

## 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. Among other things, we bring you news of proposed changes to the Takeover Code and details of Professor Kay's final report on UK equity markets and long-term decision making.

#### **Corporate governance: executive remuneration: the Government publishes consultation paper following its announcement of 20 June 2012**

Following its announcement of 20 June 2012<sup>1</sup>, the Government has now published (on 27 June 2012) a formal consultation paper on executive remuneration reporting requirements in line with the proposals it out-lined last month. The consultation paper includes draft regulations, which will apply to all quoted companies, setting out the proposed form and content of the directors' remuneration report.

Responses to the consultation are requested by 26 September 2012. The Government intends that the changes will apply for financial years ending after October 2013.

*Directors' Pay: Consultation on revised remuneration reporting regulations available at:*

<http://www.bis.gov.uk/assets/biscore/business-law/docs/d/12-888-directors-pay-consultation-remuneration-reporting.pdf>

#### **Corporate governance: the Financial Reporting Council: new structure: enhanced role in the supervision of auditors and consultation on disciplinary schemes for accountants and auditors**

*The new structure of the Financial Reporting Council*

The Financial Reporting Council ('FRC') has been restructured with effect from 2 July 2012. The aim is to enable the FRC to act as a unified regulatory body with a more proportionate range of sanctions and increased independence from those it regulates. The Board of the FRC will be responsible for the strategic direction of key decisions on standards, as well as for deciding how the FRC will discharge its responsibilities. The Board will be supported in its work by three Committees: a Codes and Standards Committee, a Conduct Committee and an Executive Committee. The FRC will, in relation to codes, standard setting and policy questions, be advised

by three Councils which will deal with accounting, actuarial and audit, and assurance issues respectively. The role formerly undertaken by the Financial Reporting Review Panel will continue to be carried out by a Panel of the same name and comprised of members appointed by the Conduct Committee of the FRC.

*FRC press release available at:*

<http://www.frc.org.uk/News-and-Events/FRC-Press/Press/2012/June/Reform-of-the-Financial-Reporting-Council-approved.aspx>

#### *Auditors*

The Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012, in force on 2 July 2012, gives the FRC new powers to ensure that professional bodies responsible for supervising statutory auditors properly discharge their supervisory functions.

*The Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 available at:*

<http://www.legislation.gov.uk/ukxi/2012/1741/contents/made>

#### *Disciplinary schemes for accountants and actuaries*

On 28 June 2012, the FRC launched a consultation on proposed changes to its disciplinary schemes for accountants and actuaries. Responses to the consultation are requested by 15 September 2012.

*FRC consultation paper: Disciplinary Schemes – Proposed Changes available at:*

[http://www.frc.org.uk/getattachment/b03e2da0-1d5e-47ca-acbd-60d591f9ca0b/Disciplinary-schemes-proposed-changes-a-consultation-paper-\(June-2012\).aspx](http://www.frc.org.uk/getattachment/b03e2da0-1d5e-47ca-acbd-60d591f9ca0b/Disciplinary-schemes-proposed-changes-a-consultation-paper-(June-2012).aspx)

#### **Corporate governance: reporting anti-corruption measures: Transparency International publishes recommendations for multi-national companies**

Transparency International's latest report, 'Transparency in corporate reporting: assessing the world's largest companies' (published on 10 July 2012), follows Transparency International's analysis of the reporting of anti-corruption measures by over one hundred of the largest publicly listed multi-national companies. The report recommends, among other things, that multi-national companies should publish:

- detailed information on their anti-corruption programmes;
- comprehensive details of their subsidiaries, affiliates, joint ventures and other related entities; and

<sup>1</sup> Details contained in the June 2012 edition of this publication: issue no. 6/2012.

- individual financial accounts for each country in which they operate.

*Transparency International report: Transparency in corporate reporting: assessing the world's largest companies available at:*

[http://files.transparency.org/content/download/459/1891/file/2012\\_TransparencyInCorporateReporting\\_EN.pdf](http://files.transparency.org/content/download/459/1891/file/2012_TransparencyInCorporateReporting_EN.pdf)

### **Corporate governance: UK equity markets and long-term decision making: Professor Kay publishes his final report**

Following his review of investment in the UK equity markets and its impact on the long-term performance and governance of UK quoted companies, Professor Kay published his final report on 23 July 2012. The report considers that the underlying problem in UK equity markets is the current culture of short-termism, driven largely by an increasing lack of trust together with poorly aligned incentives within the investment chain. Professor Kay's recommendations, addressed to the Government and other concerned parties, include the following:

- the Stewardship Code should be expanded to include a more far-reaching model of stewardship, covering strategic matters as well as questions of corporate governance;
- company directors, asset managers and asset holders should adopt the Good Practice Statements set out in the Kay report in order promote stewardship and long-term decision making;
- regulators and industry groups should ensure that existing standards, guidance and codes of practice reflect the Good Practice Statements;
- an investors' forum should be set up to encourage and facilitate collective engagement by investors in UK companies;
- companies should:
  - consult their major long-term investors over significant board appointments;
  - refrain from the process of managing short term earnings expectations and announcements;
  - structure directors' remuneration to link incentives to sustainable long-term business performance;
  - provide long-term performance incentives for directors by way only of the grant of company shares which should be held, at least, until after the director has retired from the business;
- asset management firms should:
  - make full disclosure of all costs and performance fees charged to the fund;
  - structure managers' remuneration to align the interests of asset managers with those of their clients;

- avoid linking managers' pay to the short-term performance of the investment fund or asset management firm;
- offer a long-term performance incentive in the form of an interest in the fund to be held, at least, until the manager ceases to be responsible for that fund; and

- the Government should:

- consider the most cost effective method for individual investors to hold shares directly on an electronic register; and
- ask the Law Commission to review the legal concept of fiduciary duty as it relates to the investment process.

- Additional recommendations made by Professor Kay on the topic of fiduciary duties include the following:

- the regulatory authorities should apply fiduciary standards to all relationships in the investment chain that involve discretion over the investments of others or the provision of advice on investment decisions. (The fiduciary duties should override any contractual provision to the contrary and apply whatever the category of client.); and
- all income from stock lending should be disclosed and paid by way of rebate to investors.

*The Kay Review of UK Equity Markets and Long-term Decision Making: Final Report available at:*

<http://www.bis.gov.uk/assets/biscore/business-law/docs/k/12-917-kay-review-of-equity-markets-final-report.pdf>

### **Prospectus regime: new regime in force on 1 July 2012: further changes to the Prospectus Rules**

The Financial Services Authority ('FSA') has up-dated the Prospectus Rules to bring them into line with EU Regulation 486/2012/EU, which amends the EU Prospectus Regulation (809/2004/EC)<sup>2</sup>. The amendments relate to the format and content of the prospectus, the base prospectus, the summary and the final terms and also include changes to the disclosure requirements. The FSA has, in addition, made other, minor, changes to the Prospectus Rules as well as to the Code of Market Conduct and the Listing Rules. All the changes came into force on 1 July 2012.

*Prospectus Regulation Amendment Instrument 2012 (FSA 2012/34) available at:*

[http://media.fsahandbook.info/Legislation/2012/2012\\_34.pdf](http://media.fsahandbook.info/Legislation/2012/2012_34.pdf)

*Handbook Administration (no. 26) Instrument 2012 (FSA 2012/31) available at:*

[http://media.fsahandbook.info/Legislation/2012/2012\\_31.pdf](http://media.fsahandbook.info/Legislation/2012/2012_31.pdf)

2 The changes to the Prospectus Rules are in addition to those reported in the June 2102 edition of this publication: issue no. 6/2012.

Handbook Notice 121 available at:

<http://www.fsa.gov.uk/static/pubs/handbook/hb-notice121.pdf>

## The Takeover Code: the Takeover Panel launches three new consultations on proposed changes to the Code

On 5 July 2012, the Takeover Panel ('the Panel') published three consultation papers containing proposed amendments to the Takeover Code ('the Code'). Responses to all three consultations are requested by 28 September 2012. It is likely that the changes will come into effect by the end of the year. The consultation papers are as follows:

### *PCP 2012/1: Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code*

The proposed amendments, which seek to make the Code more consistent with other requirements, will affect reporting on profit forecasts and merger benefit statements and would, for example, extend the existing exemptions for profit estimates to include preliminary estimates that comply with the Listing Rules. It is also proposed that the disclosure of material changes in information published in an offer document or target board circular be made promptly by means of announcement, and not only on the publication of a subsequent document.

*Takeover Panel Consultation Paper PCP 2012/1: Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code available at:*

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201201.pdf>

### *PCP 2012/2: Pension scheme trustee issues*

In order to allow the pension scheme implications of a takeover to be discussed during the course of an offer, the Panel proposes to extend the existing provisions of the Code which benefit the target's employee representatives to the trustees of the target's pension scheme.

*Takeover Panel Consultation Paper PCP 2012/2: Pension scheme trustee issues available at:*

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201202.pdf>

### *PCP 2012/3: Companies subject to the Takeover Code*

The proposals, which would extend the Panel's jurisdictional reach, relate to companies with a registered office in the UK, the Channel Islands ('CI') or the Isle of Man ('IOM') but which are not listed on a regulated market in the UK or on a stock exchange in the CI or the IOM.

The Panel proposes that the current 'residency' test be abolished so that the application of the Code to such companies should not, for the future, depend on whether the Panel considers the company to have its place of central management and control, as well as its registered office, in one of those jurisdictions.

The Panel also aims to simplify and clarify the existing provisions of the Code relating to private companies which have their registered office in the UK, CI or IOM. It proposes that the Code should apply:

- to offers for private companies if the company's securities have been admitted to trading on a regulated market, or a multilateral trading facility, in the UK, the CI or IOM at any time during the previous 10 years; and
- to private companies that have filed a prospectus for the issue of securities, or had a prospectus approved by the United Kingdom Listing Authority, during the previous 10 years.

*Takeover Panel Consultation Paper PCP 2012/3: Companies subject to the Takeover Code available at:*

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201203.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.

### **Jane Haxby**

Partner:  
Corporate/Corporate Finance  
T +44 161 830 5144  
E jane.haxby@  
squiresanders.com

### **Giles Distin**

Partner:  
Corporate/Corporate Finance  
T +44 20 7655 1046  
E giles.distin@  
squiresanders.com

### **Steven Glover**

Partner:  
Corporate/Corporate Finance  
T +44 113 284 7476  
E steven.glover@  
squiresanders.com

### **Christian Lowis**

Partner:  
Corporate/Corporate Finance  
T +44 121 222 3369  
E christian.lowis@  
squiresanders.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.