IN BRIEF

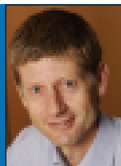
The **ACT** has responded to the International Accounting Standards Board's (IASB) exposure draft on amendments to **IAS 37 *Provisions, Contingent Liabilities and Contingent Assets.*** The response rejected the need for any changes to the existing rules. The move to record more contingent liabilities, even when the probability of crystallising them is low, would not help achieve the fundamental requirements of "faithful representation" and "substance over form" which are key attributes in the IASB's own "framework". The IASB is advocating measuring liabilities based on probabilities and "expected" amounts.

The **Markets in Financial Instruments Directive (MiFID)** is set to suffer a further six months' delay in its implementation. Under proposals tabled for the European Parliament the date for completion will be put back to end October 2007.

More than 700 adherents have signed up to the **ISDA Novation Protocol**, according to the International Swap Dealers Association (ISDA). This agreement will facilitate the transfer of existing trades to third parties, which could prove useful for a corporate trying to net down its exposures.

The **Company Law Reform Bill** has been introduced in the House of Lords. This comes at the end of a process that started with a review in 1998 and continued through various consultations, the White Paper and draft clauses. The Bill covers simplification measures for small companies, codification of directors' duties, the greater use of electronic communications, permitting auditors to limit their liability, improving audit standards, disclosure of institutional investors' votes and more. It is hoped that the Bill will be passed before the parliamentary recess takes place in the summer.

A **review of Pensions Accounting** has been announced by **the Accounting Standards Board.** The research project will reconsider the fundamental principles and questions around the relationship between scheme and employer, quantification of employer liability, the extent to which the expected return on assets should feature and the impact of all the new pensions regulations and the Pension Protection Fund and its levy. The review group will report on its findings during 2006.



INTRODUCTION

By MARTIN O'DONOVAN
ACT Technical Officer

It seems to be part of the human condition that we all like gathering together with like-minded people. It is a social thing but it can also act as a spur to more intellectual endeavours. This is exemplified in the proliferation of professional bodies and trade organisations in the financial world, many known by obscure acronyms. Like the ACT they all serve their particular niche but oftentimes their interests overlap. In these cases we are keen to exploit the efficiencies of working together – and when working to influence the authorities a combined voice will be far more powerful.

The successful outcome of the combined work with the Institutional Money Market Funds Association (IMMFA) described below bears witness to this and we are hoping that the combined voice of the European Associations of Corporate Treasurers (EACT) will be heard on the subject of Single Euro Payments Area (SEPA) – see news p7 for more.

Loan confidentiality breaches

When setting up a syndicated credit facility it is normal practice to provide confidential information to your relationship banks to help them in their credit evaluations – but can you be really sure that this information will be kept confidential and not misused? The Financial Services Authority (FSA) is worried on exactly this point, and as part of its review of the hedge fund industry it is examining whether hedge funds may have obtained price-sensitive information through buying participations in bank loans and then used this information illegally to trade in bonds and shares.

The FSA wants to ensure that those in receipt of any confidential non-public information keep it behind appropriate Chinese walls within their organisation.

Under the market abuse and disclosure rules applicable to companies with listed debt or equity it is illegal to disclose price-sensitive information on a selective basis ahead of any general market announcement unless the recipient owes a duty of confidentiality. The recipient should not deal in securities on the basis of this information. A borrower may provide some confidential information, such as outline business plans, to a potential lender, that is not sufficiently precise to be classified as "inside information" but is still classed as "relevant information not generally available". Although disclosure of this is permitted, the recipient would still be committing an offence were they to trade on the basis of this information. (See *The Treasurer*, October 2005, p50 on market abuse rules.)

This possible problem was foreseen and addressed in the ACT Guide to the Loan Market Association Documentation, produced by Slaughter and May and available at www.treasurers.org. The advice applies to the standard LMA documentation but is equally applicable to any loan agreements. The guide explains that the basic formats from the LMA include a confidentiality undertaking from the original syndicate banks but that this is drafted to cease once the banks have signed up to the borrowing agreement. Thereafter there is a clause which allows the banks to pass on information to a party potentially taking an assignment or transfer. Unless the borrower has insisted on an addition to this clause there is no requirement for that new party to have signed an appropriate confidentiality agreement. One argument would say that the banker's common law duty of confidentiality provides protection, which is true for a bank but not for a hedge fund buying into a loan facility. The ACT guide advises borrowers to insist on certain optional language that is included in square brackets in the LMA template agreements so that any potential purchaser of a participation signs a confidentiality agreement which will continue after signing. Likewise the initial confidentiality agreement should ideally be changed so that it does not terminate on signing. ■

The new OFR

Deloitte has published a study of past practice on the Operating and Financial Review (OFR) and made it available on its website. This information is particularly timely given that all UK quoted companies will need to publish an OFR which complies with Reporting Standard 1 (RS 1) in their annual reports for periods beginning on or after 1 April 2005.

The temptation is to think that because OFRs have been completed by 82% of companies for many years there is unlikely to be anything new, but that is not the case. RS 1-compliant OFRs will need additional new content and extensive thought in their preparation, even though a year's grace is being given before any official enforcement actions are to be taken.

The Deloitte survey reveals that significant numbers of the companies that already prepare OFRs are nonetheless failing to come up to the levels of disclosure mandated in the new standard:

- 59% disclose no key performance indicators (KPIs);
- 55% do not disclose the principal risks facing the business;
- 67% do not have a forward-looking orientation and merely discuss the past; and
- 47% do not clearly discuss the business objectives and strategies.

The Deloitte study provides useful guidance on preparing a new-style OFR and includes a checklist of disclosures along with an illustrative example of an OFR.

Running in parallel with the changes in the UK, the IASB has just published a discussion paper on the Management Commentary. The IASB has a broader remit than just producing accounting standards and is seeking to help improve the quality of financial reports by working up a standard covering information outside the financial statements that will assist in their interpretation.

The discussion paper draws on the experiences of countries where standard setters already cover the Management Commentary taking in particular Canada, Germany, the UK and the US as well as the guidance from International Organisation of Securities Commissions (IOSCO). ■

Preserving the Money Market Fund

The Committee of European Securities Regulators (CESR) has been drafting rules which might, inadvertently, have spelled the end of the Money Market Fund (MMF) as we know it in the UK. Fortunately the Institutional Money Market Funds Association (IMMFA) has been active in explaining to CESR the way in which MMFs work in the UK and to influence it. The ACT joined forces with the IMMFA to give the user's view. The result has been a new consultation paper from CESR which reverses the previous rules proposed.

CESR was attempting to give guidance as to what sort of assets were eligible under the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive. UCITS-eligible funds may be sold throughout Europe through a much simplified process; without this categorisation MMFs would be doomed to be sold through onerous private placements, losing all the current flexibility and convenience.

The original problem arose with CESR deeming the accounting methods used by UK MMFs as unacceptable. Funds that follow the IMMFA code of practice use the so-called amortisation methodology which amortises the cost of assets in the fund on a straight line basis, so as to achieve the constant net asset value (NAV) that is a feature of IMMFA-style funds. This is supplemented by a check of the accounting NAV against the true market value of the investments in the fund every seven days, combined with an escalation process to ensure that the fund is able to deliver on its object to preserve principal. In practice the UK-style funds are very unlikely to depart much from market values because of the short life of most of the assets. The IMMFA code stipulates that any realised capital gains or losses may be spread but over a period less than 60 days.

CESR had originally been demanding that funds must calculate daily values based on market fair values. The logic here was probably more appropriate for some European-style funds that can hold much longer-term assets. Indeed, a few years back some funds in France had suffered huge market volatility due to swapping non-euro fixed coupons against Euribor, and this had been hidden by the linear accounting method. However, the revised recommendations from CESR will now allow the amortised cost method for valuing MMFs, so the UK-style funds can continue unchanged. ■

IN BRIEF

- The Department for Work and Pensions has announced **scheme funding requirements** to come into force on 30 December 2005 for defined benefit pension schemes. The new rules will replace the current minimum funding requirements. At the same time the new Pensions Regulator has provided guidance to trustees about obtaining regular valuations, meeting the statutory funding requirements and agreeing a recovery plan and an appropriate schedule of contributions to meet any funding shortfall. The regulator is consulting on its approach to identifying schemes with the greatest risk to members' benefits and shaping the right recovery plans (*see news, page 6*).

- The updated version of the **Turnbull Guidance on Internal Control** has finally been issued, in substantially the form already published in draft in June. There is one notable change concerning the board's need to form a view on the effectiveness of internal control, which now requires the board to exercise "the standard of care generally applicable to directors in the exercise of their duties". This replaces the previous expression of exercising "reasonable care, skill and diligence".

- The **Department of Work and Pensions** has responded on the matter of **occupational pension fund investment.** It deals with concerns over the Pensions Regulations derived from the Occupational Pensions Directive – for example, over the requirement that scheme assets must be predominantly invested in regulated markets and in the use of derivatives.

- The **Committee of European Securities Regulators (CESR)** has advised the European Commission on an amendment to the **Prospectus Regulation** re historical financial information. It recommends additional requirements for issuers which have a complex financial history.

- The **CESR recommendations on alternative performance measures** have been published following an earlier consultation. The original proposal that alternative performance measures should not be given more prominence than defined measures remains in the case of measures derived from the financial accounts. However, there is a clarification that in other categories where the scope for confusion is less the measures can be presented in accordance with their capacity to portray the entity's performance.