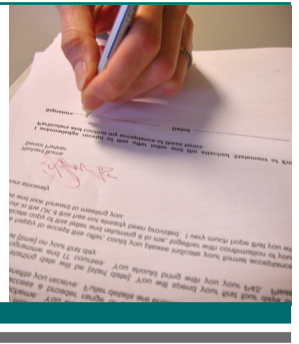


Review



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 include a review of the new EU financial supervisory regime which took effect at the beginning of the year and also bring you news of the proposed reforms to the UK financial services regulatory structure. We report on these, and other developments, below.

New EU regime for financial supervision effective 1 January 2011

The framework for the supervision of the EU financial system has been reformed with effect from 1 January with the aim of eliminating the deficiencies exposed during the recent financial crisis.

For details, [click here](#)

UK financial services regulatory structure: proposed reforms

The proposals for a new regulatory structure for the UK financial services industry follow the criticism levelled at the current system for its failings in relation to the recent financial crisis.

At present, responsibility for financial stability in the UK is shared by HM Treasury, the Bank of England (BOE), and the Financial Services Authority (FSA). The Government intends to reform the existing system so that the FSA will cease to exist in its current form. It will be replaced by three new regulatory bodies which, between them, will be responsible for the majority of the functions now performed by the FSA.

The new regulatory bodies will be:

- the Financial Policy Committee (FPC): responsible for macro-prudential regulation;
 - the Prudential Regulation Authority (PRA): responsible for micro-prudential regulation; and
 - the Consumer Protection and Markets Authority (CPMA): responsible for the regulation of conduct and consumer protection.
- The Government plans to split the regulation of those firms currently regulated by the FSA between the PRA and the CPMA depending on their regulatory permissions:
- firms with permissions for one, or more, of deposit-taking, effecting and carrying out contracts of insurance and dealing as principal will be prudentially regulated by the PRA. However, although the PRA will be responsible for their authorisation, the CPMA will regulate their conduct; and
 - all other firms will be authorised and regulated, both prudentially and for conduct of business, by the CPMA.

It is proposed that the United Kingdom Listing Authority will be part of the CPMA's markets division and that the FSA's current responsibilities for prosecuting criminal offences (including insider dealing and other forms of market abuse) will also fall to the CPMA.

In terms of timing, the Government plans to publish more detailed proposals, together with the draft Financial Services Bill, in February this year. It is anticipated that the necessary primary legislation will be passed, and powers transferred to the new regulatory bodies, by the end of 2012. In the interim, the FSA will remain the UK financial services regulator.

The Government's current proposals are set out in the July 2010 HM Treasury consultation paper: *A new approach to financial regulation: judgement, focus and stability* available at:

http://www.hm-treasury.gov.uk/d/consult_financial_regulation_condoc.pdf

For more information on the three new regulatory bodies, [click here](#)

Other proposed reforms include:

- the introduction of a new framework for handling crises affecting the UK's financial stability;
- the transfer of the regulation and supervision of settlement systems and central counterparty clearing houses (CCPs) to the BoE in addition to the BoE's existing responsibilities for payment systems oversight. Accordingly, some firms will be authorised and supervised by the BoE for clearing and settlement, but subject to conduct regulation and supervision by the CPMA;
- the establishment of an Economic Crime Agency responsible for tackling serious economic crime to take in place of a number of government departments and agencies, including the Serious Fraud Office, the FSA and the Office of Fair Trading (OFT), which currently have responsibility in this area; and
- the transfer of consumer credit regulation from the OFT to the CPMA.

Companies House: registration of charges created by companies and limited liability partnerships: system to be reformed

Following a consultation by the Department for Business, Innovation and Skills (BIS), the Government announced on 8 December 2010 that it intends to change the current regime for the registration at Companies House of charges created by companies and limited liability partnerships. The changes to be made include those that will affect:

- which charges are registrable
- how charges may be registered
- the consequences of registration and of failure to register

and will also abolish the requirement for an overseas company to register any charge it creates.

The Government aims to publish draft regulations incorporating these changes early this year with a view to implementing them in 2012 or 2013.

Consultation on registration of charges created by companies and limited liability partnerships:

Government response: <http://www.bis.gov.uk/assets/biscore/business-law/docs/g/10-1319-government-response-consultation-registration-of-charges.pdf>

Companies House: statements of capital: requirements to be simplified

Following a consultation by BIS, the Government announced on 22 December 2010 that it plans to simplify the requirements relating to the financial information to be included in statements of capital under the Companies Act 2006 amid concerns that the current requirements to set out prescribed particulars of the rights attached to shares are costly and repetitive. The Government has stated that detailed proposals will be published as soon as a legislative vehicle is available.

BIS: Companies Act 2006: Statements of capital: consultation on financial information required available at: <http://www.bis.gov.uk/consultations/companies-act-2006-statements-of-capital-consultation>

Corporate governance: audit committees: FRC issues revised Guidance on Audit Committees regarding non-audit services

On 17 December 2010, the Financial Reporting Council (FRC) published a revised version of its Guidance on Audit Committees together with feed-back on the consultation (launched in July 2010) on the changes to the Guidance. The revised Guidance (which appears to apply as from the date of its publication) contains recommendations to address concerns relating to:

- insufficient disclosure by companies of the non-audit services provided to companies by their auditors
- the reasons for engaging auditors to carry out non-audit services
- the safeguards needed to ensure auditor objectivity.

FRC: Guidance on Audit Committees, December 2010 available at: <http://www.frc.org.uk/images/uploaded/documents/Guidance%20on%20Audit%20Committees%202010%20final1.pdf>

FRC: 2010 Consultation on Revisions to the FRC Guidance on Audit Committees – Summary of Responses to the consultation available at: <http://www.frc.org.uk/images/uploaded/documents/Summary%20of%20responses%202010%20consultation%20on%20FRC%20Guidance%20on%20Audit%20Committees.pdf>

Prospectus Directive: early implementation of provisions to facilitate access to equity finance

The Directive¹ amending the Prospectus Directive and the Transparency Directive (the Amending Directive) came into force on 31 December 2011 and is due to be implemented by 1 July 2012. The Amending Directive includes provisions which place a greater emphasis on the importance of the summary of a prospectus as a source of key information for retail investors when making investment decisions and contains amendments both as to the content of the summary and the liability that attaches to it. It also introduces reduced requirements for rights issues and relaxes the rules regarding the publication of a prospectus.

In terms of timing, however, the Government has announced that it plans to introduce the following elements of the Amending Directive in advance of the July 2012 dead-line in order to help business, especially small and medium sized enterprises, access equity finance:

- the provision that the threshold for an offer of securities for which a prospectus is required will be raised from EUR2.5m to EUR5m (such figure being the total consideration of the offer in the EU calculated over a period of 12 months); and
- the provision that a prospectus will not be required for offers addressed to less than 150 persons per member state. This exemption currently applies to offers addressed to less than 100 persons per member state.

The Government plans to consult on the implementation of these changes early this year. For details of the Government's approach, see: *Financing business growth: The Government's response to financing a private sector recovery*: <http://www.bis.gov.uk/assets/biscore/corporate/docs/f/financing-business-growth-response.pdf>

Directive 2010/73/EU available at.: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:327:0001:0012:EN:PDF>

Rights issues: report on underwriting fees and practices published by the Rights Issues Fees Inquiry

Following its consultation on equity underwriting practices and procedures in the UK, the Rights Issue Fees Inquiry (RIFE) published its report on 14 December 2010. The report had been commissioned by the Institutional Investor Council (the senior body established by the Institutional Shareholders' Committee) in view of a call by the government for institutional investors to review the equity underwriting process in the UK. The Office of Fair Trading is currently also carrying out an on-going study into equity underwriting and associated services and its report is awaited.

For more details on the RIFE's report [click here](#)

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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Squire Sanders and Hammonds have combined, creating a new top-tier global legal practice with 1,275 lawyers in 37 offices and 17 countries, effective January 1, 2011



The EU Council has adopted regulations establishing a European Systemic Risk Board (ESRB) to provide macro-prudential oversight of the financial system, together with three new supervisory authorities at the micro-financial level:

- a European Banking Authority (EBA);
- a European Insurance and Occupational Pensions Authority (EIOPA); and
- a European and Securities and Markets Authority (ESMA).

The role of the ESRB is to monitor and assess potential threats to the stability of the financial system and, where necessary, to issue risk warnings and recommendations for remedial action and to monitor their implementation.

The three new EU supervisory authorities (which replace the three existing committees of supervisors at EU level¹) will work in tandem with the supervisory authorities of the member states to raise standards of national supervision across the EU (by means, for example, of developing a single EU rule-book and investigating national supervisory authorities where there are concerns that they are not complying with EU law). National authorities will remain responsible for the day-to-day supervision of individual firms.

The ESRB and the EIOPA will be located in Frankfurt, the EBA in London and the ESMA in Paris.


¹ That is, the Committee of European Banking Supervisors; the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators.

Financial Policy Committee (FPC)			
Responsibilities	Status/Composition	Accountability	International role
Macro prudential regulation	Status: a committee of the Court of Directors of the BOE	To the BOE Court of Directors, to Parliament (in particular, the Treasury Select Committee) and to the Treasury	To work with international authorities that are focused on systemic issues (e.g.: the G20)
To consider issues affecting economic and financial stability, to respond to any threats it identifies	Composition includes: the Governor of the BOE (as chairman); the PRA chief executive; the CPMA chief executive		To work with national regulators to co-ordinate macro-prudential policy
No direct regulatory responsibility			
Prudential Regulation Authority (PRA)			
Responsibilities	Status/Composition	Accountability	International role
Micro-prudential regulation of systemically important firms	Status: a subsidiary of the BOE	To the BOE, to Parliament (in particular to the Treasury Select Committee) and to the National Audit Office	To be the lead authority representing the UK on the new European supervisory authorities for the banking sector ¹ and the insurance and occupational pensions sectors ²
To promote the stable and prudent operation of the financial system through the effective regulation of financial firms	Composition of its board includes: the Governor of the BOE (as chairman); the BOE Deputy Governor for prudential regulation as chief executive; the CPMA chairman		
To focus on setting institution specific capital requirements			
Will be operationally independent from the BOE and the FPC for day-to-day regulation and supervision of firms			

¹ The European Banking Authority

² The European Insurance and Occupational Pensions Authority

Consumer Protection and Markets Authority (CPMA)			
Responsibilities	Status/Composition	Accountability	International role
To ensure confidence in financial markets and services, focusing on consumer protection and market integrity	Status: to be a company limited by guarantee, independent of Government and the BOE	To Parliament (in particular to the Treasury Select Committee) and to the National Audit Office	To be the lead authority representing the UK on the European Securities and Markets Authority
Responsible for the conduct of business regulation of all firms, including those regulated for prudential matters by the PRA		It must have regard to the Consumer Panel, the Practitioner Panel and the Small Business Practitioner Panel	
Responsible for the prudential regulation of firms not regulated by the PRA.			
Responsible for the FSA's current market conduct regulatory functions (except for the regulation and supervision of settlement systems and central counterparty clearing houses which will be the responsibility of the BoE)			



The RIFE's report considers how the level of underwriting fees to risk exposure has changed over time. It reports that since the middle of 2009, due in part to improved market conditions, the exposure to risk faced by underwriters has decreased while underwriting fees have remained high. The report contains a number of recommendations with the aim of keeping both the underwriting costs and the risks to issuers and shareholders to a minimum. The recommendations seek to:

- increase competition in the underwriting services market;
- increase the level of transparency in relation to costs and sub-underwriting arrangements; and
- improve shareholder involvement.

The report also contains a draft set of guidance for use by an issuer when considering a rights issue to help the issuer address the concerns of the institutional shareholders (see Appendix 2 of the report).

Institutional Investor Council: Rights Issue Fee Inquiry: December 2010: available at:
<http://www.iicouncil.org.uk/docs/rifireport.pdf>