

Review



CAPITAL MARKETS PRACTICE

NEWS ROUND-UP

CORPORATE FINANCE

INTRODUCTION

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice. In this issue, we report, among other things, on the Government's proposals for the future of narrative reporting, as well as high-lighting the Government's discussion paper on executive remuneration.

Companies House: listed companies: annual returns: changes effective from 1 October 2011

With effect from 1 October 2011, when The Companies Act 2006 (Annual Returns) Regulations 2011 (SI 2011/1487) ('the Regulations') came into force, listed companies covered by the disclosure requirements of Chapter 5 of the Disclosure and Transparency Rules (DTR5) throughout the return period will no longer need to include in their annual returns detailed information relating to major shareholders, or transactions in shares, that have already been disclosed to the market under the requirements of DTR5. Among other things, the Regulations also provide for reduced disclosures for companies that have been subject to DTR5 for part only of the financial year in question, as well as for companies which are listed but not subject to DTR5. The Regulations apply to annual returns made up to dates on or after 1 October 2011.

The Companies Act 2006 (Annual Returns) Regulations 2011 (SI 2011/1487) available at: <http://www.legislation.gov.uk/ukxi/2011/1487/made/data.pdf>

Companies House: registration of charges: companies and limited liability partnerships

The Department for Business, Innovation and Skills ('BIS') has published (10 August 2011) the Government's latest proposals for revising the existing regime, contained in the Companies Act 2006, relating to the registration of security created by companies and limited liability partnerships. **For details, click here**

Companies House: registration of charges: overseas companies

The Overseas Companies (Execution of Documents and Registration of Charges) (Amendment) Regulations 2011 (SI 2011/2194) ('the Regulations'), which came into force on 1 October 2011, remove the requirement for an overseas company established in the UK to register at Companies House any charge it creates over its UK assets on or after 1 October 2011. The Regulations also introduce less onerous provisions for overseas companies regarding the obligation to keep a charges register available for inspection in the UK¹.

¹ The Regulations amend the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (SI 2009/1917).

The Overseas Companies (Execution of Documents and Registration of Charges) (Amendment) Regulations 2011 (SI 2011/2194) available at: http://www.legislation.gov.uk/uksi/2011/2194/pdfs/uksi_20112194_en.pdf

Corporate governance: financial reporting: auditors: disclosure of audit and non-audit services

The Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) (Amendment) Regulations 2011 (SI 2011/2198), which came into force on 1 October 2011, update the classification of audit and non-audit services, which large companies and groups must use to disclose, by way of note to the annual accounts, the fees they have paid their auditor or auditor's associates. The new regime applies to companies with financial years beginning on or after 1 October 2011. Companies with financial years beginning before that date may elect to complete their accounts in accordance with the new rules if they so wish.

The Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) (Amendment) Regulations 2011 (SI 2011/2198) available at: <http://www.legislation.gov.uk/uksi/2011/2198/introduction/made>

The change, made by way of amendment to the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008, brings the classification into line with in the relevant European legislation² and the revised Ethical Standards for Auditors² published by Auditing Practices Board in December 2010 and available at: <http://www.frc.org.uk/apb/publications/pub2463.html>

Corporate governance: financial reporting: importance of 'true and fair view' re-iterated by the Financial Reporting Council

The Accounting Standards Board and the Auditing Practices Board of the Financial Reporting Council published a paper, 'True and Fair', on 21 July 2011 confirming that the 'true and fair' requirement set out in section 393 of the Companies Act 2006³ remains of fundamental importance in both UK GAAP and IFRS. The paper is addressed to auditors and to those responsible for preparing accounts and stresses the continuing primacy of the true and fair requirement and its relevance to both those groups, as well as to those responsible for governance.

FRC paper: True and Fair: July 2011 available at: <http://www.frc.org.uk/images/uploaded/documents/Paper%20True%20and%20Fair.pdf>

Corporate governance: narrative reporting: the Government publishes consultation paper on a new framework for narrative reporting in conjunction with discussion paper on executive remuneration

Following its August 2010 consultation paper, 'The Future of Narrative Reporting', the Department for Business, Innovation and Skills ('BIS') has launched (19 September 2011) a further consultation document, 'The Future of Narrative Reporting: Consulting on a New Framework', containing proposals for reform of the current regime. At the same time, BIS also published a discussion paper focusing on executive remuneration in quoted companies.

For details of both new papers, click here

Equity capital markets: the Kay Review calls for evidence as it launches its review of UK equity markets and long-term decision making

The Kay Review made a call for evidence on 15 September 2011 as it begins an independent review into investment in UK equity markets and its impact on long-term decision making and performance, following the Government's announcement of the Review's terms of reference in June this year⁴. Professor Kay, who is leading the Review, has emphasised that the focus of the Review will be on corporate decision-making and corporate performance rather than corporate governance. **For details, click here**

² Council Directives 78/660/EEC and 83/349/EEC.

³ Section 393 of the Companies Act 2006 provides that the directors of a company must not approve accounts unless they are satisfied that they give a 'true and fair view'.

⁴ For more details, see Capital Markets Practice News Round-up: issue no: 8 /2011.

FSA fines Sir Ken Morrison for failure to disclose reduced shareholdings in Wm Morrison Supermarkets Plc

The Financial Services Authority ('FSA') has published a Final Notice (dated 16 August 2011) imposing a penalty of £210,000 on Sir Ken Morrison, the former chairman of Wm Morrison Supermarkets Plc ('the Company'), for breach of the Disclosure and Transparency Rules ('DTR') resulting from a failure to disclose his reduced shareholding and voting rights in the Company⁵. Although Sir Ken's voting rights had fallen below the notifiable thresholds respectively of 6%, 5%, 4% and 3% during a period between September 2009 and June 2010, he failed to notify the Company of these occurrences until 1 March 2011. The delay meant that the Company was not in a position to update the market in accordance with the requirements of DTR 5.8.12(1) R and that Sir Ken's shareholding in the Company was incorrectly stated in its annual report of 31 January 2010. The penalty would have been greater had Sir Ken not co-operated with the FSA and agreed to settle at an early stage, thereby qualifying for a 30% reduction.

FSA Final Notice available at: http://www.fsa.gov.uk/pubs/final/sir_ken_morrison.pdf

London Stock Exchange publishes 2012 Dividend Procedure Timetable

The London Stock Exchange ('LSE') has published (2 September 2011) its Dividend Procedure Timetable 2012 for companies with shares that are listed on the LSE Main Market or admitted to trading on AIM. If a company's dividend timetable follows the guidelines set out in the 2012 Timetable, the LSE does not need advance notice of the dividend, provided that the required dividend information is disseminated via a Primary Information Provider under a correct headline. Dividend timetables that fall outside the guidelines must, however, be cleared by the LSE.

LSE Dividend Procedure Timetable 2012 available at: <http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/dividend-procedures-2012.pdf>

Takeover Panel: Takeover Code: amendments to various Practice Statements effective 19 September 2011

As reported in the last edition of this publication⁶, a number of changes to the Takeover Code ('the Code') came into effect on 19 September 2011. On the same date, the Takeover Panel issued a Statement (2011/25) advising that a number of Panel Executive Practice Statements had also been amended with effect from 19 September 2011. The majority of these amendments are relatively minor and, in the main, reflect the changes to the Code.

Takeover Panel Statement 2011/25: Amendments to Practice Statements available at: <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2010/12/2011-25.pdf>

For a list of the Practice Statements which have been amended, click here

5 The relevant Rules are as follows: DTR 5.1.2(1) R provides that a person must notify the issuer of the percentage of its voting rights that he holds as shareholder if the percentage of those voting rights reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10%, and each 1% threshold thereafter up to 100%, as the result of an acquisition or disposal of shares of financial instruments. Notification, in respect of a UK issuer, must be made as soon as possible, but no later than two trading days following the trade: DTR 5.8.3(1) R.

6 Capital Markets Practice News Round-up: issue no: 9/2011.

The latest proposals include details of:

- the logistics for the electronic filing of security;
- the new system which will allow for the filing of brief particulars of security together with a copy, instead of the original, of the security instrument;
- the requirement that all security created by a company will be registrable, with only limited exceptions; and
- the safeguards to be put in place to prevent the fraudulent filing of releases of security.

Comments were requested by 30 September 2011. The Government aims to publish draft amending regulations in early 2012, with a view to the changes coming into force on 1 October 2012.

BIS Consultation document available at: <http://www.bis.gov.uk/assets/biscore/business-law/docs/r/11-1108-revised-scheme-registration-of-charges-part-25.pdf>



Consultation paper on narrative reporting:

The Government's proposals include the following:

- that a new 'strategic report' and 'annual directors' statement' replace the existing directors' report and business review respectively. The strategic report would include disclosures containing high-level strategic information (including key risks) while the directors' statement would include more detailed disclosures (such as the directors' remuneration report and the corporate governance statement, for example);
- that the auditors be required to state whether the information contained in the strategic report and directors' statement is consistent with the accounts; and
- that the strategic report of a quoted company provide greater transparency in respect of executive remuneration by the inclusion, for example, of the following:
 - one, single, figure showing the total remuneration package for each director;
 - details of the link between executive pay and performance; and
 - details of the relationship between executive pay and pay levels in the organisation generally.

The Government also seeks feed-back on whether quoted companies should be required to disclose new categories of information in the strategic report (the proportion of women board members, for example), as well as suggestions on what could be done to encourage greater disclosure generally.

Discussion paper on executive remuneration:

The Government's proposals are aimed primarily at creating greater transparency (this is reflected, too, in the Government's proposals on narrative reporting) as well as promoting stronger links between executive pay and performance.

Responses to both papers are requested by 25 November 2011. The Government aims to introduce new regulations governing narrative reporting for financial years beginning on or after 1 October 2012.

BIS consultation paper: 'The Future of Narrative Reporting: Consulting on a New Framework' available at: <http://www.bis.gov.uk/assets/biscore/business-law/docs/f/11-945-future-of-narrative-reporting-consulting-new-framework.pdf>

BIS discussion paper: 'Executive Remuneration: Discussion paper' available at: <http://www.bis.gov.uk/assets/biscore/business-law/docs/e/11-1287-executive-remuneration-discussion-paper.pdf>

Additional note: on 1 September 2011, the Financial Reporting Council ('FRC') had published two new papers: 'Effective Company Stewardship: Next Steps' and 'Boards and Risk', which form part of the FRC's on-going response to the financial crisis of 2007 and 2008. Among other things, the FRC also recommends increased transparency in narrative reporting and will be working with BIS to this end.

FRC paper 'Effective Company Stewardship: Next Step' available at: <http://www.frc.org.uk/publications/pub2631.html>

FRC paper 'Boards and Risk – a Summary of Discussions with Companies, Investors and Advisers' available at: <http://www.frc.org.uk/publications/pub2630.html>



Among other matters, the Review is seeking evidence on the following issues:

- whether Government policies which seek to encourage long-term investment by companies have been effective;
- whether the rules governing disclosures of major shareholdings should be revised;
- whether the measures to foster engagement between investors and companies are working; and
- whether the increase in overseas ownership of UK shares has affected levels of engagement between companies and investors.

Responses are requested by 18 November 2011. The Review aims to submit an interim report to the Government in February 2012, with a final report to be published in July 2012.

The Kay Review of UK Equity Markets and Long-Term Decision Making: Call for Evidence available at: <http://www.bis.gov.uk/assets/biscore/business-law/docs/k/11-1286-kay-review-call-for-evidence.pdf>



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- Practice Statement No. 1: Rule 20.1 – Equality of information to shareholders and the policing of meetings;
 - Practice Statement No. 5: Rule 13.5(a) – Invocation of conditions (formerly Rule 13.4(a));
 - Practice Statement No. 6 – Strategic review announcements;
 - Practice Statement No. 8 – Timetable extensions in potentially competitive situations;
 - Practice Statement No. 10 – Cash offers financed by the issue of offeror securities;
 - Practice Statement No. 11 – Working capital requirements in cash and securities exchange offers;
 - Practice Statement No. 18 – Cross-border mergers;
 - Practice Statement No. 19: Rule 19.3 – Unacceptable statements;
 - Practice Statement No. 20: Rule 2 – Secrecy, possible offer announcements and pre-announcement responsibilities;
 - Practice Statement No. 22 - Irrevocable commitments, concert parties and related matters;
 - Practice Statement No. 23: Rule 21..2 – Inducement fees and other offer-related arrangements;
 - Practice Statement No. 24 – Appropriate offers and proposals under Rule 15; and
 - Practice Statement No. 25 – Debt syndication during offer periods.



How Squire Sanders Hammonds 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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