SQUIRE PATTON BOGGS

CAPITAL MARKETS PRACTICE: NEWS ROUND-UP ISSUE NO. 9/2014

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Introduction

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice. We advise companies, financial advisers and underwriters on all aspects of capital markets and public M&A transactions in all the principal markets of the UK, US, Continental Europe and Asia Pacific. We would be delighted to discuss with you any issues arising out of the items covered in this update.

UKLA guidance notes: Primary Market Bulletin No. 9 - Tougher stance to be taken on breaches of disclosure requirements and non-compliance with obligations to consult

The FCA has published its ninth Primary Market Bulletin. The Bulletin notes that, following a thematic review of certain areas of the Disclosure and Transparency Rules and the Listing Rules undertaken by the UKLA, the FCA is concerned with the poor compliance by some market participants with DTR 3 (Transactions by persons discharging managerial responsibilities and their connected persons), noting in particular:

- several breaches by such PDMRs of the obligation to notify issuers in writing within 4 business days of all transactions conducted on their own account in the shares or other relevant securities of the issuer (DTR3.2.1R); and
- failings by PDMRs to ensure compliance with the Model Code when a connected person deals.

Having previously issued several private warnings to infringers, the FCA has now stated that, in future, it will consider taking public disciplinary action, which could include public censure, depending on the seriousness of the breach.

The FCA is also concerned about compliance with LR 8.2 (When a sponsor must be appointed or its guidance obtained), particularly when a class 1, related party or reverse takeover transaction is proposed. The FCA makes clear that the obligation to consult a sponsor in such circumstances is mandatory and it is not sufficient for a company to undertake its own analysis or assessment of possible relevant transactions.

The Bulletin also notes that the FCA is consulting on proposed amendments to three existing notes:

- Ratification circulars (UKLA/TN/204.2).
- Transactions by persons discharging managerial responsibilities and their connected persons (UKLA/TN/540.2).
- Hostile takeovers (UKLA/TN/305.2).

You can read a copy of the Bulletin on the FCA website. (PDF)

IPOs and Bookbuilding: Suggestions for Change

Following the recommendations of the National Audit Office, in the wake of the privatisation of Royal Mail, that the Government consider alternatives to the bookbuilding process, the Secretary of State for Business, Innovation and Skills asked Lord Myners to lead a review of IPOs and bookbuilding in future privatisations. Lord Myner's report was published on 16 December 2014.

The following are some of the panel's key recommendations:

- There are a number of changes to UK market convention that should be actively encouraged. These include:
  - greater flexibility to set a wider price range and ability to move the price range;
  - publication of a prospectus as early as possible in the IPO process;
  - considering standardised shareholding disclosure requirements for all institutions;
  - revising withdrawal rights particularly as technology enables faster response time;
- Innovative bookbuilding approaches should be adopted, including launching with an un-priced prospectus. The panel was critical of bookbuilding in its standard form (where bankers gather orders from investors at different prices to set a single price at which all the shares will be sold) as it may prevent full price discovery. It suggests a full process of early investor engagement but with an acknowledgment that the price range may change if demand levels prove unexpectedly high or low. It also suggests setting a wider initial price range.

Standard bookbuilding with pilot fishing can, in the panel's view, lead to subjective allocation and not achieve best value (as in the case of the Royal Mail sale). The panel's view is that the bookbuilding process should transition to a digital online auction based on binding bids which could offer higher price discovery and greater transparency.

You can read a copy of the review on the BIS website. (PDF)

Johannesburg Stock Exchange: New Dual Listing Initiative Launched

The JSE has launched an initiative to attract foreign listed companies to dual list in South Africa. The "Fast-Track" initiative is designed to facilitate dual listing by cutting red tape and streamlining the process, thereby reducing the time and costs involved and enabling companies to leverage off their primary listing. The JSE hopes the initiative will appeal to companies wishing to access South Africa's deep investor base as well as those wishing to access Africa's fast growing economies.

You can read a copy of the initiative on The JSE website

How Squire Patton Boggs Can Help

We would be pleased to discuss with you in more detail any of the matters raised in this update.

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