REGULATION REIGNS IN 2014

I will be glad when the day comes that the Technical briefing doesn't need to focus on regulation. Unfortunately, in 2014, we have implementation deadlines for the Single Euro Payments Area and European Market Infrastructure Regulation reporting as well as decisions pending on the financial transaction tax and money market funds, which could have significant effects on corporate treasury. But let's not forget the importance of economic conditions and the possibility of rising interest rates.

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{ IN DEPTH }

SINGLE RESOLUTION MECHANISM APPROVED

The concept of a European banking union is moving forward. In December 2013, the European Council approved the creation of a new single European fund for the resolution of eurozone banks. The agreement for a common fund is a big step, but it envisages a 10-year transition period and much detail has yet to be sorted out. The council has agreed its draft of the regulation on the single resolution mechanism (SRM), which must now be confirmed by the European Parliament before it finishes in May 2014.

At the same time, the euro-area member states will have to negotiate an intergovernmental agreement on the functioning of the single resolution fund. The fund will form a second leg of Europe's banking union, with the previously agreed first leg being the supervision of the eurozone's 130 largest banks by the European Central Bank (ECB). It will start by the end of 2014 in time to roll out the single supervisory mechanism (SSM) to all 6,400 banks in the eurozone. The creation of this banking union is deemed essential to breaking the link between sovereigns and banks.

National contributions will be transferred to the fund and they will be progressively mutualised over a 10-year transitional phase. In the early years, the cost of resolving banks (after bail-in) would mainly come from the compartments of the fund of the member states where the banks are located, and the share would gradually decrease as the contribution from other countries' compartments increases over the 10-year period.

Contributions would be financed by bank levies raised at national level.

The single fund would be available for use under the bail-in rules established in the Bank Recovery and Resolution Directive.

The SRM will cover all countries participating in the SSM, namely the euro-area member states and those non-eurozone countries that decide to join the SSM via close cooperation agreements. The SRM would enter into force on 1 January 2015. Bail-in and resolution functions would apply from 1 January 2016.

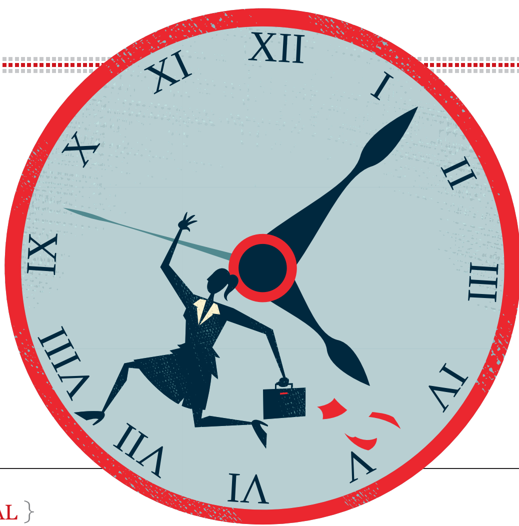
The agreement for a common fund is a big step, but it envisages a 10-year transition period and much detail has yet to be sorted out

The draft regulation agreed by the council provides for a single resolution board (SRB) with broad powers in cases of bank resolution. Once it has been notified by the ECB that a bank is failing or likely to fail, or on its own initiative, the board would place the bank into resolution. It would determine the application of resolution tools and the use of the single resolution fund. National resolution authorities would still be responsible for executing bank resolution plans under the control of the SRB.

Some have questioned the practicalities of acting swiftly to deal with a failing bank, over a weekend, for example, given that the board would include the representatives of the national resolution authorities of all the participating countries. The alternative of pre-planning and authorising ahead of time is equally difficult to envisage working given the need for confidentiality.

Note that the single resolution fund is separate and additional to the depositor protection funds held at national levels to protect holders of small deposits.

For more information, see www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/140190.pdf



{ INTERNATIONAL }

BACKLOADING TRADES FOR EMIR REPORTING

The deadline for reporting derivative trades under the European Market Infrastructure Regulation (EMIR) is 12 February 2014, so no doubt you are getting ready. You have obtained legal entity identifiers for every entity within the group that deals in derivatives, including intragroup transactions; and you have decided whether to delegate reporting or not. If you haven't delegated reporting, you have signed up with a trade repository. You have decided who is going to generate the unique trade identifier (UTI) for each trade type (the bank, your company or possibly an external dealing platform); and even worked out how, what and when you are going to report.

But are you ready to report all trades executed *after* 16 August 2012 and still outstanding on 12 February 2014 on day one? There has been some widespread misunderstanding on this point. While there is a 90-day reporting delay for trades outstanding on 16 August 2012 and still outstanding on the reporting start date, and a three-year reporting delay for trades that are not outstanding on the reporting date, these deferrals don't include the 18-month period of trades entered into post 16 August 2012 and still outstanding on the reporting date. Also remember that all backloaded trades still need a UTI to be bilaterally agreed by the counterparties.

Further information on EMIR reporting can be found in the ACT's frequently asked questions section at www.treasurers.org/node/9406

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

EMIR – frequently asked questions for non-financial counterparties (updated)

Contingency planning for a downturn in the economy: a treasurer's checklist (updated)

Libor re-fixing consultation – ACT response

ACT past webinar: EMIR countdown to implementation

ACT past webinar: The impact of regulation on European debt markets

{ WATCH THIS SPACE }

CRD IV AND THE INCREASED COSTS CLAUSE

The first day of 2014 was a notable date in banking regulation because the Capital Requirements Regulation (CRR) – part of the Capital Requirements Directive IV (CRD IV), which implements the Basel III agreement in the EU – took effect and the existing Capital Requirements Directive was repealed. EU member states had a deadline of 31 December 2013 to transpose the new CRD into national law.

The ACT Borrower's Guide to LMA Loan Documentation for Investment Grade Borrowers (April 2013) notes that the parties to a loan may wish to amend Clause 14 (Increased costs) to reflect their commercial agreement with regard to the costs associated with Basel III. In broad terms, a lender's costs will fall with the scope of an increased costs clause if it is an additional or increased cost incurred as a result of the introduction of, or any change in, any law or regulation.

Prior to 1 January 2014, the balance of views in the market was that costs arising from Basel III would have fallen within the scope of the increased costs clause, unless they were specifically carved out.

For loans entered into post 1 January 2014, Basel III costs are unlikely to count as 'increased costs', since the change in regulation will have come into effect. But corporate treasurers should be aware that some banks will seek protection and specifically carve in (on a limited scope) Basel III and CRR into the increased costs clause, as there is still uncertainty on some ratio levels.

For more on CRD IV, see page 36

{ TECHNICAL ROUND-UP }

HEDGE ACCOUNTING, EMIR AND RATINGS

The Financial Reporting Council has issued a consultation on hedge accounting for UK and Irish GAAP. The amendments are set out in *FRED 51: Draft Amendments to FRS 102*. The proposal simplifies hedge accounting since entities are not required to quantitatively assess hedge effectiveness at the start of a hedge, similar to IFRS 9, *Financial Instruments*. Unlike IFRS 9, however, FRED 51 proposes no restrictions on an entity wishing to discontinue hedge accounting. The FRED 51 comment period closes on 14 February 2014 and a copy is available at www.frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/FRED-51-Draft-Amendments-to-FRS-102-Hedge-Accounti-File.pdf

Thanks to the EMIR Counterparty Classification Tool, all businesses can classify themselves according to the EMIR taxonomy by answering a series of questions. The tool is available free of charge to corporates on ISDA Amend, a joint online service provided by the International Swaps and Derivatives Association and Markit. www.markit.com/product/isda-amend

Issuers who plan to appoint at least two credit rating agencies (CRAs) for the credit rating of the same issuance or entity, are required by CRA Regulation (Article 8d) to consider appointing at least one CRA with no more than 10% of the total market share. The European Securities and Markets Authority has published the market share of the credit rating agencies registered within the EU as of 12 December 2013. The CRAs' total market share was calculated based on the annual turnover for the calendar year 2012. As expected, Fitch, Moody's and Standard & Poor's have the largest market share, with another 19 each having less than a 10% share.

The ACT, working with the ICAEW Corporate Finance Faculty and the Cabinet Office, is part of a taskforce reporting on the specific risks of cybersecurity in corporate finance transactions. A guide, outlining the key risks and how companies can manage or mitigate them, was published in January and is available on the ICAEW website at www.icaew.com/en