IN BRIEF

A reporting statement entitled **Retirement Benefits: Disclosures** is to be published by the Accounting Standards Board in January 2007. It is designed to promote greater transparency in the financial reporting of pension schemes, and will be persuasive rather than mandatory. The statement will put forward disclosure recommendations to assist the users of financial statements in understanding the risks and rewards and funding obligations from defined benefit schemes including:

- the principal assumptions used to measure scheme liabilities;
- the sensitivity of the principal assumptions used to measure the scheme liabilities;
- how the liabilities arising from defined benefit schemes are measured;
- the future funding obligations in relation to the defined benefit scheme; and
- the nature and extent of the risks arising from financial instruments held by the defined benefit scheme.

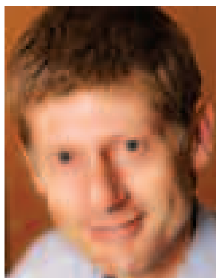
The final recommendations are broadly unchanged from those set out in the draft reporting statement which was published in May 2006.

Amendments to **FRS17 *Retirement Benefits*** have been published by the Accounting Standards Board. The amendments align the disclosures in FRS17 with those of the equivalent international standard, IAS19. The amendments will be effective for financial statements covering periods beginning on or after 6 April 2007.

Proposals for the **Basel 1-A risk capital requirements** have been put forward by the US Federal Deposit Insurance Corporation (FDIC). Larger banks will be covered by Basel II, others will have the option of adopting the so-called Basel 1-A rules or remain subject to the existing risk-based capital rules. Basel 1-A includes:

- adding three new risk weights to the existing framework: 35%, 75% and 150%;
- expanding the use of external credit ratings for certain exposures;
- increasing the credit conversion factors for certain commitments with an original maturity of less than one year;
- expanding the range of eligible collateral and guarantees used to mitigate credit risk; and
- using loan-to-value ratios to determine risk weights for most residential mortgages.

The **Companies Act 2006** is now available in electronic format on the OPSI website at the following address: **www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en.pdf.**



INTRODUCTION

By Martin O'Donovan
ACT Assistant Director, Policy and Technical

We have moved into new offices and in so doing have unearthed a volume of the *Proceedings of the Corporate Treasurers' and Accountants' Institute of 1886-7*. Given that the ACT was only formed 27 years ago you might find this puzzling, but the CTAI represented treasurers in local government. The themes in the President's inaugural address still have a resonance today. In referring to "the system of Underwriting by Bankers and Syndicates so strongly recommended by certain Brokers and Financiers in London", he condemned the same as "entirely unnecessary, and playing into the hands of the London Stock Jobbers etc". The themes of the excessive indebtedness of local authorities and the importance of education seem familiar too. He also worried about whether "our assistants are recruited from a class of people well educated, cultured and suited to carry on business"!

Cheque processing reforms get go-ahead

Improvements to the cheque clearing process have been set in train through initiatives announced by the Payments Systems Task Force.

Given the decline in cheque usage, the task force – set up under the chairmanship of the Office of Fair Trading – is not seeking a wholesale reform of the process. Instead, it has reached agreement with the industry on the following key recommendations in relation to clearing times, which will take effect from November 2007:

- Funds deposited into an account by cheque will start to earn interest or will count against overdrafts no later than two working days after the cheque is deposited (for example, Wednesday for a cheque paid in on Monday);
- Consumers and businesses will be able to withdraw funds deposited by cheque into current and basic accounts no later than four working days after the cheque has been deposited. For savings accounts where consumers are allowed to withdraw funds deposited by cheque, withdrawal will be available no later than six working days after a cheque has been deposited; and
- Financial institutions will not be able to take funds deposited by cheque back out of an account later than six working days after the cheque was deposited ('guaranteed fate') unless the payee is a knowing party to fraud.

All cheques, regardless of where in the UK they are drawn or paid in, will be subject to these limits. This will remove confusion and delays on cross-border cheques, particularly those into and out of Northern Ireland.

The changes apply only to cheques and are distinct from the changes to the clearing cycle for electronic payments which will arise from the Payments Services Directive.

The Payments Systems Task Force, which has done much work in stimulating improvements in the UK payment systems, covering issues raised in the Cruickshank Report, will be disbanded and a new strategic governance body for payments matters created – the Payments Industry Association – with Brian Pomeroy as an independent Chairman.

The ACT has been a member of one of the task force's working groups. ■

Guidance on the ability of a bank to avoid liability on dealing with a defective cheque was tested in a recent case, Architects of Wine Ltd v Barclays Bank [2006] EWHC 1648 (QB). The court ruled that it would be a defence, under section 4 of the Cheques Act 1957, for a bank to show that it was acting both in good faith and without negligence when dealing with a defective cheque.

The case concerned cheques payable to Architects of Wine Cayman Islands that had been paid into an account in the name of Architects of Wine UK. The bank was unable to prove that anyone checked the account details against the actual cheques, which would have cleared it of negligence. The cheque details and other factors should have put the bank on notice.

The trial judge held that although the bank had acted with good faith, it had "fallen well short of establishing a *prima facie* case of due care". The bank was therefore liable to the true owner of the cheques. ■

Best execution quotes

The concept of 'best execution' vexed the financial markets and its regulators for most of last year. The Market in Financial Instruments Directive (MiFID), which must be implemented by November 2007, is the cause of this since it requires firms that execute orders on behalf of clients to take "all reasonable steps" to obtain the "best possible result".

In the case of traditional broking, particularly if conducted via exchanges, the concept is reasonably straightforward. MiFID does not require firms to obtain the best possible result for every order, but should drive trading to venues offering the best results.

The complication arises when dealing in markets that are really bilateral, such as bond trading or swap deals. In feedback to the Financial Services Authority (FSA) the ACT argued that the concept of best execution was irrelevant since no 'orders' were being given – the customer was taking quotes and would make their own decision on which were best.

In a recent speech Hector Sants, Managing Director of Wholesale Markets at the FSA, came to similar conclusions: "We have taken the view that it does not make sense to require a dealing firm to deliver best execution on a quote-driven transaction if the customer is relying on its own due diligence in deciding to buy or sell a financial product. However, firms can agree to provide best execution on quote-driven transactions if they wish to do so."

FSA has published legal advice on the scope of the best-execution duty. ■

Payments and data protection

SWIFT has been called on to comply with European data protection laws in a report by the Article 29 Working Party. The working party is an independent body set up by the European Commission to provide expert opinions on data protection and to advise on rights and freedoms with regard to the processing of personal data and privacy.

SWIFT (Society for Worldwide Interbank Financial Telecommunication) had been storing messages at two operations centres, one in the US and one in the EU. The messages, processed via the SWIFTNet FIN service, contained personal data such as the names of the payer and payee.

After the terrorist attacks of September 2001, the US Treasury Department issued subpoenas requiring SWIFT to provide access to message information held in the US. SWIFT complied with the subpoenas.

In the opinion of the Article 29 Working Party, SWIFT and other financial institutions in the EU must comply with EU Data Protection Directive 95/46/EC.

The working party said that any measures taken in the fight against crime and terrorism should not and must not reduce standards of protection of fundamental rights which characterise democratic societies.

As data controllers, financial institutions in the EU are legally obliged to ensure that SWIFT fully complies with the law, in particular data protection law, to protect their clients. The financial institutions are responsible for having sufficient knowledge of the different payment systems and their technical and legal characteristics and risks.

The working party said that the hidden, systematic, massive and long-term transfer of personal data by SWIFT to the US Treasury in a confidential and non-transparent manner without effective legal grounds or the possibility of independent control by public data protection supervisory authorities constituted a violation of the fundamental European principles on data protection and was not in accordance with Belgian and European law.

The repercussions of the working party's findings appear to extend further than expected and put the onus back on banks to review their dealings with service providers.

The report stated: "All financial institutions in the EU using the SWIFTNet Fin service, including the central banks, have to make sure, according to Articles 10 and 11 of the EU Directive 95/46/EC, that their clients are properly informed about how their personal data are processed and which rights the data subjects have. They also have to give information about the fact that US authorities might have access to such data."

The banking sector is now left in a difficult position as it is caught between the EU's data protection laws and the subpoenas of the US Treasury. Europe's central banks have even come under fire and are recommended to bring data protection rules within the scope of their oversight. ■

IN BRIEF

- The Paris-based Euronext exchange, which is being bought by NYSE Group, is developing plans to create **contracts based on credit default swaps**. The idea is that the exchange will make credit default swaps cheaper to trade and easier to understand than the derivatives sold by banks. It will cut the cost to buy and sell credit default swaps by eliminating the need for trading agreements with banks and accounting systems that value investments and assess risk. Listing credit derivatives on exchanges will make it easier for pension and mutual fund managers to buy them, and will provide a ready source of valuations.

- **The costs and benefits of MiFID** are the subject of a recent FSA assessment. Its report identifies up to £200m a year savings on compliance and transaction costs and £240m of indirect benefits from deeper and more liquid capital markets. Set against this are one-off implementation costs of up to £1,170m and extra ongoing costs of up to £117m per year.

- The FSA has published a **business continuity guide for financial services firms** covering contingency planning in the event of a major operational disruption such as a terrorist attack or natural disaster where there is a widespread impact on more than one organisation. The guide is based on experiences gained from a benchmarking exercise of 60 companies. The guide does not have official status – the FSA expects firms to use their commonsense and judgment in assessing which parts of the guide are relevant to them. The *Business Continuity Management Practice Guide* is available on the FSA website. See **www.fsa.gov.uk.**

- The ACT has indicated its broad support to proposals from **Standard & Poor's to extend its recovery rating coverage** to speculative-grade industrials and to enhance its notching framework for getting from the issuer default rating to the issue-specific rating. The latter will reflect a combination of default probability and recovery prospects.

- The ACT has supported proposals from **Fitch to increase coverage of short-term issuer ratings** in addition to the more commonly used instrument-related ratings. The wider use of issuer default ratings and clarifying that issue-specific ratings incorporate a weighting for recovery given default expectations serve the useful purpose of supplying the market with additional information.