REGISTRY ROUND-UP

December 2018

Welcome to your December 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.

Christmas Opening Times

Below are the opening times for our shareholder contact centre during the festive period:

Christmas Eve: 8.00am until 4.00pm
Christmas Day: Closed
Boxing Day: Closed
Thursday 27 December: 8.00am until 5.30pm
Friday 28 December: 8.00am until 5.30pm
New Year's Eve: 8.00am until 4.00pm
New Year's Day: Closed

This month we will cover:

Industry update

- Evolution of Subsidiary Governance
- Gender Diversity - 2018 Hampton-Alexander Report Published
- Corporate Reporting - Updated Q&A on Corporate Governance Reporting Regulations
- FRC Lab Report on Performance Metrics
- Future of the Corporation
- Georgeson AGM Season Review
- MAR Q&As
- Proper Purpose Guidance
- Corporate Governance Code FAQs
- Global News

Brexit update

Georgeson market update

- UK
- International

Latest on the blog

Dormant Assets Commission

Read our blog about the DAC's report and their key recommendations for issuers.

Following the government's initial response, we are collating feedback to help us respond to the DAC. We'd appreciate you taking the time to complete our short survey.

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Evolution of Subsidiary Governance

Computershare Governance Services, the operator of GEMS and BoardWorks has published a white paper looking at the history of subsidiary governance, and how it demonstrates the importance of a better governance framework and the integration of technology.

Andrew Moore, President of Governance Services, considers how the impact of Enron type failures have changed global governance and continue to cause increased regulatory focus, which can be aided by the introduction of artificial intelligence.

The white paper can be found here.

Gender Diversity - 2018 Hampton-Alexander Report Published

Following on from the Hampton-Alexander review published in November 2016, a further report has been published reviewing the progress of FTSE 350 companies against the previously published recommendations. The 2016 report can be found here.

The key findings in the report are:

- **Executive Committee and Direct Reports**
  - The FTSE 100 has seen the number of women who are Executive Committee members or 'Direct Reports' of Committee members increase from 25.2% in 2017, to 27% this year.
  - The FTSE 250, on the other hand, has seen a smaller increase from 24% in 2017, to 24.9% this year.
  - Around 70 companies in the FTSE 250, and 40 FTSE 100 companies, have already met the 33% target or are on target to do so by 2020.

- **Women on Boards**
  - The number of women on Boards in the FTSE 100 has increased from 27.7% last year to 30.2% this year, and there are now 76 FTSE 100 companies with three or more women on their boards.
  - Female representation on boards in the FTSE 250 has increased from 22.8% last year, to 24.9% this year. There are 62 FTSE 250 companies with three or more women on their boards.
  - The FTSE 100 is on track to achieve the 33% target for Women on Boards by 2020.
  - The number of female CEOs or Chairs has had no significant movement.

The latest report can be found here.

Corporate Reporting - Updated Q&A on Corporate Governance Reporting Regulations

On the 9 November, the Department for Business, Energy and Industrial Strategy (BEIS) published an updated version of the Companies (Miscellaneous Reporting) Regulations 2018 Q&A which was originally published in June 2018. Our Registry round-up covering this can be found here. The topics covered by the updated Q&A include: the scope of the Regulations, timing and what information companies should include to meet the requirements.

Key points from the updated Q&A are:

- Section 172(1) statement – Depending on the circumstances, it may be acceptable for a subsidiary to provide less information in its own section 172(1) statement where a full explanation is given by the parent company,

and the policy decisions are made at group level. The subsidiary will still need to explain how its directors have applied or reflected the group policies, and judgement will be needed in deciding what is appropriate.
- The new Q&A encourages the adoption of the Wates Corporate Governance Principles for Large Private Companies, which are expected to be published in December. We covered these in our July 2018 Registry round-up, found here.
- The Regulations introduce a requirement to disclose the possible impact of a growth in the share price on executive remuneration that is linked to performance targets. The reporting requirements for this are applicable to any new directors' remuneration policy introduced from the 1 January 2019, whereas all other requirements are applicable from 2020.

The updated Q&A can be found here.

The Financial Reporting Council (FRC) has also published an open letter (found here) to all Finance Directors and Audit Committee Chairs, calling for improvements in key areas of corporate reporting. Such areas include key accounting judgements, eliminating basic errors and how companies have applied the principles of the Corporate Governance Code.

FRC Lab Report on Performance Metrics

Following on from the June 2018 report, 'Performance metrics – an investor perspective, (covered in our August Registry round-up, found here), the FRC has published a further report.

The June 2018 publication covered five principles which were designed to help companies decide how best to present the metrics they want investors to understand. The FRC's new report contains guidance and examples from companies who have implemented the principles in their annual reports.

This latest report, Performance metrics – Principles and practice, can be found here.

Future of the Corporation

The British Academy has concluded the first phase of their project, Future of the Corporation, where they have been looking at the supposed damaging social effects of corporations being principally profit focused.

Within the first phase, the project gathered existing evidence, looked at fresh ideas and identified gaps in current research, and following this work they have produced a report which summarises the research and sets out the projects findings.

The findings set out a new framework for the future of corporations based on three interconnected principles:

- Well defined and aligned purposes
- A commitment to trustworthiness
- Enabling culture

The second phase of the project will use five areas of change identified by the project as their starting point, and look to develop detailed policies to help bring about change.

The paper entitled Future of the Corporation which summarises the research can be found here, and the paper entitled Reforming Business for the 21st Century which sets out the case for change can be found here.

Georgeson AGM Season Review

Georgeson has released their annual review of the AGM season which contains a comprehensive analysis of trends witnessed in major European markets.

The review has found that the number of contested resolutions has fallen in some markets. This appears to be a consequence of increased effort by issuers to engage on contentious topics. Simultaneously, proxy advisors have become more demanding. Georgeson believe this highlights that issuers must go beyond basic assumptions to fully understand and engage with investors. One of the key findings across all markets is the willingness of investors to oppose Board members when they consider there have been governance failings.

In the UK, the FTSE 100 has seen a 128% increase since 2016 in contested director elections (those resolutions with 10% or more in opposition). In 2018, 41 directors received opposition compared to only 18 in 2016.

Other key findings for the UK include:

- 2018's AGM season saw a 39% increase in opposition to remuneration reports, from 18 resolutions in 2017 to 25 in 2018.
- ISS appeared more stringent across the FTSE 100, with negative recommendations up by 27%, compared to Glass Lewis whose negative recommendations were down by 23% when compared to 2017.
- The average proportion of the capital that voted (so-called "quorum level") across the FTSE 250 has increased slightly by 0.4% to 73.7% when compared against the 2017 levels.

The full review can be downloaded here.

MAR Q&As

The European Securities and Markets Authority (ESMA) has published another edition of their Market Abuse Regulation (MAR) Q&A.

This version makes clear that the prohibition in Article 19(11) of MAR which placed a restriction on a person discharging managerial responsibilities (PDMR) of an issuer conducting a transaction in shares of the issuer during a closed period; does not apply to transactions conducted by the issuer themselves, such as a share buyback.

The updated Q&A can be found here and supports the analysis set out by The City of London Law Society in their Q&As.

Proper Purpose Guidance

ICSA has published an updated edition of their guidance on accessing registers of members (often referred to as the 'proper purpose test').

Since the first version of the guidance was published in 2007, the UK has seen several changes in terms of legislation (Small Business, Enterprise and Employment Act 2015) and relevant case law judgements. Recent legislation brought amendments to the Companies Act 2006 which affected the information available about shareholders, and in the last few years two cases (Burry & Knight Limited & another v Martin John Murless Knight; and Richard Charles Fox-Davies v Burberry Plc) have looked at the interpretation and application of the proper purpose test.

While each of the cases found that that some or all of the purposes for the requests were in fact improper, they did demonstrate the case by case nature of the application of the proper purpose test. They also concluded that a purpose may be improper not just because of the end it seeks, but also due to the way it seeks to achieve that end.

The new guidance can be found here and a supporting article by Peter Swabey, Policy & Research Director at ICSA, can be found here.

Corporate Governance Code FAQs

The FRC has published a frequently asked questions paper in relation to the new Corporate Governance code. The 2018 Code, which includes new requirements on corporate culture, stakeholder engagement and directors' remuneration, comes into force for financial years beginning on or after 1 January 2019.

The FAQs include:

- **Reporting on Principles**
  The Code requires companies to state how they have applied the principles in a manner that enables stakeholders to conduct a clear evaluation. The FAQs state that this will involve reporting on how the board set the 'purpose & strategy' of the company, met objectives & achieved outcomes through its decisions.

- **Non-Executive Tenure and the Chair**
  While there is no set tenure for non-executive directors, the nine years detailed in Provision 10 continues to

act as a recommended tenure period. The FAQs explain that Provision 19, which covers the Chair's tenure of nine years from their first appointment, should include careful consideration after completion of the nine year period, and if extended beyond this period a comprehensive explanation should be provided to stakeholders.

- **Conflicts of Interest**
  The FAQs make clear that Provision 7 is designed to emphasise the collective responsibility of the Board in dealing with conflicts in a transparent way.

The FAQs can be found here, and the 2018 Code is located here.

Global News

Dutch Stewardship Code

Following consultation published last year by Eumedion, the group representing institutional investors in the Netherlands, the first Dutch Stewardship Code has been published.

The principles of the code take account of the revised Shareholder Rights Directive, and offer several similarities to the UK's own Stewardship Code.

The Code which will enter into force on 1 January 2019 can be found here.

Canadian Corporate Governance

The Office of the Superintendent of Financial Institutions Canada has published a revised version of its Corporate Governance Guideline (found here). The guideline, which applies to federally regulated financial institutions, is aimed at ensuring applicable firms maintain confidence of customers and the wider market.

The guideline is split into several key areas including the roles and responsibilities of the Board, risk governance and the role of the Audit Committee.

Flexibility and Proportionality in Governance

The Organisation for Economic Co-operation and Development (OECD) has released their report entitled Flexibility and Proportionality in Corporate Governance (found here).

Their report looks at the following seven areas in over 30 international jurisdictions:

- Pre-emptive rights
- Board composition, committees and qualifications
- Say on pay and remuneration disclosure
- Related party transactions
- Periodic financial information disclosure
- Major shareholding disclosure
- Takeovers

The results of the report are based on the responses to an online questionnaire, and look at the extent to which the governance frameworks within jurisdictions permit flexibility and are proportionate to the local markets. There are in-depth case studies of the UK, Sweden, Italy and the US.

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Brexit update

Over the last few weeks we have seen several statutory instruments being published by the UK government in order to prepare the UK's corporate law framework for the country's departure from the European Union. Below we have detailed just a few of them:

- **Official Listing of Securities, Prospectus and Transparency**
  This policy note (found here) explains that the regulation will seek to replicate, as far as possible, the current effects of the prospectus regime and the existing transparency rules.

- **European Public Limited-Liability Company**
  This regulation (found here) and explanatory note (found here) will provide a temporary framework for any companies incorporated as 'Societas Europaea' that remain registered in the UK on the day the UK leaves, and allow such companies to convert into a 'UK Societas'.

- **Companies, Limited Liability Partnerships and Partnerships**
  This instrument (found here) is designed to amend aspects of the Companies Act 2006, secondary legislation and revoke certain regulations. Principally the changes in this instrument address references to the EEA, such as those regarding EEA regulated markets, and revokes legislation that relates to cross-border mergers.

- **Statutory Auditors and Third Country Auditors**
  These regulations (found here) will make amendments to the legislation which implemented the EU Audit Directive (e.g. part 42 of the Companies Act 2006) and the retained UK version of the EU Audit Regulations.

Computershare, like many businesses, is monitoring the progress of the Brexit negotiations and the recently published agreement. Regardless of the outcome of the negotiations, Computershare's global footprint, with offices throughout Europe, leaves us well placed to respond and ensure the seamless delivery of services to issuers and their shareholders.

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UK

Policy Guidelines

ISS has announced its 2019 Benchmark Policy Updates

"For its UK/Ireland and Continental European policies, in 2019, ISS will track significant audit quality issues, with a focus on accounting controversies, at the lead engagement partner level, wherever such information is available. Where the information is available, ISS research reports will note any lead audit partners who have been linked with significant auditing controversies and, where they are also identified as being engaged in the audit for other public companies, this connection will be raised for investor attention. A negative vote recommendation on auditor ratification may be applied in the most serious cases, e.g. where the lead audit partner has previously been linked with a corporate failure scenario or other material destruction of shareholder value arising from fraud or other accounting issues."

Georgeson has issued a memo on the ISS updates; please contact your Client Manager to request a copy of the memo.

Glass Lewis has published Policy guideline updates for the Main European markets

"Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis. For 2019, our guidelines are focused on several key areas, including board diversity, environmental and social risk oversight, auditor independence, executive compensation and shareholder rights. For a complete detail of the 2019 updates, please review the Summary of Changes within the relevant policy document."

Audit Sector Must Change

Reuters reports that Britain's 'broken' audit sector must change – MPs

"Britain's parliament will start an inquiry into auditing in January to ensure that two pending reviews will lead to actual reform of a 'broken' sector dominated by the Big Four accounting firms, a senior lawmaker said on Monday. Rachel Reeves, chair of parliament's business select committee, said accounting scandals at construction firm Carillion, retailer BHS and cafe chain Patisserie Valerie showed that lawmakers must get involved to push through change. The Competition and Markets Authority (CMA) is due to report findings from its fast-track investigation of auditing, a sector where Deloitte, PwC, EY and KPMG check the books of 341 of Britain's top 350 listed companies. A separate review for the government by John Kingman is looking at how the sector's regulator, the Financial Reporting Council (FRC), could be strengthened. It will also report back by the end of the year."

Dereliction of Duty

The Daily Telegraph reports that Star investor Neil Woodford accused of 'dereliction of duty' in Stobart case

"Star fund manager Neil Woodford has been accused of 'dereliction of duty' after refusing to meet Stobart chairman Iain Ferguson and backing a campaign for him to be ousted. The asset manager, one of Stobart's biggest investors, faced scrutiny in the High Court as a bitter court case between the FTSE 250 company and its former chief executive moved into a second week. Mr Woodford denied allegations during cross-examination by Stobart's legal team. He insisted he had been forced to pick sides in a boardroom battle between former chief executive Andrew Tinkler and Mr Ferguson earlier this year."

International

Pay Lottery

The Economist reports that Chief executives win the pay lottery

"In Japan bosses have rarely been given share options, perhaps because the country's stockmarket has never recovered from the bursting of the 1980s bubble. Owing also to an egalitarian mindset, Japanese executive pay is a little more than a tenth of that in America, and about a quarter of the British level. If the argument goes that executives have to be paid stratospheric salaries to run multinational businesses, this contrast seems odd. Japan has plenty of globally competitive companies in fields such as cars and robotics. In other words, it is not obvious that CEOs in America and Britain are raking it in because they are uniquely skilled. Moreover, their stock-option paydays have been driven in part by declines in interest rates, designed to boost the whole economy. Bosses have won the monetary lottery."

Breaking the Glass Ceiling

Paul Hastings has published a report entitled Breaking the Glass Ceiling: Woman in the Boardroom

"Paul Hastings presents the fifth edition of Breaking the Glass Ceiling: Women in the Boardroom, our comprehensive survey of the legislative, regulatory, and private sector developments impacting the representation of women on corporate boards globally."