



As we beaver away at our jobs, there are times when we wonder whether we are making any real progress. But we are. A modest example is the EU paper on long-term financing (see page 14), which at last acknowledges the needs of the real economy. I take heart from the words of poet Arthur Hugh Clough, which were quoted by Winston Churchill:



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**THE NEEDS
OF THE REAL
ECONOMY**

*For while the tired waves, vainly breaking,
Seem here no painful inch to gain,
Far back, through creeks and inlets making,
Comes silent, flooding in, the main.*

{ IN DEPTH }

NEW TECHNOLOGY FOR UK PAYMENTS IS ON ITS WAY

Cheque imaging

The UK government is proposing to legislate for 'cheque imaging', which will speed up cheque-clearing times and give customers greater convenience and choice in how they deposit cheques. The reforms will enable banks to clear a certified, digital image of a cheque instead of a traditional paper cheque. The HM Treasury proposals are for enabling legislation, but the actual systems and processes will be for the banking industry to decide on and implement.

Under current legislation, the paying bank has the

By removing outdated provisions, the new legislation will allow for different approaches to be designed. One might be similar to the US approach where paying banks can still get cheques in paper form using an 'image replacement document' recreated from the digital image. Alternatively, banks would all have to be ready at the same time to accept digital images.

Cheques would still have to start in written, paper form. There is no proposal for customers to be able to write a digital cheque on their smartphone, but

it is expected that some industry participants will create the capability to pay in cheques via phone or tablet. Digitalisation will mean that clearing times come down to two days or, more particularly, one-two-two for interest/withdrawals/dishonour compared with the current maximum periods of two-four-six.

The benefits of imaging will also be extended to other similar instruments – bankers' drafts, postal orders, government payable orders, warrants, traveller's cheques and bank giro credits.

called Paym [pronounced 'Pay Em'] from the Payments Council that is available through participating banks and building societies. Initially, customers of Bank of Scotland, Barclays, Cumberland Building Society, Danske Bank, Halifax, HSBC, Lloyds Bank, Santander and TSB can register to link a receiving bank account to their mobile number. Other banks will be joining later in the year.

To make a payment, you do not need to be registered with Paym, you simply log in to your existing mobile banking or payments app. Then, instead of entering someone's account number and sort code, you can either select the contact you wish to pay, or manually enter their mobile number.

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Mobile payments

From 29 April 2014, UK payments can be sent to an existing current account using just a mobile phone number. This is a new service

right to demand that it be presented with a physical cheque before deciding to pay. This will change so that a digital image is sufficient. At present, the paying bank is responsible for fraud detection. Under the new set-up, however, the collecting bank will be the one introducing the image into the system, so it is thought to be best placed to implement frontline security measures, and thus have liability for fraud or error.



{ INTERNATIONAL }

EMIR AND FX FORWARDS

The treatment of FX forwards under the European Market Infrastructure Regulation (EMIR) is a complete muddle. All parties can agree on that, but the solution is more contentious and is now in the hands of the European Commission. The definition of instruments subject to EMIR is taken from the Markets in Financial Instruments Directive (MiFID), but because this is a directive, it was implemented and interpreted slightly differently in various member states. The UK guidance from the Financial Conduct Authority explains that FX forwards done for commercial purposes, as opposed to investment purposes, are not MiFID instruments and therefore not within the scope of EMIR, and thus not subject to the rigours of EMIR reporting.

The European Securities and Markets Authority has written to the Commission asking it to clarify the definitions through an implementing act, and in a remarkably prompt response, the Commission has given the preliminary view that FX forwards should be in scope. This is strange since the Commission Q&A on MiFID specifically says: "Thus, FX forward transactions not connected to the provision of an investment service, ie commercial FX forward transactions, are not covered by MiFID."

Also up for clarification are commodity forwards that can be physically settled and whether FX spot, which is not a derivative, can be defined as an FX deal with settlement within seven days. The ACT has made representations direct to the Commission staff dealing with the question, arguing that the intention of MiFID was not to cover commercial-related instruments and, secondly, that from a pragmatic point of view, taking FX forwards out of scope would completely remove millions of small companies from EMIR, along with very many intragroup transactions.

{ WATCH THIS SPACE }

EUROPEAN COMMISSION CONSULTS ON LONG-TERM FINANCE AND RECOGNISES ITS ECONOMIC IMPORTANCE

The fact that regulators and legislators are out of touch with the needs of commercial and industrial companies is a common refrain, but the light may just be dawning with the European Commission if the tone of its recent communication on the long-term financing of the European economy is anything to go on. The paper recognises that funding from banks,

particularly longer-term funding, is contracting, so non-bank alternative providers are needed. Nothing surprising there, but the more remarkable element is that there is a very real recognition that in regulating the financial system and its participants, it is necessary to have regard for its ability to provide finance to the economy. This is just what the ACT and the wider

treasury community have been saying for years. The specific measures proposed are mainly actions to undertake studies, monitoring and assessments. These are probably appropriate given that both the Commission and the European Parliament will be subject to change over the summer. What it does do is set the tone for the next Commission, so watch this space.

{ TECHNICAL ROUND-UP }

COMPLIANCE, CLEARING AND CONDUCT

Compliance with EMIR by non-financial counterparties in Germany has to be certified by auditors if the volume of OTC derivatives exceeds specified volumes. The regulation on this has been published by the Federal Financial Supervisory Authority (BaFin) at www.tinyurl.com/emiraudit

The first EU central counterparty (CCP) was authorised under EMIR on 18 March 2014, starting the obligations that apply to clearing. Although the detailed technical standards for mandatory clearing are not yet adopted, it is expected that the first clearing obligations could take effect by the end of 2014, subject to phase-in. Depending on the timing of further CCP authorisations, this first CCP authorisation could set the start date for front-loading, meaning that a class of OTC derivatives entered into from that date may later become subject to mandatory clearing.

The FCA Risk Outlook 2014 has been published, giving its perspective on the risks to the financial landscape and the sorts of areas where the Financial Conduct Authority has responsibilities. The bias this year tends towards conduct, standards, market integrity, effective competition and behaviours.

The UK bank levy methodology will be changing following the UK budget so that it will no longer be a percentage (currently 0.156%pa) of a bank's equity and liabilities. Instead, banks will be allocated to bands based on their chargeable equity and liabilities. Then all banks within the same band will be charged a set amount, with the change starting on 1 January 2015.

EMIR derivatives, and how broad the definition of them might be, are discussed in a memorandum from the City of London Law Society, specifically ordinary corporate transactions between companies, their shareholders and employees. Examples considered include employee share options, shareholder agreements requiring disposing holders to offer their shares to existing shareholders, warrants to subscribe for shares, etc.

Further to events in the Ukraine, the FCA has a new web page reminding firms of their anti-money-laundering obligations in light of recent EU asset freezes.



Blog: *A week in ACT's Policy & Technical*

ACT past webinar: Investing in repos

ACT past webinar: Demystifying supply chain finance