REGISTRY ROUND-UP

March 2020

Welcome to your March round-up, where we bring you key dates and the latest industry highlights from the world of registry, along with a market update provided by Georgeson.

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Reporting on the Impacts of Climate Change

The Financial Reporting Council (FRC) has announced that they will conduct a major review, looking at how companies and auditors assess and report on the impact of climate change.

The review will look at how the quality of information can be improved to support informed decision-making by stakeholders. They will also consider the extent to which companies are reporting in accordance with the Task Force on Climate-related Financial Disclosures (TCFD) framework.

More information on the FRC's plans can be found here.

Dormant Asset Consultation

The Department for Digital, Culture, Media & Sport has published the anticipated consultation on dormant assets. This consultation follows the industry champions blueprint for expansion (see more information here) that was published in April 2019.

While it had been anticipated that the Government would be consulting on all the recommendations made by the industry champions without any significant alteration, this is not the case. The Government has opted to deviate from the industry champions on some areas including the concept of full restitution.

You can view the full consultation here, which is open until 16 April. We are planning on hosting a roundtable on 18 March at 3.00pm in our London office, where representatives of the Government and the Reclaim Fund will be available to answer questions on the consultation and listen to Issuers' views. If you would like to hear more about the roundtable, please contact your Client Manager.

We are currently in the process of reviewing the consultation and intend to publish some initial views prior to finalising a formalised response to the consultation.

1/3 of Board Positions Held by Woman

The UK Department for Business, Energy & Industrial Strategy (BEIS) has announced that one of the Hampton-Alexander Review targets has been met a year early with a third of FTSE 100 board positions now being held by women.

While this is good news, the recent update from the review highlighted a continuing lack of female representation in senior leadership and key executive roles within FTSE companies. Recent work conducted for the review has also identified that women are still facing a concerning amount of everyday sexism within the workplace.

For more information on the progress of the Hampton-Alexander Review targets and the report into everyday sexism visit the BEIS site here.

Board Committee Guidance Notes

ICSA: The Chartered Governance Institute has released updated guidance notes and model terms of reference for board committees (found here).

The updated documents are for the audit, nomination and remuneration committees and reflect the requirements of the 2018 edition of the UK Corporate Governance Code.

The model terms of reference have been designed so companies can adapt them to their needs, such as amending them to suit primary offshore listings or specific requirements of their sectors.

Future Revision of EU Non-Financial Reporting Directive

The EU Directorate-General for Financial Stability, Financial Services and Capital Markets (DG FISMA) has launched a consultation on the review of the Non-Financial Reporting Directive (NFRD).

The programme of work being undertaken to review the directive, of which this consultation is part, is aiming to address the following challenges:

- The lack of adequate and publicly available information on the impact of non-financial and sustainability issues on companies. In particular, the lack of comparable or reliable information.
- The impact of unnecessary and avoidable costs related to the required reporting.

The consultation has been issued as there has been a wide consensus that the directive, which required certain large companies to include a non-financial statement on matters including ESG within their annual reports, has not achieved its original goals.

The consultation which can be accessed here is open until 14 May 2020. Please note that to access the consultation you may need to establish an EU login account.

Considering the review being conducted by the EU and DG FISMA's consultation, the body purporting to represent European Issuers have published a position paper on the future of NFRD. The paper (found here) looks at the possible improvements that could be made to the directive. Their suggestions include:

- developing a harmonised reporting framework
- collaborating with Issuers to ensure a reporting framework is operationally practical and reflects Issuers sustainability policies
- extending reporting obligations to non-EU Issuers who operate within the EU to ensure a level playing field

Parker Review Update

The Parker Review which looked at the matter of ethnic board diversity has published an update (found here) on the progress being made to increase the representation of ethnic minorities on FTSE boards.

The original recommendations made by Sir John Parker included the fact that:

- FTSE 100 boards should have at least one BAME director by 2021
- FTSE 350 boards should have one by 2024
- companies should develop mechanisms to identify, develop and promote people of colour and disclose their efforts within their account report

The update has identified that just over half of the FTSE 100 and one fifth of the FTSE 250 have achieved the target of having BAME representation on their boards. Within the FTSE 250, about 7.5% of all directorships are held by directors from a BAME background based on available information.

Within the update, there are further recommendations that cover measuring board-level diversity and building a pipeline of ethnically diverse board candidates.

Shareholder Priorities

As we head into the peak AGM season, the Investment Association (IA) has published a document which discusses shareholder priorities for 2020 in relation to listed companies.

The document (found here) focuses on four areas that members of the association consider to be the key drivers to longer-term value. It also looks at the approach that the association's corporate governance research service (IVIS) will take in these areas.

The four areas are:

1. **Climate change**
   Investor is looking for significant progress in the implementation of the TCFD's recommendations and IVIS will be introducing a new section to its ESG report which will highlight where a company has made relevant disclosures.
2. **Audit quality**
   The association makes it clear that audits which are robust and high quality are of essential importance but that often, audit committees' disclosures are generic. Therefore, disclosures should properly identify where challenges have been raised, how professional scepticism has been applied and how a quality audit has been delivered. IVIS will be revising its questions to encourage better disclosures.
3. **Stakeholder engagement**
   Investor is keen to gain a better understanding of how directors are fulfilling their duties and taking account of the views of material stakeholders including employees. Two new questions will be introduced by IVIS to understand how a company has established who their material stakeholders are, the engagement with them and which of the options within the Corporate Governance Code have been adopted.
4. **Diversity**
   The progress made by companies to meet the recommendations of the Hampton-Alexander Review is noted by the association, and it also notes the importance of progress towards meeting the Parker Review recommendations. Therefore, IVIS will be 'red topping' any FTSE 350 company where:

   - women represent 20% or less of the board
   - there is one or no women on the board
   - women represent 20% or less of the Executive Committees

Global News:

TCFD Based Climate Risk Guide

The Governance Institute of Australia has produced a new guide on climate change risk disclosures (found here) which is aimed at corporate governance professionals and boards. The guide suggests specific actions that support each of the key steps outlined in the TCFD Implementation Guide.

While the guide is aimed at ASX listed companies who need to comply with elements of the ASX's Corporate Governance Council's – Corporate Governance Principles and Recommendations, other companies are likely to find the guide instructive.

The guide includes sample approaches and disclosures from ASX listed companies and others, as well as more general informative information on climate change and the TFCD framework.

AI Oversight

The World Economic Forum, in conjunction with over 100 companies and technology experts, has designed a toolkit to educate boards on both their responsibilities around AI oversight and how to carry out those responsibilities effectively.

The toolkit (found here) is built as 12 standalone modules. Seven modules address strategy-related oversight areas, including addressing control activities (ethics, governance, risk and audit). All the modules include a clear description of the module's focus, the associated responsibilities, oversight recommendations and areas for further board discussion.

Expectations for the European 2020 AGM Season

In November 2019, the two leading proxy advisors published updates to their voting policies that will apply for 2020. These guidelines represent some of the most influential indicators of how institutional investors are likely to approach the 2020 AGM season differently from previous years.

In our article, we set out the major themes that have emerged from the ISS and Glass Lewis guidelines updates and how these issues have been dealt with in the main European markets so far.

The full article can be read here.

UK

Muddy Waters' Short-Seller King

The Mail on Sunday reports about Muddy Waters' short-seller king Carson Block: 'I've got a hit list of UK firms'.

"The feared activist investor who has taken on hospitals operator NMC Health – a member of the prestigious FTSE 100 – and litigation finance firm Burford Capital has set out plans to expand and target more UK companies. In his most open interview to date, Carson Block, the founder of US short-selling firm Muddy Waters, reveals how his tough upbringing shaped him as a thick-skinned investor. He says the UK is ripe for short-selling – where investors bet against companies whose shares they believe to be overpriced and set to fall heavily. And, in a revelation that will send shudders through the City, the American reveals he has a number of new targets already lined up."

L&G to Vote Against Combined Roles

Reuters reports that British investor Legal & General to vote against combined chair/CEO roles.

"Legal & General's investment management arm, one of Britain's biggest investors, will vote against combined chief executive and board chairman roles globally, it said on Monday as part of its annual review of voting policies. Legal & General Investment Management (LGIM) will also vote against all Topix 100 companies in Japan that do not have at least one woman on their board, it said in a statement. […] LGIM said the issue was particularly acute in the United States, France and Spain. Forty-seven percent of S&P 500 boards have combined CEO and board chair roles and 20% of IBEX 35 companies in Spain do, along with 53% of France's CAC 40 companies, it said."

ESG Firms Need to Stop 'Greenwashing'

Reuters reports that EU watchdog says ESG rating firms need rules to stop 'greenwashing'.

"Agencies that issue ratings on how much companies and financial products are exposed to climate change need better supervision to help crack down on 'greenwashing', a top European Union regulator said on Wednesday. Asset managers have increasingly turned to so-called ESG ratings agencies that rate a company on its environmental, social and governance (ESG) aspects as investors seek to avoid putting cash into firms that contribute to climate change. Greenwashing refers to products that wrongly claim to be sustainable. Steven Maijoor, chair of the bloc's European Securities and Markets Authority (ESMA) said the supervision of ESG ratings was 'far from optimal'."

International

Inconsistency of ESG Ratings

Alex Edmans (Professor of Finance at London Business School) addresses The Inconsistency of ESG Ratings: Implications for Investors.

"For that reason, ESG rating agencies (such as MSCI, Sustainalytics, Vigeo Eiris, ISS, RobecoSAM, and Asset4) can play a major positive role. They painstakingly collect and aggregate a range of information on a company's ESG performance – its own disclosures, third-party reports (e.g. from NGOs), news items, and proprietary research through company interviews and questionnaires. They come up with an overall ESG score, as well as scores for the individual components (E, S, and G) separately. However, different rating agencies disagree substantially on a company's ESG performance. The correlation between ESG ratings across different providers is around 0.3. This contrasts with credit ratings, where the correlation between ratings by S&P and Moody's is around 0.99."

Most Controversial Companies

RepRisk has published its Most Controversial Companies (MCC) 2019 Report.

"RepRisk's Most Controversial Companies (MCC) 2019 Report examines publicly documented environmental, social, and governance (ESG) risk incidents affecting companies, including criticism and allegations, controversies, lawsuits, fines, and other adverse events. The companies included in the report were those that had the highest RepRisk Index (RRI) scores in 2019. The RRI is a proprietary risk metric that quantifies a company's reputational risk related to ESG issues."