

## 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.

#### Corporate governance: proxy advisers: ESMA seeks views on the regulation of the EU proxy advisory industry

On 22 March 2012, the European Securities and Markets Authority ('ESMA') published a discussion paper asking for views on the regulation of the EU proxy advisory industry. This initiative follows concerns about the role of such advisors, appointed by the large institutional investors, among other things, to analyse proposals for general meetings and to make voting recommendations. The discussion paper focuses particularly on the following:

- the factors which influence the accuracy, independence and reliability of proxy advice (including possible conflicts of interest); and
- the level of transparency involved, for example, in the management of conflicts of interest and in the making of voting recommendations.

ESMA seeks views on the following possible policy options:

- whether it is necessary for the EU to take any action at this stage;
- whether individual member states should be encouraged to develop enhanced standards for regulating proxy advisers;
- whether the EU should introduce quasi-binding regulatory measures (such as ESMA guidelines and recommendations); or
- whether the EU should implement binding legislative measures.

Comments are requested by 25 June 2012. ESMA aims to publish a feedback statement later this year and will indicate then whether it considers policy action should be taken.

*An Overview of the Proxy Advisory Industry: Considerations on Possible Policy Options available at:*

<http://www.esma.europa.eu/system/files/2012-212.pdf>

#### Corporate governance: the FRC publishes list of proposed corporate governance projects for 2012/2013

The Financial Reporting Council ('FRC') has published its Draft Plan and Budget for 2012/13 with proposals for the corporate governance projects it intends to address in 2012/2013. They include the following:

- the introduction of a revised UK Corporate Governance Code ('the Code') with effect from 1 October 2012. The revised Code will reflect the outcome of the monitoring exercise undertaken by the FRC in December 2011 and will implement, among other things, new provisions on board diversity. The FRC will consult on the amendments to the Code later this year;
- the continued promotion of better quality explanations by companies if they decide to depart from provisions of the Code;
- a consultation on amendments to the Stewardship Code and the continued encouragement of closer engagement between companies and investors;
- the progression of Lord Sharman's awaited conclusions on how the health of a company, especially whether it is a going concern, should be assessed and reported; and
- the progression of the FRC's consultation on 'Effective Company Stewardship'. This initiative aims to ensure better quality reporting of business models and risk, greater clarity about the respective responsibilities of audit committees and auditors as well as better reporting of the work of the audit committee.

Comments were requested by 13 April 2012 and the FRC aims to finalise its proposals by the end of this month.

*FRC: Draft Plan and Budget 2012/2012: March 2012 available at:*

<http://www.frc.org.uk/images/uploaded/documents/FRC%20draft%20plan%20and%20budget%202012-131.pdf>

#### The future role of the FRC: changes in the pipe-line

In the meantime, the Government plans to introduce changes, due to come into effect on 2 July 2012, to restructure the FRC (which is responsible for the Code and the Stewardship Code) and to strengthen its independence.

*Proposals to reform the Financial Reporting Council: a joint Government and FRC response available at:*

<http://www.frc.org.uk/images/uploaded/documents/Joint%20BIS-FRC%20response%20to%20FRC%20reform%2026%2003%2012.pdf>

## Corporate governance: Women on Boards: Lord Davies issues first annual progress report

On 13 March 2012, Lord Davies published the first annual progress report following the publication, in February last year, of his report, Women on Boards. Lord Davies notes an unprecedented pace of change in the make-up of UK boards of directors and provides the following data compiled as at the end of February: .

### FTSE 100 companies

- women now account for 15.6% of all directorships (up from 12.5%);
- 47 female board appointments have been made since February 2011;
- 27% of all board appointments have been taken up by women (up from 13%); and
- only 11 all-male boards remain (down from 21).

### FTSE 250 companies

- women account for 9.6% of all directorships (up from 7.8%);
- 26% of all board appointments have been taken by women;
- for the first time, all-male boards are in the minority (112 companies, or 44.8%, down from 52.4%) and
- 53 female appointments have been made since February 2012.

Lord Davies recommends, among other things, that over the next year FTSE 350 companies should aim to have boards which comprise at least 25% women.

The Government has indicated that it does not intend to introduce mandatory quotas at present although, as reported in the March 2012 edition of this publication, the EU is looking at the possibility of taking action in this area.

*Lord Davies' Report: Women on Boards: March 2012 available at:*

<http://www.bis.gov.uk/assets/biscore/business-law/docs/w/12-p135-women-on-boards-2012.pdf>

## Financial reporting: narrative reporting: proposed changes deferred until next year

On 28 March 2012, the Department for Business, Innovation and Skills ('BIS') published the Government's response to its September 2011 consultation on a new framework for narrative reporting. BIS reports a high-level of support for its proposals, is now working to develop these further and intends to publish draft regulations and a full impact assessment later this year. The changes, which include the proposal that the current business review and directors' report be split into two

new documents, a strategic report and an annual directors' statement, will not now be brought into force in October this year as originally planned. The Government has deferred the implementation of the proposed changes to the narrative reporting regime until April 2013 in order to give companies time to adjust.

*BIS Government response to its consultation on the future of narrative reporting: March 2012 available at:*

<http://www.bis.gov.uk/assets/biscore/business-law/docs/f/12-588-future-of-narrative-reporting-government-response.pdf>

## Listing Rules and Disclosure and Transparency Rules: proposed changes include new approach by FSA on giving individual guidance

In its quarterly consultation paper (CP12/5), published on 7 March 2012, the Financial Services Authority ('FSA') has proposed certain changes to the Listing Rules ('LR') and to the Disclosure and Transparency Rules ('DTR'). The changes, which appear in Chapter 7 of the consultation paper, include the following:

- LR 11 (related party transactions): an amendment to the definition of 'substantial shareholder' for the purposes of LR 11 will exclude from the operation of LR 11 cases where a shareholder holds more than 10% of the shares in an issuer where shares are held for a short period only and the holding is incidental to the arrangement of transactions for other parties; and
- amendments to the LR and DTR to reflect the proposal that the UKLA helpdesk should cease to accept requests for individual guidance on a "no names" basis. Where individual guidance is sought, a submission should be made in writing (save in cases of exceptional urgency).

Responses to Chapter 7 of the consultation are requested by 6 May 2012. In the meantime, however, the FSA announced on 21 March 2012 (in the first edition of its Primary Market Bulletin which replaces List!) that its helpdesk staff will no longer accept calls from individuals who are unwilling to disclose their own or their firm's contact details and that the FSA expects to implement its proposals on individual guidance set out in CP12/5 on 1 September 2012.

*FSA Consultation Paper: Quarterly Consultation: CP12/5 (no. 32) available at:*

<http://www.fsa.gov.uk/static/pubs/cp/cp12-05.pdf>

*Primary Market Bulletin Edition: March 2012: issue no. 1 available at:*

<http://www.fsa.gov.uk/static/pubs/ukla/ukla-pmb-issue1.pdf>

## UK financial regulation: Government proposals for reform: a brief up-date

The Financial Services Bill was introduced into Parliament on 26 January 2012 and will reform the system which currently regulates the UK's financial services industry. At present, responsibilities are divided between the Treasury, the Bank of England and the Financial Services Authority ('FSA'). The new system will give the Bank of England macro-prudential responsibility for the oversight of the financial system together with responsibility for the day-to-day prudential supervision of financial services firms managing significant balance-sheet risk. A new conduct of business regulator will be created to protect consumers, promote competition and ensure integrity in markets. The FSA will cease to exist in its present form and will be replaced by two new regulators: the Prudential Regulation Authority and the Financial Conduct Authority. The legislation will:

- establish a macro-prudential authority within the Bank of England, the Financial Policy Committee, to monitor and deal with systemic risks;
- transfer responsibility for significant prudential regulation to a new regulator, the Prudential Regulation Authority. This body will be established as a subsidiary of the Bank of England; and
- create a new conduct of business regulator, the Financial Conduct Authority, which will also assume the functions of the UK Listing Authority.

Subject to the Bill passing through Parliament, it is proposed that the new authorities will be established in early 2013. In the meantime, however, the FSA is planning to move as closely as possible to the new system as from 2 April this year.

*HM Treasury press release on the introduction of the Financial Services Bill to Parliament available at:*

[http://www.hm-treasury.gov.uk/fin\\_financial\\_services\\_bill.htm](http://www.hm-treasury.gov.uk/fin_financial_services_bill.htm)

*Text of speech by Hector Sants, Chief Executive, FSA: Delivering 'twin peaks' within the FSA: 06/02/2012 available at:*

<http://www.fsa.gov.uk/portal/site/fsa/menuitem.10673aa85f4624c78853e132e11c01ca/?vgnextoid=903328e6c3f45310VgnVCM10000044bc10acRCRD&vgnextfmt=default>

## 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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