REGISTRY ROUND-UP

November 2018

Welcome to your November 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

- Duty of Directors Guidance
- Ethnicity Reporting
- Business Model, Risk and Viability Reporting
- Climate Change Disclosures
- MAR Q&A Update
- Next Generation Governance
- FRC Annual Governance Review
- Future of Corporate Reporting
- Global News

Georgeson market update

- 2018 Proxy Season Review
- UK Activism
- International Activism

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.

READ MORE

Duty of Directors Guidance

The GC100 has published guidance on the duty imposed on all directors under s.172 of the Companies Act 2006 to promote the success of their company.

The guidance follows the Department for Business, Enterprise & Industrial Strategy's (BEIS) invitation for the group to produce this guidance as part of the government's drive to improve the UK's corporate governance framework.

The group has split the guidance into four sections which cover key suggestions for consideration, practical steps, key legal aspects of the duties and example scenarios on how directors could discharge their duties.

The guidance can be found here.

Ethnicity Reporting

The Department for Business, Energy & Industrial Strategy (BEIS) has published a consultation looking at ethnicity pay reporting, together with a 'One Year On' review of progress following the McGregor-Smith Review.

One of the recommendations made within the McGregor-Smith Review in 2017, was that companies should be required to publish information on their ethnicity pay data. However, the government opted to encourage voluntary reporting while they continued to monitor progress. The 'One Year On' review has found that only a minimal number of organisations have collected data on ethnicity pay.

Due to the limited progress, the consultation is proposing that reporting on ethnicity pay gaps should be mandatory. This position has the support of both the Equality & Human Rights Commission and the House of Commons' BEIS committee.

The consultation proposes several methodologies for the calculation of data, which include mirroring the methodology used for gender pay gap reporting by comparing average hourly earnings of ethnic minority employees as a percentage of white employees. The consultation also considers other factors including the adoption of narrative reporting and how ethnicity data is currently being collected by organisations. The government is recommending that the mandatory reporting requirement is only applicable to those organisations with over 250 employees.

The consultation can be located here, and the 'One Year On' review can be found here. Responses to the consultation are required by 11 January 2019.

Business Model, Risk and Viability Reporting

The Financial Reporting Council's (FRC) Financial Reporting Lab has published a new report 'Business model reporting; Risk and viability reporting – Where are we now?' considering how reporting practices have changed since the original reports were published in 2016 and 2017.

The findings of the report have concluded that whilst there have been some positive developments; there is still emphasis by investors on the need for reporting to be more consistent and clearly linked throughout a company's annual report, to make business model, risk and viability disclosures more useful.
The report also includes practical examples from companies which have implemented the Lab's recommendations in their reports.

The FRC report can be found here.

Climate Change Disclosures

On 15 October the Financial Conduct Authority (FCA) published a discussion paper on Climate Change and Green Finance, considering the impact of climate change on financial markets.

The discussion paper was published following the recent report by the Financial Stability Board's (FSB) Taskforce on Climate-related Financial Disclosures (TCFD), which noted that few companies currently disclose the financial impact of climate change. The FSB published recommendations with the aim of helping companies measure and respond to climate change risks, and the taskforce highlighted the need for continued efforts to support the implementation of its recommendations.

Following on from the FSB recommendations, the FCA is consulting on guidance to issuers about how current regulation might be interpreted to apply to climate change risks and has suggested that reporting on this is already included under the existing disclosure obligations. The FCA is seeking the views of market participants regarding this guidance and is also considering whether issuers should be required to provide a statement to investors as to whether they have followed the TCFD recommendations.

Responses to the discussion paper will be accepted until 31 January 2019. The discussion paper can be found here, and the FSB TCFD report can be found here.

MAR Q&A Update

The European Securities and Markets Authority (ESMA) has published an updated edition of its Q&A relating to the Market Abuse Regulation (MAR). The updated Q&A includes three new questions which all seek to provide clarification on delaying disclosure of inside information to preserve the stability of the financial market, under Article 17(5) of MAR.

The revised Q&A covers:

› How to assess whether conditions under Article 17(5) of MAR are met when credit/financial institutions intend to delay disclosure of inside information.
› That credit/financial institutions are expected to notify the National Competent Authority (NCA) of their intention to delay and specify the expected duration of the delay.
› If the NCA does not consent to the delay in disclosure, the inside information will have to be disclosed immediately, and it cannot be delayed on any other grounds.

The updated Q&A can be found here.

Next Generation Governance

ICSA has released a report entitled 'Next Generation Governance' following their survey of Company Secretaries and governance professionals from Generation Y/Z (ages 18-35) and established practitioners (ages 56-85).

The survey sought to gain an understanding into the impact that different age demographics have on the role of governance, the future challenges facing organisations and the company secretarial profession.

Some of the key findings discussed in the report include:

› 44% of Generation Y/Z (compared to 26% of established practitioners) respondents felt that regulators and industry bodies had more influence than investors over an organisations culture.
› 48% of Generation Y/Z felt that environmental sustainability is highly likely to cause significant governance challenges; whereas only 27% of established practitioners believe this.

The report can be found here.

FRC Annual Governance Review

Ahead of the change to the new UK Corporate Governance Code, the Financial Reporting Council (FRC) has published their annual review of corporate governance and reporting.

The FRC has identified that compliance with the existing code is as high as 95% for FTSE350 companies who report that they comply with all but one or two of the code's provisions. However, in a far stronger tone than previous years, the report makes clear that high levels of compliance does not necessarily equate to high standards of governance and that companies still seem hesitant to provide clear explanations of their non-compliance.

The FRC's report can be found here.

Future of Corporate Reporting

The Financial Reporting Council (FRC) has launched a major review of how companies should better meet the information needs of shareholders and other stakeholders. The review will look at financial and non-financial reporting practices, consider what information investors and other stakeholders want, and more fundamentally, the purpose of corporate reporting and the annual report.

The FRC expects their review will result in changes to regulation and practice during the second half of 2019 following a published consultation. The project will be supported by an advisory group of up to 15 individuals.

The FRC is looking for nominations to the advisory group by 15 November. Individuals can apply here or if they wish to provide ideas or suggestions on how corporate reporting should evolve, they can email futurereporting@frc.org.uk.

Global News

Corporate Governance Principles

A new version of the 'common sense' US corporate governance principles has been published by a group of well-known company directors, investment managers and institutional investors acting collaboratively. This is the latest update of the principles following their original release in 2016.

The principles cover several of the same areas seen within the UK Corporate Governance Code and/or the QCA Code. It has also been announced that Columbia Law School's Milstein Centre for Global Markets and Corporate Ownership will maintain and publish the principles, host them on their website and retain a list of companies and investors who have committed to them.

The revised principles can be found here.

Companies Amendment Bill

The South African Department for Trade & Industry has published for public comment a draft of the Companies Amendment Bill (located here). This bill will amend the current company law framework as covered under the Companies Act 2008 and the Companies Regulation 2011.

Amendments include, but are not limited to, changes to the definition of securities, amendments to the definition of an employee share scheme and clarification of how shares which are not fully paid are to be dealt with.

Comments to the draft Bill are required within 60 days of publication, which occurred on 21 September.

Annual Governance Practices Report

Shearman & Sterling, the global law firm, has released their annual report on Corporate Governance & Executive Compensation (found here). The report contains data relating to some of the largest US companies, together with a focused review and practical guidance on a number of key topics such as corporate culture, cybersecurity, board diversity and #MeToo developments.

The review of cybersecurity is of particular note in view of the pervasive cyber threats, recent SEC guidance and ever-evolving practices in the area.

Director Onboarding

Spencer Stuart, the US-based global executive search firm, has released a director onboarding checklist (found here) which encompasses five insights and recommendations based on new directors' onboarding experiences and views of best practice.

1. Formal and structured onboarding programmes enable new directors to understand expectations and proactively identify potential gaps.
2. Formal and informal meetings with the full board and senior management enable new directors to better understand boardroom dynamics, board culture, director backgrounds and perspectives.
3. More, rather than less, should be the guiding principle when it comes to onboarding to ensure new directors are aware of strategies, financials, structures, business units, KPIs etc.
4. Encouraging new directors to attend all committee meetings can be effective for accelerating their understanding.
5. Assign new directors a more experienced director mentor.

The full memo from Spencer Stuart entitled 'New Director Onboarding: 5 Recommendations for Enhancing Your Program' can be found here.

Georgeson market update

2018 Proxy Season Review

Look out next week for the publication of the Georgeson's 2018 Proxy Season Review. The report will cover seven major European markets: the UK, Germany, France, Switzerland, the Netherlands, Italy and Spain.

Georgeson will also be holding a webinar in conjunction with SWIPRA on the proxy season review and SWIPRA's corporate governance survey. Register here for the webinar taking place on 9 November at 12.00pm (GMT).

UK Activism

UK Companies More Vulnerable

The Financial Times reports that UK companies more vulnerable to activist investors.

"More campaigns expected as a result of weak pound, strong shareholder rights and Brexit."

Corporate Landscape Shaped by Passive Funds

The Financial Times report about How passive fund managers can shape the corporate landscape.

"They are proving pivotal in control contests, activist campaigns and mergers."

International Activism

Scare Tactics to Coerce Dell Shareholders

CNBC reports that Carl Icahn says Michael Dell trying to coerce Dell tracking stock holders with 'scare tactics'.

"Billionaire activist investor Carl Icahn said Monday that Michael Dell and the private equity firm Silver Lake are 'manipulating' and 'coercing' shareholders of the tracking stock of VMware into accepting their buyout offer. By using 'scare tactics,' Icahn claimed, Dell and Silver Lake are 'literally stealing' $11 billion from shareholders in a plan to take Dell public again. Icahn contends Dell and Silver Lake are significantly undervaluing VMware, a software company, in order to make money."

Voting Firms Fight Congress

CNBC reports that Shareholder voting firms fight Congress over attempt to limit their power.

"A piece of legislation is pitting companies against investors – and the investors have begun fighting back in earnest. Congress is looking to rein in the influence of so-called proxy advisory firms, which prepare research reports that help inform investors on how to vote in shareholder matters. On Tuesday, Institutional Shareholder Services (ISS) and the Council of Institutional Investors (CII) are starting a website to urge American voters not to support this legislation, known as The Corporate Governance Reform and Transparency Act of 2017 (H.R. 4015). […] The bill would require proxy advisory firms to register with the SEC and allow companies to fact-check their research before it's distributed to investors. That's one of the biggest sticking points for the investor camp. CII, a non-profit association for fund managers, says that giving companies the right to review research would slow down the process. That would give investors who are the proxy advisory firms' paying customers, less time to do their own analysis, CII said in a joint statement with ISS. CII is also concerned that giving companies the right to review research might give them a reason to slant the reports more in favour of the companies in contested situations."

Beyond gender hard to measure

The Financial Times reports that Diversity beyond gender proves hard for investors to measure.

"Finding data on worker demographics is a challenge for responsible investment teams."