

THE CITY OF LONDON LAW SOCIETY

COMPANY LAW COMMITTEE

Agenda for the 235<sup>th</sup> meeting  
at 9.00 a.m. on 22nd July 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 234th meeting
3. Matters arising:
  - 3.1 Companies Act 2006**

See section 3.1 of the Appendix
  - 3.2 Financial assistance**

Update on joint paper with the CLLSFLC – to follow separately
  - 3.3 Directors' share dealings/irrevocable broker mandates**

Review of draft letter to UKLA – to follow separately
  - 3.4 Market Abuse**

See section 3.4 of the Appendix
  - 3.5 Contracts for Difference**

FSA policy update published:

Policy update:  
[http://www.fsa.gov.uk/pubs/cp/cp07\\_20\\_update.pdf](http://www.fsa.gov.uk/pubs/cp/cp07_20_update.pdf)

News release:  
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/064.shtml>
4. Discussions
  - 4.1 Reduction of capital – discussion to be led by the Chairman**
    - (A) Draft of The Companies (Reduction of Share Capital) Order 2008 and related draft of The Companies Act 2006 (Commencement No 7 and Transitional Provisions) Order 2008 published:  
<http://www.berr.gov.uk/files/file46030.pdf>  
<http://www.berr.gov.uk/files/file46300.doc>

Explanatory text:

<http://www.berr.gov.uk/files/file45981.doc>

- (B) The Companies (Reduction of Capital) (Creditor Protection) Regulations 2008:  
[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080719\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080719_en.pdf)

Explanatory memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20080719\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080719_en.pdf)

#### 4.2 Rights issues – discussion leader tbd

- (A) FSA disclosure regime for significant short positions in companies undertaking rights issues:

Announcement:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/057.shtml>

Instrument:

[http://www.fsa.gov.uk/pubs/press/PN0572008\\_instrument.pdf](http://www.fsa.gov.uk/pubs/press/PN0572008_instrument.pdf)

FAQs:

[http://www.fsa.gov.uk/pubs/other/Shortselling\\_faqs.pdf](http://www.fsa.gov.uk/pubs/other/Shortselling_faqs.pdf)

- (B) The Institutional Voting Information Service (IVIS) placed an amber top on the amended rights issue by Bradford & Bingley and proposed sale of 23 per cent to TPG:

<http://www.abi.org.uk/Newsreleases/viewNewsRelease.asp?nrid=16344>

#### 5. Current problems and recent developments

##### 5.1 Company law and legislation

- (A) FRC published final guidance on auditor liability limitation agreements:  
[http://www.frc.org.uk/documents/pagemanager/frc/Auditor\\_Liability\\_Limitation\\_Agreements/FRC%20ALLA%20Guidance%20June%202008%20final.pdf](http://www.frc.org.uk/documents/pagemanager/frc/Auditor_Liability_Limitation_Agreements/FRC%20ALLA%20Guidance%20June%202008%20final.pdf)
- (B) European Commission issued a recommendation concerning the limitation of auditors' civil liability:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:162:0039:0040:EN:PDF>
- (C) Institutional Shareholders' Committee auditor liability limitation agreements:  
<http://institutionalshareholderscommittee.org.uk/sitebuildercontent/sitebuilderfiles/ISCAuditorLiabilityLimitationJun08.pdf>
- (D) See also section 5.1 of the Appendix

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

- (A) FSA issued £350,000 fine to Woolworths Group plc for failing to disclose information to the market in a timely manner:  
[http://www.fsa.gov.uk/pubs/final/woolworths\\_11jun08.pdf](http://www.fsa.gov.uk/pubs/final/woolworths_11jun08.pdf)
- (B) FSA published policy statement comprising feedback on changes to implement the 8<sup>th</sup> Company Law Directive:  
[http://www.fsa.gov.uk/pubs/policy/ps08\\_06.pdf](http://www.fsa.gov.uk/pubs/policy/ps08_06.pdf)
- Newsletter:  
[http://www.fsa.gov.uk/pubs/policy/ps08\\_06\\_newsletter.pdf](http://www.fsa.gov.uk/pubs/policy/ps08_06_newsletter.pdf)
- Original consultation paper:  
[http://www.fsa.gov.uk/pubs/cp/cp07\\_24.pdf](http://www.fsa.gov.uk/pubs/cp/cp07_24.pdf)
- (C) LSE fine and public censure of Meridian Petroleum plc for breaches of AIM Rules 10, 11 and 31:  
<http://www.londonstockexchange.com/NR/ronlyres/322A5CCB-FCA6-4353-9FB1-FEA2DF7CF7F3/0/PublicCensureFINAL.pdf>
- (D) See also section 5.2 of the Appendix

## 5.3 FSMA/FSA

- (A) FSA thematic review of controls over inside information issued:  
[http://www.fsa.gov.uk/pubs/newsletters/mw\\_newsletter27.pdf](http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter27.pdf)
- (B) FSA Market Watch Issue 28  
[http://www.fsa.gov.uk/pubs/newsletters/mw\\_newsletter28.pdf](http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter28.pdf)
- (C) See also section 5.3 of the Appendix

## 5.4 Mergers and Acquisitions (public)

- (A) Takeover Panel Executive published Practice Statement No. 22: irrevocable commitments, concert parties and related matters:  
<http://www.thetakeoverpanel.org.uk/new/practiceStatements/DATA/PS22.pdf>
- (B) Takeover Panel Executive published Practice Statement No. 24: appropriate offers and proposals under Rule 15:  
[http://www.thetakeoverpanel.org.uk/new/practiceStatements/DATA/PS24.pdfhttp://www.fsa.gov.uk/pubs/cp/cp08\\_12.pdf](http://www.thetakeoverpanel.org.uk/new/practiceStatements/DATA/PS24.pdfhttp://www.fsa.gov.uk/pubs/cp/cp08_12.pdf)
- (C) See also section 5.4 of the Appendix

## 5.5 EU law and practice

- (A) European Commission published a proposal for a Council Regulation on a statute for a European Private Company:

[http://ec.europa.eu/internal\\_market/company/docs/epc/proposal\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/epc/proposal_en.pdf)

Press release:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1003&#0038;format=HTML&0038;aged=0&0038;language=EN&0038;guiLanguage=en>

FAQs:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/434&#0038;format=HTML&0038;aged=0&0038;language=EN&0038;guiLanguage=en>

- (B) See also section 5.5 of the Appendix

## 5.6 Overseas Law and Practice

See section 5.6 of the Appendix

## 5.7 Accounting

See also section 5.7 of the Appendix

6. Cases not otherwise discussed

See section 6 of the Appendix

7. Any other business

## 7.1 CPD Credit: portion of meeting eligible

## Appendix

### 3.1 Companies Act 2006

- (A) Revised draft of The Companies Act 2006 (Commencement No 7 and Transitional Provisions) Order 2008 published:

<http://www.berr.gov.uk/files/file46300.doc>

Explanatory Note:

<http://www.berr.gov.uk/files/file46301.doc>

- (B) Government's response to BERR's November 2007 consultation on the application of the Companies Act 2006 to limited liability partnerships:

<http://www.berr.gov.uk/files/file46287.pdf>

- (C) BERR publishes a series of FAQs on the trading information required to be disclosed by companies:

<http://www.berr.gov.uk/bbf/co-act-2006/faq%20Act%202006/page38501.html>

- (D) Draft Companies Act 2006 (Commencement No.8, Transitional Provisions and Savings) Order 2008 published:

<http://www.berr.gov.uk/files/file46678.doc>

Accompanying consultation document:

<http://www.berr.gov.uk/files/file46677.doc>

- (E) Draft of The Companies (Reduction of Share Capital) Order 2008 published:

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110818368\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110818368_en_1)

Explanatory memorandum:

[http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem\\_9780110818368\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110818368_en.pdf)

- (F) Draft of The Limited Liability Partnerships (Accounts and Audit)(Application of Companies Act 2006) Regulations 2008 published:

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110818337\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110818337_en_1)

Explanatory memorandum:

[http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem\\_9780110818337\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110818337_en.pdf)

- (G) Draft of The Small Limited Liability Partnerships (Accounts) Regulations 2008 published:

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110818344\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110818344_en_1)

Explanatory Memorandum:

[http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem\\_9780110818344\\_en.pdf](http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110818344_en.pdf)

- (H) Draft of The Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008 published:

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20081659\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081659_en.pdf)

- (I) Drafts of The Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations published:

[http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110818351\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110818351_en_1)

- (J) Guidance on the accounting reporting provisions introduced under The Companies Act 2006 published:

<http://www.berr.gov.uk/files/file46791.pdf>

- (K) Company Names Adjudicator Rules 2008 published:

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20081738\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081738_en.pdf)

Explanatory memorandum:

[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20081738\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20081738_en.pdf)

### **3.4 Market Abuse**

- (A) HM Treasury feedback statement summarising responses to its consultation regarding the provisions of the UK's market abuse regime which are super-equivalent to the EU Market Abuse Directive published: [http://www.hm-treasury.gov.uk/media/8/C/consult\\_fsma\\_marketabuse\\_responses060608.pdf](http://www.hm-treasury.gov.uk/media/8/C/consult_fsma_marketabuse_responses060608.pdf)

- (B) CESR consultation on its third set of guidance on the common operation of the Market Abuse Directive launched: <http://www.cesr.eu/popup2.php?id=5054>

### **5.1 Company law and legislation**

- (A) FRC published June 2008 version of the Combined Code on Corporate Governance - applies to accounting periods beginning on or after 29 June 2008: [http://www.frc.org.uk/documents/pagemanager/frc/Combined\\_Code\\_June\\_2008/Combined%20Code%20\(June%202008\)%20Web%20Optimized.pdf](http://www.frc.org.uk/documents/pagemanager/frc/Combined_Code_June_2008/Combined%20Code%20(June%202008)%20Web%20Optimized.pdf)

- (B) OECD published practical advice on how to implement the OECD Principles of Corporate Governance: A Boardroom Perspective: <http://www.oecd.org/dataoecd/20/60/40823806.pdf>

- (C) House of Lords inserted sub-clause (clause 80(4)) into Climate Change Bill which could, if enacted, require all companies whose directors' report must contain a business review under section 417(1) of the Companies Act 2006 (namely all companies other than those subject to the small companies' regime) to include a report on their greenhouse gas emissions in the business review, having regard to any guidance given by the Secretary of State under clause 80 of the Bill: <http://www.publications.parliament.uk/pa/cm200708/cmbills/097/08097.35-38.html#i6000>

- (D) EU Services Directive: BERR response to consultation on implementation published: <http://www.berr.gov.uk/files/file46592.pdf>

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

- (A) European Securities Markets Expert Group adopted a position recommending that Article 10 of the Prospectus Directive should be abolished when it is amended: [http://ec.europa.eu/internal\\_market/securities/docs/esme/position\\_prospectus\\_directive\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/esme/position_prospectus_directive_en.pdf)

- (B) Companies Act 2006 (Consequential Handbook Amendments) Instrument 2008 published by the FSA:  
[http://fsahandbook.info/FSA/handbook/LI/2008/2008\\_22.pdf](http://fsahandbook.info/FSA/handbook/LI/2008/2008_22.pdf)
- (C) FSA update on electronic communications published:  
[http://www.fsa.gov.uk/pubs/ukla/ukla\\_update.pdf](http://www.fsa.gov.uk/pubs/ukla/ukla_update.pdf)
- (D) FSA adds USA to UK Listing Authority financial reporting rules (DTR 4) exemption:  
[http://www.fsa.gov.uk/Pages/Doing/UKLA/company/non\\_eea/index.shtml](http://www.fsa.gov.uk/Pages/Doing/UKLA/company/non_eea/index.shtml)
- (E) FSA quarterly consultation on changes to the Listing Rules regarding sponsors:  
[http://www.fsa.gov.uk/pubs/cp/cp08\\_12.pdf](http://www.fsa.gov.uk/pubs/cp/cp08_12.pdf)

### 5.3 FSMA/FSA

FSA consultation paper on changes to the Decision Procedure and Penalties manual and Enforcement Guide published:

[http://www.fsa.gov.uk/pubs/cp/cp08\\_10.pdf](http://www.fsa.gov.uk/pubs/cp/cp08_10.pdf)

### 5.4 Mergers & Acquisitions (Public)

- (A) Takeover Panel Executive announces issue of Practice Statement No.23, withdrawal of Practice Statements No.4 and No.5 and amendment of Practice Statement No.20.

Announcement:

<http://www.thetakeoverpanel.org.uk/new/statements/DATA//2008//2008-31.pdf>

Practice Statement No.23:

<http://www.thetakeoverpanel.org.uk/new/practiceStatements/DATA/PS23.pdf>

- (B) Response Statement 2008/1 (Competition Reference Periods) and Other Minor and Consequential Amendments to the Takeover Code published:  
<http://www.thetakeoverpanel.org.uk/new/statements/DATA//2008//2008-32.pdf>
- (C) Instrument 2008/2 (Competition Reference Periods) published:  
<http://www.thetakeoverpanel.org.uk/new/codesars/DATA//Instrument%202008%202.pdf>
- (D) Instrument 2008/3 (Minor and Consequential Amendments to the Takeover Code) published:  
<http://www.thetakeoverpanel.org.uk/new/codesars/data//instrument%202008%203.pdf>

### 5.5 EU law and practice

EU Council adopted the Rome I Regulation on the law applicable to contractual obligations, accepting all amendments voted by the European Parliament at first reading and published in the Official Journal:

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/misc/100997.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/100997.pdf)

Rome I Regulation published in Official Journal:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:EN:PDF>

## 5.6 Overseas Law and Practice

- (A) OECD declaration on sovereign wealth funds and recipient country policies released:  
[http://www.oilis.oecd.org/oilis/2008doc.nsf/LinkTo/NT000032DE/\\$FILE/JT03247225.PDF](http://www.oilis.oecd.org/oilis/2008doc.nsf/LinkTo/NT000032DE/$FILE/JT03247225.PDF)  
[http://www.oilis.oecd.org/oilis/2008doc.nsf/LinkTo/NT000032DE/\\$FILE/JT03247225.PDF](http://www.oilis.oecd.org/oilis/2008doc.nsf/LinkTo/NT000032DE/$FILE/JT03247225.PDF)

- (B) International Organisation of Securities Commissions (IOSCO) final report on private equity, published (follows November 2007 consultation):

Final Report:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD274.pdf>

Original consultation:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD254.pdf>

## 5.7 Accounting

- (A) Financial Reporting Review Panel its approach to the review of accounts whose audit report is qualified for failure to comply with the Companies Act 1985 announced (follows June 2007 consultation paper):  
<http://www.frc.org.uk/frfp/press/pub1630.html>

Original consultation paper:

[http://www.frc.org.uk/images/uploaded/documents/Consultation%20Paper%20\(June%202007\)2.pdf](http://www.frc.org.uk/images/uploaded/documents/Consultation%20Paper%20(June%202007)2.pdf)

- (B) ICAEW published technical guidance release (Tech 03/08) Guidance on Materiality in Financial Reporting by UK entities:  
<http://www.icaew.com/index.cfm?route=158691>

- (C) Urgent Issues Task Force of the Accounting Standards Board issued guidance on disclosure of off-balance sheet arrangements:  
<http://www.frc.org.uk/asb/press/pub1643.html>

- (D) IASB amendments to IFRSs for determining the cost of an investment in the separate financial statements issued:  
[http://www.iasb.org/NR/rdonlyres/87C73D9E-177D-49E4-8B1D-FA0AF71BBE14/0/PR\\_Cost\\_of\\_an\\_Investment.pdf](http://www.iasb.org/NR/rdonlyres/87C73D9E-177D-49E4-8B1D-FA0AF71BBE14/0/PR_Cost_of_an_Investment.pdf)

Project reports:

[http://www.iasb.org/NR/rdonlyres/89072AA9-9146-4989-B80A-EB74FDBEFB7E/0/Cost\\_of\\_an\\_Investment\\_0508.pdf](http://www.iasb.org/NR/rdonlyres/89072AA9-9146-4989-B80A-EB74FDBEFB7E/0/Cost_of_an_Investment_0508.pdf)

- (E) Fourth draft decision on transitional period during which auditors from certain third countries may continue audit activities without being registered under article 45 of the Statutory Audit Directive (2006/43/EC) published by European Commission:  
[http://ec.europa.eu/internal\\_market/auditing/docs/relations/draft-decision-4th\\_en.pdf](http://ec.europa.eu/internal_market/auditing/docs/relations/draft-decision-4th_en.pdf)

- (F) Detailed proposals to give practical effect in the UK to new European requirements for the regulation of the auditors of companies from outside Europe that have issued securities on regulated markets within the EU published by Professional Oversight Board:  
[http://www.frc.org.uk/documents/pagemanager/pob/Third\\_Country\\_auditors/Consdoc%2028%2005%2008%20FINAL.pdf](http://www.frc.org.uk/documents/pagemanager/pob/Third_Country_auditors/Consdoc%2028%2005%2008%20FINAL.pdf)
- (G) ICAEW flow chart and guidance note to help registered auditors with the new requirements under sections 522 to 525 of the Companies Act 2006 published:  
<http://www.icaew.com/index.cfm?route=155861>
- (H) Accounting Standards Board updated version of the Financial Reporting for Smaller Entities (FRSSE) to reflect changes in company law arising from the Companies Act 2006 issued:  
<http://www.frc.org.uk/documents/pagemanager/asb/FRSSE/FRSSE%20Web%20optimized%20FINAL.pdf>

#### 6. Cases not otherwise reported

- (A) Petition of *West Coast Capital (Lios) Limited* for an order under Section 994 of the Companies Act 2006 including interdict ad interim [2008] CSOH 72 (Unfair prejudice: directors' duties):  
<http://www.scotcourts.gov.uk/opinions/2008CSOH72.html>
- (B) *Re Ortega Associates Limited (in liquidation) Green v Walkling* [2007] EWHC 2046 (Ch) (Misfeasance: application failed where director acted under legal advice):  
<http://www.lawtel.com/content/display.asp?ID=AC0115972ChD.pdf>  
<http://www.lawtel.com/content/display.asp?ID=AC0115980ChD%28Bristol%29.pdf>
- (C) *Dashfield v Davidson* [2008] BCC 222 (Application of Re Duomatic principle to authorities for purchase of own shares):  
<http://www.lawtel.com/content/display.asp?ID=AC0115980ChD%28Bristol%29.pdf>