

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 reactions to proposals made in the Chancellor's recent Autumn Statement.

HM Treasury: Autumn Statement of 5 December 2013: Corporate Aspects

The Chancellor of the Exchequer's Autumn Statement, made on 5 December 2013, contained a number of proposals in the corporate arena which have been welcomed by representatives of UK business. The Government's proposals include the following:

- to publish a discussion paper on improving access to public equity markets for UK businesses and retail investors in a bid to enhance public equity finance in the UK;
- to accelerate the abolition of quarterly reporting requirements for listed companies by implementing part of the directive amending the Transparency Directive (2004/109/EC) ahead of the November 2015 deadline for the implementation of the amending directive; and
- to encourage wider employee share ownership in growing businesses.

HM Treasury: Autumn Statement 2013 available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263942/35062_Autumn_Statement_2013.pdf

Corporate Governance: NAPF Issues the Latest Edition of its Corporate Governance Policy and Voting Guidelines and the Final Version of its Remuneration Principles

On 18 November 2013, the National Association of Pension Funds (NAPF) issued a revised edition of its Corporate Governance Policy and Voting Guidelines ('the Guidelines'). The Guidelines are updated each year to reflect developments in best practice, investor expectations and regulatory changes, and support the UK Corporate Governance Code (the Code).

The changes introduced in the latest edition of the Guidelines include the following:

- *executive remuneration*
 - the company's remuneration policy should be put to a vote once every three years, rather than annually;

- the new binding shareholder vote on remuneration policy places the onus on shareholders to explain their reasons in the event they vote against the company's policy;
- there is a new expectation that companies will be able to demonstrate that they comply with the five remuneration principles contained in the paper, Remuneration Principles for Building and Reinforcing Long-Term Business Success, also published on 18 November 2013¹:
 - remuneration committees should expect executive management to make a material long-term investment in shares of the company;
 - executive pay should be aligned to long-term success and the desired corporate culture throughout the organization;
 - pay schemes should be clear and comprehensible to investors and executives alike, and should ensure that executive rewards reflect long-term returns to shareholders;
 - any discretion in remuneration policy approved by shareholders must be used to ensure that rewards are commensurate with company performance; and
 - companies should have regular dialogue with investors about strategy and long-term performance;

- *auditor independence*: NAPF now considers that the Code provision requiring FTSE 350 companies to submit the audit function to tender at least every ten years should be viewed as a minimum expectation;
- *related party transactions*: companies should form a new committee of directors to review significant related party transactions, the board should approve the review and the company should disclose significant transactions in its annual report; and
- *extra-financial risks*: NAPF encourages boards to explain to shareholders how they approach oversight and management of material extra-financial risks, including risks to reputation such as their approach to tax management.

¹ The Remuneration Principles for Building and Reinforcing Long-Term Business Success were produced jointly by NAPF, Hermes EOS, BT Pension Scheme, RPMI Railpen Investments and the Universities Superannuation Scheme.

NAPF's Corporate Governance Policy and Voting Guidelines: November 2013 available at:

http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0352_%20NAPF_corp_governance_policy_and_voting_guidelines_2014.pdf

Remuneration Principles for Building and Reinforcing Long-Term Business Success available at:

http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0351_3_remuneration_principles_for_building_and_reinforcing%20longterm_business_success_nov2013.pdf

Corporate Governance: Executive Remuneration: the GC100 and Investor Group Issue Revised Guidance on the Directors' Remuneration Reporting Regulations 2013

On 12 November 2013, the GC100 and Investor Group² published a revised version of their guidance on the Directors' Remuneration Reporting Regulations 2013, originally published in September this year. The updated version contains minor amendments most of which are sign-posted by foot-notes.

GC100 and Investor Group: Directors' Remuneration Reporting Guidance, 12 September 2013 (as amended) available at:

<http://uk.practicallaw.com/groups/uk-gc100-investor-group>

Corporate Governance: Institutional Investors Announce the Launch of a New Forum to Promote Long-Termism and Collective Action

The Collective Engagement Working Group, which was set up April 2013 in response to the Kay Review on equity markets and long-term decision making, has recently published its recommendations on how investors might work together in their engagement with listed companies and announced the launch of an Investor Forum (the Forum). The Forum has received funding for at least two years from investors and trade associations and will operate as follows:

- the Forum will be run by a central secretariat;
- participation will be open to a wide range of investors, including major institutional investors in the UK and abroad, together with sovereign wealth funds;
- companies will be expected to organise an annual strategy meeting with institutional investors (given that AGMs are now seen as addressing small shareholders' needs);

- "engagement action groups" will be set up where a pattern of concerns emerge from participants and will be disbanded when the issue(s) have been resolved. These changes are not meant to replace existing arrangements. The ABI, for example, may continue to organise collective meetings between investors and companies;
- routine remuneration matters should not be a core focus for the Forum. However, questionable remuneration policies which raise strategic questions will form part of the Forum's wider remit; and
- the secretariat ensure that issues relating to concert parties, inside information and market abuse do not arise, and will liaise with the Takeover Panel and the Financial Conduct Authority as appropriate.

The Forum is expected to be in operation by June 2014. The implementation team will issue a progress report by the end of March 2014.

Report of the Collective Engagement Working Group available at:

<http://www.investmentuk.org/assets/files/press/2013/20131203-cewginvestorforum.pdf>

Corporate Governance: the Takeover Directive: ESMA Issues Clarification on Shareholder Co-Operation and Acting in Concert

Following a request for clarity made by the European Commission, the European Securities and Markets Authority (ESMA) has published a statement on shareholder co-operation and acting in concert under the Takeover Directive (2004/25/EC). Among other things, the statement contains a 'white list' of those activities on which shareholders may co-operate for the purposes of good corporate governance without raising the presumption that they are acting in concert and thereby running the risk of having to launch a mandatory bid.

ESMA: Public Statement: Information on shareholder co-operation and acting in concert under the Takeover Bids Directive available at:

http://www.esma.europa.eu/system/files/2013-1642_esma_public_statement_-_information_on_shareholder_cooperation_and_acting_in_concert_under_the_takeover_bids_directive.pdf

² The GC 100 represents FTSE100 companies, while the Investor Group is comprised of members of the Corporate Governance Forum, a network of leading institutional investors.

Corporate Governance: Women on Boards: Non-Executive Directors: the European Parliament Supports Measures for 40% Female Representation by 2020

On 20 November 2013, the European Parliament voted with a large majority in favour of the European Commission's proposed directive to improve the gender balance in the boardrooms of Europe's listed companies.

Although the European Parliament has made some amendments to the Commission's original proposal, it has confirmed the basic principle involved: listed companies should adopt a transparent selection process with the aim of reaching a 40% representation among their non-executive directors of the under-represented sex by 1 January 2020 (or by 1 January 2018 for public undertakings) based on clear criteria and a comparison of the candidates' skills and qualifications.

Member States will now need to reach agreement on the matter in order for the proposed directive to become law.

European Parliament: Text Adopted (Part III) at the sitting on 20 November 2013 available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+20131120+SIT-03+DOC+WORD+V0//EN&language=EN>

Disclosure and Transparency Rules: the FCA Proposes to Introduce a Fine for the Late Publication of Periodic Financial Reports

In its quarterly Consultation Paper No. 3 (CP 13/18), published on 6 December 2013, the Financial Conduct Authority (FCA) has proposed to introduce an administrative charge of £250 with effect from 1 April 2014 to cover the UKLA's costs of dealing with the late publication by listed issuers of periodic financial reports under the Disclosure and Transparency Rules. Comments on the proposal are requested by 6 February 2014.

FCA Consultation Paper (CP13/18) available at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp13-18.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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