



London Update

UK Financial Services Regulatory Developments

December 2006

The Companies Act 2006 Completes its Passage through Parliament

The Companies Act 2006 completed its passage through Parliament on November 8th receiving Royal Assent.

The Act, which, with 1300 sections, is the longest ever UK statute, introduces sweeping changes intended to simplify and improve company law and also consolidates the current UK Companies Acts. The Department of Trade and Industry announced the Act's Royal Assent stating: "company law has been substantially rewritten to make it easier to understand and more flexible - especially for small businesses."

About a third of the Act is intended to be a restatement of the previous law in clearer and simpler language. The effective dates for the Act's various provisions will vary. The Government has stated that it expects all provisions to be implemented by October 2008.

The Act includes provisions that:

- give greater clarity on directors' duties, including making clear that they have to act in the interests of shareholders, but in doing so have to pay regard to the longer term, the interests of employees, suppliers, consumers and the environment;
- implement the EU Takeover and Transparency Directives (these provisions are expected to be in force by January 2007);
- encourage narrative reporting by companies to be forward-looking, covering risks as well as opportunities, with explicit requirements for quoted companies;
- provide an option for all directors and shareholders to file a service address on the public record rather than a private address;
- promote shareholder engagement by enhancing the powers of proxies and making it easier for indirect investors to be informed and exercise governance rights in the company;
- create a new offence of recklessly or knowingly including misleading, false or deceptive matters in an audit report;
- provide a power to require institutional investors to disclose how they use their votes. The Government has stated that it hopes that such disclosure will be achieved without the need to exercise the power and that regulations will not be put in place without prior consultation and a detailed cost analysis;
- simplify the regime applicable to private companies including: the introduction of new model articles of association and providing that a private company is no longer obliged to have a company secretary or an AGM.

Among its simplifications of prior law, the Act extends to the whole of the UK, so that there will no longer be a separate company law regime for Northern Ireland.

<http://www.publications.parliament.uk/pa/pabills/200506/companies.htm>

The Office of Public Sector Information ("OPSI") announced on November 16th that it did not expect to receive the approved text of the Act from the House of Lords before the end of November. When OPSI receives the text of the Act it will be made available immediately on OPSI's website at <http://www.opsi.gov.uk/legislation/>.

Fraud Act 2006 Passed

The Fraud Act 2006 also received Royal Assent on November 8. It creates a new general offence of fraud replacing various prior criminal offences involving deception under various criminal statutes.

The new fraud offence can be committed:

- by false representation
- by failing to disclose information; or
- by abuse of position.

<http://www.publications.parliament.uk/pa/pabills/200506/fraud.htm>

European Commission Releases Proposals for Modernising EU Investment Fund Regulation

On November 16th, the European Commission issued a white paper containing proposals for the modernisation of the EU framework for investment funds. They are designed to simplify the current EU UCITS Directive on investment funds, to ensure that investors receive useful cost and performance disclosures when selecting funds, and to make it easier for the industry to achieve cost savings and specialisation benefits across the European single market.

Following consultation, the Commission plans to propose these changes in autumn 2007, in the form of amendments to the current Directive. The Commission will also consider whether to make similar changes for other fund products, particularly real estate funds, not covered by the current EU UCITS Directive.

The proposals are designed to:

- examine options for establishing a European private placement regime for the marketing of funds;
- enable fund managers to manage funds domiciled in other Member States;
- simplify the notification procedure for cross-border marketing;
- create a framework for the cross-border merger of funds;
- create a framework for asset pooling;
- improve the quality and relevance of the key disclosure documents to the end investor; and
- strengthen supervisory cooperation to monitor and reduce risk of cross-border investor abuse.

http://ec.europa.eu/internal_market/securities/ucits/index_en.htm

FSA and CFTC Sign New MoU

On November 20th, the Financial Services Authority (“FSA”) announced that it had signed a new Memorandum of Understanding (“MoU”) with the US Commodities and Futures Trading Commission (“CFTC”) designed to strengthen cooperation on the exchange of regulatory information to support cross-market surveillance operations. The MoU provides for the exchange of information between the FSA and the CFTC to facilitate cross border oversight of UK and US derivatives exchanges in order to address potential abusive or manipulative trading practices that may occur.

<http://www.fsa.gov.uk/pubs/mou/cftc.pdf>

FSA Fines US Equities Salesman for Inappropriate Conduct

On November 23rd, the Financial Services Authority (“FSA”) announced that it had fined SP, a former US equity sales executive, £20,000 for breaches of Principles 2 and 3 of the FSA's Statements of Principle for Approved Persons (failing to exercise due skill, care and diligence and to observe proper standards of market conduct when carrying out his function as an approved person).

SP received an analyst's email concerning a US company, BSX. The email was worded in such a way as to appear that it might have contained inside information about BSX's prospects. The email did not in fact contain inside information.

During a series of calls to clients passing on the information in the email he had received concerning BSX, SP used language that embellished the information in such a way that the FSA concluded that he gave his clients the impression that he was passing them inside information. By doing so, SP failed to observe proper standards of market conduct.

The FSA further concluded that SP acted without due skill, care and diligence when he failed to consider whether or not the email might have contained inside information and as a result he did not discuss the email with his senior manager or compliance as required by his employer's compliance procedures.

In deciding that a fine of £20,000 was the appropriate penalty, the FSA took into account the fact that SP did not form a positive belief that the information he had received was inside information; the fact that SP co-operated with the FSA, had agreed to settle this matter and had not previously been the subject of FSA disciplinary action.

<http://www.fsa.gov.uk/pubs/final/Pignatelli.pdf>

FSA Sets Out Good Practice Guidelines for Valuation of Hedge Fund Assets

On November 29th the Financial Services Authority ("FSA") released the text of a letter sent to by its Managing Director of Wholesale and Institutional Markets to the Valuations Sub-Committee of the International Organization of Securities Commissions.

The letter contains a non-exhaustive list of good practice valuation criteria, identified by the FSA during visits between March and May 2006 to fund managers it supervises in the areas of: (1) establishing appropriate systems and controls; (2) compliance and corporate governance arrangements; (3) high level pricing policies; and (4) the timeliness and bases of the valuations.

http://www.fsa.gov.uk/pubs/international/iosco_letter_271106.pdf

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Upcoming Breakfast Seminar:

Date: Tuesday 12 December 2006
Venue: London Capital Club, London EC4
Title: UK Taxation of Hedge Funds and Hedge Fund Managers.

For an invitation please contact terri.duggan@kattenlaw.co.uk

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