

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 developments in the area of corporate governance and proposals for the reform of the audit market.

ISDX Growth Market: ISDX launches new admissions criteria, revises its Rules for Issuers and introduces a new framework for authorised corporate advisers

On 8 July 2013, the ICAP Securities & Derivatives Exchange ('ISDX') announced the launch of its new admissions criteria for companies wanting to apply for admission to the ISDX Growth Market, including a change to the revenue thresholds test which has been reduced from £200,000 to £100,000. Companies already admitted to trading will be given a transitional period of 18 months to demonstrate that they comply with the new rules.

Further details on the new admissions criteria are contained in the ISDX Press Release dated 8 July 2013 at the link below:

<http://www.icap.com/news-events/in-the-news/news/2013/130708-isdx-launches-new-admissions-criteria.aspx>

ISDX has also introduced new requirements relating to investment vehicles, corporate governance and disclosure, together with a new framework for the role of an authorised ISDX corporate adviser. Revised Rules for Issuers and an up-dated Corporate Adviser Handbook (both dated July 2013) reflect the changes.

ISDX Growth Market: Rules for Issuers (July 2013 edition) available at:

<http://www.isdx.com/files/pdf/consultations/FINAL-ISDX-Rules-for-Issuers-CLEAN.pdf>

ISDX Growth Market: ISDX Corporate Adviser Handbook (July 2013 edition) available at:

<http://www.isdx.com/files/pdf/consultations/FINAL-ISDX-Corporate-Adviser-Handbook-CLEAN.pdf>

Corporate governance: executive pay: the new regime for the remuneration of directors of quoted companies: the new-look directors' remuneration report: the final Regulations are published

In the June 2013 edition of this publication, we reported on:

- the Enterprise and Regulatory Reform Act 2013 which introduces the new, much-publicised, regime relating to the remuneration of directors of quoted companies. The changes, which give shareholders a binding vote on executive pay, will apply to the first directors' remuneration report to be published during the company's first financial year beginning on or after 1 October 2013. Among other things, the changes introduce a new-look directors' remuneration report which must include a new, separate, section with details of the company's forward-looking remuneration policy; and
- the draft regulations published by the Government in June 2013, The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 ('the Regulations'), with details of the proposed new form and content of the directors' remuneration report.

The final version of the Regulations has now been published (on 12 August 2013) and remains in the same form as the draft of June 2013. For more details on the new-look directors' remuneration report, please see the June 2013 edition of this publication and our report on the draft Regulations.

The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981) available at:

http://www.legislation.gov.uk/ukxi/2013/1981/pdfs/ukxi_20131981_en.pdf

Corporate governance: narrative reporting: changes to the regime to require quoted companies to make additional disclosures on human rights, gender representation and greenhouse gas emissions are to come into force for financial years ending on or after 30 September 2013: the final Regulations are published

In the June 2013 edition of this publication, we reported on the Government's proposed changes to the form and content of a company's non-financial annual reports and the publication (on 12 June 2013) of draft secondary legislation to introduce the new regime: The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 ('the Regulations').

Final Regulations, in the same form as the June 2013 draft, have now been published (on 9 August 2013). To recap: the main change, which is applicable to all companies, is the introduction of a 'strategic report' in place of the existing 'business review'.



Quoted companies will be required to make additional disclosures regarding human rights issues, gender representation within the company and greenhouse gas emissions. The new regime will apply to reports produced in relation to financial years ending on or after 30 September 2013.

The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (SI 2013/1970) available at:

http://www.legislation.gov.uk/uksi/2013/1970/pdfs/uksi_20131970_en.pdf

Corporate governance: audit: the FRC publishes notes on best practice to help companies with the audit tender process

On 9 July 2013, the Financial Reporting Council ('FRC') published practical suggestions to help companies undertake an effective process when they put their audit contracts out to tender.

FRC: Audit Tenders: Notes on best practice available at:

<http://frc.org.uk/Our-Work/Publications/Corporate-Governance/Audit-Tenders-Notes-on-best-practice.pdf>

Corporate governance: ICSA publishes up-dated guidance on the terms of reference for board committees and on matters reserved for the board

The series of ICSA guidance notes on the terms of reference for the various board committees, as well as its guidance on matters reserved for the board, have recently been up-dated to reflect the revised editions of the UK Corporate Governance Code and the FRC Guidance on Audit Committees published in September 2012. The up-dated guidance notes (listed below) are available to ICSA members from the ICSA website at <https://www.icsaglobal.com>:

- ICSA Guidance: Terms of reference: audit committee;
- ICSA Guidance: Terms of reference: remuneration committee;
- ICSA Guidance: Terms of reference: nomination committee;
- ICSA Guidance: Terms of reference: risk committee;
- ICSA Guidance: Terms of reference: executive committee; and
- ICSA Guidance: Matters reserved for the board.

Corporate governance: the ABI publishes proposals for improving corporate governance and shareholder engagement

On 25 July 2013, the Association of British Insurers ('ABI') published a report on 'Improving Corporate Governance and Shareholder Engagement'. The report:

- considers the different roles and responsibilities of non-executive directors and institutional shareholders, as well as of asset managers and asset owners;

- provides a comprehensive review of the current approach taken by the major institutional investors to corporate governance analysis and engagement; and
- makes a number of proposals for improving corporate governance and shareholder engagement.

Its proposals include the following:

- non-executive directors: the company should ensure that its non-executive directors receive adequate information to help them support and challenge their executive board colleagues, together with full and early information on potential mergers and acquisitions (including independent advice, if appropriate); and
- investors: companies should be encouraged to set up a transparent investor relations programme, to include meetings on corporate governance issues.

ABI Report: Improving corporate governance and shareholder engagement available at:

<https://www.abi.org.uk/News/News-updates/2013/07/~media/2492136445D547CD88F369756481E14A.ashx>

Corporate governance: audit: the Competition Commission publishes its proposals for greater competition in the audit market, including a requirement for more frequent audit tenders for FTSE 350 companies

Following its market investigation into the supply of statutory audit services to large companies in the United Kingdom, the Competition Commission announced its provisional decision on remedies on 22 July 2013. Its proposals include the following:

- FTSE 350 companies should be required to put their statutory audit engagement out to tender at least every five years, subject to a five year transitional period;
- the FRC's Audit Quality Review team should review every audit engagement in the FTSE 350 on average every five years;
- clauses in loan documentation limiting the company's choice of auditor to one of the 'Big-4' audit firms should be banned;
- shareholders should have an advisory vote on whether the audit committee's report contains adequate information;
- the accountability of the external auditor to the audit committee should be enhanced and the influence of management reduced; and
- the FRC should change its constitution to include a secondary objective to have due regard to competition.

The Competition Commission invited comments on its provisional decision by 13 August 2013 and is due to publish its final report by 20 October 2013.

Competition Commission Press Release (with a link to a summary of the Commission's provisional decision on remedies) available at:

<http://www.competition-commission.org.uk/media-centre/latest-news/2013/Jul/cc-outlines-measures-for-audit-market>

Corporate governance: the Government launches a discussion paper on the transparency of the ownership and control of companies, the enforcement of directors' duties and the compensation of creditors

The Government has recently published a discussion paper, 'Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business', inviting feed-back on a number of proposals concerning the transparency of company ownership and control, enforcement of directors' duties and compensation of creditors. Among other things, the Government proposes to:

- require companies to obtain information about the beneficial ownership of their shares and file this information with Companies House¹. The Government seeks comments on what information should be provided to Companies House, and whether the information should be publicly available or restricted to certain law enforcement and tax authorities;
- prohibit the use of bearer shares (to prevent shares of this type from being used to protect an individual's identity);
- ban nominee and corporate directors;
- amend directors' statutory duties for key sectors such as banking (and give sector regulators powers to disqualify directors);
- allow additional factors to be taken into account by the Court when deciding whether to disqualify a director;
- allow disqualification in the UK of directors found guilty of misconduct in relation to overseas companies; and
- require directors, and their advisers, who have acted fraudulently or negligently to personally compensate those adversely affected by their actions.

The deadline for responses to the consultation is 16 September 2013. The Government's aim is to introduce reforms before the current Parliament ends in 2015.

Discussion paper: 'Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business' available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increasing-trust-in-uk-business.pdf

On 18 July 2013, the Insolvency Service ('IS') published a consultation paper on changes to insolvency regulation and practice that are intended to complement those set out in the Government discussion paper referred to above. Among other things, the IS proposes to give administrators the power, currently exercisable only by liquidators, to take action against directors for fraudulent or wrongful trading but without the need for the company to be put into liquidation.

The deadline for responses to the IS consultation is 10 October 2013.

¹ A beneficial owner for these purposes would be an individual with an interest in more than 25% of the company's shares or voting rights or a person who otherwise exercises control over how the company is run.

Insolvency Service consultation paper available at:

<http://www.bis.gov.uk/assets/insolvency/docs/insolvency%20profession/consultations/redtapechallenge/rtc-consultation.pdf>

Corporate responsibility: the Government publishes a call for views on corporate responsibility with a view to developing a framework for action

On 27 June 2013, the Government published a call for views on corporate responsibility with a view to developing a framework for action. The Government paper defines the term 'corporate responsibility' as the 'responsibility of an organisation for the impacts of its decisions and activities on society and the environment through transparent and ethical behaviour above and beyond its statutory requirements'. Key questions raised in the paper include:

- how can the Government encourage more businesses to adopt internationally recognised guidelines;
- how can companies manage their supply chains responsibly;
- how can best practices be adopted by small and medium sized companies when these practices are normally associated with big business;
- what are the main obstacles to business contributing to social initiatives; and
- what more can the Government and business do to enhance the information available to consumers who wish to take account of ethical considerations when buying goods or services.

Comments are requested by 27 September 2013. The Government intends to publish a framework for action on corporate responsibility by the end of 2014.

Government Paper: Corporate Responsibility available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209219/bis-13-964-corporate-responsibility-call.pdf

Equity capital markets: the ABI calls for process reform for IPOs and secondary capital raisings in a bid for greater efficiency

Following a detailed review of the processes for both initial public offerings ('IPOs') and secondary capital raisings, the Association of British Insurers ('ABI') has recently published a report, 'Encouraging equity investment', containing the results of its findings and its proposals for change. Although the ABI has found that, overall, investors consider the UK system to be working satisfactorily, it has made a number of proposals aimed at improving the efficiency of the processes. Its recommendations include:

- the continuation of the minimum free float of 25% for premium and standard listings;
- the reduction in the size of bank syndicates;
- the early engagement by issuers and vendors with investors (up to a year or more before a planned IPO);
- the publication of the prospectus at an earlier stage in the IPO process;

- the appointment of an independent board at least one month before the announcement of the intention to float;
- enhanced protection for minority shareholders;
- clarification of the ABI's position on what is acceptable to investors on a non-pre-emptive secondary capital raising; and
- improved fee disclosure for both IPOs and secondary raisings.

The timing for the next steps is not entirely clear. Press reports suggest, however, that the ABI is of the view that its proposals are likely to be enacted, or adopted by regulators as the case may be, before the current Parliament ends in 2015.

ABI Report: Encouraging equity investment: facilitation of efficient capital raising in the UK market available at: <https://www.abi.org.uk/~media/Files/Documents/Publications/Public/Migrated/Investment%20and%20corporate%20governance/ABI%20Encouraging%20Equity%20Investment%20report.ashx>

The Financial Conduct Authority: the FCA consults on guidance for carrying out its operational objectives

On 24 July 2013, the Financial Conduct Authority ('FCA') published for comment a preliminary version of its guidance setting out how it intends to advance its prescribed operational objectives which relate to market integrity, the protection of consumers and the promotion of effective competition

Comments are requested by 27 September 2013. Final guidance is expected in the early part of 2014.

FCA publication: 'The FCA's Approach to Advancing its Objectives' available at: <http://www.fca.org.uk/static/documents/fca-approach-advancing-objectives.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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