

ANNUAL REVIEW

BANKING & FINANCE

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UNITED STATES

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MILBANK, TWEED, HADLEY & MCCLOY

Q COULD YOU PROVIDE A BRIEF OVERVIEW OF RECENT BANKING AND FINANCE ACTIVITY IN THE US? ARE BANKS IN GENERAL DEMONSTRATING A STRONG APPETITE TO LEND TO CORPORATES?

HANRAHAN: Banking and finance activity in the US in 2015 has been more volatile than in the prior year. By most accounts, leveraged lending and high-yield issuance in the US was down throughout 2015. Investment grade volume – particularly with regard to finance acquisitions – was up.

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Q WHAT TYPES OF FINANCING SEEM TO BE POPULAR? ARE NON-TRADITIONAL DEBT SOURCES PLAYING A NOTABLE ROLE IN SERVICING CORPORATE DEMAND FOR DEBT IN THE US?

HANRAHAN: Unregulated financial institutions, business development companies and various types of funds have become more active presences in financing transactions recently, in particular in smaller and middle market transactions, due to the influence of the US Leveraged Lending Guidelines, among other factors. Borrowers continue to have access to a broad array of financing options, which seem to ebb and flow in popularity. For example, by many accounts there has been less second lien loan issuance this year.

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Q HOW WOULD YOU DESCRIBE INTEREST RATES, COVENANTS AND OTHER TERMS APPLIED TO DEBT OFFERINGS IN THE CURRENT MARKET?

HANRAHAN: While the US Leveraged Lending Guidelines have sought to influence certain loan terms, borrowers have generally had the upper hand in negotiations recently and pushed for additional debt capacity – both in the form of future incremental debt capacity inside of the credit agreement and other *pari passu*, unsecured, junior lien and subordinated debt outside of the credit agreement – and additional acquisition, dividend and other covenant flexibility. Covenant-lite loans – credit facilities in which the financial maintenance covenant is only available for the benefit of the revolving credit facility and not the term loan facility – are available to many borrowers, although perhaps they have been less common than in prior years.

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Q ARE LENDERS TAKING ALL PRECAUTIONS TO ENSURE THEY GAIN SECURITY OVER ASSETS? WHAT CONCESSIONS MAY DEBTORS NEED TO ACCEPT IN ORDER TO OBTAIN A FINANCING PACKAGE?

HANRAHAN: In the US, it is relatively easy to grant and perfect a security interest in most types of assets under one pledge and security agreement and by making simple filings, called UCC financing statements. Real estate mortgages will need to be handled separately and other types of collateral will require additional perfection steps. There is typically an acknowledgment that the cost of perfecting certain types of collateral exceeds the benefits to the lenders of receiving such collateral, and guarantees from certain types of subsidiaries would not provide meaningful credit support. This acknowledgement often results in negotiating materiality thresholds or an agreed set of 'excluded assets'.

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Q COULD YOU OUTLINE THE MAJOR REGULATORY CHANGES IN THE US OVER THE PAST 12-18 MONTHS THAT WILL AFFECT THE BANKING INDUSTRY GOING FORWARD?

HANRAHAN: The regulatory changes, such as the Leveraged Lending Guidelines and Dodd-Frank, introduced over the last few years will continue to impact the banking industry. Additional capital requirements, such as Basel III, will continue to be phased-in in the short-term.

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Q IN YOUR OPINION, WHAT ARE THE KEY ISSUES AND CHALLENGES FACING SENIOR BANKING & FINANCE EXECUTIVES IN THE YEAR AHEAD? IS THERE A CONSCIOUS EFFORT TO REGAIN TRUST AND REPAIR REPUTATIONS FOLLOWING THE FINANCIAL CRISIS?

HANRAHAN: The challenges will likely be the same as over the last few years. Implementation and compliance of the various applicable regulations and capital requirements will likely be at the forefront of the minds of senior banking and finance executives. There will likely be continued pressure on terms from borrowers and there will always be pressure to ensure discipline with respect to credit analysis and deal structuring.

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Q WHAT DEVELOPMENTS IN BANKING & FINANCE DO YOU EXPECT TO SEE IN THE US OVER THE NEXT 12-18 MONTHS?

HANRAHAN: The current trends will likely continue for the next 12-18 months.

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“There will likely be continued pressure on terms from borrowers and there will always be pressure to ensure discipline with respect to credit analysis and deal structuring.”

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Lauren Hanrahan is a partner in the New York office of Milbank, Tweed, Hadley & McCloy and a member of the firm's Global Leveraged Finance Group. Ms Hanrahan's practice centres on representing banks and other financial institutions in senior lending transactions. She has significant experience in representing lenders in acquisition financings, including leveraged buyouts, tender offers and other going private transactions, recapitalisations, bridge and mezzanine financings, debtor-in-possession and exit facilities and special situation financings. She has a broad range of financing experience in both US and international transactions.



UNITED KINGDOM

NEIL CADDY

MILBANK, TWEED, HADLEY & MCCLOY

Q COULD YOU PROVIDE A BRIEF OVERVIEW OF RECENT BANKING AND FINANCE ACTIVITY IN THE UK? ARE BANKS IN GENERAL DEMONSTRATING A STRONG APPETITE TO LEND TO CORPORATES?

CADDY: Banking and finance activity in the UK has been somewhat mixed this year. Earlier in the year the demand for paper from investors was extremely high. This meant that arrangers had little trouble in syndicating and indeed many larger deals undertook re-pricing transactions post closing. More recently, however, the buy-side seems to be much more selective as to which deals to invest in, meaning that re-pricing activity has dried up. This has also led to spreads widening when compared to earlier in the year and deal volumes have shrunk as compared to this time last year. That said, for the right credits, banks have in general been demonstrating that they are still very keen to lend to corporates.

Q WHAT TYPES OF FINANCING SEEM TO BE POPULAR? ARE NON-TRADITIONAL DEBT SOURCES PLAYING A NOTABLE ROLE IN SERVICING CORPORATE DEMAND FOR DEBT IN THE UK?

CADDY: I think this year in the UK can be characterised by the continued proliferation of the cov-lite loan product for big-ticket financings in particular and the increasing role of alternative capital providers in the small to mid-market. Neither of these trends are new for this year but activity levels in those areas suggest that both are here to stay. Cov-lite deals are now commonplace and are increasingly moving toward the terms available in the United States and are providing a good alternative to the high yield market for borrowers. The number of alternative capital providers which are active in the UK are increasing – many of which are able to write larger cheques than they could previously, thereby opening up the scope of transactions that they participate in.



Q HOW WOULD YOU DESCRIBE INTEREST RATES, COVENANTS AND OTHER TERMS APPLIED TO DEBT OFFERINGS IN THE CURRENT MARKET?

CADDY: Pricing does seem to have widened this year as compared to earlier in the year. The syndicated debt markets appear to be comfortable with the cov-lite product. The movement of the terms available in the loan market towards those in the US and the high yield product started with the top end of the market but it does appear, at least on certain terms, to be extending to the upper mid-market syndicated product as well. However, banks remain alive to jurisdictional specific issues that need to be kept in mind when doing deals in Europe. In alternative capital deals there is pressure to loosen terms but for the most part providers have been successful in maintaining reasonable covenant packages. In those deals, borrowers can of course take comfort from the fact that they will have a smaller lender group to deal with when it comes to waivers and amendments.

Q ARE LENDERS TAKING ALL PRECAUTIONS TO ENSURE THEY GAIN SECURITY OVER ASSETS? WHAT CONCESSIONS MAY DEBTORS NEED TO ACCEPT IN ORDER TO OBTAIN A FINANCING PACKAGE?

CADDY: Lenders are taking precautions, however they recognise that there will always be a cost-benefit analysis to do when determining precise security packages. For instance, in pan-European deals being done out of the UK, real estate security will be very expensive to take in certain jurisdictions and may therefore fall outside of the security net. In the UK, this will not be an issue since all asset security can be taken under English law in a single debenture at minimal cost, but a proportionate approach will still be required in relation to perfection steps required in relation to certain assets. In most instances, debtors will need to accept a reasonable level of cover, in particular in relation to structurally important assets, such as shares and shareholder loans at the top of their group structure where possible.



Q COULD YOU OUTLINE THE MAJOR REGULATORY CHANGES IN THE UK OVER THE PAST 12-18 MONTHS THAT WILL AFFECT THE BANKING INDUSTRY GOING FORWARD?

CADDY: There have been a number of regulatory changes introduced over the last few years that will continue to impact the banking industry as the effects of the changes are felt and the measures that they impose are phased in. Additional capital controls and requirements associated with Basel III and its implementation through the CRD IV Directive will continue to take effect in the UK and across Europe. Leveraged Lending Guidelines issued by the Federal Reserve in the United States will also continue to affect banks that operate in the US or are regulated there, even with respect to lending activities carried out in the UK.

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Q IN YOUR OPINION, WHAT ARE THE KEY ISSUES AND CHALLENGES FACING SENIOR BANKING & FINANCE EXECUTIVES IN THE YEAR AHEAD? IS THERE A CONSCIOUS EFFORT TO REGAIN TRUST AND REPAIR REPUTATIONS FOLLOWING THE FINANCIAL CRISIS?

CADDY: I don't think the challenges will be that different to those encountered over the last few years. There will always be pressure on terms from debtors and there will always be pressure to ensure discipline with respect to credit analysis and deal structuring. That said, one area that may impact bankers on a day-to-day basis could be the introduction of a new individual accountability in banking and the senior managers regime by the FCA and PRA in the UK, which seeks to increase accountability for certain individuals at regulated entities. The regime is due to be implemented on 7 March 2016 and could see additional procedures imposed by those regulated entities in order to ensure and demonstrate compliance with the new regime.

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Q WHAT DEVELOPMENTS IN BANKING & FINANCE DO YOU EXPECT TO SEE IN THE UK OVER THE NEXT 12-18 MONTHS?

CADDY: In general terms, the banking and finance landscape should not change a great deal over the next 12 to 18 months. I would expect the trends we have seen over the last 12 to 18 months to continue. The UK market I expect will continue to track and converge with the market in the US and alternative capital providers will continue to provide an alternative option for a wider array of debtors. I would expect deal volumes to increase as compared to 2015.

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