

Regulatory Update – September 2008

Company directors could be made to disclose any "significant doubts" over whether their business truly is a going concern under plans being drawn up by the UK's corporate reporting watchdog. The Financial Reporting Council is proposing an overhaul of the existing guidance for directors as the effects of the credit crunch spread to the wider economy. More companies are expected to fall into financial difficulties this year.
<http://www.frc.org.uk/press/pub1683.html>

Wealth funds adopt draft transparency guidelines. Global sovereign wealth funds reached a preliminary agreement on a set of voluntary principles to guide their investment practices and to calm fears about their motives. The International Working Group of Sovereign Wealth Funds,
<http://www.iwg-swf.org/pr.htm>

Correlation between sell side recommendations and investors' actions. The debate about the role and utility of sell-side research has raged since the Spitzer settlement in 2003 and the imposition of Regulation FD in the US and Mifid in Europe. State Street Global Markets' research agenda is very different to the mainstream offer of both the investment banks and independent boutiques. Investor behaviour is the key driver of recommendations rather than the view of individual analysts and strategists. State Street <http://www.globallink.com/en/About/ResearchNotes/013365>

The National Association of Pension Funds (NAPF) Engagement Survey 2008 of funds with over £1 billion in assets, has found that growing numbers are becoming involved in class actions. The number who had never taken part in a class action has nearly halved from 28% in 2007 to 15% in 2008 whilst those who had been a lead plaintiff/active participant had doubled from 10% to 23%.
http://www.napf.co.uk/DocumentArchive/Press%20Releases/02_2008/20080918_18-09-2008%20-%20Major%20Pension%20Funds%20Increase%20Class%20Action%20Participation.pdf

Companies must step up reporting of their cash positions or risk losing investor confidence, according to members of the Corporate Reporting Users Forum. They caution that current accounting rules and practices leave them unable fully to assess a company's cash flows.. They warn that the disclosures are crucial as solvency issues come to the fore during the financial crisis.

http://www.cruf.co.uk/cash_flow_letter_ft_oct08.pdf

The most comprehensive study of corporate governance in the Middle East and North Africa (MENA) issued by Hawkamah - the Institute for Corporate Governance and the International Finance Corporation, the private-sector arm of the World Bank Group.

The study reveals that a majority of participating banks and listed companies are unable to properly define corporate governance. What's more, only 3% follow good practice and none follow best practice, while 56% of boards have no more than one independent director, a situation that makes proper oversight difficult, according to the study.

<http://www.hawkamah.org/publications/IFC/>

European Parliament Calls for Regulation of Hedge Funds and Private Equity. On September 23, the European Parliament adopted a report demanding regulation of private equity funds and hedge funds. The Parliament formally requested that the European Commission propose legislation before December 2008.

www.europarl.europa.eu/oeil/file.jsp?id=5558452

Investors are using information on companies' carbon dioxide emissions to manage their portfolios, according to an annual survey of the world's leading businesses. The Carbon Disclosure Project (CDP), backed by hundreds of institutional investors, asks the world's biggest companies to report their greenhouse gas emissions. This year, almost two-thirds of the 385 institutional investors behind the project said they used the survey to identify companies not adequately addressing climate change.

<http://www.cdproject.net/reports.asp>

One in three FTSE 100 companies is failing to take advantage of the opportunities the internet offers to communicate with shareholders, reduce costs and improve environmental credentials, a survey has found. The companies that make the greatest impact online help investors to find the information they need fast and in formats they can download for their own use. But 34 of the 100 largest listed companies provide only a static pdf (portable document format) file of the annual report or images of it which can be slow to download and difficult to search.

<http://www.smithpartnership.com/reporting/index.html>

IRO's speak up over lack of FSA guidance on IMS's.

<http://www.ft.com/cms/s/0/d6d9b136-8fcb-11dd-9890-0000779fd18c.html>

Asset management chief executives think the industry is going to change significantly and they don't know how they should react, according to a new study from IBM Institute for Business Value. <http://www-935.ibm.com/services/us/gbs/bus/pdf/gbc03099-usen-fm-ceo.pdf>

Credit Suisse and Gerson Lehrman Group announced today a strategic alliance on investment research that allows the two companies to leverage each other's strengths. The relationship grants Credit Suisse access to Gerson Lehrman Group's network of more than 200,000 experts around the world to grow its global equity research brand. Gerson Lehrman Group will include Credit Suisse's global equity research analysts in its network on a limited basis, <http://www.glggroup.com/GLG-announces-strategic-alliance-CreditSuisse.html>

IASB supports FASB fair value proposals

<http://www.iasb.org/News/Press+Releases/IASB+staff+position+on+SEC-FASB+clarification+on+fair+value+accounting.htm>

Fund manager group urges caution in stock lending. The Investment Management Association, a UK-based umbrella organisation for fund management firms, has urged members to exercise caution in stock lending. It therefore invites its members to consider carefully the implications of any

participation in the lending of stock in UK banks, so long as current conditions prevail. Members should weigh up the need for an orderly market and the risk to their client's interests should the lent stock be used against them. <http://www.investmentuk.org/press/2008/20080919.asp>

Australian Treasury proposes new permanent rules on short – post the temporary ban.

[http://www.treasury.gov.au/documents/1418/RTF/Exposure_Draft_Corporations_Amendment_\(Short_Selling\)_Bill_2008_Commentary.rtf](http://www.treasury.gov.au/documents/1418/RTF/Exposure_Draft_Corporations_Amendment_(Short_Selling)_Bill_2008_Commentary.rtf)

FSA List! 19 provides guidance on transactions (class tests), on Prospectus Directive issues and on Directors Dealings under the Model Code.

http://www.fsa.gov.uk/pubs/ukla/list_oct08.pdf

US News

Statement of Securities and Exchange Commission Concerning Short Selling and Issuer Stock Repurchases

<http://www.sec.gov/news/press/2008/2008-235.htm> and
<http://www.mofo.com/news/updates/files/080928SEC.pdf>

The Securities and Exchange Commission announced that it will hold a roundtable to discuss ways to modernize its disclosure system to give investors more useful and timely information for investment decision-making. The roundtable is part of the SEC's 21st Century Disclosure Initiative launched by SEC Chairman Christopher Cox in June. The roundtable's discussions will help guide the Commission as it examines how the agency acquires disclosure information from public companies, mutual funds, and other market entities as well as how that information is being made available to investors and the markets.

<http://www.sec.gov/news/press/2008/2008-227.htm>

SEC Publishes Final Rules Regarding Foreign Private Issuers and Cross-Border Tender Offers changing its cross-border exemptions for business combination transactions, tender and exchange offers and rights offerings by foreign private issuers to expand and enhance the utility of the exemptions. The changes are intended to encourage offerors and issuers in cross-border transactions to permit U.S. security holders to participate in these transactions

<http://www.sec.gov/rules/final/2008/34-58597.pdf>

<http://www.sec.gov/rules/final/2008/33-8959.pdf>

SEC Updates Disclosure Requirements for Foreign Private Issuers

On August 27, the Securities and Exchange Commission voted to update and modernize disclosure requirements for foreign companies offering securities in U.S. markets, making it easier for U.S. investors to gain access to timely financial information and make better informed investment decisions.

Rule amendments accelerate the reporting deadline for annual reports filed on Form 20-F by foreign private issuers from six months to four months after the issuer's fiscal year end, consistent with most countries' filing requirements.

<http://sec.gov/news/press/2008/2008-183.htm>

<http://sec.gov/news/speech/2008/spch082708fhk.htm>

SEC Votes to Amend Exemptions for Foreign Companies Trading Securities in U.S. Markets

On August 27, the Securities and Exchange Commission voted to adopt amendments to Securities Exchange Act Rule 12g3-2(b). The Rule provides a foreign private issuer with an exemption from registering its equity securities under the Exchange Act while having its equity securities traded in the U.S. over-the-counter market if it files certain information published outside the U.S. with the SEC. The exemption does not apply if the foreign private issuer's securities are traded on a national securities exchange or the OTC Bulletin Board.

<http://www.sec.gov/news/speech/2008/spch082708ebs.htm>

<http://www.sec.gov/news/digest/2008/dig082708.htm>

SEC mulls 2014 for international accounting rules. U.S. companies could be required to use international accounting standards by 2014 under a tentative timeline proposed by the SEC. The SEC voted unanimously to establish a path that could eventually force companies to use the international accounting rules instead of U.S. Generally Accepted Accounting Principles,

http://www.sec.gov/news/speech/2008/spch082708cc_ifrs.htm

Charles Niemeier, a member of the Public Company Accounting Oversight Board, said the **proposed switch could squander comparability among U.S. financial statements** and hurt the ability of regulators and auditors to do their jobs.

http://www.pcaob.org/News_and_Events/Events/2008/Speech/09-10_Niemeier.aspx

Ten U.S. exchanges have agreed to give two market watchdogs more power to ferret out insider trading regardless of where it occurs in the United States, regulators said. The exchanges will give responsibility for detecting illegal trading to NYSE Regulation and the broker-dealer watchdog, the Financial Industry Regulatory. Each exchange currently is responsible for monitoring trading on its market as well as any investigations and enforcement actions.

<http://www.finra.org/Newsroom/NewsReleases/2008/P039066>

The Securities and Exchange Commission today took several coordinated actions to strengthen investor protections against "naked" short selling. <http://www.sec.gov/news/press/2008/2008-204.htm>