

# REGISTRY ROUND-UP

August 2018



Welcome to your August 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:

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## Latest on the blog

### UK Corporate Governance Code

Take a look at our webpage about recent changes to the UK Corporate Governance Code and its impact on companies

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## Industry update

### Strategic Report Guidance

Following on from the revised UK Corporate Governance (our blog on the Code can be found [here](#)) the Financial Reporting Council (FRC) has published updated guidance on the Strategic Report. The revised guidance encourages companies to consider wider stakeholders and broader matters that impact performance over the longer term.

The enhancements to the guidance recognise the importance of non-financial reporting but maintain the core principles of the original guidance, which promotes the FRC's belief that integration of non-financial information into a Strategic Report improves the telling of the company's story.

The revised guidance can be found [here](#).

### Shareholder Engagement

The Institute of Chartered Secretaries and Administrators (ICSA) has published a report entitled Shareholder Engagement: The State of Play (found [here](#)). The report's aim is to document current engagement practices and see if any recommendations can be drawn on how to promote more effective dialogue between investors and issuers.

The report is based on a survey of company secretaries or their equivalent representatives in listed companies across 10 markets (Australia, Brazil, Chile, Italy, Japan, Hong Kong, South Africa, Sweden, United Kingdom and United States).

Some key findings from the report include:

More than 70% of respondents believe their level of engagement with investors has improved over the last five years. Most engagement is event-driven, but more developed markets are seeing an increase in ongoing engagement. 1/3 of issuers who responded pointed to international trends as a reason for increased engagement. An increase in client demand for active oversight and more focus on environmental, social and governance (ESG) factors has prompted increased engagement.

### EU Prospectus Directive

From 21 July, two further provisions of the EU Prospectus Regulation will be applicable. From that date, a prospectus will no longer be required for an offer of securities to the public with a total consideration in the EU of less than €1 million, and member states will have the discretion to exempt offers from the requirement to publish a prospectus where the total offer for consideration is less than €8 million. Under the previously applicable Prospectus Directive, the threshold was €5 million, and under the EU Prospectus Regulation the UK has chosen to apply the maximum threshold for exemption of €8 million. However, the aforementioned exemptions do not apply to the requirement to publish a prospectus on an admission of securities to trading on a regulated market.

The EU Prospectus Regulation is replacing the Prospectus Directive, and all regulations made under it have direct effect in EU member states. However, it is necessary to make consequential amendments to section 86 and schedule 11A of the Financial Services and Markets Act 2000 (FSMA), in order to implement the EU Prospectus Regulation.

The EU Prospectus Regulation can be found [here](#), and the updated FSMA can be found [here](#). Furthermore, the government has published an explanatory memorandum which can be found [here](#).

## LSE Updated AIM Nominated Advisor Rules

In April this year, the London Stock Exchange (LSE) published a consultation on proposed changes to the AIM Rules for Nominated Advisers (Nomads). Further to this consultation, the LSE has now published updated rules which came into force on 30 July 2018. The LSE has implemented the majority of its proposed rules and the focus is on the eligibility of firms to act as Nomads, as well as clarifying the LSE's supervisory powers over Nomads. The main rule changes are:

- **Rule 2 – Additional eligibility criteria**  
There are now additional eligibility criteria including that the entity seeking approval as a nominated adviser must provide satisfactory evidence that they are capable of being effectively supervised, and that they have appropriate financial and non-financial resources
- **Rule 12 – Changes to a nominated advisor**  
Rule 12 contains a non-exhaustive list of changes which may affect the entity's provision of Nomad services. The Nomad must inform the LSE of any matters which may affect its operation, role or performance as a Nomad as soon as possible
- **Rule 27 – Supervision of nominated advisers and qualified executives**  
The rule highlights the actions the LSE can take in respect of a Nomad's performance. The actions include requiring remedial action to be taken, imposing restrictions or limitations on the services the Nomad can provide, and any action under rules 28, 29, and 31 regardless of whether any steps have already been taken under rule 27
- **Rule 30 – Jurisdiction**  
Rule 30 makes clear that when a Nomad is removed from the register, the LSE retains jurisdiction over the Nomad for the purpose of conducting an investigation, or taking disciplinary action, in regards to prior breaches or suspected breaches.

The LSE have published a mark-up of the AIM rules [here](#), which highlights what changes have been made, and the revised AIM rules can be found [here](#).

## Financial Reporting Council Performance Metrics Report

The Financial Reporting Lab has published a report called: 'Performance metrics – an investor perspective', which sets out investors' views on the reporting of performance metrics. The results of the report showed that investors would like the metrics chosen by companies to report their performance to be:

- Clearly aligned to the company's strategic goals
- Transparent in how they are calculated
- Providing sufficient information that allows comparisons to be made to the previous years' performance.

The report includes a framework and a set of questions for companies to consider when deciding on how they report their performance.

The FRC has stated that the report should supplement the current regulatory focus on the reporting of performance, following the publication of Guidelines on Alternative Performance Measures by the European Securities and Markets Authority – found [here](#).

Furthermore, the FRC has noted that the next phase of the project, which will be published in autumn 2018, will seek to identify examples of how the principles highlighted in the report can be put into action.

The Lab's report can be found [here](#).

## ShareAction: Workforce Disclosure Initiative

ShareAction is expanding its investor-backed Workforce Disclosure Initiative following an apparent successful pilot.

They will be contacting 500 global companies and requesting that they complete a 45 page survey aimed at enhancing the transparency of their workforce management practices. The purported incentives for companies to

complete the survey include the reduction in reporting burdens imposed by responding to multiple survey or data requests from company's investors.

While not a requirement, respondents to the survey are encouraged to make their response public. Upon the survey being submitted to the initiative, companies will be evaluated based on their levels of disclosure and on the substance of their responses in comparison to their peers.

More information on the initiative, including a list of the 500 companies can be found [here](#).

## Responsible Investing

Aon has conducted its first global survey on the subject of responsible investing and has reached out to over 200 global institutional investors.

Its survey found that while 68% of respondents consider responsible investing important, it may not garner the support or recognition it deserves within an organisation because of a lack of agreement among key stakeholders about what they feel defines responsible investing.

Of those investors who have an active responsible investment policy, the incorporation of environmental, social and governance factors into their investment decisions is the most common approach.

The top five drivers of responsible investing are:

- Fossil fuels / carbon footprint
- Climate change
- Bribery and corruption
- Renewable energy
- Weapons manufacturing or work connected with the military.

Aon's full survey results can be found [here](#).

## New Regime for UK National Security

The UK government has implemented measures to increase its scope to review takeovers on national security grounds. We included a summary of this in our April Registry round-up, which can be found [here](#).

These measures were part of the government's National Security and Infrastructure Investment Review. Following on from this, on 24 July, the government published a white paper setting out a second set of stand-alone measures to significantly increase its powers to scrutinise investments on national security grounds. Moreover, it was highlighted in the white paper that the previously introduced measures are only temporary until the new national security regime takes effect. The proposed regime would be separate from the UK merger control regime, and national security considerations would be removed from the public interest considerations.

Under the new regime, two thresholds will need to be met – 'trigger events' and a 'substantive' threshold. It will not be limited to any specific sectors, unlike the previously implemented short-term measures, and will have no turnover or share of supply requirements. The government has also proposed that it will have the power to call into review a trigger event relating to assets or entities outside the UK where they carry on activities or supply taking place in the UK. It, therefore, has the potential to affect much smaller transactions than the previous measures, and overall the proposed regime would include a wide range of qualifying transactions.

The government stated that the new regime will bring the UK in line with other countries' foreign investment regimes, and that they expect there to be a significant increase in notifications and transactions called in for review each year. Under a proposed voluntary notification system, businesses will be encouraged to notify the government ahead of major transactions, although the right will be reserved to intervene where parties have chosen not to notify.

The white paper includes a non-exhaustive list of potential outcomes to review:

- Confirmation to proceed

- Approval subject to conditions
- Blocking or unwinding a deal, where this has already taken place.

Moreover, the government is proposing to include sanctions for non-compliance with the regime, including custodial sentences, financial penalties, or director disqualifications.

The white paper can be found [here](#), and the government is inviting comments until 16 October 2018.

### **New Regime for UK National Security**

Companies House have conducted some analysis on Persons of Significant Control (PSC) submissions and found that there are areas for improvement due to some misunderstandings especially where recording ineligible overseas companies as a relevant legal entity (RLE).

With this in mind, the Institute of Chartered Secretaries and Administrators (ICSA) has published an article reviewing the definition of an RLE and analysed the associated rules (found [here](#)).

#### **Interests held by companies:**

The article explains that while a company cannot technically be a PSC, it should be included on the register if it is an RLE under s. 790C(6) of the Companies Act. This section of the act states that a company would be an RLE if it would fall within the definition of a PSC if it had been an individual, and is subject to its own disclosure requirements.

Where there is a chain of RLEs owning a company, only the first should be entered onto the register, and similarly, where there are shareholders of an RLE these individuals will usually not need to be reported on the register.

#### **Indirect holdings:**

Such holdings held through a company or other legal entity can only be attributed to an individual if they have 'control' which is determined using the concept of 'majority stake'. The article provides a thorough explanation of several different ways this concept can be understood.

### **Register of Significant Votes Against**

The Investment Association (IA) have issued an update (found [here](#)) reporting on the 2018 AGM season so far, in which they review the data collected in relation to significant votes against resolutions.

The key findings covering AGMs up until 8 June include:

- 140 resolutions with more than a 20% vote against
- 54 individual director-related resolutions received significant votes against
- There was a similar level of significant votes against individual pay related resolutions.

The IA has confirmed that more companies are making public statements about their actions as a result of a significant vote against a resolution and that they would expect companies to follow-up their initial statement with one, within six months of their AGM.

### **Global News**

#### **Un-sponsored ADRs**

In mid-July the Ninth Circuit Court in the US issued its decision that an overseas company with an un-sponsored ADR which is trading in the US can be liable for violations of US securities laws.

The court seems to have eliminated the distinction between sponsored and un-sponsored programmes in respect of the territorial reach of Section 10(b) of the Securities Exchange Act 1934. This would seem to suggest that companies with an un-sponsored ADR would need to comply with the Securities and Exchange Commission's (SEC) reporting requirements.

In a similar manner to CREST Depository Interests, unsponsored ADRs are not generally set up with the knowledge of an issuer; therefore you may not be aware of an ADR being in operation. Companies can check if they have an ADR (including an unsponsored one) by using the search tool [here](#), and then checking the 'Depository' field on the right hand side of the search result.

US law firm Davis Polk has produced a short briefing note on the decision which can be found [here](#).



## Shareholder Activism

### Review of Shareholder Activism

Lazard has published its [Review of Shareholder Activism – Q2 2018](#)

"1) New campaigns initiated and capital deployed by activists reached record levels in 1H 2018; 2) Activists won more Board seats in 1H 2018 than they did in all of 2017 and are on pace to significantly surpass 2016's record level by year end; 3) Aside from seeking Board change, M&A objectives - whether catalyzing a sale, opposing the terms of an existing deal or pushing for a break-up - were the most common in 1H 2018; 4) Global targets remained in the activist crosshairs in 1H 2018, with high-profile instances of US-style activism occurring in both Europe and Asia." See [here](#) for the full document.

### Policy Survey

ISS has launched its [Annual Global Policy Survey](#)

"Institutional Shareholder Services Inc. (ISS) [...] today launched its Annual Policy Survey, a key component of ISS' annual global policy development process, looking at potential changes for 2019. Institutional investors, companies, corporate directors and other market constituents are all invited to respond to the survey. As in 2017, this year's survey is being conducted in two parts, starting with a high-level ISS Governance Principles Survey covering a small number of global high-profile governance topics. Topics cover auditors and audit committees, director accountability, board gender diversity and the 'one-share, one-vote' principle. **This part of the survey will close on August 24, 2018, at 5pm ET.** The second part of the survey is the ISS Policy Application Survey, a more expansive and detailed set of questions, broken down by region. This can be accessed at the end of the primary Governance Principles Survey, allowing respondents to drill down into many specific voting issues across the Americas, EMEA, and Asia-Pacific. **This more in-depth application survey will remain open for responses until September 21, 2018, at 5pm ET.**" Access the ISS Governance Principles Survey [here](#).

### Companies and Activists Find Common Ground

Bloomberg reports that [Companies, Activists Find Common Ground on Climate, Diversity](#)

"Companies are more willing than ever before to negotiate with shareholders advocating on issues such as climate change and boardroom diversity, according to data from Institutional Shareholder Services Inc. Corporate boards and management teams tend to push back when investors try to put proposals about the environment or social issues onto their annual meeting ballots. Now companies such as Amazon.com Inc. and Citigroup Inc. are instead reaching agreements with shareholder activists to change the company's board diversity policy, for example, or commit to

more climate disclosure, as several energy companies have done. That's led investors to withdraw a record 44 percent of the environmental and social proposals they submitted for a vote in 2018, the ISS data showed. It's the first time since ISS started tracking such data that more of these proposals have been withdrawn than voted on during the annual meeting season, which is mostly over now. A recent shift in big investors' voting habits helped bring companies to the negotiating table. Last year, companies saw BlackRock Inc. and Vanguard Group's first votes in favour of a climate proposal and State Street Corp.'s first votes against directors on all-male boards."

## **UK Activism**

### **Investors Turn Up Pressure**

Reuters reports that [Investors turn up pressure on British firms in 2018 AGM season](#)

"The number of British companies facing material dissent from investors at their shareholder meetings jumped in the first half of the year, with votes against individual directors doubling from 2017. Ninety-four companies were added to the Public Register – which lists companies that saw opposition of more than 20 percent on any vote or which withdrew a resolution – in the year to June 8, trade body the Investment Association said. The IA, whose members manage nearly 7 trillion pounds in assets, set the register up after a major review into corporate governance by the government last year, in the wake of growing discontent about corporate culture and behaviour. At the midway point of the season for annual general meetings of companies in the FTSE All-Share index, the IA said a total of 140 individual resolutions had seen votes against of more than 20 percent, while 14 were withdrawn. Thirty-four companies faced director-related resolutions in that period, up 62 percent on a year earlier, while the number of individual resolutions with more than 20 percent votes doubled to 54 from 27."

### **Female Under-representation**

Cranfield School of Management reveals that the [Cranfield FTSE report highlights female under-representation in executive ranks](#)

"A report by Cranfield School of Management has criticised the lack of progress in improving gender diversity at the highest executive echelons of FTSE 350 companies. Despite progress in female representation on non-executive board positions, the report identifies the lack of women in executive roles on boards of the UK's leading companies. In a 48-page detailed analysis, experts from the school's International Centre for Women Leaders scrutinise data provided by the UK's top 350 companies. Drawing on 20 years of experience in this area, the Female FTSE Board Report's authors identify the leading players in gender diversity in the FTSE 100, and highlight those companies that are lagging behind the rest." See the full document [here](#).

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