

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 the latest developments in the field of corporate governance.

Corporate governance: the ABI reports on board effectiveness over the past year and makes recommendations for the future

On 12 December 2012, the Association of British Insurers ('ABI') issued its latest annual report on board effectiveness, based on an analysis of the annual reports of FTSE 350 companies. The ABI's report sets out details of the progress made since its 2011 report, discusses best practice in board diversity, succession planning and external evaluation, and contains a review of the role of the chairman. Its key findings show that board diversity is improving, and that the use of external evaluation of board effectiveness is increasing. Among other things, it recommends that:

- companies should disclose the measures they are taking to promote diversity in the boardroom and make clearer disclosures about succession planning;
- external board evaluations should be carried out by an independent party with no conflict of interest; and
- the chairman should outline in the annual report the role of the chairman in creating an effective board.

Association of British Insurers: Report on Board Effectiveness: Updating progress, promoting best practice: December 2012 available at:

<http://www.abi.org.uk/content/contentfilemanager.aspx?contentid=65339>

Corporate governance: the UK Corporate Governance Code: the ABI publishes a report on investor expectations and current practices under the 'comply or explain' regime

The Association of British Insurers ('ABI') has also recently issued a report on investor expectations and current practices under the 'comply or explain' regime of the UK Corporate Governance Code ('the Code'). Among other things, it sets out six criteria to help companies explain non-compliance with the Code. These include the following:

- companies should give a clear rationale when they decide not to comply with any provision of the Code;
- they should explain the steps taken to address any risks which might result from non-compliance; and
- they should explain how any alternative arrangements made promote good governance.

Association of British Insurers: Comply or Explain: Investor expectations and current practices: December 2012 available at:

<http://www.abi.org.uk/content/contentfilemanager.aspx?contentid=65367>

Corporate governance: NAPF publishes 2012 up-dates to its Corporate Governance Policy and Voting Guidelines

On 4 December 2012, the National Association of Pension Funds ('NAPF') issued an up-dated edition of its Corporate Governance Policy and Voting Guidelines containing a number of revisions to the 2010 edition. Key changes include the following:

- greater emphasis on a clear policy for greater board diversity;
- enhancement of the audit committee report (to include a statement on the company's auditor re-tendering policy);
- simplification of remuneration policies, with a focus on directors holding shares for longer; and
- a recommendation that directors' service contracts should be published on-line.

NAPF: Corporate Governance Policy and Voting Guidelines: November 2012 available at:

http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0277_Corporate_governance_policy_and_voting_guidelines_an_NAPF_document.ashx

NAPF's Corporate Governance Policy and Voting Guidelines for Smaller Companies and for Investment Companies

At the same time, NAPF also published 2012 up-dates for its Corporate Governance Policy and Voting Guidelines for Smaller Companies, as well as for its Policy and Guidelines for Investment Companies.

NAPF's Corporate Governance Policy and Voting Guidelines for Smaller Companies

NAPF's Corporate Governance Policy and Voting Guidelines for Smaller Companies are aimed mainly at AIM companies. Key changes made by the 2012 edition include the following:

- encouragement for companies to engage more effectively with key shareholders; and
- improved disclosure standards concerning board evaluation and the work of the audit committee.

NAPF: Corporate Governance Policy and Voting Guidelines for Smaller Companies: November 2012 available at:

http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0278_Corporate_governance_policy_and_voting_guidelines_for_smaller_companies_an_NAPF_document.ashx

NAPF's Corporate Governance Policy and Voting Guidelines for Investment Companies

The 2012 up-date introduces a number of changes which follow the Association of Investment Companies' Code of Corporate Governance in almost all respects.

NAPF: Corporate Governance Policy and Voting Guidelines for Investment Companies: November 2012 available at:

http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0279_%20Corporate_governance_policy_and_voting_guidelines_for_investment_companies_an_NAPF_document.ashx

European company law and corporate governance: the European Commission publishes a provisional action plan for more engaged shareholders and sustainable companies

On 12 December 2012, the European Commission published a provisional action plan for more engaged shareholders and sustainable companies. The plan proposes, among other things, that measures be introduced in 2013:

- to require companies to make greater disclosure of the steps taken to promote diversity at board level;
- to improve corporate governance reporting; and
- to improve the disclosure of institutional investors' voting and engagement policies.

Action plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies (provisional version) available at:

http://ec.europa.eu/internal_market/company/docs/modern/121212_company-law-corporate-governance-action-plan_en.pdf

Takeovers: the Takeover Panel publishes a review of the 2011 changes to the Takeover Code

Following the reforms made to the Takeover Code ('the Code') in September 2011, the Takeover Panel ('the Panel') published Panel Statement 2012/8 on 26 November 2012 setting out its review of the operation of the amended Code provisions. The review covers the twelve month period from 19 September 2011 to 18 September 2012.

The review confirms the Panel's opinion that the Code appears to be operating satisfactorily. Although the Panel does not propose any immediate changes, it is keeping a number of provisions under review including those relating to prohibitions on deal protection measures and formal sale processes.

The Panel reports the following developments since the implementation of the 2011 reforms:

- bid activity: the volume of bid activity has been virtually the same as in the previous twelve month period, despite concerns that the 2011 reforms might have discouraged offerors;
- hostile bids: there has been no significant increase in the number of hostile bids;
- leak announcements: there has been a marked reduction in the percentage of offer periods which began following rumour and speculation in the market or as the result of an untoward rise in the share price;
- offeror "downing tools" : there have been very few cases of potential bidders privately "downing tools" in order to avoid being publicly named following a leak;
- deal protection measures: only one inducement fee agreement has been given to a bidder; and
- employee representative opinions: there has been a significant increase in the number of target employee representative opinions published in relation to offers.

Panel Statement 2012/8: Review of the 2011 amendments to the Takeover Code available at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2012/01/2012-8.pdf>

UKLA guidance: launch of new on-line UKLA Knowledge Base containing guidance on the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules

The Financial Services Authority ('FSA') has announced the launch of a new on-line UKLA Knowledge Base to be the single repository for technical guidance published by the United Kingdom Listing Authority ('UKLA') in relation to the Listing Rules,

the Prospectus Rules and the Disclosure and Transparency Rules. Its main content comprises eighty guidance notes, divided into two series: Procedural Notes and Technical Notes. In contrast to previous UKLA guidance notes, the notes contained in the UKLA Knowledge Base will constitute formal FSA guidance under the Financial Services and Markets Act 2000.

For more details, please see the FSA's Primary Market Bulletin, No. 4 available at:

<http://www.fsa.gov.uk/static/pubs/ukla/ukla-bulletin-no4.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.

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