

**INTERNATIONAL FINANCIAL REPORTING STANDARDS - JOINT STATEMENT  
ISSUED BY THE LOAN MARKET ASSOCIATION AND THE ASSOCIATION OF  
CORPORATE TREASURERS**

**13 SEPTEMBER 2004**

For financing periods commencing on or after 1 January 2005 most publicly traded companies governed by the law of a European Union member state must prepare their consolidated financial statements in conformity with adopted International Financial Reporting Standards ("**IFRS**").

The Loan Market Association ("**LMA**") and The Association of Corporate Treasurers ("**ACT**") recognise the challenges faced by their respective members in ensuring a successful transition to IFRS. It is essential that market participants gain an early understanding of the differences between IFRS and the accounting standards currently in place so those areas of their organisation, systems and businesses that need to change can be identified. The LMA and the ACT will continue to monitor whether they can assist in this process.

It is recommended that loan market participants begin to consider any changes required to the formulation of financial covenants and any other term of a facility agreement that refers to amounts derived from an obligor's accounts (such as the calculation of the margin and certain mandatory prepayment events) as a result of IFRS. It may be that certain of these financial covenants and other terms in existing deals require amendment.

However, each of the LMA recommended forms of Facility Agreements has always contained an option for the inclusion of a "frozen GAAP" provision. We attach a copy of the relevant clause as Schedule 1. If included, this provision requires that obligors ensure that all financial statements apply the same GAAP and accounting practices as used in the preparation of the financial statements delivered at the time the facility agreement is signed or, if there has been a change in GAAP or accounting practices, the agent is entitled to receive information enabling there to be a comparison back to the original GAAP and accounting practices. This provides comfort to parties during the conversion period as it will mean that it is still possible to test financial covenants formulated prior to conversion to IFRS. However it does place a burden on obligors to provide the relevant information and so is not a long term solution. Similar provisions are contained in other forms of facility agreement used in the market.

It is recommended that loan market participants check their existing facility agreements to see:

- if the references to amounts taken from the obligors' accounts are affected by the introduction of IFRS and, if so, whether those references will need to be amended
- if there is a "frozen GAAP" provision and, if so, whether it is practicable to provide to the agent the information which will be necessary once IFRS applies to the obligors' accounts.

As regards new transactions, parties should consider the inclusion of a "frozen GAAP" provisions in their facility agreement. In addition, we attach at Schedule 2 a new clause that loan market participants may wish to consider relating to a requirement for parties to negotiate in good faith changes that may be required to any term of a facility agreement as a result of a change in GAAP.

Tim Ritchie  
*Chairman*  
Loan Market Association

Richard Raeburn  
*Chief Executive*  
The Association of Corporate Treasurers

**SCHEDULE 1**  
**"FROZEN GAAP" CLAUSE**

The following provision appears at Clause 20.3(c) of the LMA recommended form of Multi-currency Term and Revolving Facilities Agreement (MTR 04) and in each of the other recommended form of Facility Agreements.

"The Company shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 20.1(*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:

- (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
- (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 21 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared."

## SCHEDULE 2

### SUGGESTED CLAUSE FOR INSERTION IN FACILITY AGREEMENTS

"If the Company notifies the Agent of a change in accordance with paragraph (b)<sup>1</sup> of Clause 20.3 (*Requirements as to financial statements*) the Company and the Agent shall enter into negotiations in good faith with a view to agreeing any amendments to this Agreement which are necessary as a result of the change. To the extent practicable these amendments will be such as to ensure that the change does not result in any material alteration in the commercial effect of the obligations in this Agreement. If any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms."

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<sup>1</sup> Please note this provision is only to be included if the "frozen GAAP" clause is included. The "frozen GAAP" clause is an optional provision in the LMA Facility Agreement appearing at Clause 20.3 (c) - however, if parties choose to include the "frozen GAAP" provision, paragraph (b) of Clause 20.3 should be deleted and the "frozen GAAP" clause becomes paragraph (b) of Clause 20.3.