SQUIRE SANDERS

CAPITAL MARKETS PRACTICE

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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 an up-date on the proposed reforms to the regulatory regime governing the UK's financial services sector, as well as news of the latest developments in the field of corporate governance.

London Stock Exchange ('LSE'): the LSE publishes the rulebook for the new High Growth Segment of the Main Market to be launched in March

On 12 February 2013, the LSE published for consultation its draft rulebook for the High Growth Segment, the new segment of the Main Market due to be launched in March this year. The rulebook contains the eligibility criteria, admission process and continuing obligations for issuers, together with details of the role and obligations of the key adviser.

As previously reported[1], the new High Growth Segment is being set up to meet the needs of UK and European mid-sized high growth businesses, which are currently under-represented on the UK's public markets, and will provide issuers with a transitional route to a full premium listing.

Key issuer eligibility requirements include the following:

- incorporation in the EEA;
- equity shares only, issued by commercial companies;
- a minimum free float of 10% and a value of at least £30m, the majority of which must be raised at admission by the issue of new securities or sale of existing securities; and
- historic revenue growth of 20% over a 3 year period.

Comments on the new rulebook are requested by 8 March 2013.

The rulebook for the High Growth Segment is available at:

http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/change-and-updates/stock-exchange-notices/2013/n0213.pdf

[1] In the October 2012 edition of this publication (issue no. 10/2012).

UK financial services regulation: up-date on the progress of the Government's reforms

Background

In June 2010, in the wake of the financial crisis of 2007/2008, the Government announced its plans to abolish the Financial Services Authority ('FSA') in its present form and to set up three new regulatory bodies: the Financial Policy Committee; the Prudential Regulation Authority; and the Financial Conduct Authority. The Financial Services Act 2012 (which was published at the end of last year) introduces the new regulatory structure by means of amendment to the provisions of the Financial Services and Markets Act 2000 and other existing legislation. It is anticipated that the new regime will come into being on 1 April 2013.

The three new regulatory bodies

The Financial Policy Committee will be a committee of the Bank of England, responsible for macro-prudential regulation and charged with monitoring the stability and resilience of the UK financial system as a whole. The Prudential Regulation Authority and the Financial Conduct Authority will, between them, take over most of the FSA's existing functions.

The Prudential Regulation Authority ('PRA') will be a subsidiary of the Bank of England, responsible for micro-prudential regulation of those firms which the Government believes should be subject to significant prudential regulation, including, for example, banks, building societies, insurers, and certain investment firms. These firms will also be regulated by the Financial Conduct Authority for conduct purposes and will be known as "dual-regulated firms".

The Financial Conduct Authority ('FCA') will:

- assume the majority of the FSA's market regulatory functions, including the FSA's role as the UK Listing Authority; and
- be responsible for the conduct of business regulation of all firms, including dual-regulated firms, and for the prudential regulation of firms not regulated by the PRA (known as "FCA-authorised firms" or "FCA-only firms").

Financial Services Act 2012 available at:

http://www.legislation.gov.uk/ukpga/2012/21/pdfs/ukpga_20120021_en.pdf

New rulebooks and policies

The FSA is publishing a series of papers with proposed changes to the regulatory requirements needed to create the new rulebooks and policies for the FCA and the PRA. To date, the papers published by the FSA include the following:

- FSA consultation paper CP12/37 (published on 18 December 2012) which sets out proposed changes to the Listing Rules and the Disclosure and Transparency Rules ('DTRs'). These include:

    - changes to the Listing Rules in light of the FCA's new statutory powers to supervise and discipline sponsors, and of the revised notification requirements concerning the suspension or cancellation of an issuer's securities at the request of an issuer;

    - changes to the DTRs relating to primary information providers, their continuing obligations and supervision; and

    - changes to the Decision Procedure and Penalties Manual in view of the new statutory notice powers to be given to the FCA.

Responses to the consultation were requested by 1 February 2013.

FSA Consultation Paper CP12/37: the Financial Services Bill: Implementing market powers, decision making procedures and penalties available at:

http://www.fsa.gov.uk/static/pubs/cp/cp12-37.pdf

- FSA consultation paper CP13/3 (published on 25 January 2013) with the FSA's proposals for the general arrangements to deal with the transition between the existing FSA Handbook and its replacement, the FCA Handbook.

FSA Consultation Paper CP13/3: Regulatory reform: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments available at:

http://www.fsa.gov.uk/static/pubs/cp/cp13-03.pdf

- FSA consultation paper CP13/6 (published on 8 February 2013) which contains proposed amendments to certain provisions of the existing FSA Enforcement Guide, with comments requested by 1 March 2013.

Regulatory reform: FCA Handbook amendments relating to the Enforcement Guide (CP13/6) available at:

http://www.fsa.gov.uk/static/pubs/cp/cp13-06.pdf

Corporate governance: directors: ICSA publishes new guidance for non-executive directors

The institute of Chartered Secretaries and Administrators ("ICSA') has recently published new guidance for non-executive directors. It advises on the steps they should take to enable them to demonstrate to a regulator or a court that they have exercised care, skill and diligence in the performance of their duties. Among other things, ICSA recommends that:

- before joining a board, non-executive directors should carry out their own due diligence to satisfy themselves that they have confidence in the company and can make a valuable contribution; and

- following appointment to the board, non-executive directors should:

    - accept responsibility for their own on-going training and continuous development;

    - be prepared to offer independent oversight and constructive challenge to the board;

    - insist on receiving high-quality information;

    - make objective decisions which are in the interests of the company; and

    - avoid conflicts of interest.

ICSA guidance on liability of non-executive directors: care, skill and diligence available at:

https://www.icsaglobal.com/assets/files/pdfs/guidance/Guidance-notes-2013/Directors-duty-to-exercise-care-skill-and-diligence-13012013.pdf

Corporate governance: executive remuneration: major pension funds and investors issue new guidance on executive remuneration to enhance long-term business success

On 7 February 2013, Hermes Equity Ownership Services '(Hermes EOS'), the National Association of Pension Funds ('NAPF'), the BT Pension Scheme, RPMI Railpen and USS Investment Management issued a discussion document setting out high-level guidance for companies on their remuneration structures and principles ahead of the introduction by the Government of the binding vote on remuneration policy next year. The guidance includes the following principles:

- management should take a significant long-term investment in shares of the companies they manage: shares granted to executive directors, for example, should ideally be held for a minimum of ten years, whether or not the executive remains in post;

- pay should be aligned to the long-term success of the company, with pay awards and pensions arrangements consistent throughout the organization;

- pay schemes should be simple, comprehensible to investors and executives alike, and ensure that rewards reflect long-term returns to shareholders; and

- remuneration committees should explain how their decisions will encourage long-term business success.

Following discussions to be held with remuneration committee chairs and shareowner representatives, Hermes EOS and the NAPF will issue an authoritative guide against which shareholders can judge executive remuneration policies and practices.

Hermes EOS and NAPF: Remuneration principles for building and reinforcing long-term business success available at:

http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/0290_0290-Hermes-EOS-and-NAPF-Pay-Principles.aspx

Corporate governance: financial reporting: the FRC consults on the implementation of recommendations made by the Sharman inquiry into going concern and liquidity risks

On 30 January 2013, the Financial Reporting Council ('FRC') issued a consultation paper proposing to implement certain of the recommendations made in June 2012 by the Sharman Panel of Inquiry into Going Concern and Liquidity Risks ('the Panel')[2]. In light of the Panel's recommendations, the FRC has now proposed, among other things, to introduce:

- up-dated guidance on going concern for directors to stress the need for a more continuous assessment of going concern, as part of an integrated process for setting risk-management strategy and running the business[3];

- additional guidance for banks to cover specific issues relating to the going concern risks applicable to the banking sector; and

- amendments to International Standards on Auditing (UK and Ireland) to bolster the role of the auditor in relation to going concern[4].

Responses to the consultation are requested by 28 April 2013. It is anticipated that the new guidance for directors and banks, as well as the changes to the auditing standards, will apply for financial years beginning on or after 1 October 2012.

FRC Consultation paper: Implementing the Recommendations of the Sharman Panel available at:

http://www.frc.org.uk/getattachment/f1b20d17-151f-49ec-a556-6756a4893205/Sharman-Implementation-Consultation-Paper.aspx

Corporate governance: the UK Corporate Governance and Stewardship Codes: the FRC reports on the impact and implementation of the Codes during 2012 and high-lights topics of note for 2013

On 19 December 2012, the Financial Reporting Council ('FRC') published a report dealing with the impact and implementation of the 2010 editions of the UK Corporate Governance Code ('the Code') and the Stewardship Code during 2012. Among other things, the report makes the following points:

The Code

- General compliance: more than half of all FTSE 350 companies have complied fully with the Code. However, the statements of explanation from those companies that deviated were variable.

- Annual re-election of directors: compliance in this regard is now very high, with 96% of FTSE 350 companies following this practice.

- Reporting: the overall quality of the reporting of principal risks and uncertainties has improved although reports by audit committees on their activities continue to be uninformative.

- FRC recommendation on board diversity: companies should consider what steps they can take to increase the number of women on boards.

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[2] The Panel was set up in March 2011 to identify lessons for companies and auditors arising from the financial crisis, to address questions regarding going concern and liquidity risks, and to recommend measures to improve the existing reporting regime and related guidance.

[3] The up-dated guidance for directors will replace the FRC's existing guidance on going concern for directors published in October 2009.

[4] The International Standards to be amended include: ISA 260 (Communications with those charged with governance), ISA 570 (Going concern) and ISA 700 (Auditor's report on financial statements).

The Stewardship Code

- The number of signatories to the Stewardship Code has increased to almost 260.
- Voting levels at AGMs increased during 2012.
- A greater number of asset managers disclosed details of their voting records in the past year.

The year ahead

The report looks ahead to the priority issues for 2013 when the FRC will, among other things, consult on possible changes to the Code in light of Government legislation on executive remuneration.

FRC Report: Developments in Corporate Governance 2012: The impact and implementation of the UK Corporate Governance and Stewardship Codes available at:

http://www.frc.org.uk/getattachment/47293b70-bd65-485c-bbcd-d9a63688b87d/Developments-in-Corporate-Governance-in-2012.aspx

EU: the EU Commission launches a consultation on the cross-border transfer of registered offices

On 14 January 2013, the EU Commission launched a consultation in order to establish whether legislation is needed to facilitate the transfer of a company's registered office across borders within the European Union, with a request for responses by 16 April 2013.

DG Markt: Consultation on the cross-border transfers of registered offices of companies available at:

http://ec.europa.eu/internal_market/consultations/2013/seat-transfer/docs/consultation-document_en.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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