

IN BRIEF

▶ CESR (Committee of European Securities Regulators) has published a call for evidence on the operation of the **Prospectus Directive** and regulation. CESR is interested in knowing from market participants whether the implementation of the key provisions of the prospectus regime is divergent in the member states.

The regulators organisation is seeking views on the level of disclosure and protection that the prospectus regime provides to investors, and is accordingly interested in hearing about areas where CESR can positively act. All are encouraged to provide feedback either on the CESR website or by contributing to a combined ACT response via:

modonovan@treasurers.org.

▶ The **European Payments Council** has redesigned and relaunched its website. Information and briefings on SEPA, IBANs and other payments matters are available, with more promised as SEPA implementation unfolds. See: www.europeanpaymentscouncil.eu

▶ **The Companies Act 2006** was given the royal assent on 8 November, bringing to an end a process of review, drafting and consultation that had been going on for 10 years. The bulk of the legislation will come into force in October 2008, possibly with a phased implementation. Clauses relating to the Takeover Panel and the EU Transparency Directive will come into effect in January 2007.

▶ In response to the threat of **overseas regulation applying to UK exchanges** if subject to foreign takeover, the government will introduce a short bill before Christmas giving the FSA powers to veto regulatory changes that impose an excessive burden.

▶ **The European Associations of Corporate Treasurers (EACT)** has announced co-operation agreements with both SWIFT (Society for Worldwide Interbank Financial Telecommunication) and TWIST (Transaction Workflow Innovation Standards Team).

See page 6 for more information.

▶ The **Accounting Standards Board** has decided that it will not amend the UK standard FRS15 *Tangible Fixed Assets* to bring it into line with the IASB's proposed amendments to IAS23 *Borrowing Costs*. The IASB is proposing to remove the option for expensing all borrowing costs that relate to the period of production of an asset and instead to require the capitalisation of those costs.



INTRODUCTION

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

December, and another year-end approaches. It's a

time of year that often brings about a moment of reflection.

In the world of financial regulation, standard-setting and public policy, things seem to move at a snail's pace compared to

the world of commerce, but that is inevitable if all the interested parties are to be properly involved and consulted.

It is pleasing therefore to be able to report the culmination of

the UK Company Law Reform process with the Companies Act 2006, and the imminent coming into force of the Transparency Directive and Basel II. MiFID implementation next year is also pretty well just about settled and even the shape of the Payments Directive is almost finished. So perhaps progress is being made after all.

Fears emerge over the impact of private equity

Private equity deals on the corporate credit and debt markets are increasing risk and threatening credit quality, according to the FSA and Standard & Poor's.

The FSA is seeking feedback from the industry and public policymakers on whether it has correctly identified the risks posed by the growth in the private equity market and the suitability of its regulatory approach in addressing these risks.

The FSA believes that the private equity market is an increasingly important component of international capital markets and makes a key contribution to the efficiency of these markets. However, there are risks associated with debt finance, such as excessive leverage and the use of opaque and complex risk transfer practices and the potential for conflicts of interest and market abuse.

The FSA's discussion paper can be found at: www.fsa.gov.uk/pages/Library/Communication/PR/2006/114.shtml.

The view of Standard & Poor's is that the rise of merger and acquisition, corporate finance restructuring and private equity deals in Europe is threatening corporate credit quality, according to its latest Industry Report Card.

The report concludes that although fundamentals in the financial services sector remain strong, the credit cycle has turned, as reflected by the increase in debt-funded dividends, share buybacks and acquisitions.

Standard & Poor's expects this trend not only to continue, but to accelerate over the coming quarters, with the promise of higher shareholder returns financed by abundant cheap money.

The report can be found at <http://tinyurl.com/yzveyf>. ■

How to measure interest rate risk and withstand a standard shock

Interest rate risks in banks' non-trading activities are the subject of new guidance for supervisors from the Committee of European Banking Supervisors (CEBS). The paper sets out ideas for high-level guidance on how interest rate risks could be measured and summarises current market practices.

The Capital Requirements Directive requires the banking book to be able to withstand a "standard shock" without causing the

institution's economic value to decline by more than 20% of own funds.

CEBS proposes a common definition of standard shock equivalent to the 1st and 99th percentile of observed interest rate changes. This currently equates approximately to a parallel 200 basis points shock for major currencies.

For the full report, see www.c-ebbs.org/documents/guidelines_IRRBB_000.pdf. ■

FSA sets out new transparency rules

The FSA has published near-final rules for incorporating the Transparency Directive requirements into the UK listing rules, which will take effect for reporting periods starting after 20 January 2007.

The changes, covering periodic reporting and notifications of major shareholdings, are broadly in line with most of the proposals outlined in *The Treasurer*, July/August 2006, page 6. The *Disclosure Rules Sourcebook* will be renamed *Disclosure and Transparency Rules*.

Periodic financial reporting The FSA will copy out the Transparency Directive requirements on annual and half-year reports as well as the interim management statements, but will provide guidance on what it would not expect issuers to disclose in the latter. This guidance will have been provided in a special edition of *List* in November 2006 by the time this issue of *The Treasurer* appears.

Where half-year accounts are required, there were some concerns over the meaning of true and fair in that context. The FSA confirmed that the condensed set of financial statements in the half-year accounts would satisfy the true and fair criterion if the accounts had been prepared in accordance with IAS34 (or national equivalents for non-IFRS reporters).

The requirement to send half-year reports to holders of securities or to publish in a national newspaper will be removed. Issuers of exclusively wholesale debt will have to continue publishing annual audited accounts, but will not have to produce half-year reports. Likewise, half-year reports will not be required for convertibles issuers.

As expected, issuers will no longer have to publish a preliminary statement of annual results, but those who wish to continue to do so will still have to meet the existing content standards.

In its earlier consultation, the FSA had proposed that the responsibility for periodic reporting be similar to that applicable to prospectus information – namely, it would rest with the company and the directors.

In the light of strong opposition, the FSA has now decided that responsibility will lie with the company only. That said, there is a further Transparency Directive requirement that the “persons responsible” within the issuer be named, which introduces some confusion as to what responsibility and liability the directors named may be taking on.

Under the new Companies Act there is a

statutory liability on the company for untrue or misleading statements made knowingly or recklessly, and an exclusion of liability for anyone else. This area remains somewhat muddled and given the current piecemeal changes, HM Treasury has appointed Paul Davies of the LSE to review the liability regime.

Major shareholding notifications The shareholder notification rules will apply to holdings in issuers trading on a regulated market and to UK companies traded on exchange-traded markets such as AIM and Plus (formerly OFEX). The FSA has decided to retain the existing super-equivalent thresholds for notifications regarding UK issuers – namely, disclosure of holdings of 3% and with 1% increments, and for non-UK issuers to go with the Transparency Directive thresholds of 5%, 10%, 20%, and so on. The determination of which interests are notifiable will follow the directive’s specifications with certain clarifications. In addition to direct holdings of shares, it will take in entitlements to acquire, dispose of or exercise voting rights, and financial instruments such as options, futures, swaps and forward rate agreements. To simplify the notifications, stock lending will not count as a disposal.

To help shareholders work out their percentage holdings, issuers will have to declare by 31 December 2006 the number of voting rights in respect of each class of shares traded on a regulated exchange or a regulated market.

An issuer of shares must, if it acquires or disposes of its own shares which take it through the 5% and 10% thresholds, make certain public announcements within four trading days; and if the number of outstanding shares with voting rights change, it must make a month-end disclosure of the shares in issue and the number held in treasury.

Contracts for differences (CFDs) The Companies Act gives the FSA powers to extend the regime for disclosure of “ownership” of equity to disclosure of “economic interests” in shares through derivatives such as CFDs. Concerns have been raised about potential market failures that can arise out of non-disclosure of CFD positions; therefore the FSA is to undertake further analysis of this area. It will publish its conclusions during the summer of 2007. ■

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► The **revised version of the combined code** published by the Financial Reporting Council in June 2006 has been approved by the FSA much quicker than expected and will now be incorporated into the listing rules for reporting periods starting after 1 November 2006. The main changes are the inclusion of a ‘vote withheld’ box on voting forms, and allowing certain information disclosures to be made through the web. For details, see: http://fsahandbook.info/FSA/handbook/LI/2006/2006_38.pdf.

► The **bond market standards initiative** (published in April 2006), promoted jointly by the ABI and BVI (the UK and German investor associations) together with the ACT and other market participants, was given further publicity at a well-attended conference held by the ABI in October. Presentations from regulators, investors and intermediaries reinforced the need for issuers to provide clear and timely documentation to investors in accordance with the Prospectus Directive. There were further lively discussions concerning changes in the regulatory framework – including both the Market Abuse and Transparency Directives – as well as calls from investors for enhanced bondholder protection against event risk (50% of current issuance contains some form of ‘change-of-control’ clause).

► The **convergence of UK GAAP with IFRS** has been under consideration by the ASB. The ASB now proposes not to follow the previous phased convergence approach, but to issue new IFRS-based accounting standards, which will not be mandatory before a single date, currently estimated to be financial years beginning on or after 1 January 2009.

► The ACT is seeking a volunteer from the corporate side to represent the ACT on the **Bank of England’s Money Market Liaison Group** (MMLG). This committee consists of representatives from market participants, trade associations and the authorities to provide a forum for discussion of structural issues concerning the UK money markets, including related derivative and securities markets.

It reviews the latest developments and improvements and has recently covered contingency planning in the event of a crisis. Minutes of recent meetings are on the Bank’s website (search for MMLG) and give an indication of the group’s remit. ACT members interested in getting involved, please contact modonovan@treasurers.org.