FINANCIAL REGULATION

For those based in the EU, we have the Call for Evidence. For those in the UK, we have HM Treasury's initiative on BEPS and the Payment Systems Regulator's advice as to how its own £15m cost will be spread across the payments industry. If you have views you'd like the ACT policy and technical team to take into account in responding to any of the subjects covered in this article or elsewhere in *The Treasurer*, please email us at technical@treasurers.org

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{ IN DEPTH }

EU REGULATION: PAUSE FOR THOUGHT

The EU Commission issued a Call for Evidence to review the state of EU financial regulation (see tinyurl.com/obgupfg) following the six years of implementing legislation because "...there is a need to understand their combined impact and whether they give rise to any unintended consequences."

The ACT has responded by the due date, which had been extended to end January 2016 (see www.treasurers.org/EU-Call-for-Evidence) after consulting the Treasurers Forum to gather 'real economy' examples of adverse effects of legislation.

This has been a welcome exercise for corporate treasurers and an opportunity to put responses on specific subjects such as European Market Infrastructure Regulation (EMIR) into context. We discuss EMIR below, but do please feel free to provide any further comments on the state of legislation to assist us in our ongoing dialogue with regulatory authorities in the UK and the EU.

Prospectus Directive

The EU Commission has published its proposal for updated regulations, known colloquially as PD3, which reflects last month's briefing (see tinyurl.com/jh5nufo).

The disclosure concern remains for corporates and this arises from efforts to make the risk factors more readily readable to retail investors. The corporate concern is not so much the degree of disclosure, but that efforts to prescribe risk disclosure and ranking of risks will constrain discussion with the longer-term exposure to investors claiming they were not appropriately informed by debt issuers and sponsors. Yet another 'unintended consequence' of noble efforts.

We will continue to monitor the implementation of these proposals and keep members updated.

EMIR

The EMIR consultation was completed in August. Since then we have met with the UK Financial Conduct Authority, Directorate-General for Financial Stability, Financial Services and Capital Markets Union in the Commission and European Securities and Markets Authority to present the corporate treasurers' view and gain a better understanding of their concerns and intent.

We do not expect further change to, or public discussion on, EMIR until the Commission has been able to digest the Call for Evidence discussed above.

Check your EMIR data

What this discussion has shown is mistrust of the high percentage of corporate derivatives reported as non-hedging, which is 14% across Europe. The conclusions can only be that either data is mis-recorded or that taking speculative positions is more prevalent than had been expected when the hedging exemption was agreed for corporates.

Talking to both the regulatory side and treasurers suggests that delegated reporting and complex field specifications for direct reporters may be leading to mis-recorded trades. Couple this with the compound effect of layering derivatives over time and some non-financial corporates (NFCs) may find they unwittingly exceed the clearing threshold as collateralisation is progressively implemented over the next three years.

Central clearing

Central clearing, that is collateralisation of margin, commences in June 2016 for OTC interest rate swaps for NFC+s.

We strongly recommend that direct reporters check their use of the clearing threshold fields, and delegated reporters gain access to their trade data at trade repositories and ensure they are content that hedge transactions are reported as such.

View technical updates and policy submissions at www.treasurers.org/technical. Elsewhere on the web:

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

Delay in the publication time of the European Central Bank FX reference rates from 14:30 CET to 16:00 CET as of 1 July 2016: www.ecb.europa.eu/press/pr/date/2015/html/pr151207.en

{ TECHNICAL ROUND-UP }

EBA, VICKERS AND PSR

EBA SHADOW-BANKING INITIATIVE

The Euro Banking Association (EBA) has published its guidelines on shadow banking (see tinyurl.com/goaqljh), which recognise the use of treasury companies.

UK members should not be affected by the essential thrust of the EBA, which has been to bring 'credit intermediation' and 'maturity transformation' activities under banking regulation. UK practice has been for regulators to oversee finance arms of corporates, but the EBA document provides guidance for those businesses seeking to promote sales aid financing.

IMPLEMENTATION OF VICKERS IN THE UK

As the banks start to agree their ring-fencing structures with the Financial Conduct Authority, members need to start working with their key relationship banks to understand how the banks are planning to restructure in order to identify which entity or entities of the bank they will transact with and the new level of counterparty risk they may be exposed to.

UK PSR ANNOUNCES FEE ALLOCATIONS

The Payment Systems Regulator (PSR) has published for consultation its 2016/17 allocation of its £15m budget (see www.fca.org.uk/news/cp15-44-psr-regulatory-fees-2016-17). Fees will be allocated over the main payment services, which the PSR regulates (Bacs, CHAPS, Cheque and Credit, Faster Payments Scheme, LINK, Northern Ireland Cheque Clearing, MasterCard and Visa Europe), as well as the interchange fee over card service providers.

Although a significant reduction from 2015/16, which included a £12.2m 'one-off' set-up cost, these fees can only trickle down to transaction fees. The ACT does not propose a formal response.

{ INTERNATIONAL }

LEASE ACCOUNTING STANDARD **IFRS 16** PUBLISHED

As reported previously in Technical Briefing (see *The Treasurer*, September 2015), the International Accounting Standards Board has completed its re-deliberations and published the long-awaited IFRS 16, *Leases* accounting standard. The new standard will apply for annual periods beginning on or after 1 January 2019. Early adoption is permitted if the entity also applies IFRS 15, *Revenue from Contracts with Customers*.

Broadly speaking, the new accounting standard requires a customer leasing assets (lessee) to recognise assets and liabilities for *all* identified leases. This includes leases that are currently off-balance sheet, as IAS 17, *Leases* required only finance leases to be recognised on the balance sheet.

One of the first steps when implementing will be to identify whether a contract is, or contains, a lease and the standard contains application guidance to assist users in interpreting the lease definition.

For many companies, this will result in a grossing-up of the balance sheet, potentially impacting financial covenant ratios that include 'debt', 'net financial position' or similar indicators. EBITDA and the interest cover ratio are also likely to be impacted.

{ WATCH THIS SPACE }

ARE YOUR SYNDICATED LOANS TRULY COMMITTED?

Article 55 of the Bank Resolution and Recovery Directive – which provides regulators with a common set of tools and powers for dealing with failing banks – becomes effective from 1 January 2016.

This extends the existing write-down and conversion powers of European Economic Area (EEA) regulators to include documents governed by the law of a non-EEA country, as long as an EEA financial institution has any potential liability under the document. This means that practically all loan facilities will now be caught if you have relationships with European banks.

It is widely understood that, in the event of a bank entering resolution, deposits with that bank may be converted into share capital or in other ways 'lost' to the corporate. However, as part of the resolution process, regulators will also look to address the liabilities side of the bank's balance sheet and, as a result, loans and similar liabilities may be subject to bail-in actions, which may include a reduction of the principal or outstanding amount, or even the cancellation of the facility.

This means that many (if not all) of your loan agreements may not be as committed as you think, and your documentation will almost certainly need revisiting to ensure that appropriate language is included. The Loan Market Association has issued guidance, but you may need to talk to your legal advisers, as the whole area is far from clear.

This also emphasises the importance of checking the credit strength of your banking partners.