IN BRIEF

The Payments Directive has been approved by the European Parliament. Certain administrative processes need to be completed and the directive should then be published in the *Official Journal* in the autumn, ready for subsequent enactment by each member state. To speed its approval, a compromise was included so that the requirements for capital for payment institutions that are not banks would be delegated to individual member states. The delays in finalising this directive mean that it will not be possible for SEPA direct debits to start before 2009.

The Office of Fair Trading is to investigate **current account charging**, including the fairness of charges for unauthorised overdrafts. It will consider so-called free banking offers as well as wider questions on competition, transparency and value in the banks' provision of personal current accounts.

A consultation on the impact of the **Combined Code on Corporate Governance** has been launched by the Financial Reporting Council less than a year after the current version was introduced. In particular, the FRC is seeking views on whether the code has helped to improve board performance, the code's impact on smaller companies, the effectiveness of the 'comply or explain' approach, and whether disclosures on the code in annual reports are useful and cost-effective. There is no presumption that any changes will be made, but if they are they will take effect from 1 November 2008.

A statement of principles on **institutional shareholder responsibilities** has been published by the International Corporate Governance Network (ICGN). While it is vital for companies to ensure that shareholders can exercise their ownership rights, investors must use these responsibly. Institutional shareholders should have suitable governance procedures down the chain of their own investors.

The European Central Bank has reported on **private equity** from the perspective of the banking sector. Its survey shows that the debt exposures of banks to the EU leveraged buy-out market are not large relative to their capital buffers, so that private equity poses little risk. The survey does note the banks' dependency on the increasingly active segment of the secondary market for leveraged buy-out debt trading. Download a PDF of the report at: **www.ecb.int/pub/pdf/other/largebanksandprivateequity200704en.pdf**

INTRODUCTION

By Peter Matza
ACT Policy and Technical Officer

The ACT's Policy and Technical team enjoyed its few days away in the Edinburgh sun last month (despite my low-cost carrier losing my bag). More seriously, the opportunity to talk with members and other delegates and to hear their contributions to the various presentations was a hugely useful exercise.

What was particularly interesting was confirmation of the range of organisations in which treasury skills are being deployed and the responses of service providers to meet the demands of treasury professionals working in those fields.

Treasurers have to deal with an increasing number of complex issues – operational and strategic – in their jobs and the chance to share and learn from others' experiences was clearly of benefit to all delegates. I may even have recruited one of those new committee members I was looking for.

All in all, a great success!

SEC offers non-US companies easier route to deregistration

New rules from the Securities and Exchange Commission (SEC) on foreign companies wanting to deregister from the US became effective on 4 June 2007 and are as broadly outlined by the proposals made by the US financial regulator in December 2006.

Under the old rules, even if a foreign company delisted it was still subject to SEC reporting if it had more than 300 US-resident shareholders. For this purpose, it had to look through nominee holders to the number of ultimate shareholders.

Under the new rules, a non-US company is eligible to deregister if it first delists and then meets each of the following three conditions:

- A one-year dormancy, meaning the company has not made a registered securities offering in the previous 12 months;
- A one-year alternative listing – namely, that the company has had its equity listed for the previous 12 months on a non-US exchange or exchanges, and that non-US trading amounts to at least 55% of worldwide volume; and
- A one-year reporting history – the company has been SEC-reporting for the previous year and has filed at least one SEC annual report.

If the company meets all three of these conditions, it must then pass at least one of the following two tests:

- Its US trading volume is 5% or less: the average daily US trading volume of the equity over a 12-month period must be less than 5% of the average daily trading volume worldwide; or
- It has fewer than 300 shareholders: the number of US-resident holders, or the number of worldwide holders, must be less than 300, which still has to be calculated by looking behind the nominee stockholders but using a revised counting method that limits the inquiries required.

To deregister a class of debt securities, a company will still have to have filed at least one year's worth of required reports, including an annual SEC report, and will have to meet the fewer than 300 worldwide or US-resident holders test, which is the same as at present. There is a small technicality here in that the SEC requirements can now be terminated whereas previously they were suspended.

To deregister, companies must complete a Form 15F request. Once this has been filed, the reporting requirements are immediately suspended.

Given that many foreign companies feel unduly burdened by the Sarbanes-Oxley obligations, the SEC is expecting around 25% of non-US filers to apply for deregistration in the first year. To counterbalance this, the SEC hopes that the more flexible regime will act as an encouragement to new issuers to consider a US listing.

Before rushing to deregister from the US, companies may like to review whether the changes expected from the SEC later this year will sufficiently remove some of the problems that arise from compliance with the Sarbanes-Oxley Act.

The SEC final rule is available at: **www.sec.gov/rules/final/2007/34-55540.pdf** ■

News from the Pensions Regulator

The Pensions Regulator has reminded parties considering corporate transactions that its underlying principle in clearing a deal is whether the event is financially detrimental to the ability of the pension scheme to meet its liabilities. The reminder comes ahead of a planned update to clearance guidance during the summer.

Published on the regulator's website, the reminder states: "Where there is a significant weakening of employer covenant as a result of a corporate transaction – for example, where a highly leveraged transaction occurs and/or the assets for which the scheme currently has recourse are being removed from the employer group – then clearance is an appropriate consideration irrespective of the funding position of the scheme involved."

Trustees in these circumstances should also consider whether to seek a materially enhanced level of mitigation in excess of FRS 17/IAS 19.

The Pensions Regulator has published guidance for trustees on the abandonment of defined benefit pension schemes, along with the responses to its recent discussion paper.

The guidance, which takes into account the responses received, outlines how trustees should deal with a proposal involving the abandonment of a defined benefit pension scheme. It underlines the importance of understanding changes to the employer covenant and the potential impact on the pension scheme where the link with an employer of substance is removed.

The Pensions Regulator has outlined its key priorities for the next three years in a 2007-2010 corporate plan setting out strategy and aims, and explaining how it will deploy its resources over the next three years to deliver its risk-based approach to regulation.

The plan also highlights progress made in the development of the regulator's systems, culture, business processes, and delivery of the regulatory framework required by the Pensions Act 2004.

The three-year plan offers some interesting pointers as to where the regulator thinks attention is needed, especially in the following three areas:

- Defined benefit scheme funding will be strengthened by completion of scheme-specific valuations, and agreed recovery plans for those schemes with deficits;
- Governance of work-based pensions to achieve a year-on-year improvement in the extent to which trustees demonstrate knowledge and understanding of governance requirements; and
- Risks to members of defined contribution schemes to be reduced via raised understanding among trustees and others involved in running the schemes.

The Pensions Regulator has also issued a report, *How the Pensions Regulator will Regulate Defined Contribution Schemes in Relation to Risks to Members*, and a new discussion paper, *The Governance of Work-based Pension Schemes*. ■

Fair value reactions

It looks as if the International Accounting Standards Board (IASB) is in for a rocky ride on fair value measurement if reaction to its discussion paper is anything to go by.

In broad terms, the IASB wants to replicate the US SFAS 157 standard, which makes fair value a market measure based on exit values assuming knowledgeable and willing parties (see the March issue of Technical Update).

The ACT response supported the concept of guidance on fair values but not a standard definition. The determination of fair value must depend on the context and use to which that value will be put.

The UK's own standard setter, the ASB, likewise questioned the 'one size fits all' assumption in the discussion paper. The ASB also questioned the assumption that fair value should always be assessed from the perspective of a market participant rather than that of the entity.

The same point was neatly summed up by the Australian Group of 100 CFOs: "The financial statements are those of the reporting entity and as such they should reflect the perspective of the entity as a going concern rather than that of a hypothetical market participant."

The European Financial Reporting Advisory Group (EFRAG) usually provides a well-informed reaction, being expert in accounting theory while also getting substantial input from users and preparers, and it was also sceptical of the IASB's direction. It disputed the IASB contention that market-based measures were more reliable and subjective than entity-specific measures, particularly if no market existed.

Worries over undue standardisation seem widespread. It is encouraging that informal feedback from the IASB suggests it might be prepared to accept that using identical methodologies in all existing standards is not essential, and that regard may be had for the purpose for which fair value is being used. ■

IN BRIEF

▸ The Institutional Money Market Funds Association (IMMFA) has produced a position statement which provides the rationale as to why **triple-A rated institutional money market funds** can be treated as cash equivalent, in accordance with IAS 7.

▸ **Shareholder rights** are being considered by the European Commission in a new consultation paper on a future directive. Among other things it covers the language of meeting documents, depository receipts, stock lending, and the chain of intermediaries and disclosure of investors.

▸ **UK insolvency law** needs to be reformed, according to the European High Yield Association (EHYA). To reduce the power given to customers and suppliers when a company enters insolvency, the EHYA is proposing the possibility of a stay of enforcement to prevent value being destroyed. The Enterprise Act 2002 did not go sufficiently far towards a US-style Chapter 11 regime, the EHYA says. In addition, creditors or shareholders with no economic interest in any resulting restructured organisation should not be able to block progress.

▸ **Bond covenant packages** are being made more visible by Bloomberg, with access to new information via COV<GO> on each bond issue on the system. The details are taken from prospectuses and term sheets and provide a checklist as to whether or not certain protections are available to investors such as collateral, change of control, asset disposal limits, ratings downgrade or other defaults.

▸ More guidance on the **Transparency Directive** has been issued by the FSA in its April edition (issue 14) of *List*. The non-binding guidance includes information on disseminating major shareholding notifications, clarification around buybacks of shares to be held in treasury, and sending electronic communications.

▸ **The Non-Executive Directors Association** has been officially launched to represent non-executive directors and ensure they are properly trained and developed. For details, visit: **www.nedaglobal.com**

▸ The functioning of **private placement regimes** in the EU are being reviewed by the European Commission. The Commission's concern is that there may be national barriers to private placement and the absence of a common approach could be a possible stumbling block to deepening European markets.