

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 is again in the news and we bring you details of changes in this area, as well as of developments in other areas of interest.

London Stock Exchange: the Government publishes proposals to open London's equity markets to high-growth companies

On 20 September 2012, the Government announced that it has, together with the London Stock Exchange, developed a set of proposals to attract entrepreneurs and high-growth companies to the London equity markets, including a new route to the UK market for high-growth companies. The new route would be aimed mainly at European mid-sized high-growth businesses, which are currently under-represented on the UK's public markets, and is intended as a launch pad for companies seeking a full premium listing. Further details on the proposed eligibility criteria and benefits of the new route to market are due to be published before the end of the year.

Government Press Release, 20 September 2012, available at:

<http://www.news.bis.gov.uk/Press-Releases/Bold-action-to-open-up-London-s-equity-markets-to-high-growth-companies-6805e.aspx>

Corporate governance: the FRC publishes up-dates to the UK Corporate Governance Code, the Stewardship Code and its Guidance on Audit Committees

On 28 September 2012, the Financial Reporting Council ('FRC') announced limited changes to the UK Corporate Governance Code and the Stewardship Code. The changes, which were effective 1 October 2012, seek to increase accountability and engagement through the investment chain.

The UK Corporate Governance Code

Changes to the UK Corporate Governance Code include the following:

- FTSE 350 companies are to put the external audit contract out to tender at least every ten years;¹
- audit committees are to disclose to shareholders how they have carried out their responsibilities;
- boards are to confirm that the annual report and accounts taken as a whole are fair, balanced and understandable;
- companies are to explain their policies on boardroom diversity and report on progress in this area; and
- companies are to provide fuller explanations to shareholders when they choose not to follow any provision of the Code.

The Stewardship Code

Changes to the Stewardship Code include the following:

- investors are to explain more clearly how they manage conflicts of interest, the circumstances in which they will take part in collective engagement, and the use they make of proxy voting agencies;
- asset managers are encouraged to have the processes that support their stewardship activities independently verified in order to provide greater assurance to their clients; and
- the respective stewardship responsibilities of asset managers and asset owners have been clarified.

Guidance on Audit Committees

The FRC has published an up-dated edition of its Guidance on Audit Committees to reflect the changes to the UK Corporate Governance Code, and included transitional arrangements regarding the introduction of the ten year tendering process on its website.

Directors' remuneration

The FRC will consult on whether it will need to revise the UK Corporate Governance Code again once the Government's legislation dealing with changes to the directors' remuneration regime has been finalised. Any necessary changes will be made in the next edition of the Code.

¹ The FRC will be considering whether guidance on the tendering process would be useful.

FRC Press Release PN010, 28 September 2012, available at:

<http://www.frc.org.uk/News-and-Events/FRC-Press/Press/2012/September/FRC-publishes-updates-to-UK-Corporate-Governance-C.aspx>

UK Corporate Governance Code: September 2012 edition available at:

<http://www.frc.org.uk/getattachment/a7f0aa3a-57dd-4341-b3e8-ffa99899e154/UK-Corporate-Governance-Code-September-2012.aspx>

Stewardship Code: September 2012 edition available at:

<http://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx>

Guidance on Audit Committees: September 2012 edition available at:

<http://www.frc.org.uk/getattachment/6ec23196-28ee-406e-8f56-89ab9d1dc06d/Guidance-on-Audit-Committees-September-2012.aspx>

Corporate governance: auditing standards: the FRC publishes revised standards to improve auditor communication and extend auditor reporting

Following its recent consultation, the Financial Reporting Council ('FRC') has published (on 28 September 2012) revised International Standards on Auditing (UK and Ireland), effective for audits of financial statements for periods beginning on or after 1 October 2012.

The changes reflect the proposals in the FRC's paper, 'Effective Company Stewardship: Next Steps' (published in September 2011), as well as the changes to the UK Corporate Governance Code and Guidance for Audit Committees effective 1 October 2012 (reported above). The revisions to the Standards aim principally:

- to enhance auditor communications by requiring auditors to notify the audit committee of any information the auditor considers the committee will need to understand the significant professional judgments made in the audit; and
- to extend auditor reporting by requiring auditors to report if the board's statement that the annual report is fair, balanced and understandable is inconsistent with the auditor's findings, or if the matters disclosed in the audit committee's report do not appropriately deal with matters notified by the auditor to the committee.

The revised Standards are as follows:

- 260 Communication with those charged with governance;
- 700 The auditor's report on financial statements (Revised);

- 705 Modifications to the opinion in the independent auditor's report;
- 706 Emphasis of matter paragraphs and other matter paragraphs in the independent auditor's report; and
- 720A The auditor's responsibilities relating to other information in documents containing audited financial statements.

FRC Press Release PN011, 28 September 2012, (with links to the revised Standards) available at:

<http://www.frc.org.uk/News-and-Events/FRC-Press/Press/2012/September/FRC-issues-revised-auditing-standards-to-enhance-c.aspx>

Corporate governance: ICSA publishes a consultation paper on 'Improving Engagement Practices by Companies and Institutional Investors' with a view to publishing guidance in this area

The Institute of Chartered Secretaries and Administrators ('ICSA') has, in conjunction with the Investor Stewardship Working Party, published a consultation paper seeking comments on ways to improve engagement between companies and institutional investors, with the aim of developing a good practice guide to this end. Comments are requested by 30 November 2012 and, depending on the outcome of the consultation, it is likely that guidance will be issued in March 2013.

ICSA Consultation Paper: 'Improving Engagement Practices by Companies and Institutional Investors' available at:

<http://www.icsaglobal.com/assets/files/pdfs/Policy2/01-Improving-Engagement-Practices-between-Companies-and-Institutional-Investors-Consultation-Oct-2012.pdf>

Corporate reporting: the FRC has launched a discussion paper on 'Thinking about disclosures in a broader context'

On 15 October 2012, the Financial Reporting Council ('FRC') published a discussion paper, 'Thinking about disclosures in a broader context', with the aim of improving the quality of financial reporting disclosures. The paper sets out a proposed 'road map' for a disclosure framework which would reform the current piecemeal approach and provide a more coherent framework, making the disclosures more relevant for users while at the same time cutting clutter. Comments are requested by 31 January 2013.

FRC Discussion Paper 'Thinking about disclosures in a broader context' available at:

<http://www.frc.org.uk/getattachment/4e747c33-cc31-469b-9173-a07a3d8f0076/Thinking-about-disclosures-in-a-broader-context-A-road-map-for-a-disclosure-framework.aspx>

Corporate reporting: the Financial Reporting Review Panel publishes its annual report for 2012

On 26 September 2012, the Financial Reporting Council ('FRC') published the Financial Reporting Review Panel's annual report for 2012. The Panel, whose report is based on its review of accounts in the year to 31 March 2012, found the quality of corporate reporting to be good overall. It did, however, express concerns about the reports and accounts of some smaller listed and AIM companies, and made certain points in relation to the directors' report generally, including the following:

- the need to include a clear description of the company's principal risks and uncertainties, together with an explanation of the steps taken to reduce their likelihood and effect; and
- the importance of explaining the impact of significant events or items on the results for the period.

FRC: Financial Reporting Review Panel Annual Report 2012 available at:

<http://www.frc.org.uk/getattachment/f46d075e-7d0b-439c-aaf6-d557de55f93f/Financial-Reporting-Review-Panel-Annual-Report-2012.aspx>

The Listing Regime: the FSA has published changes to the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules: some of these changes are now in force

On 28 September 2012, following an earlier consultation, the Financial Services Authority ('FSA') published Handbook Notice 123 with amendments to the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules. The key changes to the Listing Rules, which came into force on 1 October 2012, affect a number of areas, including the following:

- class transactions: the changes relate, among other things, to:
 - class 1 circulars: the directors' responsibility statement must also be provided by the issuer; and
 - class 3 transactions: this category of transactions has been removed from the rules;
- break fee arrangements: the amendments include a wider definition of 'break fee arrangements';
- reverse takeovers: the changes include a number of indicators that could lead the FSA to treat a transaction as a reverse takeover (even in circumstances where the transaction's percentage ratio is below the 100% mark);

- financial information and eligibility: the changes consolidate the existing provisions of the Listing Rules and related technical notes; and
- circulars: the amendments include clarification of the rules on the incorporation of information into circulars by reference.

Other areas affected by the changes are the rules relating to:

- PDMRs (persons discharging managerial responsibility);
- related party transactions; and
- share buy-backs.

Changes made to the sponsor regime are coming into force in stages:

- as from 1 October 2012, confirmation that the sponsor meets the eligibility criteria must be given in the prescribed form in January each year, not on the anniversary of the date of approval; and
- as from 31 December 2012, sponsors will, in relation to sponsor services and in addition to other changes, be required to notify the FSA if the issuer has committed any breach of the Listing Rules, the Prospectus Rules or the Disclosure and Transparency Rules.

The amendments made to the Prospectus Rules, which came into force on 28 September 2012, reflect recent EU changes to the prospectus regime.

FSA Handbook Notice 123 available at:

<http://www.fsa.gov.uk/static/pubs/handbook/hb-notice123.pdf.pdf>

The Listing Regime: the FSA publishes a consultation paper on 'Enhancing the effectiveness of the Listing Regime'

Following its consultation in January of this year, the Financial Services Authority ('FSA') has proposed a number of further changes to the Listing Rules with the aim of enhancing the effectiveness of the Listing Regime. Among other things, the proposals seek to strengthen the corporate governance requirements for companies with a dominant shareholder, while others address the question of the free float provisions. Comments are requested by 2 January 2013.

FSA Consultation Paper: 'Enhancing the effectiveness of the Listing Regime': CP12/25 available at:

<http://www.fsa.gov.uk/static/pubs/cp/cp12-25.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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