IN BRIEF

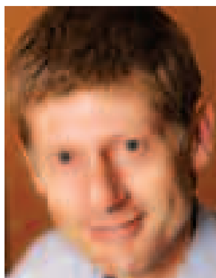
The **Accounting Standards Board (ASB)** has published **FRS 29 *Financial Instruments: Disclosures***. The FRS has the effect of implementing in the UK the International Accounting Standards Board's financial reporting standard, IFRS 7. FRS 29 replaces the disclosure requirements of FRS 25 (IAS 32) *Financial Instruments: Disclosure and Presentation*, and applies for accounting periods commencing on or after 1 January 2007.

The **European Commission** informed member states via the Accounting Regulatory Committee that **regulations endorsing IFRS** published in the *Official Journal* and coming into force after the balance sheet date but before the date the financial statements are signed may be used by companies (although they are not obliged to use them) where early application is permitted in the regulation and the related international financial reporting standards.

The **International Organization of Securities Commissions (IOSCO)** has announced that it is establishing arrangements for regulators to share decisions on the **application of the IFRS** in order to promote consistency in the implementation of IFRS. The database is intended to be operational by second half of 2006 but will not be accessible by the public.

Companies House and **HM Revenue & Customs (HMRC)** are consulting on proposals to align the **filing dates for annual accounts and company tax returns.** All companies would have either seven or nine months from their accounting dates to file their company tax return with HMRC. Private companies would have the same amount of time to deliver their statutory accounts to Companies House, which, if the first option is chosen, would mean an acceleration from the current nine months allowed. Public companies currently have six months to file their accounts so this would not align perfectly with tax return deadlines. Although the tax filing times are accelerated there is no change proposed to the tax payment dates.

The Financial Services Authority has published a guide **Planning for Markets in Financial Derivatives Directive (MiFiD)** on its website. The guide is aimed at senior management in regulated firms, but provides a straightforward indication of what MiFID involves and some of the implications. See *www.fsa.gov.uk/pubs/international/planning_mifid.pdf*.



INTRODUCTION

By Martin O'Donovan
ACT Technical Officer

Spotting the good guys in the influential world of regulation is not easy and in any case 'good' is entirely subjective – witness the revived debate on the Operating and Financial Review (OFR) and whether it should or should not be mandatory for listed companies. Likewise, the Payments Directive seems to reveal the European Commission in the role of good guy, standing up for the rights of users to get the best possible service from banks and from the new Single Euro Payments Area (SEPA). The payment service providers, however, may not share that view.

Standing back from the inevitable vested interests, the question is: what is best for the overall common good? The ACT prefers to avoid the use of regulation, or at any rate to make do with light touch regulation, but it is not always the case that regulation is bad and a hindrance. Reaching a voluntary consensus is preferable, but sometimes the regulators are the good guys. ■

Where now for the OFR?

Gordon Brown, the Chancellor of the Exchequer, announced at the start of December that he would do away with the obligation on quoted companies to produce an Operating and Financial Review (OFR). This change of policy has triggered much debate and no doubt uncertainties will continue for a while yet. But even if the mandatory OFR is abolished, the ACT is recommending that companies continue to produce a report in accordance with the standard RS 1 *The Operating and Financial Review* from the ASB.

The form of the OFR provides an ideal narrative section where directors can demonstrate they have given due consideration to risks and can discuss matters affecting future performance. This is of enormous benefit to investors and can also serve as a reminder to directors to keep their eye on the overall strategy and its potential to succeed.

Assuming that the mandatory requirement is removed, all companies should be reminded that the Companies Act 1985 (Operating and Financial Review and Directors' Reports, etc) Regulations 2005 still requires all directors' reports to include a business review, which is similar to the OFR but without the same forward-looking element.

The precise details are available at www.opsi.gov.uk and by searching for Statutory Instrument 2005 No 1011. This requirement also applies to each individual group company unless it falls within an exemption for small and medium-sized enterprises.

The key section says that the directors' report for a financial year must contain:

- a fair review of the business of the company; and
- a description of the principal risks and uncertainties facing the company.

The review required is a balanced and comprehensive analysis of:

- the development and performance of the business of the company during the financial year; and
- the position of the company at the end of that year, consistent with the size and complexity of the business.

The review must, to the extent necessary for an understanding of the development, performance or position of the business of the company, include:

- analysis using financial key performance indicators; and
- where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

Where appropriate, the review must include references to, and additional explanations of, sums included in the company's annual accounts.

Ideally, the focus should be on best practice and the requirements of RS 1, but those looking at the minimum requirements only should also bear in mind the Transparency Directive, and the extent to which it creates the need for forward-looking statements similar to parts of the OFR. This will not be implemented until January 2007 for listed companies, but it creates an obligation to publish half-yearly accounts with an interim management statement that "shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year". ■

The Payments Directive

The European Commission has issued its draft Payments Directive, otherwise known as the New Legal Framework for Payments. This will form the basis of the harmonisation of national law that will apply to all payments in Europe in any currency. Once this is achieved, it becomes possible for the banking community to progress with making the Single Euro Payments Area (SEPA) happen so that euro payments can be made as easily across borders as they are domestically.

The Payments Directive concerns itself with a great deal of detail and feels much more like a statement of commercial operational small print rather than the law, but by doing it this way the commission is giving the banks a strong guide as to the shape of the rules needed for SEPA.

For example, the directive says that refunds of direct debits the payer wishes to recall must be requested within four weeks, whereas the rules that the European Payments Council came out with a month or so ago had a refund period of 90 days. This is very different from the UK where the repayment period is theoretically unlimited and may well be unacceptable to retail customers who receive only monthly statements and therefore have little time for checking.

While SEPA concerns euro payments and might seem less relevant to the UK, the directive affects all payments and so will automatically affect sterling BACS payments.

For payments under €50,000 some of the other significant points are:

- Electronic credits or direct debits must be made for value the next day.
- Payments must be made in full with no deductions for charges.
- Banks must not take any float period – for example, by holding onto funds before giving good value.
- Payments will be made by reference solely to the account number (IBAN) – in other words, this takes precedence over payee name.
- If the IBAN is correct, then the bank is responsible for defective execution of a payment instruction and will be liable for any charges and interest incurred by the customer.

The ACT will be providing comments to the UK government and the European Commission. ■

Readers wishing to contribute to this process or to be copied in on progress should contact modonovan@treasurers.co.uk

Conflicts of IPO interests

On some recent Initial Public Offerings (IPOs), a new method of choosing the syndicate members is being used, which is giving concern to the FSA since it appears to exacerbate the conflicts of interests around these deals. Instead of the traditional process of mandating the lead manager and other syndicate members after a beauty parade, the issuer delays the final appointments and keeps up the competitive pressure on the firms involved until much later, at which point some of the firms do not win the appointments.

In a competitive IPO the issuer may be able to exert pressure on the competing firms, directly or indirectly, to produce research that is favourable or which justifies a higher valuation range. This is because firms could be providing their draft research to the issuer in circumstances where the firm is still trying to win a role in the syndicate.

The FSA is therefore reminding firms and issuers of its rules and published guidance on managing conflicts of interest.

The FSA reminds all issuers that it is not appropriate, directly or indirectly, to exert pressure on firms to act inconsistently with their responsibilities. Issuers should not exert undue pressure on firms to include a valuation in their draft research.

Regulated firms should ensure their procedures for managing conflicts of interest are adequate. Firms have an obligation to ensure that, where research is not impartial, they have not presented it as such and that this fact is clear to the intended recipients. Sponsors are reminded of the important role they play in helping to ensure that listed issuers meet the required standards in relation to major transactions. ■

IN BRIEF

▸ The **FSA** has published its ***International Regulatory Outlook***, which summarises the extensive regulatory work programme arising from European legislation and other international measures. It is available at: *www.fsa.gov.uk/pubs/iro/nov2005.pdf.*

▸ The **Office of Fair Trading,** through its Payments Systems Task Force, is to review the **cheque clearing process** and will consider possible reforms such as speeding up the process, as well as the cost and benefits of alternatives to making cheque payments. Its report is due out in summer 2006.

▸ The **FSA, British Bankers Association** and **Building Societies Association** have agreed changes to **cheque practices** to help reduce the risk of fraud. From October 2006 cheques will not be accepted if made payable to a bank or building society unless they also include the name of the payee account to be credited.

▸ A report on the **bank charges for payments** has been published by the **European Commission**. The report investigates the effect of Regulation 2560/2001, which required international electronic payments and credit transfers to be made at the same rate as the domestic equivalents for payments less than €12,500 (€50,000 from January 2006).

▸ The **Money Laundering Regulations 2003** and the **Proceeds of Crime Act 2002** have been amended so as to extend the defence which is currently available to legal advisers in certain circumstances to cover auditors, tax advisers and accountants.

▸ The **Third Money Laundering Directive** has been published in the *Official Journal* to come into effect by December 2007. This extends existing measures to combat terrorist financing and organised crime. It imposes customer identity checking on the financial sector as well as lawyers, notaries, accountants, estate agents, casinos, trust and company service providers and all providers of goods, when payments are made in cash in excess of €15,000, as well as the reporting of suspicious activities and the need for adequate personnel training.

▸ The **EU** has officially adopted the amendment to **IAS 39 *Cashflow Hedge Accounting of Forecast Intra-group Transactions*** by Commission Regulation 2106/2005 published in the *Official Journal* on 22 December 2005 and effective three days later.