THIS MONTH

LIBOR UPDATE

The new Libor administrator is in place (see page 13). For treasurers, continuity and continued availability of rates is crucial. ACT member Annabel Murday was seconded from Lloyds Bank to BBA Libor during its crisis, keeping the show running during the redesign of the Libor process and transition to new administrators. This is a good example of how ACT members work in a variety of fields, bringing a sound professional approach to the task in hand. Thanks, Annabel.

Martin O'Donovan is ACT deputy policy and technical director @martinodonovan1

{ IN DEPTH }

EUROPE UNVEILS RING-FENCING REFORMS

The UK ring-fencing obligations are designed to ensure the ring-fenced side of a bank 'protects' retail customers by limiting the sorts of activities that the bank can undertake. This is achieved through higher capital requirements and ensuring that risks from elsewhere in the group cannot flow back to the ring-fenced part.

Whether the business restrictions imposed really make banks safer remains to be seen, but what they will succeed in doing is to make a ring-fenced bank more easily resolvable should something go wrong. Ring-fencing of UK banks was a recommendation of the 2011 Vickers Report and is specified in the Banking Reform Act, which received royal assent at the end of 2013. The Act is largely an enabling Act, so much of the detail will be filled in through secondary legislation.

In the wider European context, the Liikanen high-level expert group came up with recommendations to achieve a similar aim in autumn 2012. The chosen mechanism here was to require a form of separation of activities, but in this case, the route was to stipulate that proprietary and other high-risk trading were to be kept separate.

In January 2014, the European Commission published its legislative proposals for a form of bank ring-fencing. The key features are to:

- Ban proprietary trading in financial instruments and commodities, ie the bank trading on its own account for the sole purpose of making profit for the bank;
- Grant supervisors the power and, in certain instances, the obligation to require the transfer of other high-risk trading activities (such as market making, complex derivatives and securitisation operations) to separate legal trading entities within the group ('subsidiarisation'); and
- Provide rules on the economic, governance, legal and operational links between the separated trading entity and the rest of the banking group.

The outright ban on proprietary trading goes further than expected and has drawn a critical response from banks. It also introduces the problem of defining the boundaries between that and basic market making. As a further anti-avoidance measure, the Commission has simultaneously adopted a proposal for a regulation on reporting and transparency of securities financing transactions in order to prevent banks from attempting to shift parts of their activities to the less-regulated shadow-banking sector.

Under the European legislative process, the Commission has the sole power to propose draft legislation. This must then be debated and agreed separately by the European Parliament and the Council of the European Union (often just called the Council of Ministers). Typically, each of these will create separate, new amended versions that then need to be reconciled and agreed between themselves and the Commission – the 'trialogue'.

With a European election due in May 2014, it is now too late for any substantive discussions in this parliament. So the proposals will have to be reintroduced in the autumn, at which point there is a further complication since the sponsoring commissioner, Michel Barnier, finishes his term of office in October 2014. The debate on European ring-fencing is by no means over.

Ring-fencing of UK banks was a recommendation of the 2011 Vickers Report and is specified in the Banking Reform Act

{ INTERNATIONAL }

RMB BUSINESS NEARLY DOUBLES OVER 12 MONTHS

The Standard Chartered Renminbi Globalisation Index (RGI) reached 1,301 in November 2013, an increase of 79% in 12 months. The RGI benchmark tracks the progress of renminbi business activity, measuring business growth in deposits, dim sum bonds and certificates of deposit, trade settlement and other international payments, and FX. Financial and regulatory reforms have been significant players in this growth.

A key 2013 regulatory reform that all treasurers conducting business in China should be aware of is that cross-border renminbi lending is now allowed across China. Cross-border renminbi lending is no longer limited to intercompany lending since unrelated entities can now enter into renminbi cross-border lending agreements in the form of a cross-border entrustment loan.

Renminbi can now be fully integrated into regional or global cash pools and corporates can bring trapped cash out of China to meet overseas working capital needs. Cross-border renminbi transaction procedures have also been simplified since approval from the People's Bank of China is not required. In addition, domestic Chinese banks can now directly process cross-border renminbi settlements based on existing know-your-customer, know-your-business and due diligence processes.

NEW ON THE WEB

Briefing note: Libor administrator change to ICE Benchmarks from BBA LIBOR

ACT responds to UK government balance of competences review

Cyber-Security in Corporate Finance: a report from ICAEW and others, including the ACT

ACT past webinar: EMIR – the final countdown

{ WATCH THIS SPACE }

ICE TAKES ON LIBOR

From 1 February 2014, ICE Benchmark Administration has taken on the administration of Libor, which was previously handled by British Bankers' Association Libor (BBA Libor). ICE is part of the US-based IntercontinentalExchange Group, which owns the New York Stock Exchange. The transition from BBA Libor to ICE Libor has been planned to cause as little disruption as possible, but some checking of documentation is in order.

The change of Libor administrator was prompted by the 2012 Wheatley Review, which recommended a new framework of regulation and proposed that benchmark compilation should be a regulated activity. Other international reviews and proposals around financial benchmarks are in progress by the Financial Stability Board and the European Commission.

Contracts specifying BBA Libor may already include some wording to cater for any equivalent replacement rate, but it is a good idea to double-check. Even without replacement language, the English courts have a number of tools at their disposal to achieve continuity (notably contractual interpretation and implication of terms). In practical terms, the intention of the parties should be clear in any case.

The methodology for collecting rates from contributors is set out in the Libor Code and it will not change. The key features of Libor, including the controlled use of judgement in compilation, which give confidence in Libor and help to ensure its availability on all business days, remain unchanged.

The ACT will be a member of ICE's new oversight committee, which will administer the Libor code of conduct. A briefing note on the subject has been published by the ACT and is available at www.treasurers.org/technical/briefingnotes

{ TECHNICAL ROUND-UP }

CAPITAL AND COMPETENCES

A pro forma EMIR reporting delegation agreement has been published jointly by the International Swaps and Derivatives Association and the Futures and Options Association. It aims to provide a standardised form of bilateral agreements. This and other EMIR-related documentation and tools are available at www2.isda.org/emir or via the ACT EMIR page at www.treasurers.org/otc

Bank capital ratios are analysed by Fitch Ratings in a new report, entitled *Basel III Common Equity Tier 1: Early Delivery*, using pro forma data for the top 29 global, systemically important banks. As of the end of Q3 2013, all met or exceeded their minimum ratios, with the banks' average pro forma Basel III Tier 1 common equity ratio coming in at 10.1%.

Reform of the Markets in Financial Instruments Directive and Regulation has reached the stage of political and technical agreement between the European Parliament and the Council of Ministers of the EU. This paves the way for completion before the end of the current parliament. The reforms cover market structure, pre- and post-trade transparency, derivatives execution and high-frequency trading.

The balance of competences review by the UK government has been seeking views on the balance of power between the UK and the EU with regards to financial services and the free movement of capital. The ACT has responded with support for a degree of harmonisation across European financial markets since this provides greater depth and liquidity than could be provided by a purely domestic market. We argue, however, that the overall volume of financial regulation from the EU has become excessive and that there should be room for some local variations. In complex markets, it is unlikely that a single perfect solution exists, so rule making should permit some local experimentation.

Ethics in an era of regulation is the topic of an ACT update that brings together pre-existing material on ethics and treasury. It is available on the ACT website at www.treasurers.org