies may be using some of the currency fixings being discontinued for intra-group charging purposes. Members can find and review suitable domestic alternatives by using an ACT briefing note at www.treasurers.org/node/8650

A General Anti-Abuse Rule (GAAR) is included in the 2013 Finance Bill. Arrangements to get a 'tax advantage' are very widely drawn, but are limited by a 'double reasonableness test'. They are abusive if they cannot reasonably be regarded as a reasonable course of action. The GAAR has an explanation of the circumstances that should be taken into account when determining whether arrangements are abusive, along with examples. The rule is expected to become law in July 2013.

International implementation of Basel III is progressing, according to the Basel Committee. Overall, 11 jurisdictions (Australia, Canada, China, Hong Kong, India, Japan, Mexico, Saudi Arabia, Singapore, South Africa and Switzerland) have published final regulations effective from the start date of 1 January 2013. Seven jurisdictions (Argentina, Brazil, the EU, Indonesia, Korea, Russia and the US) have issued draft regulations and indicated they are working towards issuing final versions as quickly as possible. Turkey will issue draft regulations early in 2013.

The Single Euro Payments Area (SEPA) is looming with one year to go before legacy euro payment systems will be turned off. From 1 February 2014, all euro payments will have to be made under SEPA, notably with eXtensible Markup Language (XML) format required for all payment submissions to the banks.