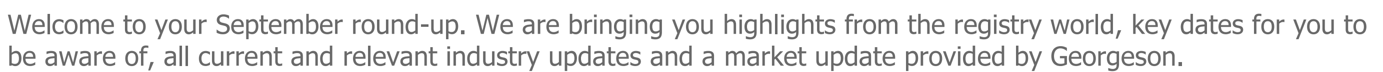
Computershare

REGISTRY ROUND-UP

September 2019



Welcome to your September 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

- Intermediated Securities
- ICSA Bellwether Report
- General Meetings and the Role of the Chairman
- FCA Market Watch – Market Abuse Regulation
- FTSE 100 Remuneration
- Climate Change
- Director Over-boarding
- SEC Guidance on proxy rules and voting responsibilities (Corp Law 23/08)

Georgeson market update

- ESG and Financial Returns
- What Companies Are For
- Pay Policy Ripped Up

Intermediated Securities

The anticipated call for evidence from the Law Commission which is looking into intermediated securities was published on August 27.

The call for evidence is the first step in the Commissions' study and is seeking views and evidence on stakeholder's experiences of intermediated securities.

The Commission is seeking views on issues such as:
Difficulties that investors who hold through an intermediated model have with obtaining voting rights, lodging votes and ensuring their vote has been counted compared to directly registered investors
The ability of intermediated investors to seek legal redress from an issuer of securities in which they have invested
Impacts on investors in the event of insolvency of an intermediary
How new technologies may improve an investors ability to exercise their rights.

Representatives from our Industry Team and Global Capital Markets group have already been engaged with the Law Commission prior to the publication of the call for evidence and are currently reviewing the call for evidence ahead of responding.

The call for evidence (found here) is open until 5 November 2019 and if you have any points you wish us to consider in our response to the Commission please let your Client Manager know.

ICSA Bellwether Report

The ICSA in conjunction with the Financial Times have published the results of their biannual Boardroom Bellwether Survey which takes the views of FTSE350 companies on matters such as the state of the business environment and key governance issues.

The survey has found that there is a general lack of confidence in the economy with 69% of those who responded anticipating a decline in the coming year. However despite the doom and gloom, the fear of Brexit is lessening despite many companies sitting on the fence as to its possible impact.

Many now view the UK Government as unfriendly to the business community with 42% of respondents stating so, a figure which has risen significantly since the winter of 2018 where only 13% felt this way.

The survey has shown that ahead of many of the FTSE 350 needing to report on the new UK Corporate Governance Code there is a strong preference (42% of respondents) for designating a non-executive director to act as the voice of the workforce over and no respondents indicated that they would seek to put an employee on their board (though this isn't to say a small number of non-respondents aren't considering this).

The full survey results can be found here.

General Meetings and the Role of the Chairman

A recent court judgement has been given in the case of Kaye v Oxford House (Wimbledon) Management Company Ltd [2019] EWHC 2181 (Ch).

The decision explores the operation of general meetings and the role of the chairman in conducting the business and closing the meeting. This is believed to be the first time that the courts have considered s.303(5) of the Companies Act 2006 which provides that a resolution may be moved at a meeting unless if passed it would be ineffective either by way of inconsistency with any enactment, the company's constitution or otherwise, or if it is defamatory to any person or it is frivolous or vexatious.

This case looked at the actions of the chairman during an extraordinary general meeting where based on limited legal advice on s.303(5) he dismissed the resolutions and closed the meeting without the support of the attending shareholders. In his decision the Deputy High Court Judge Lance Ashworth QC found that:

"It is the duty and function of the chairman to preserve order and to take care that the proceedings are conducted in a proper manner and that the sense of the meeting is properly ascertained with regard to any questions which is properly before the meeting. However, he does not have power to stop the meeting at his own will and pleasure ... the chairman is not running the general meeting for his own benefit, but for the benefit of the company as a whole. The chairman must therefore act at all times in good faith and for proper purposes, remembering at all times that the authority to preside over the meeting does not confer dictatorial power"

The judge found that once a general meeting is called by the directors, "the only people who can then consider the proposed resolutions included in the notice convening the meeting are the members of the company. There is no residual power remaining in the directors further to consider section 303(5)" meaning that to utilise the provisions of the section, it must be done within the 21 days allowed under s.304 to call a meeting once the company has become subject to the member's request.

FCA Market Watch – Market Abuse Regulation

The 60th edition of the Financial Conduct Authority's (FCA) newsletter "Market Watch" (found here) discusses the regulator's expectations in relation to insider lists and inside information as prescribed under the Market Abuse Regulation.

The newsletter principally focuses on the outcome of a review by the FCA into systems and controls used by investment banks and related advisers, however, there are several points raised that will be of importance to all those impacted by the regime.

- **Quality of Insider Lists**
  The FCA states that their investigations are hindered by insider lists frequently omitting the name of those who have or have had access to inside information. Organisations must ensure that the data provided to the FCA is complete and accurate.

  On top of this, the FCA has made clear that an inability to respond to a request from them to be provided with an insider list (and provide accurate records) is considered by the regulator to be an indication of weaknesses in procedures and policies within the organisation.

- **Access to inside information**
  Organisations should ensure that appropriate controls are in place so that access to inside information is only available to those who genuinely need it to properly fulfil their own role.

  This is especially relevant due to the recent conviction of Fabiana Abdel-Malek who used her position as a senior compliance officer to access information and pass it to a third party who made illegal profits of approximately £1.4 million. While Abdel-Malek was named on the relevant insider lists, it was not considered absolutely necessary she had access to the information, according to the FCA.

FTSE 100 Remuneration

Ahead of the full publication of Deloitte's review of directors' remuneration in FTSE 100 companies, due in October, a preview of their findings have been released (found here).

The review which looked at data on 96 companies who had a financial year ending up to and including the 28 February 2019 and those companies who held an AGM during 2019 with a financial year ending on or after 30 September.

The previewed findings show that:

- The receipt of low votes on pay (below 80% in favour) by FTSE 100 companies fell by nearly a half compared to last year. However, those companies within the FTSE 250 saw a more challenging season with 1one in six receiving low votes on their annual remuneration report.
- The new Corporate Governance Code is already being felt with companies making moves to reduce executive pensions and implementing measures to ensure executives hold shares after they leave an organisation.
- Median pay packages for CEOs has reduced from £4m in 2017 to £3.4 in 2018. This combined with the fact that almost a third of CEOs saw no increase in their base salaries seem to indicate that remuneration levels are stabilising and that pay packages are being simplified with only 5% of the FTSE 100 operating more than one LTIP.
- Deloitte's preview was released at the same time that the Chartered Institute of Personnel & Development (CIPD)/High Pay Centre published their annual assessment of FTSE 100 pay packages (found here) which identifies that a significant disparity remains between top earners and the wider workforce.

The CIPD's findings state that:

- CEO median pay, while reduced, is still 117 times that of the average UK full-time worker earning £29,574, meaning that the average CEO would take just three days to earn the average worker's annual wage.
- The reduction in CEO pay is likely tied to a greater restraint on high pay, and less money being awarded through LTIPs, however, this latter factor could be down to the cyclical nature of pay-outs.
- Despite improved efforts on boardroom diversity, only six female CEOs exist within the FTSE 100.
- Shareholder dissent is having very little impact on bringing companies to account on excessive pay. During 2014 and 2018 every pay policy brought to shareholders for a binding vote was approved, with most receiving over 90%.

Global News

Climate Change

This month we have seen a number of bodies from around the globe providing updated guidance on climate change disclosures or aids for investors on understanding such matters.

ASIC Guidance Update

The Australian Securities & Investments Commission (ASIC) have updated their existing guidance on climate change related disclosures (found here). The updates are contained in a number of regulatory guidance and accompanying information documents all of which follow recent Senate recommendations on carbon risk and the government's response. Amongst other things, the updates include:

- Enhancements to the list of examples of common risks that may need to be disclosed to include those risks developed by the G20 Financial Stability Board's Taskforce on climate related matters.
- Highlighting that climate change is a systemic risk that could impact the future financial prospects of an organisation and which will need disclosing in an operational and financial review.

ASIC have confirmed that they will be conducting surveillance on climate change disclosure practices in the coming year.

Canadian Guidance

The Canadian Securities Administrators (CSA) have released guidance (found here) which is similar in nature to the US's Securities & Exchange Commission's 2010 guidance in that it aims to aid companies in identifying and disclosing material climate change related risks in line with existing laws.

The guidance includes questions for boards and executive management to help inform the consideration of material risks, evaluate them and prepare the appropriate disclosures. It also covers factors that may be considered when making materiality determinations and provides examples of possible risks grouped into categories such as physical, reputational, regulatory, technology.

ISS Voting Framework

In relation to their work with institutional investors on developing climate change proxy voting & engagement policies, ISS have launched a scorecard based Climate Voting Service which uses their unique climate data and propriety research as well as drawing on a number of widely accepted frameworks. They have also announced that they are launching an ISS Climate Awareness Scorecard which will utilise publicly available data together with their own propriety analysis on climate related disclosures, practices and performance records and be available in selected proxy voting and research reports going forward.

More information can be found in their article here.

Director Over-boarding

With a growing international trend highlighting concerns around a directors' ability to serve on multiple boards, ISS have published an article looking at the global trends, definitions and the impact of director over-boarding (found here).

ISS's article identifies several key factors which are prompting an increase in sensitivity toward the subject. It also considers the most common criteria for over-boarding and provides information on evolving investor expectations and voting guidelines.

The article demonstrates that a new investor market standard has emerged which has a maximum of four boards for non-CEO directors and only two boards for CEOs and it also assesses a correlation between over-boarding and company underperformance.

Within the article, ISS consider the principal criteria used in determining if a director has an unmanageable number of outside mandates such as:

- Employment status
  Those individuals who are employed full time (e.g. professional directors) should serve on fewer boards and where a CEO position is held full time then the expectation is stricter in that they should serve on no more than one or two boards in addition to their full time position.

- Board & Committee Responsibilities
  The Chair is expected to serve on fewer boards then standard board members, and in some jurisdictions holding the position of a chair is seen as the equivalent of two directorships. There are also considerations for those board members who hold the chair on prominent committees such as the Audit Committee.

SEC Guidance on proxy rules & voting responsibilities (Corp Law 23/08)

The Securities & Exchange Commission (SEC) have published two documents looking at proxy voting within the US. The first is guidance for investment advisers in relation to proxy voting responsibilities (found here) and the second concerns the applicability of the US proxy rules (found here).

- Investment Adviser Guidance
  The guidance is aimed at investment advisers who have agreed to take on the proxy voting for their clients (individual investors, funds or other institutional investors).

  The guidance makes clear that the appointed adviser has a duty of care to do what is in the best interest of the client and not in their own interest. It should ensure that to the best of its ability it has conducted a review to ensure that there is no materially inaccurate or incomplete information where they are determining the clients voting interests.

  The guidance also considers what should be done where an adviser has a conflict and if they use the services of a proxy advisory firm (i.e. ISS or Glass Lewis).

- Applicability of proxy rules

The document considers whether proxy voting advice constitutes a 'solicitation' under federal proxy rules and their application to proxy voting advice. The interpretation and guidance within the document forms part of the SEC's wider review of the US proxy process.

International

ESG and Financial Returns

AXA Investment Managers has published a report entitled ESG and Financial Returns: The academic perspective.

"An increasing amount of academic research is showing that the incorporation of environmental, social and governance (ESG) factors can potentially lead to better performance for both companies and their investors. This is fundamentally dispelling the long-held stereotypical view that investing responsibly means sacrificing investment returns. In this document, we highlight a variety of academic research which demonstrates the positive link between ESG and financial performance. These studies support AXA Investment Managers' ambition and commitment to integrating ESG factors into investment analysis, engaging investee companies and developing impact investing – as we believe it is in our clients' long-term best interests to do so."

What Companies Are For

The Economist reports about What companies are for: Competition, not corporatism, is the answer to capitalism's problems.

"Across the West, capitalism is not working as well as it should. Jobs are plentiful, but growth is sluggish, inequality is too high and the environment is suffering. You might hope that governments would enact reforms to deal with this, but politics in many places is gridlocked or unstable. Who, then, is going to ride to the rescue? A growing number of people think the answer is to call on big business to help fix economic and social problems. Even America's famously ruthless bosses agree. This week more than 180 of them, including the chiefs of Walmart and JPMorgan Chase, overturned three decades of orthodoxy to pledge that their firms' purpose was no longer to serve their owners alone, but customers, staff, suppliers and communities, too."

UK

Pay Policy Ripped Up

The Daily Telegraph reports that Berkeley tears up pay policy after outcry.

"Berkeley Group has drawn up a new pay policy for bosses including its founder Tony Pidgley after outrage over payouts worth tens of millions of pounds. The housebuilder, which handed its three highest-paid executives a combined £21m last year, has scrapped its annual bonus. Bosses will now be forced to hang on to shares earned through the company's generous long-term incentive scheme for an extra two years. Mr Pidgley, Berkeley's executive chairman, and his fellow directors will have to re-earn any shares that have not vested through the scheme by 2021 over the following four years."

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