Katten
Katten Muchin Rosenman LLP

Corporate and Financial Weekly Digest

July 18, 2008

SEC/Corporate

SEC Committee Issues Draft Report Recommending Accounting Reforms

On July 11, the Advisory Committee on Improvements to Financial Reporting, chartered by the Securities and Exchange Commission in July 2007, issued a draft report recommending certain reforms to increase the usefulness of financial information to investors, while reducing the complexity of the financial reporting systems for preparers and auditors. The Committee highlighted five themes underlying its recommendations:

- *Clarifying guidance on financial restatements and accounting judgments* – The Committee recommended that the evaluation of the "materiality" of an error to a company's financial statements should be made from the perspective of a reasonable investor and should be judged based on how the error affects the total mix of the information available to a reasonable investor. The Committee stated that it would not recommend changing the SEC's existing materiality guidance, contained in Staff Accounting Bulletin 99, but rather would enhance the guidelines by requiring that companies consider both qualitative and quantitative factors when determining whether errors are material to financial statements. The Committee noted that just as qualitative factors may lead to a conclusion that a small error is material, qualitative factors also may lead to a conclusion that a large error is not material. Additionally, the Committee recommended that (i) companies should be required to correct all errors promptly and should not have the option to defer corrections of errors until future financial statements are issued, (ii) prior period financials should only be restated for errors that are material to those periods, (iii) the determination of how to correct a material error should be based on the needs of investors making current investment decisions, (iv) amendments to previously filed annual or interim reports to reflect restated financial statements may not need to be filed if the next annual or interim report will be filed in the near future and that report will contain all of the relevant information, (v) a restatement of interim period financial statements should not necessarily result in a restatement of annual period financial statements, (vi) corrections of large errors in previously issued financial statements should be disclosed even if the error is determined not be material and (vii) to limit the likelihood of "stealth restatements," the SEC should revise the instructions to Form 8-K to state clearly that the form needs to be filed for all determinations of non-reliance on prior financial statements.

- *Increasing the usefulness of information in SEC reports* – The Committee's recommendations include (i) requiring a short summary, no more than two pages, at the beginning of a company's annual and quarterly reports describing the company's main business units, key metrics for its past performance and an outline of its business outlook,

SEC/CORPORATE

For more information, contact:

Robert L. Kohl
212.940.6380
robert.kohl@kattenlaw.com

Mark A. Conley
310.788.4690
mark.conley@kattenlaw.com

Palash I. Pandya
212.940.6451
palash.pandya@kattenlaw.com

along with a page index showing where investors could find more detailed information on particular subjects, (ii) supporting the use of Extensible Business Reporting Language so that particular items across companies can be easily sorted and analyzed by investors and (iii) encouraging the development of key performance indicators on an activity and industry basis that would capture important aspects of a company's activities that may not be fully reflected in its financial statements or may be non-financial measures.

- *Enhancing the accounting standards-setting process* – The Committee's recommendations include increasing investor representation on the Financial Accounting Standards Board (FASB) and creating a Financial Accounting Forum where all public and private parties would be represented.

- *Improving the substantive design of new accounting standards* – The Committee's recommendations include (i) supporting the FASB's efforts to divide the income statement into two or more sections, (ii) generally opposing all-or-nothing bright line tests and (iii) generally advocating a move away from industry-specific guidance in authoritative literature and addressing industry-specific guidance that conflicts with the general principles in U.S. GAAP.

- *Delineating authoritative interpretive guidance* – The Committee's recommendations include (i) supporting the FASB's efforts to complete codification of U.S. GAAP into one document, (ii) advocating a single standards-setter for all authoritative accounting standards and interpretive implementation guidance of general significance and (iii) supporting the efforts of the SEC's Division of Corporation Finance to publish its comment letters on financial reports filed by registrants.

The Committee expects to issue its final report in August 2008.

http://www.sec.gov/about/offices/oca/acifr/acifr-dfr-071108.pdf

Litigation

Wrongful Conduct of Fund's Investment Managers Barred Recovery By Liquidators

Plaintiffs, court-appointed joint official liquidators (JOLs) of a failed hedge fund, brought claims on behalf of the Fund against, among others, the Fund's investment managers, who were responsible for the operation and management of the Fund (Investment Managers) and the Fund's auditor. The JOLs alleged that the Investment Managers fraudulently inflated the value of the Fund's mortgage-backed securities and that the auditor conducted a deficient audit and negligently failed to detect the Investment Managers' fraudulent valuation.

After all defendants other than the auditor settled, the auditor moved for summary judgment, which the Court granted. The Court first ruled that the JOLs were subject to the same defenses that the Fund itself would be subject to if it were the plaintiff. The Court then held that the JOLs' claims were barred because the wrongful actions of the Investment Managers were imputed to the Fund itself. In doing so, the Court synthesized the *in pari delicto* doctrine, which bars a plaintiff from recovering from a defendant where each is equally at fault, with the "*Wagoner* rule" (named after the Second Circuit case in which it was enunciated), which the Court described as establishing that a bankruptcy trustee (or other similar court-appointed professional) is deprived of standing to assert a claim against a third party for wrongdoing committed "with the cooperation of management" of the entity on whose behalf the Trustee files suit.

LITIGATION

For more information, contact:

Alan R. Friedman
212.940.8516
alan.friedman@kattenlaw.com

Brian L. Muldrew
(212) 940-6581
brian.muldrew@kattenlaw.com

While recognizing that there are limited exceptions to the *Wagoner* rule, the Court determined that none applied. For example, the JOLs failed to provide evidence to support application of the "adverse interest" exception, which applies if the acts of management are so adverse to the corporation that the conduct cannot be attributed to the corporation under traditional agency principles. To the contrary, the Fund benefited from the Investment Managers' alleged wrongdoing by receiving additional capital and retaining investors. Similarly, the JOLs failed to support application of the "innocent insider" exception to the *Wagoner* rule, which would apply if there were "innocent" members of management who would have been able to stop the wrongdoing if the auditors had alerted them to the Investment Managers' wrongdoing. The Court found that the JOLs had failed to raise a triable issue that there were any such innocent decision-makers. Finally, the court rejected the JOLs assertion that they should nonetheless be permitted to pursue the claims because any recovery would solely benefit innocent investors. While recognizing that such an exception had been made in at least one prior decision, the Court rejected it, reasoning that an "innocent successor" exception would "fly in the face of the well-established agency principle[s]." (*Bullmore, et al. v. Ernst & Young Cayman Islands, et al.*, 2008 WL 2572931 (N.Y. Sup. June 19, 2008))

Question of Fact Regarding Whether LLC Interest Was a "Security" Prevented Summary Judgment

Plaintiff asserted claims under, among other things, the federal securities laws, in connection with its investment in Houma Sports Entertainment, LLC (LLC), the parent company of an arena football team. Plaintiff claimed that at the time it acquired its interest in the LLC, Defendant Terrebonne Parish Consolidated Government (TPCG), the owner and operator of the venue where the team played, provided it with false projections and misrepresented that the LLC was operating profitably when, in reality, it was operating at a substantial loss.

Defendant moved for the summary judgment dismissal of the federal law securities claims, arguing that the LLC membership interests at issue here are not "securities" within the meaning of the securities laws. In denying the motion, the Court first noted that the term "security" is broadly defined in the federal statutes, and includes, among other things, an "investment contract." The Court then found that "investment contracts" include a contract pursuant to which a person invests money in a common enterprise with the expectation that (i) there will be profits, and (ii) "the efforts made by those other than the investor are the undeniably significant ones... which affect the [profitability] of the enterprise."

Defendant argued that Plaintiff's investment did not qualify as an "investment contract," because Plaintiff had exercised significant control over the investment, including participating in the negotiations for the purchase of the arena football franchise and signing various contracts and checks on behalf of the LLC. The Court disagreed, finding that a genuine issue of material fact existed regarding Plaintiff's role in the management of the LLC and the significance of Plaintiff's efforts to the success of the LLC relative to the efforts of third parties. Among other things, the Court noted evidence in the record that reflected that another individual appeared to have a substantial role in the franchise negotiations and in the management of the LLC. (*Sudo Properties, Inc. v. Terrebonne Parish Consol. Government*, 2008 WL 2623000 (E.D.La. July 2, 2008))

FINRA Expands Fair Prices and Commissions Rule

The Securities and Exchange Commission has approved a proposal by the Financial Industry Regulatory Authority (FINRA) to expand the scope of Rules 2440 and IM-2440-1 to include transactions with customers on exchanges. Rule 2440 requires that (i) when acting for its own account in a transaction with a customer, a member firm has to buy or sell the security at a fair price to the customer, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that the firm is entitled to a profit and (ii) when acting as agent the member shall not charge more than a fair commission, taking into consideration all relevant circumstances. Mark-up Policy NASD IM-2440-1 states that it is inconsistent with just and equitable principles of trade under NASD Rule 2110 for a member firm to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission that is not reasonable. Both rules now apply to all securities transactions, whether they occur in the OTC market or on an exchange.

http://edocket.access.gpo.gov/2008/pdf/E8-13945.pdf
http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p038910.pdf

FINRA Issues Further Guidance on Auction Rate Securities Practices

In response to questions raised by Regulatory Notice 08-21, the Financial Industry Regulatory Authority (FINRA) has provided additional guidance on the issue of partial redemptions of auction rate securities. Where a member firm is considering the adoption of an allocation process that diverges from the express provisions of NYSE Rule 402.30, but such methodology is believed to comport with the principles set forth in the Notice, the member firm should contact its FINRA Coordinator for a determination that such methodology will be acceptable. FINRA notes further that, when dealing with investors who hold securities that have become illiquid (such as auction rate securities that are experiencing failed auctions), NASD Rule 2110 requires that firms must provide fair and balanced communications pertaining to material matters related to such securities, including allocation methodologies in the case of redemptions and calls. Among the possible methods of such communications could be (i) specific notice by mail or email; (ii) maintenance of an accessible page on the member firm's website; and/or (iii) including prominent, plain English disclosures on customer statements. Such communications should include examples of the allocation process to illustrate the explanation.

http://www.finra.org/RulesRegulation/PublicationsGuidance/InterpretiveLetters/ConductRules/P038895

FINRA Issues Investor Alert on Weathering Tough Financial Times

The Financial Industry Regulatory Authority (FINRA) has issued a new Investor Alert to highlight the pitfalls of various “quick cash” programs becoming more prevalent in times of rising fuel and food costs, declining and volatile housing markets and the tightening credit crunch. The Alert addresses Internal Revenue Code Section 72(t) plans and 401(k) debit cards which both permit premature withdrawals from 401(k) plan accounts. The Alert warns that 72(t) withdrawals can use an unrealistic rate of return and require imprudent rates of withdrawal each year, while 401(k) debit card withdrawals could result in increased tax liabilities including penalties, lost opportunity costs and making available to creditors assets that are otherwise creditor-proof. Also addressed are Life Settlements or Senior Settlements which allow an insured to cash out

BROKER DEALER

For more information, contact:

James D. Van De Graaff
312.902.5227
james.vandegraaff@kattenlaw.com

Daren R. Domina
212.940.6517
daren.domina@kattenlaw.com

Patricia L. Levy
312.902.5322
patricia.levy@kattenlaw.com

Morris N. Simkin
212.940.8654
morris.simkin@kattenlaw.com

Janet M. Angstadt
312.902.5494
janet.angstadt@kattenlaw.com

Ross Pazzol
312.902.5554
ross.pazzol@kattenlaw.com

Lance A. Zinman
312.902.5212
lance.zinman@kattenlaw.com

by selling their life insurance policy to a third party for more than the policy's cash surrender value but less than the death benefit, and Reverse Mortgages which allow homeowners to cash the equity out of their homes by receiving a lump sum and adding the interest to the principal (a "rising debt" loan). Life Settlements and Reverse Mortgages could both result in the loss of valuable state or federal benefits such as Medicaid for investors or their spouses. Life Settlements expose a great deal of personal health information to third-party purchasers, and Reverse Mortgages could result in a loss of homestead exclusions and other home equity protection against creditors or result in no property left to bequeath to heirs.

http://www.finra.org/InvestorInformation/InvestorAlerts/RetirementAccounts/WeatheringToughFinancialTimes-TheLong-termCostsofQuickCash/P038822

FINRA Proposes Interim Rules Changes to Streamline Duplicative NYSE/NASD Rules

The Financial Industry Regulatory Authority (FINRA) is in the process of a developing a unified NYSE/NASD rulebook, but in the interim has proposed amending and deleting certain NYSE rules in an effort to reduce regulatory duplication and relieve firms that are members of both FINRA and the NYSE. The term "allied member," which designates a person with control over a member organization, would be deleted and replaced with the NASD Rule term "principal executive," which denotes someone with principal responsibility over the various areas of a member organization. NYSE buy-in rules, Rules 283 and 285-290, would be repositioned into NYSE Rule 282, which would serve as a complete, central repository for all requirements and procedures related to transactions subject to the buy-in rules.

Permitted supervisory personnel under NYSE Rule 342.13(a) would be amended to require supervisory candidates to have one year of "direct experience" or two years of "related experience" in the subject area to be supervised rather than the current "creditable three-year record as a registered representative or three years of equivalent experience before functioning as a supervisor". The four-month training period prescribed by NYSE Rule 345 before certain exam-qualified registered persons could receive NYSE approval to perform certain functions would be eliminated, and member organizations would determine, consistent with their overall supervisory obligations, the extent and duration of training for each registered person before being permitted to conduct registration-sensitive functions. The registration category of "securities trader" would be deleted.

NYSE notice requirements for member organization employees engaged in outside business activities would be deleted. The proposal would reposition the requirements pertaining to member organization employee "private securities transactions" from Rule 407 to Rule 346, which addresses issues related to outside business activities. Rather than retain Rule 346(e), which required NYSE approval for supervisory persons to devote less than their entire time to the business of the member organization, the proposal would require the prior written approval of the member organization, pursuant to the exercise of due diligence, for such arrangements.

The proposal would amend NYSE Rule 351.13 to limit the definition of the term "customer complaint" to any written statement of a customer or any person acting on behalf of a customer rather than the current application to both written and oral complaints. NYSE Rule 352(c) would be amended to exempt from the proportional contribution requirement joint accounts with immediate family members held by principal executives or registered representatives of member organizations, subject to the provision that no member organization will guarantee or in any way represent that it will guarantee a customer against loss. A person acting as an investment adviser, whether registered or not, would be permitted to receive compensation based on a share of profits or

gains if all of the conditions of the Investment Advisers Act of 1940 Rule 205-3 are satisfied. Amendments to Rule 408(a) would require member organizations to obtain the signature of any person or persons authorized to exercise discretion in such accounts, of any substitute so authorized, and the date such discretionary authority was granted.

Rule 311 (prescribing the number of partners to be named in a member organization in order for it to conduct business), Rule 412 (transfer of customer accounts from one member to another), Rule 436 (interest on credit balances) and Rule 446 (business continuity and contingency plans) would be rescinded as they are covered in other FINRA rules.

http://edocket.access.gpo.gov/2008/pdf/E8-15817.pdf

AMEX Proposes Listing Standards for Closed-End Fund of Hedge Funds

The American Stock Exchange has proposed listing standards for Securities and Exchange Commission-registered closed-end funds that substantially invest their assets in underlying hedge funds in an effort to provide alternatives to listing markets overseas as well as traditional OTC markets. In addition to existing Closed-End Investment Company listing standards, a Closed-End Investment Company investing in a Fund of Hedge Fund would be:

- Required to provide for the calculation and public dissemination of its net asset value on at least a weekly basis;
- Permitted to invest only in underlying Hedge Funds that provide for weekly valuation reports prepared by an unaffiliated, independent third party; and
- Required to contractually agree to publicly disseminate any material information that an underlying Hedge Fund makes available to its investors.
- In addition, each underlying Hedge Fund and the Closed-End Fund or the registered investment adviser on behalf of the Closed-End Fund would also be required to enter into a contractual relationship whereby the underlying Hedge Fund agrees to provide the weekly valuation reports to the Closed-End Fund.

The underlying hedge funds would be investment companies under the Investment Company Act but for the exceptions provided by Section 3(c)(1) or Section 3(c)(7).

http://edocket.access.gpo.gov/2008/pdf/E8-15513.pdf

Investment Companies and Investment Advisers

Cash Solicitation Fee Rule Does Not Apply to Solicitations for Hedge Funds and Other Investment Pools

The Securities and Exchange Commission staff on July 15 issued an interpretive letter to clarify that Rule 206(4)-3, the cash referral fee rule under the Investment Advisers Act of 1940 (Advisers Act) does not apply to payments to compensate a person for soliciting investors to invest in an "investment pool" managed by the adviser. An investment pool is an investment company under the Investment Company Act of 1940, or a company that would be an investment company but for an exclusion under Section 3(c). Rule 206(4)-3 makes it unlawful for any registered investment adviser (or adviser required to be registered) to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless the payments are made in compliance with conditions set forth in the Rule.

INVESTMENT COMPANIES AND INVESTMENT ADVISERS

Marybeth Sorady
202.625.3727
marybeth.sorady@kattenlaw.com

Daren R. Domina
212.940.6517
daren.domina@kattenlaw.com

Peter J. Shea
704.444.2017
peter.shea@kattenlaw.com

Kathleen H. Moriarty
212.940.6304
kathleen.moriarty@kattenlaw.com

The staff's interpretation is based, in part, on the decision in *Goldstein v. SEC* in which the Court stated that for purposes of Section 206 of the Advisers Act, investors in a pooled investment vehicle are not "clients" of the investment adviser of the pool. The SEC reasoned that the references to "client" in Rule 206(4)-3 (found in the definition of "solicitor") should not be interpreted to include investors in investment pools.

The SEC has made clear that even if Rule 206(4)-3 does not apply, the solicitor may be required by Section 206 of the Advisers Act to disclose to the investor material facts relating to conflicts of interest. In addition, the SEC did not address whether such activity would result in the solicitor being deemed a "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934.

http://www.sec.gov/divisions/investment/noaction/2008/mayerbrown071508-206.htm

Meryl E. Wiener
212.940.8542
meryl.wiener@kattenlaw.com

Ross Pazzol
312.902.5554
ross.pazzol@kattenlaw.com

Structured Finance and Securitization

STRUCTURED FINANCE AND SECURITIZATION

For more information, contact:

Eric S. Adams
212.940.6783
eric.adams@kattenlaw.com

Hays Ellisen
212.940.6669
hays.ellisen@kattenlaw.com

FDIC Releases Final Policy Statement on Covered Bonds

On July 15, the Federal Deposit Insurance Corporation (FDIC) released its final statement of policy regarding the treatment of covered bonds in a conservatorship or receivership. The policy statement clarifies how the FDIC will apply the consent requirements of section 11(e)(13)(C) of the Federal Deposit Insurance Act to covered bonds. The final statement clarifies that "actual direct compensatory damages" due to bondholders for repudiation of covered bonds will be limited to the par value of bonds plus accrued interest, and extends the term limit for covered bonds from 10 years to 30 years. The FDIC, however, declined to (i) expand the definition of "eligible mortgages", (ii) expand the permitted assets for cover pools to other types of commonly securitized loans and receivables, (iii) change the limit on eligible covered bonds to no more than four percent of an insured depository institution's total liabilities, or (iv) "grandfather" preexisting covered bonds that do not meet the specific requirements of the policy statement.

http://www.fdic.gov/news/news/press/2008/pr08060a.html

ASF Launches Project RESTART

On July 16, the American Securitization Forum (ASF) announced the public launch of its Project on Residential Securitization Transparency and Reporting (ASF Project RESTART). Project RESTART aims to restore investor confidence in mortgage and asset-backed securities through a number of phases including the development of standardized residential mortgage-backed security (RMBS) disclosure and reporting packages, model representations and warranties, repurchase and due diligence procedures, and servicing provisions. The ASF also announced a request for comment (RFC) on the first phase of the Project, the ASF RMBS Disclosure Package, which contains selected data elements which have been recommended initially by Project members to comprise the core deal and loan-level information which should be supplied by issuers, transaction supplement fields, and an RMBS Disclosure Package Glossary. The comment period for the RFC ends on August 22, 2008.

http://www.americansecuritization.com/uploadedFiles/Project_RESTART_RFC_%207_16_%2008.pdf

Banking

Federal Reserve Releases Final Rule on Subprime and Other Loans

On July 14, the Board of Governors of the Federal Reserve System (Federal Reserve) approved a final rule amending Regulation Z (Final Rule). The rule prohibits unfair, abusive or deceptive home mortgage lending practices and restricts certain other mortgage practices.

The Final Rule includes a definition of “higher-priced mortgage loans” which, according to the Federal Reserve, will “capture virtually all loans in the subprime market, but generally exclude loans in the prime market.” Specifically, a loan is “higher-priced” if it is a first-lien mortgage securing a consumer’s principal dwelling and has an annual percentage rate that is 1.5 percentage points or more above an index to be published by the Federal Reserve, or 3.5 percentage points or more if it is a subordinate-lien mortgage. To provide an index, the Federal Reserve Board will publish the "average prime offer rate," based on a survey currently published by Freddie Mac. With respect to “higher-priced mortgage loans” secured by a consumer’s principal dwelling, the Final Rule’s new protections include the following: (i) a lender is prohibited from making a loan without consideration of the borrowers’ ability to repay the loan from income and assets other than the home’s value; (ii) a creditor is required to verify the income and assets they rely upon to determine repayment ability; (iii) prepayment penalties are banned if the payment can change in the initial four years; and (iv) creditors are required to establish escrow accounts for property taxes and homeowner’s insurance for all first-lien mortgages.

For loans secured by a consumer’s principal dwelling, regardless of whether it is a higher-priced mortgage loan, the Final Rule also adopts the following protections: (i) neither a creditor nor a mortgage broker can coerce a real estate appraiser to misstate a home’s value; (ii) mortgage company servicers are prohibited from engaging in certain enumerated practices; and (iii) creditors must provide a good faith estimate of loan costs, including a schedule of payments, within three days after a consumer applies for any mortgage loan secured by a consumer’s principal dwelling, such as a home improvement loan or a loan to refinance an existing loan.

One element of the original proposal has been withdrawn. The Federal Reserve Board had proposed for public comment certain requirements pertaining to so-called "yield-spread premiums." During the intervening period, the Board engaged in consumer testing that cast significant doubt on the effectiveness of the proposed rule.

The new rules take effect October 1, 2009.

http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20080714a1.pdf

Federal Reserve Bank of New York Given Authority to Lend to Fannie Mae and Freddie Mac

On July 13, the Board of Governors of the Federal Reserve System (Federal Reserve) announced that it has granted the Federal Reserve Bank of New York the authority to lend to Fannie Mae and Freddie Mac, should the need arise.

The Federal Reserve explained that the “authorization is intended to supplement the Treasury’s existing lending authority and to help ensure the ability of Fannie Mae and Freddie Mac to promote the availability of home mortgage credit during a period of stress in financial markets.” Any lending to the two companies would be at the primary credit rate (currently 2.25%) and would be backed by U.S. government and federal agency securities.

BANKING

For more information, contact:

Jeff Werthan
202.625.3569
jeff.werthan@kattenlaw.com

Christina J. Grigorian
202.625.3541
christina.grigorian@kattenlaw.com

Adam Bolter
202.625.3665
adam.bolter@kattenlaw.com

Furthermore, Treasury Secretary Paulson announced at the same time that the Treasury is seeking approval to temporarily increase its line of credit to Fannie Mae and Freddie Mac and to purchase equity stakes in either of the companies if needed. In his statement, Paulson remarked that "Fannie Mae and Freddie Mac play a central role in our housing finance system and must continue to do so in their current form as shareholder-owned companies." He believes that "[t]heir support for the housing market is particularly important as we work through the current housing correction."

Fannie Mae and Freddie Mac hold or back $5.3 trillion in mortgage debt, which accounts for approximately half the outstanding mortgages in the United States.

http://www.federalreserve.gov/newsevents/press/other/20080713a.htm
http://www.ustreas.gov/press/releases/hp1079.htm

EU Developments

UK Government Opposes Greater Role for EU Supervisory Committees

In May 2008, the European Commission launched a consultation on possible amendments to the structures of each of the EU Level Three Committees—the EU Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)—as reported in the May 30, 2008 edition of *Corporate and Financial Weekly Digest*.

On July 9, the UK Treasury and the UK Financial Services Authority (FSA) issued a joint response to the European Commission's consultation which was also agreed to by the Bank of England and the UK Pensions Regulator. The UK considers that the existing arrangements have made a positive contribution to the EU's regulatory and supervisory framework. The UK supports amendments that reduce unnecessary divergences or duplication in EU markets and their regulation and supervision. However, the UK authorities do not support a wider coordination roll for the existing committees nor do they agree that differences in supervision by various supervisors result in a material obstacle to a single EU financial services market.

www.hm-treasury.gov.uk/media/2/A/consultation_cesrcebsceiops_response.pdf

CESR Consults on Fair Value Measurement and Related Disclosures

On July 11, the EU Committee of European Securities Regulators (CESR) launched a consultation on a draft statement for fair value measurement and related disclosures of financial instruments in illiquid markets.

The purpose of the draft statement is to help EU financial services regulators ensure that issuers fulfil all information obligations under the requirements of the EU Transparency Directive and the EU Market Abuse Directive.

The consultation will close on September 12, 2008.

http://www.cesr-eu.org/index.php?page=consultation_details&id=113

European Commission Publishes UCITS IV Proposals

On July 16, the European Commission published its long-awaited legislative proposals for reforming the EU legislative framework for Undertakings for Collective Investment in Transferable Securities (UCITS) funds. The draft

EU DEVELOPMENTS

For more information, contact:

Martin Cornish
44.20.7776.7622
martin.cornish@kattenlaw.co.uk

Sam Tyfield
44.20.7776.7640
sam.tyfield@kattenlaw.co.uk

Edward Black
44.20.7776.7624
edward.black@kattenlaw.co.uk

Sean Donovan-Smith
44.20.7776.7625
sean.donovan-smith@kattenlaw.co.uk

"UCITS IV Directive" will replace ten existing directives with a single text. The Commission intends to establish a more efficient framework by allowing UCITS managers to develop cross-border business to achieve savings consolidation and economies of scale.

The proposals also call for improving retail investor protection by ensuring that investors in UCITS funds receive clear and easily understandable information. This includes "key investor information" documents that would replace the current simplified prospectuses for UCITS funds. Specific measures are designed to reduce barriers to cross-border marketing by streamlining notification procedures and requirements.

Concurrently, the Commission has asked the EU Committee of European Securities Regulators to examine the possibility of establishing an effective management company passport as part of its package of targeted legislative amendments to be included within the UCITS IV Directive. A management company passport would allow a UCITS fund to be managed by a management company authorized and supervised in a Member State other than the Member State in which the fund is established.

ec.europa.eu/internal_market/investment/docs/legal_texts/framework/ia_report_en.pdf

* Click here to access the *Corporate and Financial Weekly Digest* archive.

Katten

Katten Muchin Rosenman LLP

www.kattenlaw.com

Charlotte
401 S. Tryon Street
Suite 2600
Charlotte, NC 28202-1935
704.444.2000 tel
704.444.2050 fax

Chicago
525 W. Monroe Street
Chicago, IL 60661-3693
312.902.5200 tel
312.902.1061 fax

Irving
5215 N. O'Connor Boulevard
Suite 200
Irving, TX 75039-3732
972.868.9058 tel
972.868.9068 fax

London
1-3 Frederick's Place
Old Jewry
London EC2R 8AE
+44.20.7776.7620 tel
+44.20.7776.7621 fax

Los Angeles
2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel
310.788.4471 fax

New York
575 Madison Avenue
New York, NY 10022-2585
212.940.8800 tel
212.940.8776 fax

Palo Alto
260 Sheridan Avenue
Suite 450
Palo Alto, CA 94306-2047
650.330.3652 tel
650.321.4746 fax

Washington, DC
1025 Thomas Jefferson Street, NW
East Lobby, Suite 700
Washington, DC 20007-5201
202.625.3500 tel
202.298.7570 fax

Katten Muchin Rosenman LLP is a Limited Liability Partnership including Professional Corporations. London Affiliate: Katten Muchin Rosenman Cornish LLP.