IN BRIEF

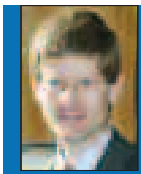
- The Financial Services Authority (FSA) has published a Policy Statement explaining the changes it has made to its rules to implement the **Market Abuse Directive,** including topics such as price sensitive information, market rumours, inside information, insider lists and research disclosure obligations. The changes come into effect on 1 July 2005.

- The Bank of England has started to publish a new **sterling effective exchange rate index (ERI)** which is a trade weighted index as before, but now taking into account services trade and a broader mix of countries. As part of the change the Bank of England 11.00 am Spot Settlement Rate fixings will be discontinued from 11 July 2005.

- The discussion of **Risk Management and Internal Control in the EU** has been further stimulated by a paper from the European accountants' association, the Fédération des Experts Compatables Européens (FEE). It favours increased transparency and a comply or explain disclosure, but is not convinced of the need for testing of effectiveness of controls. Included is a country by country summary of the risk management and internal control requirements in Europe and the US.

- The **Auditing Practices Board** (APB) is consulting on Statements of Investment Circular Reporting Standards SIR 1000 applicable to all engagements involving an investment circular, and SIR 2000 applicable to public reporting engagements on historical financial information. The new Statements take into account changes to the work of reporting accountants arising from the implementation of the Prospectus Directive and the FSA's review of the Listing Regime.

- The DTI has published a guidance note on the provisions relating to **Directors' liability** in the Companies (Audit, Investigations and Community Enterprise) Act 2004, the requirements of which came into force on 6 April 2005. The guidance covers directors' liabilities, indemnification by the company or by an associated company, liability insurance, disclosure and the liabilities of company officers other than directors, for instance officers who are not directors may be indemnified by the company even in respect of liability to the company. The guidance may be found at www.dti.gov.uk/cld/companies_audit_etc_act/N000035B.pdf



INTRODUCTION

By MARTIN O'DONOVAN
ACT Technical Officer

The burden of regulation and the inordinate number of new rules coming out from Europe is much talked about, but perhaps, in a small way, just for the moment, the tide may be turning. The relatively new European Commissioner for the Internal Markets, Charlie McCreevy, has been quite vocal in calling for less regulation or better regulation, or regulation only where there is persuasive evidence that it is necessary. It is therefore pleasing that the regulation of credit rating agencies is not being recommended (see story opposite). It is doubly pleasing since this is the stance the ACT and other treasury associations have been jointly putting forward to the authorities. Even in among the additional requirements proposed to Company Law it is worth noting that some simplifications and relaxations are included. ■

Company law reform

Several proposals for changes to company law are coming to a head at the moment, some driven by proposals to amend EU directives and others from a long running law reform process in the UK.

Changes to the 4th and 7th Company Law (Accounting) Directives will cover:

– *The establishment of collective responsibility of all board members for the accounts and key non-financial information.* This is already the case in the UK, but the changes would bring all member states into line. The responsibility of the board is to the company and not to individual shareholders.The DTI is not proposing to change this which is welcome since UK companies would not wish to find themselves open to US style class actions.

– *New disclosure requirements on off-balance sheet arrangements, including Special Purpose Entities.* These would require disclosure of "the nature and business purpose of the company's arrangements not included in the balance sheet and the financial impact on the company of those arrangements". The ACT believes that this is potentially far too wide-ranging and instead prefers the government's alternative of relying on IASs. This requirement will need to be better defined or else it could pick up any contractual arrangement.

– *New disclosure requirements on related party transactions.* This proposal is due to the abuses that occurred in the case of Parmalat and would in essence bring all companies up to IAS standards.

– *Introduction of a new corporate governance statement.* All EU companies would be required to make a statement covering internal controls, the operation of the board, and the codes they were applying, on a comply or explain basis. This would be much as already required under UK legislation.

The other area for reform is the Second Company Law Directive. Here the proposals are an interim measure and will make it easier for public companies to deal with issues of size, structure and ownership of their capital. They include:

– *Relaxation of the rules on the valuation of non-cash consideration for the allocation of shares.*

– *Relaxation of the requirements concerning acquisition of own shares by a company (buyback)* so that shareholder consents will be valid for five years and the buyback amounts will be limited to the amount of distributable reserves rather than a percentage test.

– *Relaxation of prohibition on financial assistance for the acquisition of one's own shares.* Extensive debate is expected on these ideas given that some of the proposals are fairly onerous, such as demonstrating solvency for five years forward.

– *Relaxation of procedures governing the waiving of pre-emption rights.*

– *Introduction of 'squeeze-out' and 'sell-out' rights.* A majority shareholder of a listed company (holding at least 90% of the shares) could be able to buy out the minority at a fair price with a complementary right on the minority shareholders to compel majority shareholders to buy them out.

Running in parallel with the EU initiatives there is a White Paper in the UK on Company Law Reform. This takes in a vast number of provisions covering shareholder communications and the rights of investors to vote; the codification of the duties of directors with a core duty to 'promote the success of the company for the benefit of its members as a whole' but having regard to other stakeholders such as employees and suppliers; allowing shareholders to agree to limit the auditors liability; certain capital maintenance provisions, abolishing financial assistance restrictions for private companies; and creating a new mechanism for capital reductions based on solvency tests.

The ACT will be responding to these consultations so readers' comments and input are invited to modonovan@treasurers.co.uk.

See *Cutting back on shares* p14. ■

No regulation for credit agencies

The views of the treasury organisations across Europe have been endorsed by the Commission of European Securities Regulators (CESR) in its recent advice to the European Commission that, for the moment, regulation of credit rating agencies (CRAs) is not required. CESR's view is that the new Code of Conduct Fundamentals for CRAs published internationally by International Organisation of Securities Commission (IOSCO) should be allowed time to be applied. The ACT and the French treasurers' association played an extensive part in the call for evidence by CESR and in its deliberations. We were pleased that certain of the ACT's views have found their way verbatim into the advice to the Commission.

The pressure to consider regulation of credit rating agencies stemmed from their failure to identify problems in companies like Enron, WorldCom and Parmalat, where apparently deliberate attempts were made by issuers to mislead the agencies (and the rest of the world). The ACT and AFTE in joint evidence to CESR urged that regulation would not be the best way of tackling this mischief.

What is needed is robustness on the part of rating agencies and good faith on the part of issuers – regulation cannot guarantee those qualities. Good conduct, however, is more likely if the expectation of good behaviour is widespread in the community, and the voluntary codes of conduct applicable will all help in setting the benchmarks for that conduct

The lack of cases where rating agencies have withdrawn ratings due to doubts about the issuer's good faith is disturbing, although it is recognised that agencies will need to use this sanction with the utmost caution. This said it must be stressed that most issuers do deal properly with the agencies in these matters.

A Code of Standard Practices for Participants in the Credit Rating Process (Code) has been published by the Association of Corporate Treasurers, the Association for Financial Professionals, (AFP, USA), and Association Française des Trésoriers d'Entreprises (AFTE, France) on behalf of the International Group of Treasury Associations (IGTA) and the Euro-Associations of Corporate Treasurers (EACT). The Code provides that issuers should provide information to rating agencies in good faith and that rating agencies should be seen to refuse ratings where they have concerns about completeness or reasonableness of disclosures.

Issuers have responsibilities to the CRAs which rate them. As a reminder these are set out in the extract from the Code in the box. ■

Issuer Code of Standard Practices (See technical area of www.treasurers.org for full code)

7. Issuers should commit to co-operate actively with CRAs when a rating is solicited and to providing information to CRAs that will contribute to the initial and ongoing accuracy and timeliness of solicited ratings when the CRA's rating methodology involves access to management and to confidential, non-public information.

7.1. Credit ratings and opinions are forward-looking and involve matters of judgement by the CRAs, and the credibility and reliability of these ratings and opinions are heavily dependent on an issuer's ability to provide adequate and timely information. Therefore, an issuer is responsible for providing information to CRAs that should include:

7.1.1. The issuer's business strategy;

7.1.2. The legal and management structure of the issuer and its parent company or subsidiaries, as well as its management processes;

7.1.3. The risks and opportunities of the issuer's business environment, as well as those peculiar to itself;

7.1.4. The issuer's approach to risk management and financing;

7.1.5. The issuer's financial policies;

7.1.6. Key financial data; and

7.1.7. Any other information or data that the issuer believes will help the CRAs to better understand its particular circumstances and outlook.

7.2. Issuers should provide adequate and timely information, in good faith, regarding any material change in the financial situation of the company.

7.3. Notwithstanding the requirement for full and timely communication to CRAs in 7.2, issuers should hold, at least once a year, a full review with CRAs in order to explain past performance and future prospects on a horizon relevant, in the issuer's opinion, with the nature of its business(es). In doing this, issuers should allow CRAs to access the appropriate level of management within their organisation.

7.4. Issuers should inform CRAs about any corporate actions, including public debt issuances, prior to their launch. Issuers should provide CRAs with all relevant information on these corporate actions in order to allow CRAs to issue, update or revise their opinion/rating, if any, in a timely manner.

7.5. Issuers should endeavour to address CRAs' questions and requests as quickly as possible and, in case of delayed answers, to inform CRAs accordingly.

7.6. Issuers should seek to react as quickly as practicable to communications submitted to them by a CRA prior to their public release by the CRA. While issuers should, in any case, make reasonable efforts to respond as quickly as possible, the time frame in which companies may review the text should be limited (but not less than four business hours) in order to ensure that investors receive timely information and to minimise the possibility of information leaks.

During this time, issuers should not take any pre-emptive action that would challenge or counter the release by the credit rating agency. In addition, issuers should not take advantage of the delay in the release of the rating action to the market by making any debt issuance other than the refinancing of maturing short-term debt. ■