CLYDESDALE BANK – 8372 EXAMPLES OF "IT ISN'T A SWAP BUT IT HAS MANY OF THE FEATURES OF A SWAP"

Omnishambolic Clydesdale and its sister bank Yorkshire sold well over 8,000 fixed rate tailored business loans to customers 'who did not understand what they were getting into'. In addition to this number, it sold an estimated 1,600 more structured tailored business loans that act like an embedded structured collar.

Whilst the debate over whether the tailored business loans have embedded derivatives or whether they are stand-alone continues to rage at the Financial Conduct Authority, Clydesdale's own CEO Mr Thorburn still maintained that the bank did not design Tailored Business Loans with the intention of getting around regulatory oversight. Thus far the bank has successfully avoided the inclusion of tailored business loans within the FCA review on Interest Rate Hedging Products.

MPs listening to the Treasury Select Committee testimony were apparently astounded that in the event of early prepayment of these loans, the break cost could be as much as 25% of the capital repaid. Mr Thorburn sought to provide the explanation that 'nobody anticipated' that interest rates would fall as low as they did. Really? At the beginning of 2008 it was apparent as the UK and the rest of the world fell into recession, with loan delinquency rates beginning to spike from mid 2007 onwards that something was afoot. Whilst very few would have predicted that rates would fall to 0.50% and stay there for over five years, there was no need post January 2008 to insist or sell products that supposedly 'hedged' borrowers from higher interest rates.

QA Legal has been involved with these cases for over two years, and has painstakingly built arguments that the bank didn't do what they said they did when they hedged and funded themselves in order to provide customers with a 'hedged' product. Regardless of the lack of proper articulation of break costs, the imposition of the bank's own costs on customers handed them an immediate contingent liability, a fixed interest rate exposure of their very own, the size of which in some cases was big enough to challenge the trading resourcefulness of a junior trader in one of the bank's own dealing rooms.

Mr Thorburn yesterday admitted that the break clause language under-pinning tailored business loans would not pass a plain English test. In the meantime, with over 8,000 Clydesdale Bank customers having been NABbed, and with an estimated further 50,000 odd similar fixed rate loans out there, sold by other banks of the like of Barclays and Nationwide, what hopes do customers have of getting redress?

The Financial Ombudsman Service has recently over-turned a handful of early decisions, finding in favour of the borrowers, but the cases have to be presented carefully. Litigation is a route taken by at least a couple of former customers with tailored business loans, and direct petition to the bank, armed with strong supporting evidence should now be start to unsettle the omnishambolic bank.