

IN BRIEF

► **Pitfalls in loan agreements** have been exposed as a result of the market turbulence in 2008. Serious reconsideration has arisen on the application of market disruption clauses and the absence of termination provisions on the lender. Other ideas up for debate include pricing based on credit default swap spreads. All this and other observations on the markets and the outlook for 2009 are covered in an article written by the ACT for the Loan Market Association magazine LMA News, and available on the ACT website at www.treasurers.org/node/4548

► The ACT's concerns over the **Banking Bill** are largely being addressed. The proposals for the special resolution regime for banks (see Technical Update, November 2008, page 10) would have meant that a failing bank could have been split, with companies finding their contracts with the bank had been allocated to the rump bank where all the downside risks had been parked. New proposals include an overriding provision to the effect that no creditor should be worse off from any transfer of assets and liabilities that occurs under the special resolution regime tools.

► **The going concern assessment** is an important calculation for treasurers to be involved in. The UK's Financial Reporting Council has produced helpful guidance for directors in making the assessment whether the accounts can be prepared on a going concern basis. The Auditing Practices Board now also offers guidance to auditors on the topic.

The FRC update notes that the absence of confirmations of bank facilities does not in itself necessarily cast significant doubt on a company's ability to continue as a going concern nor necessarily require auditors to refer to going concern in their reports. An ACT commentary and links to the relevant guidance are available at www.treasurers.org/goingconcern

► **Guidance on articles of association** for publicly traded companies has been issued by the Association of British Insurers. Topics covered include auditor liability limitation agreements and borrowing powers. In the latter case the ABI recommends that there should be a limit, normally based on a multiple of capital and reserves – often two times. The guidance goes on to say that netting off cash may be acceptable but that simply excluding pension scheme deficits or surpluses is unlikely to be appropriate.



INTRODUCTION

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Although there may be signs of markets calming down and deals being done it is difficult not to be driven by the need to react

and plan around the immediate issues and crises. By definition, the urgent things need to be done first, but in all the excitements in the near term one must be careful not to forget that the longer term must still be planned for. I seem to be

failing in this regard and realise that all the main technical update items this month arise from the current financial crisis in one direction or another.

Rights issues reformed

Rights issues can be a prolonged and overly complicated process. The extended timetables needed to complete some of the bank rights issues last year gave ample time for the banks' share prices to move, creating uncertainty over the outcome. In the case of HBOS the need for a general meeting, the time to prepare a prospectus and the period for which the issue had to be open all meant that the process took 83 days.

The Rights Issue Review Group – set up by the Chancellor last summer – issued its report in November which contained numerous ideas to streamline and simplify the process. Although the ideas were broadly helpful, the speed with which they can be implemented is limited by the need for changes in the law.

The rights issue timetable is largely driven by:

- the timetable for holding a general meeting if shareholder approval is required to increase the authorised and unissued share capital, along with authority to allot shares; and
- the 21-day period for which the rights issue must be open for acceptance, which derives from company law and the listing rules.

The Review Group recommends reducing the subscription period from 21 to 14 calendar days and the FSA is now consulting on such a change to the listing rules. Changes to company law will have to await the implementation of part of the Companies Act 2006, which takes effect on 1 October 2009.

Although the period for general meetings will decrease from 21 to 14 days by the time the EU Shareholder Rights Directive is implemented in August 2009, it will apply only if shareholders all have the facility to vote electronically.

Companies routinely seek shareholder agreement to allotting share capital. Under guidelines from the Association of British Insurers (ABI), a decision to increase the quantity of share capital is regarded as uncontentious if the number of new shares amounts to less than a third of the issued share capital.

In response to the Review Group's suggestion, the ABI has revised its guidelines and now sets this limit at two-thirds of issued capital by reference to the market value. Companies may need to issue such large quantities because of the trend to issue new shares at greater discounts than in the past. For the two-thirds increase to be acceptable to the ABI, the authority to allot should be valid for one year only, and if allotments are actually made then all the directors have to stand for re-election at the next AGM.

The Review Group has reported on other ideas which would need to be developed and consulted on before any changes are likely. The ideas include pre-emptive open offers but with compensation for those not participating, reform of the EU Prospectus Directive to simplify prospecting requirements, and greater use of shelf registrations for equity. ■



www.investinginbondsEurope.org

Easy and open access to bond prices used to be difficult to find, but no longer. SIFMA, the Securities Industry and Financial Markets Association, has launched a new bond education and price information site, partly in response to a request from the European Commission. The focus is on informing retail investors but the data will also be helpful to treasurers who do not have access to the commercial providers. The site includes various indices such as iTraxx from Markit, and allows a drill-down to corporate (including financials) bond pre-trade price information for some 800 European bonds. This includes bond ratings, prices, yields and swap spreads.

Treasurers' contingency checklist just got longer

Back in May 2008 the ACT issued a briefing note entitled "Contingency Planning for a Downturn in the Economy: a treasurer's checklist" little knowing that confidence in the economy would deteriorate so badly during the remainder of the year.

As the downturn continues, it is natural for analysts and planners to give serious consideration to the risk of a deeper and longer recession, and it is just as sensible for treasurers to do likewise. The ACT's contingency planning briefing has therefore been revised and reissued.

Sadly, many of the additions in the revamped briefing reflect the more negative outlook, although we have deliberately refrained from assuming the worst. The briefing points out the pitfalls to avoid if your company is becoming insolvent, such as illegally trading while insolvent or a solvent subsidiary lending to its insolvent parent by means of a cash pooling system.

Monitoring cash forecasts and business plans to ensure ratios compliance remain important. There is, though, the added twist that a weakening currency can wreak havoc where average exchange rates are used for profit and loss items while point in time rates are applied to balance sheet items.

Forecasting funding needs and availability is core to treasury management and has been pushed into the limelight by the debate at the UK's

Financial Reporting Council over the going concern assessment for accounting purposes.

The FRC has updated its guidance to directors and the Auditing Practices Board (APB) has updated its guidance for auditors. Taking a pragmatic attitude, the APB recognises that under current conditions it is not always possible to get confirmation from banks that finance will continue to be available for the "foreseeable future", but that this does not automatically mean that accounts cannot be prepared on a going concern basis.

If banks are reining back their balance sheets, then companies need to make best use of available bank credit. Check whether all the lines of credit marked against your company are still needed – are there amounts marked for subsidiaries or branches that have been closed or sold, or bonding or letters of credit facilities in excess of needs? – and whether there any bonds or guarantees where the beneficiary should have released you.

Credit insurance taken out by your suppliers is effectively another source of credit to be maintained.

Finally, in your efforts to preserve the health of your company, do not forget the health and wellbeing of your staff and yourself. Watch out for stress-related signals from the workload and pressures. ■

Additional IFRS 7 disclosures

Additional IFRS 7 disclosures on the fair value of investments in debt instruments look to be rushed into accounting standards and be effective for periods ending after 15 December 2008 even though the exposure draft was only published just before Christmas. However, the timings for the EU endorsement process are unclear at this stage.

If approved, the exposure draft requires new fair value disclosures for all debt investments by way of the notes to the accounts over and above those that are already carried at fair value through profit and loss.

The exposure draft's proposals are extensive and for some entities the necessary information may not be readily available. Treasury and finance staff likely to be affected should immediately be planning how they will obtain the necessary information should the exposure draft's proposals be confirmed.

The exposure draft's proposals for additional disclosures include requiring companies to provide in tabular format the following information for all investments in debt instruments other than those classified as at fair value through profit or loss:

- pre-tax profit or loss as though the instruments had been classified as at fair value through profit or loss, and accounted for at amortised cost.
- the following amounts in a way that permits comparison: the carrying amount in the statement of financial position, fair value and amortised cost.

IN BRIEF

► The definitions of **distributable and realised profits** are far from straightforward, but the definitive advice on the subject is provided in technical guidance from the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants of Scotland in TECH 07/08 issued at the end of 2008. This takes the previous version, TECH 01/08, and updates it for distributions in kind and the new requirements in the Companies Act 2006 relating to capital reductions.

► **Guidelines on using ratings responsibly** have been issued by the Investment Management Association (IMA), warning asset managers not to rely too much on credit ratings. They remind users that credit ratings are an incomplete description of riskiness: for instance, they do not assess liquidity or market volatility risk. In the best interests of their clients, where appropriate, asset managers should challenge mandates which appear ill designed.

► The notice period for **company general meetings** (other than AGMs) is to change from 14 days to 21 days when the EU Shareholder Rights Directive becomes effective in August 2009. If companies wish to adopt the 14-day notice period they should get shareholder consent at their next AGM, and they will also need to provide electronic voting facilities to all shareholders.

► The application of **credit default swap-based loan pricing** in some recent loan agreements has triggered discussion of the concept. While the concept may be a tool to get deals done or improve terms, the variability in pricing will be unattractive to treasurers unless it is in some way capped. Indeed, in a Standard & Poor's corporate criteria of 16 December, entitled "Methodology and Assumptions: Analysis Of corporates' swap-indexed bank lines", the credit rating agency said that it would not include a CDS-linked facility in its assessment of a company's liquidity resources unless the pricing was capped. A more detailed article on this subject will appear in the March issue of *The Treasurer*. To contribute to the debate, the ACT has issued a briefing note on the ACT website at www.treasurers.org/cdsloanpricing

► **Corporation tax** For an update on the Pre-Budget Report, see page 38.