

## UK corporate update.

### **Admission and Disclosure Standards amended**

The London Stock Exchange's Admission and Disclosure Standards have been amended in relation to block listings; the procedure used when issuers want to issue securities on a regular basis, such as in relation to an employee share scheme.

The definition of a block admission has been revised and Rule 2.7 updated accordingly. The amendments clarify the definition and offer issuers the option of making a block admission application if the securities (i) are not allotted and (ii) do not require prospectus or listing particulars. There is also guidance on the application of Rule 2.7 so it is clear what typically constitutes a block admission application.

The notice can be found at:

<http://www.londonstockexchange.com/NR/rdonlyres/5BB830CE-BE70-4B2A-8B85-39DAD06231F4/0/N2009.pdf>

and its attachment at:

<http://www.londonstockexchange.com/NR/rdonlyres/9A6C653B-EF28-4CEA-AF6A-642EC7302272/0/Attachment1N2009.pdf>

### **No intent necessary for market abuse offences**

The Financial Services and Markets Tribunal has confirmed that a person can commit market abuse even if they have no intention to distort or mislead the market.

The Tribunal rejected an appeal by Winterflood Securities Ltd against a fine of £4m for market abuse. The appeal centred on a technical point concerning the interrelation of s.118 of the Financial Services and Markets Act 2000 and the Code of Market Conduct. Winterflood argued that, in addition to establishing that the conditions for market abuse set out at s.118 FSMA were satisfied, the FSA was also required to prove that Winterflood had acted with intent, or an "actuating purpose", as defined in the Code, to distort or mislead the markets. The Tribunal, an independent body set up to review FSA decisions, found in favour of the FSA, holding that it was not necessary for the FSA to prove that Winterflood had intended to commit market abuse. It concluded that Winterflood had misinterpreted the sections

### **Contents**

#### **Page 1**

Admission and Disclosure Standards amended

No intent necessary for market abuse offences

#### **Page 2**

Consultation on the Market Abuse Directive

#### **Page 3**

Personal liability for senior accounting officers

#### **Page 4**

Reform of Limited Partnership Law

Registration of charges by overseas companies

#### **Page 5**

Updated guidance on audit committee terms of reference

Linklaters and PLC Spring Seminars

Seminar programme

of the Code which mentioned the need for an “actuating purpose,” and upon which it had relied.

The Tribunal’s decision highlights the risk of firms inadvertently falling foul of the Market Abuse Regime, reinforcing the fact that liability for market abuse remains “effects-based”; the absence of an intention to engage in market abuse will not necessarily provide a firm or individual with a complete defence.

See <http://www.linklaters.com/pdfs/publications/Litigation/FSAvictorious.htm> for a Stop Press prepared by our Litigation team for further information.

## **Consultation on the Market Abuse Directive**

The European Commission has announced a “call for evidence” to seek views on the application of the Market Abuse Directive. The review forms part of the Commission’s policy to strengthen the EU regulatory framework for financial services and of its action plan to reduce administrative burdens on EU companies.

The Market Abuse Directive aims to ensure that behaviour such as insider dealing and market manipulation is properly deterred and sanctioned. It was implemented in the UK on 1 July 2005 by part VIII of the Financial Services and Markets Act 2000.

### *Key proposals*

The Commission has identified certain parts of the Directive as needing review in order to improve its effectiveness and reduce unnecessary burdens. In particular it seeks further views on the following proposals:

- clarification of the circumstances in which issuers can delay disclosure of inside information;
- delayed disclosure of inside information should be permitted where there is a threat to the financial viability of the issuer (e.g. in the case of a financial institution where central bank funding is being arranged to provide liquidity for the institution);
- emergency financial stability measures should be excluded from the scope of the Directive; and
- the scope of the buy-back and stabilisation safe harbour should be reviewed.

### *Other areas for consultation*

The call for evidence also encourages views on whether the following should be implemented:

- extension of the Directive to non-regulated markets and/or multilateral trading facilities;

- alignment of the definition of financial instrument covered by the Directive with the definition currently in the Markets in Financial Instruments Directive (MiFID);
- development of a market abuse framework to cover physical markets (i.e. commodity trading/commodity derivatives);
- reduction of the scope of the obligation (a) to prepare insider lists and (b) report transactions entered into by persons discharging managerial responsibilities;
- clarification that competent authorities' powers to require telephone and data traffic records in the course of market abuse proceedings are not limited by any confidentiality or privacy restrictions; and
- a harmonised EU regulatory framework in relation to short selling.

The call for evidence is available at:

[http://ec.europa.eu/internal\\_market/consultations/2009/market\\_abuse\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/market_abuse_en.htm)

The consultation closes on 10 June 2009. This may be an opportunity for helpful reforms to be made and Linklaters will be involved in responding to the call for evidence.

### **Personal liability for senior accounting officers**

It was announced in the Budget 2009 this week that new provisions are to be included in the Finance Bill 2009 which will require senior accounting officers of large companies to take reasonable steps to establish and monitor accounting systems within their companies that are adequate for the purposes of accurate tax reporting. The senior accounting officer will also need to certify this annually to HMRC or alternatively specify any inadequacies in the system.

In the event that the new requirements are not met as a result of a deliberate or careless failure, penalties may be chargeable on the company or, in a novel move, the senior accounting officer personally.

Although there is a statutory requirement for companies to make accurate returns in relation to tax and other duties, there is currently no requirement to ensure that internal accounting systems are adequate to ensure that this can be done.

Responsible companies, particularly listed companies, should already have adequate accounting systems in place, so that these requirements should not involve significant additional burdens. However, the senior accounting officer will need to be identified to HMRC, and the risk of personal liability will be a concern for such individuals, potentially encouraging greater caution and increased due diligence in the administration of the company's tax affairs.

For a summary of other significant business tax announcements in the Budget see

<http://www.linklaters.com/pdfs/publications/taxnewsflash/090423budget2009.pdf> for a report prepared by our tax team.

## **Reform of Limited Partnership Law**

The Government has announced an update on its proposed reform of limited partnership law.

In August 2008, the Department for Business Enterprise and Regulatory Reform published a consultation document with a proposal to modernise and simplify the law on limited partnerships. It contained a draft Legislative Reform Order that would have repealed the Limited Partnerships Act 1907 and inserted new provisions about limited partnerships into the Partnership Act 1890.

BERR received more responses to the consultation than had been expected and these included some that raised points of substance. It has now announced that, in the light of the responses, it will not be possible to proceed with the Legislative Reform Order as proposed. It still wants to proceed with some proposals and will be discussing these with interested parties.

Limited liability partnerships formed under the Limited Liability Partnerships Act 2000 are outside the scope of the reforms.

BERR's official response is available at

<http://www.berr.gov.uk/whatwedo/businesslaw/partnership/page25911.html>

## **Registration of charges by overseas companies**

Revised draft regulations have been published relating to the obligations on overseas companies to register charges.

An overseas company must be registered at Companies House if it has an establishment in the UK. The revised draft Regulations provide that if a registered overseas company creates a charge over its property in the UK then it must register particulars of that charge with Companies House.

The draft Overseas Companies (Company Contracts and Registration of Charges) Regulations 2009 can be found at

<http://www.berr.gov.uk/files/file50856.doc>

and an explanatory memorandum at

<http://www.berr.gov.uk/files/file50857.doc>

The regulations will come into force on 1 October 2009 (at the same time as Part 25 (Company Charges) of the Companies Act 2006).

## **Updated guidance on audit committee terms of reference**

ICSA has published a revised version of its guidance on audit committee terms of reference.

The guidance has been updated to reflect the new version of the Combined Code that applies to listed companies for financial years beginning on or after 29 June 2008 and the October 2008 FRC guidance on audit committees.

The updated ICSA guidance is available at:

<http://www.icsa.org.uk/assets/files/pdfs/guidance/090303%20%20FINAL%20Terms%20of%20Reference%20%20Audit%20Committee.pdf>

## **Linklaters and PLC Spring Seminars**

### **Corporate financing options in challenging markets**

A large number of companies have turned to the equity markets this year to raise finance, with more capital being raised in the first three months of 2009 than in the whole of 2008. A combination of corporate debt maturing in the coming 12 months and the likelihood that debt-market conditions will remain difficult, means that secondary issues are likely to remain a key source of finance.

Linklaters, in conjunction with Practical Law Company, are holding two seminars at Linklaters' London offices which will take a practical and commercial look at the options available to companies hoping to raise money in the equity markets and other possible sources of finance.

Seminar one -Equity capital raising and debt financing: key points for companies.

Seminar two - Recent developments in equity issues and what happens if the equity markets do not provide the solution.

We would be delighted to see you at either or both of these seminars.

The seminars are for in-house legal teams and investment bankers and will take place at 5.00 pm on Wednesday 6 May 2009 and Wednesday 20 May 2009 followed by drinks from 7.00 pm.

The events are free to attend and accredited for CPD points.

For further details on the seminars and to register please see

<http://www.practicallaw.com/6-385-5139>

### **Seminar programme**

We would be delighted if you could join us for the next seminars in our programme, "Foreign corrupt practices – the position in the US, UK and Europe" on 7 May 2009 and "Budget 2009 – what it means for your organisation" on 20 May 2009.

Both seminars will take place at our offices, One Silk Street, London, EC2Y 8HQ. For further details and to register your interest in these events, please visit the seminar page on our website at <http://www.linklaters.com>

## **Foreign corrupt practices – the position in the US, UK and Europe**

Thursday 7 May 2009

9.00am – 10.00am (registration from 8.30am)

Foreign corrupt practices represent a serious risk to all organisations with international activities. The risk is not only of financial loss but also to commercial relationships, reputation, liability and criminal exposure.

The US has led the way with its Foreign Corrupt Practices Act, its effectiveness (and enthusiasm) for investigating and bringing prosecutions and the scale of its penalties – witness the fine of \$44.1m imposed on Baker Hughes in 2007, representing civil and criminal fines and disgorgement of illicit profits.

In the face of US and OECD pressure, EU member states and many other countries have committed to raise their game in this area. Recently, the City of London Police established an Overseas Corruption Unit which, in August 2008, achieved the first UK conviction for foreign corrupt practices.

Never has it been more important for organisations to understand the foreign corrupt practices laws to which they are subject and the approach of enforcement authorities, and to take effective steps to comply.

In this seminar we will:

- Provide an overview of the key rules on foreign corrupt practices in the US, UK and key European countries
- Consider the steps you should be taking to detect and prevent foreign corrupt practices
- Offer practical advice on how to respond to foreign corrupt practices issues

This seminar will be useful for in-house legal, litigation and cross-border project and finance teams and investment banks.

Attendance at this seminar will provide 1 hour of accredited CPD.

## **Budget 2009 – what it means for your organisation**

Wednesday 20 May 2009

9.00am – 10.30am (registration from 8.30am)

The Budget is expected in Spring 2009 and in these turbulent times it will be interesting to see what changes to the tax system the Chancellor comes up

with. The detail (and often the “real deal”) will be found in the Finance Bill which is usually published a few weeks later.

This seminar is timed for after the publication of the Finance Bill and will go beyond the media and political hype to consider what the Budget changes actually mean for UK companies.

This seminar is aimed at in-house legal and members of finance teams and tax teams in both corporates and investment banks.

Attendance at this seminar will provide 1.5 hours of accredited CPD.

Linklaters has 26 offices in 19 jurisdictions covering all the major jurisdictions and financial centres around the world.

Amsterdam  
Antwerp  
Bangkok  
Beijing  
Berlin  
Brussels  
Dubai  
Düsseldorf  
Frankfurt  
Hong Kong  
Lisbon  
London  
Luxembourg  
Madrid  
Milan  
Moscow  
Munich  
New York  
Paris  
Rome  
São Paulo  
Shanghai  
Singapore  
Stockholm  
Tokyo  
Warsaw

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2009.

We currently hold your contact details, which we use to send you marketing and business communications. This information is available to our offices worldwide and to those of our associated firms. If any of your details are incorrect, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at [marketing.database@linklaters.com](mailto:marketing.database@linklaters.com).

Linklaters LLP ([www.linklaters.com](http://www.linklaters.com)) is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm regulated by the Solicitors Regulation Authority ([www.sra.org.uk](http://www.sra.org.uk)). The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of Linklaters LLP members together with a list of those non-members who are designated as partners and their professional qualifications may be inspected at our registered office, One Silk Street, London EC2Y 8HQ and such persons are either solicitors, registered foreign lawyers or European lawyers.