# REGISTRY ROUND-UP

May 2018

Welcome to your May 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**

- Economic Crime Inquiry
- Executive Pay and Gender Pay Gap Inquiry
- ESMA Prospectus Regime Updated Q&A on Profit Forecasts
- ESMA Proposes Simplification to Prospectuses
- Modern Slavery
- Mid-Small Cap Investor Survey
- QCA Governance Code
- Global News

**Georgeson market update**

- UK Activism
- International Activism

## Registry Review 2018

The last 12 months in Registry

Our team takes you through our latest services and developments, as well as an overview of key industry and legislative topics

READ OUR 2018 REGISTRY REVIEW


## Economic Crime Inquiry

The House of Commons Treasury Committee has launched an inquiry looking into aspects of economic crime (further information found here). They are focusing on:

1) anti-money laundering and sanctions, and
2) consumers and economic crime.

The first of the areas being focused on will look at the scale of money laundering and the impact of the existing regulatory regime, while the second area will look at the effectiveness of financial institutions in combating economic crime and the security of consumer data.

## Executive Pay and Gender Pay Gap Inquiry

The House of Commons Business, Energy and Industrial Strategy (BEIS) Select Committee has launched an inquiry (further information found here) to determine the progress of their 2017 recommendations on executive pay, any improvements on the reporting of executive pay and what steps have been taken to tackle excessive executive pay. The inquiry is likely to examine the use of clawback provisions.

The Committee is also seeking views on compliance with the rules on gender pay gap reporting that required companies to publish data on the government website by 4 April. They will be looking at the measures that can be taken against companies who have failed to comply and the effectiveness of the sanctions and what actions companies should take, if any, to address pay gaps.

## ESMA Prospectus Regime Updated Q&A on Profit Forecasts

The European Securities and Markets Authority (ESMA) has updated its Q&A to include new information relating to profit forecasts. The new Q&A clarifies how to identify profit forecasts in prospectuses, as well as explaining the definition included in the Prospectus Regulation No 809/2004. It also gives examples of specific criteria which are considered to be a profit forecast:

- There does not need to be a precise figure to constitute a profit forecast. It can instead refer directly or indirectly to a range of figures, such as a minimum and maximum figure
- If the purpose of the wording is to provide information about expected future profit/loss for a specific financial period, it should be considered a profit forecast
- Long-term financial objectives, regardless of whether they are aggregated or not, can be considered profit forecasts
- Accounting data or financial indicators can be considered a profit forecast, and ESMA adopts a 'substance over form' approach in regards to what financial measures may be viewed as profit forecasts
- Information may be considered a profit forecast if it is possible to calculate a figure, or a minimum or a maximum, for the likely levels of future profit or loss, when combining it with other information in the prospectus
- To constitute a profit forecast, a statement must be specific with respect to a level of profit and to a specific financial period, and should be clearly identified as such

- It is not possible to remove information from the scope of the definition of profit forecast by merely stating that it is not a profit forecast.

The updated Q&A can be found here.

## ESMA Proposes Simplification to Prospectuses

On the 30 June 2017, the Prospectus Regulation was published in the Official Journal of the European Union. Most of the provisions will come into force in July 2019. Following the publication, the European Commission sought technical advice from ESMA in three areas: format and content of the prospectus, format and content of the EU growth prospectus, and the scrutiny and approval of the prospectus. ESMA's final report on Technical Advice was submitted to the European Commission on the 28 March 2018, and was developed following three consultation papers published in July 2017.

The report contains the following key points:

- **Format and content of the prospectus**
  ESMA has proposed largely maintaining the existing requirements. However, they have also suggested a number of changes (such as reduced disclosure requirements for secondary issues by better taking account of information already in the public domain) with the aim of reducing the cost and administrative burden of using a prospectus. ESMA has also developed a new registration document – the Universal Registration Document (URD) - for issuers of securities that are listed on a regulated market or a Multilateral Trading Facility (MTF). This URD is intended to function as a useful shelf registration document

- **Format and content of the EU Growth prospectus**
  This section of the report identifies the minimum disclosure requirements for the EU Growth prospectus, and the format and content of the specific summary. ESMA has also suggested adapting disclosure requirements based on the issuer's size and complexity of its operations, and balancing this against the need to protect the investor

- **Scrutiny and approval of the prospectus**
  The last section of the report suggests applying standard criteria for scrutiny of the prospectus, and that national competent authorities should be given a level of flexibility to ensure investor protection. For approval and filing, ESMA suggested applying procedures based on the existing provisions of the Commission Delegated Regulation 2016/301.

The technical advice will form the basis for the implementing regulations, which are to be adopted by the Commission before the end of January 2019. The press release and full report can be found here.

## Modern Slavery

The Business & Human Rights Resource Centre (BHRRC) has published their guide to best practice for companies when producing their Modern Slavery Act statements (found here). Through a range of case studies, the guide provides examples of best practice based on existing statements and goes onto highlight areas where the Centre considers companies are underperforming.

Some actions taken by companies have been highlighted as positive and include:

- Development of supplier codes of conduct and contracts
- Self-assessments and monitoring tools
- Explicit modern slavery training
- Appointment of senior executives to oversee modern slavery strategies
- Collaboration with peers.

The key recommendations that the Centre have put forward are:

- Regular review of due diligence and risk assessments

- Prioritising the mapping of supply chains
- Ensuring statements comply with the minimum requirements of the Act
- All six reporting areas set out within the Act should have detailed disclosures contained within the statement.

## Mid-Small Cap Investor Survey

The Quoted Companies Alliance (QCA) and Peel Hunt have published their survey of 100 UK-based fund managers whose focus is small and mid-size companies (found here).

The survey has found that since the implementation of MiFID II earlier in the year, both the volume and quality of research into small and mid-size companies have declined. The majority of fund managers believe that the new regulations have negatively impacted the liquidity of companies and will lead to a decrease in the number of broking houses.

The survey has found that for companies MiFID II is likely the single most impactful change in the last 10 years and those small and mid-size companies should note that:

- A company's website is going to become a far more important source of information for investors due to the decrease in available market research
- Check if your appointed broker can distribute research to investors and potential investors. Research used to be free for Asset Managers, with costs being recouped in other ways; under MiFID II research must be paid for.

## QCA Governance Code

In line with the recent AIM rule changes, the Quoted Companies Alliance (QCA) haas published an updated Corporate Governance Code (found here) which aims to provide practical and outcome-based approaches. The code is tailored to small and mid-size companies and provides a valuable reference for emergent companies.

The code focuses on 10 principles together with step-by-step guidance for their application. The guide is free to members of the QCA or can be purchased from the organisation.

The code is made up of four sections covering:

- The effective application of the code
- Good corporate governance
- Principles of the code
- Roles and responsibilities.

The key changes to this version of the code include the reduction of the principles from 12 to 10, linking relevant disclosures with principles.

## Global News

### Priorities for 2018 Proxy Season

EY has published their 2018 proxy season preview (found here), where they interviewed over 60 institutional investors, who represent over US$32 trillion in assets to establish their top five priorities for the 2018 proxy season.

The investors' priorities include:

- Board composition and diversity
- Board experience
- Climate risk
- Talent management
- Remuneration.

The report clearly shows that institutional investors are focusing on how companies are navigating the changing business environment, including technology changes and environmental challenges.

**Virtual Meeting Best Practice**

A US committee representing investors, companies, proxy and legal service providers and the US Society for Corporate Governance have released some principles and best practice for virtual annual shareowner meetings (found here).

The document is aimed at companies making decisions regarding the format of their annual meetings, specifically when considering hybrid or virtual-only meetings. While the document recognises the increase in virtual meetings of all sizes, it also acknowledges the fundamental objectives of meaningful, equitable and broad shareholder participation.

**Euroclear and Brexit**

One consequence of Brexit has been the need for the Irish market to undertake a review of the operation of their Central Securities Depository. The intention had been that Euroclear UK and Ireland would establish an Irish specific legal entity to service the Irish market, albeit using the same CREST system as is used to service securities settlement in the UK and Ireland currently. In recent weeks, it has been announced that other options are being explored due to concerns being raised by regulators.

As further information is known we will continue to keep interested parties updated.

Computershare


## UK Activism

### AGM Showdown

The Telegraph reports that Barclays braced for AGM showdown with activist investor Bramson.

"Barclays is preparing for a potential showdown with notorious New York-based corporate raider Ed Bramson at its annual general meeting in London on Tuesday. Speculation is rife that Mr Bramson will turn up to the event at the QEII Conference Centre in Westminster, and that he could publicly call for a shake-up of the bank. Mr Bramson missed the deadline to table a resolution for the AGM, raising the prospect of him having to attend in order to get his points across."

### Politeness is Key

The Financial Times reports that Fund chiefs aid activist raiders but in Britain politeness is key.

"Battle of the boardrooms: after Melrose-GKN, investors are set to step up criticism."

### Falling Short on Diversity

The Investment Association has announced that 1 in 10 FTSE 350 companies fall short on gender diversity targets.

"The Investment Association (IA) and the Hampton-Alexander Review have written to 35 FTSE 350 companies with low female representation at leadership level, calling for change. 14 companies in the FTSE 100 have been singled out. Companies in the FTSE 100 who have all-male Executive Committees, such as BP and Smurfit Kappa Group, and companies whose combined Executive Committees and Direct Reports have low proportions of women, such as Persimmon and TUI, have been asked to explain their poor gender balance and what steps they are taking to move towards the targets as set out in the Hampton-Alexander Review."

### 11 Investor Revolts

The Financial Times reports about The 11 investor revolts to watch for this AGM season.

"From pay to gender diversity, shareholders are planning a series of protests."

## International Activism

### Push Harder for Woman Directors

Bloomberg reports that Big Investors Push Harder for More Women Directors.

"Emboldened by last year's successful campaigns against excessive executive pay, some of the world's biggest investors are shifting their focus to women – or the lack thereof – on corporate boards."

### Shareholder Activism – Q1 2018

Lazard has published their Review of Shareholder Activism – Q1 2018.

"Key observations from the Q1 2018 report include: 1) Activist activity reached new heights in 1Q 2018 both in terms of capital deployed and campaigns initiated; 2) Activism in Europe continued to be robust in 1Q 2018, accounting for ~29% of capital deployed and ~23% of campaigns initiated; 3) Influence of passive investors continued to strengthen as Vanguard, BlackRock, and State Street now own ~18% of the S&P 500 vs. ~14% in 2012; and, 4) M&A continued to be a core focus, with activists pushing for sales processes, intervening in announced transactions and forcing break-ups and divestitures." The full document can be viewed here.