IN BRIEF

The ACT has published its borrower's guide to the Loan Market Association (LMA) facilities agreement for leveraged transactions on the ACT website (see page 38). Like the ACT's guide to the LMA documentation for investment-grade borrowers, the new guide explains the LMA's standard agreement in great detail. It flags those clauses where a borrower may want to negotiate improved terms, giving the rationale to support the case. Even borrowers who are not engaged in a leveraged transaction will benefit from the guide since there can be a cross-over of terms into other loan agreements for deals that are not leveraged.

The SEC is to amend disclosure requirements for foreign companies. The rule changes will be put through to make foreign companies' disclosures available to US investors more quickly, without cost, and in English. After a transitional period, foreign reporting companies will be required to file their annual reports with the SEC two months earlier (within four rather than six months of the end of the financial year). Foreign companies without SEC-registered securities will need to give investors instant electronic access to foreign company disclosure documents on the internet (in English) rather than submit paper disclosures.

The SEC has unveiled an interactive company data system which will eventually replace the EDGAR system that stores all SEC company filings. The new system is called IDEA, short for Interactive Data Electronic Applications.

Currently, most SEC filings are available only in government-prescribed forms through EDGAR. Investors looking for information must sift through one form at a time; a painstaking task. With IDEA, investors will be able instantly to collate information from thousands of companies and forms, and create their own tailored reports and analysis.

The SEC has formally proposed requiring US companies to provide financial information using interactive data, beginning as early as next year.

Interactive data relies on computer tags that identify individual items in a company's financial disclosures. With every number on an income statement or balance sheet individually labelled, information about thousands of companies held on thousands of forms could be easily searched on the internet, downloaded into spreadsheets, reorganised in databases, and put to any number of other comparative and analytical uses by investors, analysts, journalists and financial intermediaries.

INTRODUCTION

By Martin O'Donovan
ACT Assistant Director, Policy and Technical

Risk management and counterparty risk in particular has been top of the list of issues for many months now. Unfortunately, the markets have moved on and the priority now must be to do some thinking ahead of time as to how to deal with a counterparty failure and the administration and legal processes that might come into play.

The influence of contagion from the US markets is clear to see, but I assure you that it is pure coincidence that many of the technical news items that appear here this month are from the SEC.

Treasurers attack EU plans to regulate rating agencies

Within days of closing his consultation on the regulation of credit rating agencies, the European commissioner for internal markets, Charlie McCreevy, has said he intends to propose a legally binding registration and external oversight regime in October, with European regulators supervising the agencies' policies and procedures. The proposals will also cover reform of the corporate and internal governance of agencies.

McCreevy made the announcement in the face of opposition from all sides of the market. Critics said there could not have been time to analyse the responses properly, and that in any case the normal process of an impact assessment prior to regulation had still not been undertaken.

Treasurers from across Europe came together through the European Associations of Corporate Treasurers (EACT) to warn McCreevy of the threat to competition and innovation and the likelihood of higher costs if the proposed credit rating agency regulation goes ahead. Their preference is to continue with the voluntary approach of adherence to the internationally agreed IOSCO code of conduct for credit rating agencies.

The ACT supported the EACT's key arguments:

- Credit ratings in the more traditional sovereign and corporate sectors have not been a problem. Problems have arisen in relation to structured finance instruments and from some users' misunderstanding of what credit ratings are.
- The proposals take a narrow view of ratings, and fail to recognise the variety in size, type, outputs and methods of credit rating agency.
- Given the global nature of many financial markets, issuers and investors, the proposals pay insufficient attention to wider international aspects and extra-territorial effects.
- The European Commission should consider more fully the consequences of its proposals.

EACT chairman Olivier Brissaud said: "Our members are concerned that the proposed directive would increase the cost of capital for EU-based companies. Rather than limited, principles-based regulation, the draft is often more like attempted micro-management. It risks raising costs, freezing competition and stopping innovation in credit ratings services."

Rather than relying on competition, confidence and reputation to create a self-regulating environment, the proposed regulation majors on inappropriate and fruitless detail. For example:

- It bans people involved in providing the rating service from serving a particular client for more than four years. Yet much of a rating's added value comes from the depth of experience of analysts and review committees.
- It insists that non-executives at the agencies must be experienced in credit ratings and modelling sensitivities and that their remuneration is not linked to the agency's growth in earnings. But it can be good to have non-execs with a broad range of commercial skills, rather than pure product specialists.
- Another requirement tries to make the agencies verify as well as analyse the information they are provided with about rated parties. But this would radically change the cost structure of the industry; analysts making a judgement would become auditors conducting detailed testing.

The credit agencies themselves realise that some form of enhanced accountability is inevitable but for the moment the need to be seen to be doing something is driving the politicians. Far more straightforward, flexible and effective would be a comply-or-explain setup linked to a slightly refined IOSCO code.

See A Common Language, page 22, and The Ratings Alphabet (page 30, September issue of The Treasurer) ■

SEPA direct debit fee approved

The European Commission and the European Central Bank (ECB) are keen to encourage the European Payments Council (EPC) and the banking community to move ahead with the launch of pan-European direct debits. The introduction of this high-profile and entirely new element of Single Euro Payment Area (SEPA) schemes is planned for November 2009.

With this in mind, the Commission and the Bank have made a major concession and are to allow the concept of a multilateral interchange fee for cross-border direct debits within the framework of the SEPA scheme on condition that such fees are objectively justified and transitional (applicable only for a limited period).

The competition commissioner Neelie Kroes said: "It may prove necessary to have a multilateral interchange fee for cross-border SEPA direct debits in the very initial stage. But we will have to be convinced that these fees will be strictly limited in time and objectively justified; i.e. are not aimed at providing additional profits to banks."

For SEPA direct debit to take off, the EPC believes the right incentives must be in place. In particular, banking communities where an interchange fee for national transactions exists could be allowed to apply this fee temporarily at national level for SEPA direct debit transactions too.

At the end of the transitional phase there would no longer be any transaction-based multilateral interchange fee, neither at the national nor the cross-border level for SEPA direct debits or national direct debits. This would ensure the necessary level playing-field in the national context for the SEPA direct debit scheme and the national legacy direct debit schemes. ■

Revisions proposed for going concerns

A going concern statement is required under the UK listing rules, which must be prepared in accordance with "Going Concern and Financial Reporting: Guidance for Directors of Listed Companies Registered in the UK", published in November 1994. The Financial Reporting Council (FRC) is now proposing revisions to this guidance in light of the current economic climate. It also serves as a timely reminder to treasurers that they need to be involved in the forecasts and assessments, including the new specific detail that directors should "use sensitivity analysis to assess whether the headroom, between cash requirements and facilities available is sufficient".

Directors are reminded of the many cross-links between the requirements of accounting standards, law and sensible planning. The going concern verification must link to IFRS 7 on the risks faced and the management of those risks, to the IASB framework on going concern assumption, and to a similar concept in the Companies Act. IAS 36 on impairment of assets may be relevant and, in the extreme, IAS 1 on disclosures if there is doubt about the company's ability to continue as a going concern.

The FRC guidance contains an appendix covering suggested procedures and considerations for directors, taking in budgets and forecasts, borrowing requirements, liability management, contingent liabilities, financial risk management and financial adaptability.

Stanford Business School offers free access to a selection of articles giving research and analysis in various fields of business and finance.

It's an eclectic mix of stuff, from the high-powered and serious to the rather lighter behavioural sciences. Recent titles range from "How dividends encourage consumer spending" to topics such as "How much will we pay for a year of life?" or "Measuring wine by its price tag".

You can sign up for a monthly email too at: **www.gsb.stanford.edu/news/knowledgebase.html**

Pre-emption changes

The statement of principles on the disapplication of pre-emption rights has been updated by the Pre-Emption Group. Changes include:

- a clarification that convertible instruments are to be counted within the guideline levels and when authority to issue the instruments is sought, not when they are converted; and
- authorities for non pre-emptive issues should be granted for no more than 15 months or until the next AGM, whichever is shorter.

Shareholder consents are required to issue shares other than to existing shareholders. Consents above 5% pa or 7.5% on a rolling three-year basis may be requested, but will require good explanations and justifications.

The ACT supports the guidelines. ■

IN BRIEF

The SEC has released a roadmap towards adoption of IFRS, issuing proposals for public comment. The proposals set out several milestones that could lead to the use of IFRS by US issuers in their filings with the SEC, with a decision being made in 2011.

Two-thirds of US investors own securities issued by foreign companies that report their financial information using IFRS. SEC chairman Christopher Cox said: "An international language of disclosure and transparency is a goal worth pursuing on behalf of investors who seek comparable financial information to make well-informed investment decisions."

Under anti-money laundering laws, trust or company service providers (TCSPs) that provide their services "by way of business" must comply with certain requirements, including registering with HM Revenue and Customs (HMRC). HMRC has published revised guidance on who needs to register as a TCSP, explaining that occupational pension scheme trustees are generally excluded from the need to register.

The materiality concept in accounting is explained in guidance issued by the Institute of Chartered Accountants in England and Wales (ICAEW). The guidance is for preparers of financial statements and is intended to help with the practical application of the definitions and explanations of materiality.

An amendment to IAS 39 on eligible hedged items was issued by the IASB on 31 July, and is effective retrospectively for annual periods beginning on or after 1 July 2009. This amendment differs from the exposure draft in September 2007, which included wider aspects of hedged risk and when an entity may designate a portion of the cashflows of a financial instrument as a hedged item (see The Treasurer, November 2007, page 9). After considering the responses to the exposure draft, the IASB decided to focus on two situations:

- the designation of a one-sided risk in a hedged item
- the designation of inflation in particular situations

It added application guidance to show how to apply the principles underlying hedge accounting. It will not be allowable to include the time value of a purchased option in a hedged item, nor to separate the inflation element out of a fixed rate of interest. If inflation is separately specified in a contract, it may be designated as a hedged risk or a portion of a financial instrument.