



London Update

UK Financial Services Regulatory Developments

May 2007

Companies Act 2006: Changes Taking Effect April 2007

The Companies Act 2006 (the “Act”) is being implemented through a number of key “milestones” throughout 2007 and 2008. All of the provisions of the Act will be implemented by October 1, 2008.

On April 6, a number of sections of the Companies Act 1985 were repealed and Part 28 of the Act regarding the takeovers regime came into force.

Sections of the Companies Act 1985 that have been repealed include: (1) the requirement that someone who is 70 or over must have shareholder approval to be a director of a public company; (2) the prohibition on a company paying a director remuneration free of income tax; (3) the offence of a director, or his family, dealing in options on listed shares and debentures of his company or any group company; and, (4) the requirement for every director to notify his company of his dealings, and those of his family, in the company's shares and debentures or those of a group company (and companies will no longer be required to keep a register of directors' interests).

Although the takeovers regime in Part 28 of the Act largely restates the existing regime that has been in force since May 20, 2006, the powers of the Takeover Panel have now been formalized under statute.

The next key implementation date is October 1, 2007.

<http://www.dti.gov.uk/files/file38805.doc>

Office of Fair Trading Closes LME Investigation

The UK Office of Fair Trading (“OFT”) announced on April 20 that it had finally and unconditionally closed its investigation of the London Metal Exchange (“LME”). The case was opened in response to a complaint in 2003 from Spectron Group plc (“Spectron”) which alleged that the operation of the LME Select electronic trading platform was anti-competitive. Spectron provides an electronic platform (eMetals) for trading LME non-ferrous metals contracts in competition to the LME.

http://www.offt.gov.uk/advice_and_resources/resource_base/ca98/closure/LME

FSA Considering Introduction of Plea Bargaining

The *Financial Times* published a study on April 22 which confirmed the findings of earlier work by the UK Financial Services Authority (“FSA”) that there had been possible insider trading ahead of a takeover announcements in almost one in four cases in 2005. (The FSA study was published on March 7 and reported in the April 2007 London Update.)

In response to questioning by the *Financial Times*, Margaret Cole, FSA's Director of Enforcement, confirmed that the FSA was considering with the UK Treasury the introduction of immunity from prosecution and plea-bargaining in insider dealing market abuse cases. Ms Cole said, “In the past, the idea of the plea bargain in this country has been looked at with disdain. But we have been studying the US experience and are now seriously looking at whether we can introduce a form of plea bargaining which can be hugely advantageous.” This would represent a major change of approach by the UK regulator and future developments are awaited with interest.

<http://www.ft.com/cms/s/5e3da614-f112-11db-838b-000b5df10621.html>

FSA Continues Move Towards More Principle-Based Regulation

The FSA published a paper, *Principles-Based Regulation - Focusing on the Outcomes that Matter* on April 23 setting out its approach to a more principles-based regulatory regime. The paper was published in conjunction with a conference held at which the FSA and the financial services industry discussed the challenges and opportunities presented by a move towards a more principles-based regulation.

Under the FSA's new approach, its FSA Handbook will rely increasingly on principles and outcome-focused high level rules rather than detailed prescriptive rules focussing on how outcomes must be achieved. As part of their move to a more principles-based regulatory regime, the FSA has committed to provide, either directly or through confirmation of industry guidance, a greater range of information to help firms plan their business processes and controls. This recognizes the difficulty of regulated firms attaining confidence that they understand the regulatory environment represented by a less rules-based system. It appears that greater dependence on professional advisors is another likely outcome of the change to more principles-based regulation.

<http://www.fsa.gov.uk/pubs/other/principles.pdf>

UK Treasury Encourages Greater Cooperation in Supervision of Hedge Funds

In a speech given to the FSA's More Principles-Based Regulation conference on April 23, UK Treasury minister Ed Balls said that the UK will propose that financial regulators work more closely together in sharing information on major counterparties' exposures to hedge funds. The proposal is based on the view that the quality of prudential supervision of hedge fund activity will be enhanced by greater co-operation between regulators in monitoring counterparties' exposures to hedge funds.

Although Mr Balls accepted that requiring hedge funds to disclose their portfolio positions to regulators would not be productive, he announced that he intended to discuss with other G8 Finance Ministers a proposal to broaden the scope of the six-monthly enquiries that the FSA currently addressed to other international regulators as well as to prime brokers and other hedge fund counterparties which it regulates.

http://www.hm-treasury.gov.uk/newsroom_and_speeches/press/2007/press_48_07.cfm

AIM to be Subject to MiFID Changes

The London Stock Exchange ("LSE") announced on April 24 that it is consulting on proposed rule changes that would allow third party trading platforms to trade securities listed on its Alternative Investment Market ("AIM") as a result of the EU Markets in Financial Instruments Directive ("MiFID"), due to be implemented from November 1, 2007. The LSE main market will be within the scope of MiFID and subject to MiFID transparency rules as a result. Even though AIM is outside the scope of MiFID, the LSE believes that MiFID's transparency rules should also apply to AIM.

The consultation closes May 21, 2007.

<http://www.londonstockexchange.com/en-gb/about/Newsroom/pressreleases/2007/aimsecurities.htm>

EU Developments

European Commission Commences Legal Action for Failure to Implement MiFID

On April 24, the European Commission commenced infringement proceedings against 24 EU member states for failing to implement MiFID into their national law. At present, only the UK, Ireland and Romania have fully met their obligations under the Directive. All EU member states were required to implement the new MiFID requirements before January 31, 2007 to give EU firms sufficient time to prepare for the November 1, 2007 date on which MiFID requirements come into force.

It is rare for infringement proceedings to run their full course. Although their commencement triggers a formal process that could potentially reach the European Court of Justice, the Commission's goal is to force the non-complying member states to step up the pace of their implementation of this significant Directive.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/547&format=HTML&aged=0&language=EN&guiLanguage=en>

Creation of Single Euro Payments Area Still on Course

On April 24, the European Parliament adopted the European Commission's proposal for the Payment Services Directive ("PSD") which creates the legal foundation for the creation of the Single Euro Payments Area ("SEPA").

The PSD and SEPA aim to ensure that cross-border EU credit-card transactions, bank transfers and direct debits, are as easy, efficient and secure as standard domestic payments.

The PSD will apply to all EU member states, not just the euro area, and must be transposed into national law by November 1, 2009.

http://www.europarl.europa.eu/news/expert/infopress_page/042-5721-113-04-17-907-20070420IPRo5537-23-04-2007-2007-false/default_en.htm

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Upcoming Breakfast Seminar:

Date: 22 May 2007

Venue: London Capital Club, London EC4

US/UK Tax Issues for Fund Managers

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

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