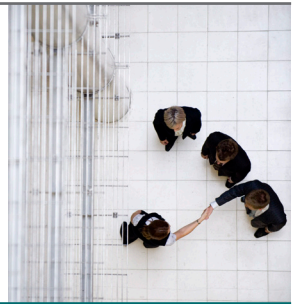


Review

Corporate Finance



Capital Markets Practice

News round-up

Corporate governance

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 focus on recent developments in the area of corporate governance.

Corporate governance: the ABI issues its first report on board effectiveness and revised guidance on executive remuneration

On 28 September 2011, the Association of British Insurers ('ABI') issued two papers, its first 'Report on Board Effectiveness' and its revised 'Principles of Remuneration'.

For details, [click here](#).

Corporate governance: changes to the UK Corporate Governance Code to enhance board diversity: the FRC urges immediate voluntary compliance

On 11 October 2011, the Financial Reporting Council ('FRC') announced that it will amend the UK Corporate Governance Code ('the Code') to require listed companies to report annually on:

- the company's boardroom diversity policy, including gender diversity; and
- any measurable objectives that the board has set for implementing this policy and the progress made in achieving such objectives.

The FRC will also update the Code to specify the question of the diversity of the board, including gender diversity, as one of the matters to be taken into account when evaluating the effectiveness of the board.

The latest amendments to the Code come in the wake of the Davies Report, 'Women on Boards'¹ and will come into force for financial years beginning on or after 1 October 2012, although the FRC is urging compliance on a voluntary basis with immediate effect .

FRC Feedback Statement: Gender Diversity on Boards available at: <http://www.frc.org.uk/images/uploaded/documents/Feedback%20Statement%20on%20Boardroom%20Diversity%20October%202011.pdf>

¹ For more details, see Capital Markets Practice News Round-up: issue no: 3/2011.

Corporate governance: Financial Reporting Council: consultation on future role

On 18 October 2011, the Department for Business, Innovation and Skills and the Financial Reporting Council ('FRC') launched a joint consultation paper on reform of the FRC. A number of the proposals are aimed at focusing the work of the FRC on aspects of the most concern to the running of the capital markets and include the following:

- whether the monitoring and enforcement functions of the FRC should be limited mainly to publicly-traded companies and the largest private companies. (The FRC would, however, still set standards for governance, accounting, audit and actuarial work applicable to the corporate sector generally); and
- whether the FRC's accountancy disciplinary function should be restricted to the work and conduct of accountants in the preparation and audit of reports for the capital markets. The appropriate professional body would deal with other areas of potential misconduct.

The consultation also contains proposals for restructuring the FRC, as well as proposed measures for enhancing its independence.

Responses to the consultation are invited by 10 January 2012. Any changes are likely to be implemented in April 2012.

Consultation Paper: Proposals to Reform the Financial Reporting Council:

<http://www.frc.org.uk/images/uploaded/documents/FRC%20reforms%20condoc.pdf>

Corporate governance: Financial Reporting Review Panel consults on new powers of disclosure

On 4 October 2011, the Financial Reporting Review Panel ('the Panel') published a consultation paper containing proposed changes to its operating procedures which would, among other things, give the Panel new powers:

- to issue an announcement in all cases where a company makes a significant change to its corporate reporting as a result of the intervention of the Panel; and
- to release an announcement of its own where the existence of a Panel enquiry has become public.

Comments are requested by 30 November 2011

Financial Reporting Review Panel: Proposals for changes to the operating procedures of the Financial Reporting Review Panel: Consultation paper: October 2011: available at:

<http://www.frc.org.uk/images/uploaded/documents/FRRP%20Consultation%20paper%20-%20operating%20procedures.pdf>

Corporate governance: Financial Reporting Review Panel publishes annual report for 2011

The Financial Reporting Review Panel ('the Panel') has published (28 September 2011) its annual report for 2011 following a review of reports and accounts for the year ended 31 March 2011. The report seeks to help boards deal with significant matters that are likely to arise in the current reporting season (including those relating to the directors' report, corporate governance statements and half yearly financial reports) and also advises on good practice in corporate reporting.

Financial Reporting Review Panel: Annual Report 2011: September 2011 available at: <http://www.frc.org.uk/images/uploaded/documents/FRRP%20AR%20FINAL%20for%20web1.pdf>

Corporate governance: guidance for directors published on the risk management obligations contained in the UK Corporate Governance Code

The Institute of Risk Management has published a Guidance Paper on Risk Appetite and Tolerance. The Paper aims, among other things, to offer guidance to directors (and those responsible for advising boards) on compliance with the provision contained in the UK Corporate Governance Code that 'the board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives'. The Guidance, which has been endorsed by the Institute of Chartered Secretaries and Administrators, offers practical advice on steps that can be taken to meet this responsibility.

Institute of Risk Management: Risk Appetite & Tolerance Guidance Paper available at: <http://www.theirm.org/publications/documents/IRMRiskAppetiteFullweb.pdf>

Corporate governance: narrative reporting: the first 'Financial Reporting Lab' is launched

On 14 October 2011, the Financial Reporting Council ('FRC') launched the first 'Financial Reporting Lab' to help seek practical solutions to current problems in financial reporting, including the length and complexity of reports and accounts. The FRC hopes that the Lab (whose members will represent a wide range of sectors, investors and companies) will help in the Government's efforts to stream-line narrative reporting requirements and reduce the likelihood of regulatory intervention.

The FRC's Guide to the Financial Reporting Lab is available at: <http://www.frc.org.uk/images/uploaded/documents/frc%20lab%20leaflet%20final.pdf>

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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Report on Board Effectiveness

This Report follows the publication of the Financial Reporting Council's 'Guidance on Board Effectiveness' in March 2011¹. It focuses on the three main areas that assist in establishing an effective board and high-lights current best practice amongst FTSE 350 companies. The key areas addressed are diversity in the boardroom (including gender diversity), succession planning and board evaluation.

ABI Report on Board Effectiveness available at: http://www.ivis.co.uk/PDF/ABI_1684_v6_CS4.pdf

Principles of Remuneration

The revised Principles up-date the ABI's guidelines on executive remuneration and are aimed principally at companies listed on the main market of the London Stock Exchange (although the ABI hopes that they may also prove useful for companies listed on other public markets). Among the key recommendations, the ABI advises that boards should:

- resist rewarding failure;
- support proportional rewards for exceptional performance;
- avoid unsophisticated benchmarking to justify pay increases; and
- appreciate that excessive or undeserved rewards are detrimental to the operation and reputation of the company and inconsistent with the interests of shareholders.

Specific issues addressed include the following:

- *taxation*: the ABI advises that executive remuneration should not be adjusted to compensate executives for any change in their personal tax position;
- *clawback* (of shares or cash payable under executive share incentives or bonuses): the ABI considers that shareholders will expect to see provisions of this kind in executive remuneration packages;
- *quantum*: the ABI has, for the first time, introduced guidance on the levels of executive remuneration; and
- *pay below board level*: the ABI notes that there may be a role for the remuneration committee in setting pay below board level, especially in cases of significant risk or remuneration.

ABI Principles of Remuneration: September 2011 available at: <http://www.ivis.co.uk/ExecutiveRemuneration.aspx>

¹ For more details, see Capital Markets Practice News Round-up: issue no: 3/2011.