A Special Meeting of the Council was held in the Boardroom, Faculty Building, South Kensington Campus, Imperial College London, at 9:30 a.m. on Wednesday, 3rd November 2010, when there were present:

The Lord Kerr of Kinlochard (Chairman), Professor D.K.H. Begg, Mrs. P. Couttie, Professor Dame Julia Higgins, Dr. M.P. Knight, Baroness Manningham-Buller (by telephone), Mr. J. Newsum, Mr. S. Newton, Ms. K. Owen, Professor S.M. Richardson, the Lord Tugendhat, the Rector and the Clerk to the Court and Council.

Apologies: Professor M.J. Dallman, Professor J. Kramer Ms. J.R. Lomax and Professor S.K. Smith.

In attendance: Mr. D Simpson and Mr. J. Young of KPMG (for Minutes 1 to 17 only) and the Assistant Clerk to the Court and Council.

IMPERIAL COLLEGE OF SCIENCE, TECHNOLOGY AND MEDICINE

IMPERIAL INNOVATIONS (PAPER A)

1. Before commencing the Meeting, the Chairman advised members that he had determined that, because of commercial sensitivity, this item constituted a reserved area of business. The President of the Imperial College Union had therefore not been invited to attend this Meeting.

2. Introducing Paper A, Mr. Newton advised the Council that the College Fund Board had met on the previous day to review the paper before the Council today. At that meeting, the Rector had pointed out an inaccuracy in the paper circulated to Council. Paper A included the statement “The College Fund Board unanimously recommends to the Council that the proposal be supported”. However, at the time the paper was circulated neither he, as Rector, nor the College Fund Board, had seen the report from KPMG on the proposal. As the recommendation to the Council would have to take full account of the independent advice commissioned from KPMG, the Fund Board had not been in a position to make such a recommendation at that stage. Mr. Newton confirmed that he had spoken to KPMG and obtained their views before the Council paper was finalised and circulated, but he fully accepted the point made by the Rector and apologised for this inaccuracy. The College Fund Board had then received the report from KPMG and, following consideration of this report, had confirmed its recommendation for the proposal.

3. Before inviting KPMG to present their report to the Council Mr. Newton reminded members that they should declare any personal interests in Imperial Innovations to ensure that any potential conflicts of interest were understood by the full Council. He then declared that both he and the Hon. Mr. Robert Rayne (one of the members of the College Fund Board) had an interest in Imperial Innovations, either directly or indirectly and he reminded members that Dr. Knight also had a personal interest in Imperial Innovations, as well as
being its Chairman. Mr. Newsum then declared that he too had an interest in Imperial Innovations, both personally and through SandAire. Mr. Newton then invited Mr. David Simpson of KPMG to present his independent report on the proposed transaction to the Council.

4. Presenting his report, a copy of which was tabled for members' information, Mr. Simpson said that KPMG had been appointed to review the proposal on behalf of the Council. They had been asked to carry out two main tasks: to look at the business model of Innovations; and to evaluate the merits and risks of the deal itself. In addition, KPMG had looked at the wider market conditions to inform their evaluation. However, in this point he recognised that there was actually very little concrete market information available that could usefully inform an assessment of the proposed transaction.

5. Mr. Simpson first assessed the status quo position. Innovations had, he said, been very successful to date and it was currently trading at a high multiple of its net asset value (NAV). It also currently had about £24M of cash at its disposal. However, if it was to continue to invest in new and existing spin-out companies, there was little doubt that this level of capital was too small and that Innovations had a need for more investment funding. Another consideration was the stage at which it was able to invest in its spin-out companies. It was clear, he said, that the most lucrative investments were made in later funding rounds when original investors could often find their holdings diluted unless they could continue to invest and maintain their holdings. If Innovations had access to more capital, it could continue to invest in those companies that looked most likely to succeed. This would ensure that it would be able to reap the maximum benefit from those companies that went on to be successful.

6. Mr. Simpson went on to say that Innovations stock was thinly traded with only three substantial investors: the College, Invesco and Lansdowne. Invesco and Lansdowne were both very supportive of the Company, and indeed, Invesco's willingness to purchase shares when they became available was largely responsible for current price of Innovations' shares. Although there were clear benefits from having an investor who was keen to increase its investment in the company, the lack of real trading in its shares meant that the current market price might not represent its real value.

7. Turning to the transaction itself, Mr. Simpson said that the team from KPMG had conducted a three stage analysis. First, they had considered the implications for the College of reducing its shareholding below 50%. Secondly, they had considered whether the terms of the actual deal itself were reasonable; and finally, they had considered whether Innovations was likely to be able to deal with the change in scale of its business if it was successful in raising the £140M as proposed. Ordinarily, he said, reducing a shareholding would be a major step for any shareholder as it meant relinquishing control over the company. However, the College's relationship with Innovations was in fact governed by three elements; its shareholding, the Technology Pipeline Agreement and the Relationship Agreement. A reduction in Imperial's shareholding to below 50% would mean that it would no longer be able to appoint the Chairman of Innovations, as it was currently able to do, but provided its holding remained above 30%, it would retain the right to appoint two directors. The other investors had already confirmed that they wanted Dr. Knight to continue as Innovations' Chairman, so this was less of an issue than it might be. Furthermore the Relationship Agreement between the College and Innovations served to restrict the extent to which the College could exercise control over the company. In particular, the College was restricted from making any decisions against the wishes of the other shareholders. This meant that the implications of a diminution in the College's shareholding were much less than would normally be the case.

8. Mr. Simpson then turned to the Technology Pipeline Agreement (TPA). That agreement required Innovations to consider IP from the College for exploitation and ensured that College IP had a route to market. The TPA also afforded certain protections to the College,
which would allow Imperial to withdraw from the TPA if Innovations acted against the College's interests. Similarly, if Innovations failed to make reasonable efforts to exploit the College's IP, the College would then be free to exploit this IP itself. This too meant that the College was less affected by a reduction in its shareholding than might otherwise be the case. Mr. Simpson then considered the College's ability to liquidate its shareholding. At present, he said, if the College wanted to sell some shares in Innovations, this might be seen by the markets as a signal that the College lacked confidence in Innovations, which could have a direct impact on market confidence and the price of Innovations' shares. However, a dilution to 30% would mean that the association between Innovations and the College would be less strong; the College would then be better able to trade in Innovations' shares without this having a deleterious effect on the market price.

9. Mr. Newsum said that the TPA was clearly vital to protecting the College's interests. Mr. Simpson agreed and said that the crucial clause in the TPA gave the College the right to dissolve the agreement with Innovations if an inappropriate person was to take control of the company. This provided the College with a good level of protection for the future.

10. Mr. Simpson then considered the proposed transaction in detail. The proposed price for shares in the transaction was 350p. This was less than the current price, but he reminded members that shares were currently trading at around 3 times net asset value (NAV). If the cash held by Innovations was removed from the calculation of the company's value, the trading price was almost 4 times NAV. Although there were very few real comparators in the market, in marked contrast to Innovations, most of the other IP exploitation companies in the UK were currently trading at or below NAV, while the nearest direct comparator, IP Group, was currently trading at a discount of 50% against NAV. One of the consequences of the proposed share issue would be a nominal reduction in the share price. The theoretical ex-rights price per share for Innovations was 419p, which was still 1.8 times NAV. A more pessimistic view of the ex-rights price might suggest that this would be the same price as the rights issue, i.e. 350p. Even this lower price represented 1.5 times NAV. It was likely that this was a more realistic and sustainable premium over NAV than the current high level.

11. Clarifying this latter point the Chairman said that there was a risk that the current share price over-valued the company and he asked if Mr. Simpson believed that issuing the shares at a 25% discount, with the knowledge that the ex-rights price was likely to be at a similar level, was a fair price to pay to reduce the risk that the current share price could fall as a result of a perceived over-valuation. Mr. Simpson said that this was ultimately a question for the Council to decide. However, he said he thought that it would be a reasonable conclusion for the Council to reach. Furthermore, he noted that raising an additional £140M would provide the shares with a much greater level of asset-backing. At present the level of asset-backing for Innovations was just 30%. After this additional capital had been raised, the asset-backing would increase to over 50%. If the price did indeed settle around 350p, the level of asset-backing would increase to over 66%. This would be a much more comfortable position for Innovations to be in.

12. Mr. Simpson then went on to consider whether the College would be able to generate income from selling its own rights. This was possible but, he felt, unlikely, and he suggested that the College should proceed on the assumption that it would not do so. At present, he said, it was assumed that Invesco would be interested in purchasing the College's rights as well as its own. However, it was not known if Invesco would be prepared to pay a premium for these rights and Cazenove had not yet tested whether any other buyers would be interested in purchasing the College's rights. They would also have a limited time to discuss this option with other potential buyers. Furthermore, if Invesco decided to take up the College's rights, it would then hold more than 30% of the company and would then be precluded from purchasing additional shares when they became available; Invesco would cease to be the buyer of last resort. Although this should not be a
central concern for the Council, Mr. Simpson suggested it was another issue of which members should be aware.

13. Mrs. Couttie asked if Cazenove should be looking for additional buyers. The chance to invest in Innovations should be attractive and might well attract interest in the market. This would also increase Innovations’ investor base and increase the liquidity of its stock. Mr. Simpson acknowledged that other investors might be interested. However, the extent and enthusiasm of the market had yet to be tested and the market for specialist stock such as Innovations was necessarily limited. He suggested that the College should not expect there to be an increase in liquidity for Innovations for at least two years.

14. Assuming then that the nil-paid rights might have little value, the Chairman asked if it might be better for a different structure to be adopted for this fund-raising such as a placement. Mr. Simpson reminded the Council that KPMG had only reviewed the proposed structure in detail and had not considered other possible structures for achieving the same or similar ends. He also did not know what the current investors’ views of a placement rather than a rights issue might be. However, he said that a placement might indeed be an attractive alternative. Much would depend on the responses Cazenove received once it was in a position to discuss the proposed rights issue with other potential investors. If there was little interest from outside investors, a public auction of rights could be very destructive to the share price. However, as he had previously noted, these discussions had yet to take place and, in the absence of this information, it was difficult to know how the wider market might react. In the circumstances, he said it would be sensible for the Council to keep its options open and recommended that a degree of flexibility on structure be maintained for the time being.

15. Mr. Simpson then moved on to consider the impact of the new business model on Innovations and its capacity to service this new model. Initially at least KPMG had been concerned at the practical implications for Innovations in taking on 3 new technology pipelines while also making deeper investments in some of its existing companies. However, over the course of these enquiries, Mr. Simpson said he had been increasingly impressed by the Innovations team and he was now a great deal more comfortable with this proposition than he had been at the outset. Innovations governance structures were sound and, he felt, would remain appropriate for the new business model. With regard to widening its investments to include companies from other universities, he said there was anecdotal evidence that the pipelines in these other universities were not well served and that Innovations’ professionalism and the experience it had gained from working with the College would stand it in good stead for dealing with the other universities. It would also mean that Innovations would be able to offer a unique service to academics in those institutions. As for the need to conduct follow-on investments, he said that Innovations had a strong relationship with, and a good understanding of, the companies it would be investing in and it was reasonable to believe that these later stage investments would provide greater returns to Innovations. Mr. Simpson acknowledged that, if it was take on this wider and deeper activity, Innovations would have to be strengthened, both in terms of the quality and number of staff it employed. However, this need had been recognised by the Innovations Board. Mr. Simpson also noted that one consequence of the increased capital available to Innovations following the rights issue would be that it would be better placed to attract the high quality staff it would now require.

16. Mr. Newsum noted that, if the proposal went ahead, Invesco would become the largest shareholder in Innovations. This would inevitably change its relationship with Innovations and the College. He asked if any more was known about Invesco’s intentions and reasons for investing. Mr. Newton suggested that this should be seen in the context of the general financial environment. Most companies had been cutting back on in-house research and development and were increasingly looking to buy in technology which had been developed elsewhere. Even companies with a strong research tradition had found that the best inventions and developments were coming from inter-disciplinary research; the type of
research that was hardest for these companies to conduct themselves. This meant these companies were now increasingly looking to universities – which were very well placed to conduct multi-disciplinary research – to undertake the early stage development of technologies which might then be bought in. In this changing environment, access to university IP and technology could provide considerable returns on investment. Mr. Newton suggested that, as Innovations was the market leader in the UK in developing university IP, Invesco saw Innovations as the best way of gaining access to this university-developed IP and therefore the best future-tech companies. Furthermore, because of Innovations close relationship with the academics producing the IP, it was much better placed than other companies to pick out the likely winners. Finally, he noted that, as Invesco had over £20BN in assets, the additional £100M it would be investing in Innovations was not a large investment for it to make.

The Chairman noted Mr. Simpson’s comments about the need to strengthen Innovations’ management and asked Dr. Knight, as Chairman of Innovations, to report on its intentions in this regard. Dr. Knight said that the Board was acutely aware of the need to extend Innovations’ management capacity if it was going to be able to extend its operations as was now proposed. Innovations would need to employ more staff and also attract more high quality staff to manage its portfolio of companies and investments, but this could not be done until the additional funding was in place. Indeed, he said, as Mr. Simpson had already noted, the additional funding would serve as an attractor in its own right to help recruit the new staff required. The Chairman then asked Mr. Simpson to comment on Invesco’s motivations in making this investment. In particular, he asked if Invesco would now be able to appoint a new Chairman and, if it did, what protections could the College rely on. Mr. Simpson said that, once Imperial’s shareholding was less than 50%, the Chairman would be chosen by the Board, not by individual shareholders. Nor did shareholders have a right to appoint members of the Board, only Imperial College had this right by virtue of the Relationship Agreement. Finally, he said that the protections under the Relationship Agreement and the TPA which had already been discussed would still apply. From a practical perspective, the risk of Invesco acting, or being able to act, in a way which was detrimental to the College was low.

Mr. Newsum then asked what the current arrangements at Oxford, Cambridge and UCL were and who had access to their IP. Dr. Knight said that some departments had sold their IP rights, but there was not a defined pipeline agreement in place at any of these universities. This meant that academics had to find investors to exploit their IP on an individual basis. Innovations’ previous success and profile allied to the investment capital it would now have meant that it would be an extremely attractive proposition for most academics at the other universities. Mr. Newsum asked if the other universities would want to become investors in Innovations themselves. Dr. Knight said that this possibility had been discussed with the investment funds of the other universities. However, he understood that Innovations was considered to be too illiquid for them to invest. The Chairman then asked Mr. Simpson if there were any other points he wished to bring to the Council’s attention. He advised that £140M was a substantial capital sum and there would be an expectation in the market that this would enable Innovations to start investing immediately in new companies. He suspected that it would take longer to make use of this capital than expected and this slower than expected rate of spend could have a short term effect on Innovations’ share price. However, he did not believe this was a major issue and any short-term effects would eventually stabilise. The Chairman thanked Mr. Simpson for the independent report he had given the Council.

Once Mr. Simpson and Mr. Young had left the Meeting the Chairman noted that the independent advice received from KPMG had confirmed that the College's position was still protected and that the proposal to raise additional capital for Innovations was a reasonable one. KPMG had also confirmed that the proposed price of 350p per share was reasonable. Members agreed that there was nothing in KPMG's report which would cause the Council to change its view that the College's shareholding could be reduced to 30%. However,
there were still a number of issues to be resolved. First was the quantum of funds to be raised. The current proposal was to raise £140M at 350p a share. This assumed that the College would be able to dispose of its own rights. If it was not able to do so, and KPMG had suggested that this was not certain, the amount raised for the College would be zero. However, the Chairman suggested that, ultimately, this should not be a matter for the Council. Once the Council had decided that the College shareholding could be diluted to 30% and that it wanted to achieve a price of 350p a share, determining the final quantum was an issue for the College Fund Board. The Chairman then suggested that an alternative route for raising these funds might be a placement rather than a rights issue, especially if the College was unlikely to realise any significant value for the sale of its own rights. A placement would be less complex and might have fewer potential downsides. Here again, though, he suggested that the final decision on the structure of the deal should be taken by the College Fund Board. If the Council agreed, it would be important to provide the Fund Board with sufficient flexibility to take these decisions, while still acting in accordance with the Council's wishes.

20. Mr. Newsum asked if there were any reputational concerns in choosing a placement rather than a rights issue, particularly if this meant other existing shareholders were thereby denied the right to invest themselves. Mr. Newton suggested that a placement with a clawback would allow existing shareholders the option to invest. Members agreed that this would deal effectively with the concerns of existing shareholders and that, if a placement was the preferred structure, this should be with a clawback.

21. The Chairman then said that, if Innovations' senior management team made significant personal gains from a rights issue, this might be badly received by some within the College and could change the way in which the rights issue was perceived. He asked if the Innovations' team would consider not taking up their individual rights. Mr. Newsum noted the Chairman's concerns, but said that if the Innovations' team did not take up their own rights, there was a risk that the wider market would perceive this as a lack of confidence in the deal. The Chairman noted the point, and that, if a placement were chosen instead of a rights issue, this would cease to be an issue. Dr. Knight confirmed that he would not be taking up his own rights and said that, although he could not give any undertaking on their behalf, he understood that the other Innovations executive directors also intended not to take up their own rights. As the directors' rights represented a very small proportion of the issued share capital, he did not believe that this decision would have a material impact on the fundraising or on the market's perception of Innovations.

Resolved: The Council, having considered the advice of the College Fund Board and the independent advice from KPG,

a. noting that there would be no effect on Innovations' obligations to the College under the Technology Pipeline Agreement, confirms that it would be ready to see the College's shareholding in Innovations fall to no less than 30%;

b. informed that Innovations, supported by the College Fund Board, sees advantage in seizing a possible opportunity to raise some £120 – 140M by issuing new shares at a price of no less than 350p per share, confirms that it has no objections to their doing so, whether by a rights issue (if the College Fund, which would not be taking up its rights, could thereby obtain significant value), or (if this were to prove the more cost-effective course) by a placing with clawback;

c. delegates to the Chairman of the College Fund Board, consulting with the Chairman and the Rector, responsibility for ensuring, with the Chairman of Innovations, that the most effective route is followed.
ACADEMIC HEALTH SCIENCES CENTRE (AHSC)

22. The Rector advised members that Lord Tugendhat, Professor Smith and he had been considering the best governance structure for the AHSC in the light of proposed developments and the possible move to an Academic Health Sciences System (AHSS). They had agreed that Professor Smith, while retaining his responsibilities as CEO of the Imperial College Healthcare NHS Trust, should move to a new role in the College. To this end, Professor Smith would take up appointment as the Pro-Rector (Health) with effect from 1 December. In order to take up these new duties, Professor Smith would be relinquishing his role as Principal of the Faculty of Medicine and it was proposed that his deputy, Professor Sir Anthony Newman-Taylor should be appointed as the new Principal of the Faculty of Medicine, also with effect from 1 December 2010. Although it had originally been intended that Council members should interview Sir Anthony and then present a recommendation to the Council for formal approval at the next meeting, this had not been possible. This was because these two appointments were complicated by the need to ensure that the Trust and the Health Authority were comfortable with these changes and were satisfied that they would not affect the close relationship between the College and the Imperial College Healthcare NHS Trust. The Trust Board and the Health Authority had now been informed of these proposals and had confirmed that they were content with them. It was also possible that an early announcement of these changes might have to be made before the next Council meeting.

23. The Chairman noted the special circumstances surrounding these appointments and suggested that the Council note Professor Smith's appointment as Pro-Rector (Health) and Professor Sir Anthony Newman-Taylor's appointment as the Principal of the Faculty of Medicine and agree that an announcement to this effect could be made. Before the Council's next meeting arrangements would be made for Sir Anthony Newman-Taylor to be interviewed by Ms. Owen and Professor Dame Julia Higgins on behalf of the Council. At its next Meeting, the Council could then receive a report from Ms. Owen and Professor Higgins and consider whether to appoint Sir Anthony as a member of the Council. The Council agreed this proposed way forward.

APPOINTMENT OF THE PRINCIPAL OF THE FACULTY OF ENGINEERING

24. The Chairman reminded members that, at its last Meeting, the Council had been advised that Professor Richardson would be relinquishing his role as the Faculty Principal for Engineering in order to concentrate on his role as Deputy Rector. There was therefore a need to identify a new Principal for the Faculty of Engineering and, in this case, he was pleased to say it had been possible to involve members of the Council in the appointment process, as had been recommended by the Governance Review Group. Ms. Owen reported that she and Professor Dame Julia Higgins had met with Professor Jeff Magee, currently Head of Department of Computing and Deputy Principal of the Faculty of Engineering, and had interviewed him for appointment as the new Engineering Principal. She confirmed that both Professor Higgins and she recommended him for appointment.

Resolved: That the appointment of Professor Jeff Magee as Principal of the Faculty of Engineering and ex-officio member of the Council, with effect from 1 January 2011, be approved.
ANY OTHER BUSINESS

25. There was none.

NEXT MEETING

26. The Clerk reminded members that the Council’s next Meeting would be held on Friday, 26 November 2010, with a dinner on the preceding evening.