Migrating transactions

The switch from the Cayman Islands to alternative domiciles, following the European Commission's listing of the jurisdiction on the EU AML list, appears to have been painless for most CLOs. **Angela Sharda** investigates.

The European Commission's blacklisting of the Cayman Islands earlier this year has triggered the migration of many CLOs to alternative domiciles. Overall, the switch has been fairly straightforward, with Jersey appearing to be the jurisdiction that has benefitted the most.

"The hype around the issue was a cloud that we thought was going to hover over the CLO space, but it was just that – hype. The switch to the alternative jurisdictions has been seamless – people we have dealt with in other jurisdictions have made the solutions easy, with minor wrinkles," observes Joseph Beach, partner at Cadwalader.

Following a European Commission proposal, on 21 February, a Commission Delegated Regulation was published that placed the Cayman Islands on the EU's Anti-Money Laundering (AML) 'blacklist', along with eight other jurisdictions. Typically, the Cayman Islands was popular among CLO managers, due to its attractiveness as an offshore jurisdiction.

The EU's AML blacklist is a list of countries deemed 'high risk' under the AML Directive – for example, those whose AML/combatting the financing of terrorism regimes have strategic deficiencies that are perceived to pose a significant threat to the EU's financial system. ▶

Joseph Beach, Cadwalader

Since February, the Maples Group – for one – had, at the time of writing, incorporated 41 new Jersey CLOs and completed 16 continuations of Cayman CLOs into Jersey, with another seven continuations in its pipeline. "Jersey has been widely accepted as the leading alternative jurisdiction solution for US CLO issuers looking to market deals to investors in the EU, and continues to attract interest from arrangers and managers of structured finance products – with over 90 CLO transactions on track to either incorporate in, or to migrate to, Jersey in 1H22," claims Scott Macdonald, global head of finance at Maples and Calder, the Maples Group's law firm.

Jersey is seen as a unique and attractive jurisdiction, given that it has a zero-tax rated regime and has a long-standing regulatory policy for securities issuance. Further, the island is an OECD territory but outside the EU, and has availability of familiar legal structures and many experienced professionals in the financial services sector.

Macdonald notes that the Jersey Regulator and Jersey Companies Registry continue to provide efficient and reliable services, which also supports the smooth closing of CLO transactions. The Maples Group's Cayman team continues to lead on communications with transaction counterparties to support the Jersey team and to provide time zone coverage. In addition, they appoint a Cayman-based director to the board of each Jersey CLO issuer to ensure that they have a signatory available in the New York time zone.

He adds: "The market has responded positively to the use of Jersey as an alternative jurisdiction for CLO transactions and we expect the closing of recent notable transactions will inspire further confidence in the future use of Jersey by CLO and other structured product market participants."

Although Bermuda has been promoted as an option for CLO issuers, Jersey is better known as a securitisation jurisdiction that has historically catered for the speed of incorporation required by that market. Bermuda is better known as an insurance jurisdiction with a multi-stage incorporation process. Jersey was already home to a few US CLOs and has also been used in the past for synthetic securitisations.

"THE MARKET HAS RESPONDED POSITIVELY TO THE USE OF JERSEY AS AN ALTERNATIVE JURISDICTION FOR CLO TRANSACTIONS"

The time zone bridge was the biggest issue, according to Beach. "In addition, there are legal quirks in each jurisdiction, which have proven to be insignificant. For example, Bermuda requires some additional filings for warehouse loans, which took a while to solve. But the council worked with us to help solve this."

Meanwhile, Jersey has specific rules governing security interest over Jersey-law documents, but those are insignificant in the CLO process and so have largely been ignored.

Indeed, the process of migrating CLOs from the Cayman Islands appears to have been relatively straightforward. Gregg Jubin, partner at

Gregg Jubin, Cadwalader

Cadwalader, explains that the terminology and people may be different, but overall there are no significant issues to overcome. He says that this process could have been a lot more problematic, but both governments have stepped up to make it as seamless as possible.

Jubin claims: "They are allowing these entities to not have to reform and keep their existing governance forms and exist in these new jurisdictions. Overall, the process has been easy as it relates to CLOs."

Another jurisdiction that could benefit from the Cayman blacklist is Luxembourg. On 9 February, the Luxembourg Parliament passed an amendment to its securitisation law that broadens the sources of funding for securitisation products in Luxembourg and, importantly, now permits active management of debt portfolios.

Looking ahead, Beach says he can foresee a scenario where CLOs switch back to Cayman – should it come off the blacklist – as it continues to have the best infrastructure for the deals. He concludes: "We have done a handful of Delaware-only deals, all at the request of senior debt investors. It raises tax concerns and puts constraints on selling non-investment grade deals. I am unsure whether this will indicate a wave of deals for the future."

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