SLAUGHTER AND MAY/

OCTOBER 2023

PLANNING FOR RPI REFORM

Reform of the Retail Prices Index ("**RPI**") may expose issuers of, and investors in, RPI-linked securities to the risk of uncertainty in determining the applicable inflation rate after 2030. This will be particularly relevant for financial institutions, pension funds, the utilities sector, the investment arms of insurers and assurers and those in the commercial real estate sector, all of whom have significant exposures to inflation-linked securities. Recent experience of similar market developments (for example, IBOR cessations) has shown that addressing this type of issue can be complex and that it is prudent to look ahead to address the upcoming reform.

1. What is changing?

Following a joint consultation by the UK Statistics Authority and HM Treasury in 2020, it was announced that RPI would be reformed by bringing the methods and data sources of the Consumer Prices Index (including owner occupiers' housing costs) into the calculation of RPI (the "**RPI Reforms**"). In September 2022, the High Court dismissed a judicial review of the decision to align the two methodologies, which had been brought by the trustees of certain pension funds, essentially making it all but certain that the RPI Reforms will take effect in 2030 as planned.

2. How will it impact RPI-linked securities?

Most RPI-linked debt securities contain terms which, upon a fundamental change to the calculation of RPI, allow for an expert (which we would expect to be an investment bank) to be appointed and to recommend adjustments to the calculation of RPI for the purposes of the securities, or to recommend a substitute index to which to link these securities. In the financial institutions sector, the default fallback is often that the issuer of the bonds themselves will act as calculation agent and determine an appropriate fallback.

We have found that, over time, these existing fallback provisions have become outdated for several reasons, including:

- fallback provisions are designed to operate once the RPI Reforms are implemented, and there is therefore little or no scope to make pre-emptive amendments to the terms and conditions of RPI-linked securities;
- many fallback provisions go directly to determination by a third-party expert, which may be costly and difficult (see below), without first assessing whether HM Treasury has recommended any adjustments to the applicable reference gilt;
- by their nature, expert determination provisions rely on it being possible for the issuer or bond trustee being capable of locating an institution to act as expert. Recent experience with LIBOR cessation and other determination processes shows that it may be difficult, if not impossible, to locate an adviser willing to act in this capacity as we approach 2030, and fallback provisions rarely specify what should happen where an expert cannot be appointed;
- if an expert is found and is willing to act, they will expect to be remunerated for doing so (and, where there are few institutions willing to take on this role, their fee could be considerable); and
- expert determination provisions often do not specify how the expert would be required to make its determination, only that it must consider whether, in its opinion, the relevant changes are detrimental to the interests of the issuer or the relevant bondholders. The determination the expert may make is therefore often unclear, creating uncertainty for both issuers and bondholders.

Taken together, at the point at which the RPI Reforms are implemented in 2030, many issuers with RPI-linked debt could be left to rely on outdated RPI fallback provisions which are not appropriate for their circumstances.

3. How we can help

We are already advising clients on ways in which the above risks can be mitigated and would be interested in discussing with other issuers, and those with exposures to RPI-linked securities, how we might advise on de-risking those securities.

We have long-standing relationships with many of the UK's largest companies in sectors with exposures to RPI-linked debt and have extensive experience advising these companies on their debt securities, including in relation to programme establishments, issuances and liability management exercises. In recent years we have supported many issuers to amend their debt programmes and issuances to address other similar market developments, such as the cessation of various IBORs and changes in regulatory regimes.

Contacts

MATTHEW TOBIN
Partner and Head of Financing

T: +44 (0)20 7090 3445
E: matthew.tobin@slaughterandmay.com

CAROLINE PHILLIPS
Partner and Head of Debt Capital Markets

T: +44 (0)20 7090 3884
E: caroline.phillips@slaughterandmay.com

GUY O'KEEFE
Partner

T: +44 (0)20 7090 3299
E: guy.okeefe@slaughterandmay.com

ED FIFE
Partner and Head of Banking

T: +44 (0)20 7090 3662
E: edward.fife@slaughterandmay.com

OLIVER WICKER
Partner

T: +44 (0)20 7090 3995
E: oliver.wicker@slaughterandmay.com

CHARLIE MCGAREL-GROVES
Partner

T: +44 (0)20 7090 3579
E: charlie.mcgarel-groves@slaughterandmay.com

KEVIN HOWES
Partner

T: +44 (0)20 7090 3173
E: kevin.howes@slaughterandmay.com

DAVID HAY
Partner

T: +44 (0)20 7090 5083
E: david.hay@slaughterandmay.com

LIAM REYNOLDS
Associate

T: +44 (0)20 7090 4170
E: liam.reynolds@slaughterandmay.com

MINOLEE SHAH
Professional Support Lawyer, Debt Capital Markets

T: +44 (0)20 7090 5491
E: minolee.shah@slaughterandmay.com