IN BRIEF

▸ **Loan agreement changes** have been included in the latest version of the Loan Market Association (LMA) investment-grade loan facility documentation. The most important change is the inclusion of an express confidentiality clause, which is a very welcome development for borrowers, particularly given the rising participation of non-bank lenders.

As ever, the LMA document should be taken as the starting point for negotiations. There are additional points on confidentiality worth considering, such as duration of an undertaking and the various carve-outs.

Further changes that are helpful for borrowers have been made in the areas of taxation and of non-bank lenders appointing a third party to receive communications. These are all explained in the March 2009 commentary provided for the ACT by Slaughter and May, which supplements the main guide to the LMA documentation. Both are available at **www.treasurers.org/loandocumentation**

An article on the changes will appear in the July/August issue of The Treasurer.

▸ Banks will be required to retain 5% of securitised products they originate and sell following EU parliamentary approval of **changes to the Capital Requirements Directive**. One late change was the inclusion of a review clause, asking the European Commission to present a possible proposal (by 31 December 2009) to increase the retention rate, after consulting the Committee of European Banking Supervisors and taking into account international developments. Amendments debated in the European parliament, but not approved, included proposals to increase the 5% retention to something between 10% and 15%.

▸ A **directive to regulate hedge funds**, or so-called alternative investment fund managers, has been published by the European Commission. The proposals stop short of regulating the funds themselves, and target the managers to contribute to strong regulatory standards, greater transparency, and appropriate governance standards and management systems that address risk, liquidity and conflicts.

The fund industry has registered its disapproval, citing the reports from Turner and de Larosière, which said hedge funds did not cause or play a significant part in the credit crisis. The European Commission hopes the directive can be adopted by the end of this year, for implementation by the end of 2011.

INTRODUCTION

By Martin O'Donovan
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Business life often seems to consist of one step forward and two steps backwards. Perhaps every so often, treasurers need to treat themselves to a look back at what has been completed or achieved – there could be some pleasant surprises. On these pages this month several regulatory moves seem retrograde, but these are well offset by positives in the shape of an improved LMA investment-grade loan agreement, greater certainty over the workings of the Bank of England's asset purchase facility, and new possibilities for UK supplier credit insurance and ECGD export credit insurance.

Bank CP scheme evolves

The Bank of England has confirmed that its commercial paper (CP) asset purchase facility will operate for as long as the abnormal conditions in corporate credit markets persist and materially impair the financing of real economic activity.

As part of government support for business in the credit crunch and its policy of quantitative easing, the Bank is now a regular purchaser of sterling CP from rated issuers. Its clarification of the operation of the scheme will give issuers – and especially prospective issuers – of commercial paper, greater certainty about the availability of the facility.

The Bank said it would give at least 12 months' notice of any determination of the CP asset purchase facility. Companies already eligible (or which applied successfully for eligibility) at the date of the notice will continue to have access to the facility until the notice expires.

Earlier in April, the Bank widened the range of maturities of commercial paper it was prepared to buy from one week to three months. ■

EU finalises ratings agency shake-up

The EU parliament and Council have approved the Credit Rating Agency Regulation, which will become directly applicable in member states, with a six-month implementation period allowed. Any credit agency that wants its ratings to be usable under EU regulation must apply for registration and abide by new rules.

The rules are intended to ensure that the agencies are not affected by conflicts, stay vigilant on the quality of ratings themselves and methodologies, and act transparently. Ratings agencies cannot give advice, and must not rate instruments on which they have insufficient quality information. Ratings agency boards must also include at least two independent directors whose remuneration does not depend on agency performance.

The rule that is potentially most damaging to corporate issuers/rated parties – the one prohibiting the issuer-pays model for use for EU regulatory purposes – is not in this regulation. There is, however, a requirement for the European Commission to report on the topic within three years.

The ACT has been active in contributing to the debate on ratings agency regulation. We have no problem with a user-pays model as such for corporate ratings, but do not want any prohibition of an issuer-pays model. The ACT sees no problem with conflict of interest under an issuer-pays system for corporate ratings, but can see issuers facing difficulties in ensuring that an issue will be rated. For a company not previously rated to become rated under a user-pays system, it has to fit into a category which one or more users have paid the agency to rate. As the rating would be available only to those that had chosen to pay for it, it would be outside the control of the issuer to ensure that it was rated under a user-pays regime or that its rating was fully available to all its target investors.

It is in the interests of both issuers and investors to have good-quality ratings available, but the concentration of benefits is higher for the issuer in order to increase market acceptability of their risk at an appropriate price. The issuer side is therefore more likely to be prepared to pay for that rating.

The effects of the new regime is already apparent in the very visible efforts of ratings agencies to avoid conflicts of interest that arise through giving advice, to rotate analysts every five years and to decline any offers of hospitality.

Credit insurance boost

The problem with credit insurance is that it only ever becomes important when cover is withdrawn, so the Budget confirmation that the government would step in to restore some of the cover that has been withdrawn from the market was a welcome move.

Unlike many of the other government initiatives to help business, this one should have a very real and direct impact. However, the top-up scheme will work only to provide additional government guarantees to the extent that existing cover has been reduced since 1 April 2009, and the extra insurance is capped at the lowest of the following three terms:

- the amount equal to the level of cover now offered under the credit insurance policy;
- the amount which restores the level of cover to the amount previously taken out; or
- £1m.

This means that government cover is not available if commercial cover has been completely removed.

The extra government insurance is available for purchase but has to be done via one of the commercial providers. The three largest providers (Euler Hermes, Atradius and Coface) have already agreed to offer the scheme to their customers, and other providers are expected to follow shortly.

The scheme also excludes exports and is available only if a whole-turnover trade credit insurance policy is held. The cost of a six-month top-up policy will be calculated at a rate of 2% of the level of cover provided under the scheme at the time when a company joins it.

If a company's suppliers have taken out trade credit insurance, an insurer may well want to gather financial information from the company even though no contractual connection between the two exists – a recipe for complications.

To some extent, the ground rules to cover this are laid out in the statement of principles on trade credit insurance, recently republished by the ABI (Association of British Insurers), which sets out how trade credit insurers operate and what their clients can expect from them.

The ABI has also published advice to businesses on trade credit insurance, which explains what information insurers expect from their clients and the companies they are trading with.

The ABI advice lists the kind of information that companies can reasonably expect to be asked to provide to insurers. The list includes:

- management accounts for recent trading periods showing actual to budget performance; the quality and accuracy of the information must be to a high level;
- business plans with detailed underlying assumptions for key figures such as sales and margins;
- cashflow projections showing available headroom within existing financing facilities;
- sensitivity analysis;
- details of funding or banking arrangements, including term, overdraft and revolving facilities, and applicable covenants, as well as projected covenant headroom on future testing dates; and
- capital expenditure plans and details of funding.

Trade credit insurers, the ABI advice says, will "treat any financial and management information provided to them as confidential, particularly in those instances where the information supplied is over and above that required to be publicly disclosed for listed companies".

While it is heartening that insurers recognise the importance of confidentiality, any listed company will want an explicit confidentiality deal in place before releasing any information rather than relying on a general confidentiality principle that an insurer may have signed up to.

Furthermore, for listed companies in Europe there must be an expectation that confidentiality will be maintained. Under the EU's Market Abuse Directive, selective disclosure is only permitted under a confidential obligation "provided that the issuer is able to ensure the confidentiality of that information".

The three big UK insurers have all signed up to the ABI principles, as have AIG UK, Credit Indemnity & Financial Services (CIFS), HCC International Insurance Company, QBE European Operations and Zurich. ■

See Soaring Demand, Shrinking Supply p22

Selftrade

For individual private investors, corporate bonds seem to have become popular but remain hugely difficult to deal or even to get prices on. As professional treasurers we can equally justify taking an interest in corporate bond yields and although presumably not designed for the corporate treasurer, Selftrade seems to have some reasonably up-to-date pricing. Go to **http://tinyurl.com/qn3v58**

IN BRIEF

▸ **Delays to the SEPA Direct Debit** scheme look likely after the French National SEPA Committee pushed back the date for implementation of the SEPA Direct Debit scheme by a year to November 2010. The apparent reason for the postponement is delays in the transposition of the Payment Services Directive to national law along with concerns over the economics of new interchange fee levies. While SEPA Direct Debit can continue without France, the worry must be that other countries will hold back and threaten the benefits of a wider European direct debit area.

In practical terms one of the complications of moving to SEPA Direct Debit is the question of the effectiveness of pre-SEPA mandates. To ease this, the European Payments Council (EPC) has introduced various waivers into the scheme rulebook, which will apply just to pre-existing legacy mandates.

The EPC has looked at the new data requirements of the SEPA mandate and considered workrounds to fill any gaps. An example is IBAN (International Bank Account Number), which is unlikely to be available in legacy mandates, so creditor banks are allowed to carry out the calculations to re-create this.

In other places the rulebook can require the creditor to provide the creditor bank with a copy of the mandate if this is requested by the debtor. A waiver is available to cover occasions where a legacy mandate is not in written form as long as the creditor bank can provide suitable evidence of a valid mandate.

▸ The **Export Credit Guarantee Department (ECGD) may return to the short-term credit insurance business** for the first time since 1991, as announced in the Budget statement. Constraints in the availability of export finance have become a major hurdle in the path of UK companies seeking to take advantage of a favourable exchange rate to grow their international sales.

ECGD is now consulting on a new product, provisionally called the Letter of Credit Guarantee Scheme. It will take the form of a master guarantee issued to participating UK banks, under which those banks may cede to the guarantee – subject to a fee and within limits – the potential exposure which they would incur by virtue of confirming letters of credit issued by overseas banks in favour of UK exporters.

ECGD would guarantee repayment to the confirming bank of sums owed to it by the issuing bank.