IN BRIEF

A new briefing note on **MiFID for corporate treasurers** has been published by the ACT via its website. The note explains the key elements of the Markets in Financial Instruments Directive (MiFID) and how the treasury operations of non-financial corporates will be affected. Terms such as client categorisation, appropriateness and suitability, best execution, and their implications are fully explained in the briefing, which was prepared with assistance from law firm Slaughter and May. See also page 30.

The IASB has issued a revised version of **IAS 1 *Presentation of Financial Statements***. The standard requires information in financial statements to be aggregated on the basis of shared characteristics (to help users analyse and compare the data) and introduces a statement of comprehensive income. Changes in a company's equity from transactions such as dividends and share repurchases are shown separately from third-party transactions. Dividends are thus no longer shown in the statement of comprehensive income. Although not mandatory for use in a company's accounts some terminology has been changed – for example, the balance sheet is renamed as a statement of financial position. The revised standard will come into effect for annual periods beginning on or after 1 January 2009.

IFRIC, the Interpretations Committee of the International Accounting Standards Board, has issued new guidance the **accounting treatment of pension surpluses**. IFRIC 14 will be applicable for periods starting on or after 1 January 2008 and clarifies that in order to hold any pension surplus as an asset on its balance sheet, a company must have an "unconditional right" to the refund or "sufficient scope to reduce future contributions".

The guidance on **insider information and the requirements of the Market Abuse Directive** produced by the Committee of European Securities Regulators (CESR) has been updated and republished on the CESR website.

The Competition Commission has published its provisional decision to **lift the temporary price controls on SME banks**. The controls, imposed in 2003, required the UK's four largest banks servicing small and medium-sized enterprises (SMEs) to make available to SMEs an account that offers an interest rate of at least 2.5 percentage points below base or free money transmission services, or both.

INTRODUCTION

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

Technical Update aims to bring you news of policy areas where the ACT is taking a stance on behalf of non-financial corporates, as well as offering an update on 'techie' treasury areas where the rules are changing. The problem comes in deciding what subject matter qualifies as relevant to treasurers. As is apparent from the mix this month, the scope is wide, covering pensions, accounting, law, payments and financial regulation of all sorts. But looking back over previous months, can it be right that the core subject of borrowing seems not to get its fair share of column inches?

At the ACT's 2007 Treasurers' Conference, funding and interest rate risk was voted the highest priority for risk managers and the events in the credit markets this summer have amply justified that conclusion. For that very reason perhaps you will forgive us in making the assumption that because funding is so core, our readers are likely to be well up to date already.

ACT responds to the PPF's levy proposals

The ACT Policy and Technical team have responded to the Pension Protection Fund's recent consultation concerning the development of the pension scheme levy. John Hawkins, Principal at Mercer, discusses the industry perspective on the consultation elsewhere in this edition (see page 42).

In principle, the ACT supported the proposals made by the PPF in response to levy payers although in some areas of the consultation specific comment was justified.

The difficulty for the PPF lies in addressing the needs of an enormously disparate collection of entities with differing skills and approaches to managing pension exposure. However, one size does not always fit all.

Our comments addressed the need for the PPF to recognise that well-managed pension schemes should be able to benefit promptly from material positive actions. Any change in the levy as a result of a change in risk exposure should allow for positive improvements in risk as well as negative outcomes. Stability should not mean diminishing flexibility or a flat-rate price for all pension schemes.

The ACT also suggested that the PPF should consider a 'fast-track' levy analysis process for material risk reduction measures undertaken by larger corporates.

The ACT submission argued that larger companies with ratings from the main ratings agencies should have these included in any review of their levy.

A number of treasurers raised concerns with the P&T team that the use of Dun & Bradstreet (D&B) as the sole provider of insolvency risk calculations could have less benefit for larger, more complex corporate structures and diminish the value of long-term pension and treasury management.

The PPF has already recognised the need to consider this broader issue of the insolvency risk provider, which the ACT welcomed.

Many companies will have noticed that their D&B score has been marked down significantly. D&B ranks the credit of entities in order of strength across the population it covers. In summer it reassessed many public sector organisations, moving them from mid-ranking to the highest levels, pushing down many companies that were previously scored very highly.

However, the PPF converts the D&B score into a probability of insolvency and has adjusted its conversion tables to allow for the new rankings. For example, an old D&B score of 70 had a PPF insolvency probability of 1.22% whereas under the new scales a score of 45 translates to that same probability.

The PPF board is encouraging all schemes and employers to engage with D&B far in advance of the 31 March 2008 deadline to ensure that they are working with accurate and up-to-date information. This is good advice and well worth noting, as is the need to submit a valuation to the PPF by the same date.

The full text of the ACT's letter to the PPF is available at www.treasurers.org/technical/resources/ppflevyresp07.pdf ■

ACT urges insolvency regime review

The ACT has called on the government to commission a major enquiry into the corporate insolvency regime.

All too often lenders, suppliers and customers treat the appointment of administrators as a step towards the sale of assets rather than the start of a process of corporate reconstruction and the formation of a viable ongoing business, as was the intention of the Enterprise Act.

For companies in financial distress the old 'London approach', promoted by the Bank of England, encouraged banks to provide rescue finance to allow the company to work its way out of trouble. By working with the company, the banks could help preserve the value of their loans.

But nowadays the primary lending markets include a wider diversity of lending institutions, and in the secondary market specialist distressed debt funds and others are looking for trading profit, extracting a high price for agreeing to rescue terms or swapping debt for equity. This, plus the concept of trading credit risk via derivatives, means that lenders can be reluctant to adopt the London approach.

Some newer institutions lack internal Chinese walls between staff trading in different markets. To avoid becoming insiders, they refuse to receive non-public information, which precludes them from any syndicate decision-making.

A well-adapted corporate insolvency regime is important to keep down the cost of capital to companies and to encourage investment and entrepreneurship. The many stakeholders involved – staff, customers and the communities in which a company operates, as well as the direct financial creditors – all have an interest in corporate survival.

Furthermore, the greatest public interest at times of corporate financial distress is to ensure the survival of as much of the real option value implicit in the company as possible.

Real option value derives from a business's choice or right to take a decision – for example, the opportunity to exploit some ideas or skills or invest in a new factory. Society as a whole suffers from the destruction of these options.

A major review of corporate insolvency should look at behaviours as well as law, the trends in the US and Europe – in particular, the recent changes in France. It should also involve a wide cross-section of stakeholders. It is a long-term project but a necessary one.

The full text of the ACT's letter to HM Treasury is available at www.treasurers.org/purchase/showres.cfm?resid=2326 ■

Statutory pension debt changes proposed

Changes have been proposed on the section 75 statutory debt arising on the winding up of a pension scheme or the insolvency of its sponsoring employer.

Section 75 debt is calculated on the 'buy-out' basis (the cost of buying annuity policies). Under the current rules, in a multi-employer scheme an s75 debt arises if one employer ceases to have any active members but not if all participating employers simultaneously cease participation in the scheme, as would happen when a scheme closed for future accrual of benefits.

The proposed changes aim to make the employer debt regulations easier to operate and more flexible, and offer better protection for scheme members. However, under the proposed amending regulations it will no longer be possible for employers who cannot afford the continuing cost of defined benefit provision and propose to close the scheme to future accrual (while continuing to fund benefits for past service) to do so without triggering the s75 debt. ■

What profits are distributable under IFRS?

The ICAEW has co-published guidance on distributable profits (TECH 02/07) with the Institute of Chartered Accountants of Scotland (ICAS) on the implications of the transition to IFRS accounting.

The determination of what constitutes realised profits and so what is available for distribution remains a highly complex area and the new guidance supplements and amends TECH 7/03.

Companies may prepare their accounts under IFRS and in time, as UK GAAP converges with IFRS, all UK companies will be affected.

This new technical release is based on draft guidance that was issued for comment in June 2005 but includes some changes.

There is more guidance about the circumstances in which fair value gains on derivatives are realised profits. For example, realised profits now include changes in fair value which are recognised in the financial statements. The requirement that referred to an asset for which there was a liquid market will be replaced by a reference to an asset that is readily convertible to cash. ■

IN BRIEF

- SEC proposals to **eliminate the need for US GAAP reconciliations** are out for public consultation. If approved, issuers who prepare their accounts under IFRS will be allowed to file their financial statements with the SEC without reconciliation to US GAAP. Financial statements prepared under deviations from IFRS such as EU-approved IFRS will not, however, be eligible. The European Commission is expected to press the SEC to recognise EU IFRS, at least for an initial period.

- **The UK Faster Payments Service launch is to be delayed** until May 2008. The Faster Payments scheme will create a near real-time electronic payment mechanism, initially for lower value or bulk payments. The changes to cheque processing, such as the guaranteed fate after six days, will still take effect at the end of November (see *The Treasurer* Jan/Feb 2007 page 8).

- A revised **statement of principles on institutional shareholder responsibilities** has been approved and published by the International Corporate Governance Network. Starting from the principle that the ownership of equity carries important responsibilities, the statement sets out the responsibilities of institutional shareholders in relation to their external role as owners of company equity, and in relation to their internal governance.

- A list of **frequently asked questions on notifiable interests in shares** has been added to the UK Listing Authority section of the FSA website. The FAQs help explain the obligations of large shareholders to disclose their interests to the company. Shares with voting rights and any financial instrument that gives the holder the right to acquire shares with voting rights count towards the thresholds. The FSA will be issuing a discussion paper on the disclosure of other interests, such as CFDs (contracts for differences) this autumn.

- **Reserve asset costs** as charged in loan agreements may be changing depending on the outcome of a new consultation by HM Treasury on the Bank of England's cash ratio deposit scheme. Certain financial institutions have to place non-interest bearing deposits with the Bank and the income earned funds the costs of its monetary policy and financial stability functions. The proposal is to reduce the ratio from 0.15% of eligible liabilities to 0.11%. This percentage forms part of the normal mandatory costs formula in loan agreements.