

## 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. Corporate governance continues to be in the news and we report on developments in this and other areas below.

#### Corporate governance: financial reports: FRC guidance for directors on responding to increased country and currency risk

In light of the current global economic situation, the Financial Reporting Council ('FRC') published on 17 January 2012 an Update for Directors of Listed Companies to help directors respond to increased country and currency risk in their companies' annual and half-yearly financial reports in the coming months. The Update highlights certain matters directors may need to take into account in order to give a balanced and understandable assessment of the company's position and prospects in view of enhanced country and currency risk.

FRC guidance: An Update for Directors of Listed Companies: responding to increased country and currency risk in financial reports available at: <http://www.frc.org.uk/publications/pub2693.html>.

#### Corporate governance: the FRC reports on developments in the implementation of the UK Corporate Governance Code and the Stewardship Code

On 14 December 2011, the Financial Reporting Council ('FRC') published its first report analysing the implementation of the UK Corporate Governance Code ('the Code'), which was revised in 2010, and the Stewardship Code which was introduced in the same year. While expressing concerns about some areas, the FRC reported a high level of take up of the Code provisions announced last year (the annual election of directors and the appointment of external advisers to undertake board evaluations, for example) and noted that most of the main investors in UK equities have signed up to the Stewardship Code.

The FRC plans to make certain limited changes to both the Code and the Stewardship Code during this coming year in order to encourage further behavioural changes and to enhance communication between companies and their investors.

FRC Report: Developments in Corporate Governance 2011 available at: <http://www.frc.org.uk/images/uploaded/documents/Developments%20in%20Corporate%20Governance%2020116.pdf>

#### FTSE UK Index Series: changes to minimum free float eligibility requirement effective 1 January 2012

On 14 December 2011, the FTSE Group ('FTSE') announced that the Ground Rules of the UK Index Series<sup>1</sup> would be revised with effect from 1 January 2012 to introduce a new minimum free float eligibility requirement of 25% for UK incorporated companies. FTSE will maintain this threshold even in cases where the United Kingdom Listing Authority ('UKLA') has used its discretion (under Listing Rule 6.1.20) to grant an exception to its own 25% minimum 'shares in public hands' requirement in respect of UK incorporated companies seeking a premium listing, while companies that have already been admitted to the FTSE All-Share with a free float of less than the new minimum will be given a 24 month period of grace within which to increase their free float to 25%.

FTSE intends to launch a further consultation in due course to consider whether to increase the 25% threshold, or whether to include additional governance standards in the FTSE All-Share Index.

FTSE press release available at: [http://www.ftse.com/Media\\_Centre/index.jsp](http://www.ftse.com/Media_Centre/index.jsp)

#### Market abuse directive: inside information: ESMA reminder about dividend payments and policy

On 9 January 2012, the European Securities and Markets Authority ('ESMA')<sup>2</sup>, published a Question and Answer document on the operation of the Market Abuse Directive (2003/6/EC). Among other matters, ESMA reminds issuers that information regarding dividend payments and policy may be inside information should this information have a significant effect on the prices of either the issuer's shares or related derivatives, or both.

ESMA: Questions and Answers on the common operation of the Market Abuse Directive available at: <http://www.esma.europa.eu/system/files/2012-9.pdf>

#### Market abuse regime: the UK Government postpones the expiry of UK super-equivalent prohibitions

The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011 (SI 2011/2928), which came into force on 31 December 2011, extend until 31 December 2014 the life of the following market abuse provisions of the Financial Services and Markets Act 2000:

- section 118(4): prohibition against misuse of information; and
- section 118(8): prohibition against behaviour likely to give rise to false or misleading impressions or to distort the market.

1 The FTSE UK Index Series includes the FTSE 100 Index, the FTSE 250 Index and the FTSE All-Share Index.

2 ESMA, which took over from the Committee of European Securities Regulators ('CESR') in January 2011, is an independent EU authority charged with helping to safeguard the stability of the EU's financial system and strengthening investor protection.

These prohibitions, which exceed the narrower prohibitions of the Market Abuse Directive (2003/6/EC), were due to expire on 31 December 2011. Their new expiry date of 31 December 2014 reflects the date it is anticipated that a new EU Regulation replacing the current Market Abuse Directive is likely to come into force.

The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011 (SI 2011/2928) available at: [http://www.legislation.gov.uk/ukksi/2011/2928/pdfs/ukksi\\_20112928\\_en.pdf](http://www.legislation.gov.uk/ukksi/2011/2928/pdfs/ukksi_20112928_en.pdf)

### **Prospectus Directive: implementation of outstanding amending provisions**

On 13 December 2011, the Financial Services Authority ('FSA') and the Treasury published a joint consultation paper setting out how the UK intends to implement the remaining provisions of the EU Directive amending the Prospectus Directive and the Transparency Directive (2010/73/EU) ('the Amending Directive'), due to be implemented in member states by 1 July 2012.

Two provisions of the Amending Directive have already been implemented in the UK in advance of the July 2012 deadline by way of amendment to the Financial Services and Markets Act 2000 ('FSMA')<sup>3</sup>. The remaining provisions will be implemented by means of further changes to FSMA, together with changes to the relevant FSA Handbooks (principally the Prospectus Rules).

Responses to the consultation are requested by 13 March 2012. The FSA and the Treasury plan to publish a policy statement, with feedback and details of the next steps, in the second quarter of this year.

FSA and HM Treasury Consultation Paper CP11/28: UK implementation of Amending Directive 2010/73/EU available at: [http://www.fsa.gov.uk/pubs/cp/cp11\\_28.pdf](http://www.fsa.gov.uk/pubs/cp/cp11_28.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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<sup>3</sup> These changes, effective 1 July 2011, provide that a prospectus will not be required where offers are addressed to fewer than 150 persons (other than qualified investors) per member state (section 86(1) (b) FSMA) and increase the threshold for an offer of securities for which a prospectus is required to the figure of EUR 5 million (being the total consideration of the offer in the EU calculated over a 12 month period) (paragraph 9(1), Schedule 11A FSMA).

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The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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