## IN BRIEF

**The OFT (Office of Fair Trading)** intends to launch a market study into rights issue equity underwriting and associated services, and is seeking views on its scope. Informal discussions with corporate users of these markets have revealed dissatisfaction with these services. The OFT will assess whether users' concerns are justified and will consider:

- how underwriting and related services are provided, including the level of competition for the work, the remuneration and how different services such as advice, arranging the issue and the actual underwriting are sold; and
- how underwriting services are purchased, including the information available to buyers and the incentives in place when they take decisions.

**The Takeover Panel** is consulting on changes to the way it regulates takeover bids, prompted largely by public concern about Kraft's takeover of Cadbury. They will consider changes to the Takeover Code including:

- whether the "50% plus one" minimum acceptance condition threshold for a takeover offer should be raised;
- whether voting rights should be withheld from shares in an offeree company acquired during the course of an offer period;
- whether the 1% trigger threshold for the disclosure of dealings and positions in relevant securities under the Takeover Code's disclosure regime should be reduced to 0.5%;
- whether offerers should be required to provide more information in relation to the financing of takeover bids;
- whether the "put up or shut up" deadlines should be standardised, applied automatically or shortened; and
- the extent to which inducement fee arrangements and other deal protection measures might give undue power to offerers to frustrate offers by potential competitors.

Responses must be submitted to the Panel by 27 July.

**The Operating and Financial Review** has featured in the UK's new coalition "Programme for government". It says: "We will reinstate an Operating and Financial Review to ensure that directors' social and environmental duties have to be covered in company reporting, and investigate further ways of improving corporate accountability and transparency."

## INTRODUCTION

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

**In a treasury department the work often seems to be dealing with very immediate needs – anything from making today's payment to finalising the terms of that new syndicated loan you have been battling over for some months. But of course longer term planning must not be neglected. Within the world of Policy & Technical at the ACT the timescales can be much extended when influencing new rules and regulations – which is good in that proper consultation and debate can happen. Thus measuring our success and effectiveness takes time. In the case of HMRC and the relief from withholding tax (see below) the seeds sown two years ago have now reached fruition. Although not yet perfect, this has produced a distinct improvement in procedures.**

# HMRC eases interest payouts

HMRC has launched a new process for getting treaty clearance to pay interest gross to non-UK lenders and this is welcomed by the ACT.

Obtaining clearance to pay loan interest gross has always been a tedious and cumbersome process and even the provisional treaty relief scheme seemed to give little practical help. Keeping track of the status of lenders, especially where the syndicate makes up changes through loan trading, can be a nightmare. For these reasons the ACT, working with the Loan Market Association, started discussions with HMRC back in 2008 and proposed a form of passporting arrangement. After various public consultations during 2009 we have been pleased to see that the concept has been taken up, with a new double tax treaty passport (DTTP) scheme opened for applications on 1 June, with a start date of 1 September 2010.

Currently, a lender has to make a separate treaty application for each loan it grants/acquires. The application needs to be certified by its home tax authority and then filed with HMRC – this typically takes several months (but delays of a year or more are not uncommon). During this time, the borrower must continue to withhold tax. If all goes well, treaty clearance is granted, and the tax withheld can be reclaimed, but the delay and cashflow cost can prove problematic.

The new DTTP scheme will work such that:

- a lender will be able (but not required) to apply for a treaty "passport";
- if accepted, the lender will be allocated a unique DTTP reference and included on a public register of passport holders with each passport valid for five years. HMRC undertakes to deal with any application within 30 working days;
- a register will be published on HMRC's website;
- when a loan is entered into the lender can notify the borrower of its passport status or the borrower can check this from the HMRC website. The UK corporate borrower may then enter into the loan with an expectation that interest payments made under it will attract relief from withholding tax at a rate appropriate to the relevant double taxation arrangements then in force;
- the borrower still has to notify HMRC (within 30 days to be effective from the start of the loan) who will in turn grant clearance by issuing a direction, as it already does, to the borrower to pay without withholding; and
- HMRC should be able to issue a gross payment direction "as soon as is practicable" (probably after around three weeks). ■

**Further details and the links to HMRC information are available at www.treasurers.org/DTTP**

**EACT blog** The chairman of the EACT, Richard Raeburn, has been exceptionally active representing the interests of corporate treasurers to the various EU authorities charged with devising new and supposedly better financial regulation of banks and markets. His observations and latest news of progress on several fronts are on the EACT blog **http://eactchairman.wordpress.com**

# Politics hit OTC report

The ECON committee of the European parliament has now finalised its own initiative report on OTC derivatives regulation, written by the German MEP Werner Langen. The first draft was encouraging (*The Treasurer*, April 2010, Technical Update, page 8). It had recognised that most derivatives used by business posed no systemic risk and that therefore companies should be granted some exemptions from the need to clear transactions through a central counterparty (CCP) – and thus from the need to put up margin.

The final report bears the mark of political input encompassing all kinds of knee jerk reactions to more recent events. For example, it now calls on the European Commission to regulate the selling of naked derivatives and specifically to ban CDS transactions with no underlying credit and which are purely speculative. Their concern here is over deals connected with sovereign debts which "led to unjustified high levels of several national spreads".

However the MEPs do propose exemptions from CCP clearing and margining for deals by non-financials subject to certain thresholds to be set by the Commission.

In mid June the Commission produced its final consultation ahead of drafting legislation and has in fact included just such an exemption, for non financial companies. While this is good news as far as it goes, details remain to be clarified such as the applicability of the exemption to finance subsidiaries, to pension funds, and so on.

A separate report by the ECON committee has expressed its views on the regulation of bank capital and liquidity through Basel III and CRD IV. The rapporteur notes the corporate sector's concerns, using derivatives to hedge commercial risks, and about the possible costs of capital charges for non-centrally cleared derivatives.

The MEPs do recognise that within Europe the corporate sector is predominantly financed through bank lending, so the rules should not place the European economy and business at a competitive disadvantage. They stress the need to consider the impact on the real economy. ■

# EACT helps payments reconciliation

Identifying and reconciling incoming payments on your bank statement can be a complicated task but should be capable of automation. Within a SEPA credit transfer there is a remittance held available to carry "XML-structured remittance information" of up to 140 characters including tags or to carry "unstructured remittance" information of up to 140 characters. In order to pack as much remittance information as possible within those 140 characters, the European Association of Corporate Treasurers (EACT) has designed a standardised format and set of rules which have been accepted by the European Payments Council (EPC) and members of the End Users Coordination Committee (EUC).

The EACT rules optimise the use of space using the "unstructured mode" to accommodate six or more invoices, depending on the detail. The SEPA rules require that this information must be carried in full and without alteration right through to the beneficiary. Examples of formatting rules are:

- every "element" is preceded by a code ("tag"), placed between forward slashes. For example, CNR means customer number, DOC for document reference, TXT means free text etc;
- multiple elements can be used: the code, placed between forward slashes, must be repeated between two elements of the same kind;
- components of a compound element are separated by a forward slash followed by a space (two characters, both for readability and to allow the use of individual slashes and spaces within elements);
- elements can be specified in any order; and
- for compound elements (like invoices) a predefined sequence of components determines the meaning of the information, components being separated by a forward slash followed by a space.

Thus: /CNR/876543/DOC/894584334/DOC/894584335/ 45.56/ 20092707 means customer number 876543 is paying invoice number 894584334 as invoiced but for invoice number 894584335 dated 27-07-2009 only 45.56 is paid.

Of course a payer can still send a separate remittance advice through a different channel and use the reference field to provide the cross reference to that separate information and its location.

**Full details are available at www.corporatesepa.com/eact.html – subject to free registration.**

**Centralised supervision of credit rating agencies** is at the core of new proposals from the European Commission. The existing and relatively new CRA Regulation remains but the ESMA, the new European Securities and Markets Authority, would be made responsible for supervision and enforcement actions. Included in the proposals is the idea that an issuer of structured finance instruments should be required, subject to confidentiality conditions, to give access to the information which it has given to the CRA it hired to competing CRAs. The competing CRA could then create an unsolicited rating. This is being proposed to avoid possible conflicts of interest arising for the CRA under the issuer-pays model, which are deemed particularly virulent on the rating of structured finance instruments.

**The FRC** has updated the Combined Code and renamed it the UK Corporate Governance Code. The provisions of the Code apply to listed companies and include new elements which could prove controversial, but at least they remain subject to the "comply or explain" approach. Among the new rules it recommends that all directors of FTSE 350 companies should be put forward for re-election each year and that there should be an externally facilitated evaluation of the board at least every three years. The principles on board appointments have been extended to encourage boards to consider the benefits of diversity, including gender diversity. The main principle on internal control has been extended to cover the board's responsibility for the risks it is prepared to take in achieving its strategic objectives. The Code will apply to financial years starting from the end of June 2010.

**Changes to IAS 19** – Employee Benefits are proposed in an IASB exposure draft. The main proposal is to require immediate recognition of all gains and losses arising in defined benefit plans, banning the so-called "corridor" method. Equally controversial is the proposal to calculate the net interest component of pension expense by applying a single interest rate (the rate used to discount the obligation) to the entity's net pension asset or liability. This would be taken to finance charge whereas currently it can be in finance charge or pension expense. The ability to book the expected long term return on the pension assets to net income via finance charge or pension costs would be removed.