

Introduction

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice.

Corporate governance: the FRC appoints a Director of Corporate Governance ahead of the up-date of the UK Corporate Governance Code

On 5 March 2014 the Financial Reporting Council ('FRC') announced that it has appointed a Director of Corporate Governance. The appointee, David Styles, will take up the post on 6 May 2014 and joins the FRC from the Department for Business, Innovation and Skills where he has worked in the Corporate Law and Governance Directorate. Mr. Styles led the implementation of departmental policy on directors' remuneration, shareholders' rights and corporate governance.

News of the appointment comes ahead of the FRC's up-date of the UK Corporate Governance Code.

FRC Press release PN 012/14 available at:

<https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2014/March/FRC-appoints-Director-of-Corporate-Governance.aspx>

Corporate governance: proxy advisory industry: Best Practice Principles for Providers of Shareholder Voting Research and Analysis are published in the wake of ESMA recommendations

The Best Practice Principles Group ('BPPG'), a group of corporate governance research providers, has recently published a set of best practice principles and supporting guidance for providers of shareholder voting research and analysis ('the Principles').

Members of the BPPG, and the first signatories to the Principles, are Glass, Lewis & Co, Institutional Shareholder Services Inc, IVOX GmbH, Manifest Information Services Ltd, PIRC Ltd and Proxinvest.

The BPPG was set up, and the Principles published, in the wake of a consultation relating to the proxy advisory industry launched by the European Securities and Markets Authority ('ESMA') in 2012. In ESMA's Final Report and Feedback Statement on the Consultation Regarding the Role of the Proxy Advisory Industry, published on 19 February 2013, ESMA confirmed that it would not, for the time being, introduce binding measures to regulate the proxy advisory industry but would, instead, seek to encourage that industry to develop its own Code of Conduct.

The Principles aim to help clients and stakeholders understand:

- the nature and character of shareholder voting research and analysis services;

- the standards of conduct that underpin those services; and,
- how signatories to the Principles interact with other market participants.

The Principles, which operate on a comply or explain basis, provide, among other things, that

- signatories to the Principles should have in place, and make publicly available:
 - their research methodology and house voting policies;
 - their policy on conflicts of interest, including their procedures for dealing with any conflicts that may arise in relation to the supply of their services; and
 - their policy for communicating with issuers, shareholder proponents, other stakeholders, the media and the public; and
- signatories to the Principles should publish a statement of their compliance with the Principles on the BPPG website and review the statement at least once a year.

The BPPG will monitor the implementation of the Principles on an on-going basis and will review the Principles again in two years' time at the latest. In addition, ESMA will carry out a separate review into the operation of the Principles at the beginning of 2016 as part of its on-going consideration of the practices of the proxy advisory market.

Best Practice Principles for Providers of Shareholder Voting Research and Analysis 2014, March 2014 available at:

<http://bppgrp.info/wp-content/uploads/2014/03/BPP-ShareholderVoting-Research-2014.pdf>

Corporate governance: the QCA Corporate Governance Code for Small and Mid-Size Quoted Companies 2013: the QCA publishes a review of disclosures made under the Code

On 4 March 2014, the Quoted Companies Alliance ('QCA') published a review of the corporate governance disclosures made by 100 small and mid-size quoted companies benchmarked against the minimum disclosures set out in the 2013 edition of the QCA's Corporate Governance Code for Small and Mid-Size Quoted Companies. The 100 companies assessed were drawn from across all industry sectors and comprised a mix of companies with equity securities admitted to trading on the Main Market of the London Stock Exchange, AIM and the ISDX Growth Market.

¹ The QCA is an independent organisation that champions the interests of small to mid-size quoted companies. Its members include small and mid-cap companies, their advisors, investors and other market participants.

The key points arising from the review include the following:

- boards of directors should explain more clearly:
 - why their decisions are in the best interests of the company as a whole; and
 - how their decisions align the company's strategy with corporate governance and the proper management of risk; and
- boards should avoid the use of boiler-plate disclosures and make disclosure in such a way as to allow investors to reach their own conclusions.

The review emphasises that institutional investors are particularly concerned to see disclosures explaining:

- how the objectivity and independence of the auditor is protected, especially in cases where the auditor also provides significant non-audit services;
- how the risks of the business align with the strategy of the company; and
- how the strategy of the company relates to the key performance indicators, the company's remuneration policies and its corporate responsibility activities.

QCA and UHY Hacker Young: Corporate governance behaviour review available at:

http://www.theqca.com/article_assets/articledir_166/83407/QCAUHYCorporateGovReview_FINALemailversion.pdf

Takeover Code: minor changes to the Takeover Code come into force on 1 April 2014

In its latest Panel Statement, Panel Statement 2014/2, and Instrument 2014/1 published on 4 March 2014, the Takeover Panel has made minor amendments to the Takeover Code ('the Code') which will come into force on 1 April 2014. The amendments:

- reflect the fact that the Office of Fair Trading and the Competition Commission have been replaced by the Competition and Markets Authority. This category of amendments appears in the Introduction and Definitions of the Code, and in Rules 9, 12, 13, 20, 21 and 31 and certain associated Notes; and
- reflect the change of name of the 'Association of Private Client Investment Managers and Stockbrokers' to the 'Wealth Management Association'. This amendment appears in the Introduction to the Code.

Panel Statement 2014/2 and Instrument 2014/1 available at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2013/12/2014-23.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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