

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. Among other things, we bring you news of the latest developments in the field of corporate governance.

Corporate governance: executive remuneration: NAPF encourages FTSE 350 companies to show restraint in this year's pay awards

In an open letter, dated 4 March 2013, the National Association of Pension Funds ('NAPF') warns the chairmen of remuneration committees of FTSE 350 companies that shareholders will not support unjustified executive awards in this year's AGM season. The letter contains guidelines NAPF would like to see reflected in the pay policies set during 2013, including:

- limiting increases in executive base pay to the rate of inflation, and keeping increases in line with those for the rest of the workforce;
- avoiding the use of peer group benchmarking (where executive pay is set by way of comparison to that of executives from other companies); and
- ensuring that variable pay is 'genuinely stretching' and determined by results that support the long-term growth of the business.

NAPF also encourages remuneration committees to take a firmer line when finalising bonus payments and share awards, to ensure that rewards are aligned with the success of the business over time and that returns on capital are taken into account.

NAPF letter dated 4 March 2013: Executive Remuneration 2013 available at:

http://www.napf.co.uk/PressCentre/Press_releases/~/_media/Policy/Documents/0293-FTSE350-Letter.ashx

Corporate governance: executive remuneration: the Government publishes a list of FAQs on the proposed new regime for quoted companies

The Government has issued a list of frequently asked questions ('FAQs') on the proposed reforms relating to the remuneration of directors of quoted companies due to come into force on 1 October 2013. The FAQs focus on changes to the directors' remuneration voting regime and aim to help companies and investors understand the impact of the reforms.

Directors' remuneration reforms; Frequently Asked Questions (March 2013) available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/158048/13-727-directors-remuneration-reforms-faq.pdf

Corporate governance: shareholders: PIRC publishes a revised edition of its UK Shareholder Voting Guidelines

On 14 February 2013, the Pensions Investment Research Consultants ('PIRC') published a new edition of its UK Shareholder Voting Guidelines to replace the 2012 edition. The new Guidelines, which reflect a shift in PIRC's approach, place greater emphasis on the management of shareholders' capital and take a firmer line on executive pay. Whilst the market does not generally feel compelled to adopt PIRC's position, it is, perhaps, worth noting that the changes in the new edition include the following:

- Directors' remuneration
 - PIRC will oppose the introduction of all new long-term incentive schemes. PIRC is of the view that such schemes are fundamentally flawed in that they are not, in fact, long term, that they do not act as incentives, and that they are subject to change and manipulation by remuneration committees.
- Remuneration consultants
 - PIRC will encourage greater shareholder scrutiny of the role of remuneration consultants and will no longer support the adoption of a company's report and accounts, the re-election of the chair of the audit or remuneration committees, or the re-appointment of the auditors, where the reporting auditor is also the remuneration advisor to the company.
- Financial reporting
 - Where PIRC considers that adherence to IFRS has led to a failure of the accounts to provide the true and fair view, PIRC will not support the adoption of the company's report and accounts, the re-election of the audit committee and of the finance director responsible for the accounts in question.

The new PIRC Guidelines (the 17th edition) are available from PIRC's web-site:

<http://www.pirc.co.uk/publications>

Corporate governance: shareholders: ICSA publishes guidance on enhancing the dialogue between companies and investors

The Institute of Chartered Secretaries and Administrators ('ICSA') has published guidance, Enhancing Stewardship Dialogue, containing advice and recommendations for facilitating good practices of engagement between companies and investors.

ICSA guidance: Enhancing stewardship dialogue available at:

https://www.icsaglobal.com/assets/files/pdfs/guidance/Enhancing_stewardship_dialogue/icsastewardshipreport.pdf

Corporate governance: EU initiatives: ESMA reports on the role of the proxy advisory industry

Following its consultation on the role of the proxy advisory industry launched in March 2012, the European Securities and Markets Authority ('ESMA') has now published its final report. Instead of binding measures, it recommends that the proxy advisory industry should develop its own EU code of conduct. It will review the development of the code by February 2015 and may then propose more formal measures if no substantial progress has been made.

ESMA final report: Feedback statement on the consultation regarding the role of the proxy advisory industry available at:

<http://www.esma.europa.eu/system/files/2013-84.pdf>

Competition Commission: the Commission finds fault with the audit market and proposes remedial actions

Following its market investigation into the supply of statutory audit services to large companies in the UK, the Competition Commission ('CC') has now published its provisional findings .

It reports that competition in the audit market is restricted by a number of factors which deter companies from changing auditors, and by the tendency for auditors to concentrate on meeting management needs ahead of those of the company's shareholders. Its Notice of possible remedies sets out a range of different options, including the introduction of mandatory tendering for audit services every five or seven years and the mandatory rotation of audit firms every 7, 10 or 14 years.

Interested parties were invited to comment on the Notice of possible remedies and the provisional findings report by 18 March and 21 March 2013 respectively. The CC aims to publish its final report by August this year.

Competition Commission: provisional findings report: statutory audit services market investigation available at:

<http://www.competition-commission.org.uk/our-work/statutory-audit-services/provisional-findings-report>

The FSA has imposed its first fine for breaches of the Listing Rules and Listing Principles relating to compliance with the Model Code in a case which shows the lengths to which companies must now go to ensure compliance, as well as the need for written records to support all dealings

The Financial Services Authority ('FSA') has issued a Final Notice (dated 14 February 2013) fining Nestor Healthcare Group Limited ('Nestor') the sum of £175,000 for failing to take adequate steps as required by Listing Rule 9.2.8¹ and Listing Principles 1 and 2² to ensure that its board members and senior executives complied with the share dealing provisions of the FSA's Model Code.

Although Nestor had introduced a policy on how senior Nestor staff intending to trade in the company's shares should obtain clearance to deal, the FSA found that the breaches occurred mainly because Nestor's weak procedures allowed the policy to be forgotten by the board. This, with other factors, led to purchases of Nestor shares by board members being carried out in breach of the Model Code. The FSA did not allege that any of the dealings referred to in the Final Notice were based on inside information. Nestor agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30% discount on its financial penalty.

¹ Listing Rule 9.2.8 requires a listed company to require every person discharging managerial responsibilities, including directors, to comply with the Model Code and to take all proper and reasonable steps to secure their compliance.

² Listing Principle 1 states that a listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors. Listing Principle 2 states that a listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.

This case is an example of the FSA's increasingly tough approach. It illustrates the lengths to which the FSA now expects companies to go in order to ensure compliance. It is a timely reminder that companies should:

- maintain comprehensive written records to support all dealings;
- regularly review their compliance policies and procedures generally; and
- ensure that their policies and procedures are, in fact, being followed in practice.

FSA Final Notice to Nestor Healthcare Group PLC available at:

<http://www.fsa.gov.uk/static/pubs/final/nestor.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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