

**THE CITY OF LONDON LAW SOCIETY**

**COMPANY LAW SUB-COMMITTEE**

**Agenda for the 233<sup>rd</sup> meeting  
at 9.00 a.m. on 1 April, 2008  
at Slaughter and May, One Bunhill Row, EC1Y 8YY  
(Tel: 020 7600 1200; Fax: 020 7090 5000)**

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1. Apologies for absence

2. Approval of minutes of 232nd meeting

3. Matters arising:

**3.1 Companies Act 2006:**

(A) See Appendix

(B) E-communications and interaction with the Listing Rules: Is an e-communications letter to shareholders a circular?

Vanessa Knapp email of 14 March 2008: sent separately

[http://www.fsa.gov.uk/pubs/ukla/list\\_nov07.pdf](http://www.fsa.gov.uk/pubs/ukla/list_nov07.pdf)

**3.2 Financial assistance**

Draft joint memorandum of the Financial Law and Company Law Sub-Committees of the City of London Law Society on the implications for leveraged transactions of the repeal of the statutory prohibition of financial assistance: sent separately

**3.3 Auditor liability limitation agreements – update by the Chairman**

(A) CLLSCLSC draft submission to FRC consultation: sent separately

(B) Law Society response: sent separately

(C) ABI response: sent separately

**3.4 Future of the UK Listing regime - update by Lucy Fergusson**

CLLSCLSC draft submission on DP08/01: see separate pdf

**3.5 Transparency Directive**

(A) European Parliament issues draft directive proposing minor changes to Transparency Directive:

<http://register.consilium.europa.eu/pdf/en/07/st03/st03670-re01.en07.pdf>

- (B) CESR publishes a feedback statement on proposed level 3 work:  
<http://www.cesr-eu.org/popup2.php?id=4965>

### 3.6 Prospectus Directive

European Parliament issues draft directive proposing minor changes to Prospective Directive:

<http://register.consilium.europa.eu/pdf/en/07/st03/st03676-re01.en07.pdf>

### 3.7 Market Abuse

- (A) European Parliament issues draft directive proposing minor changes to Market Abuse Directive:

<http://register.consilium.europa.eu/pdf/en/07/st03/st03674-re01.en07.pdf>

- (B) HM Treasury launches consultation on market abuse regime:

[http://www.hm-treasury.gov.uk/media/3/2/consult\\_fsmamarket\\_abuse070208.pdf](http://www.hm-treasury.gov.uk/media/3/2/consult_fsmamarket_abuse070208.pdf)

- (C) European Securities Markets Expert Group (ESME) issues report on competent authority pertaining to issuers of regulated information:

[http://ec.europa.eu/internal\\_market/securities/docs/esme/05032008\\_ca\\_report\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/esme/05032008_ca_report_en.pdf)

### 3.8 Shareholder Voting Rights

Summary of conclusions of the meeting of the OECD's Steering Group on Corporate Governance:

[http://www.oecd.org/document/32/0,3343,en\\_2649\\_37439\\_39671008\\_1\\_1\\_1\\_37439,00.html](http://www.oecd.org/document/32/0,3343,en_2649_37439_39671008_1_1_1_37439,00.html)

### 3.9 Contracts for Difference

ISDA proposed safe harbour wording for disclosure of cash-settled derivatives published: sent separately

### 3.10 Second Company Law Directive possible amendments

- (A) KPMG feasibility study:

[http://ec.europa.eu/internal\\_market/company/docs/capital/feasibility/study\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/capital/feasibility/study_en.pdf)

- (B) European Commission response:

[http://ec.europa.eu/internal\\_market/company/docs/capital/feasibility/market-position\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/capital/feasibility/market-position_en.pdf)

#### 4. Discussions

##### 4.1 Directors' conflicts of interest: discussion led by the Chairman

- (A) GC 100 guidance: <http://www.practicallaw.com/8-380-1895>
- (B) Conflict topics discussed by Law Society working group on 12 March 2008: sent separately

##### 4.2 Rule 2 of the Takeover Code

Takeover Panel Executive Practice Statement No. 20: see item 5.4(C)

#### 5. Current problems and recent developments

##### 5.1 Company law and legislation

- (A) Association of British Insurers and National Association of Pension Funds update joint statement on best practice on executive contracts and severance - first update since December 2003:  
<http://www.ivis.co.uk/ExecutiveContractsAndSeverance.aspx>
- (B) Smith Guidance on Audit Committees - FRC consultation:  
<http://www.frc.org.uk/images/uploaded/documents/Consultation%20on%20proposed%20changes%20to%20Smith%20Guidance.pdf>
- (C) Hedge Fund Standards - Final Report published by Hedge Fund Working Group:  
<http://www.pellin.co.uk/HFWG/HFWG-FINAL-REPORT.pdf>

##### 5.2 Listing Rules, DTRs and Prospectus Rules

- (A) FSA Handbook Notice 72 with minor amendments to Listing Rules and Prospectus Rules published:  
[http://fsahandbook.info/FSA/handbook/LI/2008/2008\\_1.pdf](http://fsahandbook.info/FSA/handbook/LI/2008/2008_1.pdf)  
[http://fsahandbook.info/FSA/handbook/LI/2008/2008\\_2.pdf](http://fsahandbook.info/FSA/handbook/LI/2008/2008_2.pdf)  
[http://www.opsi.gov.uk/si/si2007/uksi\\_20072194\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20072194_en_1)
- (B) Updated AIC guidance on the requirements of the Listing Rules for the disclosure of investment policies by investment companies published:  
<http://www.theaic.co.uk/files/technical/updatedguidance220208.pdf>
- (C) FSA update on disclosure and financial reporting by listed companies in the current financial climate published:  
[http://www.fsa.gov.uk/pubs/ukla/list\\_feb08.pdf](http://www.fsa.gov.uk/pubs/ukla/list_feb08.pdf)
- (D) Updated UKLA Factsheet on passporting prospectuses published:  
<http://www.fsa.gov.uk/pubs/ukla/factsheet4.pdf>

- (E) Rulebook published by London Stock Exchange after review in light of MiFID and new TradElect trading system:  
<http://www.londonstockexchange.com/NR/rdonlyres/09AD3C0D-E398-4FFC-9945-5D941DE4EE36/0/RulesoftheLondonStockExchangepublishedeffective25February2008.pdf>
- (F) FSA sponsor regime targeted review:  
[http://www.fsa.gov.uk/pubs/cp/cp08\\_05.pdf](http://www.fsa.gov.uk/pubs/cp/cp08_05.pdf)
- (G) List! 18 published:  
[http://www.fsa.gov.uk/pubs/ukla/list\\_mar08.pdf](http://www.fsa.gov.uk/pubs/ukla/list_mar08.pdf)
- (H) Draft Consumer Protection from Unfair Trading Regulations 2008 and draft Business Protection from Misleading Marketing Regulations 2008 – impact on prospectuses?:  
  
CPUTRs:  
[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110811574\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110811574_en.pdf)  
  
BPMMRs:  
[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110811475\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110811475_en.pdf)  
  
Explanatory Memorandum:  
[http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem\\_9780110811574\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110811574_en.pdf)

### 5.3 FSMA/FSA

- (A) FSA publishes commentary on systems and controls, in light of Société Générale ‘rogue trader’:  
[http://www.fsa.gov.uk/pubs/newsletters/mw\\_newsletter25.pdf](http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter25.pdf)
- (B) FSA investigation into trading in UK financial shares:  
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/026.shtml>

### 5.4 Mergers and acquisitions (public)

- (A) Competition Commission launches review of merger guidelines and merger remedies:  
[http://www.competition-commission.org.uk/rep\\_pub/rules\\_and\\_guide/index.htm](http://www.competition-commission.org.uk/rep_pub/rules_and_guide/index.htm)  
[http://www.competition-commission.org.uk/rep\\_pub/rules\\_and\\_guide/pdf/cc8.pdf](http://www.competition-commission.org.uk/rep_pub/rules_and_guide/pdf/cc8.pdf)
- (B) Takeover Panel (Code Committee) issues Public Consultation Paper on Competition Reference Periods:  
<http://www.thetakeoverpanel.org.uk/new/consultation/DATA/PCP200801.pdf>
- (C) Takeover Panel Executive issues new Practice Statements No.20 and No.21 and makes (non-material) amendments to Practice Statement No. 12 (Rule 9

and the interests in shares of clients whose funds are managed on a discretionary basis):

<http://www.thetakeoverpanel.org.uk/new/statements/DATA/2008/2008-11.pdf>

## 5.5 EU/overseas law and practice

- (A) Commission launches consultation on European Small Business Act:  
[http://ec.europa.eu/enterprise/entrepreneurship/sba\\_en.htm](http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm)
- (B) Securities and Exchange Commission (SEC) proposals to accelerate timing of Form 20-F filed by foreign private issuers from six months to 90 days after the issuer's financial year end:  
<http://www.sec.gov/news/press/2008/2008-20.htm>
- (C) SEC publishes proposed amendments to Rule 12g3-2(b) which provides an exemption from the registration requirements of the Exchange Act for certain non-U.S. issuers:  
<http://www.sec.gov/rules/proposed/2008/34-57350.pdf>

## 5.6 Accounting

- (A) EC Commission publishes draft decision on transitional period for audit activities of certain third country auditors:  
[http://ec.europa.eu/internal\\_market/auditing/docs/relations/17\\_01\\_08\\_en.pdf](http://ec.europa.eu/internal_market/auditing/docs/relations/17_01_08_en.pdf)
- (B) Auditing Practices Board (APB) issues Bulletin 2008/2 containing revised guidance regarding preliminary announcements of results:  
<http://www.frc.org.uk/images/uploaded/documents/Bulletin%202008-02.pdf>
- (C) ICAEW publishes consolidated guidance on realised and distributable profits under the Companies Act 1985 (Tech 01/08):  
<http://www.icaew.com>
- (D) Auditing Practice Board issues SIR 5000 'Investment Reporting Standards applicable to Public Reporting Engagements on financial information reconciliations under the Listing Rules:  
<http://www.frc.org.uk/images/uploaded/documents/SIR5000%20weboptimised.pdf>  
[http://www.frc.org.uk/images/uploaded/documents/Feedback%20document%20SIR%205000%20\\_2\\_.pdf](http://www.frc.org.uk/images/uploaded/documents/Feedback%20document%20SIR%205000%20_2_.pdf)
- (E) The Partnerships (Accounts) Regulations 2008 (SI 2008/569) published, replacing the provisions of the Partnerships and Unlimited Companies (Accounts) Regulations 1993 (SI 1993/1820) and implementing the Statutory Audit Directive (Directive 2006/43/EC):  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080569\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080569_en.pdf)

6. Cases not otherwise discussed

**6.1 Contract: implied limits on exercise of contractual discretion**

Socimer International Bank Ltd v Standard Bank London Ltd [2008] EXCA Civ 116:  
<http://www.lawtel.com/~8e3a4cb4612445d9afd51b7f3d44a43b~/content/display.asp?ID=AC0116482&HL=Y&BK=Y&ResultID=20200589>

**6.2 Financial assistance: assistance given by foreign subsidiary**

AGM Global Nominees (Private) Limited v SMM Holdings Limited, THZ Holdings Limited and Africa Resources Limited [2008] EWHC 221 (Ch):  
<http://www.bailii.org/ew/cases/EWHC/Ch/2008/221.html>

**6.3 Unfair prejudice: nominee directors**

Hawkes v Cuddy & Ors [2007] EWHC 2999 (Ch):  
<http://www.bailii.org/ew/cases/EWHC/Ch/2007/2999.html>

7. Any other business

**7.1 CPD Credit: portion of meeting eligible**

## Appendix

- (A) Companies (Trading Disclosures) Regulations (SI 2008/495) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080495\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080495_en.pdf)
- Explanatory Memorandum:  
[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080495\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080495_en.pdf)
- (B) Government's response to July 2007 consultation paper on Companies Act 2006 powers of registrar of companies to make rules published:
- Response:  
[http://www.companieshouse.gov.uk/companiesAct/pdf/consultationResponse\\_jan2008.pdf](http://www.companieshouse.gov.uk/companiesAct/pdf/consultationResponse_jan2008.pdf)
- Consultation:  
<http://www.companieshouse.gov.uk/companiesAct/pdf/consdocRegistrarsRules.pdf>
- (C) Government response to section 453: Civil administration penalties for the late delivery of company accounts published:
- Response:  
<http://www.companieshouse.gov.uk/companiesAct/pdf/consultationResponse.pdf>
- Consultation:  
<http://www.companieshouse.gov.uk/companiesAct/pdf/implementationOfActLateFilPen.pdf>
- (D) ICSA Guidance on Proxies and Corporate Representatives at General Meetings published:  
<http://www.bba.org.uk/content/1/c6/01/21/30/ICSA%20P%20AND%20CR%20GN%20FINAL%20080128.pdf>
- (E) Updated guidance sheets regarding Companies Act 2006 published:  
<http://www.companieshouse.gov.uk/about/guidance.shtml>
- Implementation leaflets containing FAQs on provisions of the 2006 Act that came into force on 1 October 2007 and provisions that will take effect on 6 April 2008 also published:  
<http://www.companieshouse.gov.uk/companiesAct/implementations/apr2008.shtml>
- (F) The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) published and received parliamentary approval:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080409\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080409_en.pdf)
- Explanatory Memorandum:  
[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080409\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080409_en.pdf)
- Parliamentary Approval:  
[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110806426\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110806426_en.pdf)
- (G) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) published and received parliamentary approval:

[http://www.opsi.gov.uk/si/si2008/uksi\\_20080410\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080410_en_1)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080410\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080410_en.pdf)

Parliamentary Approval:

[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110806303\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110806303_en.pdf)

- (H) The Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 (SI 2008/393) published and received parliamentary approval:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080393\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080393_en.pdf)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080393\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080393_en.pdf)

Parliamentary Approval:

[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110806228\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110806228_en.pdf)

- (I) The Companies (Revision of Defective Accounts and Reports) Regulations 2008 (SI 2008/373) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080373\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080373_en.pdf)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080373\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080373_en.pdf)

- (J) The Companies (Summary Financial Statement) Regulations 2008 (SI 2008/374) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080374\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080374_en.pdf)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080374\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080374_en.pdf)

- (K) Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations (SI 2008/497) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080497\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080497_en.pdf)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080497\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080497_en.pdf)

- (L) Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations (SI 2008/489) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080489\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080489_en.pdf)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080489\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080489_en.pdf)

- (M) Statutory Auditors (Delegation of Functions etc) (SI 2008/496) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080496\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080496_en.pdf)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080496\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080496_en.pdf)

- (N) Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008 (SI 2008/499) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080499\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080499_en.pdf)
- Explanatory Memorandum:  
[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080499\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080499_en.pdf)
- (O) Draft Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 published:  
[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110810126\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110810126_en.pdf)
- Explanatory Memorandum:  
[http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem\\_9780110810126\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110810126_en.pdf)
- (P) Draft Companies Act 2006 (Consequential Amendments Etc) Order 2008 published:  
[http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi\\_9780110810683\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/pdf/ukdsi_9780110810683_en.pdf)
- (Q) Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2008 (SI 2008/623) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080623\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080623_en.pdf)
- Explanatory Memorandum:  
[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080623\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080623_en.pdf)
- (R) Accounting Standards (Prescribed Body) Regulations 2008 (SI 2008/651) published:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080651\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080651_en.pdf)