

The Association of Corporate Treasurers

Comments in response to
***The Pensions Regulator (TPR) consultation on Revised
clearance guidance***
Consultation
September 2007

November 2007

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the end of these comments and on our website www.treasurers.org.

Contact details are also at the end of these comments.

We have canvassed the opinion of our members through our Policy and Technical Committee and wider membership

General

We appreciate the opportunity to contribute to this consultation process.

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Response

In principle the ACT understands that the revised guidance sets out the central principles that TPR expects all trustees and employers involved in corporate events to follow. We also appreciate your attempt to reinforce the need for mitigation to a (defined benefit) pension scheme where there is detriment as a result of a type A event. The ACT supports your continued belief that the best outcome for members is likely to be an appropriately funded scheme with a solvent employer.

The broad perspective of the proposals - and our response - is reflected in Question 4: *Do the updated principles provide sufficient guidance on how to approach the subject?* In

addition in some of the areas of the consultation specific comment is justified particularly where guidance may lead to confusion or potential misunderstanding between employer and trustee

- **Information from the employer:** The guidance encourages enhancing communication between employer and trustees 'at the earliest opportunity' but continues by suggesting this means 'early indication'. We feel that this guidance could be confusing. We are not convinced that the use of confidentiality agreements is sufficient to justify the advancing of this timetable
- **Negotiations:** we are concerned that encouraging trustees to negotiate even if no clearance application is intended (and very often where they have no legal powers) could lead to strained relationships between employers and trustees
- **Assessing a detrimental event:** The introduction of less clarity and certainty with regard to potential liabilities in case of, for example, a rescue sale of a business means not only more costs and time delays but also in many cases a simple refusal of people to acquire businesses – which then may go into liquidation.

In cases like these the lenders, equity holders and / or some times third parties, may be prepared to advance new money (to complete a restructuring, bridge a disposal etc) but clearly do not want that cash to be swamped by existing creditors. In return for being "lender of last resort" they often want to be "lender of first recovery". It may be they are granted an "intercreditor agreement" that the first proceeds from (whatever action) are dedicated to repay the "super priority loan".

To grant security in such circumstances can be challenging. A new complexity will be the apparent need to ask the Pension trustees to agree to become subordinated to the new lender. As the cash is normally needed in a compressed time frame the challenge to delivery from a "rules driven pension fund regulator / trustee group" is clearly unhelpful.

- **Assessing the employer's financial position:** The ACT considers that the proposed review by trustees (or their advisers) when assessing the current and prospective financial position of the employer (and, where relevant, the wider employer group) risks exposing the review process to inconsistent modelling in individual circumstances. For larger, credit rated companies this may also encourage at best duplication and at worst, conflicting opinion between the employer and trustees.

In conclusion the ACT is somewhat disappointed that the revised guidance offers less clarity and certainty that might have been expected. We would urge TPR to ensure that all market practitioners are fully consulted before implementing the revised procedures in their current form.

The Association of Corporate Treasurers

The ACT is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for treasury, providing benchmark qualifications and continuing development through training, conferences, publications, including *The Treasurer* magazine and the annual *Treasurer's Handbook*, and online.

Our 3,600 members work widely in companies of all sizes through industry, commerce professional service firms.

Further information is available on our website (below).

Our policy with regards to policy and technical matters is available at <http://www.treasurers.org/technical/resources/manifestosept2006.pdf>.

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