IN BRIEF

▸ Concerns over **section 75 statutory pension debt** were eased when the Department for Work and Pensions (DWP) issued a statement on 27 September clarifying its intentions. The announcement came too late to include in last month's Technical Update, which had highlighted the original problem.

The DWP said: "Our intention with regard to that suggested change was to tackle the potential problem of scheme abandonment. But it was not the intention to affect legitimate scheme mergers or transfers, or to trigger a 'Section 75' debt when a company closes its scheme to future accruals, whilst continuing to fund the scheme."

▸ The Investment Management Association (IMA) has published an updated version of its **pension fund disclosure code**. The code is designed to promote the accountability of fund managers to their clients through increased transparency and to help pension fund trustees understand the charges and costs levied on the pension fund assets for which they are responsible.

The code also gives pension fund trustees information on how their investment managers choose between trading counterparties and trading venues, more detailed information on how the resulting commission spend is built up and the services met out of commission spend. And it provides a comparison of client-specific information on costs and trading with similar fund management firms.

The third version of the code brings it into compliance with the execution provisions of the Markets in Financial Instruments Directive. The disclosure information specified in level 1 to this code should satisfy this requirement.

▸ The FSA approach to **insider dealing** was highlighted in a recent speech by Margaret Cole, FSA Director of Enforcement. The FSA uses information from market participants to identify potential suspicious transactions and requires firms to send suspicious transaction reports to the FSA.

The FSA is focusing its efforts on: business professionals who abuse positions of trust by misusing information legitimately passed to them to perform their jobs; repeat offenders; and cases where significant benefit is gained.

The FSA has signalled its intention to impose larger financial penalties through its administrative process and Cole hinted that the FSA would be prepared to use its power to prosecute insider dealing as a criminal offence in appropriate cases.

INTRODUCTION

By Peter Matza
ACT Policy and Technical Officer

Your correspondent was on his best behaviour recently when attending the Treasury select committee hearing involving the Bank of England. While not quite the Lions vs Christians spectacle of the previous committee hearing for private equity bosses, there was enough drama to keep everyone engaged.

While some might suggest that moving the action from the floor of the House of Commons to committee chambers diminishes the art of oratory, there is no doubting that the Chair of the committee, John McFall MP, takes very seriously his work of oversight of the institutions of the financial markets. That the players in our markets are held to public account is just another of the small details that have helped London become the world's leading financial centre.

You can judge John McFall's qualities for yourselves at the forthcoming ACT conference on private equity.

Transparency on bond pricing

A recent European Commission (EC) public hearing in Brussels into how the bond market could improve access for retail investors brought together regulators, trade associations, academic and governmental practitioners. The ACT was there, but non-financial corporates were under-represented.

The appetite for direct retail investment in bonds varies widely across the EU with significant interest in Italy, Germany and Spain, but limited involvement in the UK, France and elsewhere.

Members of the audience were keen to point out the wide diversity of private investment habits across Europe. In many instances, investor demand is satisfied by mutual (unit trust-type) funds. The minor irony that the €50,000 limit in the EC's Prospectus Directive had actively limited corporate willingness to issue into retail markets was also highlighted.

However, some MEPs and retail user groups felt the industry had not done enough to provide retail investors with credible and timely post-trade information that would let them check they had received a fair trade at a fair price.

The EC had asked the Committee of European Securities Regulators (CESR) to look at the issue. Its findings were that although there was a case for additional post-trade transparency on prices and volumes dealt, there was no self-evident market failure.

CESR advised that both the Markets in Financial Instruments Directive (MiFID) and planned market initiatives should be allowed time to permeate the market before being evaluated. Other bodies agreed broadly with these findings.

The key initiatives proposed by the market come from the International Capital Market Association (ICMA) and the Securities Industry and Financial Markets Association (SIFMA).

From the first quarter of 2008, ICMA is introducing a voluntary standard of good practice to cover areas such as retail fees, language glossaries and investor access to websites. It will also start publishing on the ICMA website trade data on cash trades, initially in large investment-grade bonds (better than A-, with a minimum value of €1bn) on a free-of-charge basis. The information will include a wide variety of data on each bond.

SIFMA plans to convert its current US site (**www.investinginbonds.com**) into one appropriate for European audiences, providing investor-focused educational information in German, French, Spanish, Italian and English.

These initiatives are expected to offer private individuals (and smaller investment firms) opportunities to understand the bond markets and further participate – directly or indirectly – as active investors. ■

The ability to accept electronic payments is essential to modern business. The UK is currently Europe's largest e-commerce economy with two-thirds of consumers having shopped online. The Electronic Payments site is a good primer on what options exist, along with an impartial tool that can be used to compare the cost of UK online payment solutions according to your own business requirements. ■
www.electronic-payments.co.uk

New Companies Act comes into force

The codification of directors' duties under the Companies Act 2006 came into effect on 1 October 2007.

Previously, directors had to act in good faith in the best interests of the company. The new formulation requires a director to "act in the way that he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole". Directors must have regard to a list of factors including employees, the community and the environment.

The new rules apply to directors of all types of company.

The 2006 Act accepts some companies have purposes other than the benefit of their members.

This might allow, for example, a subsidiary to adopt wider purposes, such as the benefit of the group, which could be helpful in the context of upstream and cross-stream guarantees supporting the debt of other group companies. Currently, there is often doubt as to the corporate benefit of such guarantees, with lenders usually requiring a unanimous shareholders' resolution.

Some financings could be facilitated if a company's constitution stated one of its purposes was the benefit of the wider group. While there is no judicial authority for such an arrangement, it could prove helpful in a range of contexts. ■

Greater clarity on IAS 39 hedging

A new exposure draft from the International Accounting Standards Board (IASB) has proposed amendments to IAS 39 *Financial Instruments: Recognition and Measurement* to clarify its intentions regarding what risks can be designated as a hedged risk and when an entity may designate a portion of the cashflows of a financial instrument as a hedged item.

A financial instrument may be designated as a hedged item for either all its risks or the following specific risks: interest rates, foreign exchange (FX), credit, prepayment and the risks associated with the contractually specified cashflows of a recognised financial instrument.

In US GAAP only interest rate, FX and credit risk can be hedged.

The draft proposes that an entity may designate as a hedged item one or more of the following portions of the cashflows of a financial instrument:

- The cashflows for part of its time to maturity;
- A percentage of the instrument's cashflows;
- The cashflows associated with a one-sided risk of the instrument – for example, flows resulting from an FX rate falling below a set level;
- Any contractually specified cashflows of a financial instrument;
- The portion of the cashflows of an interest-bearing instrument that is equivalent to a financial instrument with a risk-free rate; and
- The portion of the cashflows of an interest-bearing instrument that is equivalent to an instrument with a quoted fixed or variable inter-bank rate (for example, Libor).

Although the IASB is undertaking research that will ultimately lead to the replacement of IAS 39, that work is at an early stage. The IASB therefore decided to propose the amendments to provide additional guidance without significantly changing existing practice. While the board is deliberately not seeking comments on other contentious areas in the standard, its clarification is welcome.

The ACT will be responding to the consultation and welcomes feedback from readers to help inform our response. Initial thoughts are that drafting ever increasing lists of individual risks is bound to end up excluding valid hedges and is an example of the board's tendency to veer towards rules-based standards rather than finding a general principle that leaves some discretion for interpretation.

There is also no attempt to extend to non-financial instruments the concept of taking only a portion of the cashflows as the item being hedged. As drafted, the ability just to look at portions applies only to financial instruments. ■

US regulators reach accord on Basel II

Over the summer, US bank regulators finally reached agreement on the implementation of the Basel II capital rules, which will bring the regime for large US banks more in line with that already adopted in Europe.

The big US banks will still implement the rules more slowly than in Europe, which started running the new standards in January. They will also have to comply with the leverage ratio (the US sets a strict floor on capital as a proportion of assets).

The regulators agreed to publish a study of the new framework in 2011 and, if "material deficiencies" were found, change the regulations before banks moved to full adoption.

IN BRIEF

▸ The list of **frequently asked questions on prospectuses** has been updated on the Committee of European Securities Regulators (CESR) website. New points covered include incorporation by reference, responsibility statements and pro forma information.

▸ The concept of **one share one vote for shareholders** does not warrant EU action, according to European Commissioner Charlie McCreevy. He had previously backed the idea but the EC has now decided there is no apparent causal link between proportional voting rights for shareholders and improved performance at companies.

In earlier submissions to the EC, the ACT position was that special voting rights were inequitable and in the interests of good governance should be discouraged. However, we did not support any legal changes, preferring instead to support improved practices through normal market pressures and developments.

▸ **The securities lending code of best practice** produced by the International Corporate Governance Network (ICGN) has been revised and reissued on its website.

The ICGN believes that, given the availability of market instruments that separate economic ownership from control, companies and the broader market should be able to track significant divergence of voting power from declared economic ownership. It further proposes that the relevant market authorities should consider amending their disclosure regimes accordingly.

▸ A **code of conduct for hedge funds** has been proposed by a working group of 14 leading fund managers with the support of a further 34. The group is consulting on best practice for the industry and improved transparency.

The code covers standards for valuation of complex instruments, risk management processes that can withstand unexpected events and stresses, and fund management. On activism, it recommends regulators require all investors to disclose their interest in companies through holding derivatives such as contracts for differences (CFDs). Managers should also develop proxy voting policies and not vote where they have no underlying economic interest in a company. This latter area is shortly to be the subject of an FSA consultation.

The ACT has advocated disclosure of significant stakes in a company via CFDs, so this move by the hedge fund industry is welcome.