

MEMORANDUM FOR THE RECORD

Event: Telecom with Members of the US Chamber of Commerce Regarding Access to Commercial Paper and other types of Debt during the Financial Crisis

Type of Event: Conference Call

Date of Event: February 25, 2010

Participants - Non-Commission:

Jonathan Jachym, US Chamber of Commerce; Bradley F. Fox, VP and Treasurer of Safeway Inc.; Thomas C. Deas, VP and Treasurer of FMC Corporation; Jeff Agosta, Senior VP, Corporate Finance and Treasurer of Devon Energy; Jerry Overman, Director of Cash Management and Short Term Funding of Dominion Resources; and Mark Lovejoy, VP and Treasurer of Textron.

Participants - Commission:

Tom Krebs, Troy Burrus, Tom Greene, and Mina Simhai

MFR Prepared by: Mina Simhai

Date of MFR: March 1, 2010

Summary of the Interview or Submission:

This is not a transcript of the meeting and should not be quoted as such

On Thursday, February 25, 2010 Tom Krebs, Troy Burrus, Tom Greene and I had a conference call with Jonathan Jachym, US Chamber of Commerce; Bradley F. Fox, VP and Treasurer of Safeway Inc.; Thomas C. Deas, VP and Treasurer of FMC Corporation; Jeff Agosta, Senior VP, Corporate Finance and Treasurer of Devon Energy; Jerry Overman, Director of Cash Management and Short Term Funding of Dominican Resources, and Mark Lovejoy, VP and Treasurer of Textron to learn about their experiences in the commercial paper market during the financial crisis.

All of the companies we spoke with were A2/P2 companies, which means they issue Tier 2 commercial paper. All of the companies we spoke with had credit facilities in place giving them a contractual right to draw down funds in the event they could not or chose not to meet their borrowing needs in the commercial paper market. They also all stated the CP market dislocated due to Lehman's bankruptcy.

Parties with excess cash to invest, such as money market funds, investors, other companies and municipalities, are the main buyers of commercial paper.

Jeff Agosta, Senior VP, Corporate Finance and Treasurer, Devon Energy

Devon Energy is a natural gas and oil producer. According to Mr. Agosta, they are one of the largest A2/P2 commercial paper (“CP”) issuers, with a CP program of approximately \$2.2 billion. Their CP program is fully backed by a revolving credit line with 24 lenders.

Throughout the fall of 2008, Devon Energy typically had a CP balance of over \$1 billion, and they kept about \$0.5 billion in the overnight A2/B2 CP market. However, Lehman’s bankruptcy filing created disruptions in the A2/P2 CP market, such as higher interest rates and limited liquidity.

When Devon Energy gave its bank group notice that it intended to draw on its revolver, it received a call from one of its healthiest lenders and one of its sickest lenders advising it not to draw down unless it was absolutely necessary. The healthy bank emphasized the long term relationship and the sick bank was concerned about the health of the financial system and its own liquidity. According to Mr. Agosta, the lenders said that if all their borrowers drew on their revolvers the banks would go under. In the end, Devon Energy withdrew its borrowing request. In September 2008 Devon Energy was able to issue CP at 5.7%, but interest rates dropped to more normal levels within a week.

Mr. Agosta did state that TARP and other government guarantee programs were vital in the continued functioning of the CP market. He also stated he had heard that Bill Gross, head of PIMCO had told his wife to get all their money out of their bank account, which shows how nervous some people were about the markets.

Thomas C. Deas, VP and Treasurer, FMC Corporation

FMC Corporation (“FMC”) is a 120 year old company. It is rated BBB and is therefore a Tier 2 CP issuer. According to Mr. Deas, FMC was not in the commercial paper markets when Lehman filed for bankruptcy. It was financed with a \$600 million domestic credit facility and a \$220 million Euro facility. After the market disruption caused by Lehman’s bankruptcy, FMC saw LIBOR increase from 2.25% to 5%. Citigroup was the agent on FMC’s credit facility, and when FMC drew down the facility, Citigroup called to make sure that FMC was using the funds for ordinary business purposes and not engaging in interest rate arbitrage.

Mr. Deas noted the freezing up of the commercial paper markets was a big concern to market participants, and, due to the flight to quality, if you weren’t already invested in government funds, there were “no more seats in the life boat.” FMC was already invested in government funds, so it did not have trouble, but Goodyear had \$600 million invested with the Primary Reserve Fund and, as a result, had to fully draw down its \$600 million revolver. He also noted that companies who had Lehman as one of the lenders in their bank facilities saw their facilities decrease by the amount of Lehman’s commitment.

Bradley F. Fox, VP and Treasurer of Safeway Inc.

Safeway has over 1700 retail grocery stores, mainly in the Western US and Canada. According to Mr. Fox, Safeway uses CP to fund its weekly capital needs. Because its needs can fluctuate by \$100-200 million a week CP is a good way to manage cash needs. Safeway is one of the larger Tier 2 CP issuers, with a \$1.6 billion CP program, and \$400-500 in CP outstanding

recently. Safeway uses 4 dealers to place its CP and also places some themselves, mainly with insurance companies, money market funds and corporates. Like the other Tier 2 CP issuers, Safeway's CP program is fully backed by a revolving credit facility with about 24 lenders.

Mr. Fox advised that Safeway had two long term debt issuances expire on November 1 and 15, 2008. Safeway had intended to refinance this debt in October 2008, but the markets were closed at that time so the two debt issuances expired as scheduled. However, Safeway was still able to place its CP and doubled the size of its CP program, so it did not have a funding crisis. According to Mr. Fox, Safeway also drew down \$250 million under its revolving credit facility on November 15, 2008. The funds were outstanding for 6 weeks, and Safeway agreed with its lenders that it would repay the funds before year end. In mid December, loan markets opened up again, and Safeway was able to close a \$500 million debt deal.

Mr. Fox did note that market practices changed after Lehman filed for bankruptcy – dealers were no longer willing to hold unsold CP overnight (this had been a common practice) and it was clearly a “best efforts” placement commitment. Safeway also saw the coupon on commercial paper increase from 2% to 6%. Mr. Fox believed other Tier 2 issuers also faced significant rate increases due to a flight to quality, which benefitted issuers of Tier 1 CP. At that time, interest rates on revolving credit facilities were generally lower than on CP, but for relationship reasons Mr. Fox wanted to limit borrowing under its revolver.

Mark Lovejoy, VP and Treasurer of Textron

Textron is a \$10 billion company focused on air space defense, and, until recently, Textron had a large commercial finance unit that competed with GECC and CIT to provide financing to companies (not consumers). According to Mr. Lovejoy, Textron is a big CP player, with a \$2 billion CP program in 2008. In 2008 Textron was rated A-, was a Tier 2 CP issuer, and had a \$3 billion bank facility backstopping its CP program. During the financial crisis Textron was still able to continue rolling its CP through 2008, but the interest rate increased to 300-400 bps over LIBOR.

On February 3, 2009, Textron drew the full \$3 billion under its credit facility. Textron decided to exit the commercial finance business because it could not access capital at a reasonable price. Through an orderly wind-down process, Textron sold over \$8 billion in assets and was downgraded below investment grade. As a result, Textron was no longer a Tier 2 CP issuer and lost access to the CP market. Textron was now considered a Tier 3 CP issuer. Even before the financial crisis the Tier 3 CP market was very thin, and after the financial crisis, the Tier 3 CP market was almost non-existent.

Jerry Overman, Director of Cash Management and Short Term Funding, Dominion Resources

Dominion Resources (“DR”) is a \$40 billion energy company that is a Tier 2 CP issuer. According to Mr. Overman, in mid 2008 DR issued \$500 billion in CP, which was sold through 3 dealers. During the financial crisis DR issued \$1.9 billion in CP and it drew \$1.5 billion on its bank facility (that was subsequently repaid). During the financial crisis, DR saw CP maturities shorten and liquidity decrease and Mr. Overman also found banks reluctant to keep CP on their balance sheets overnight.

While DR did not have a funding crisis because it was still able to issue CP and draw on its credit facility, Mr. Overman did note that credit lines were there as back-up, and were not intended to be used.

General

Market participants agreed that if the government had not acted to support markets, the situation could have been very bad, with the market seizing up and companies unable to fund themselves, their capital needs, or even meet payroll. Market participants also pointed out that government assistance on CP was available only to Tier 1 issuers, not Tier 2 issuers. However, all of the market participants we spoke with had lines of credit they could (and many did) access, and the lack of liquidity in the Tier 2 CP market, which manifested itself in worse terms for CP issuers, lasted for about a week. Market participants stated that banks were supportive to the companies that drew down their credit lines during the financial crisis. Also, there was stress among banks due to Lehman's failure and the Lehman CP banks held becoming worthless. Some banks were very concerned about their own liquidity.

Market participants stated that problems in the CP market started in 2007 when LIBOR increased, Bear Stearns hedge funds filed for bankruptcy, and there were difficulties in Canadian markets, but the Lehman bankruptcy was the event that drove the CP markets into crisis. According to one market participant, Bear's troubles in March of 2008 did not lead to a CP crisis because Bear was sold off and not allowed to fail. Market participants also advised that Bear Stearns was more of a structured finance issue (e.g. SIVs, MBS, auction rate securities) than a CP issue, and that the asset backed paper market froze in February 2007.

Next Steps

1. Consider getting in touch with Goodyear, who a market participant advised had \$600 million in the Reverse Primary Fund and had to draw down its entire \$600 million revolver.