

Review

Corporate Finance



Capital Markets Practice

News round-up

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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. In this issue, we report, among other things, on the strong stand the Financial Services Authority (FSA) is taking against market abuse and on further developments in the area of corporate governance.

Annual report: directors' report: reporting of greenhouse gas emissions

The Climate Change Act 2008 requires the Government to introduce regulations by 6 April 2012 specifying the information about greenhouse gas emissions to be included in the directors' report. *For details, [click here](#).*

Corporate governance: European Corporate Governance Guidelines for small and mid-cap quoted companies published by the QCA

The Quoted Companies Alliance (QCA)¹, has published (24 May 2011) a set of high-level corporate governance principles which aim to promote effective corporate governance for small and mid-cap quoted companies across Europe.² A number of the Guidelines, which emphasise the need for a proportionate and principles-based approach, reflect the provisions applicable to UK listed companies found in the UK Corporate Governance Code. *The Guidelines, which are non-binding and are expressed as suggestions, are available at: http://www.theqca.com/article_assets/articledir_88/44421/EuropeanCorpGovGuidelines_May2011_Final.pdf*

Corporate governance: ICSA Board Evaluation: Review of the UK top 200 companies 2010

The Institute of Chartered Secretaries and Administrators (ICSA) has published the results of its Review, for the 2010 reporting season, into how the largest UK listed companies have carried out the evaluation of the performance of the board, the audit, nomination and remuneration committees and individual board directors in response to Principle B.6 of the UK Corporate Governance Code (Principle A.6 of the Combined Code on Corporate Governance). *For details, [click here](#).*

Corporate governance: IMA survey on adherence to the FRC's Stewardship Code

The Investment Management Association (IMA) has published a report on adherence to the FRC's Stewardship Code in the period to 30 September 2010. *For details, [click here](#).*

¹ The QCA is the representative body for the UK's small and mid-cap quoted company sector.

² The Guidelines have been published in co-operation with two European associations for listed companies: MiddleNext and Deutsches Aktieninstitut.

The Organisation for Economic Cooperation and Development (OECD) has published up-dated Guidelines for Multinational Enterprises. The Guidelines were last revised in 2000 and contain voluntary principles and standards for responsible business conduct in a global context. They are wide-ranging and deal with a number of issues including the environment, industrial relations, bribery and corruption and also contain a new section on human rights. The Guidelines are addressed by those states that have endorsed them to multi-national enterprises which carry on business in or from their jurisdictions.³ *OECD Guidelines for Multinational Enterprises (May 2011)*, available at: <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

Listing Rules

FSA Handbook Notice 110, published 27 May 2011, provides feedback on the proposals to amend the Listing Rules set out in the FSA quarterly consultation paper CP11/1 published in January 2011. The proposed amendments set out in CP11/1 were aimed at clarifying certain Rules, including:

- the offer periods for rights issues and open offers;
- the disclosure of DTR 5 notifications in annual accounts; and
- the disapplication of pre-emption rights by overseas companies.

*For details about the changes to the Listing Rules and the consequential amendments to the Admission and Disclosure Standards and the AIM Rules, **[click here](#)**.*

The FSA has fined Samuel Kahn £1,094,900 for engaging in market abuse in contravention of section 118(5) of the Financial Services and Markets Act 2000 by co-ordinating a scheme to deliberately inflate the share price of Global Brands Licensing - a company admitted to trading on the PLUS Quoted market. This is the first fine imposed under the FSA's penalty regime which was introduced in March last year. The FSA has also obtained a High Court injunction restraining Mr. Kahn from committing further market abuse in view of this misconduct and previous misconduct (which was the subject of an FSA investigation and enforcement action in 2007).

FSA Final Notice dated 24 May 2011 available at: http://www.fsa.gov.uk/pubs/final/samuel_nathan_kahn.pdf

On 9 June 2011, the European Securities and Markets Authority (ESMA)⁴ published the 13th version of its Frequently Asked Questions (FAQs) on 'Prospectuses: common positions agreed by ESMA members'. The FAQs, first issued in July 2006, aim to give market participants responses to common questions on the Prospectus Directive (2003/71/EC) and the Commission's Regulation on prospectuses (EC/809/2004). The FAQs are not, however, binding on the European Commission. *ESMA: FAQs: Prospectuses: common positions agreed by ESMA Members: 13th updated version - June 2011* available at: http://www.esma.europa.eu/data/document/11_85.pdf

3 The Guidelines have been endorsed by all 34 OECD members plus Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. A list of OECD members is available at: http://www.oecd.org/pages/0,3417,en_36734052_36761800_1_1_1_1_00.html

4 ESMA was created as an EU competent authority on 1 January 2011 (taking over the responsibilities of the Committee of European Securities Regulators) in order to safeguard the stability of the EU's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection.

Rights issues: guidance for issuers published by the Institutional Investor Committee

Following publication of the Rights Issue Fees Inquiry's report in December 2010⁵, the Institutional Investor Committee (IIC)⁶ has published (18 May 2011) best practice guidance for issuers when raising equity capital. *For details, [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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⁵ For more detail, see Capital Markets Practice News round-up, January 2011: issue no. 1/2011.

⁶ Comprised of representatives from the Association of British Insurers, the Investment Management Association and the National Association of Pension Funds.

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In response, the Department for Environment, Food and Rural Affairs (DEFRA) has launched a consultation and is seeking views, among other things, as to whether there should be greater voluntary reporting or whether the regulations should require:

- compulsory reporting for all quoted companies;
- compulsory reporting for all large companies; or
- compulsory reporting for all companies with electricity consumption above a certain threshold.

Comments are requested by 5 July 2011. *DEFRA Consultation Paper: Measuring and reporting of greenhouse gas emissions by UK companies: a consultation on options: May 2011* available at: <http://www.defra.gov.uk/consult/files/110511-ghg-emissions-condoc1.pdf>

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The review indicates that only 33 (16.5%) of the top 200 UK listed companies undertook an external board evaluation process for the 2010 reporting season. All but ten of these companies had, however, used some form of external facilitation in the last five years.

ICSA notes that, in recent years, more companies overall have used an external facilitator to assist with the evaluation process and hopes that companies which, to date, have only undertaken internal evaluations will periodically engage an external facilitator to help evaluate the performance of the board and committees.

ICSA Board Evaluation: Review of the UK top 200 companies 2010 available at: <http://icsa.org.uk/assets/files/pdfs/Publications/bereport2011.pdf>

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The report summarizes the responses of a number of asset managers, asset owners and service providers and its findings indicate that:

- over 90% of institutional investors vote all or the great majority of their UK shares;
- nearly two thirds now publish their voting records; and
- at the date of the survey, 43 out of 50 respondents had published a statement on adherence to the Code, and another six have since done so.

The IMA also carried out a number of case studies into how institutional investors dealt with certain controversial issues. The IMA considers that the results of the survey reveal a long-term commitment to achieving value for shareholders and real and productive engagement between companies and the institutional investors. *IMA report: Adherence to the FRC's Stewardship Code at 30 September 2010 available at: [Current survey](#)*

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The initial proposed amendments have been now been implemented, with effect from 6 June 2011, by the Listing Rules Sourcebook (Amendment No 7) Instrument 2011 (2011/32). There have been some minor changes from the amendments originally proposed in CP 11/1 order to reflect the feed-back received to the consultation. With regard to open offers, the final version of new Listing Rule 9.5.7 A provides that the first business day of the minimum 10 business day offer period is the date on which the offer is first open for acceptance.

Listing Rules Sourcebook (Amendment No 7) Instrument 2011 (2011/32) available at:

http://fsahandbook.info/FSA/handbook/LI/2011/2011_32.pdf

FSA Handbook Notice 110 available at:

http://www.fsa.gov.uk/pubs/handbook/hb_notice110.pdf

Admission and Disclosure Standards

London Stock Exchange (LSE) Notice N11/11, published 7 June 2011, sets out minor changes to the Admission and Disclosure Standards (Standards) to reflect the terms of Listing Rule 9.5.7A regarding open offer timetables. The amendments to the Standards appear in paragraph 3.9 and have immediate effect. *LSE Notice N11/11 available at:* <http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/change-and-updates/stock-exchange-notices/2011/n1111.pdf>

AIM Rules

LSE AIM Notice AIM37, published 6 June 2011, sets out minor changes to the Guidance Notes to the AIM Rules for Companies (AIM Rules), again to reflect the terms of Listing Rule 9.5.7A regarding open offer timetables. The amendments to the AIM Rules appear in the Guidance Notes to AIM Rules 24 and 25 and have immediate effect. *LSE AIM Notice AIM 37 available at:* <http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim37.pdf>

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The guidance aims to inform directors of the views of institutional shareholders on best practice when raising equity capital and, among other things:

- advises that directors should familiarise themselves with equity capital raising processes;
- includes guidance on the appointment of advisers; and
- recommends that full disclosure of fees be made following the issue.

IIC: Best Practice Guidance for issuers when raising equity capital (May 2011) available at:

<http://www.iicomm.org/docs/bpguidance0511.pdf>

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