Examining the small print

THE PACE OF REFORM OF CAPITAL MARKET ACTIVITY IN EUROPE RARELY SLACKENS. IN PART TWO OF A REGULATORY OVERVIEW, KATIE KELLY SETS OUT ICMA'S POSITION ON KEY AREAS UNDER THE SPOTLIGHT

SHUTTERSTOCK

Regulatory authorities have relatively little exposure to issuers, so work carried out by the International Capital Market Association (ICMA) to encourage interaction and collect views from market participants is welcomed. Work on key areas of regulation that have an impact on corporate treasurers is outlined below.

Standardisation

One of the remits of ICMA is to explore market-led solutions to ensure the efficient functioning of the markets. This currently includes addressing the secondary market liquidity challenge, an area on which there has been much debate around the standardisation of corporate bond issuance.

The standardisation debate may be viewed as one of a whole series of incremental measures that the market can take to improve secondary market conditions; another related measure is the development of electronic trading. However, electronic trading platforms don't lend themselves to trading corporate bonds, which are heterogenous, diverse and very different to equities. For electronic trading to work, it would require a more homogenous product, ie standardised bonds.

The discussion is likely to continue. The European Commission's approach, which is reflected in its Capital Markets Union (CMU) Action Plan, is that this issue is very much for the market to sort out. To this end, no relevant regulation is proposed. Concerns have been highlighted by ICMA to the European Commission on its Green Paper on CMU, as well as to the Fair and Effective Markets Review as to, among other things, loss of flexibility of funding for the issuer (and appropriate issuer compensation), fragmentation of the market, refinancing risk, inadvertent volatility and market infrastructure capacity.

Prospectus Directive III

One of the conclusions of the European Commission's CMU Action Plan announced in September last year was a review of the Prospectus Directive, resulting in Prospectus Directive III. Proposals include:

- removing the flexibility that issuers of certain non-equity securities currently enjoy to choose their home member state, which would mean that they would no longer be able to choose which competent authority approves their prospectuses;
- removing the €100,000 denomination distinction for disclosure purposes and applying one disclosure regime to all securities and requiring a summary for all issues of securities;
- obliging issuers to categorise risk factors according to their materiality (high, medium and low risk), and limiting the number of risk factors that can be included in a summary to the five most material risks; and
- requiring a summary for all prospectuses.

Concerns around these areas have been brought to the attention of the European Commission, as well as to national regulators, by ICMA.

Pan-European Private Placements

The Pan-European Private Placement (PEPP) market aims to benefit medium-sized and unrated companies by providing long-term debt funding that may not otherwise be available to them from the loan or bond markets. It may serve in this way as an intermediary and preparatory stage for these companies before they gain access to the public debt markets. The investment market is institutional, with a buy-to-hold strategy.

The PEPP Joint Committee, coordinated by ICMA, has published a market guide, which sets out best practice and recommendations, defines the roles of parties and explains expectations in terms of disclosure and covenants. The joint committee also promotes standardisation of transaction documentation and identifies barriers to entry for new issuers and investors into this market. In its CMU Action Plan, the European Commission indicated that it is fully supportive of this work.

For a summary of ICMA's representations on the bail-in mechanism, ring-fencing, the net stable funding ration, repurchase agreement and allocations under MiFID II, see *The Treasurer,* April 2016, page 32.

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