IN BRIEF

The Accounting Standards Board (ASB) has issued an exposure draft proposing to bring forward the implementation date for its existing FRS 26 standard *Financial Instruments: Measurement*, which is based on IAS 39 *Financial Instruments: Recognition and Measurement*. All entities other than those smaller entities applying FRSSE will need to apply FRS 26 for accounting periods commencing on or after 1 January 2007.

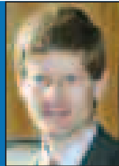
When FRS 26 was issued in 2004 it applied initially only to certain classes of entity – listed entities for accounting periods commencing on or after 1 January 2005, and entities using the fair value accounting rules in the Companies Act for accounting periods commencing on or after 1 January 2006.

Entities brought into the scope of FRS 26 will also need to comply with the disclosure requirements of FRS 25 (IAS 32) *Financial Instruments: Disclosure and Presentation*, as well as FRS 23 (IAS 21) *The Effects of Changes in Foreign Exchange Rates*, and FRS 24 (IAS 29) *Financial Reporting in Hyperinflationary Economies*.

In late April the **ASB** published a revised version of its *Financial Reporting Standard for Smaller Entities* (FRSSE). The amendments are largely based on the exposure draft published in November and will be effective for accounting periods starting on or after 1 January 2005.

The **Committee of European Securities Regulators (CESR)** has published for consultation its draft advice to the European Commission regarding its assessment of the equivalence of Generally Accepted Accounting Principles (GAAP) in the US, Canada and Japan with International Financial Reporting Standards (IFRS). This has relevance for the acceptability of accounts for prospectus and continuing obligations purposes. Its findings are that there is equivalence subject only to the need to create pro-forma adjustments for certain special purpose entities, for stock options, and Japanese merger accounting and consolidation and certain descriptive disclosures.

More technical news is available on the technical news area of the ACT website: www.treasurers.org.



INTRODUCTION

By MARTIN O'DONOVAN
ACT Technical Officer

Too much regulation or better regulation are ever present themes. Thinking back to the old days when the Bank of England was the principal regulator in the financial markets, an invitation to come in for a cup of tea might have senior executives trembling. A gentle rattling of teacups would be sufficient to set the errant firm back on course. So it is delightfully quaint to see that the fine old traditions still flourish at the modern FSA. The concept of a 'Dear CEO' letter is designed to warn the market to get its own act together and behave itself. Last month just such a letter was used to remind us all about the importance of disclosing the effects of accounting under IFRS, as we explain below. It makes one proud to be British. ■

FSA warns on IFRS

The FSA has sent a 'Dear CEO' letter to all listed companies to remind them of their obligations to notify a Regulatory Information Service about any price-sensitive information without delay. This is in the context of providing information on the impact on their 2004 financial statements from the move to IFRS accounting and the need for statements that are not misleading – for example, by covering all possible impacts, both positive and negative. The implication is that the quantified IFRS information on the 2004 accounts could be critical and in any event will need to be released on or prior to an issuer presenting its 2005 interim information under IFRS.

It is debatable whether the effects of a change in accounting conventions can ever be price-sensitive since valuations are normally derived from expected future cashflows and presumably these will not change because of new accounting standards. On the other hand, the presentation of new information, or in a new format, may reveal factors the market had not previously recognised and so genuinely be price-sensitive.

The FSA also took the opportunity to stress the importance of fully embedding IFRS into issuers' systems and processes so as to be able to provide timely and reliable information to the market on an ongoing basis. ■

The new listing rules and the Prospectus Directive

The FSA has issued what will in essence be the new listing rules from 1 July 2005. These are referred to as "near final" rules since the general election has delayed certain formalities as to parliamentary approvals. The rules have been well trailed in various consultations and are necessary to implement the Prospectus Directive.

The UK's sponsor regime is retained and the responsibilities and liability of the sponsor have been clarified, which is in line with the views that ACT expressed at an earlier stage.

Also retained is the need for a 'clean' working capital report for equity issues. The ACT had proposed a set-up where the issuer would state whether it had sufficient working capital and, if it did not, how it proposed to provide the additional working capital needed, rather than the existing requirement for full cover for all forecast cash needs for 12 months.

For issuers of debt and specialist securities, the FSA will establish a non-regulated market, to be known as the Professional Services Market (PSM). PSM issuers of both retail and larger denomination issues will still need to prepare listing particulars with content equivalent to that required for wholesale debt in the Prospectus Directive, which means that IFRS accounts are not required.

There will be small changes in who takes responsibility for prospectuses. The FSA will maintain the current approach for convertible issuers to require the issuer to take responsibility, but for non-equity retail prospectuses they will remove the need for directors to take responsibility.

The FSA has been reviewing the apparent anomaly that a company can take the drastic step of delisting without the approval of shareholders, even though such a move could be extremely detrimental to them. The FSA has also introduced a requirement for the approval of 75% of shareholders who vote before a company can delist, as argued for by the ACT. ■

Transparency Directive brings e-filing into line

The Committee of European Securities Regulators (CESR) is looking into ways of disseminating information about issuers using electronic filing and a European electronic network, as part of the implementing measure for the Transparency Directive.

The Transparency Directive was officially adopted by the EU last December although the implementation deadline is January 2007. The measures in the Directive will apply to all issuers of securities on regulated markets, although where an entity has only debt in issue the financial reporting requirements will not apply if that debt is in denominations of more than €50,000. The Transparency Directive also contains provisions on the disclosure of major shareholdings, the exercise of shareholder rights at general meetings, and, most significantly, the periodic financial reporting required.

REGULATORY FILINGS In its role of advising on implementing measures, the CESR has just reported its findings on the development of a central storage mechanism for regulated information, the setting up of a European electronic network of financial information on issuers, and electronic filing.

There are as yet no firm proposals but the CESR homes in on a number of options and recognises that the IT developments could take up to four years. The central storage system could be provided by a single mechanism or by linking multiple national mechanisms operated by the competent authority or a commercial entity. It would make sense if the eventual system could simultaneously meet the multiple requirements of the Transparency Directive for issuers to file regulatory information with their competent authority in their home member state (Article 19), to get the required information to a central depository (Article 21), and to ensure access on a pan-European basis (Article 22). Incompatibility of existing systems will be compounded by the fact that each member state can impose more stringent information requirements than those laid down in the Transparency Directive.

For the issuer a single local filing with appropriate links sounds more straightforward. However, the cost and complexity of integrating multiple systems have persuaded the CESR to head towards a single central mechanism with the issuer making multiple filings locally and centrally.

SPEEDY DISSEMINATION OF INFORMATION
As a separate requirement of the Transparency Directive issuers must inform end-users speedily and without discrimination. This should not be confused with the official mechanism for archiving and retrieval of regulated information.

Recent advice from the CESR is not proposing to mandate issuers to use service providers. Rather, the CESR says issuers should be free to disseminate regulated information in the way they consider best suited to their needs. They may disseminate regulated information themselves as long as they comply with the required standards.

The dissemination channel must also ensure that investors in different EU member states receive the same regulated information as close to simultaneously as possible and that information is not merely made available, but pushed towards investors. Accordingly, just putting the information up on the issuer's website is not considered an adequate method of dissemination, although it would be acceptable if combined with an electronic notification. The CESR would expect the dissemination to include different channels of distribution such as press agencies, newspapers with wide coverage, and websites dedicated to financial matters. Investors must not be charged by issuers any specific costs for receiving information.

DISCLOSURE OF INTERESTS The Transparency Directive obliges major shareholders to disclose their interest if they acquire or dispose of shares that take them through a 5% barrier.

Given the complexities in the market with stock lending, providing shares as collateral, contracts for differences and the like, the definition for shareholding was in need of clarification. The CESR points out that the obligation falls on shareholders (Article 9) and on those entitled to acquire, dispose of or exercise voting rights attached to shares (Article 10). The aim is to identify who is controlling the way in which voting rights are exercised.

Additionally, an accumulation, through one of the threshold levels, of financial instruments entitling a person to acquire shares can generate a disclosable interest under Article 13. Presumably, a stock loan which is both a sale and repurchase agreement could generate a notifiable disposal and notifiable acquisition by the same person. ■

IN BRIEF

The **Takeover Panel** has issued two practice statements (numbers 10 and 11) to reinforce its concern over offers lapsing because insufficient working capital is available to the enlarged group or because insufficient cash is raised by a share placing. Should this happen, it will want to investigate whether the statements made by the offeror and its financial advisor had, at the time of announcement of the offer, complied with General Principle 3 and Rule 2.5(a) – namely, that "The offeror has every reason to believe that it can and will continue to be able to implement the offer."

Likewise, in the case of an issue of new securities the offeror and its advisers will need to take all reasonable steps to satisfy themselves that the issue of the new securities will be successful.

The **European Commission** has published a Green Paper on the single market in financial services after the Financial Services Action Plan.

The Green Paper outlines its proposed approach to achieving further integration of the European financial services markets over the next five years. The focus is on making the existing regime work more effectively, although new action on asset management is flagged. Effective enforcement and cooperation between regulators is mentioned, with the implication that there may be thoughts about having a unified European financial services regulator.

Comments are invited by 1 August 2005. The final policy programme will be published as a White Paper in November 2005.

The final **Operating and Financial Review (OFR) Reporting Standard** has been released by the **Accounting Standards Board** with just modest changes from the previous exposure draft. For financial years starting after 1 April 2005 listed companies are required to produce an OFR.

Alert. The revised deadline for opting out of the "Disregard Regulations" is 30 June. The aim of these regulations is to put the tax treatment of some hedging transactions back to how they were under old UK GAAP. However it may be better for some companies to opt out so that tax follows new, rather than old, UK GAAP or IFRS. For more details see the article by Mohammed Amin in *The Treasurer*, March 2005, p27.