# REGISTRY ROUND-UP

March 2019

Welcome to your March round-up. We are bringing you highlights from the registry world, key dates for you to be aware of, all current and relevant industry updates and a market update provided by Georgeson.

## This month we will cover:

**Industry update**

- Investment Association - AGM Guidance
- Listing Authority Ditch 'UK'
- Energy and Carbon Reporting
- Share Buy-Backs
- Vote Holder and Issuer Notification Rules
- Global News

**Georgeson market update**

- Governance Journal
- UK
- International


## Confirmation Investment Association - AGM Guidance

The Investment Association (IA) has published a press release (found here) which sets out its views in relation to board diversity and director pension contributions. The IA's voting information service (IVIS) will 'red top' any FTSE350 company who have no, or only one, woman on the board. IVIS will then look to 'amber-top' any FTSE350 company who are not on course to meet the recommendations of the Hampton-Alexander Review.

A 'red-top' is the highest level of warning issued by IVIS and is reserved for companies where shareholders should have the most significant and serious concerns. As for director pension contributions, and on the back of the IA's Principles of Remuneration which were published in November 2018, IVIS will 'red-top' companies which pay newly appointed directors contributions that are not in line with the majority of employees. The IA has also published their summary of the voting trends during the 2018 AGM season (found here).

The prominent trend for the IA is that pay-related resolutions and director re-election related resolutions were most often subject to significant votes against.

## Listing Authority Ditch 'UK'

The Financial Conduct Authority (FCA) has announced that they are planning on phasing out referring to itself as the 'UK Listing Authority' or the 'UKLA' when acting as the regulator for listed companies. While this is the formal announcement, the FCA has been making moves to cease using the terms for several years. Example LR1.1.1 states that the FCA may use the name when exercising functions at a competent authority under the Financial Services Markets Act, yet the rest of the listing rules almost exclusively refer to things being done by or to the FCA. Where the FCA does need to explain what capacity it is acting under, it does sometimes refer to its 'UKLA functions'.
Going forward where the regulator needs to refer to their listing functions, they will use the term 'primary market function'. The UKLA department has recently been split into two departments by the FCA:

- The Primary Market Oversight Department
- The Listing Transactions Department

Together, with the Secondary Market Oversight Department, they form the regulator's Market Oversight directorate which will be responsible for overseeing the conduct of participants in primary and secondary markets.
Information on the FCA's decision can be found here.

## Energy and Carbon Reporting

The UK government has published an updated version of their Environmental Reporting Guidelines, which were originally published in October 2013. They have been revised to take into account the streamlined reporting obligations introduced by the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations.
These regulations apply to financial years beginning on or after 1 April 2019.
The new obligations will require:

- quoted companies to disclose energy consumption and principal energy efficiency measures that have been adopted
- large companies and limited liability partnerships to report on greenhouse gas emissions, energy consumption and principal energy efficiency measures that have been adopted

The government's guidelines cover which entities are in scope, how to determine emissions and energy use and provides a template that can be adopted for reporting.
The guidelines can be found here.

## Share Buy-Backs

The FCA has released a technical note regarding share buy-backs with a mix and match facility. The note explains that not all buy-backs fall within the exemption provided under Article 5 of the Market Abuse Regulation (MAR). Trading in a company's own shares is exempt from the prohibitions of insider dealing and unlawful disclosure of inside information, as well as the prohibition of market manipulation. However, this is only the case if issuers satisfy the criteria set out in Article 5 of MAR.

Where an issuer undertakes a tender offer via an intermediary and the shares bought by the intermediary are automatically cancelled or held as treasury shares, this 'sale' would not constitute as a related party transaction and so the shares should be treated as treasury shares for the purpose of the Listing Rules.
The technical note can be found here.

## Vote Holder and Issuer Notification Rules

The FCA has released a technical note looking at the scope of Disclosure and Transparency Rules, specifically DTR 5 (Vote Holder and Issuer Notification Rules). This is a reminder that holders of securities and certain instruments need to inform the issuer and the FCA simultaneously when their holdings reach below certain thresholds.
The note confirms:

- Non-UK issuers whose shares are traded on a regulated market (including those where the UK is their home member state) must comply with the Transparency Directive only and not DTR 5.
- UK issuers on prescribed markets (for example, AIM or ISDX Growth) must comply with DTR 5.
- The FCA doesn't expect DTR 5 to apply to Global Depositary Receipts (GDRs). This is because a GDR is not itself a share and the fact that it may be admitted to trade on a regulated market doesn't in itself bring the issuer of GDRs into scope of DTR 5.

The technical note can be found here.

## Global News

### Principles of Corporate Governance

Last month saw judgement being given in Stobart Group Ltd v Tinkler (2019) EWHC 258 (Comm). The trial judge is quoted as stating that the litigation concerned 'some elementary principles of corporate governance' in respect of a company incorporated in Guernsey and listed on the London Stock Exchange.
While the facts of the case are numerous they included:

- the removal from office of a director (Mr Tinkler) by the board the day after his election at the company's annual general meeting
- Mr Tinkler's private discussions with shareholders

This case is of particular note due to the discussion regarding directors' duties in the context of board dissent, including what is expected of each director in light of the proper functioning of the board. One of the other findings held that Mr Tinkler had breached his fiduciary duties under Guernsey law due to the private discussions he held with shareholders where he criticised the board's management and advocated for the removal of a fellow director.

The finding was reached following an analysis of the law in which the 'collegial function' of the board was stressed. It was also clear that the director's duty to exercise independent judgment 'is one that operates upon each director in the context of him operating as a member of the board…it exists in order to support the board's management of the company in an efficient and competent manner'.

While Guernsey company law was applied there was a heavy reliance placed on English authorities, as it was recognised that duties owed by the directors under Guernsey law were 'fundamentally the same' as those under English common law before the introduction of the Companies Act 2006.
The judgements can be found here and here.

**Next Gen Company Directors**

In the context of an increasing number of first time and 'next-gen' (under 50) company directors, Spencer Stuart and Diligent have published a document that identifies core elements of an effective onboarding program and suggests key onboarding related responsibilities, tips for the Company Secretary and other members of management, board leadership, and seasoned directors.
Company Secretaries are encouraged to:

- explain their role to new directors who may be unfamiliar with when and how to use them as a resource
- provide context to new directors on board/director personalities, preferred communications methods and other important historical and interpersonal information
- be cognisant of new directors' special skill sets that may call for additional tailoring during the onboarding process

The publication can be found here.

**Investor Engagement: Board Oversight**

Deloitte has published its 2019 Directors' Alert. In an article on page 13 entitled 'Investor engagement and activist shareholder strategies', it suggests action steps for boards to enhance their investor engagement oversight and reduce the company's potential for becoming an activist target or, at a minimum, being poorly positioned to respond if targeted.

Deloitte's article includes questions for directors to consider, that will facilitate their knowledge and understanding of the company's potential vulnerabilities and inform potential additions or changes to the board's oversight agenda going forward.
The document can be found here.

**Australian Corporate Governance**

The Australian Securities Exchange's (ASX) council on corporate governance has published their fourth edition of its Corporate Governance Principles and Recommendations (found here).
The principles have been drafted to operate on the basis of 'if not, why not', so essentially 'comply or explain'. The fourth edition sees the introduction of seven new recommendations which include:

› Listed entities should articulate and disclose its values.
› Listed entities should ensure that all substantive resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.
›

There has been a strengthening of principles and associated recommendations related to the culture and values of the company, including changes which clearly state that organisations have a responsibility to instil a culture of acting lawfully, ethically and responsibly. Other changes include expanding the recommendations on diversity and making it clear that measurable objectives should be set by the board. If the organisation is in the S&P/ASX 300, then the objective must not be less than 30% of its directors being a different gender.

This edition of the principles will take effect for an entity's first full financial year commencing on or after 1 January 2020. But the council encourages listed entities to adopt the fourth edition earlier.

Computershare

# Georgeson market update

### Governance Journal Has Published a Georgeson Article

Governance Journal has published a Georgeson article entitled Key considerations for the forthcoming AGM season across Europe.

"Following an intense 2018 AGM season, which in many markets was characterised by an increased focus on director elections and continued pressure on executive remuneration, early indications are that the 2019 season will bring notable upheavals in the German and Dutch markets (with major transitions underway on share capital dilution and the expected introduction of annual remuneration votes), while the rest of Europe portends continued pressure on the two traditional areas of focus: boards and remuneration."

## UK

### Unseating the Chair

The Financial Times reports that Almost 40 per cent of UK chairmen face pressure to unseat them.

"Pub chain founder Tim Martin says new nine-year limit for chair is 'deeply flawed'."

The Times reports that the Chairman of Imperial Brands to quit amid board reform.

"Imperial Brands is expected to announce that Mark Williamson will step down as chairman of the tobacco group in the coming months on the back of the introduction of more stringent corporate governance rules. The Times understands that the cigarette maker has been engaged in succession planning over Mr Williamson's tenure, which exceeds new guidance of nine years, and could soon confirm his resignation. At last week's annual meeting in Bristol, shareholders speaking for almost 18 per cent of votes cast voted against his re-election, although much of the opposition is believed to have been due to fears of 'overboarding' – taking on too many other boardroom posts – by the chairman."

### Investor Forum Review

The Investor Forum has published its Review of 2018 Activities.

"The Investor Forum today publishes its Review of 2018 Activities and reports a continued success in collective engagement with UK companies, with members proposing 12 different company situations for assessment – leading to six completed engagements, with Centrica plc, Imperial Brands plc, Reckitt Benckiser plc, Shire plc, Victrex plc and Unilever plc. At the same time, the Forum welcomed a further nine members to its ranks during 2018, bringing the total to 43 asset managers and asset owners, a more than doubling of the membership from the original founding group. These Members collectively represent approximately 30% of the FTSE All-share."

### Under the Activists' Glare

The Financial Times reports that UK industrials set to fall under activists' glare.

"Sector watchers say groups such as Smiths, Spectris and Weir are ripe for shake-up."

## International

### Mandated 'Non-Financial' Voting

Glass Lewis has published a blog entitled Spain is first country to mandate shareholder vote on 'non-financial' ESG reporting.

"The law requires that large companies provide a report on non-financial information, which must be put to shareholder vote as a separate point in the annual general meeting. Shareholders in Spain will see this new item on the AGM agenda as soon as the upcoming proxy season – the law applies to financial years beginning on January 1, 2018, leaving companies little time to adjust their disclosure to the requirements of the new regulations. The report on non-financial information must include:

- Description of a company's business model and main factors that may affect its future development.
- Description of the policies applied by the company with respect to due diligence procedures and mitigation of risks.
- The results of these policies, including key indicators of relevant non-financial results that allow for the monitoring and evaluation of progress and facilitate comparability between companies.
- The main short, medium and long-term risks related to the activities of the company, how it manages such risks, explaining the procedures used to detect and evaluate them.
- Key non-financial indicators that are relevant to the business and that meet the criteria of comparability, materiality, relevance and reliability.

The law also sets specific requirements for the information that is to be provided on i) environmental, ii) social and employee, iii) human rights, iv) anti-corruption and v) sustainable development issues."

### European Investors Oppose CEO Pay

Bloomberg reports that European Investors Oppose CEO Pay More Than Vanguard, Blackrock.

"Large asset managers oppose executive compensation plans at a higher rate than ever before, and European firms tend to reject CEO pay more often than their US peers. Allianz Global Investors last year voted against about 75 percent of compensation packages awarded to executive teams of S&P 500 firms, and Dutch pension fund PGGM opposed 98 percent of the time, according to a report issued Thursday by As You Sow, a shareholder advocacy group. Several major US asset managers rejected only a fraction of those pay packages, the report said."

### Investor Focus for 2019 Proxy Season

IR Magazine reports that Investors put focus on board diversity for 2019 proxy season.

"EY report highlights top three investor concerns as board diversity, ESG and human capital. More than half (53 percent) of investors say board diversity is top of mind going into the coming proxy season, according to the 2019 Proxy Season Preview report from the EY Center for Board Matters. The survey of more than 60 institutional investors, with assets under management of $32tn, shows investors are increasingly focused on board composition. This year's figure of 53 percent saying the issue should be a top board focus is up from a third three years ago."