IN BRIEF

▸ New **deregistration proposals** from the **Securities and Exchange Commission (SEC)** are out for comment. A relaxation in the fewer than 300 shareholders rule would allow deregistration if the US average trading volume was less than 5% of the average trading volume in the primary market and US holders held less than 10% of the worldwide public float, or alternatively, regardless of US trading volume, if US residents held no more than 5% of the issuer's worldwide public float. The SEC estimates that 26% of non-US issuers could deregister if it adopts these standards.

▸ The **Committee of European Banking Supervisors** has published its criteria for recognising **credit rating agencies as external credit assessment institutions** for determining risk weightings for use under the capital requirements directive obligations on banks.

▸ The **European Commission** has set out its position on the **regulation of credit rating agencies**. It is confident that existing financial services directives combined with self regulation in line with the International Organization of Securities Commissions code will be sufficient to answer the concerns of the European Parliament.

▸ An exposure draft of changes **to IFRS 2 *Share-based Payment*** has been published by the **IASB**. The IASB is proposing to restrict vesting conditions to service or performance conditions and that all cancellations, whether by the entity or by other parties, should receive the same accounting treatment.

▸ UK payments association **APACS** has confirmed that a **faster phone and internet payments system** will be introduced by the end of 2007, with payments reaching their destination within hours in place of the current three-day cycle. The new system will also speed up the processing of standing orders from three days to same day and eliminate the float period.

▸ The **Accounting Standards Board** has amended **FRS 23 *The Effects of Changes in Foreign Exchange Rates*** to implement in the UK the IASB's recent change to IAS 21. The changes cover the treatment of exchange differences arising on intra-group loans to or from a foreign operation.

▸ The **Audit Practices Board** has published the final versions of its **reporting standards** applicable to public reporting engagements on profit forecasts (SIR 3000) and pro forma financial information (SIR 4000).

INTRODUCTION

By Martin O'Donovan
ACT Technical Officer

New inventions or new ideas rarely turn out to be truly new. More often than not, innovation is little more than a form of evolution from existing circumstances.

So it is in this month's Technical Update. In every subject area reported this month, a good framework already exists. The changes are simply refinements intended to make a decent framework work even better. Let's just hope that they do turn out to be improvements.

But what is totally new this month is the raft of new acronyms we will all have to get used to in the field of international debt securities with the development of the new global note or NGN.

For the surfeit of TLAs (three-letter acronyms) this month, apologies. ■

The new global note

From June 2006, issuers of international debt securities in bearer form will be able to choose to use a new form of global certificate to be known as the new global note (NGN).

The implementation of the NGN structure will not change any of the current market fundamentals.

International debt issuers of bearer securities will continue to enjoy the same flexibility and freedom with respect to how issues are brought to the market.

However, the European Central Bank's Eurosystem collateral-eligibility criteria for euro-denominated issues will, among other things, require the issue of a security in NGN form.

It will also have to be kept in safe custody with one of the international central securities depositories (ICSDs) acting as common safekeepers (CSKs).

The current arrangements use a common global note (CGN) structure, which is a deposit structure where the securities are represented by a bearer or registered form global note that is deposited with a common depository on behalf of the two ICSDs, namely Euroclear and Clearstream.

The common depository provides safekeeping and asset servicing for such securities.

The characteristics of the NGN structure have been published by the International Capital Markets Association (ICMA) and are similar to the existing CGN, except that:

- the NGN only applies to debt securities in bearer form;
- the ICSDs' records, rather than physical annotations on the global note itself, are used to determine the outstanding amount of the issue; and
- the NGN is held in safekeeping by a CSK and serviced by a common service provider (CSP).

The NGN structure cannot be used for registered securities, as the NGN uses the records of the ICSDs as the official records of the outstanding issue amount. ■

Combined Code review

The Financial Reporting Council (FRC) has been reviewing the operation of the Combined Code and concluded that it has improved the quality of corporate governance within listed companies and, as a result, significant changes are not necessary.

However, the FRC is putting forward three possible amendments to the Combined Code, as follows:

To enable a company chairman to sit on the remuneration committee where he or she is considered independent on appointment.

To provide shareholders voting by proxy with the option of a 'vote withheld' box on proxy forms and to recommend that companies publish the details of proxies lodged on resolutions where votes are taken on a show of hands; and

To enable companies to comply with certain of the disclosure requirements of the code by placing the relevant information on their website.

It is intended that, if implemented, the changes will apply to financial years beginning on or after 1 November 2006. ■

Where now for the OFR?

You'll have seen the same headline in last month's issue of *The Treasurer*, but *déjà vu* very much sums up the confused state we have got to with the Operating and Financial Review (OFR). Whether we end up with a voluntary or a mandatory regime, the ACT is a strong and long-standing supporter of good narrative disclosures, although it is still seeking a safe harbour on directors' and company liability for opinions and forward-looking statements.

The concept of an OFR has been the subject of consideration for enough time to have ironed out what is required, given that it had its origins in the Company Law Review of 1998. The more recent history can be summarised:

May 2004
Extensive consultation by the DTI over an enhanced OFR.

November 2004
The ASB issues an exposure draft of a reporting standard on the OFR (RED 1).

March 2005
Statutory Instrument SI 2005/1011 comes into force amending the Companies Act 1985 to make the OFR mandatory for all listed companies for years starting after 1 April 2005.

May 2005
ASB issues Reporting Standard 1 on OFR disclosures. Compliance with the detailed disclosures within RS 1 will be deemed to cover all the legal requirements of the OFR regulation.

December 2005
Chancellor of the Exchequer announces his intention to remove the obligation on listed companies to prepare an OFR.

December 2005
DTI invites views on whether any particular requirements of the Business Review need to be clarified to achieve more effectively the government's objectives regarding the Business Review.

12 January 2006
The requirement to produce a statutory OFR is removed by the Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005 [SI 2005/3442]. The new requirement to include a business review in the directors' report remains.

26 January 2006
ASB reissues RS 1 reframed as a reporting statement of best practice guidance on the voluntary OFR.

1 February 2006
DTI launches consultation on mandatory narrative business reporting and introduces draft clauses into chapter 6 of part 15 of the Company Law Reform Bill to reinstate the obligation to prepare an OFR. ■

Deal confirmation targets

New guidance from the Bank of England will put pressure on treasury departments to issue deal confirmations within two hours ideally and no later than the end of the day on which the deal is struck. This improved standard of control is included in the latest revision to the non-investment products (NIPs) code, which applies to operators in the wholesale markets for deposits, and spot and forward foreign exchange. The ACT endorses the code and has helped formulate the revisions.

The preferred method of exchanging confirmations is electronic and, to avoid confusion, second confirmations by paper should not be sent. Greater emphasis is placed on the use of standard settlement instructions (SSIs) with more specific guidance on the procedures around them. For example, on receipt of a new SSI (ideally in Swift/ISO format), the receiving party should validate them by means of call-back or other authentication channel.

Another new section states that use of mobile phones for transacting business is not good practice, and that the controlled environment of the dealing room, including phone recording, should be used.

Dealings in investment products in the wholesale markets, which includes CDs, CP, debt instruments, swaps and other derivatives, are not covered by the NIPs code but by the inter-professional conduct (MAR3) section of the FSA's Handbook, which is applicable to FSA-regulated firms.

The sections of the NIPs code dealing with mandates remain unchanged. Issues around these have been held over until the next review.

The latest NIPs code is on the Bank of England and ACT websites. For more, see *The Treasurers Handbook 2006*, p471.

Bank audit reports

Bank confirmation letters are essential to the annual audit process, but for large groups with a vast number of banking relationships, sending out requests and authorisations can be a tedious burden. It is equally onerous for the banks drafting the responses. Recognising this, the Auditing Practices Board (APB) plans some modest changes to Practice Note (PN) 16 to streamline the process.

The APB proposes that companies should send out audit confirmation requests at least a month prior to the confirmation date and giving banks a month to respond. It will not always be achievable, as in cases where banks have only started doing business with a client or where an urgent circular or prospectus is being prepared. To help identify the customer or customer group, the bank should be given a main account number where possible.

PN 16 recommends that, rather than issuing new authorities to disclose each year, customers should provide a standing authority. This will mean keeping good records of authorisations given from year to year. A further thought not included in PN 16 is that the internal procedures for account opening or taking on a new bank relationship at subsidiary levels should perhaps include delegating authority to the group company secretary or similar to authorise the bank to provide audit disclosures. ■

EC pushes shareholder rights

The European Commission has published a draft directive to eliminate the main obstacles in cross-border voting and to enhance other shareholder rights. The directive specifies that:

- general meetings should have at least one month's notice, with all relevant information made available by that date and posted on the issuer's website. For EGMs related to takeover bids the 14-day notice period remains;
- share blocking should be replaced by a record date set no more than 30 days before the meeting;
- shareholders should have the right to ask questions and be given answers, which must be posted on the company website, subject to measures to prevent abuses;
- the maximum shareholding thresholds to benefit from the right to table resolutions should not exceed 5%; and
- proxy voting should not be subject to excessive administrative requirements, nor be unduly restricted. Voting results should be available to all shareholders and posted on the issuer's website within 15 days. ■