

THE CITY OF LONDON LAW SOCIETY  
COMPANY LAW COMMITTEE

Minutes

for the 300<sup>th</sup> meeting  
at 5:00 p.m. on 27<sup>th</sup> November 2019  
at Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ

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1. **Welcome and apologies**

**Attending:** David Pudge (Chairman), Sam Bagot, Adam Bogdanor, Murray Cox, Lucy Fergusson, Nicholas Holmes, Chris Horton, Vanessa Knapp, Stephen Mathews, Maegen Morrison (as alternate for Richard Ufland), Jon Perry, Caroline Rae, Patrick Sarch, Richard Spedding, Patrick Speller, Liz Wall, Martin Webster, Victoria Younghusband and Juliet McKean (Alternate Secretary)

**Apologies:** John Adebisi, Mark Austin, Robert Boyle, Kevin Hart, Richard Ufland and Kath Roberts (Secretary)

2. **Approval of minutes**

The Chairman reported that a draft version of the minutes of the meeting held on 25 September 2019 had been circulated to members on 14 October 2019. The Chairman asked members to submit any comments by 4 December 2019.

3. **Matters arising**

3.1 New EU company law to help companies move across borders. The Chairman reported that on 18 November 2019, the European Council had issued a press release announcing that it has adopted the directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions. It was noted that the press release states that the directive will make it easier for companies in the EU to restructure within the single market, whilst protecting the legitimate interests of workers, minority shareholders and creditors. It was also noted that the directive will enter into force 20 days after its publication in the Official Journal of the EU and member states will then have 36 months to implement the directive.

3.2 New measures to encourage effective stewardship. The Chairman reported that on 24 October 2019, the FCA had issued a press release announcing the publication of its Feedback Statement (FS19/7) to the FCA/FRC joint discussion paper on building a regulatory framework for effective stewardship (DP19/1). It was noted that the FCA states that it agrees with the view of most respondents that the FCA should not impose further stewardship-related requirements on life insurers and asset managers now and that it should let firms first adapt to the new rules on shareholder engagement (implementing the revised Shareholder Rights Directive), and other related measures. It was also noted that the FCA, however, states that it has identified several things that

it should do, working with industry, the FRC, Government and other regulators, to help address some remaining barriers to effective stewardship.

3.3 Register of Overseas Entities Bill. The Chairman noted that BEIS has organised a meeting with members of the Committee, the CLLS Land Law Committee, the Law Society Company Law Committee and the Law Society Conveyancing and Land Law Committee to discuss the Register of Overseas Entities Bill on 3 December 2019. The Chairman noted that Edward Craft, Juliet McKean and Lucy Reeve will be attending on behalf of the Committee and the Law Society Company Law Committee. However, since the Committee meeting took place, BEIS has cancelled the meeting due to restrictions on its activities during the election period and is re-arranging the meeting for the new year.

3.4 PSC register tricky issues' list. The Chairman reported that on 8 November 2019, the joint Law Society Company Law Committee and Committee Q&A on the PSC register was published. Liz Wall noted that the Q&A has been considered by BEIS, which has advised that it does not disagree with any of the statements made in the Q&A.

Separately, it was noted that BEIS published the post-implementation review of the PSC register. It was noted that the review report concludes that the PSC register is meeting its objectives and that the costs to business have been proportionate and in line with the original estimates. It was also noted that the PSC regulations will remain in their current form and the next statutory post-implementation review will be carried out within the next five years.

3.5 Law Commission call for evidence on intermediated securities. The Chairman reported that on 8 November 2019, a joint response on behalf of the Committee, the CLLS Financial Law Committee and the CLLS Regulatory Law Committee was submitted to the Law Commission.

Lucy Fergusson, who had led the Committee's working group, reported that working group members were united in broadly wanting no change to the "no look through" principle as it provides a high level of certainty for issuers. It was noted that the response states that the working group does not think there is a significant problem in respect of investors' ability to exercise their voting rights that needs to be addressed by a process of fundamental law reform and that the focus should be on ensuring that information is passed through the intermediary chain in a timely manner to help facilitate the exercise of voting rights and other rights of ownership. It was noted that the response states that the working group would support a separate and appropriately detailed review of the headcount test in section 899 of the Companies Act 2006 (**CA 2006**), referring to cases where problems have arisen and highlighting approaches taken in other jurisdictions including Australia. It was noted that the Law Commission intends to publish a Statement of the Law in the second half of 2020. The Committee noted the Tesco case at item 5.7(b) and the Chairman highlighted how the judgment had been carefully crafted so as not to undermine the "no look through principle" generally and had instead focused on the ability to exercise the statutory rights.

3.6 ESMA consultation on draft guidelines on disclosure requirements under the Prospectus Regulation. The Chairman noted that a joint response of the Law Society Company Law Committee and the Committee was submitted to ESMA on 3 October 2019.

3.7 Further letter to Companies House on electronic signatures. The Chairman noted that he had sent a further letter to Companies House on electronic signatures on 27 September 2019, following the publication of the Law Commission's report on electronic execution of documents, urging Companies House to reconsider its policy on electronic signatures. It was noted that Companies House has not yet responded and that the Chairman would follow up in a couple of months' time if that remained the case.

#### 4. **Discussions**

4.1 Revised and strengthened UK Stewardship Code. The Chairman reported that on 24 October 2019, the FRC had issued a press release launching a revised UK Stewardship Code (**Code**) (to take effect on 1 January 2020) and publishing a feedback statement which sets out the findings of its consultation into revisions to the Code. It was noted that the structure of the Code has been significantly revised as compared to the version that had been consulted on and that it now comprises 12 'apply and explain' principles for asset owners and asset managers, with reporting expectations relevant to their role, and six 'apply and explain' principles for service providers with reporting expectations. It was noted that the Committee's response had supported the introduction of 'apply and explain' principles and separate principles for service providers. It was also noted that an organisation applying to become a signatory to the Code will now need to provide a single Stewardship Report that sets out how it has applied the principles in the preceding 12 months. It was noted that this must include reporting on the activities it has undertaken, and the outcomes achieved and for the organisation to be listed as a signatory on the FRC's website, the Stewardship Report will need to meet the reporting expectations of the FRC. It was noted that this change simplifies the reporting for signatories and encourages a greater focus on the activities and outcomes of stewardship. It was further noted that, in general terms, the changes made are in line with the Committee's response.

4.2 ESMA consults on MAR review. The Chairman reported that on 3 October 2019, ESMA had published a press release announcing the publication of a consultation paper on the provisions of MAR. It was noted that the consultation paper addresses a wide range of issues, including the definition, and delayed disclosure, of inside information in different cases, the approach to market soundings and the appropriateness of the trading prohibition and insider lists for persons discharging managerial responsibilities. It was noted that the consultation closes on 29 November 2019 and the MAR working group had prepared a near final response. It was also noted that ESMA intends to submit a final report to the European Commission by spring 2020. Since the Committee meeting took place, the Committee's response has been submitted to ESMA.

Nicholas Holmes updated the Committee on certain aspects of the draft response and the following was noted. In respect of the reporting obligations for buyback programmes, the draft response states that option 2 in the consultation is the preferred option. However, if EMSA were to proceed with option 3, the draft response suggests that a determination of the most liquid market should be made at the outset of the buyback programme rather than having to be continually assessed. In respect of the definition and delay of inside information, the working group felt that no changes should be made, notwithstanding that some of the concepts were complex to apply in practice, given issuers and practitioners have become accustomed to dealing with the relevant concepts and the current regime has only been in effect for a relatively short

period of time. The draft response is not supportive of the proposal to notify NCAs where relevant information loses its inside nature following a decision to delay disclosure due to concerns around practicalities and additional burdens. In respect of market soundings, the draft response notes that the language in the Regulation (particularly the recitals) supports the prevailing view in the UK that the regime provides a safe harbour and is not a mandatory regime and goes on to state that, in the working group's view, the market soundings regime should remain a voluntary safe harbour rather than be a mandatory regime. The draft response also states that it is not supportive of the proposal that recording should be mandatory for all market soundings.

The Committee discussed the draft responses to the questions on permanent insider lists and the £5,000 minimum reporting threshold for PDMR dealings in order to finalise the response.

- 4.3 BEIS Committee calls for measures to help avoid next corporate collapse. The Chairman reported that on 4 November 2019, the Business, Energy and Industrial Strategy Committee (**BEIS Committee**) had issued a press release stating that it has sent a letter to Andrea Leadsom, the Secretary of State for BEIS, with a series of recommendations on corporate governance, pensions, executive pay and bonuses, bonus clawback provisions, ethnicity pay reporting, use of goodwill and its impairment and audit reform (including the separation of audit and non-audit services) following its recent public evidence sessions examining the collapse of Thomas Cook. It was noted that in the letter, the BEIS Committee expresses disappointment that the Government did not press ahead with necessary audit reforms and legislation to replace the FRC with the Audit, Reporting and Governance Authority and recommends that a new Government pushes ahead with the required legislation in the first Queen's Speech of the new Parliament.
- 4.4 FCA Liaison Group meeting. The Chairman provided feedback from the FCA Liaison Group meeting that was held on 12 November 2019.
- 4.5 Plc constitutions. The Committee discussed Simon Griffiths' memorandum on plc constitutions.
- 4.6 Brexit. The Chairman reported that the items set out in the Brexit Annex appended to the meeting agenda have been published.

## 5. **Recent developments**

### 5.1 **Corporate governance**

- (a) Hampton-Alexander Review's 2019 report. The Chairman reported that on 13 November 2019, the Hampton-Alexander Review had published its annual report on improving gender balance in FTSE leadership and a related press release. It was noted that the press release states that this has been the strongest year of progress since targets were first set in 2011 and that: (i) the FTSE 100 are on track to reach the 33% target for women on boards ahead of the 2020 deadline; and (ii) the FTSE 250 made strong gains during the year and with sustained effort will also meet the 2020 deadline. However, it was noted that the press release states that a step-change is needed for senior leadership roles below board level and that 50% of all of those appointments next year need to

go to women to achieve the 2020 target. It was also noted that the FTSE 350 has two All-Male boards (down from 5 in 2018) and 44 All-Male Executive Committees (down from 50 in 2018).

- (b) Proxy voting guidelines updates. The Chairman reported that on 11 November 2019, the Institutional Shareholder Services (**ISS**) had issued a press release announcing that it has published updates to its proxy voting guidelines for 2020 (along with an executive summary) that will apply to shareholder meetings held on or after 1 February 2020. The Chairman also reported that on 4 November 2019, Glass Lewis had issued a press release announcing that it has published its 2020 proxy paper guidelines for the UK. It was noted that the changes to the ISS and Glass Lewis proxy voting guidelines were heading in a consistent direction, focussing on percentages of independent directors on boards; gender diversity on boards; and on the issue of executive pensions and remuneration (including remuneration committee discretion). The Committee also noted that it is now becoming more commonplace to disclose details on other wider activities of board members (e.g. positions on charities) as well as other board positions held.
- (c) IA Principles of Remuneration. The Chairman reported that on 1 November 2019, the Investment Association (**IA**) had published revised Principles of Remuneration and an open letter to Remuneration Committee Chairs. It was noted that the open letter outlines the key changes to the principles and highlights the key areas of focus for IA members for the 2020 AGM season. It was also noted that it states that IA members believe that a high level of executive remuneration is a reputational risk to companies, individual directors and their shareholders and that Remuneration Committees should consider the wider employee pay context and fairness of executive pay when setting pay levels. It was noted that the principles have been updated to reflect current best practice and evolving views of IA members, including the impact of remuneration on wider stakeholders, the consultation process, approach to leavers, long term incentives, alignment of performance conditions with the company strategy and pensions.
- (d) ICGN consultation on revisions to the ICGN Global Stewardship Principles. The Chairman noted that on 11 October 2019, the International Corporate Governance Network (**ICGN**) had published a consultation on proposed revisions to its Global Stewardship Principles. It was noted that the review is intended to identify possible changes or improvements to keep the principles relevant for ICGN members and other users, and that the consultation closed on 22 November 2019.
- (e) IA guidance on executive director pension provision. The Chairman reported that on 27 September 2019, the IA had published a press release and new guidelines on executive director pensions ahead of the 2020 AGM season. It was noted that this follows changes to the UK Corporate Governance Code and the IA's Principles of Remuneration to align executive pension contributions with the workforce. It was noted that any company with an existing director who is paid more than 25% of salary as a pension contribution will be given an 'amber top' provided it has set out a credible action plan to bring that contribution in line with the majority of its workforce by the end of 2022. It

was also noted that any company with an existing director who is paid more than 25% of salary as a pension contribution that does not have such an action plan will be given a 'red top'. It was further noted that any company which appoints a new executive director, or where a director changes role, with a pension contribution out of line with the majority of its workforce will be given a 'red top'.

## 5.2 Reporting and disclosure

- (a) FRC annual open letter and annual review. The Chairman reported that on 30 October 2019, the FRC had issued a press release announcing that it has published its Annual Review of Corporate Reporting 2018/2019 and its annual open letter to Audit Committee Chairs and Finance Directors. It was noted that the open letter draws on findings in the annual review and calls for improvements to corporate reporting.
- (b) Financial Reporting Lab report on climate-related corporate reporting. The Chairman reported that on 22 October 2019, the FRC's Financial Reporting Lab had issued a press release announcing the publication of a report on climate-related corporate reporting. It was noted that the report claims that companies are falling short of investors' expectations for clearer reporting on climate-related issues, highlighting the gap between current reporting and investor expectations and calling on companies to bridge this gap. The report provides practical guidance about where companies can improve their reporting and also outlines what investors want to understand, questions companies should ask themselves, recommended disclosures and a range of examples of the developing practice of climate-related reporting.
- (c) FRC future of corporate reporting survey. The Chairman noted that on 17 October 2019, the FRC had issued a press release launching a survey that seeks stakeholders' views to help shape and improve information for all users of corporate reports as part of the FRC's project to examine the future of corporate reporting. It was also noted that respondents' views on the question 'what information do users [of corporate reports] need?' will inform the FRC's project which seeks to make recommendations for improvements to current regulation and practice and develop 'blue sky' thinking. It was further noted that the survey closed on 22 November 2019 and a summary of the results will be published alongside the 'Future of Corporate Reporting' thought leadership paper in 2020.
- (d) Financing Reporting Lab report on disclosures on the sources and uses of cash. The Chairman noted that on 25 September 2019, the FRC's Financial Reporting Lab had published a report on disclosures on the sources and uses of cash. It was noted that the report considers how companies can answer investors' questions about how a company generates cash and how it intends to use that cash. It was also noted that it provides practical guidance on how companies can give more information and context around their cash disclosures, beyond those in the cash flow statement, including business model disclosures and capital allocation frameworks.

### 5.3 Equity capital markets

- (a) EU Regulation amending MAR and the Prospectus Regulation. The Chairman noted that on 8 November 2019, the European Council had issued a press release announcing that it has adopted a regulation that amends MAR and the Prospectus Regulation (as well as MiFID II) as regards the promotion of the use of SME growth markets. It was noted that the press release states that the adopted text will be signed in the week commencing 25 November 2019 and then published in the Official Journal of the European Union.
- (b) Amendments to the AIM Rulebooks. The Chairman noted that on 29 October 2019, the London Stock Exchange (LSE) had published AIM Notice 57, which updates AIM Notice 55 in relation to proposed changes to the AIM Rules for Companies and AIM Rules for Nominated Advisers that will apply in the event of a no deal Brexit on 31 January 2020. It was noted that the notice also states that the LSE is making some clarificatory updates (which took effect on 1 November 2019) to the nominated adviser eligibility provisions in the AIM Rules for Nominated Advisers to reflect how the LSE applies the rules in respect of a nominated adviser's staffing and working arrangements for qualified executives.
- (c) FCA feedback statement on climate change and green finance. The Chairman noted that on 16 October 2019, the FCA had issued a press release announcing the publication of a Feedback Statement (FS19/6) summarising the responses it received to its Discussion Paper (DP18/8) on climate change and green finance published in October 2018, setting out its actions and signalling the steps it intends to take over the next few months in order to meet its strategic objectives on climate change and green finance.
- (d) FCA Primary Market Bulletin No. 24. The Chairman reported that on 3 October 2019, the FCA had published Primary Market Bulletin No. 24, which includes an update on Brexit, a brief overview of the FCA's proposals in relation to the European single electronic format requirements, an outline of the FCA's thematic review into understanding the money laundering risks in the capital markets, information on the most recent updates on the Prospectus Regulation and the latest changes made, or proposed to be made, to the FCA's Knowledge Base. It was noted that on 14 November 2019, a joint response of the Law Society Company Law Committee and the Committee to the consultation on the proposed amendments to the FCA's Technical Notes had been submitted to the FCA.

### 5.4 Accounting

- (a) FRC issues revised going concern standard. The Chairman reported that on 30 September 2019, the FRC issued a press release announcing that it has issued a revised going concern standard (ISA (UK) 570 Going Concern). It was noted that the revised standard has been issued in response to recent enforcement cases and a number of corporate failures, such as Carillion, BHS and Thomas Cook, where the auditor's report had failed to highlight concerns about the prospects of entities which collapsed shortly after. It was noted that the revised standard

is effective for audits of financial statements for periods commencing on or after 15 December 2019, but early adoption is permitted.

## 5.5 Takeovers

- (a) Cold-shouldering of David King. The Chairman reported that on 11 October 2019, the Takeover Panel Hearings Committee published Panel Statement 2019/16 imposing the cold-shouldering of David King for a period of four years for various Takeover Code breaches, including breach of the obligation to make a mandatory offer under Rule 9 for Rangers International Football Club PLC. It was also reported that on 11 October 2019, the FCA issued a statement on the cold-shouldering of David King, reminding FCA-regulated entities of their obligations under MAR4.3 (Support of the Takeover Panel's functions) of the Market Conduct Sourcebook i.e. that they should not deal with David King, or his principals, on any transactions to which the Takeover Code applies.

## 5.6 Miscellaneous

- (a) Pension Schemes Bill. The Chairman reported that on 14 October 2019, the Pension Schemes Bill was announced in the Queen's Speech. It was noted that the Bill covers a wide range of changes including a framework for collective defined contribution schemes and pensions dashboards, a criminal fine for failure to comply with a Contribution Notice and new circumstances in which they can be issued and increased information gathering powers for the Pensions Regulator. It was also noted that the Bill contains a proposed criminal offence for engaging in conduct that "detrimentally affects in a material way the likelihood of accrued scheme benefits being received". It was noted that the offence will apply where a person knew or ought to have known that the course of conduct "would" have that effect and that person did not have a "reasonable excuse" for engaging in the conduct. It was further noted that this criminal offence carries a maximum custodial sentence of up to seven years and goes beyond the criminal sanction that had previously been proposed by the Government.

## 5.7 Cases

The Chairman reported on the following cases:

- (a) (1) Mr Neocleous (2) Mrs Neocleous v Ms Rees [2019] EWHC 2462 (Ch). The High Court held that an automated signature (including name, occupation and contact details) which appeared on the bottom of a lawyer's email was a valid signature for the purposes of concluding a contract for the sale of land in accordance with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (which requires that the document must be "signed"). The Committee noted that this decision is consistent with the Law Commission's report on electronic execution of documents published in September 2019.
- (b) The Persons Identified in Schedule 1 of the Claim Form v Tesco Plc [2019] EWHC 2858 (Ch). The High Court dismissed an application by Tesco plc to strike out group litigation brought by its shareholders under section 90A and Schedule 10A of the Financial Services and Markets Act 2000 (FSMA) to

recover losses in respect of their investment decisions in relation to Tesco shares which they made in alleged reliance on information published by Tesco and falling within Schedule 10A FSMA. Contrary to assertions made by Tesco that none of the claimants in a custody chain with more than one intermediary is a person to whom Tesco could be liable under the relevant FSMA provisions, the court found that: (i) the rights of persons holding intermediated securities through CREST, such as the claimants, comprise an "interest in securities" such as to confer standing to sue under section 90A FSMA for compensation in respect of any untrue or misleading statement or omission in Tesco's published information if they can show that they did "acquire, continue to hold or dispose" of the securities in question in reliance upon that statement or omission; and (ii) any process whereby, in a transaction(s) on CREST, the ultimate beneficial ownership of securities that are (with the consent of the issuer) admitted to trading on a securities market in accordance with paragraph 1 of Schedule 10A FSMA, comes to be vested in or ceases to be vested in a person, constitutes "the acquisition or disposal of any interest in securities" for the purposes of Schedule 10A. The judge did however recognise that such claims must be limited only to investors with proprietary interests in the security, not simply economic interests (i.e. contractual or personal rights), so as not to expose issuers to liability to an indeterminate class of claimants, whilst also ensuring that section 90A FSMA provides an effective mechanism for providing appropriate investor protection.

- (c) Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd [2019] UKSC 50. Pursuant to a claim brought by a corporate customer against a bank for breach of the *Quincecare* duty of care, the Supreme Court considered whether the fraud of one of the company's directors, who was the sole shareholder of the company and the "dominant influence over the company's affairs", should be attributed to the company. The Supreme Court noted that the starting point is that a company has separate legal personality and that the acts of human beings through which it must act are only treated as the acts of the company in circumstances specified by its constitution, or the ordinary rules of agency and vicarious liability, or other particular rules of law. It agreed with the High Court that "the answer to any question whether to attribute the knowledge of a fraudulent director to the company is always to be found in consideration of the context and purpose for which the attribution is relevant". The Supreme Court held that the shareholder director's fraud should not be attributed to the company for the purposes of the *Quincecare* claim – if it was, there would be no *Quincecare* duty of care, which would in the Supreme Court's opinion be a retrograde step.
- (d) UTB LLC v Sheffield United Limited [2019] EWHC 2322 (Ch). The High Court had to consider, amongst other things, whether a duty of good faith should be implied into a shareholders' agreement because it was a "relational" contract. The judge considered that it was wrong to start by asking whether the agreement was a "relational" contract and from that conclude that there was a duty of good faith. Instead, the court should ask whether, applying normal principles for implying terms into contracts, there was an implied duty of good faith. The High Court held, in this case, that there was no implied duty of good faith – it was a professionally drafted contract that included certain express obligations

of good faith, which made it hard to imply a general duty. In addition, the court held that it did not make sense for a duty of good faith to apply to "Russian Roulette" provisions as the parties at that time would have conflicting interests.

- (e) Grupo Mexico SAB de CV v The Registrar of Companies for England and Wales [2019] EWCA Civ 1673. The Court of Appeal had to consider whether the court had jurisdiction to order rectification of the register at Companies House in respect of an LLP under section 1096 CA 2006 (as it applies to LLPs). In particular, the Court of Appeal had to consider whether the presence on the register at Companies House of the LLP's status as "active" had caused, or may cause, damage to the LLP pursuant to section 1096(3) CA 2006 (as it applies to LLPs). This is because, pursuant to that section, the court cannot make an order to remove material from the register whose registration has had legal consequences as regards the LLP's dissolution unless the court is satisfied that the presence of the material on the register has, or may cause, damage to the LLP and that the LLP's interest in removing the material outweighs any interest of other persons in the material continuing to appear – the latter being a balancing test that the court needs to consider.
- (f) The Secretary of State for Business, Energy and Industrial Strategy v Kevin William Eagling [2019] EWHC 2806 (Ch). The High Court made the first ever compensation order under the compensation order regime (which took effect from 1 October 2015 pursuant to sections 15A and 15B of the Company Directors Disqualification Act 1986) against a defendant director of Noble Vintners Limited for misappropriating £559,484 from Noble Vintners which was in creditors' voluntary liquidation. The compensation order was for £559,484 divided in accordance with the divisions suggested by the Secretary of State for BEIS i.e. £460,067.37 payable to 28 creditors at whose direct expense the director had benefited himself and £99,416.63 payable as a contribution to the assets of Noble Vintners. The case provides helpful guidance on the interpretation, scope and operation of the compensation order regime (which is distinct and separate from, but interacts with, the insolvency regime and provides a new cause of action for creditors to be compensated by the directors directly instead of having to prove any loss to the company).
- (g) John Michael Sharp (and the other Claimants listed in the GLO Register) v (1) Sir Maurice Victor Blank (2) John Eric Daniels (3) Timothy Tookey (4) Helen Weir (5) George Truett Tate (6) Lloyds Banking Group plc [2019] EWHC 3096 (Ch). The High Court had to consider allegations made by a group of Lloyds shareholders (or former shareholders) who sought to make five former directors of Lloyds personally liable to pay some £385 million to that group for alleged carelessness or breach of fiduciary duty. The two key claims were broadly: (i) the Lloyds directors should not have recommended the acquisition of HBOS plc by Lloyds TSB Group plc because it represented a dangerous and value destroying strategy which involved unacceptably risky decisions; and (ii) the Lloyds directors should have provided further information about Lloyds and HBOS, in particular about a funding crisis faced by HBOS and the related vulnerability of HBOS's assets. The High Court found that there had been two disclosure breaches, however, it held that the claimants had not proven that

these caused them any loss and, in any event, the claims would have failed due to the reflective loss principle. Ultimately, the High Court dismissed the claims.

6. **Any other business**

- 6.1 European Commission survey on directors' duties and sustainable corporate governance. The Chairman highlighted that the European Commission (DG JUST) has contracted a research consortium led by EY to carry out a study on directors' duties and sustainable corporate governance. It was noted that the objective of the study is to assemble evidence of a possible trend towards short-term shareholder value maximisation on the part of EU companies, to research the main factors that contribute to such trend, and to analyse how a possible reform in corporate law and board duties could contribute to more accountability for sustainable value creation. It was noted that the online surveys, which have been distributed to collect evidence and views from a broad range of stakeholders (including companies and legal practitioners), had already been circulated to Committee members and that the surveys closed on 27 November 2019.
- 6.2 FCA SME issuer event. The Chairman highlighted that on 4 December 2019, the FCA is holding an event for SME issuers seeking to increase their knowledge of the UK public disclosure regime. It was noted that the event will introduce the work of the FCA's Primary Market Oversight department, helping SME issuers to navigate the regulatory landscape, particularly with regard to the application of MAR. Members were encouraged to draw the event to the attention of any SME issuer clients.

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