THIS MONTH

EMIR, CVA, BEPS AND FTT

Leader of the opposition Jeremy Corbyn has started to liven up UK debate, with nationalisation and fiscal expansion firmly returned to the political agenda. Meanwhile, Tsipras returned as prime minister in Greece to implement unwanted austerity measures. The transmigration refugees have forced the EU member states to recognise the risk of treaty dogmatism. Our attention remains with EMIR and CVA, BEPS, renminbi and FTT. Please share any views with us at technical@treasurers.org

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{ IN DEPTH }

EMIR AND CVA

We will join our fellow EU associations to work via the European Association of Corporate Treasurers (EACT) to respond to the European Securities and Markets Authority's (ESMA's) own response to the European Market Infrastructure Regulation (EMIR) consultation. ESMA dismissed single-sided reporting (SSR) and sought a review of the hedging exemption and collateralisation thresholds. ESMA had undertaken a review of the data at treasury repositories (TRs) as at February 2015 (http://tinyurl.com/qykynke). Some remarkable facts emerged: seemingly illegal non-financial counterparties (NFCs) to NFC forex transactions; and firms reporting both as a financial counterparty (FC) and an NFC for different transactions, which is perhaps more symptomatic of the risk of relying on an FC to report on one's behalf. ESMA drew the conclusion that dual-sided reporting remained important and did not add to confusion, as a plethora of entities began what for them was novel reporting through dissimilar TRs.

More vital is that the ESMA analysis of data not available to parties other than ESMA and member states. National Competent Authorities, such as the Financial Conduct Authority for the UK, showed that NFC trades by nominal value remain at only 2% of the overall market, although 100,000+ NFCs are now obliged to report against 28,000 FCs supporting both our call for SSR, and our belief that no NFCs could be systemically risky.

ESMA has suggested only exempting SMEs from the reporting obligation. While this may relieve a material number of corporates from reporting, a partial exemption would appear to only confuse the overall data as a systemic data asymmetry is adopted.

Also of note is that ESMA continues to fail to understand that derivatives are used by most NFC businesses 100% for hedging, with no speculative positions.

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In parallel, a review of reporting field specifications for EMIR trade reporting is being undertaken by the Bank for International Settlements (BIS) in an effort to conform the reporting made meant TRs, in an effort to improve data quality and enable quicker pairing. We are responding to this BIS initiative to remind it that too much change can be resource-expensive, and that this is one area where top-down explicit direction would be of value.

Meanwhile, the European Banking Authority continues to implement Credit Valuation Adjustment (CVA) – a capital cost weighting on banks for transactions with NFCs, which do not have to collateralise under EMIR. CVA contradicts the spirit of the EMIR hedging exemption and will emerge as an increased margin on derivative pricing. It is difficult to see a challenge succeeding to its implementation.

Resolving the requirements to report trades and for some to collateralise becomes increasingly important, as the earliest date for collateralisation could be 2017, and the EMIR legislation is expected to be reviewed only tri-annually. Also, change as suggested in the current round of consultation would require Level 1 revision of legislation, that is changes made in parliament to the legislation, and this is a protracted process for which the outcome can be uncertain, as lobbyists endeavour to influence the politicians.

The ACT has circulated a copy of the position paper (see www.treasurers.org/eact-on-esma-oct2015), which the EACT will present to ESMA and the EU Commission on behalf of EU corporates. We ask for you to feed back at technical@treasurers.org

The central bank continues to actively support renminbi through market intervention drawing on China's immense FX reserves

{ INTERNATIONAL }

BEPS

The Organisation for Economic Co-operation and Development has issued its final recommendations (www.oecd.org/ctp/beps.htm) for Base Erosion and Profit Shifting (BEPS).

Consensus has emerged among 60+ countries on the means to avoid multinational enterprises earning revenue in one regime, but reporting the profit in another for tax advantage. This is clearly a noble exercise, and one now gaining popularity in major as well as developing economies as it emerges that many corporates avoid tax in G20 member states.

Multinational corporates will need to monitor BEPS implementation, which will at the least impose reporting obligations. See the Thomson Reuters round-up at https://tax.thomsonreuters.com/BEPS

NEW ON THE WEB

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

Concern over waning use of covenants in debt markets: see http://tinyurl.com/pyylbug for an article on the state of debt covenants as lenders seek yield.

The clever people at the Organisation for Economic Co-operation and Development have been thinking about how Capital Markets Union could be implemented through the use of an improved securitisation market, but using bank receivables financing. See http://tinyurl.com/nquh98o

{ RENMINBI }

Freer movement of cash cross border, but tighter forex controls

China is both extending the liberalisation of renminbi cross-border transactions, while trying to dampen currency speculation. The People's Bank of China (PBoC) has loosened the parameters for cross-border pooling of renminbi to ease the rules on flows in and out of China. The new rules raise the cap on net inflow for renminbi funds from 10% to 50% of shareholder equity in the cash pool. Both non-Chinese-headquartered and Chinese-headquartered multinationals will benefit. There is no cap on outflow of funds under the scheme. Six banks have won pooling mandates from 13 multinationals and although in force since 23 September, PBoC estimates about ¥13.3bn of capital inflow has been drawn onshore.

Meanwhile, the central bank has informed banks that it will impose a 30% reserve requirement on forex forwards to discourage speculation on the renminbi and continues to actively support renminbi through market intervention drawing on China's immense FX reserves.

{ WATCH THIS SPACE }

FINANCIAL TRANSACTION TAX

Financial transaction tax (FTT) has re-emerged, with some 11 EU member states pushing for agreement early. Although the economic impact arguments remain, some states are calling for hypothecation of the tax to fund climate change investment. The latest view is that it will be a low tax on equity transactions and derivatives (taxed on a resident's basis).

There is already some suggestion of exemptions for the 'real economy', such as small cap firms, and possibly a hedging exemption, but uncertainty remains as to how such transactions could be economically separated.

Corporates not domiciled within the member states (such as the UK) should not be complacent about the impact of FTT. They must consider the domicile of their counterparty and the potential cost impact on that counterparty.

{ TECHNICAL ROUND-UP }

MiFID 2 AND EMIR

MiFID 2 moves closer to implementation with a due date of 3 January 2017. Two problems have been identified for corporates.

Electronic dealing systems, such as 360T, have entered common use. These are classed as organised trading facilities and multilateral trading facilities. Non-financial corporates trading on their own account have been able to rely on an exemption under MiFID. This exemption has ensured corporates are not subject to MiFID obligations when using these systems, nor subject to CRD IV. The draft MiFID 2 legislation (known as Level 1 and subject to agreement in the European Parliament) no longer makes this exemption clear. The EACT and ACT have been making representations to seek extension of the exemption, but this does require amendment to the draft legislation and this cannot be certain until passed.

MiFID 2 will impose restrictions on the ability of EU corporates, which seeks to catch speculative trading, by enabling an exemption of trading activities which are 'ancillary'. There is concern over the lack of definition of this term. The risk is exposure to authorisation under MiFID, and if that is not required, an annual notification of exemption.

While there is a consultation process under way for the EU EMIR, Hong Kong and Singapore authorities are developing their regulatory regime for OTC derivatives. (http://tinyurl.com/qf7bau6).

Similarly to EMIR, there is mandatory reporting and a clearing threshold. A difference is that deliverable forex forwards are excluded from reporting and clearing, or calculating the clearing threshold.