

Andrew Winn, Barclays Global Investors
Karl Bergqvist, Gartmore Investment Management plc
Stephen Wilson Smith, M&G Investment Management Limited

15 December 2003

Gentlemen,

ACT response to consultation document “Improving market standards in the Sterling and Euro Fixed Income Credit Markets”

The ACT welcomes the opportunity to comment on the investor group’s paper on a subject core to the operations of many of our members.

The ACT’s Technical Committee has formed a working group and has taken views from individual members who feel they may be significantly affected by the proposals being put forward.

The ACT supports the general concept that a better understanding between the issuers and investors can only be beneficial to both parties. All the points raised are very properly worthy of debate, but in most cases this discussion should best take place on a deal by deal basis. We are strongly of the view that the bulk of the suggestions raised as regards more standardisation are inappropriate.

Terms and conditions are areas that should develop and evolve through normal market pressures and standards of disclosure and documentation are generally covered by existing regulatory requirements.

Issues in the traditional UK domestic long term market (now mainly confined to property companies), and the US domestic Reg D (unlisted) markets will typically have extensive covenants, whereas the US registered markets and the newer and expanding Sterling and Euro markets have grown up with very minimal covenanting. This sort of evolution through market supply and demand pressures must by definition reflect the attitudes of the participants as a whole. It should be the mechanism for change as individual issuers respond to investor needs and their circumstances in the light of market conditions at the time of issue. Change imposed through concerted action would distort the market.

If the markets start to depend on a universal level of material covenants it introduces the possibility of destabilising the market if a borrower ever gets into a workout situation. The tighter and more specific a set of covenants the more power may be put into the hands of “Vulture Funds” buying at a substantial discount, who may push a troubled company into insolvency when it would be in the better interests of the borrower and its long term and core bond investors (who invested at full price) to go through a restructuring and recovery programme.

It would seem to be a retrograde step if a market which appears to be growing and flourishing goes too far down a standardisation path. Diversity of opportunity for issuers and the possibility for investors to make profits from good analysis and investment decisions appear to be contributing to that market’s very success. We note that while the signatories to your October consultation form a significant proportion of the market, it would appear that the views of that group are not universally held in the market of investors as a whole. To the extent that issuers are able to issue on terms they and a sufficient number of investors find satisfactory, they should be able freely so to do.

We accept that the topics of call options, availability of information, disclosure, liquidity and relations with bondholders raised by your consultation document are all very relevant to the dialogue that should take place between issuers and investors. The very publication of the document will have done much to stimulate awareness of the subjects on both sides. Issuers (and, where relevant, intermediaries), will we hope, take them into account in planning new issues.

On specific covenants and ratings issuers will no doubt consider your points of view and if it can be seen to be advantageous to them in terms of pricing, accessibility to the market, issue size, and reputation then they will react accordingly.

This being said you will realise that we feel that it is not appropriate to go any further than this in terms of standardisation or codes of practice, and to do so would potentially be unhelpful to the operation of the market. The normal market pressures and pricing messages will ensure that the market will move on and develop and indeed this consultation process will of itself have hastened that natural process of evolution.

Yours faithfully,

Richard Raeburn
Chief Executive

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