THIS MONTH

GOOD AND BAD NEWS

This month's Technical briefing brings both good news and bad news for corporate treasurers. The good news is that a pan-European private placement market seems to be making ground with model documentation in the pipeline. But the bad news is that it would appear corporates might have to pay more to view and use Libor. More clarification is being sought from ICE, the Libor administrator – please see the article on page 11.

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{ IN DEPTH }

UPDATE ON EUROPEAN FINANCIAL REGULATION

As users of the financial system, non-financial corporates are both directly and indirectly impacted by the numerous financial regulatory changes that have been introduced post crisis. With the advent of a new European parliament, we provide a high-level summary of the status of some of the regulations below.

The European Market Infrastructure Regulation (EMIR) became a topic of dinner party conversation among corporate treasurers when EMIR reporting of derivative contracts was first introduced early this year. The inconsistent application of reporting FX forward contracts across member states has caused a headache for many. The European Securities and Markets Authority was planning to clarify the issue, but it has been told by the European Commission that it can't (for legal reasons) and must either wait for the Markets in Financial Instruments Directive II, which comes into force in 2017, or adopt other measures such as issuing guidelines.

From an international perspective, the OTC Derivatives Regulators Group has written to the Financial Stability Board to put pressure on those jurisdictions within the G20 that currently have barriers to reporting. It is seeking a deadline for the amendment of local laws (such as data protection laws) that prevent the reporting of counterparty identifying information to trade repositories.

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The European and Monetary Affairs Committee of the previous European Parliament did not reach an agreement on the proposed regulation of money market funds (MMFs). As a result, this was put on hold until the autumn term of the new parliament. The proposals were effectively forcing constant net asset value (CNAV) funds to convert to variable net asset value (VNAV) funds by requiring them to hold a cash buffer equivalent to 3% of their assets, together with new rules on what they can invest in and banning MMFs from soliciting an external credit rating. Meanwhile, in the US, the Securities and Exchange Commission has adopted new rules that come into force in two years' time. These rules require funds used by institutional investors to move to VNAV, although retail and government funds are allowed to continue as CNAV.

The European Commission first proposed a financial transaction tax (FTT) back in September 2011. But an EU-wide FTT could not be agreed upon and 11 member states (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) then pursued a common system of FTT covering a broad range of instruments, including shares and bonds at 0.1% of their value and derivatives at 0.01% of their notional value. To date, 10 of the 11 participating member states have reiterated their intention to implement the FTT, with the aim to finalise their proposals by the end of 2014 and implement no later than 1 January 2016. Work will focus on a progressive implementation of the tax, which is likely to start with shares and some derivative products. In April 2014, the UK challenged the legality of the FTT, but the Court of Justice of the European Union rejected this as too premature.

{ INTERNATIONAL }

POSITIVE OUTLOOK FOR EUROPEAN PRIVATE PLACEMENTS

Since the financial crisis, the number of European companies accessing the US private placement market has grown significantly. But a pan-European private placement market does not exist. To help promote its development, the International Capital Market Association (ICMA) is coordinating the work of a Pan-European Private Placement Working Group. The initial objective involves establishing a guide to best market practice and facilitating emergence of common market practices, principles and documentation.

The Loan Market Association (LMA) also has an initiative for model European private placement documents. So the ICMA working group will focus on the note agreement, with the LMA producing a similar loan agreement. The two models follow each other closely. Ease of understanding and avoidance of arbitrage on terms is the idea. Work under the LMA on the (common) term sheet is going on in parallel. The intention is to have a final proposal by the end of the year. All work has been with investors so far, although the ACT has now been brought into the term sheet working group.

A French-led initiative seeks to cover issues in jurisdictions where tax or regulatory requirements require listing, even of private placements.

NEW ON THE WEB

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

EACT monthly report on European regulatory initiatives and the issues relevant to corporate treasurers

ACT past webinar: Repos – too good to be true?

A reminder of *The Treasurer's Wiki*: www.treasurers.org/wiki

{ WATCH THIS SPACE }

ICE INTRODUCES NEW FEES FOR LIBOR

As of 1 July 2014, ICE Benchmark Administration (IBA) has introduced new licensing arrangements for the use of Libor. Corporates must pay an end user fee (which is about $10 per month) if they receive live Libor rate information from a market data vendor such as Bloomberg or Reuters. The fee is collected by the redistributor, but does not apply if the data is delayed by a minimum of four hours.

Additionally, a usage licence fee is required for any party that uses Libor rates in valuation and pricing activities, including interest rate fixings, pricing curves, discount curves and forward curves; and/or uses Libor rates as a reference rate in transactions and financial products. The usage licence is $8,000 per year for a single currency and $16,000 for multiple currencies.

The ACT has confirmed with IBA that a usage licence is required where a corporate has Libor as a reference rate in one of its own contracts, for example, an intercompany loan or customer contract. But a licence is not needed if the corporate enters into a derivative contract and/or loan agreement with a bank or other financial institution that already has a licence. The ACT is seeking further clarification on the applicability of the usage licence from IBA and will update the ACT LinkedIn discussion group with details.

For the LinkedIn discussion, visit http://tinyurl.com/kfk5k2o
Further details are also on ICE's website, at www.theice.com/publicdocs/IBA_LICENSING_DATA_FEES.pdf

{ TECHNICAL ROUND-UP }

CASH, CHINA AND CYBERCRIME

The Financial Reporting Council has issued revised editions of FRS 101, *Reduced Disclosure Framework*, and FRS 102, *The Financial Reporting Standard applicable in the UK and Republic of Ireland*. The document can be accessed at http://tinyurl.com/pd6ytwx

Do companies plan to run down cash balances? And, if so, what do companies plan to do with all that cash? These questions and more are answered in the ACT's recently published *Corporate cash and liquid investments survey* results at www.treasurers.org/cashsurvey14

A joint Cybercrime Action Taskforce has been launched to tackle cybercrime internationally. The taskforce is the initiative of the European Cybercrime Centre, the US Federal Bureau of Investigation and the UK's National Crime Agency, and is being piloted for six months. In addition to tackling cross-border cybercrime investigations, it will organise consultation meetings with key players in the private sector.

The UK Payments Council has announced that a same-day retry process will be extended for bounced payments. All participating banks and building societies will give customers until at least 2pm to pay cleared funds into their account, which will allow the payment to be successfully processed the second time around. The retry process relates to pre-notified payments such as standing orders, direct debits and future-dated payments. It doesn't include cheques.

China's State Administration of Foreign Exchange now allows Chinese corporates to buy and sell European vanilla FX options in the onshore Chinese yuan currency. While this means they can use a combination of options, such as an FX collar, care should be taken with these. Offshore corporates are able to access offshore yuan options where more structured products are available such as American and knock-in-knock-out options. Prior to this change, onshore companies could only use FX forwards and buy options to hedge their FX exposures.