

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 recent developments in the field of corporate governance.

Takeover Code: changes to Practice Statement No. 1 to improve the disclosure of material changes in information took effect on 30 September 2013

On 27 September 2013, the Takeover Panel ('the Panel') published an amended version of Practice Statement No 1 (dealing with Rule 20.1 of the Takeover Code: Equality of information to shareholders and the policing of meetings) aimed at improving the disclosure of material changes in information. The amendments, which took effect on 30 September 2013, include the following:

- if material new information is forthcoming, or if significant new opinions are expressed, at a meeting held during the offer period, an announcement (instead of a circular as before) giving details of any new matters must be made as soon as possible after the meeting. The Panel may also require that an additional document be sent to shareholders and persons with information rights, and made available to the target's employee representatives as well as to the trustees of the target's pension schemes; and
- the Panel may agree to a meeting being held during the offer period on the basis that, instead of an immediate announcement being made, the Panel receives written confirmation that the information and/or opinions will be included in the announcement to be made under Rule 2.7 (the announcement of a firm intention to make an offer).

Takeover Panel Practice Statement No. 1: Rule 20.1 – Equality of Information to Shareholders and the Policing of Meetings available at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/ps01.pdf>

Reminder: certain other changes to the Takeover Code ('the Code') also took effect on 30 September 2013. In brief, these included the following:

- changes to expand the jurisdiction of the Code to cover more companies, including many AIM companies which have their registered office in the UK, the Channel Islands or the Isle of Man, irrespective of the location of the company's place of central management and control¹; and

- changes to revise the rules relating to profit forecasts and quantified financial benefit statements, as well as the rules relating to material changes in information provided in offer periods².

The UK Listing Authority: the Financial Conduct Authority has published details of how the new UK financial regulatory regime introduced in April 2013 has affected the work of the UK Listing Authority

The Financial Conduct Authority ('FCA') has, in its latest Primary Market Bulletin (issue no. 7), set out an explanation of how the new UK financial regulatory regime introduced in April this year has changed the framework, powers and objectives of the UK Listing Authority. The Bulletin also includes a report on new guidance added to the FCA's Knowledge Base and a consultation on further additional guidance.

FCA Primary Market Bulletin (issue no. 7) available at:

<http://www.fca.org.uk/static/documents/ukla/primary-market-bulletin-7.pdf>

² For more information, see issue no. 7/2013 of this publication.

¹ For more information, see issue no. 5/2013 of this publication.



Companies House: the public disclosure of subsidiaries by FTSE 350 companies is to be closely monitored by Companies House on an on-going basis as part of the Government's drive for greater transparency

As part of its bid for greater transparency, the Government had asked Companies House to review the level of disclosure by FTSE 350 companies of their respective subsidiaries – as required by the Companies Act 2006 ('the Act')³ – and has now published the results of that review.

Companies House originally found that some 124 FTSE 350 companies had not complied in full with the relevant requirements of the Act. However, following a reminder, all 124 companies have now done so, or have committed to doing so. Companies House will continue to monitor FTSE 350 companies on an on-going basis in an attempt to ensure their full compliance with the subsidiary disclosure requirements.

Companies House report on FTSE 350 companies and the disclosure of their subsidiaries available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/237092/bis-13-1170-companies-house-report-on-ftse-350-companies-and-the-disclosure-of-their-subsidiaries.pdf

Corporate governance: executive pay: the FRC has launched a consultation on possible changes to the UK Corporate Governance Code in light of the new regime for the remuneration of directors of quoted companies

On 2 October 2013, the Financial Reporting Council ('FRC') launched a consultation on whether to amend the UK Corporate Governance Code ('the Code') in light of the new regime for voting and reporting on executive remuneration. The FRC is consulting on the following three specific proposals:

- whether the provisions regarding claw-back currently contained in the Code should be extended⁴;
- whether non-executive directors who are also executive directors of other companies should sit on the remuneration committee; and
- what actions companies might take if they fail to obtain at least a substantial majority shareholder vote in support of a resolution on remuneration.

³ Companies are required to disclose a complete list of their subsidiaries in the notes to the accounts that are submitted to Companies House. If the information is too extensive, the company may instead put the principal information in the accounts and attach the full information to the next annual return: sections 409 and 410 of the Companies Act 2006.

⁴ The Code currently provides (in Schedule A) that "consideration should be given to the use of provisions that permit the company to reclaim variable components [of remuneration] in exceptional circumstances of misstatement or misconduct".

Responses to the consultation are requested by 6 December 2013. The FRC has not yet decided whether, in principle, changes to the Code are required. However, if any changes are ultimately proposed, they will be subject to consultation in the first quarter of 2014. The new Code would then apply to accounting periods beginning on or after 1 October 2014.

FRC Consultation Document: Directors' Remuneration available at:

<http://frc.org.uk/Our-Work/Publications/Corporate-Governance/Directors%E2%80%99Remuneration-Consultation-Document.aspx>

Corporate governance: analysis of the 2013 AGM season published by NAPF ahead of the publication of its Corporate Governance Policy & Voting Guidelines in November this year

In its recent analysis of the 2013 AGM season, the National Association of Pension Funds ('NAPF') reports that the 2013 AGM season has been much quieter, in the FTSE 100 at least, than was the case in the so-called shareholder spring of 2012. Despite a small number of companies whose shareholders expressed their dissatisfaction for a second year running, NAPF considers 2013 overall to have been a year of 'quiet diplomacy'. It notes that, in general, companies have been engaging more effectively with shareholders, while preparing for the changes to the executive remuneration regime. It notes, too, that investors have been showing interest in a broader range of issues, focusing not just on executive pay but on audit and other matters. However, NAPF anticipates a testing 2014 AGM season, for companies and investors alike, in light of the introduction of the new directors' remuneration disclosure requirements.

The NAPF 2013 AGM Season Report is the first in what will be an annual monitoring exercise to be conducted by NAPF and will be published in addition to the Corporate Governance Policy & Voting Guidelines issued by NAPF each November.

NAPF's 2013 AGM Season Report available at:

http://www.napf.co.uk/PressCentre/Press_releases/~/_media/Policy/Documents/0335_2013_NAPF_AGM_report_DOCUMENT-3.ashx



Corporate governance: Women on boards: the Government announces a review into the operation of the Voluntary Code of Conduct for Executive Search Firms as part of its bid to ensure greater female representation in the top positions of FTSE 350 companies

The Government has announced that a review will be carried out into the Voluntary Code of Conduct that the executive search industry uses during the board appointment search process ('the Code'). The Code was drawn up in July 2011 by the executive search community in light of a recommendation made by Lord Davies following his report into Women on Boards of the same year.

The aim of the review is to test the strength of the Code (which sets out nine key principles of best practice to be followed throughout the search process), to develop areas of accountability and to identify the practical changes that have been made to the recruitment process as a result of its use. It will also consider whether women are still accounting for 30% of the initial long-lists of candidates submitted to companies by executive search firms, with the Government expecting that a similar level of representation be demonstrated on the subsequent short-lists. The review will be conducted by Charlotte Sweeney, previously International Head of Diversity and Inclusion for Nomura International PLC. It is anticipated that her report will be ready by the end of the year.

Government Press Release: Cable announces review of executive search code of conduct, 09/09/2013 available at:

<https://www.gov.uk/government/news/cable-announces-review-of-executive-search-code-of-conduct>

The Voluntary Code of Conduct for Executive Search Firms is available at:

<http://www.30percentclub.org.uk/executive-search-firms/>

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
F +44 870 460 2753
E jane.haxby@squiresanders.com

Steven Glover

Partner: Corporate/Corporate Finance
T +44 113 284 7476
F +44 870 460 3473
E steven.glover@squiresanders.com

Giles Distin

Partner: Corporate/Corporate Finance
T +44 20 7655 1046
F +44 870 460 2939
E giles.distin@squiresanders.com

Matthew Doughty

Partner: Corporate/Corporate Finance
T +44 20 7655 1044
F +44 870 460 2939
E matthew.doughty@squiresanders.com

Edward Dawes

Partner: Corporate/Corporate Finance
T +44 121 222 3252
F +44 870 458 2428
E edward.dawes@squiresanders.com