Loan Documents Introduction – the drivers of change

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What’s changed and what’s changing? - themes

Reregulation

GFC knock-on

Blurring of boundaries - convergence and cross-fertilisation of markets and market participants

REREGULATION – BANKS IN THE POSSE

Banks made arms of foreign policy, law enforcement and tax collection

Å AML, Counter-terrorism

Å Anti- corruption

Å Sanctions

Å FATCA

Å Accessory liability

REREGULATION – GFC REACTION

Banks and markets subject to renewed prudential and conduct controls and pay for implicit support

Å Basle 3

Å Frankendodd, derivatives

Å Targeted taxes and fees

Å LIBOR fix (and pull-back of reference banks)

Å And other stuff ï PPSA etc etc

MARKETS ï SECONDARY PARTICIPANTS

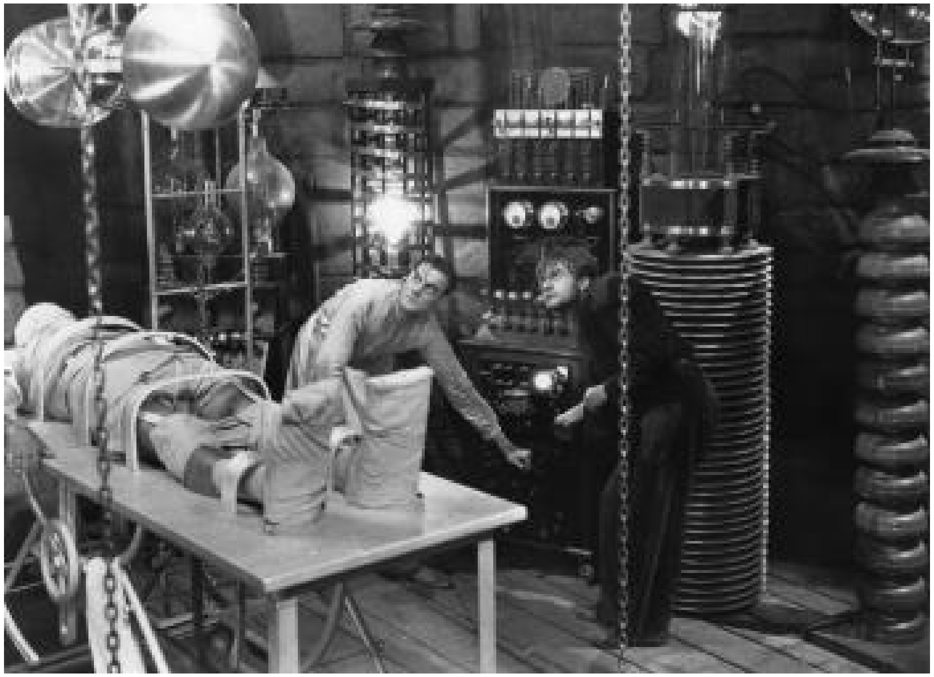
- **Continued rise in importance of liquidity, secondary market**
  - Credit derivatives
  - Sometimes the lender fronting/funding has little credit exposure
- **Rise of alternative secondary investors – and primary?**
  - vulture funds, hedge funds etc
  - potentially institutions, funds (including trustees who want limited liability)

MARKETS -CONVERGENCE

- Market changes ï new sources and converging sources
  - Limits on bank markets, liquidity and regulatory capital Institutional lenders and funds increasingly important
  - In Australia funds often require LOL
    - O/S instos and funds are often participants in bank loan markets
    - But they also lend directly in other markets
    - capital markets, High- Yield, USPP, Term Loan B
- Convergence of terms
    - Pressure from ñliteòTLB terms etc.
- Standardisation of documents

MARKETS ï THE LEVEARGE LAB

- Leveraged documents often the laboratory or genesis of changes and new provisions
- Sophisticated borrowers with market power
  - But lesser credit quality
- Every dollar counts
- Leveraged LMA docs quicker to change
- Usually intercreditor issues



GFC ï STRESS ON BANKS AND MARKETS

Liquidity issues, access to funds

- Need for central bank support
  - Loans may be collateral
- Cost of funds pressures
  - ñtieringòof the market
  - suspicion of LIBOR (justified!)
- Fewer bank players
- Defaulting participants and, potentially, agents
- Questions on the future of the euro
- Negative LIBOR

POST GFC

- Often work-outs rather than formal insolvency and enforcement
    - ñLoan to Ownò work outs, buy debt to get equity
    - Syndicates leak like sieves, often to influence price or equity
    - Transactional bankers can have whip hand if separate
- Banks trade out rather than enforce or wait
    - Composition of syndicate changes often
    - Lack of community of interest, traders v players v holders
    - Aggressive players come in
    - Agents may not have ñskinò in the game, separation of agency function

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