SQUIRE SANDERS

CAPITAL MARKETS PRACTICE NEWS ROUND-UP
CORPORATE FINANCE

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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 changes to the listing regime which, in a welcome deregulatory development, remove most of the disclosure requirements relating to directors' remuneration for UK-incorporated premium listed companies.

Executive pay and the listing regime: changes to the Listing Rules remove most of the disclosure requirements relating to directors' remuneration for UK-incorporated premium listed companies in light of overlap with the requirements of the Directors' Remuneration Reporting Regulations 2013

On 13 December 2013, the Financial Conduct Authority ('FCA') announced changes to the Listing Rules which, for UK-incorporated premium listed companies, remove most of the disclosure requirements relating to directors' remuneration.

The new regime for UK-incorporated premium listed companies

For most remuneration-related disclosures, this category of companies should now only need to comply with the Directors' Remuneration Reporting Regulations 2013 ('the Regulations'). The FCA has removed the disclosure requirements of the Listing Rules, which were very similar to those contained in the Regulations, with one exception. Former Listing Rule 9.8.8R (9) (relating to details of a director's service contract) is the sole aspect of LR9.8 that continues to apply and has, in fact, been amended so that it now simply requires the company to disclose details of the unexpired terms of the service contract of any director proposed for election or re-election at the forthcoming AGM and, if any director proposed for election or re-election does not have such a contract, a statement to that effect.

The implementation date for the changes to the Listing Rules has been aligned to that of the implementation of the Regulations so that both apply to companies with a financial year ending on or after 30 September 2013, unless the company has already published its annual report by 13 December 2013 in which case the changes to the Rules can be ignored without consequence.

Companies that are already preparing their annual report to comply with both the existing Listing Rules and the Regulations may continue to do so, although it is unlikely any company will wish to assume the burden of producing a report with overlapping disclosures.

The position for non UK-incorporated listed companies

This category of companies is not required to comply with the Regulations and remains subject to the 'old' disclosure requirements of the Listing Rules. However, in practice, they may well find themselves under pressure from their shareholders to comply with the disclosure requirements of the Regulations notwithstanding the strict legal position.

FCA: Policy Statement PS13/11: Consequential Changes to the Listing Rules resulting from the BIS Directors' Remuneration Reporting Regulations and Narrative Reporting Regulations, Including feedback on CP13/7 and final rules December 2013 available at:

http://www.fca.org.uk/static/documents/policy-statements/ps13-11.pdf

Developments in corporate governance in 2013: the FRC reports on the impact and implementation of the UK Corporate Governance Code and the Stewardship Code during the last year

On 19 December 2013, the Financial Reporting Council ('FRC') published a report on the impact and implementation of the UK Corporate Governance Code ('the Code') and the Stewardship Code during 2013. Its findings included the following:

The Code:

- 57% of FTSE 350 companies comply fully comply with the Code, up by 6% from last year. 85% of the remainder comply with all but one or two of the Code's provisions;
- companies that deviate from the Code struggle to clarify the rationale for deviation;
- all bar two of the FTSE 350 premium equity commercial companies held director re-elections in 2013;
- companies should place more emphasis on board succession planning;
- increased numbers of female non-executive directors were noted across the FTSE 100, FTSE 250 and small cap companies, although there had been no significant increase in the number of female executive directors; and
- only about one-fifth of FTSE 100 and FTSE 350 companies have specified a date for a prospective audit tender although it is likely that some 30 companies will be tendering in their current financial year, with up to 50 more planning to do so during their 2014 or 2014/15 financial years.

The Stewardship Code:

- the number of signatories is nearly 300. Of these, about two-thirds are asset managers;
- the quality of reporting by signatories remains variable; and
- there are concerns that investors in mid-market companies are not engaging with their companies as actively as those in larger companies.

The initiatives that the FRC proposes to take in the coming year include the following:

- to identify and develop good practice in succession planning;
- to consider amendments to the Code relating to risk management and reporting, remuneration, and the work of the audit committee; and
- to consider the proposal that companies should publish their full corporate governance statements on their websites, with an edited version, containing the disclosures most relevant to investors, to be published in the annual report and accounts.

Developments in Corporate Governance 2013: The impact and implementation of the UK Corporate Governance and Stewardship Codes available at:

https://frc.org.uk/Our-Work/Publications/Corporate-Governance/Developments-in-Corporate-Governance-2013.pdf

Audit quality: the FRC issues the findings of its review into the auditor's consideration and application of materiality

On 16 December 2013, the Financial Reporting Council ('FRC') issued the findings of its audit quality thematic review into the auditor's consideration and application of materiality. The report:

- highlights the importance of the audit committee in ensuring the quality of financial reporting and that the materiality levels are set appropriately;
- makes a number of recommendations to help the audit committee fulfill its oversight obligations; and
- notes that revised ISA (UK and Ireland) 700, which requires auditors to explain how the auditor applied the concept of materiality in planning and performing the audit and how it affected the scope of the audit, will make the impact of materiality on audit work more transparent and facilitate direct engagement with audit committees.

FRC: Audit Quality Thematic Review: Materiality available at:

http://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Audit-Quality-Thematic-Review-Materiality.aspx

Audit market: EU proposals for the reform of the audit market for listed companies

On 18 December 2013, the Council of the EU announced that a framework of reform had been agreed between the Council and the European Parliament in response to the Commission's proposal to reform the statutory audit for 'public-interest entities', i.e. companies with a significant public interest because of the nature of their business, size, number of employees or corporate status, including listed companies.

The framework for reform, which remains subject to the final agreement of member states, includes the following provisions:

- listed companies will be required to change their auditors every ten years[1]. Member states could allow this period to be extended:
  - by a further period of up to 10 years where public tenders are carried out, or
  - by an additional 14 years where the company appoints more than one audit firm to carry out the audit;
- audit firms will be prohibited from providing certain non-audit services to their audit clients, including tax advice and services linked to financial and investment strategy; and
- the total fees payable for permitted non-audit services will be capped at 70% of the average of the fees paid by the company in the last three years.

Council of the EU: Agreement on the reform of the audit market available at:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/140170.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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1 The Commission had originally proposed that the auditors should change every six years. The Financial Reporting Council, which developed and implemented its own plan for the re-tendering of the audit every 10 years for FTSE 350 companies, has welcomed the latest proposals.

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