

**Introduction**

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice. Among other things, we bring you details of our new executive remuneration tracker.

**Executive Remuneration Tracker**

Squire Sanders has made an executive remuneration tracker service available through its new "Compensation and Benefits: Global Insights" blog.

The UK Executive Remuneration Tracker gives a snapshot of the current position on governance issues affecting executive remuneration, including an up-to-date summary of the current state of affairs on relevant consultations and changes in legislation. The tracker can be accessed directly on the blogsite (<http://www.globalcompensationinsights.com/>). It is also possible to subscribe to the blog in order to receive alerts of executive compensation news items that affect the tracker.

As the first FTSE 100 Directors' Remuneration Reports are published under the new regulations, we will also provide links to those reports through the blogsite, which will be very helpful to companies with December year ends as they work on the new format for their own reports.

**Auditors: the Competition Commission has published proposals aimed at opening up the UK audit market: the new regime is likely to come into force from the last quarter of 2014**

On 15 October 2013, the Competition Commission ('CC') published a number of proposals aimed at making the UK audit market more competitive, as well as ensuring that audits are more focused on shareholder needs.

In a summary of its final report on the supply of statutory audit services to large companies in the UK, the CC confirmed that competition in the audit market is restricted, given certain factors that inhibit companies from switching auditors and the incentives that auditors have to focus on meeting management, rather than investor, needs. The full final report of the CC will be published shortly<sup>1</sup>.

In view of its findings, the CC has proposed a number of remedies, including the following:

- FTSE 350 companies must put their statutory audit engagement out to tender every ten years as an absolute minimum;
- many companies would, however, benefit from going out to tender at least every five years. If companies choose not to go out to tender with such frequency, the audit committee must in its report specify the financial year in which the company plans to do so and state why this decision is in the best interests of shareholders;

- the Financial Reporting Council should review every audit engagement in the FTSE 350 on average every five years, and its findings should be relayed to shareholders;
- a prohibition of 'Big-4-only' clauses in loan agreements – although it will be possible to specify that an auditor should satisfy objective criteria;
- there must be a shareholders' vote at the AGM on whether the report of the audit committee contained in the annual report is satisfactory; and
- only the audit committee should be allowed to negotiate audit fees and influence the scope of audit work, initiate tender processes, make recommendations for appointment of auditors and authorize the external audit firm to carry out non-audit services.

The CC will prepare an Order for those elements of the remedy package it can require, and make recommendations for the others. It is expected that the new regime will come into force from the last quarter of 2014.

Statutory Audit Services for Large Companies: Market Investigation: Summary of Report available at: [http://www.competition-commission.org.uk/assets/competitioncommission/docs/2011/statutory-audit-services/131015\\_summary.pdf](http://www.competition-commission.org.uk/assets/competitioncommission/docs/2011/statutory-audit-services/131015_summary.pdf)

**Corporate governance: executive remuneration: the ABI publishes the 2013 up-date of its Principles of Remuneration**

On 5 November 2013, the Association of British Insurers ('ABI') issued the 2013 edition of its Principles of Remuneration. The ABI made significant revisions to the Principles in last year's edition and, this time, has made only minor amendments and clarifications. The key changes relate to:

- performance adjustment;
- executive shareholdings;
- performance on grant schemes; and
- the new reporting and voting regime.

ABI Principles of Remuneration, 5 November 2013, available at: <http://www.ivis.co.uk/ExecutiveRemuneration.aspx>

ABI Letter to Remuneration Committee Chairmen introducing the 2013 edition of the Principles of Remuneration available at: <http://www.ivis.co.uk/Principles%20Letter%2004%2011%2013%20final%20website.pdf>

1 The CC's final report will follow the CC's provisional findings report (published February 2013) and its provisional decision on remedies (published July 2013).

## Corporate governance: the FRC has proposed changes to the UK Corporate Governance Code, and the introduction of new guidance, to improve risk management and the quality of information provided to investors

In its consultation paper, Risk Management, Internal Control and the Going Concern Basis of Accounting, published on 6 November 2013, the Financial Reporting Council ('FRC') has proposed changes aimed at improving risk management and communications with investors about the risks faced by the companies in which they invest.

The consultation paper contains draft revised and consolidated guidance on risk management, internal control and the going concern basis of accounting for directors of companies applying the Code ('the New Guidance'). The New Guidance, which would replace the FRC's existing going concern guidance as well as the Turnbull Guidance on Internal Control, follows the integrated approach recommended by the Sharman Panel inquiry into going concern and liquidity risks.

The FRC's proposed amendments to the Code would, among other things, require the board:

- to carry out a robust assessment of the principal risks facing the company, including any risks that would threaten its solvency or liquidity; and
- to confirm in the annual report that the assessment had been made and to explain any risks that were material uncertainties in relation to the company's ability to adopt the going concern basis of accounting.

Responses to the consultation paper are requested by 24 January 2014. The FRC aims to publish the final version of the New Guidance in the first half of 2014. It is anticipated that the New Guidance, and the proposed changes to the Code, will come into effect for financial periods beginning on or after 1 October 2014.

Risk Management, Internal Control and the Going Concern Basis of Accounting: Consultation on Draft Guidance to the Directors of Companies applying the UK Corporate Governance Code and associated changes to the Code available at: <http://www.frc.org.uk/Our-Work/Publications/FRC-Board/Consultation-Paper-Risk-Management,-Internal-Contr-File.pdf>

## Financial reporting: the FRC publishes the Corporate Reporting Review Annual Report for 2013

On 17 October 2013, the Financial Reporting Council (the 'FRC') published the Corporate Reporting Review ('CRR') Annual Report for 2013 covering reviews of some 264 sets of accounts conducted in the year to 31 March 2013. The Report includes:

- information about the main issues the CRR encountered during the review;
- details of those matters the CRR has identified as potentially important in the next financial reporting period, including those it intends to address; and
- information on how the CRR expects companies to approach financial reporting.

The CRR notes that, while reporting by larger companies (especially those in the FTSE 350) remains at a good level, reporting by some smaller listed or quoted companies suffers from a lack of adequate or appropriate resources.

As a result the FRC will consider actions to strengthen reporting in this area as part of its plan for 2014/15. Among other things, the CRR advises:

- that a company's key messages should be made clear in its annual report and accounts; and
- that boards should carefully consider where there is scope for directors' judgment in the application of accounting standards. The CRR will continue to challenge companies where the exercise of judgment appears to have resulted in aggressive accounting.

Financial Reporting Council: Corporate Reporting Review Annual Report for 2013 available at: <http://www.frc.org.uk/Our-Work/Publications/Corporate-Reporting-Review/Coporate-Reporting-Review-Annual-Report-2013.aspx>

## European Union: the Government launches a review in a bid to analyse what the UK's membership of the EU means for the UK's national interest

Further to its commitment to examine the balance of competences between the UK and the European Union ('EU'), the Government is undertaking a review to provide an analysis of what the UK's membership of the EU means for the UK national interest. The review aims to enhance public and Parliamentary understanding of the nature of the UK's membership of the EU and to contribute to the debate about reforming and improving the EU.

As part of the review, the Department for Business, Innovation and Skills ('BIS') has published a call for evidence on the free movement of services, including company law. The call for evidence asks, among other things:

- what are the advantages and disadvantages of EU action on company law?
- to what extent are the costs of existing or future EU rules in this area considered proportionate to the benefits?

Responses are requested by 13 January 2014.

BIS: Government Review of the Balance of Competences Between the United Kingdom and the European Union, Call for Evidence: Single Market: Free Movement of Services review available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251659/bis-13-1254-call-for-evidence-single-market-free-movement-of-services-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251659/bis-13-1254-call-for-evidence-single-market-free-movement-of-services-review.pdf)

HM Treasury has also published a call for evidence, on financial services and the free movement of capital. The EU legislation relevant to this exercise includes the Prospectus and Transparency Directives, the Market Abuse Directive and the Shareholder Rights Directive. Among other things, the Treasury seeks views on the following questions:

- how have the EU rules on financial services affected organisations?
- are the EU rules proportionate in their focus and application?
- would the UK benefit from more or less EU action?
- does the UK have an appropriate level of influence on EU legislation in the area of financial services?

Responses are requested by 17 January 2014.

HM Treasury: Single Market: Financial Services and the Free Movement of Capital – Call for Evidence available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251514/PU1568\\_BoC\\_FSFMC\\_CfE\\_proof4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251514/PU1568_BoC_FSFMC_CfE_proof4.pdf)

### **Prospectuses: Prospectus Rules: amendments to the rules on filing a prospectus came into force on 8 November 2013**

On 8 November 2013, the Prospectus Rules (Amendment) Instrument 2013 (FCA 2013/70) introduced amendments to PR 3.2 to clarify the timing and method of filing a prospectus with the Financial Conduct Authority ('FCA'): a prospectus (or supplementary prospectus) must now be filed with the FCA at the same time as it is made available to the public or, if earlier, within 24 hours of receipt of the notification of approval from the FCA.

The amendment seeks to ensure that the FCA is able to meet its new obligation to report certain data to the European Securities and Markets Authority under the terms of the EU Omnibus Directive (2010/78/EU).

Prospectus Rules (Amendment) Instrument 2013 (FCA 2013/70) available at: [http://media.fshandbook.info/Legislation/2013/FCA\\_2013\\_70.pdf](http://media.fshandbook.info/Legislation/2013/FCA_2013_70.pdf)

### **Prospectuses: ESMA publishes version 20 of its 'Prospectuses: Questions and Answers' document**

The European Securities and Markets Authority ('ESMA') has published version 20 of its Prospectuses: Questions and Answers ('Q and As'). The up-dated document:

- introduces Q and As covering the following topics:
  - the statement of the auditors' agreement where a prospectus includes a profit estimate (question 88);
  - the application of the proportionate disclosure regime to a rights issue that is not fully subscribed (question 89); and
  - the proportionate disclosure regime for rights issues and admission to trading (question 90); and
- up-dates the current answers to the existing questions relating to:
  - pro forma financial information (question 51); and
  - the level of disclosure concerning price information for share offerings (question 58).

Prospectuses: Questions and Answers 20<sup>th</sup> updated version, October 2013, available at: [http://www.esma.europa.eu/system/files/2013-1537\\_qa\\_prospectuses\\_-\\_20th\\_updated\\_version\\_0.pdf](http://www.esma.europa.eu/system/files/2013-1537_qa_prospectuses_-_20th_updated_version_0.pdf)

### **Proxy advisors: a public consultation is launched on a code of conduct for the proxy advisory industry**

The Best Practice Principles for Governance Research Providers Group ('the Group') has launched a public consultation on a set of draft best practice principles relating to activities concerning the provision of shareholder voting and analytical services.

The Group is an industry forum made up of six governance research providers and was set up in February 2012 following the European Securities and Markets Authority ('ESMA') consultation on the role of the proxy advisory industry. ESMA had recommended that the industry should develop its own EU code of conduct, and the Group was formed to develop a set of best practice principles for governance research providers.

The Group's draft principles, which are intended to complement applicable legislation, regulation and other soft-law instruments, are designed to govern, on a comply-or-explain basis:

- the nature and character of governance research services;
- the standards of conduct that underpin those services; and
- how signatories to the principles interact with other market participants.

Comments are requested by 20 December 2013. The Group aims to finalise the principles during February 2014.

Public Consultation on Best Practice Principles for Governance Research Providers available at: <http://bpggrp.info/wp-content/uploads/2013/10/BPP-Group-Principles-Consultation.pdf>



## How Squire Sanders can help

We would be pleased to discuss with you in more detail any of the matters raised in this article.

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