IN BRIEF

The Independent Commission on Banking has published an issues paper and invited comments on structural and related non-structural reforms to the UK banking sector designed to promote financial stability and competition. The options put forward consider the structure of banks, including the separation of retail and investment banking, narrow banking and limited purpose banking, limits on proprietary trading and investing, structural separability (including living wills and resolution schemes), contingent capital and structure-related surcharges. The options put forward for the structure of markets include measures to reduce market concentration and to reform market infrastructure.

The September edition of Market Watch from the FSA deals exclusively with leaks of inside information. The FSA has been investigating and reviewing potential disclosures of inside information to the media ahead of announcements and has now made best practice recommendations. This reinforces the FSA's determination to ensure that regulated/unregulated firms and issuers that handle inside information have strong systems and controls to ensure confidentiality, and reduce the risk that inside information they hold is improperly disclosed contrary to the market abuse regime.

The International Money Market Funds Association has published a series of investor Insights to provide useful information to investors on key matters which influence investment decisions. This series of one-page documents currently covers selecting a money market fund, comparing CNAV and VNAV funds, managing and mitigating credit risk, and investing in an IMMFA money market fund. All are available at **www.immfa.org**

New taxation of the financial sector with a two-pronged approach is set out in a European Commission communication. A financial transactions tax is envisaged as working at the global level, with every transaction involving a financial instrument being taxed on the basis of its transaction value. A financial activities tax would target the profits of, and remuneration paid by, financial sector companies and is intended to apply at EU level. This idea is progressing through the ECOFIN Council and will eventually go to the G20 summit in November.

INTRODUCTION

By Martin O'Donovan
ACT assistant director, policy and technical

Different companies have different definitions of what functions treasury encompasses. The definitions range from a narrow view that treasury equals cash management, through to the widest interpretation, taking in financial strategy, corporate finance, risk and the whole gamut. When the ACT policy and technical section reviews proposed changes to financial regulation, accounting, insolvency, company law, regulatory structures or whatever, it has to be selective, picking up on only those changes most relevant to treasury and mindful of our resources. Those resources have just been enhanced by Michelle Price joining our small team. She was a director in the corporate treasury consulting practice of Deloitte and with her help we hope to extend the boundaries of what we can monitor and influence.

Hedge accounting proposals imminent

The long awaited exposure draft on hedge accounting is expected this month with the final standard expected in the second quarter of 2011. Below are highlighted the three key changes relating to hedged items together with the IASB's tentative decisions.

Hedged items, net positions
IAS 39 currently prohibits hedging a net position; the International Accounting Standards Board (IASB) is developing a model to permit it. In some cases, the gains or losses arising from net hedges are to be presented in a separate line item in the profit and loss.

Hedged items, derivatives as hedged items
Under the proposals, derivatives can be designated as hedged items when the hedged exposure is a combination of a derivative and a non-derivative. The IASB has recognised that corporate treasurers are economically required to enter into transactions that can create commodity price, interest rate and foreign exchange risks.

Hedged items, contractually specified risk components
Currently IAS 39 restricts eligible risk components to separately identifiable and reliably measurable risk components of financial items (and foreign currency risk for non-financial items). For example, a company with a fixed rate loan can bifurcate and hedge the reference rate separately. The IASB has tentatively agreed that a contractually specified risk component can be designated as the hedged item, whether it is the component of a financial or a non-financial item. For example, inflation risk could be hedged where an operating lease had a contractually specified inflation price link. Where the risk is not specified in the contract, no conclusion has yet been reached by the IASB.

The exposure draft will cover effectiveness and ineffectiveness, and the mechanics of fair value hedges. For the IFRS hedge accounting project, visit **bit.ly/920yt8** ■

See The Long Trek to IFRS 9, page 17
See Net the Benefits, page 34

IAS Plus
With all that is currently going on with accounting standards it can be difficult to keep up with the latest news and analysis. Through IAS Plus and its resources section you can find notes on all the IASB board meetings very soon after they take place. Its record often seems to give more detail than the official IASB reports, and there is lots more accounting news as well. **www.iasplus.com**

Your agreement needed for payment opt-outs

It is now a year since the Payment Services Regulations 2009 came into force in the UK, implementing the EU Payment Services Directive. At the time the ACT drew members' attention to the corporate opt-outs (The Treasurer, October 2009, page 9).

The regulations give customers all manner of protection. The bank, rather than the customer, for example, is responsible for unauthorised transactions. However, a bank can opt out of these protections for corporate customers, subject to the agreement of the customer.

The small print of your payment provider's standard terms and conditions may well be presented as standard and non-negotiable, but it's still worth reading them carefully to see if any improvements can be agreed. Importantly, if your payment provider is disapplying some the benefits of the regulations for your company, it must explain what elements are being disapplied.

The Financial Services Authority has published guidance for payment providers. At section 8.35, and in similar vein at 8.78, it says: "For some customers, as detailed below, different arrangements may be made by agreement. It is important to note that the PSRs (the regulations) provide that the agreement may be that 'any or all of the provisions do not apply'. In our view, for the customer to 'agree' it must be made clear to them which provisions are being disapplied."

Section 8.37 of the guidance specifies how the information should be supplied. Broadly speaking, it must be clear and comprehensible on paper or in some other easily accessible form.

In essence, the FSA's guidance says that any action a bank takes to opt out your company from payment services protection should be open and, since your agreement is being sought, presumably subject to negotiation. The ACT hears from members that all too often the banks seem to be unaware of the guidance, so quoting chapter and verse may help in negotiations. ■

For the FSA's guidance for payment providers, go to bit.ly/aUA7mJ

Borrowers start to return to health

The debate continues as to whether the banks are lending sufficiently to SMEs or whether demand for loans is down, but as a whole across the EMEA region borrowers seem to be faring reasonably well, based on the information in several recent reports from ratings agency Moody's.

The agency's special comment "Liquidity of EMEA corporate issuers" reports that debt markets have been open for both investment-grade and speculative-grade issuers. Combined with strengthened cashflows, it means that 86% of corporate borrowers rated B3 and above demonstrate sufficient liquidity to cover the next 12 months' worth of debt maturities compared with 83% in September 2009.

Moody's expects only 20% of speculative-grade issuers will be exposed to tight or restrictive covenants (meaning less than 20% headroom) compared with 38% back in the third quarter of 2009.

The issuer-weighted global speculative-grade default rate for Q3 finished at just 4.0%, compared with 6.2% in Q2 and 13.2% in Q3 2009. Moody's forecasting model predicts that global default rates will fall to 2.7% in Q4 and to 2.0% by Q3 2011.

Looking forward to the years around 2013 there have been widespread concerns over the wall of refinancing coming up. Looking at the $502bn (equivalent) of bank and bond debt held by rated EMEA speculative-grade companies that matures from 2011 onwards, Moody's expects that the high-yield markets together with bank funding should be able to meet the near-term financing needs. For issuers with maturities in 2013 and beyond there could be some pressures.

Moody's has now reviewed the trend for covenant-lite high-yield bonds issued between 2008 and 2010. For this purpose covenant lite means bonds that lack one or both of the critical debt incurrence or restricted payments covenants. These covenants limit leverage and cash leakage or investments in riskier assets respectively.

Between 2008 and 2010 79% of Ba1 bonds, 44% of Ba2 bonds and 24% of Ba3 bonds were covenant lite. For Ba issuers, covenant lite has become much more prevalent since 2008.

IN BRIEF

New guidance on corporate risk oversight has been issued by the International Corporate Governance Network, a membership organisation drawn largely from institutional investors that aims to raise corporate governance standards worldwide. It sets guidance for the internal board and company process on corporate risk oversight including an enterprise-wide view of risk; on investor responsibility in the context of corporate risk oversight and the dialogue with shareholders; and on board and company information and disclosures of the risk oversight process. The guidance recognises that the board has responsibility for setting the risk appetite and policy and implementing the latter, with investors taking an oversight responsibility in the sense of monitoring the effectiveness of boards.

MEPs have passed a resolution supporting the direction of Basel III while calling for attention to be given to its cumulative impact on banks. They also resolved that the European Commission should produce a comprehensive assessment of the consequences of the new standards on the real economy, and that differing corporate financing needs across different countries should be taken into account since a one-size-fits-all approach could stifle economic recovery. This is a significant move since proposals to give legal effect to the Basel standard must be approved by the parliament as co-legislator with the Council.

The ACT has broadly welcomed proposals for a restructuring moratorium made by the Insolvency Service. The conditions to be satisfied prior to the courts approving the three-month breathing space are restrictive, so the occasions when the moratorium could be invoked will be limited to companies where survival is reasonably likely.

The ACT has responded to the Treasury's proposals for reform of the UK financial regulation framework, the responsibility for which is currently split between the FSA, Bank of England and the Treasury. The ACT has expressed dismay at the proposal to move the UK Listing Authority into the Financial Reporting Council and has concerns over the precise objectives and governance of the new regulatory bodies being proposed, and the consequences for the UK voice within Europe.