Financial Services and Markets Act - categorisation of investors

There has been a recent change in the rules governing the categorisation of investors. Although there is a special category of intermediate customer designed for corporates, it seems likely that most large companies will want to continue trading in the markets as full market counterparties (MCP). The transition rules are designed so that such companies will carry on as normal and automatically be treated as MCPs.

Smaller companies may, however, prefer to remain in the intermediate category where they will have some customer protections. It was envisaged that such companies could opt up to MCP by an exchange of letters between them and the bank. The banks have now persuaded the FSA that the opting up process could be held up by corporates not responding to bank notices in a timely fashion, so the FSA has agreed that opting up can be a one way process initiated by bank notice to a customer. We are concerned that some companies may not understand the implications of the notice and will be treated as MCPs when they do not have the expertise to operate in the markets without protection.

Clearly, the Association stands ready to provide advice and guidance for members trying to cope with the new regime. A brief outline of the FSA's proposals is contained in *The Treasurer's Handbook 2001,* page 34, and we intend that the next edition will contain a comprehensive review of the final provisions. Given the new timetable for implementation of the new system (November 2001), this is now looking a bit tight but achievable as long as there are no further delays. ■

Accounting for financial instruments

As you are aware, the technical committee is reviewing the international proposals for accounting for financial instruments (JWG proposals), which are far wider in application than either FAS 133 or IAS 39 (see below). A summary of the JWG proposals can be found at www.asb.org.uk/current projects. The committee would like to hear members' views on this before drafting its response.

- or will we all be using IAS 39?

Not many UK companies seem to have picked up on the announcement that the EU is proposing that all listed companies in the EU should adopt international accounting standards (IAS) by 2005. Some consultants are advising companies to start reviewing their systems requirements now. IAS 39 – *Financial Instruments: recognition and measurement*, which is now in effect, was intended only as an interim solution so what standard will be in force in Europe in 2005 is anyone's guess. ■

Amendments to ISDA master agreement

Readers may recall that the technical committee wrote to ISDA expressing their concerns over certain amendments ISDA proposes to make to the Master Agreement. ISDA seems set on its approach which seems also to have regulatory backing. Members should note, however, that all of the amendments are contained in Annexes and are therefore subject to negotiation between the parties. We hope to include guidance on this issue in *The Treasurer's Handbook 2002*. ■

Euro payments crossborder

Since the introduction of the euro there have been complaints about processing delays and the level and variability of fees for crossborder payments. The EC has produced a draft proposal requiring banks to implement new standards to improve the efficiency of euro crossborder payments within the EU & EEA from 1 January 2002. The proposal requires banks to issue payment instructions carrying the beneficiary's IBAN (International Bank Account Number) in addition to the beneficiary's bank's identification code. Most banks will be issuing IBANs to customers with euro denominated accounts during 2001. The idea is that, although IBANs will not be mandatory, their widespread use will reduce the costs of crossborder payments. Exact costs have not yet been settled by the banks but it is likely that non-use of an IBAN will attract additional fees. ■

Tax - section 20

A recent tax case between Morgan Grenfell and the Inland Revenue went to appeal on the issue of whether the Revenue could use 'section 20' to obtain sight of correspondence between a taxpayer and his adviser. The Court of Appeal came down on the side of the Revenue and refused leave to appeal to the House of Lords.

It appears that however hypothetical the advice requested from a tax adviser, it can still be deemed relevant by the Revenue and sight of it demanded. The other point to emerge from this case is that although section 20B(10) ensures that a tax adviser cannot be required to deliver up such correspondence under section 20, there is no similar protection for the taxpayer. So taxpayers should assume that any correspondence between them and their advisers will be open to view. ■

Hotline is prepared by Caroline Bradley, the Association's Technical Officer. For any comments or new items, please contact her at cbradley@treasurers.co.uk. Additional technical updates are available on the website: www.treasurers.org.